

# **Review of the Parliamentary Committee System**

**Report No. 17**

**COMMITTEE OF THE LEGISLATIVE ASSEMBLY**

**February 2016**

# COMMITTEE OF THE LEGISLATIVE ASSEMBLY

<b>Chair</b>	Hon. Peter Wellington MP, Speaker of the Legislative Assembly
<b>Members</b>	Mr Mick de Brenni MP, [Deputy Premier's nominee] Hon Stirling Hinchliffe MP, Leader of the House Mr Shane Knuth MP, Member for Dalrymple Mr John-Paul Langbroek MP, Deputy Opposition Leader Mr Linus Power MP, Member for Logan [Premier's nominee] Mr Lawrence Springborg MP, Leader of the Opposition Mr Ray Stevens MP, Leader of Opposition Business
<b>Staff</b>	Mr Neil Laurie, Clerk of the Parliament Mr Michael Ries, Deputy Clerk of the Parliament Ms Melissa Salisbury, Principal Research Officer Ms Andrea Musch, Executive Secretary Ms Tamara Vitale, Acting Executive Secretary
<b>Contact details</b>	Committee of the Legislative Assembly Parliament House George Street Brisbane Qld 4000
<b>Telephone</b>	+61 7 3553 6610
<b>Fax</b>	+61 7 3553 6614
<b>Email</b>	<a href="mailto:CLA@parliament.qld.gov.au">CLA@parliament.qld.gov.au</a>
<b>Web</b>	<a href="http://www.parliament.qld.gov.au/cla">www.parliament.qld.gov.au/cla</a>
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## Chair's Foreword

The introduction of the Queensland Parliament's current portfolio based committee system in 2011 was arguably the most significant reform to the Queensland Parliament in over 100 years. As a Member of this Parliament for over 18 years, I can attest to the significant impact of the current committee system on the workings of this Parliament.

The recent examination of the issue of fixed four-year terms by the Finance and Administration Committees (FAC) has raised the issue as to whether the parliamentary committee system should be entrenched in Queensland's constitutional provisions.

In addition, the FAC recommended that a review be undertaken as to the efficacy of the current portfolio committee system with a view to ensure the Queensland Parliament has the best committee system to meet its intended aims and objectives.

On behalf of the committee, I would like to thank those persons who made a submission to the inquiry and those who took the time to attend the public hearing, in particular those representatives of stakeholder groups.

I would like to thank all the members of the Committee of the Legislative Assembly for the bi-partisan manner in which they went about their work on this significant inquiry.

I commend this report to the House.

A handwritten signature in blue ink, reading "Peter Wellington". The signature is fluid and cursive, with the first name "Peter" and the last name "Wellington" clearly legible.

Hon Peter Wellington MP  
Speaker, Legislative Assembly and  
Chair, Committee of the Legislative Assembly



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## Executive Summary

### The referral

On 3 December 2015, an inquiry into the Queensland Parliament's (the Parliament) committee system was referred to the Committee of the Legislative Assembly (CLA). The inquiry was established following an inquiry by the Finance and Administration Committee (FAC), which recommended a Bill and referendum for a fixed-four year term of Parliament in Queensland.

The FAC was of the view that the likelihood of a referendum to introduce a fixed four year term succeeding would be improved if the Parliament could demonstrate a commitment to greater accountability and transparency. The FAC recommended that the Parliament enhance the accountability mechanism by entrenching the role of committees.

The CLA undertook to inquire into and report to the Legislative Assembly on issues raised in recommendation nine of the FAC report regarding entrenchment and also in relation to recommendation ten regarding a review of the efficacy of the current parliamentary committee system.

### Background to the committee system

While strong during the 19<sup>th</sup> century, the Queensland Parliament's committee system fell into decline during the course of the 20<sup>th</sup> century following the abolition of the Legislative Council. The parliamentary committee system began to revitalise in the 1980s, and continue to grow in the following two decades.

However, it wasn't until 2011 that significant reform of the parliamentary committee system occurred as a result of the inquiry by the Committee System Review Committee (CSRC), which was a select committee established in 2010. The recommendations of the CSRC resulted in the committee system as it currently stands today.

### 2011 reforms

This inquiry found the introduction of the 2011 committee system reforms has seen a significant increase in the activity of parliamentary committees. The number of hearings and briefings conducted by committees in each financial year since the 2011 reforms is at least three times that conducted in the financial years immediately preceding the reforms. This activity is indicative of the stakeholder consultation and increased workload generally.

The 2011 committee system reforms have also resulted in a more vigorous legislative process with a large number of recommendations for amendment to Bills being made by portfolio committees and significant percentages of those recommendations for amendment being accepted by government.

Members of Parliament are significantly better informed in relation to legislation and policy issues and therefore better equipped to perform one of their key roles as Members of Parliament - the role of legislator.

Stakeholder participation in parliamentary committee activities has significantly increased flowing from the 2011 committee system reforms. The reforms have seen increased regional outreach and experimentation with some more innovative approaches to engagement than the traditional call for submissions and hearing approach.

The 2011 committee system reforms have resulted in the Queensland Parliament now meeting the majority of the Commonwealth Parliamentary Association's benchmarks in relation to committee systems which reflects a greater connection between the work of the Assembly and its committees, enhanced accountability of the executive to the Parliament and scrutiny of legislation.

Stakeholder views generally acknowledge that the 2011 reforms in expanding the scrutiny of legislation beyond the application of fundamental legislative principles has been a positive step while

at the same time noting that there is room for improvement, particularly in the area of the time provided for Bills inquiries.

#### Suggestions for improvement

The CLA considered suggestions to enhance the current committee system as put forward by submitters to the inquiry.

The CLA recognises that there is merit in the estimates process being a 'core' part of the functions of the committee system which should be recognised in statute. No further adjustments to the estimates process are recommended at this stage, although learnings from the more mature estimates jurisdiction in New Zealand may be an area for future reform.

The CLA understands that the frequency of Bill inquiry referrals to the portfolio committees since their inception has made it difficult for those committees to find the time and resources to devote to their public accounts and public works jurisdictions.

The CLA does not believe it is either possible or essential for the portfolio committees to enquire into every Auditor-General's Report, public accounts or public works matter within their respective portfolio areas. Each portfolio committee must necessarily make choices as to the use of resources and prioritise its inquiries.

The CLA recommends that the *Parliament of Queensland Act 2001* be amended to provide a general power for portfolio committee to initiate inquiries on their own motion on matters within their portfolio areas. This amendment would also empower portfolio committees to conduct inquiries in relation to petitions that are relevant to the committee's portfolio.

No recommendations have been made to alter the structure and composition of the portfolio committee system at this point in time. However, the Legislative Assembly's recent appointment of a non-government chairperson to the Parliamentary Crime and Corruption Committee is noted and endorsed.

The CLA notes the stakeholders comments regarding the difficulties experienced with respect to the high workloads on the portfolio committees since the 2011 reforms and the tight timeframes experienced (largely with respect to Bill inquiries). The CLA acknowledges the need for the CLA to be more vigilant in playing a role where it can in distributing the workload more evenly across the portfolio committees.

The CLA notes the views of the submitters with respect to urgency procedures but considered that there must be some procedures for urgency.

The CLA noted the views of the submitters with respect to advice from departments but feels the views of stakeholders and the research of the committee secretariats provide a sufficient counterbalance to the advice from departments.

Issues were raised in the submissions as regards Human Rights and Fundamental Legislative Principles. The CLA notes that the Legal Affairs and Community Safety Committee is currently undertaking an inquiry into whether it is appropriate and desirable to legislate for a Human Rights Act in Queensland, other than through a constitutionally entrenched model, which is due to be reported to the House by 30 June 2016. The CLA awaits the report to consider the issues and the recommendations made.

The CLA notes the views of the submitters with respect to the various other options for strengthening the committee system and practices in other jurisdictions but was not convinced it should recommend any changes to the current procedures at this point in time. In coming to this conclusion the CLA notes that the committee system in each jurisdiction must fit within the composition, constitutional arrangements and culture of their respective parliaments.

The CLA believes that it is best to allow the Queensland Parliament's current system, which has been through major change only five years ago, to slowly evolve and develop.

It may well be that some of the matters raised in this inquiry will eventually be adopted or adapted for the Queensland system, whilst others will always be unsuitable for adoption.

#### Entrenchment of the committee system

The CLA supports statutory recognition that there will be a parliamentary committee system in Queensland and that the provision also include the core principles of that committee system.

It is recommended that the appropriate statute for the provision which contains the 'core matters' detailed below is the *Constitution of Queensland Act 2001*. The location of the provision in the *Constitution of Queensland Act 2001* will not only emphasise its importance, but place a psychological impediment to its alteration without just cause.

It is recommended that part of the recommendations of the former Legal, Constitutional and Administrative Review Committee (2003) regarding the *Constitution of Queensland Act 2001* should be now addressed, in that an amendment to that Act 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).

It is recommended that the basic principles and structure of the committee system be recognised in the *Constitution of Queensland Act 2001*, but:

- only the core matters should be in the Constitution, leaving each Assembly the flexibility to adopt a committee system that suits that Assembly and which allows the committee system to adapt and evolve;
- the core matters to be included in the provision are:
  - The Legislative Assembly must, at the commencement of every session, establish a minimum number of committees of the Legislative Assembly. The CLA recommends that six (6) committees be set as the minimum number.
  - Committees established by the Legislative Assembly will be allocated areas of responsibility that collectively cover all areas of government activity.
  - Every Bill introduced into the Legislative Assembly must be referred to a committee of the Legislative Assembly for a review period. The Committee suggests that the minimum review period be six (6) weeks.
  - The annual Appropriation Bills (the budget) must be:
    - accompanied by the estimates of expenditure; and
    - referred to a committee or committees of the Legislative Assembly for examination in a public hearing.

Entrenchment of the committee system by any special mechanism is not supported at this time. The new portfolio committee system is still in its infancy and the CLA is loathed to entrench a system that may still evolve.

The CLA recommends at least initially, the provision should explicitly enable the Legislative Assembly by ordinary majority to declare Bills urgent.



## 1. Introduction

### 1.1 Role of Committee

The Committee of the Legislative Assembly (CLA) is established under section 80 of the *Parliament of Queensland Act 2001* (POQA).

Section 84 of the POQA provides the following areas of responsibility for the CLA:

#### **Areas of responsibility**

*The committee has the following areas of responsibility—*

(a) *the ethical conduct of members;*

*Note—*

*However, under section 104C(2), a complaint about a particular member not complying with the code of ethical conduct for members may be considered only by the Assembly or the Ethics Committee.*

(b) *parliamentary powers, rights and immunities;*

(c) *standing rules and orders about the conduct of business by, and the practices and the procedures of, the Assembly and its committees;*

(d) *any other matters for which the committee is given responsibility under the standing rules and orders;*

(e) *any matter referred to the committee by the Speaker.*

Standing Order 135A of the Standing Rules and Orders of the Legislative Assembly (Standing Orders) further provides that:

*The Committee of the Legislative Assembly shall:*

(a) *monitor and review the business of the Legislative Assembly to aim for the effective and efficient discharge of business;*

(b) *monitor and review the operation of committees, particularly the referral of Bills to committees, and where appropriate vary the time for committees to report on Bills or vary the committee responsible for a Bill.*

### 1.2 Referral

On 3 December 2015, an inquiry into the Queensland Parliament's (the Parliament) committee system was referred to the CLA. Specifically, the referral required:

- 1) that the Committee of the Legislative Assembly inquire into and report to the Legislative Assembly by 25 February 2016 on issues raised in recommendation nine regarding entrenchment and recommendation ten regarding a review of the parliamentary committee system, of the Finance and Administration Committee report *Inquiry into the introduction of four year terms for the Queensland Parliament, including consideration of Constitution (Fixed Term Parliament) Amendment Bill 2015 and Constitution (Fixed Term Parliament) Referendum Bill 2015* (the report).
- 2) that, in undertaking this inquiry, the committee consider how the current parliamentary committee system could be strengthened to increase accountability by:
  - examining the role of parliamentary committees in other jurisdictions with unicameral parliaments, including the functions and powers of those committees and how they are exercised, to see if the functions and powers of Queensland Parliamentary committees can be further strengthened; and
  - reviewing the *Parliament of Queensland Act 2001* and Standing and Sessional Orders of the Legislative Assembly pertaining to parliamentary committee functions, powers and

procedures to ensure these functions, powers and procedures are operating as effectively as possible as an accountability mechanism.

- 3) further, as part of this review, that the committee consider the implications and method of entrenching matters as outlined in recommendation nine of the report and consider alternative accountability mechanisms in lieu of entrenchment.

### 1.3 Submissions and public hearing

On 11 December 2015, the CLA called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. Each of the Parliament's portfolio committees also notified its email subscribers of the call for submissions.

The closing date for submissions was 29 January 2016. The CLA received 17 submissions (see **Appendix A** for a list of submitters).

On 9 February 2016, the CLA held a public hearing at Parliament House in Brisbane.

Copies of the submissions and the transcript of the public hearing are available from the CLA's webpage.<sup>1</sup>

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<sup>1</sup> See: [www.parliament.qld.gov.au/cla](http://www.parliament.qld.gov.au/cla).

## 2. Background

### 2.1 Role and Functions of the Legislative Assembly

Under sections 1 and 2 of Queensland's *Constitution Act 1867*, the State's legislative power is vested in the Queen (via Her Majesty's representative the Governor) and the Legislative Assembly. The present Legislative Assembly is composed of 89 members each representing a single-member electorate. Each parliamentary term is three years, having been reduced from five years in 1890.

As a representative assembly, the Legislative Assembly is responsible for a number of functions which overlap and interact. The Legislative Assembly:

- 1) after each general election, or on occasions during a term<sup>2</sup>, the Legislative Assembly provides the State Government from the political party or coalition of parties which has obtained a majority of the seats in the Legislative Assembly or at least has the confidence of and can obtain the supply (financial support) from the majority of the members of the Assembly
- 2) passes Bills, which, after Assent by the Governor become statutes, which constitute the State's laws as well as often providing the basis for Government activity (the legislative function)
- 3) has a financial responsibility of overseeing and granting the Government's requested appropriations of revenue and expenditure (the financial function)
- 4) provides a forum for the scrutiny of the Executive Government's activities and actions through a variety of parliamentary procedures including Question Time, Adjournment Debates, Matters of Public Interest, Notices of Motion, Private Members' Bills, Private Members' Statements, Bill debates and through the activities of parliamentary committees (the scrutiny function)
- 5) is a representative institution for all of the State's citizens via their elected members (the representative function)
- 6) provides a forum for matters of public interest and concern to be debated and addressed through parliamentary procedures such as Petitions, Matters of Public Interest, Adjournment Debates, Grievance Debates, Address-in-Reply debates or even within the debates on Bills (debate and grievance).<sup>3</sup>

### 2.2 Role and Functions of Queensland Parliamentary Committee System

The parliamentary committees are bodies established by the Assembly to inquire into specific matters, have general overview of an area or oversight of bodies. In short, committees are a small group of members delegated tasks by the Assembly.

Parliamentary committees can be established by:

- Acts of Parliament (statutory committees)
- Standing Orders (standing committees)
- resolution of the Legislative Assembly (select committees).

Committees have significant powers to inquire into matters for the Assembly and will generally seek information and views from people and organisations. Some committees also have continuing roles to monitor and review public sector organisations or keep areas of the law or government activity under review.

The POQA makes provision for the establishment of the CLA and the Ethics Committee. The *Crime and Corruption Act 2001* (CCA) and the *Parliament of Queensland Act 2001* (POQA) establishes the Parliamentary Crime and Corruption Committee. The POQA also provides that the Standing Orders must establish portfolio committees to examine the full range of activities conducted by government

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<sup>2</sup> As occurred in 1996.

<sup>3</sup> [www.parliament.qld.gov.au/explore/about-us/parliament-overview/role-of-parliament](http://www.parliament.qld.gov.au/explore/about-us/parliament-overview/role-of-parliament).

departments and agencies (s.88) (portfolio area). Some of these portfolio committees are also provided oversight responsibilities with respect to certain independent statutory offices. At the current time there are seven portfolio committees.

Portfolio committees' roles include the following in relation to its portfolio area (defined in Schedule 6 of the Standing Orders):

- consideration of Appropriation Bills (Estimates)
- examination of Bills and subordinate legislation to consider:
  - the policy to be given effect
  - the application of fundamental legislative principles
  - the lawfulness of subordinate legislation
- assessment of the integrity, economy, efficiency and effectiveness of government financial management (public accounts)
- consideration of Auditor-General's reports referred by the CLA under SO 194A
- consideration of public works
- operations of parliamentary procedures
- investigation of any issue into which the Parliament may require a detailed inquiry.

Schedule 6 of the Standing Orders provides that portfolio committees are responsible for monitoring and reviewing the performance of statutory authorities within their portfolio area. Other statutory authorities within the committee's portfolio areas are set out at Schedule 7 of the Standing Orders.

Parliamentary committees have the power to examine witnesses, canvass public opinion through submissions, forums and hearings, obtain documents and papers, evaluate the evidence gathered and compile a report for the Assembly, usually with a range of recommendations.

### 2.3 Brief history of Queensland's Committee System

In the 19th century, the Queensland Houses of Parliament had a strong parliamentary committee system, which subsequently fell into decline during the course of the 20<sup>th</sup> century – following the abolition of the Legislative Council. With only rare exceptions (for example, the Education Committee during 1978 and 1979) until the early 1980s there were only a few domestic committees (for example, the Privileges Committee, Printing Committee and the Subordinate Legislation Committee established in 1975). However, in 1988 legislation was enacted to establish the Parliamentary Committee of Public Accounts. In 1989 the Public Works Committee was also established by Act.

Later in 1989, the Fitzgerald Report (Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct) looked at systems in place in the Federal Parliament of Australia and the House of Commons in the UK and recommended that Queensland introduce 'a comprehensive system of parliamentary committees to enhance the ability of Parliament to monitor the efficiency of Government'.<sup>4</sup>

Following the Fitzgerald Report additional committees were established and assigned oversight of bodies created as a result of the inquiry (the Parliamentary Criminal Justice Committee and the Electoral Administrative Review Committee).

In 1994, a system of estimates committees were established, where seven committees were established each year to examine the estimates associated with the annual Appropriation Bills. Prior to the introduction of estimates committees the 'estimates process each year consisted of a very general debate in the Assembly on only a small number of portfolios on rotation (with portfolios with particular issues often not being on the rotation in difficult years).

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<sup>4</sup> G.E. Fitzgerald, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, July 1989, p. 124.



The Electoral and Administrative Review Commission (EARC) was a body created to investigate the electoral system and public administration of the state and local government authorities. EARC undertook a review of parliamentary committees, reporting in October 1993.<sup>5</sup>

EARC proposed a system of portfolio based committees, and recommended the establishment of five committees to cover portfolio areas, together with a Scrutiny of Legislation Committee, with select committees to be established as needed for specific issues. The portfolio committees were to be able to review policy proposals and activities including:

- proposals for new or amending legislation, including bills and subordinate legislation
- budget estimates and financial administration generally
- policy and administration in all areas of public policy.

EARC stated its proposed system was to 'ensure that no aspect of public administration in this State is immune from critical review by the people's representatives serving on committees of the Parliament.'<sup>6</sup>

The Parliamentary Committee for Electoral and Administrative Review (PCEAR) reviewed the EARC report and reported in 1993.<sup>7</sup> PCEAR did not support EARC's portfolio based model, preferring instead to enhance the system that had developed since 1988. The government preferred the PCEAR's recommendations.<sup>8</sup>

In 1995, the *Parliamentary Committees Act* established (or in most cases re-established), six committees:

- the Public Accounts Committee
- the Public Works Committee
- the Scrutiny of Legislation Committee
- the Legal, Constitutional and Administrative Review Committee
- the Members' Ethics and Parliamentary Privileges Committee
- the Standing Orders Committee.

The Parliamentary Criminal Justice Committee (PCJC) after initially being rolled into the Legal, Constitutional and Administrative Review Committee, was eventually reinstated and continued – as it does today after many name changes. The Travelsafe Committee which had responsibility for transport and road safety issues had been established as a select committee in the early 1990s and would continue to be established each Parliament until 2009.

Minor changes to committees occurred in 2009 with the passing of the *Parliament of Queensland Amendment Act 2009*. The Act established the Law, Justice and Safety Committee as a standing committee replacing the Legal Constitutional and Administrative Review Committee. In addition, the Act merged the Public Accounts Committee and the Public Works Committee into a single committee entitled the Public Accounts and Public Works Committee. On 23 April 2009 the Legislative Assembly established by resolution three new committees, the Economic Development Committee, the Environment and Resources Committee and the Social Development Committee. These reforms saw a shift towards a policy area based committee system.

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<sup>5</sup> Electoral and Administrative Review Commission: *Report on Review of Parliamentary Committees* - October 1992, Volume 1, Chapter 6, pages 182-183.  
[www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/1992/4792T367.pdf](http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/1992/4792T367.pdf).

<sup>6</sup> Note 5, EARC, volume 1, page xiii.

<sup>7</sup> Parliamentary Committee for Electoral and Administrative Review: Report No. 19 - *Report on Review of Parliamentary Committees*, October 1993.  
[www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/1993/4793T3268.pdf](http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/1993/4793T3268.pdf).

<sup>8</sup> [www.legislation.qld.gov.au/Bills/48PDF/1995/ParliamentaryCommB95E.pdf](http://www.legislation.qld.gov.au/Bills/48PDF/1995/ParliamentaryCommB95E.pdf).

However, despite the post-Fitzgerald reforms, Queensland's former parliamentary committee system failed to meet international benchmarks for parliaments.<sup>9</sup> For example, Bills were not routinely referred to committees for examination, beyond examination for breaches of the fundamental legislative principles by the Scrutiny of Legislation Committee. Few Bills were referred to parliamentary committees for examination of underlying policy. It wasn't until 2011 that significant reform of the parliamentary committee system occurred as a result of the inquiry by the Committee System Review Committee (CSRC), which was a select committee established in 2010.

## 2.4 Committee System Review Committee review and report

In February 2010, the Parliament established the CSRC to conduct an inquiry and report on how the parliamentary oversight of legislation could be enhanced and how the existing parliamentary committee system could be strengthened to enhance accountability.

The CSRC was asked to consider the following in its inquiry:

- the role of parliamentary committees in both Australian and international jurisdictions in examining legislative proposals, particularly those with unicameral parliaments;
- timely and cost effective ways by which Queensland parliamentary committees can more effectively evaluate and examine legislative proposals; and
- the effectiveness of the operation of the committee structure of the 53rd Parliament following the restructure of the committee system on 23 April 2009.

The CSRC was also asked to include in its report options on models for structuring the committee system. The CSRC tabled its report containing 55 recommendations on 15 December 2010.<sup>10</sup> The recommendations included the establishment of a system of nine portfolio committees which mirrored the various portfolio areas of government, as well as a Parliamentary Crime and Misconduct Committee and a Committee of the Legislative Assembly. The POQA was to establish the nine portfolio committees, with Standing Orders to specify the titles of the committees to provide greater flexibility as government portfolios change over time.

It was recommended that portfolio committees take responsibility for public accounts and public works for their portfolio areas, consideration of the application of the fundamental legislative principles, and for monitoring and reporting on any subordinate legislation within their portfolio responsibilities. The CSRC also made recommendations on the composition and membership of the committees, voting rights, and use of participating and substitute members.

The CSRC made it explicit that all Bills, with the exception of those deemed 'urgent', be referred to portfolio committees for inquiry and report (with the associated requirements included in Standing and Sessional Orders for the referral to be made), that opportunities be given to the public to provide input into the legislative process and that committees be able to recommend amendments to the Bill (although the power of amendment was to remain with the House). The CSRC also made recommendations on the maximum timeframe for a committee inquiry into a Bill, portfolio committee consideration of budget estimates and the parameters of that consideration, and outlined the resources required to support the committee system.

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<sup>9</sup> For example: Commonwealth Parliamentary Association (CPA) 'Benchmarks for Democratic Legislatures' 2006; United Nations Development Programme 'Benchmarks and Self-Assessment Frameworks for Democratic Legislatures' 2010.

<sup>10</sup> Committee System Review Committee (CSRC), Review of the Queensland Parliamentary Committee System, December 2010, p. xvii-xxiv  
[www.parliament.qld.gov.au/documents/committees/CSRC/2010/QldParlCtteeSystemReview/rpt-15Dec2010.pdf](http://www.parliament.qld.gov.au/documents/committees/CSRC/2010/QldParlCtteeSystemReview/rpt-15Dec2010.pdf).

In its report, the CSRC noted:

*Queensland has a history of a strongly entrenched two-party system of government, with rigid party discipline. With members being elected from single-member constituencies through an optional preferential voting system, our Parliament frequently includes large government majorities. The additional level of scrutiny that can be provided by an Upper House is absent in Queensland since the abolition of the Legislative Council in 1922. Parliament becomes dominated by the government of the day.*

*We must look to other means of ensuring accountability and scrutiny.*

*A healthy parliamentary committee system is important for this reason. Additionally, a strong and well-resourced system of parliamentary committees can enhance the interaction between the Parliament and the community.<sup>11</sup>*

The Government supported the majority of the committee recommendations.<sup>12</sup> In February 2011, the Parliament established a select committee, the CLA, to consider the details of the new committee system.

## 2.5 Aims and objectives of the 2011 committee system reforms

The *Parliament of Queensland (Reform and Modernisation) Amendment Act 2011* was introduced on 5 April 2011 and received Royal Assent on 19 May 2011. The Act implemented a number of key reforms to the committee system including the establishment of a number of portfolio committees under Standing Orders to cover all areas of government activity, examine Appropriation Bills, other legislation and public accounts and public works.

The POQA was also amended to provide for the establishment of:

- the CLA with areas of responsibility that include the conduct of business by the Legislative Assembly and the ethical conduct of members; and
- the Ethics Committee with areas of responsibility that include dealing with complaints about the ethical conduct of members and alleged breaches of parliamentary privilege.

The Parliamentary Crime and Misconduct Committee, now the Parliamentary Crime and Corruption Committee, was continued under the *Crime and Misconduct Act 2001*, now the *Crime and Corruption Act 2001*.

## 2.6 Committee System Review Committee recommendations not implemented

However, there were a number of recommendations that weren't implemented, and these included:

- **Recommendation 14**

The Committee recommends that all portfolio committees have the ability to report on all aspects of government activities, including investigating and reporting on events, incidents and operational matters.

- **Recommendation 18**

The Committee recommends that the *Crime and Misconduct Act 2001* be amended to provide that the chair of the Parliamentary Crime and Misconduct Committee be a Member nominated by the Leader of the Opposition.

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<sup>11</sup> Note 10 at xiii.

<sup>12</sup> [www.parliament.qld.gov.au/documents/committees/CSRC/2010/QldParlCtteeSystemReview/gr-09Mar2011.pdf](http://www.parliament.qld.gov.au/documents/committees/CSRC/2010/QldParlCtteeSystemReview/gr-09Mar2011.pdf).

- **Recommendation 46**

The Committee recommends that the *Crime and Misconduct Act 2001* be reviewed with a view to:

- having lay members included on the Parliamentary Crime and Misconduct Committee, and
- greater transparency of the operations of the Parliamentary Crime and Misconduct Committee.

- **Recommendation 47**

The Committee recommends that the Standing Orders be amended to provide that a committee can on its own initiative consider any petition received by the House, the subject-matter of which falls within the jurisdiction of the committee.

- **Recommendation 48**

The Committee recommends that the Standing Orders be amended to provide that a minister (being the minister responsible for the administration of the matter which is the subject of the petition) can refer a petition to the relevant committee for consideration, but such referral shall not operate so as to require the committee to consider any petition.

## 2.7 Aims and objectives of the 2011 committee system reforms

Prior to the reforms introduced in 2011, the committee system at that time did not cover the field of government activity, there was little connection between the House and committees and committees did not regularly consider Bills introduced into the Assembly.

For example, in the decade prior to the reforms in 2011 (i.e. between 2000 and 2010):

- 502 committee reports were considered on the floor of the House;
- there were 20 referrals by House to committees;
- only four Bills were scrutinised by committee beyond ‘technical scrutiny’ by Scrutiny of Legislation Committee in relation to the Fundamental Legislative Principles in the Legislative Standards Act 1992; and
- there was a total of 45 minutes of formal consideration by the House of three of 191 ‘inquiry reports’ (less than 2%).<sup>13</sup>

The aims and objectives of the portfolio committee system established as part of the *Parliament of Queensland (Reform and Modernisation) Amendment Bill 2011* were to:

- establish a more vigorous legislative process to scrutinise legislation and achieve better legislative outcomes
- create a better informed Parliament and individual Members of Parliament and develop best practice policy
- improve engagement with the community and stakeholders in a formal process
- enhance parliamentary oversight of the expenditure and activities of the Government.

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<sup>13</sup> See page 7 of the following submission by the Clerk of the Parliament to the CSRC: [www.parliament.qld.gov.au/documents/committees/CSRC/2010/QldParlCtteeSystemReview/submissions/023-QldParl.pdf](http://www.parliament.qld.gov.au/documents/committees/CSRC/2010/QldParlCtteeSystemReview/submissions/023-QldParl.pdf).

### 3. Outcomes of the 2011 committee system reforms

#### 3.1 Activity post the 2011 committee system reforms

One of the most immediate outcomes following the introduction of the 2011 committee system reforms has been a significant increase in the activity of parliamentary committees, in particular the number of public briefings and hearings.

The table below sets out the number of public briefings, public hearings and private hearings of committees during the 53<sup>rd</sup> Parliament (note: activity under the portfolio committee system did not commence until August 2011):

2009-10	2010-11	2011-12 <sup>14</sup>
42	44	121

The table below sets out the number of public briefings, public hearings and private hearings of committees during the 54<sup>th</sup> Parliament:

2012-13	2013-14	2014-15 <sup>1516</sup>
195	212	114

The table below sets out the number of public briefings, public hearings and private hearings of committees during the 55<sup>th</sup> Parliament (to 31 December 2015):

2014-15 <sup>1718</sup>	2015-16 <sup>19</sup>
69	158

In May 2015, the CLA undertook a review of the 2011 committee system reforms.<sup>20</sup> The information presented in the review shows that there had been significant progress in achieving the objectives of the 2011 committee system reforms.

The following analysis of the actual results achieved against the stated objectives of the 2011 committee system reforms builds on the findings of the May 2015 report and supports them with more up to date data and the evidence of submissions and witnesses to this inquiry.

##### 3.1.1 Conclusion

**The CLA notes that the introduction of the 2011 committee system reforms has seen a significant increase in the activity of parliamentary committees. The number of hearings and briefings conducted by committees in each financial year since the 2011 reforms is at least three times that conducted in the financial years immediately preceding the reforms. This activity is indicative of the stakeholder consultation and increased workload generally.**

<sup>14</sup> This period included the dissolution period for a general election.

<sup>15</sup> *Ibid.*

<sup>16</sup> July 2014 to January 2015.

<sup>17</sup> *Ibid.*

<sup>18</sup> March 2015 to June 2015.

<sup>19</sup> to 31 December 2015.

<sup>20</sup> Review of 2011 committee system reforms Report No. 13 Committee of the Legislative Assembly [www.parliament.qld.gov.au/documents/committees/CLA/2015/rpt-13-20May2015.pdf](http://www.parliament.qld.gov.au/documents/committees/CLA/2015/rpt-13-20May2015.pdf).

## 3.2 Outcomes measured against aims and objectives

### 3.2.1 More vigorous legislative process

One of the aims of the 2011 reforms was to establish a more vigorous legislative process to scrutinise legislation and achieve better legislative outcomes.

Section 93 of the POQA now provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles to the legislation; and
- for subordinate legislation – its lawfulness.

A portfolio committee's responsibilities in relation to legislation include monitoring the compliance of explanatory notes (tabled with legislation) with the *Legislative Standards Act 1992*.

One method of measuring whether the legislative process has improved is to look at how the portfolio committee recommendations have impacted on Bills. During the 53<sup>rd</sup> Parliament (from August 2011 to February 2012), portfolio committees considered 34 Bills, of which 22 were considered by the Legislative Assembly. The table below outlines the number of Bills examined by committees and debated in the House. It also outlines the recommendations made by committees and the number accepted by the Government in the 53<sup>rd</sup> Parliament:

Bills examined and debated 22 <sup>21</sup>	Legislative amendments recommended 24	Legislative amendments accepted 17	Percentage accepted 71
	Other recommendations 8	Accepted recommendations 8	Percentage accepted 100

During the 54<sup>th</sup> Parliament (May 2012 to January 2015), portfolio committees reported on 161 Bills, of which 157 were debated in the House, and 704 pieces of subordinate legislation. The table below outlines the number of Bills examined by committees and debated in the House. It also outlines recommendations made by committees and the number of recommendations accepted by the Government:

Bills examined and debated 157 <sup>22</sup>	Legislative amendments recommended 308	Legislative amendments accepted 162	Percentage accepted 53
	Other recommendations 242	Accepted recommendations 202	Percentage accepted 83

<sup>21</sup> Total number of Bills reported on and debated in the House during the 53<sup>rd</sup> Parliament.

<sup>22</sup> Total number of Bills reported on and debated in the House during the 54<sup>th</sup> Parliament.

So far in the 55<sup>th</sup> Parliament (in the period from March 2015 to December 2015), portfolio committees reported on 40 Bills, of which 35 were debated in the House, and 140 pieces of subordinate legislation. The table below outlines the number of Bills examined by committees and debated in the House. It also outlines recommendations made by committees and the number of recommendations accepted by the Government:

Bills examined and debated 35 <sup>23</sup>	Legislative amendments recommended	Legislative amendments accepted	Percentage accepted
	37	29	78%
	Other recommendations	Accepted recommendations	Percentage accepted
	43	40	93%

Another way of measuring whether the legislative process has improved is via the views of stakeholders. Some of the submitters to the inquiry noted the improved scrutiny afforded to Bills since the introduction of the 2011 reforms. For example, the Queensland Law Society (QLS) submission stated:

*At the outset, I note that the Society is wholly supportive of the Parliamentary Committee System, which in the Society's experience contributes greatly to the delivery of just and workable legislation. The system is particularly important in Queensland as in the absence of an upper house, the Parliamentary Committees perform a critical review function.*

*Given the importance of the Parliamentary Committee System, the Society is of the view that the system must be as robust as is possible.<sup>24</sup>*

The Chamber of Commerce and Industry's submission to this inquiry noted:

*CCIQ is of the view that the general operation of the current Parliamentary Committees is functioning well at present. Indeed in many respects CCIQ believes that the scrutiny and outcomes from the Parliamentary Committee process is arguably better than what is currently being achieved under the Queensland's Regulatory Impact Statement process.*

*The room for improvement that can be identified by CCIQ appears to be more a reflection of the shortcomings in the process of Government or the urgency in the Government's legislative agenda that in turn manifests or presents itself through the Committee System. This is an observation that is not unique to this Government and has been a consistent trend across many years. The incremental adjustment to improve the operation of the Committees can be identified through the issues raised below.<sup>25</sup>*

Mr Behrans representing the CCIQ at the public hearing stated:

*As you will have noted, we have been a very active participant of the committee process since the last state election. In the main, we think the committee process is working well. We are a strong supporter of the committees' operations. Indeed, we have often commented that we think the scrutiny afforded to Bills is more robust and leads to a better outcome than that undertaken in the regulatory impact statement process. In the main, we think the improvement available is largely incremental and that the shortcomings we note in relation to the committee system operation largely are as a result of the urgency in a government's*

<sup>23</sup> Total number of Bills reported on and debated in the House during the 55<sup>th</sup> Parliament, to 31 December 2015.

<sup>24</sup> Submission no. 12, p 1.

<sup>25</sup> Submission no. 13, p 3.

*legislative agenda—and I make the point that that is not unique to this government; that has been an experience across many governments.*<sup>26</sup>

On one view, the fact that not all of the committee recommendations, for legislative amendment or otherwise, have been accepted by executive government might be seen as a weakness in the system.

However, on another view it demonstrates that the committees are not just putting forward recommendations that are palatable to the Government of the day. As the Clerk of the Parliament noted in his evidence at the public hearing:

*I have spent some time providing some statistics in relation to the portfolio committee system's activities during the period of the reform. I note in some of the submissions earlier today there was some disappointment by stakeholders that only 56 per cent, for example, of the statutory amendments had been accepted by government. I would disagree with that proposition. I am actually heartened by the fact that it is not 100 per cent adoption by the government of the committee recommendations.*

*To explain, if I were seeing the government adopting each and every recommendation coming from the committee, I would be highly suspicious that the majority of the committee, or the government members of the committee, were basically going in there and making recommendations that had been prestamped, if you like, by the executive. I think the fact that there is a difference between what is recommended and what is accepted shows a healthy degree of independence by committee members and a good show of creative tension, if you like, between the executive and the committees. I see that as a positive, not necessarily a negative.*<sup>27</sup>

At the hearing the Queensland Resources Council noted the improvement in the committee system since 2011, whereby committees have a role in considering legislation beyond the role performed by the former Scrutiny of Legislation Committee, which could only consider the effects of the Bills on fundamental legislative principles (FLPS):

*Very early in the current system of committee processes we would quite often bring issues to a committee and they would say, 'That is great. You have made a terrific case, but does it cut across fundamental legislative principles?', and we would say, 'No, it does not, but it is stupid policy and we are not making the best legislation we possibly could and that is irritating.' The answer often was, 'That is not one of the fundamental legislative principles so we will move on.' That is frustrating because what you have built up over time is a community of stakeholders who have invested in the committee process and see some good engagement from the committee process.*<sup>28</sup>

### **3.2.1.1 Depth of scrutiny – duration of inquiries / resourcing**

Since the introduction of the portfolio committee system in 2011 the duration of inquiries has been significantly shorter than the default period of 6 months as set out in the Standing Orders. The following tables detailing the average duration of inquiries broken down by each Parliament clearly demonstrates this fact.

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<sup>26</sup> Transcript of proceedings, 9 February 2016, p 14.

<sup>27</sup> Transcript of proceedings, 9 February 2016, p 26.

<sup>28</sup> Transcript of proceedings, 9 February 2016, p 4.



The average duration of committee inquiries in the 53<sup>rd</sup> Parliament was:

Total completed inquiries 31 <sup>29</sup>	Government Bills	Private Members' Bills	Other Inquiries
	Average duration 10.6 weeks	Average duration 8 weeks	Average duration N/A (no completed inquiries)

The average duration of committee inquiries in the 54<sup>th</sup> Parliament was:

Total completed inquiries 150 <sup>30</sup>	Government Bills	Private Members' Bills	Other Inquiries
	Average duration 8.5 weeks	Average duration 25.4 weeks	Average duration 32.4 weeks

The average duration of committee inquiries in the 55<sup>th</sup> Parliament (to 31 December 2015) was:

Total completed inquiries 36 <sup>31</sup>	Government Bills	Private Members' Bills	Other Inquiries
	Average duration 8.6 weeks	Average duration 16.9 weeks	Average duration 20.4 weeks

A number of the stakeholder representatives that made submission to the inquiry noted and criticised that the tight timeframes for inquiries made it difficult for stakeholders to produce fully considered submissions and for the members of the committees and their support staff to ensure fulsome and proper consideration to their submission. These submissions are detailed at chapter 5 of this report.

### 3.2.2 Conclusion

**The CLA notes the 2011 committee system reforms have resulted in a more vigorous legislative process with a large number of recommendations for amendment to Bills being made by portfolio committees and significant percentages of those recommendations for amendment being accepted by government.**

**The CLA also notes stakeholder views generally acknowledge that the 2011 reforms in expanding the scrutiny of legislation beyond the application of fundamental legislative principles has been a positive step while at the same time noting that there is room for improvement, particularly in the area of the time provided for Bills inquiries.**

<sup>29</sup> Total number of inquiries reported on by portfolio committees in the 53<sup>rd</sup> Parliament. Note – a number of inquiries reported on more than one Bill and a Government response was not received to certain inquiries in the 53<sup>rd</sup> Parliament.

<sup>30</sup> Total number of inquiries reported on by portfolio committees in the 54<sup>th</sup> Parliament. Note – a number of inquiries reported on more than one Bill and a Government response was not received to certain inquiries in the 54<sup>th</sup> Parliament.

<sup>31</sup> Total number of inquiries reported on by portfolio committees in the 55<sup>th</sup> Parliament, to 31 December 2015. Note – a number of inquiries reported on more than one Bill and a Government response was not yet received to certain inquiries as at 31 December 2015.

### 3.2.3 Better informed Parliament and Members and better policy development

The CLA Members noted their own anecdotal evidence from members who experienced both the pre and post 2011 committee systems that members serving on committees since the reforms are much better informed of the detail and policy issues behind the Bills as a result of the process that now takes place post the reforms.

The CLA Members also noted the depth of debate in the Legislative Assembly with respect to Bills has improved as a result of individual members being better informed of the detail of the Bills and the capacity for personal development of a member with respect to knowledge of a portfolio area by serving on a particular portfolio committee for a term of Parliament.

At the public hearing, Mr Behrans of the Chamber of Commerce and Industry noted:

*Our sense is that parliamentarians have gained a greater understanding of how some of these bills impact on business and the employment opportunities that flow from some of these bills.<sup>32</sup>*

With respect to policy issue referrals the below tables indicate the impact of committee policy inquiries on Government policy decisions.

The table below outlines the number of 'Other Inquiry' reports tabled in the House in the 54th Parliament to which the Government provided a response (11 reports). The table also outlines the number of recommendations made by committees and the number of amendments accepted by the Government:

Total completed inquiries 11	Legislative amendments recommended 72	Legislative amendments accepted 41	Percentage accepted 57
	Other recommendations 275	Accepted recommendations 215	Percentage accepted 78

The table below outlines the number of 'Other Inquiry' reports tabled in the House in the 55<sup>th</sup> Parliament (to 31 December 2015) to which the Government provided a response (1 report). The table also outlines the number of recommendations made by committees and the number of amendments accepted by the Government:

Total completed inquiries 1	Legislative amendments recommended 8	Legislative amendments accepted 7	Percentage accepted 87%
	Other recommendations 3	Accepted recommendations 3	Percentage accepted 100%

<sup>32</sup> Transcript of proceedings, 9 February 2016, p 14.

### 3.2.4 Conclusion

The CLA notes the 2011 reforms have meant that Members of Parliament are significantly better informed in relation to legislation and policy issues and therefore better equipped to perform one of their key roles as Members of Parliament - the role of legislator.

### 3.2.5 Improve engagement with the community and stakeholders in a formal process

#### 3.2.5.1 Engagement statistics

The introduction of the 2011 committee system reforms have seen a significant increase in community and stakeholder participation in parliamentary committee activities.

For example in the 54<sup>th</sup> Parliament alone, a total of 3,324 people appeared at portfolio committee hearings as follows:

- 1,727 public servants;
- 661 representatives of peak organisations;
- 580 members of other groups; and
- 356 individual members of the public.

Even during the first 9 months of the 55<sup>th</sup> Parliament (to 31 December 2015), a total of 1,169 people appeared at portfolio committee hearings as follows:

- 581 public servants;
- 360 representatives of peak organisations;
- 65 members of other groups; and
- 163 individual members of the public.

#### 3.2.5.2 Stakeholder comments

A number of the representatives of stakeholder organisations who submitted to this inquiry expressed their satisfaction with the improved engagement within the current parliamentary committee system.

For example, Mr Budden of the Queensland Law Society noted:

*The committee system is a very important part of the democratic process in Queensland. My experience with the parliamentary committee system is that politicians of every stripe strive for bipartisan or polypartisan solutions to legislative problems. I think the outcome is a very strong series of laws.*

*I note that a lot of other speakers today have mentioned that it is vital in a unicameral legislature to have this system. That is undoubtedly true. To be honest, I think this system performs a little better than some of the upper houses lately. I strongly suspect that if more people had seen the parliamentary committee system in operation, rather than the snippets of question time they might see on the news, they would have much more faith in our democratic system. I cannot really add much to our submission at this point except to say that we think a sufficiently robust parliamentary committee system is an ornament to democracy.<sup>33</sup>*

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<sup>33</sup> Transcript of proceedings, 9 February 2016, p 9.

In addition, Mr Behrans of the Chamber of Commerce and Industry made the following response to a question at the hearing:

**Mr STEVENS:** *Thank you. Of that membership, could you give a generalisation of the awareness of the individual members in relation to the operation, the importance and the effectiveness of the current parliamentary portfolio committee system?*

**Mr Behrens:** *The chamber has previously cited, particularly in the last 15 months, that our view is that the committee system is one of the state's best kept secrets and that there is very good opportunity for individual businesses to raise their concerns and thoughts about individual pieces of legislation yet they are not necessarily aware that there is opportunity available to them. Many businesses would say that that is not an opportunity that is the right fit for them, because they do not wish to put their head above the pulpit, so to speak. That is ultimately the role of individual organisations like ours. Nevertheless, we think if an organisation has concerns about a bill then the committee process is a wonderful opportunity to convey those concerns. The more we can get the broader community to engage in the parliamentary committee system, ultimately, we think the legislation will be greatly enhanced in doing so.<sup>34</sup>*

### 3.2.5.3 Regional outreach

Engagement with stakeholders has not been confined to when the Parliament is in session or to Brisbane, with committees traveling to conduct a total of 95 hearings in regional centres as detailed below:

- Aug 2011 – Feb 2012: 3
- May 2012 – Jun 2013: 15
- July 2013 – June 2014: 18
- July 2014 – June 2015: 31
- July 2015 - Dec 2015: 28

### 3.2.5.4 Innovative approaches to engagement

Since the introduction of 2011 reform the portfolio committees have also experimented with some innovative ways to receive evidence in addition to the traditional process of call for submissions, and briefings and hearings.

Some examples of these approaches are detailed below:

- The former Transport Housing and Local Government Committee (54<sup>th</sup> Parliament) held a public round table discussion on 16 Oct 2013 for its Inquiry into Cycling Issues. There were 23 participants representing the State Government, BCC, CARRS-Q, and key stakeholder groups such as RACQ, Heart Foundation and cycling groups as well academic experts.
- The former Health and Community Services Committee (54<sup>th</sup> Parliament) held two facilitated and structured roundtables as part of its Palliative Care inquiry. That committee also sat in on conferences, some conducted in language, under the *Family Responsibilities Commission Act 2008* with individuals at a remote Indigenous communities.
- The Education and Innovation Committee (54<sup>th</sup> Parliament) held a workshop / roundtable run by an independent external facilitator, with a group of around 40 stakeholders over several hours in relation to its inquiry into the Assessment of Senior Maths, Science and Physics in Queensland schools.
- The Legal Affairs and Community Safety Committee (55<sup>th</sup> Parliament) has done a number of 'site visits' informally talking with patrons and others in entertainment precincts; and holding meetings

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<sup>34</sup> Transcript of proceedings, 9 February 2016, p 14.

with academics, health professionals, police in private, but with recordings taken and convened as (sub)committee meetings – evidence heard this way was referenced in the report (Tackling Alcohol-Fuelled Violence Bill).

- The Infrastructure Planning and Natural Resources Committee (55<sup>th</sup> Parliament) has experimented with holding ‘community statements’ sessions at the end of structured public hearings. These statements, transcribed by Hansard, were initiated during their ‘fly-in, fly-out’ inquiry as a way to deal with the large numbers of people who wanted to participate in the hearings.
- The Finance and Administration Committee (55<sup>th</sup> Parliament) held public forums in Brisbane and regional areas as part of their inquiries into possible changes to Queensland parliamentary terms. The forums were an informal discussion and information session, where attendees were given the opportunity to make a brief statement, followed by questioning by the committee, to give the community an opportunity to provide input into the inquiry.

Most recently the Finance and Administration Committee (55<sup>th</sup> Parliament) has conducted public forums and visits on North Stradbroke Island prior to seeking public departmental briefings.

### 3.2.6 Conclusion

**The CLA notes the significant increase in stakeholder participation in parliamentary committee activities flowing from the 2011 committee system reforms. The CLA also notes that the reforms have seen increased regional outreach and experimentation with some more innovative approaches to engagement than the traditional call for submissions and hearing approach.**

### 3.2.7 Enhance parliamentary oversight of the expenditure and activities of government

#### 3.2.7.1 Estimates Committees

The portfolio committees also serve as the Estimates Committees and examine in detail the budgets of the departments within their portfolio at a public hearing.

These hearings no longer have structured times for each question and answer and allow for a more free-flowing examination with direct questioning of both Ministers and senior public servants.

As a result of these reforms, the budget accounts, capital works and legislation for portfolio areas are examined by the one committee.

A number of submissions specifically referred to the FAC recommendation that a process for consideration of Budget Estimates must be maintained by the Legislative Assembly.

The Clerk of the Parliament noted that processes such as the estimates process are established by Standing Orders and can be abolished, set aside or amended by simple resolution of the House. The Clerk gave the example of the system being modified in 2014 by resolution against the will of the Opposition and cross-bench.

The Queensland Ombudsman showed support in his submission for the committee system’s role in the estimates process and the entrenchment of that role.

Mr Willis proposed that:

*As well, Queensland’s portfolio committees could be enabled to call for public submissions on appropriation bills, particularly where such bills adversely affect the rights and conditions of individuals and groups, as part of their scrutiny function. If, as one Queensland Parliament publication has stated, the ‘public’ may consider ‘Appropriation Bills and accompanying Budget documents in detail and formulate their responses’, then it would only seem*

*reasonable for the public to be invited to provide formal submissions on such legislation and for any submissions to receive due consideration.*<sup>35</sup>

### 3.2.8 Conclusion

**The CLA sees merit in the estimates process being a 'core' part of the functions of the committee system which should be recognised in statute.**

**The CLA notes the procedural reforms with respect to the estimates process and does not recommend any further adjustments to this process at this point in time although it notes the learnings from the more mature estimates jurisdiction in New Zealand may be an area for future reform.**

#### 3.2.8.1 Public Accounts and Public Works Inquiries

Furthermore, section 88 of the POQA provides that activities of each government department must be covered by a portfolio committee. Portfolio committees are responsible for:

- the assessment of the integrity, economy, efficiency and effectiveness of government financial management by examining government financial documents and considering the annual and other reports of the Auditor-General;
- public works undertaken by construction authorities (the State, department or Government Owned Corporation (GOC));
- any major GOC works.

As the CLA report on the committee system in May 2015 noted, the early focus of portfolio committees has been Bills, subordinate legislation and referrals from the House, however, it is envisaged that public accounts and public works inquiries will be an area of future growth for portfolio committees.

The frequency of Bill inquiry referrals since the portfolio committee system was introduced has made it difficult for the portfolio committees to find the time to conduct public accounts and public works inquiries. In the period from August 2011 to December 2015 only nine Public Accounts Inquiries and one Public Works inquiry has been completed. (55<sup>th</sup> Parliament Agriculture and Environment Committee – Barrier Fences in Queensland)

A full list of the nine public accounts inquiries is set out below:

53rd Parliament:

- Finance and Administration Committee – 1 (Review of Auditor-General's Report No 9 for 2011 - Acquisition and public access to the Museum, Art Gallery and Library collections)
- Transport and Local Government Committee – 1 (Financial Sustainability of Remote Councils)

54th Parliament:

- Finance and Administration Committee – 3 (Inquiry into Public Sector Contract Extensions, Auditor-General's Report to Parliament No: 9 2012-13 - Fraud Risk Management and Auditor-General's Report No. 5: 2012 - Internal Control Systems (1 report for both), Auditor-General's Report No. 4: 2012 - Managing Employee Unplanned Absence)
- Health and Community Safety Committee – 3 (Inquiry to consider the Auditor-General's Report No. 4: 2012-13 - Queensland Health - eHealth Program, Inquiry to consider the Auditor-General's reports for 2013-14: No.1- Right of private practice in Queensland public hospitals and No.13 - Right of private practice: Senior medical officer conduct, Inquiry into telehealth services in Queensland)

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<sup>35</sup> Submission no. 3, p 3.

55th Parliament:

- Agriculture and Environment Committee – 1 (Review of the Drought Relief Assistance Scheme)

The CLA notes that parallel to this inquiry an internal management review of the efficiency and effectiveness of the Committee Office is being undertaken. The terms of reference of that review includes looking at ways to enhance the capacity for the portfolio committee to undertake more public accounts and public works inquiries.

However, the CLA also notes any such strategies will necessarily be limited by the capacity of members of the committees to undertake such work.

The CLA also notes that it does not believe it is neither possible or essential that each portfolio committee enquires into or reports on every Auditor-General Report, public accounts matter or public works issue within the portfolio committee's area of responsibility. Each portfolio committee must necessarily make choices as to the use of its resources and prioritise its inquiries.

### 3.2.9 Conclusion

**The CLA understands that the frequency of Bill inquiry referrals to the portfolio committees since their inception has made it difficult for those committees to find the time and resources to devote to their public accounts and public works jurisdictions.**

**The CLA notes the Clerk of Parliament's advice that an internal management review currently being conducted into the committee office is examining efficiency and resourcing options aimed at enhancing the capacity to undertake increased work in those jurisdictions. The CLA supports such endeavours, however, acknowledges that such strategies will none the less be limited by the capacity of members of committees to undertake such work.**

**The CLA does not believe it is neither possible or essential that for the portfolio committees to enquire into every Auditor-General's Report, public accounts or public works matter within their respective portfolio areas. Each portfolio committee must necessarily make choices as to the use of resources and prioritise its inquiries.**

### 3.2.10 Oversight of Independent Statutory Office Holders

The inquiry received some evidence that the oversight role of the portfolio committee system in overseeing the operation of certain independent statutory office holders is a valuable one.

At the public hearing, Mr Phil Clarke, Ombudsman made the following comment:

*I felt the need to bring to the committee's attention what I regard as a significantly important role of the committees—that is, the oversight of independent offices. I note the comments that were made in the reports about consideration of legislation and providing advice to the parliament in regard to bills, and obviously the parliamentary estimates process, but from my point of view the oversight of my office by a parliamentary committee is a very significant and important part of the confidence of the people of Queensland in my office and, indeed, my own engagement with the parliament as an officer of the parliament in making sure that I deliver on the statutory role of Ombudsman for Queensland in line with parliament's expectations.<sup>36</sup>*

Furthermore, Mr Clarke made the following comment in answer to a question:

**Mr HINCHLIFFE:** *In relation to that issue of the oversight of statutory offices, do you have a particular view or opinion on whether the current model of portfolio committees, where there are allocations made of those statutory offices to those portfolio committees, is successful in*

<sup>36</sup> Transcript of proceedings, 9 February 2016, p 17.

*playing that role, if it were to be entrenched as you say or just generally? Or is an alternative model of a specific statutory office committee a preferable way forward?*

**Mr Clarke:** *I have not really given consideration to the second alternative that you have alluded to. My experience of parliamentary oversight so far, in the first five years of my office, has been very satisfactory. I have had good support from parliamentary committees. I have welcomed the scrutiny of the parliamentary committees and I think generally the inquiry made by parliamentary committees has led me to improve operations in my office, so it has been a positive experience from me in the committees.<sup>37</sup>*

### **Recommendation**

**The CLA recommends that the current oversight of independent statutory office holders as performed by the portfolio committee system be maintained. The committee notes that the current internal management review of the efficiency and effectiveness of the Committee Office is examining more efficient and effective ways of performing that oversight function.**

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<sup>37</sup> Transcript of proceedings, 9 February 2016, p 17.



## 4. Jurisdictional comparison

### 4.1 International benchmarks

A strong, active committee system is an asset in any functioning parliamentary democracy. A comprehensive system of parliamentary committees provides greater accountability by making the policy and administrative functions of government more open and accountable. Committees provide a forum for investigation into matters of public importance and give members the opportunity to enhance their knowledge of such issues.

Following the reforms of the Fitzgerald era, the system of ‘function-oriented’ committees described above were established. Apart from some changes in 2009, that system was largely unchanged between 1995 and 2010. Prior to the amendments made to the committee system in 2011, Queensland’s former parliamentary committee system did not meet recommended international benchmarks on accountability and parliamentary oversight of the executive as established by groups such as the Inter-Parliamentary Union, Institute for Democracy and Electoral Assistance, and the Commonwealth Parliamentary Association.

Since the introduction of the committee system in 2011, there has been a vast improvement in the Queensland Parliament’s rating on international benchmarks. Of particular note is the parliament’s rating on the Commonwealth Parliamentary Association’s (CPA) detailed list of benchmarks in relation to committee systems. These benchmarks include:

- the Legislature shall have the right to form permanent and temporary committees;
- the Legislature’s assignment of committee members on each committee shall include both majority and minority party members and reflect the political composition of the Legislature;
- the Legislature shall establish and follow a transparent method for selecting or electing the chairs of committees;
- committee hearings shall be in public. Any exceptions shall be clearly defined and provided for in the rules of procedure;
- votes of committee shall be in public. Any exceptions shall be clearly defined and provided for in the rules of procedure;
- there shall be a presumption that the Legislature will refer legislation to a committee, and any exceptions must be transparent, narrowly-defined, and extraordinary in nature;
- committees shall scrutinize legislation referred to them and have the power to recommend amendments or amend the legislation;
- committees shall have the right to consult and/or employ experts;
- committees shall have the power to summon persons, papers and records, and this power shall extend to witnesses and evidence from the executive branch, including officials;
- only legislators appointed to the committee, or authorized substitutes, shall have the right to vote in committee; and
- legislation shall protect informants and witnesses presenting relevant information to commissions of inquiry about corruption or unlawful activity.

The Parliament’s committee system now meets the majority of these benchmarks, reflecting greater connection between the House and committees, and greater accountability of the executive to the Parliament, and ultimately the electors. The table in **Appendix B** provides further information on how the committee system meets each of these benchmarks and the associated governance.

## 4.2 Role of parliamentary committees in other jurisdictions with unicameral parliaments

As part of the review of the parliamentary committee system, the CLA looked at the role of parliamentary committees in other jurisdictions with unicameral parliaments, including New Zealand, Scotland, Alberta and Quebec. The following provides a summary of the comparative analysis undertaken. A more detailed breakdown of the elements of the committee systems of these parliaments and how they meet indicators of best practice can be found in **Appendix C**.

### 4.2.1 New Zealand

Re-organisation of the select committee system occurred in 1985 when 13 new ‘subject select committees’ were established to reflect related government departments and committee powers and functions were extended. Committees were given:

- the power to examine government department spending
- greater scope to make recommendations to laws
- the power to start their own inquiries into matters of concern within their subject area
- better support through a dedicated Select Committee Office.<sup>38</sup>

In addition, the public are allowed to attend hearings of evidence.<sup>39</sup>

The *New Zealand Parliament* website outlines the purpose of the committees:

*New Zealand’s select committee system enables Members of Parliament to examine issues in more detail than is possible in the House of Representatives. Select committees can also provide the public with an opportunity to comment on and suggest changes to impending legislation, and to participate in other parliamentary functions such as inquiries. Select committees carry out public scrutiny of the Government’s spending plans and of the performance and operations of Government departments, Crown entities, and State enterprises. Select committees operate under the authority of the House and are required to report to the House.<sup>40</sup>*

In 1996, New Zealand introduced Mixed Member Proportional electoral rules which is said to have led to changes in the operation of New Zealand’s committee system. For example:

- committees now comprise a number of parties rather than just two
- there are more agendas and ideas being brought to discussion and scrutiny
- with the multi-party parliament there is a number of senior politicians who will probably never become ministers and who, therefore, concentrate more on being effective ‘parliamentary men and women’
- committees work more consensually to achieve effective scrutiny and oversight, although the extent to which that happens still depends on the leadership of the chair and members
- party dynamics and the power balance between parties has changed and this has strengthened the powers of committees to scrutinise and oversee the executive
- allocation of chairs has evolved and the distribution of chairs has gradually shifted away from the government although there is still some way to go until a proportional distribution of chairs is achieved
- electoral system change as well as reform of the committee system has given ‘teeth’ to the scrutiny functions of the committees.<sup>41</sup>

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<sup>38</sup> New Zealand Parliament, [30<sup>th</sup> Anniversary of subject select committees](#), media release, 5 November 2015.

<sup>39</sup> New Zealand Parliament, [30<sup>th</sup> Anniversary of subject select committees](#), media release, 5 November 2015.

<sup>40</sup> New Zealand Parliament, [Parliamentary business: Select committees](#), (accessed 11 January 2016).

<sup>41</sup> E McLeay, ‘Scrutiny and Capacity: An evaluation of the parliamentary committees in the New Zealand Parliament’, *Australasian Parliamentary Review*, vol 21(1), 2006, p 164

### 4.2.2 Scotland

The committee system of the Scottish Parliament includes mandatory and ‘subject’ committees which are established at the start of each Parliament. The composition of committees reflects the balance of parties in the assembly, as does the distribution of chairs. Not all chairs of committees represent the governing party. However, unlike Norway and Sweden, there is no rule preventing the executive (ministers) from being committee members. This is achieved in practice rather than entrenched in legislation or Standing Orders.

The committees of the Scottish Parliament attract scholarly attention principally because of their comparatively important legislative role. Scottish committees combine legislative work with inquiries, and they have the power to initiate Bills.<sup>42</sup>

Bills in the Scottish Parliament go straight to committee rather than first being subject to a plenary debate.

Scottish committees perform four distinct roles:

1. unique supervisory role in relation to formulation of Executive Bills. They acts as gatekeepers charged with ensuring the consultation requirement has been satisfactorily undertaken. Granted reserve powers in the event of the Executive defaulting on its obligation to engage in comprehensive consultation with interested bodies;
2. overt legislative role in that they are empowered to initiate legislation. Committee Bills are seen as a crucial resource in setting the legislative agenda;
3. unusually wide-ranging deliberative role, with the power to scrutinise and amend legislative Bills, examine Scottish statutory instruments and consider petitions; and
4. an interrogative role, where the Executive is obliged to respond to inquiry reports within a prescribed period.<sup>43</sup>

The uniquely wide-ranging powers and functions of the Scottish committees were designed in some measure to compensate for the lack of a second chamber.<sup>44</sup>

### 4.2.3 Alberta and Quebec

The structures and powers evident in Alberta and Quebec offered little in terms of strengthening committee systems over and above features which already exist in Queensland. These are documented in the comparative analysis of systems in **Appendix C**.

### 4.2.4 Conclusion

**The CLA notes that the 2011 committee system reforms have resulted in the Queensland Parliament now meeting the majority of the Commonwealth Parliamentary Association’s benchmarks in relation to committee systems which reflects a greater connection between the work of the Assembly and its committees, enhanced accountability of the executive to the Parliament and scrutiny of legislation.**

**The CLA notes that an examination of committee practices and procedures in other international Westminster jurisdictions did not reveal any additional practices and procedures that it would recommend be introduced in Queensland at this point in time. In coming to this conclusion the CLA notes that the committee system in each jurisdiction must fit within the composition, constitutional arrangements and culture of their respective parliaments.**

<sup>42</sup> D Halpin, I MacLeod & P McLaverty, ‘[Committee hearings of the Scottish parliament: Evidence giving and policy learning](#)’, *Journal of Legislative Studies*, vol 18(1), 2012, p 1.

<sup>43</sup> D Arter, *The Scottish Parliament: A Scandinavian-style assembly?*, Routledge, 2004, p 37.

<sup>44</sup> D Arter, *The Scottish Parliament: A Scandinavian-style assembly?*, Routledge, 2004, p 37.

**The CLA believes that it is best to allow the Queensland Parliament's current system, which has been through major change only five years ago, to slowly evolve and develop. It may well be that some of the matters observed from other jurisdictions in this enquiry will eventually be adopted or adapted for the Queensland system, whilst others will always be unsuitable for adoption.**

## 5. Options for further strengthening the functions and powers of Queensland Parliamentary committees

The following provides a summary of the submissions on options for further strengthening the functions and powers of Queensland Parliamentary committees made by stakeholders.

### 5.1 Greater powers being awarded to committees

A number of submissions to the review raised concerns about the committees' powers in relation to proposing or amending legislation. These concerns included that committees:

- can only make recommendations for changes to Bills;
- cannot amend or reject legislation found to be inadequate in any way.

Some submissions made references to committee systems in other unicameral parliaments and the powers allocated to those committees. The parliaments referenced included the parliaments of Scotland, New Zealand and Sweden.

The elements of these committee systems that were proposed in submissions for consideration for the Queensland Committee system included:

- the power for committees to initiate legislation;<sup>45</sup>
- the power for committees to propose amendments to legislation, including the potential for the situation where unanimous support for changes to a Bill be automatically adopted by the House;<sup>46</sup>
- the power for committees to investigate 'well supported' petitions;<sup>47</sup>
- the power for committees to investigate any item which falls within their remit and hold inquiries;<sup>48</sup>
- the chairs of committees being shared proportionately between the parties in the House;<sup>49</sup> and
- minorities in the House being given procedural rights including:<sup>50</sup>
  - one third of the House being able to send a report back to a committee for further consideration
  - one third of a committee being able to request information and opinion from public authorities.

The power to initiate legislation and propose amendments to legislation was of particular interest to submitters. In a submission by Mr Don Willis, he noted that:

*First, committees need to have more 'teeth'... committees can only really make recommendations which can be either accepted or rejected by the executive-controlled Legislative Assembly. In some other unicameral Parliaments such as Scotland and New Zealand, committees can consider petitions, initiate their own inquiries and propose legislation. In New Zealand, a committee's unanimous support for changes to a bill is automatically adopted by the House. Consideration could be given by the CLA to Queensland's parliamentary committees being similarly strengthened.<sup>51</sup>*

The Queensland Greens also raised concerns about committees not being able to amend or reject legislation. In their submission they raised concerns about the current committee system stating:

<sup>45</sup> Submissions no. 2, 3 & 7.

<sup>46</sup> Submissions no. 3, 7 & 9.

<sup>47</sup> Submissions no. 2, 3 & 7.

<sup>48</sup> Submissions no. 2, 3, 5 & 14.

<sup>49</sup> Submission no. 5, p 2.

<sup>50</sup> *Ibid.*

<sup>51</sup> Submission no. 3, p 3.

*While the Greens recognise the importance of reviewing legislation, committees cannot amend or reject legislation found to be inadequate in any way, as demonstrated by so many split decisions on committees in the first year of the Palaszczuk government.<sup>52</sup>*

As a solution the Queensland Greens proposed in their submission that committees be allowed to draft and propose amendments to legislation and to initiate legislation. At the public hearing they stated:

*If you are looking to provide more oversight powers to committees, some of the suggestions from Scotland and New Zealand really intrigued us. In Scotland they are allowed to start the process of making legislation themselves, which is quite interesting. In New Zealand they allow amendments to be made directly to legislation before it is presented to parliament, which is also very interesting.<sup>53</sup>*

The adoption, or at least consideration by the House, of unanimous committee recommendations was also raised by submitters. The Local Government Association of Queensland (LGAQ) submitted that:

*...the current system requires strengthening to ensure that there are greater checks and balances to not only maintain the system but also to ensure that fundamental changes to bills and the formation of policy is driven by committees, and that unanimous recommendations made to government are adopted in legislation.<sup>54</sup>*

The LGAQ submitted that there needs to be a fetter on the state government, particularly when considering the unanimous recommendations of committees. When asked at the public hearing about a system that could be put in place, the response was:

*I might cite the New Zealand committee process, as we understand it. Accepting differences, I think the New Zealand experience demonstrates an acceptance of the significance of the committees in the parliamentary process. In the New Zealand parliament, as we understand it, if there is a unanimous decision of the relevant parliamentary committee, that decision is read into the bill where relevant and, in fact, that is the outcome, more or less, that is achieved. It really is a cultural issue: is the executive of the day prepared to accept that the scrutiny of a bill by a committee resulting in recommended changes through that process of scrutiny, assessment research, analysis and ultimately a decision that has a view different to the executive should, in fact, have carriage? If there is not some means by which that occurs then the committee process effectively is null and void as a legitimate part of the parliamentary process.<sup>55</sup>*

The Anti-Discrimination Commissioner of Queensland (ADCQ) supported this stance saying at the public hearing:

*I also share the observations and frustrations expressed by the Local Government Association of Queensland concerning recommendations of committees being unilaterally rejected by government based on the advice of the department promoting the proposed bill. Sometimes the department's concerns appear to take precedence over a considered view of what the committee has recommended.<sup>56</sup>*

As mentioned in the second chapter, the CSRC recommended that all portfolio committees be given the ability to report on all aspects of government activities, including investigating and reporting on events, incidents and operational matters.

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<sup>52</sup> Submission no. 7, p 4

<sup>53</sup> Submission no. 7, p 23.

<sup>54</sup> Submission no. 9, p 1.

<sup>55</sup> Transcript of proceedings, 9 February 2016, p 2

<sup>56</sup> Transcript of proceedings, 9 February 2016, p 12.

During the public hearing this issue was canvassed with the Clerk of the Parliament, who made the following response to questions at the hearing:

**CHAIR:** *In Mr Bartlett's submission he reflected on the work of the Senate. My understanding is that at the moment our committees do not have the power to conduct inquiries off their own bat. There has to be a specific referral by the parliament or a bill for consideration. If we are going to further empower our committees, do you have an opinion on whether we should also consider amending the current legislation so that committees have the capacity, off their own bat, to conduct inquiries into matters that fall within their own terms of reference?*

**Mr Laurie:** *In short, yes. Mr Speaker, I am pragmatic enough to know, though, that, given the workload they will have by way of bills and references—and the number of references has been the surprising outcome of the 2011 review—they have considerable scope already under their public accounts and public works power to conduct inquiries that they have not been doing because I think of time and workload issues. I think it would be a good signal of the commitment of the parliament to committees to give them a self-reference power. Whether or not they get to use that given their workload will be another issue, but it then takes away the need for committees to be acting essentially on executive approval, and I think that is a good signal.*

*Can I make one other comment in terms of some of the comments that Mr Bartlett was making about culture. I largely agree with what Mr Bartlett said. Every parliament has a different culture. That culture comes about because of things like the electoral system, the numbers in the House and how many houses you have. All of that feeds into culture. I think one way that you start to change culture is by the system you develop, because your culture develops within the system in many respects. I think the 2011 changes have changed our culture already, as I have said earlier.*

*I think four-year terms and entrenchment of committees will change our culture again, and I think it will be a positive change to our culture. If you set a 12-week minimum statutory period for bills to be considered by committees which the House by resolution cannot simply set aside—and that is what we really mean by entrenchment in a parliamentary sense—unless there is genuine urgency—and I have never seen a motion for genuine urgency fail in this House, and I point to the Magistrates Act as an example; genuine urgency does not fail to get bipartisan support—then the next cultural change that you will have will be in the ministry and in the Public Service that there is a review period and we are just going to have to wait on legislation.*

**Mr SPRINGBORG:** *Mr Laurie, I have a question that is very much linked to the Speaker's question to you about self-referral powers. I think you partly answered it, but I want some further clarification. My understanding was that under the legislation that established the public accounts committee basically from the start it could initiate its own inquiries.*

**Mr Laurie:** *Yes. The jurisdiction of the public accounts committee and public works committee was set out in acts in 1988 and 1989, from memory. I will have to check this, but I think at an earlier stage what the public works committee could investigate was limited to a financial amount but then that financial amount was taken away. They could determine what they looked at within the realm of public accounts and within the realm of public works. They had that self-referral power within that jurisdiction. In my view, governments have to stop fearing that committees will go rogue with their self-referral powers. I just do not believe that will happen.<sup>57</sup>*

<sup>57</sup> Transcript of proceedings, 9 February 2016, p 28.

The CSRC also recommended that the Standing Orders be amended to provide that a committee can on its own initiative consider any petition received by the House, the subject-matter of which falls within the jurisdiction of the committee. It was also recommended that the Standing Orders be amended to provide that a minister (being the minister responsible for the administration of the matter which is the subject of the petition) can refer a petition to the relevant committee for consideration, but such referral shall not operate so as to require the committee to consider any petition.

The ability for committees to respond to and inquire on the topics of petitions was suggested by a number of submitters. The Queensland Integrity Commissioner (QIC) submitted at the public hearing that:

*I think we should not lose sight of the possible representational role of the committee system as well. One of the attributes of a unicameral system is that electors in Queensland do not have access to different levels of representation in the same way that electors in bicameral places do. It seems to me that there is some opportunity for the committee system to think about what it can contribute in providing that representation for the electors of Queensland... I instanced the Scottish Public Petitions Committee just as an example of the sort of thing that might be contemplated.<sup>58</sup>*

The QIC submitted that ‘any additional mechanism which encourages direct access by electors to the Parliament and its committees is worthy of consideration’.

The Queensland Greens also supported the option of committees undertaking an inquiry on ‘well-supported’ petitions, stating:

*Currently petitions to parliament are responded to by the government with action on any specific issue left to the executive to act on, which often tends to demoralise the petitioners when the executive chooses to take no action.*

*In the case of submissions with a significant support base, or the support of at least one MP, a referral for further inquiry by the appropriate committee may allow MPs to debate the issue without significant disruption to the planned agenda of the parliament. While it still may take a significant effort to pass specific legislation this way, it would allow for proper consultation on issues that the public find significant, independent of the whims of the executive.<sup>59</sup>*

### 5.1.1 Conclusion

The CLA was not convinced that it should recommend at this point in time greater powers for portfolio committees with respect to the following:

- direct amendment to Bills;
- initiating legislation; or
- majority recommendations to be adopted by government.

However, the CLA is of the view that the *Parliament of Queensland Act 2001* be amended to provide a general power for portfolio committees to initiate inquiries on its own motion on matters within their portfolio areas.

The CLA notes that such a power would also empower portfolio committees to conduct inquiries in relation to petitions that are relevant to the committee’s portfolio. Such an amendment would finally implement outstanding recommendations of the former Committee System Review Committee (recommendations 14, 47 and 48).

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<sup>58</sup> Transcript of proceedings, 9 February 2016, p 7.

<sup>59</sup> Submission no. 7, p 8.



The CLA regards this amendment as highly symbolic, whilst recognising that the exercise of this power will need to be balanced against the overall legislative and inquiry responsibilities of each committee and may be exercised sparingly.

### Recommendation

The CLA recommends that the *Parliament of Queensland Act 2001* be amended to provide a general power for portfolio committee to initiate inquiries on their own motion on matters within their portfolio areas.

## 5.2 Committee structure and composition

The allocation of committee members, composition of committees and voting rights of those members were concerns also raised in submissions to the review.

Specific concerns included the:

- ability for governments to remove their members from committees;<sup>60</sup>
- process of review by committees being undermined when the committee system is dominated by government members;<sup>61</sup>
- requirement for majority decision-making, which may not be conducive to bipartisanship;<sup>62</sup> and
- partisan nature of reports.<sup>63</sup>

In his submission, Mr Willis stated:

*...committees need to be seen to be independent of the executive. Committees should not be just an echo of the Government of the day. The current requirement for majoritarian decision making by committees is not conducive to bipartisanship and could work against the Committees' scrutiny role....*

*Consequently, committee decision-making needs to be bipartisan as far as possible. Similarly, to enhance the committees' check and balance function, a mechanism is needed to ensure that as far as possible committee chairs are non-government members....*<sup>64</sup>

In support of his submission, at the public hearing Mr Willis stated:

*...committees need to simply not be an echo of the government controlled Legislative Assembly, but the majoritarian decision-making requirements under the Parliament of Queensland Act are not conducive to committees taking a bipartisan approach.*<sup>65</sup>

The Chamber of Commerce and Industry (CCIQ) stated at the public hearing that 'there is a great degree of rigour placed on the appropriateness of the Bill but, when you bring it full circle, ultimately the recommendations of the committee, in our experience, default to party position. So you go through a long process to arrive back at your original commencement point'. In their submission they state:

*CCIQ has observed a number of Parliamentary Committee final reports and recommendations that in overall terms default to aligning with Government policy and then have an Opposition viewpoint provided through a dissenting section of the report. More specifically CCIQ would*

<sup>60</sup> Submission no. 3

<sup>61</sup> Submissions no. 3, 5 & 7.

<sup>62</sup> Submission no. 3.

<sup>63</sup> Submission no. 13.

<sup>64</sup> Submission no. 3, p 4.

<sup>65</sup> Transcript of proceedings, 9 February 2016, p 20.

*describe final reports as often only aligning with Party policy positions rather than embracing the spirit of working together to make a Bill better to the public interest.*<sup>66</sup>

The proposed suggestions from submitters to address these concerns included:

- the entrenchment of proportional assignment of members to committees to avoid dominance by the executive;<sup>67</sup>
- committee chairs positions be occupied by non-government members;<sup>68</sup>
- a special majority of the Parliament be required to prevent committee members from being removed by the executive-dominated Legislative Assembly,<sup>69</sup> and
- (as mentioned in the previous section) the chairs of committees being shared proportionately between the parties in the House.<sup>70</sup>

Mr Willis also suggested:

*A provision could be entrenched which ensures that only Members of Parliament who are not members of the executive may be appointed to committees. To prevent committee members from being removed by the executive-dominated Legislative Assembly, a special majority of the Parliament could be required similar to the FAC's proposed formula for declaring urgent Bills.*<sup>71</sup>

In their submission, the Queensland Greens state:

*The process of review by committees is also undermined when the committee system is dominated by Government members as it was under the Newman Government, where if there was dissent to the legislation would be handled either in cabinet or party room (where there is no public oversight) rather than in committees.*

*In situations where the government does control numbers on the committees, there is no significant difference between the position of the executive and the committee itself, further entrenching executive power.*<sup>72</sup>

The proportional assignment of members to committees was suggested by the Queensland Greens as a way of approaching the issue of domination of committees by government members. In their submission, the Queensland Greens stated:

*Currently, assignments of MPs to committees are done by a vote of the legislative council within the proportions set by the Parliament of Queensland Act, which ensures that the executive will always have at least as many members on committee as the opposition and cross bench combined.*

*As a suggested process, parties and independents could be automatically assigned numbers of seats on committees relative to their proportions of MPs who are not members of the executive. This should have the effect of making it hard for either the government or opposition to completely control all committees and would complement a more politically diverse parliament if there is an increase in the number cross bench members.*

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<sup>66</sup> Submission no. 13, p 4.

<sup>67</sup> Submission no. 7.

<sup>68</sup> Submission no. 3

<sup>69</sup> Submission no. 3

<sup>70</sup> Submission no. 5.

<sup>71</sup> Submission no. 3, p 4.

<sup>72</sup> Submission no. 7, p 4.

*While this may be in line in practice where there is a minority government, such as now, a more formal arrangement may be more desirable than an ad-hoc one and represents no extra risk to the legislative agenda of the government of the day.<sup>73</sup>*

### 5.2.1 Conclusion

**The CLA was not convinced by any argument to alter the structure and composition of the portfolio committee system at this point in time.**

**The CLA does, however, note and endorse the Legislative Assembly's recent appointment of a non-government chairperson to the Parliamentary Crime and Corruption Committee.**

### 5.3 Bill inquiry process – timeframes and resources

The timeframe for scrutiny of Bills allocated by the Parliament, the workload of committees and the resources available to committees for the inquiry were raised as issues that impact on the committees' and stakeholders' ability to scrutinise Bills.

The concerns included:

- short review periods<sup>74</sup> and high number of referrals and overloading of some committees;<sup>75</sup>
- the use of urgency procedures to bypass committee scrutiny and/or reduce time that Bills are before the committee or the Assembly (mostly for political reasons);<sup>76</sup> and
- the reliance on the department responsible for the Bill as witnesses.<sup>77</sup>

#### 5.3.1 Short review periods and high number of referrals

The Local Government Association of Queensland (LGAQ) submitted that the committee system needs better resourcing of the research functions in the Parliamentary Service to enhance the scrutiny of legislation, provide more in-depth analysis and to assist in the development of new policy. At the public hearing LGAQ representatives suggested that 'the imbalance between government resources and parliamentary committee resources is an inherent problem in the process'.

For example, Mr Hoffman of the Local Government Association of Queensland noted:

*In our submission we were suggesting that the parliamentary process could be better resourced. I have great respect for the work of the committees and the committee secretariat and support staff, but in truth they are usually stretched to the absolute limit in terms of the timetable they are given to undertake any meaningful research.<sup>78</sup>*

The Queensland Resources Council (QRC) submitted that committees need to be given sufficient time and information to improve accountability of parliament and executive government by reviewing and scrutinising tabled legislation. At the public hearing the QRC advised:

*The issue with tight time frames, particularly for peak bodies or stakeholder groups, is where you have to not only do the work of understanding what a bill means but also get a briefing on that to a whole range of people to make a decision and try to get consensus on that... if you are trying to do that, particularly on complex legislation, in a couple of weeks it becomes very difficult. There is a real risk that people who are ultimately going to be affected by legislation do not have sufficient forewarning of the changes coming through and do not have*

<sup>73</sup> Submission no. 7, p 8.

<sup>74</sup> Submissions no. 8, 13, 14 & 16.

<sup>75</sup> Submissions no. 8, 13 & 14.

<sup>76</sup> Submissions no. 3 & 14

<sup>77</sup> Submissions no. 9 & 13.

<sup>78</sup> Transcript of proceedings, 9 February 2016, p 3.

*the ability to bring their practical experience of how legislation affects them to bear on how that legislation is being drafted.*

*There are always circumstances where legislation is pressing. I think the special circumstances make allowance for that. In the general course of events, it seems to us that you need sufficient time to let the ideas that are embedded in regulatory reform percolate down to the people who are going to be affected by them and give them an opportunity to have a say about how they think those changes are being expressed and administered.<sup>79</sup>*

In addition, Mr Barger of the Queensland Resources Council noted:

*Like the LGAQ before us said, we think the committee process and committee system is really important. It works really well. The thrust of our submission was to say that it works well, almost despite the legislative architecture. Whether it is entrenched or not, at the end of the day it really comes down to the calibre of the committee members and their commitment and the resources available to the committee. It is also if they have a good secretariat that provides a really important counterbalance to the departmental advice and the advice they get from stakeholders*

*I think it is important to recognise that committee members are put under an enormous amount of pressure. We often speak to committee members about wading through three-foot stacks of submissions until two o'clock in the morning to make sure they are across the issues.<sup>80</sup>*

In their submission, the QRC suggested that:

- a limit should be placed on the number of concurrent inquiries that each committee can undertake at one time;
- the minimum timeframe for an inquiry should be expressed in business days, and that it should be not less than 40 business days;
- each Bill should be accompanied by a complete regulatory impact statement;
- an inquiry should commence with a public hearing from the Department at a time well in advance of public submissions being due (15 business days before submissions are due);
- it be clarified that Parliament can refer a more general thematic inquiry to committee without waiting for a Bill to be tabled;
- the committee process could incorporate a short formal round of technical redrafting of specific clauses that have been identified as needing refinement; and
- the workload and skills associated with chairing a committee be explicitly recognised, and a mechanism whereby committee members and particularly chairs can be mentored and trained by experienced Members of Parliament be established.<sup>81</sup>

The Queensland Law Society (QLS) also raised timeframes as an issue and supported minimum stakeholder consultation periods being legislated. In their submission, the QLS stated:

*The Society notes that in circumstances where inadequate consultation periods are allowed, stakeholders have difficulty making comprehensive submissions. This increases the chances that that an unworkable provision will survive the review of the legislation, or that unintended and unpalatable consequences of legislation will not be picked up prior to its passage; clearly, it is preferable to ensure a fulsome review process and obviate the need for legislative amendment down the track.<sup>82</sup>*

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<sup>79</sup> Transcript of proceedings, 9 February 2016, p 4.

<sup>80</sup> Transcript of proceedings, 9 February 2016, p 4.

<sup>81</sup> Submission no. 8, p 3.

<sup>82</sup> Submission no. 12, p 1.

Furthermore, Mr Budden of the Queensland Law Society made the following response to a question at the hearing:

**Mr LANGBROEK:** *The Law Society has to make submissions on every bill, and I think it does. There are time frames that the Law Society has to fulfil and there are some complexities that you face. This morning we heard from previous submitters such as the Resources Council, but I know that has been an issue for the Law Society. Can you expand on that in terms of the tightness of time for submissions?*

**Mr Budden:** *Yes, that is certainly an issue for us in that our committee members who provide feedback on these various bills—and we have 26 policy committees so we do have a very broad remit in terms of that kind of commentary—are volunteers. They do this sort of work on weekends, during lunchtimes and after work. If we have a very short consultation period, it is very difficult for us to get the level of consultation that we would need to assist the parliament. We do see ourselves as facilitators: we assist the committee in coming to its decision. We try to reality check everything and give evidence as to whether or not a bill will work or how it will work in practice, if that is the outcome the committee or the parliament is after, but it does depend on getting an adequate consultation period. We have had a number of submissions recently for which the consultation period encompassed the Christmas period. That does make it difficult for us. Many law firms close down between 20 December and 4 or 11 January, depending on when it falls, and it does make it hard to get in contact with our members, particularly if they are from small firms, as so many of them are. They are draining their own resources to contribute to this, so adequate consultation is vital for us. We appreciate that there are some bills that really need to happen very quickly. We hope that those are quite rare. For the most part, this system works far more effectively if there are adequate consultation periods.<sup>83</sup>*

The QLS noted it accepts that some legislation will require urgent passage, but that it should be rare and only following the meeting of some criteria, although the QLS did not suggest what that criteria should be.

The Chamber of Commerce and Industry Queensland (CCIQ) submitted that the rushed regulatory agenda of the current and previous governments has led to multiple inquiries being held concurrently and a shortened timeframe, which impacts on the CCIQ's ability to represent its members. In their submission it states:

*The representations provided by CCIQ are essentially the re-articulation of what our members have told us they think about a Bill or an issue before Parliament. CCIQ Advocacy is developed in partnership with our members through consultation, research and direct discussion. We canvass the views of our members through use of surveys, industry committees, roundtables, regional road shows, website, case studies and other one on one communication with members by the CCIQ Advocacy Team. The development of this representation is significantly diminished in the absence of suitable opportunity by way of timeframe or overlapping inquiries.<sup>84</sup>*

Mr Behrens of the Chamber of Commerce and Industry made the following response to a question at the hearing:

**Mr SPRINGBORG:** *Mr Behrens, my question relates to the challenges for you as an advocacy organisation representing your members. You indicated in your submission that there were problems sometimes with the multiplicity of inquiries, overlapping time frames and the pressure that places on your organisation in the work it needs to do. How would you go about*

<sup>83</sup> Transcript of proceedings, 9 February 2016, p 10.

<sup>84</sup> Submission no. 11, p 3.

*addressing that? Do you see that there would be an ideal time frame that should be set to assist organisations such as yours?*

**Mr Behrens:** *One of the themes raised in our submission was the urgency in the legislative agenda of the government in that that can provide some significant constraints on the opportunity we have to canvass an issue with our membership. One of the solutions that would readily come to mind is that there be a greater equity in the allocation of bills across the committees. From our point of view, our greatest dealings have been with the Finance and Administration Committee. They have had a lot of fun over the last 15 months—a lot of workload—and there have been many active inquiries that the chamber has had to engage in concurrently. That has ultimately put some constraints on us. Indeed, I remember the super Wednesday morning of the second last week of the parliamentary sittings last year, where there were three committee hearings all being held concurrently. It was impossible for the chamber to have representation across those committees. But can I say that the parliamentary research services did a wonderful job in accommodating the chamber. Ultimately, they got us to the public hearings at a point in time in each of those allotted spaces.*<sup>85</sup>

The CCIQ suggested that greater equity in the allocation of Bills across committees would assist the committee with being able to undertake their scrutiny role, while improved timeframes would assist the CCIQ with consulting with their membership on a Bill.

The Queensland Council of Unions (QCU) also requested that as much time as possible be allowed to provide submissions to the various parliamentary committees ‘as the quality of the QCU’s submissions is consistent with the time in which they are given to provide them’.<sup>86</sup>

To improve the functioning of committees, the Queensland Resources Council (QRC) proposed that the workload and skills associated with successfully chairing a committee should be explicitly recognised. A mechanism whereby committee members and particularly chairs can be mentored and trained by experienced Members of Parliament was also suggested by the QRC.

The Queensland Greens at the public hearing suggested that expanding the size of committees would help with the workload, stating that:

*However, it is of note that the committees in Queensland are actually quite small, comparatively. New Zealand have much larger committees, of around eight or nine members, and they have a very similar size parliament. It is also similar in Scotland, although they have a much larger parliament than we do. Expanding the size of committees definitely would help with the workload. Once again, it is up to you to make that particular choice.*<sup>87</sup>

In his submission to the inquiry and in his evidence at the public hearing the Clerk of the Parliament noted that a minimum period of 12 weeks for a Bills inquiry would be a reasonable compromise between the ideal of 6 months as contained in the Standing Orders and the reality in practice of much shorter periods since the system was introduced in 2011 as detailed in the tables above.

The Clerk suggested that setting a minimum period of 12 weeks would not only have the effect of allowing a reasonable time for submissions and for the committee to conduct thorough scrutiny but assist in forging a better the culture about the role of Assembly in scrutinizing legislation without unduly delaying the government’s legislative agenda. As the Clerk noted:

*I think four-year terms and entrenchment of committees will change our culture again, and I think it will be a positive change to our culture. If you set a 12-week minimum statutory period for bills to be considered by committees which the House by resolution cannot simply set aside—and that is what we really mean by entrenchment in a parliamentary sense—unless*

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<sup>85</sup> Transcript of proceedings, 9 February 2016, 15.

<sup>86</sup> Submission no. 16, p 1.

<sup>87</sup> Transcript of proceedings, 9 February 2016, p 23.

*there is genuine urgency—and I have never seen a motion for genuine urgency fail in this House, and I point to the Magistrates Act as an example; genuine urgency does not fail to get bipartisan support—then the next cultural change that you will have will be in the ministry and in the Public Service that there is a review period and we are just going to have to wait on legislation.*<sup>88</sup>

The Clerk of the Parliament also supported setting ‘sensible timeframes’ for inquiries, especially Bills inquiries, and a focus on resourcing. The Clerk made the following recommendations:

- the period of time in which bills are scheduled for committee review needs to be set at 12 weeks unless declared urgent and the requirements for the declaration of bills as urgent needs to be statutorily controlled; and
- the CLA needs to more closely consider the workload of each committee when allocating inquiries or bills.<sup>89</sup>

The Clerk advised the committee that in parallel with this inquiry a review has been conducted into the efficiency and effectiveness of the Committee Office by the Parliamentary Service.

The purpose and scope of the review is to:

1. examine the overall effectiveness and efficiency of the Committee Office.
2. examine all current services delivered by the Committee Office and its individual secretariats and the resources required for each service with particular reference to workload arising from the introduction of portfolio committee system in 2011.
3. determine whether the management structure, operational structure, staffing levels (including classifications) and workforce skills are appropriate and properly aligned so as to deliver the service priorities of all committees.

The review is not yet complete, but its findings will eventually be reported to Mr Speaker and the Committee of the Legislative Assembly.

The Clerk noted that a review of the Committee Office and the resources and organisation of that Office, may assist with the management of varying workloads the resources provided to each portfolio committee cannot entirely alleviate the burden on the members of each committee.

The Queensland Greens also supported the proposition of improved resourcing. At the public hearing it was stated:

*...I do think there is the wider issue—I know some other people have raised it—of resourcing of the committee. It is not necessarily about stacking more MPs on it and it is not necessarily about massively ratcheting up the salary of your chief research officer, but there needs to be some support for more people. Certainly one of the problems I found in the Senate was that every time there was an issue people would say, ‘Let’s have a Senate committee inquiry,’ and you would end up running literally 10 inquiries at once, which inevitably means it degrades the value of the work. Aspiring to a culture of good, solid reports and inquiries means having good backup staff who have the time because the MPs do not. It does not matter if you have 50 MPs on your committee; you all have 50 other things to do. So resourcing and backup staff are highly desirable, if at all possible.*<sup>90</sup>

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<sup>88</sup> Transcript of proceedings, 9 February 2016, p 8.

<sup>89</sup> Submission no. 14, P 9.

<sup>90</sup> Transcript of proceedings, 9 February 2016, p 26.

### 5.3.2 Conclusion

The CLA notes the stakeholders comments regarding the difficulties experienced with respect to the high workloads on the portfolio committees since the 2011 reforms and the tight timeframes experienced (largely with respect to Bill inquiries). The CLA acknowledges the need for the CLA to be more vigilant in playing a role where it can in distributing the workload more evenly across the portfolio committees.

The CLA notes the Clerk of the Parliament's advice that an internal management review currently being conducted into the committee office is examining efficiency and resourcing options aimed at enhancing the capacity to allocate and spread the workload more efficiently across the Committee Office. The CLA supports such endeavours, however, acknowledges that such strategies will none the less be limited by the capacity of members of committees to undertake committee work.

### 5.3.3 Urgency procedures

The Anti-Discrimination Commissioner of Queensland (ADCQ) specifically mentioned his support for the proposed changes to limit the declaring of Bills as urgent and bypassing the committee system, and the Queensland Law Society submitted that legislation requiring urgent passage should be rare and only occur following the meeting of certain criteria. For Bills that are declared urgent, Mr Willis suggested that the relevant committee be empowered to review the efficacy of the legislation after a suitable post-enactment period and make proposals for any necessary amendments.

The Queensland Greens proposed a slight change to the recommendation on the special majority required to change the period of review to:

*A special majority to be defined as at least 65 per cent of the Members of the Legislative Assembly, including at least one Member of the official opposition or at least one member of the cross bench that is not in a formal coalition with the government. This recommendation would also apply to any other Bill(s) with similar intent which are introduced.<sup>91</sup>*

The Chamber of Commerce and Industry Queensland (CCIQ) submitted that an improved and more consistent process within government for the development of Regulatory Impact Statements would assist both committees and stakeholders in their scrutiny of the Bill, and should be required for each Bill.

### 5.3.4 Conclusion

The CLA notes the views of the submitters with respect to urgency procedures but notes that there must be procedures for urgency.

### 5.3.5 Reliance on departments

The LGAQ wanted to see a reduced reliance on departmental staff as witnesses in support of the legislation.

The LGAQ raised concerns about 'reduced credibility in the current system because of extensive departmental involvement'. Representatives at the public hearing explained:

*When you consider the process of the development of a bill, you see that the government of the day has a policy position or an electoral mandate. That gives rise to the processes for the preparation of bills and ultimately their submission to parliament. The parliamentary committee process then relies upon those departmental representatives advising the committee. The committee considers that. It then considers evidence. At the end of the process the departmental representatives effectively have a right of reply to comment on the evidence that has been given. The committee considers it and makes its decision. Then the*

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<sup>91</sup> Submission no. 7, p 4.



*government of the day considers the committee's recommendations. That consideration is undertaken virtually by the same departmental officers who in fact initiated the process.*<sup>92</sup>

The CCIQ also raised the issue of the emphasis placed on departmental briefings:

*Government department briefings in our view generally provide a viewpoint only with that of the Government's policy position. CCIQ believes it is almost inconceivable that a public servant would provide a dissenting viewpoint in a public hearing to that of the State Government. CCIQ believes that the weight placed on Departmental briefings needs to be tempered or instead replaced with the articulation or presentation of a Regulatory Impact Statement (RIS) prepared by the Department.*<sup>93</sup>

### 5.3.6 Conclusion

**The CLA notes the views of the submitters with respect to advice from departments but feels the views of stakeholders and the research of the committee secretariats provide a sufficient counterbalance to the advice from departments.**

## 5.4 Fundamental Legislative Principles / Human Rights

A number of submissions focused on fundamental legislative principles (FLPs) and the integration of human rights as a way of strengthening accountability of the Parliament and to assist the committee system with scrutinising legislation.

Section 4 of the *Legislative Standards Act 1992* defines fundamental legislative principles as:

### **Meaning of fundamental legislative principles**

(1) *For the purposes of this Act, **fundamental legislative principles** are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.*

*Note—*

*Under section 7, a function of the Office of the Queensland Parliamentary Counsel is to advise on the application of fundamental legislative principles to proposed legislation.*

(2) *The principles include requiring that legislation has sufficient regard to—*

- (a) rights and liberties of individuals; and*
- (b) the institution of Parliament.*

Prior to the reforms made to the committee system in 2011, the Queensland Parliament had maintained a Scrutiny of Legislation Committee since its introduction in 1995 via the *Parliamentary Committees Act 1995* (which was subsequently imported into the *Parliament of Queensland Act 2001*) as a result of an EARC recommendation.<sup>94</sup> The changes made to the committee system in 2009 did not affect the Scrutiny of Legislation Committee.

The Scrutiny of Legislation Committee had responsibility for the following areas:

- the application of fundamental legislative principles (FLPs) to particular Bills and particular subordinate legislation
- the lawfulness of particular subordinate legislation.<sup>95</sup>

The committee was subsequently abolished as part of the 2011 reforms. The CSRC recommended instead that portfolio committees should consider the application of the fundamental legislative principles in considering any Bill referred to them. The CSRC also recommended that the portfolio

<sup>92</sup> Transcript of proceedings, 9 February 2016, p 2.

<sup>93</sup> Submission no. 13, p 4.

<sup>94</sup> CSRC, Review of the Queensland Parliamentary Committee System, December 2010, p. 5.

<sup>95</sup> CSRC, Review of the Queensland Parliamentary Committee System, December 2010, p. 10.

committees monitor and may report on any subordinate legislation within their portfolio responsibilities.<sup>96</sup>

At the time there was some negative feedback about the abolishment of these committees. The QIC notes his predecessor's commentary on the 2010 report by the CSRC in which:

*...he expressed a misgiving about the dissolution of the previous Scrutiny of Legislation Committee. He commented that 'the elimination of the Scrutiny of Legislation Committee would almost certainly lead to a diminution of the quality of Queensland's legislation', essentially because of loss of focus on what he termed the 'technical aspects of legislation'.<sup>97</sup>*

In his submission, the QIC suggested that a future Parliament may wish to reintroduce a Scrutiny of Legislation Committee to examine FLPs:

*A future Parliament might legitimately decide that this issue is of such significance as to warrant particular scrutiny by an expert committee like the Scrutiny of Legislation Committee, rather than relying on the more generic portfolio ones.<sup>98</sup>*

The QLS does not refer to the re-establishment of the Scrutiny of Legislation Committee, but submits that it needs to be ensured that committees are cognisant of, and adhere to, the FLPs as established by the *Legislative Standards Act 1992*. In its submission, the QLS proposes that a separate review body be created which reviews all Bills for compliance with FLPs, but makes no comment on portfolio or other issues relating to a Bill. The QLS suggests the review body would report separately to Parliament and table its report seven days prior to debate on the Bill.

The Anti-Discrimination Commissioner of Queensland (ADCQ) submitted that consideration of how the parliamentary system could be strengthened to increase accountability 'necessitates consideration of the efficacy of the meaning of fundamental legislative principles and the processes for considering Bills and subordinate legislation'.<sup>99</sup>

At the public hearing the ADCQ concurred with the view of the QIC, saying that 'scrutiny of executive action and legislation can occur from a broader perspective and a future parliament might consider an expert committee like the Scrutiny of Legislation Committee if warranted, rather than rely just on generic portfolio committees'.<sup>100</sup>

The ADCQ's submission refers to a submission by the then Industry, Education, Training and Industrial Relations committee to the Finance and Administration Committee's review of the meaning of FLPs in 2011 which noted that 'the former Scrutiny of Legislation Committee, with its specific purpose of scrutinising legislation in respect of the rights and liberties of individuals and the institution, had developed considerable expertise in the area'.

However, the ADCQ does not suggest the Scrutiny of Legislation Committee be re-established. Instead, the ADCQ submits that by making some changes to the process for considering Bills and legislation, and by incorporating human rights more overtly into the meaning of FLPs, accountability in the scrutiny of legislation could be strengthened. The ADCQ made the following recommendations based on a process similar to the federal model for scrutiny:

- a statement of compatibility with human rights be prepared and presented to the House for each Bill; and
- there be a specialist bipartisan committee on human rights to examine Bills and Acts for compatibility with human rights, and to report to Parliament.<sup>101</sup>

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<sup>96</sup> CSRC, Review of the Queensland Parliamentary Committee System, December 2010, p. xviii.

<sup>97</sup> Submission no. 2, p 4.

<sup>98</sup> *Ibid.*

<sup>99</sup> Submission no. 10, p3.

<sup>100</sup> Transcript of proceedings, 9 February 2016, p 12.

<sup>101</sup> Submission no. 10, p 4.

The ADCQ submits that the role of the portfolio committees would be to examine other aspects of legislation, as well as other roles.

The ADCQ also recommends that the definition of FLPs should be changed to refer to ‘human rights’ instead of rights and liberties of individuals, and to specify also the separation of powers. The ADCQ submits that ‘human rights’ should be defined in an inclusive way, with examples and further explanation detailed in a guidance note. The ADCQ recommends the following definition be adopted:

*The personal rights and liberties recognized or expressed under the Constitutions of Queensland and Australia, in statutes of the parliaments of Queensland and Australia, or in treaties ratified by the government of Australia.*<sup>102</sup>

The ADCQ also recommends the following measures to increase accountability in the scrutiny of legislation:

- *in the Legislative Standards Act 1992, include as an express objective that Queensland legislation is consistent with the promotion and protection of human rights;*
- *replace the expression ‘rights and liberties of individuals’ with ‘human rights’;*
- *add to the definition of FLPs ‘the separation of powers’;*
- *define ‘human rights’ in an inclusive way;*
- *develop and implement a guidance note to assist in identifying human rights issues;*
- *replace the requirement for explanatory notes to include a ‘brief assessment of consistency’ with a requirement of a ‘statement of compatibility’ with FLPs for all bills and amendments;*
- *establish under the Parliament of Queensland Act 2001 a separate specialist bipartisan committee (a Human Rights Committee) with roles to include the examination of all bills and subordinate legislation for compatibility with FLPs; and*
- *amend the Parliament of Queensland Act 2001 to require the Member promoting a bill to respond to any recommendations or concerns raised by the specialist human rights committee.*<sup>103</sup>

The above recommendations are seen by the ADCQ as interim steps, prior to the implementation of its subsequent recommendations for the development and entrenchment of a Human Rights Committee to examine legislation and report on human rights issues, and the introduction of a Human Rights Act. The ADCQ submits that a common feature of human rights acts and constitutional charters is that they provide for proposed legislation to be reviewed before debate in Parliament, for compliance or otherwise with human rights, and for a report to be provided to parliament.

During the public hearing, the Anti-Discrimination Commissioner suggested that a Human Rights Act could make the community feel more comfortable with the prospect of four year terms, saying:

*That is a piece of legislation that parliament will develop and it then allows for ordinary citizens to engage in the debate or to appeal if they feel an agency has not delivered a service within their human rights context. I think that is an ultimate safeguard. Also from the community’s perspective, a human rights act can provide that legitimacy and a mechanism and the means for them to participate and try to get redress to where they feel their human rights as an individual or a collective have not been met.*<sup>104</sup>

The QCCL also supported the introduction of a Human Rights Act as a means of strengthening the committee system. As part of its submission and reference to the Swedish Riksdag, the QCCL referred to minorities in the House being given procedural rights on the passage of a Human Rights Act including:

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> Transcript of proceedings, 9 February 2016, p 13.

- *government proposals affecting one of the rights listed in the Act may be held in suspense for 12 months at the request of 10 MPs unless 5/6s of the MPs approve the bill*
- *if one tenth of the MPs request and one third then vote in favour, a referendum may be held in respect to a law which affects a right to set out in the Human Rights act held in suspense over an election.*<sup>105</sup>

As an alternative if a Human Rights Act isn't introduced, the QCCL suggested a similar result could be achieved by setting the International Covenant on Civil and Political Rights as the standard.

#### 5.4.1 Conclusion

**The CLA notes the issues raised in the submissions as regards Human Rights and Fundamental Legislative Principles but also notes that the Legal Affairs and Community Safety Committee is currently undertaking an inquiry into whether it is appropriate and desirable to legislate for a Human Rights Act in Queensland, other than through a constitutionally entrenched model, which is due to be reported to the House by 30 June 2016.**

**The CLA awaits the report to consider the issues and the recommendations made.**

#### 5.5 Other options for strengthening the committee system

Both the Queensland Greens and QCCL argued that a parliament that more accurately and proportionately reflects the electorate is needed to ensure a successful committee system and be less likely to be dominated by the executive.

In their submission the Queensland Greens stated:

*Fundamentally the committee system can only be successful as a mechanism of review if the parliament from which it is derived accurately and proportionately reflects the electorate. A parliament that accurately reflects the electorate is also much less likely to be dominated by the executive.*

*It is the executive dominance of parliament rendering it most often merely a rubber stamp that the committee system should be designed to counter, but it is only one element of broader more wide-ranging democratic reform that are required towards that end.*<sup>106</sup>

At the public hearing the Queensland Greens stated:

*When we are talking about committees we are talking about executive power in Queensland and the way it is used. It is completely up to the executive to make decisions about laws that come through this place. No committee could possibly stop a piece of legislation that the executive wanted to see enacted. The only way you could really do that would be to introduce something like proportional representation in the lower house or maybe reintroduce an upper house.*<sup>107</sup>

Other options included:

- an increase in the number of Members of Parliament so that appropriate time and resources can be devoted to the committee system (Queensland Greens);
- the introduction of a recall mechanism for MPs (Queensland Greens);
- citizen initiated referendums (as occurs in Sweden and New Zealand) (Queensland Greens);
- introduction of a citizen's jury (in parallel with the committee) that is given the final say on recommendations proposed by the committee (Queensland Greens);
- make polling/surveying/online feedback options available to committees (Queensland Greens)

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<sup>105</sup> Submission no. 5, p 2.

<sup>106</sup> Submission no. 7, p 4.

<sup>107</sup> Transcript of proceedings, 9 February 2016, p 23.

- the ability for committees to ask Ministers to appear before a committee to answer questions (Mr Willis); and
- the ability to call for public submissions on Appropriation Bills as part of their scrutiny function (Mr Willis).

### **5.5.1 Conclusion**

**The CLA notes the views of the submitters with respect to the various other options for strengthening the committee system but was not convinced it should recommend any changes to the current procedures at this point in time. In coming to this conclusion the CLA notes that the committee system in each jurisdiction must fit within the composition, constitutional arrangements and culture of their respective parliaments.**

**The CLA believes that it is best to allow the Queensland Parliament's current system, which has been through major change only five years ago, to slowly evolve and develop.**

**It may well be that some of the matters raised in this inquiry will eventually be adopted or adapted for the Queensland system, whilst others will always be unsuitable for adoption.**

## 6. Entrenchment of the committee system

### 6.1 The FAC report

After recommending a Bill and referendum for a fixed-four year term, the FAC Report noted that ensuring that public confidence in the system of democracy and the Parliament is maintained under a fixed four year term was of particular interest to the FAC.

The FAC noted that under a unicameral parliamentary system, there is no Upper House to scrutinise legislation and hold the executive to account. The FAC also noted that at the time that the Upper House was abolished, there was a very strong view that three year terms and the ability for the Premier to take the Legislative Assembly to an election at any time was paramount to maintaining democracy and accountability of the Parliament to the people.

The FAC agreed that an extension to four year terms needed to be complemented by other safeguards to reinforce the role of Parliament and democracy.

In this respect, the FAC emphasised the important role of parliamentary committees within Queensland's Parliamentary system. However, the FAC was not convinced that the public had confidence that the committee system acted as a complete panacea for the absence of an Upper House, nor fully understood the role of parliamentary committees. Importantly, the FAC was concerned that the effectiveness of the committee system is compromised because of a lack of statutory protections for the role and functions of committees.

The FAC was of the view that the likelihood of a referendum to introduce fixed four year term succeeding would be improved if the Parliament can demonstrate a commitment to greater accountability and transparency. The FAC therefore recommended that the Parliament enhance the accountability mechanism by entrenching the role of committees. The FAC was of the view that this would send a strong message to the voters about the protections that the Parliament is putting in place alongside the extension of four year terms in order to not only enhance but protect systems of accountability and scrutiny that have developed in the past quarter of a century.

The FAC also recommended entrenched, mandatory referral of all Bills to committees for consideration within adequate timeframes, with a special bipartisan majority required for exemptions (to allow for the passage of genuinely urgent Bills).

The FAC thought the minimum time frame for consideration of Bills should be six weeks.

The FAC thought the requirement for a special bipartisan majority to approve exemption from committee review for urgent Bills will still leave the Legislative Assembly with enough flexibility to deal with genuinely urgent Bills.

### 6.2 The meaning of entrenchment

Generally, Parliaments cannot bind their successors. This means that legislation passed by a State Parliament can at any time in the future amend or repeal the legislation of their predecessors by a normal Act passed in the normal way (simple majority).

There is, however, one exception to this general rule. The Parliaments of the Australian States can bind their successor Parliaments to comply with special procedures prescribed by 'manner and form' provisions for the enactment of legislation, so long as those provisions comply with certain legal requirements. These requirements generally include that the provision(s):

- concern the constitution, powers or procedure of the Parliament
- must relate to the legislative process
- must not purport to abdicate legislative power.

### 6.3 Why entrench?

'Manner and form' provisions are crafted to 'entrench' certain legislative provisions so as to prevent their amendment or repeal by an Act of Parliament passed by a simple majority in both Houses of Parliament (or one House in Queensland) and assented to by the Governor as the Queen's representative.

Manner and form provisions generally imposes requirements such as a referendum or special majority before assent is given to the Bill. Essentially manner and form provisions seek to ensure amendment and repeal of legislation is more difficult. Legislation where these special requirements for repeal or amendment is required is referred to as entrenched.

The rationale for entrenching legislation is based on a perception that the legislation or provision is fundamental and important and should only be amended or repealed with considerable care.

### 6.4 Singly or doubly entrenched

A manner and form provision may be either singly or doubly entrenched. In a parliamentary sense procedures in statute are also be 'statutorily' entrenched.

#### 6.4.1 The meaning of singly entrenched

Single entrenchment of a provision or provisions occurs when the requirements prescribed for the amendment or repeal of the law (referendum, special majority etc.) does not apply to a law to amend or repeal that particular provision. This means that the provision itself can be amended or repealed by an Act passed in the ordinary way. In essence a provision which is only singly entrenched is not an effective, binding, entrenched provision on future parliaments.

Provisions in Chapter 7 of the *Constitution of Queensland Act 2001* relating to the system of local government in the State are examples of provisions that are singly entrenched. Section 78 of that Act, for example, provides:

#### **78 Procedure for bill ending system of local government**

- (1) *This section applies for a bill for an Act ending the system of local government in Queensland.*
- (2) *The bill may be presented for assent only if a proposal that the system of local government should end has been approved by a majority vote of the electors voting on the proposal.*
- (3) *The bill has no effect as an Act if assented to after presentation in contravention of subsection (2).*
- (4) *The vote about the proposal must be taken on a day that is more than 1 month but less than 6 months before the bill is introduced in the Legislative Assembly.*
- (5) *The vote must be taken in the way prescribed by an Act.*
- (6) *An elector may bring a proceeding in the Supreme Court for a declaration, injunction or other remedy to enforce this section either before or after the bill is presented for assent.*

There is no provision which states that an Act to amend or repeal s.78 itself must be presented to the electors (via a referendum). Therefore, it is possible for a Parliament to simply pass an Act that repeals s.78 and then pass a subsequent Act that ends the system of local government in Queensland, all without a referendum contemplated in s.78.

Of course, a government and Parliament that sought to end the system of local government without a referendum by repealing the section without a referendum and then ending the system without a referendum would likely suffer considerable political damage. Whilst not a complete safeguard, such a provision, especially placed within the 'Constitution' is highly symbolic. It also slows down the

legislative process because the Parliament must go through a two-step process to achieve its ends – thus prolonging any political damage.

### 6.4.2 The meaning of doubly entrenched

Double entrenchment of a provision exists when the requirements apply not only to the enactment of certain future laws, but to any law which purports to amend or repeal the original provision.

Double entrenchment effectively binds future Parliaments as they cannot expressly or impliedly amend or repeal the provision unless it complies with the provisions own ‘manner and form’ requirements.

Examples of doubly entrenched provisions in the Queensland Constitution are provided in sections 1, 2, 2A, 11A, 11B and 53 of the *Constitution Act 1867 (Qld)*. These provisions deal with 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). These provisions are all doubly entrenched because s.53(1) of the *Constitution Act 1867 (Qld)*, provides:

**53. Certain measures to be supported by referendum.**

(1) *A Bill that expressly or impliedly provides for the abolition of or alteration in the office of Governor or that expressly or impliedly in any way affects any of the following sections of this Act namely —*

*Sections 1, 2, 2A, 11A, 11B; and*

*this section 53*

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

Replacement of the current three year maximum term of Parliament with fixed, four year terms, will go to a referendum of electors in March 2016. This is an example of the operation and effect of double entrenchment, as without the double entrenchment contained in s.53 above, the Parliament would have been able to alter the terms using the two-step approach discussed above.

An important issue about future double entrenchments relates to the insertion of s.2A into the *Constitution Act 1867 (Qld)* in 1977. The amendments made the Queen (and her representative the Governor) a constituent part of the Parliament so that any future law changing her role would be a law respecting the ‘constitution’ of the legislature and therefore have to meet the manner and form requirement of approval at a referendum.

On one view, any Act after 1977 which purports to entrench provisions by requiring a referendum of voters as a condition of making a law could be in breach of s. 2 of the *Constitution Act 1867*. A contrary argument is that an entrenching measure in a Bill would not necessarily amend or affect s 2 of the *Constitution Act 1867* but merely regulate the exercise of s. 2. There is no judicial authority for either proposition.

Another important issue relates to modern public policy. The Electoral and Administrative Review Commission,<sup>108</sup> the Electoral and Administrative Review Committee,<sup>109</sup> the Queensland Constitutional

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<sup>108</sup> EARC, Report on Consolidation and Review of the Queensland Constitution, August 1993, para 4.110.

<sup>109</sup> Queensland Parliamentary Committee for Electoral and Administrative Review, Report on Consolidation and Review of the Queensland Constitution, November 1994, para 136.



Convention<sup>110</sup> and the Queensland Constitutional Review Commission<sup>111</sup> all took the ‘policy’ view that laws should not be entrenched unless the same manner and form which is sought to be imposed is also used to entrench (i.e. a referendum).

### 6.4.3 Statutory entrenchment or ‘parliamentary entrenchment’

Professor Carney in his text *The Constitutional Systems of the Australian States and Territories* discusses the possibility of ‘parliamentary entrenchment’ which provides procedural requirements which although not ‘legally entrenched’ would be ‘politically and morally’ binding.<sup>112</sup>

From 1996 to 2001 there was considerable review of the Constitution of the State. The process, although started by EARC fell into abeyance when it ceased to exist (1993). The Legal Constitutional and Administrative Committee (LCARC) recommenced the process, culminating in two draft Bills (1999). The Queensland Constitutional Review Commission (QCRC) (1999-2000) was established to consider the work of the LCARC.

Around the same time a Queensland Constitutional Convention was held in Gladstone in 1999 which passed the following resolution:

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

*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.*<sup>113</sup>

QCRC considered that the Queensland Constitution was the ‘fundamental law’ of the State and thought as such it required appropriate recognition – that is a status higher than a normal statute. However, QCRC did not want to entrench by referendum the entire text of the Queensland Constitution. But QCRC recommended two forms of entrenchment:

- referendum entrenchment of the most fundamental aspects of the Constitution (recommendation 12.1); and
- three procedural requirements, together comprising ‘parliamentary entrenchment’, to apply to all sections of the Constitution (recommendation 12.3).<sup>114</sup>

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

- a minimum period of one calendar month between the first and second readings of a bill to amend the Constitution (to ensure sufficient time for the community to be alerted to what is proposed and, if they wish, to 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

<sup>110</sup> Queensland Constitutional Convention, Gladstone, June 1999, Communiqué, Theme 1, para 1.3.

<sup>111</sup> Queensland Constitutional Review Commission, *Report on the Possible Reform of and Changes to the Acts and Laws that relate to the Queensland Constitution*, February 2000, Rec 12.2.

<sup>112</sup> Carney, Gerard (2006) *The Constitutional Systems of the Australian States and Territories*. Cambridge University Press: Port Melbourne.

<sup>113</sup> Newton, Kerry (2005) ‘Recent Constitutional Developments in Queensland’ in *Australasian Parliamentary Review*, Vol. 20(1), p 144–60.

<sup>114</sup> *Ibid.*

- the short title of the bill to include the words ‘Constitution Amendment’ (to ensure that the Constitution is not amended inadvertently or by concealment).<sup>115</sup>

The LCARC’s report *Review of the Queensland Constitutional Review Commission’s recommendations regarding entrenchment of the Queensland Constitution*<sup>116</sup> also recommended ‘parliamentary entrenchment’ along the lines indicated by the QCRC.

The LCARC recommended that the Constitution should be amended as soon as possible by way of ordinary legislative amendment so that four requirements together comprising ‘parliamentary entrenchment’ apply to the whole Constitution.

The LCARC’s four requirements would mean that any Bill which seeks to amend or repeal the Constitution:

- cannot be passed within 27 calendar days of being introduced;
- must be the subject of an inquiry and report to Parliament by a committee of the Queensland Parliament before being passed;
- must contain the words ‘Constitution Amendment’ in its title; and
- 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).<sup>117</sup>

The LCARC saw parliamentary entrenchment as an important procedural mechanism to ensure that amendments to the Constitution were given detailed consideration and in such a way as to facilitate public input to the proposed amendments.

The Government did not support the concept of parliamentary entrenchment. The Government cited concerns about:

- the constitutional validity of parliamentary entrenchment;
- the possibility of inadvertent non-compliance with the proposed requirements; and
- the calendar day requirement being too restrictive.<sup>118</sup>

There is nothing particularly unusual about statutes containing parliamentary procedures with legal effects if the procedures are not followed. There are statutes which require that before certain types of government action can be undertaken the Legislative Assembly must pass a resolution authorising that action. Examples of actions that require the prior approval of the Legislative Assembly are proposals for land inclusion or exclusion from Brisbane Forest Park and revocations of fish habitat reserves, national parks and State forests.<sup>119</sup>

Section 50 of the *Statutory Instruments Act 1992 (Qld)* provides procedures for the Legislative Assembly to disallow subordinate legislation. That section provides that within 14 sitting days of subordinate legislation being tabled, a member may give notice of a motion to disallow the subordinate legislation. Section 50(4) of the *Statutory Instruments Act 1992 (Qld)* provides that if the notice of motion has not been disposed of at the end of 14 sitting days the subordinate legislation ceases to have effect.

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<sup>115</sup> *Ibid.*

<sup>116</sup> [www.parliament.qld.gov.au/documents/committees/LJSC/2000/qld-const-entrenchment/Report-41.pdf](http://www.parliament.qld.gov.au/documents/committees/LJSC/2000/qld-const-entrenchment/Report-41.pdf).

<sup>117</sup> *Ibid.*

<sup>118</sup> [www.parliament.qld.gov.au/documents/committees/LJSC/2000/qld-const-entrenchment/gr-rpt41.pdf](http://www.parliament.qld.gov.au/documents/committees/LJSC/2000/qld-const-entrenchment/gr-rpt41.pdf).

<sup>119</sup> [www.parliament.qld.gov.au/documents/assembly/procedures/ParliamentaryProceduresHandbook.pdf](http://www.parliament.qld.gov.au/documents/assembly/procedures/ParliamentaryProceduresHandbook.pdf).

#### 6.4.4 Procedures in statute v. procedures in Sessional or Standing Orders

Section 11 of the *Parliament of Queensland Act 2001* provides for the Legislative Assembly to prepare and adopt Standing Rules and Orders for the conduct of parliamentary business. Most procedures for the Assembly are contained in Standing Orders. Sessional Orders are motions passed by the Legislative Assembly which either enable it to do certain things and take certain actions not covered by Standing Orders or which supersede a particular Standing Order for the duration of a parliamentary session. For example, Sessional Orders are passed on the first day of business of each session setting out matters such as the days and hours of sitting, the order of business and time limits for debates and speeches.

As explained above, there are statutes which also provided procedure for the Assembly. The difference between procedure in Standing and Sessional Orders and procedure in statute is that in the case of Standing and Sessional Orders, procedure can be set aside by the Assembly.

A Standing or Sessional Order can also be formally set aside by a motion to suspend it. The motion may be moved with or without notice, but if it is moved without notice leave is required. While a motion to suspend Standing Orders is usually moved by the Leader of the House or a Minister it may be moved by any Member. The Legislative Assembly can dispense with the need to comply fully with Standing Orders by granting 'leave' for a matter to be dealt with in an informal way. 'Leave' means the permission of the Legislative Assembly to do something. There is no debate when it is proposed to the Legislative Assembly that leave be granted to do something for there is no motion before the House. The Legislative Assembly, while bound by its Standing Orders, is ultimately the master of its own procedures. If there is agreement on a particular way of proceeding it would be pointless for the House to feel bound by its own rules to act differently.

The difference between compliance with Standing and Sessional Orders and statute is best explained by example. As outlined above, s50 of the *Statutory Instruments Act 1992 (Qld)* provides procedures for the Legislative Assembly to disallow subordinate legislation. Under the section if a notice of motion for disallowance is not dealt with within 14 sitting days of being given the subordinate legislation has no effect.

Complimentary to the statute, Standing Orders require, in part, that disallowance motions be debated within seven sitting days after notice of disallowance has been given. The motion can be called on before the expiration of seven sitting days and the Assembly can suspend Standing Orders to postpone the debate beyond seven days. However, the Assembly cannot suspend the operation of s50 of the *Statutory Instruments Act 1992 (Qld)*, so if the Assembly does not deal with the motion within 14 sitting days the legal effects in the Act operate to effectively disallow the instrument.

As the above example demonstrates, merely having a procedure in statute places a break on the powers of the Assembly to set aside that procedure.

#### 6.5 Support for entrenchment of the committee system

There was strong support for entrenchment in submissions and evidence, although most submitters were concerned to ensure the Assembly also retained flexibility around the Queensland Parliamentary committee System to enable it to evolve and adapt.

The Queensland Integrity Commissioner agrees with the recommendation for entrenchment of the committee system, but does not consider that a minimum number of portfolio committees is required or desirable.

At the hearing, the Integrity Commissioner elaborated that it was important that the committee system should be entrenched, but also noted that what should be in the entrenched provisions needed to be at a high level, akin to statements of principle:

**Mr HINCHLIFFE:** *You have made it clear that you do think there is a space for entrenchment of the system. Taking account of your very clear statements around needing to maximise the flexibility and agility, I guess, of the committee system to respond to parliamentary needs*

*going forward, is there a particular form of entrenchment that you think would be the most appropriate for the establishment of the committee system strongly in our system but in a way that maintains that agility?*

**Mr Bingham:** *Yes. Firstly, I adopt the comments that you have heard previously this morning that the framework and structure of the committee system is only one part of the way in which it should operate. I do not see entrenchment as being a panacea in relation to that sort of element. That said, my preference is for the strongest form of entrenchment. I would perceive that giving the electors of Queensland some role in any removal of the committee system would be the most appropriate way to go.*

....

**Mr SPRINGBORG:** *I am particularly interested in this inquiry's consideration of the potential entrenchment of the committee system in the future. You have indicated in your submission—and you have again reinforced it—that, whilst it is important, it is not the be-all and end-all, but you highly urge that it should be a form of entrenchment where you reference the people of Queensland, so that would be through some form of referendum if you sought to change it. How do you see that operating if it were to happen with your desire that the system should be very, very flexible? What sort of structure would you envisage that would have reference to Queenslanders but be a flexible system?*

**Mr Bingham:** *At the risk of minimising the importance of it, what I envisage is a statement of principle, if you like. I think statements of principle and statements of values are important for us to have in our system of government. I would contemplate something in the legislated framework for the way that the parliament operates which says, 'There shall be a committee system.' That statement should acknowledge that it is a matter for each parliament to determine what is the appropriate committee system for it to properly fulfil its responsibilities into the future—just a broad statement which says, 'We recognise that a significant and important part of the functioning of our parliamentary democracy is the parliamentary committee system.'<sup>120</sup>*

The Anti-Discrimination Commissioner of Queensland (ADCQ) also supports entrenchment of a committee system, provided it does not unduly restrict flexibility in the structure of the committee systems into the future. The ADCQ recommends that a specialist human rights committee should be established and entrenched (see section 5.4 on fundamental legislative principles and human rights). At the hearing, the Commissioner stressed the need to identify core issues that should be entrenched, whilst retaining flexibility:

**Mr SPRINGBORG:** *I note that a little while ago you made reference to your support for a statutory entrenchment and the consideration of a range of factors, particularly around human rights, which of course you have a very special interest in and have done for a long period of time as commissioner and also prior to that. You also referenced the LNP's suggestion of a stand-alone committee statute. You may have noticed that my particular interest in this is how you entrench something in the most effective way. Would you believe that having a specific committees act provides enough entrenchment to ensure support for and the longevity of a committee system that has respect in the community, or should it go further and be in the Constitution as a statutory entrenchment or even further and be entrenched by referendum so that it can only be dealt with by referendum?*

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<sup>120</sup> Transcript of proceedings, 9 February 2016, p 8.

**Mr Cocks:** *I am not an expert on the technical points you are getting at, but I think it is important for some of the core elements that all committees that oversight the accountability of legislation be entrenched just in a legislative sense. We are not arguing that everything needs to be entrenched. We recognise there needs to be flexibility. I think there needs to be flexibility around the portfolio type committees. Whether it goes into a Constitution or it is entrenched through parliament, I think that is a conversation that probably needs to be had much more broadly, and others more expert than I should be providing guidance on that.*<sup>121</sup>

Both the Queensland Ombudsman and the Auditor-General support the entrenchment of the committee system, and suggest the CLA include in its considerations the oversight role of committees of independent parliamentary offices.

The Queensland Ombudsman recommends that the CLA consider including oversight of independent parliamentary offices (and that those offices be named) as an essential responsibility for the future parliamentary committee system.

The Queensland Auditor-General also suggests that:

*...the relationship between that committee [Finance and Administration Committee] and my Office would be further strengthened by also entrenching in its role:*

- *selecting and appointing the Auditor-General*
- *establishing my annual budget*
- *monitoring and assessing the performance of the Auditor-General and my Office through annual external audits and five-yearly strategic reviews.*<sup>122</sup>

The QIC suggests that the appropriate committee structure is best left to the Parliament of the day, and that there may be benefit in permitting future Parliaments to move away from reliance on a strict portfolio approach.

The Queensland Greens in their submission state that they support the proposed amendments identified in Recommendation 9 of the FAC report as a stand alone proposal, but advise that they:

*...do not consider entrenchment to be adequate compensation for the loss of accountability represented by a move to four year terms, or for the lack of electoral and democratic reforms required for a parliament that properly reflects the electorate.*<sup>123</sup>

In addition, the Queensland Greens advise that they would like the CLA to consider extending the cross-party support requirement of the special majority to extend to any opposition or cross bench party who are not in coalition with the government.

The LGAQ supports the recommendation, noting particularly their support that a process for consideration of Budget estimates must be maintained by the Legislative Assembly. However, the LGAQ also notes that it is unlikely that entrenching the committee system by a referendum will occur in the immediate future, and therefore recommends a proposal by the Clerk of the Parliament that a statutory requirement enhancing the current provisions relating to portfolio committees contained in the POQA be initially implemented with a view to eventually securing constitutional entrenchment.

At the public hearing the issue of entrenchment versus statutory enactment was canvassed with Mr Hoffman of the LGAQ:

**Mr SPRINGBORG:** *My question relates to the support in your submission and a number of other submissions for the notion of entrenchment of the committee system. Entrenchment could take many forms, of course. One is statutory entrenchment through the Constitution Act of Queensland. Another one is entrenchment involving reference to the people of*

<sup>121</sup> Transcript of proceedings, 9 February 2016, p 12

<sup>122</sup> Submission no. 6, p 1.

<sup>123</sup> Submission no. 7, p 4.

*Queensland if you want to change it. Does the Local Government Association have a particular view about which would be preferable, because both apparently seem to have some superficial attractions and some practical attractions? The real issue here is that people want to know the committee system will stand the test of time but nevertheless be able to evolve.*

**Mr Hoffman:** *Ultimately, entrenchment is the strongest demonstration of the significance of the committees to the parliamentary process. That would be a preferred outcome, acknowledging that that is a significant or difficult process in itself. At the very least, statutory provisioning is, in our view, absolutely essential.*

*It is fair to say that the treatment of committees by governments over time reflects varying levels of support or disinterest in the committee process. If it is to play the role expected of it, particularly if we move to four-year fixed parliamentary terms in a unicameral system, then the legitimacy of that move should be demonstrated or supported by ensuring a committee system exists, will continue to exist and, in fact, is treated appropriately by the government of the day.<sup>124</sup>*

The Queensland Law Society (QLS) agrees with Recommendation 9 of the Finance and Administration Committee's report to the extent that every Legislative Assembly must establish at least seven portfolio committees whose role will include a review of Bills. At the hearing, Mr Budden from the QLS emphasised the need to identify the essential matters that need to be entrenched, whilst leaving enough flexibility in the system:

**Mr SPRINGBORG:** *.... With regard to the committee system, in order to keep faith and confidence with people, if you do entrench it—and this is the challenge—what form of entrenchment should there be? There is statutory entrenchment such as the many references we have in the Queensland Constitution Act. I think we have three or four matters that are entrenched to the extent that people make the decision—the Supreme Court, the term of parliament, the Queen and those sorts of things. In order to keep the confidence of Queenslanders, if you did entrench the committee system and you wanted to make sure that it functioned in a particular way, would you leave it open to interpretation? Mr Bingham said that we need to leave it flexible. If the argument is cynicism around the motivation of members of parliament, do you want to leave it flexible or would you try to put some other constraints around the way at least the committee system should function in some core areas?*

**Mr Budden:** *I think it is important that the system is robust. We certainly need some guidelines there. When you talk about making it flexible, coming from a background as a lawyer I can tell you that people can consider any system flexible and will argue about the operation of anything. All of you have been involved in parliamentary committees for a while. You would all know that it is impossible to legislate for every outcome. You would have acts that were thousands of pages long and would still miss things. There certainly need to be some robust guidelines, but it would be impossible to nail down everything. You would need to decide what your absolute non-negotiables are and you could entrench those. For the same reason that our Constitution is supported by conventions at a federal level, this system will always have flexibility built into it. You just need to decide which things you really need to nail down and those are the things you can entrench.<sup>125</sup>*

The Clerk of the Parliament in his submission stated that the focus must be to ensure that the Queensland Parliament has the most effective parliamentary committee system possible in a unicameral parliament so as to provide the people of Queensland the most appropriate accountability

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<sup>124</sup> Transcript of proceedings, 9 February 2016, p 3.

<sup>125</sup> Transcript of proceedings, 9 February 2016, p 9.

safeguards, but also submits that constitutional entrenchment should not be undertaken without a referendum achieving that end.

The Clerk submitted that, given the decision to move forward to a referendum on fixed four year terms without addressing committee entrenchment and the costs of referendums, it is recommended that the current provisions relating to portfolio committees contained in the *Parliament of Queensland Act 2001* be enhanced by providing that:

- There will be a minimum number of portfolio committees established each Parliament
- Every Bill introduced into the Legislative Assembly must be referred to and reviewed by a portfolio committee, unless a special majority of the Assembly agrees to the Bill not being referred to a portfolio committee
- A special majority to be defined as at least 65% of the Members of the Assembly (currently 58 members), including members of the official opposition.

The Clerk suggests these provisions could be statutorily entrenched in a similar way to provisions in Chapter 7 of the *Constitution of Queensland Act 2001*, with the effect being to ensure that governments with comfortable or large majorities could not simply declare Bills urgent by using provisions in Standing Orders, or by simply suspending Standing Orders – there would need to be bipartisan support. There would need in turn to be justifiable reasons of urgency. The Clerk advises that the solution would not prevent the repeal of the statutory requirement by a simple Act as it would not be constitutionally entrenched. However, any government seeking to remove the provision would have to justify its actions or face ‘political odium’ in removing the provision.

At the hearing, the Clerk conceded that the best way forward may be to have a provision in the Queensland Constitution:

**Mr SPRINGBORG:** *I want to return to the issue of entrenchment. There seems to be a broad thread in the evidence today that those who are submitting generally agree with the notion of entrenchment to provide some degree of certainty and to guard the public interest with regard to committees continuing into the future. Do you have a particular view as to the form that entrenchment should take, based on the discussions that you have heard today? I think you have indicated statutory entrenchment in your submission, but is there anything that has been mentioned today that may have helped you further formulate your views or harden your views one way or the other?*

**Mr Laurie:** *In terms of constitutional entrenchment, I think that boat has now sailed. The better view from both a legal and a policy perspective is that you should not entrench parts of the Constitution unless the public themselves are voting for that entrenchment. If we accept that as a matter of law—and I think that is a grey area—and as good policy, in my view that boat has sailed because in March the public will be voting on the issue of four-year terms. I do not see anybody rushing to have yet another referendum about committees in the foreseeable future. It may happen in the future as part of a broader constitutional discussion, but at this point in time I do not see that occurring.*

*My fallback is to have the provision placed in statute. Having heard the discussion today and some of the views that you have been putting through your questions, I would suggest that the Constitution of Queensland is probably the place to place it. I think you create a system of committees but you do not make that system inflexible by putting too much detail in there, but you basically make sure that the system is in there. You create a requirement that there be a minimum number. I think FAC recommended seven. I would not be averse to putting six because it is a minimum. It does not prevent you from creating more. You provide that every*

*bill introduced must go there for a specified period of time—my submission is 12 weeks unless you get a special majority.*<sup>126</sup>

## 6.6 Opposition to entrenchment or alternatives to entrenchment

The QCCL's submission states that:

*We can see no evidence that the parliamentary committee system in this state has yet begun to function as an effective break on executive action...It is not clear to us that the benefits of this measure would be greater than the costs which might be incurred by freezing the Committee system into a fixed state.*<sup>127</sup>

The QCCL references the Swedish Riksdag as an example of a system with appropriate accountability measures.

The LNP advises in its submission that it does not support entrenchment of the committee system at this time. The LNP's submission suggests a gradual pathway forward is preferred to entrenchment of the parliamentary committee system (which would require a referendum). The LNP also suggests that the issue of fixed four year terms and the entrenchment of the committee system should be considered separately.

As an alternative, the LNP suggests the parliamentary committee system should have its own standalone legislation to give it solidarity and provide more confidence to electors that it was enduring 'thus mitigating the difficulty with the proposed fixed four year terms that electors do not think there is enough protections'.

### 6.6.1 Conclusion - entrenchment in *Constitution Act 2001*

**The CLA supports statutory recognition that there will be a parliamentary committee system in Queensland and that the provision also include the core principles of that committee system.**

**The CLA concludes that the appropriate statute for the provision which contains the 'core matters' detailed below is the *Constitution Act 2001*. The location of the provision in the *Constitution Act 2001* will not only emphasise its importance, but place a psychological political impediment to its alteration without just cause.**

**Furthermore, the CLA is of the opinion that part of the recommendations of the former Legal, Constitutional and Administrative Review Committee (2003) regarding the *Constitution of Queensland Act 2001* should be now addressed, in that an amendment to that Act 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).**

## 6.7 Core issues that should be in statute

If the parliamentary committee system is to be placed in statute, the question that arises is: what matters should be contained in the provision(s)?

Almost all of those in favour of entrenchment thought that at a minimum the provision should state that there would be a committee system. As the Integrity Commissioner put it, just placing the principle in statute is a way of acknowledging that the committee system is a 'significant and important part of the functioning of our parliamentary democracy is the parliamentary committee system'.

The importance of the symbolic nature of such a statement in statute was also emphasised by Mr Hoffman from the LQAQ when he stated that 'if we move to four-year fixed parliamentary terms in a unicameral system, then the legitimacy of that move should be demonstrated or supported by

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<sup>126</sup> Transcript of proceedings, 9 February 2016, p 28.

<sup>127</sup> Submission no. 5, p 1.



ensuring a committee system exists, will continue to exist and, in fact, is treated appropriately by the government of the day’.

Most submitters explicitly supported the FAC committee’s recommendation 9. It is this Committee’s view that recommendation 9, has four core principles:

1. Every Legislative Assembly summoned after the approval of the Bill must establish Committees
2. Committees established have the role of reviewing Bills (including Appropriation Bills) introduced into the Assembly
3. There will be a committee process for consideration of Budget Estimates (estimates committees)
4. Every Bill introduced into the Legislative Assembly must be referred to and reviewed by a committee of the Legislative Assembly, for a stated period, unless special procedures are followed.

### 6.7.1 Conclusion – core issues

The CLA concludes that the core matters to be included in the relevant statutory provision are:

- The Legislative Assembly must, at the commencement of every session, establish a minimum number of committees of the Legislative Assembly.
- Committees established by the Legislative Assembly will be allocated areas of responsibility that collectively cover all areas of government activity.
- Every Bill introduced into the Legislative Assembly must be referred to a committee of the Legislative Assembly for a review period.
- The annual Appropriation Bills (the budget) must:
  - be accompanied by the estimates of expenditure; and
  - be referred to committees of the Legislative Assembly for examination in a public hearing.

Issues that arise from acceptance of these core principles are:

- What should be the minimum number of committees?
- What should be the minimum review period for Bills?
- What should be the mechanism for truncating the review period?

### 6.8 Minimum number of committees

The FAC recommended the minimum number of committees as seven.

The Committee notes that historically (from 1994), seven estimates committees have been established by the Assembly to consider the appropriations. Seven portfolio committees were also established in 2011 and serviced the 53<sup>rd</sup> and 54<sup>th</sup> Parliaments. In this Parliament, until recently, there have been eight portfolio committees.

#### 6.8.1 Conclusion - Committee numbers

**The CLA concludes that the minimum number to be established should be set in the statute should be six, with it being explicitly stated that the number is a minimum and that the power of the Assembly by Act or resolution to establish more committees is unaffected.**

### 6.9 Conclusion – review period for Bills

The FAC in recommendation 9 expressed the period of six weeks as a minimum period for committees’ review of Bills, unless special procedures were followed. Most submitters explicitly supported the FAC committee’s recommendation 9 – that is a minimum six week review period.

The QRC submitted that the period for review of Bills should be 40 business days:

**Mr HINCHLIFFE:** *The QRC submission made the specific recommendation about changing the standard time frame for a committee to conduct an inquiry to 40 business days. Can you address why you said 40 business days rather than the six weeks that is set out in the standing orders? Is there something in your experience that has informed that suggestion?*

**Mr Barger:** *It probably relates more to some of the other formal bodies that make inquiries, like the ACCC and the Queensland Competition Authority, where there seems to be a deluge of draft reports that come out in December. You have a full consultation process that runs over Christmas when you cannot get anybody's attention. The parliamentary committee process tends not to do that too much. For the sake of clarity, it was to give people a sense that it is the full six weeks of people actually being on the tools rather than the clock ticking when people are not paying attention. It was as simple as that.*

Mr Budden from the Queensland Law Society provided an overview of the issues from a major stakeholder as to the time tables for making submissions on Bills:

**Mr LANGBROEK:** *The Law Society has to make submissions on every bill, and I think it does. There are time frames that the Law Society has to fulfil and there are some complexities that you face. This morning we heard from previous submitters such as the Resources Council, but I know that has been an issue for the Law Society. Can you expand on that in terms of the tightness of time for submissions?*

**Mr Budden:** *Yes, that is certainly an issue for us in that our committee members who provide feedback on these various bills—and we have 26 policy committees so we do have a very broad remit in terms of that kind of commentary—are volunteers. They do this sort of work on weekends, during lunchtimes and after work. If we have a very short consultation period, it is very difficult for us to get the level of consultation that we would need to assist the parliament. We do see ourselves as facilitators: we assist the committee in coming to its decision. We try to reality check everything and give evidence as to whether or not a bill will work or how it will work in practice, if that is the outcome the committee or the parliament is after, but it does depend on getting an adequate consultation period. We have had a number of submissions recently for which the consultation period encompassed the Christmas period. That does make it difficult for us. Many law firms close down between 20 December and 4 or 11 January, depending on when it falls, and it does make it hard to get in contact with our members, particularly if they are from small firms, as so many of them are. They are draining their own resources to contribute to this, so adequate consultation is vital for us. We appreciate that there are some bills that really need to happen very quickly. We hope that those are quite rare. For the most part, this system works far more effectively if there are adequate consultation periods.*

Mr Behrens from the QCC was also asked about these issues and emphasised that there needs to be sufficient consultation time for stakeholder groups to consult their members, often times on multiple concurrent inquiries:

**Mr SPRINGBORG:** *Mr Behrens, my question relates to the challenges for you as an advocacy organisation representing your members. You indicated in your submission that there were problems sometimes with the multiplicity of inquiries, overlapping time frames and the pressure that places on your organisation in the work it needs to do. How would you go about addressing that? Do you see that there would be an ideal time frame that should be set to assist organisations such as yours?*

**Mr Behrens:** *One of the themes raised in our submission was the urgency in the legislative agenda of the government in that that can provide some significant constraints on the opportunity we have to canvass an issue with our membership. One of the solutions that would readily come to mind is that there be a greater equity in the allocation of bills across the committees. From our point of view, our greatest dealings have been with the Finance and Administration Committee. They have had a lot of fun over the last 15 months—a lot of*

*workload—and there have been many active inquiries that the chamber has had to engage in concurrently. That has ultimately put some constraints on us. Indeed, I remember the super Wednesday morning of the second last week of the parliamentary sittings last year, where there were three committee hearings all being held concurrently. It was impossible for the chamber to have representation across those committees. But can I say that the parliamentary research services did a wonderful job in accommodating the chamber. Ultimately, they got us to the public hearings at a point in time in each of those allotted spaces.*

*A key point that I wish to convey is that the chamber does not articulate our individual views on how legislation impacts on business; the chamber goes out and asks our membership what the impact of bills will be. That means that we need to be afforded sufficient time to go out to our membership to canvass what we think the bill will do and then get the business community feedback on that bill. That takes time and the less time available to us—ultimately, I would not say that the chamber’s representations are diminished; it just creates some significant constraints around us and we have to get cracking.*

The Clerk of the Parliament submitted that 12 weeks should be set as the minimum review period. At the hearing the Clerk noted that setting such a timeframe would change the culture of government and the public service towards the parliament:

*Every parliament has a different culture. That culture comes about because of things like the electoral system, the numbers in the House and how many houses you have. All of that feeds into culture. I think one way that you start to change culture is by the system you develop, because your culture develops within the system in many respects. I think the 2011 changes have changed our culture already, as I have said earlier.*

*I think four-year terms and entrenchment of committees will change our culture again, and I think it will be a positive change to our culture. If you set a 12-week minimum statutory period for bills to be considered by committees which the House by resolution cannot simply set aside—and that is what we really mean by entrenchment in a parliamentary sense—unless there is genuine urgency—and I have never seen a motion for genuine urgency fail in this House, and I point to the Magistrates Act as an example; genuine urgency does not fail to get bipartisan support—then the next cultural change that you will have will be in the ministry and in the Public Service that there is a review period and we are just going to have to wait on legislation.*

### 6.9.1 Conclusion – review period for Bills

**The CLA concludes that the review period set in the Constitution should be six (6) weeks.**

### 6.10 Reducing the review period

The FAC, in recommendation 9, recommended that every Bill introduced into the Legislative Assembly must be referred to and reviewed by a committee of the Legislative Assembly, for a period of not less than six weeks, unless –

- a special majority of the Assembly agrees to the Bill not being referred to a committee or being referred for a period less than six weeks; or
- the resolution for the Bill not being referred to a committee is passed without division or dissent.

The FAC recommendation 9 defined a ‘special majority’ as at least 65 per cent of the Members of the Legislative Assembly, including at least one member of the official opposition.

Most submitters explicitly supported the FAC committee’s recommendation 9.

In the case of submitters such as the QRC, support for the special majority was seen as a method of ensuring that matters were not rushed, so that there was sufficient time for consultation:

**Mr LANGBROEK:** *I am interested in the final recommendation of the QRC which seeks to get into our standing orders and says that we might have to have a vote at some time to change the period that a bill might be analysed and scrutinised. I think it is called a special majority of the Legislative Assembly. I am interested to hear how the QRC or Michael Roche has come up with that one.*

**Mr Barger:** *Fortunately, Michael cannot take the credit for that one. We were just recycling the drafting from the original committee report. The idea was that there was already a mechanism there whereby if something was really important to the government or was time pressed—you would imagine a budget allocation or something like that—there was provision made in the original recommendation for a special majority, being 65 per cent of the members including a member of the official opposition. The idea was to provide an avenue where, if the House agreed, ‘Yes, this is pressing. It does not need to run through the usual process,’ you could put it down the fast track but that fast track did not become a bypass. It was not the path of least resistance. It was only used in circumstances where the majority of members were happy that that was a reasonable way to curtail the usual committee process. It was not our drafting. We just worked it into our suggestion around that as a way of emphasising the importance of the time that the committee needs to do its job properly.<sup>128</sup>*

Some submitters, such as Mr Willis, thought that a special majority for Bills being declared urgent and not by-passing committee scrutiny was very important and was supportive of the FAC approach. Indeed, Mr Willis’ submission went further and involved a process that would encourage bi-partisan decision making:

**Mr STEVENS:** *Mr Willis, I congratulate you on a wonderful presentation to the committee and particularly your submission. It is very well thought out. Obviously you have put a lot of time into these matters. You raised one matter—and I am looking through your submission now—that I was particularly keen on in terms of the urgency motion of bills before the House. You suggested that there should be a certain number of the House in itself before a bill became an urgent bill to pass through the House without referring through the parliamentary committee system. Could you give us some idea on how you would see that being entrenched into the parliamentary system?*

**Mr Willis:** *That was a recommendation from the FAC’s report for the special majority. I agree personally that that is a good approach. It ensures at least that the members of the parliament work together to make sure, if it is really necessary in the public interest to expedite a bill, that everyone agrees to it. I think there was an example last year involving the Magistrates Court. Everyone agreed that that legislation was essential and there was no problem. It was expedited. I think having a special majority requirement would certainly make sure that bills that are genuinely in the public interest and are urgent do get that attention. It could be entrenched as part of the procedural requirements relating to committee powers—the parliament’s powers to expedite those sorts of matters. I think under the Constitution would be an appropriate place.*

*I have been listening to other speakers and the questions asked. I think there are two forms of constitutional entrenchment. There is a referendum entrenchment and a special majority entrenchment: there is one that goes to the people and there is one that has to have that truly bipartisan parliamentary support. I guess it is a call whether that type of thing should be referendum entrenched or special majority entrenched, but either way I think it needs that extra protection and not just a simple majority in the parliament.*

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<sup>128</sup> Transcript of proceedings, 9 February 2016, p 5.

**Mr STEVENS:** *In relation to special numbers in the House, I am having some difficulty understanding, particularly when you may have a situation where one side has 78 seats and the other has seven, that you can get a special majority number for urgent matters.*

**Mr Willis:** *I think the FAC recommended a potential solution to that, which was 65 and at least one of those numbers has to be from the official opposition.*

**Mr HINCHLIFFE:** *Thank you, Mr Willis, for your contribution. I am reading your suggested process promoting bipartisan parliamentary committee decision-making and dealing with the intracommittee deadlocks. Running through it on the first blush, I want to make sure that I understand it properly. You are suggesting that, unless there is unanimity amongst the committee, a bill referred to committee should not proceed for debate in consideration and there is an opportunity for going through and testing that deadlock. But ultimately, unless you can achieve a special majority—and you highlighted the one that we are talking about there, the 65 plus one member of the opposition—you would not be able to pass any bill for which bipartisan committee support has not been obtained.*

**Mr Willis:** *Yes.*

**Mr HINCHLIFFE:** *I want to clarify that that is, in essence, a recipe that says that the majority of the Queensland parliament could potentially not have the ability to pass legislation that it favoured?*

**Mr Willis:** *It is a way of focusing the minds of members to ensure that there is unanimity.*

**Mr HINCHLIFFE:** *But to be clear, it would mean that a majority of—*

**Mr Willis:** *Yes, a bill would not go through.*

**Mr HINCHLIFFE:** *Sure.*

**Mr POWER:** *Mr Willis, wouldn't we, in effect, create an ability to stall or veto legislation as a parliamentary tactic, if that were the system?*

**Mr Willis:** *There is always potential for that sort of spoiling tactic, I suppose.*

**Mr POWER:** *Not with the wonderful opposition that we have, but some future opposition.*

**Mr Willis:** *Yes, way down in the future. Certainly it is a way of encouraging, I think, to focus their minds on how we avoid a deadlock.<sup>129</sup>*

### 6.10.1 Conclusion - Reducing the review period

Whilst supportive of a minimum review period, the CLA believes that there still must be a mechanism to declare Bills urgent in the statute and is not supportive of mechanisms beyond the majority principle traditional in Queensland.

### 6.11 Entrenchment – recommendations

The CLA recommends statutory recognition that there will be a parliamentary committee system in Queensland and that the provision also include the core principles of that committee system.

The CLA recommends that the appropriate statute for the provision which contains the 'core matters' detailed below is the *Constitution of Queensland Act 2001*. The location of the provision in the *Constitution of Queensland Act 2001* will not only emphasise its importance, but place a psychological political impediment to its alteration without just cause.

The CLA recommends that part of the recommendations of the former Legal, Constitutional and Administrative Review Committee (2003) regarding the *Constitution of Queensland Act 2001* should

<sup>129</sup> Transcript of proceedings, 9 February 2016, p 21.

be now addressed, in that an amendment to that Act 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).

The CLA recommends that the basic principles and structure of the committee system be recognised in the *Constitution of Queensland Act 2001*, but emphasises that:

- only the core matters should be in the Constitution, leaving each Assembly the flexibility to adopt a committee system that suits that Assembly and which allows the committee system to adapt and evolve;
- the core matters to be included in the provision are:
  - The Legislative Assembly must, at the commencement of every session, establish a minimum number of committees of the Legislative Assembly. The CLA recommends that six (6) committees be set as the minimum number.
  - Committees established by the Legislative Assembly will be allocated areas of responsibility that collectively cover all areas of government activity.
  - Every Bill introduced into the Legislative Assembly must be referred to a committee of the Legislative Assembly for a review period. The Committee suggests that the minimum review period be six (6) weeks.
  - The annual Appropriation Bills (the budget) must be:
    - accompanied by the estimates of expenditure; and
    - referred to a committee or committees of the Legislative Assembly for examination in a public hearing.

The CLA does not support entrenchment of the committee system by any special mechanism at this time. The Committee believes that the new portfolio committee system is still in its infancy and the CLA is loathed to entrench a system that may still evolve.

The CLA recommends at least initially, the provision should explicitly enable the Legislative Assembly by ordinary majority to declare Bills urgent.

## Appendix A – List of Submissions

Sub #	Submitter
1	S.G. Brown
2	Queensland Integrity Commissioner
3	D Willis
4	Phil Clarke, Queensland Ombudsman
5	Queensland Council for Civil Liberties
6	Queensland Audit Office
7	Queensland Greens
8	Queensland Resources Council
9	Local Government Association of Queensland
10	Anti-Discrimination Commission Queensland
11	Liberal National Party
12	Queensland Law Society
13	Chamber of Commerce and Industry Queensland
14	Clerk of the Queensland Parliament
15	Shane Knuth MP, Member for Dalrymple
16	Queensland Council of Unions
17	North Burnett Regional Council

## Appendix B – Commonwealth Parliamentary Association Benchmarks

Benchmark	Queensland Parliament	
	Type of Governance	Further information
3.1.1 The Legislature shall have the right to form permanent and temporary committees.	Legislation/Standing Rules and Orders/Other (resolution of the Legislative Assembly)	<p>Queensland Parliamentary committees can be established by:</p> <ul style="list-style-type: none"> <li>• Acts of Parliament (statutory committees);</li> <li>• Standing Orders (standing committees); and</li> <li>• Resolution of the Legislative Assembly (select committees).</li> </ul> <p>Two parliamentary committees are statutory committees established by the <i>Parliament of Queensland Act 2001</i> (POQA) (Committee of the Legislative Assembly, s80 and the Ethics Committee, s102). The POQA also provides that the Standing Orders must establish portfolio committees to cover the range of government departments (s88). Currently, there are seven portfolio committees (SO 194 and Schedule 6).</p> <p>The <i>Crime and Corruption Act 2001</i> (CCA) establishes the Parliamentary Crime and Corruption Committee (s291).</p>
3.1.2 The Legislature’s assignment of committee Members on each committee shall include both majority and minority party Members and reflect the political composition of the Legislature.	Legislation/Standing Rules and Orders	<p>Except for the Committee of the Legislative Assembly, no specific mention is made of crossbench members. Minority parties are not specifically mentioned.</p> <p>The POQA determines the membership of the CLA (s81).</p> <p>For the Ethics Committee, the POQA provides for 6 members, those being 3 members nominated by the Leader of the House and 3 members nominated by the Leader of the Opposition.</p> <p>For the portfolio committees, the POQA provides for the membership and operation of portfolio committees according to the numbers of government members and non-government members making up the membership of the Assembly (s89-91C). Members are chosen by the Leader of the House and Leader of the Opposition.</p>



Benchmark	Queensland Parliament	
	Type of Governance	Further information
3.1.3 The Legislature shall establish and follow a transparent method for selecting or electing the chairs of committees.	Legislation	<p>The POQA provides that the chair of the Committee of the Legislative Assembly is the Speaker of the House.</p> <p>The CCA provides that the chairperson of the PCCC must be the member nominated as chairperson by the Leader of the House (s300).</p> <p>The POQA provides that the chair of the Ethics Committee is to be the member of the committee nominated as chairperson by the Leader of the House (s104).</p> <p>For portfolio committees, the POQA provides that depending on the percentage of government and non-government members in the House, either the Leader of the House nominates the chairperson, or the chairperson is the member of the committee nominated as chairperson by an order of the Assembly (s89-91C).</p>
3.1.4 Committee hearings shall be in public. Any exceptions shall be clearly defined and provided for in the rules of procedure.	Standing Rules and Orders	<p>There is no specific express power in Standing Orders which provides that a committee can meet or hold its activities in private. Private meetings are simply something a committee can do.</p> <p>In examining a Bill, a portfolio committee is to operate in as public and transparent manner as practicable. Standing Order 133(2)(b) provides that the committee is to, among other things, hold briefings from departmental officers and hearings in public unless there are compelling reasons to hold such briefings and hearings in private. It is important to note that the presumption of the public activities of committees does not apply to the Ethics Committee or the Parliamentary Crime and Misconduct Committee.</p> <p>Members of the public may attend a public meeting of a committee but cannot attend a private meeting, except by express invitation of the committee (SO207).</p> <p>A portfolio committee's estimates hearings are open to the public unless the committee otherwise orders (SO179).</p> <p>Any person admitted to a public hearing of a committee may be excluded at the discretion of the chairperson or by order of the committee. Additionally, another member of a committee may,</p>

Benchmark	Queensland Parliament	
	Type of Governance	Further information
		<p>by leave of that committee, participate in both its public and private meetings and question witnesses (SO208-209).</p> <p>The CCA provides that meetings of the PCCC must be held in public, however the PCCC may decide that a meeting or a part of a meeting be held in private if the committee considers it is necessary to avoid the disclosure of confidential information, or information about a complaint or an investigation or operation being dealt with by the Crime and Corruption Commission (s302A).</p>
3.1.5 Votes of committee shall be in public. Any exceptions shall be clearly defined and provided for in the rules of procedure.		<p>Committees generally deliberate in private. The only procedural resolutions agreed to by the committee in public would be during a public hearing.</p> <p>Standing Order 214 provides that any member who does not agree with a committee report, or any part of the report, may give the committee notice that they intend to add a dissenting report or statement of reservation to the committee's report.</p>
3.2.1 There shall be a presumption that the Legislature will refer legislation to a committee, and any exceptions must be transparent, narrowly-defined, and extraordinary in nature.	Standing Rules and Orders	<p>If the question for the first reading of the Bill succeeds, then the Bill stands referred to the nominated portfolio committee. The committee must report to the House on a Bill within six calendar months of the Bill being referred to it (SOs131-135 &amp; 136).</p> <p>A minister or Leader of the House may move that a Bill be declared an urgent Bill and may be considered immediately and not referred to a portfolio committee. A Bill, referred to a committee may be declared urgent and discharged from the committee. A Bill declared urgent may be passed with unusual expedition through all stages and a minister or the Leader of the House may move a motion specifying the time that shall be allotted to the various stages of the Bill (SO137). There is no definition of what constitutes a Bill being declared urgent in Standing Orders.</p>
3.2.2 Committees shall scrutinize legislation referred	Legislation/Standing Rules and Orders	When a Bill (except for an annual appropriation Bill) is referred to a committee the portfolio committee shall examine the Bill and:

Benchmark	Queensland Parliament	
	Type of Governance	Further information
to them and have the power to recommend amendments or amend the legislation.		<ul style="list-style-type: none"> <li>determine whether to recommend that the Bill be passed;</li> <li>may recommend amendments to the Bill; and</li> <li>consider the application of fundamental legislative principles contained in Part 2 of the <i>Legislative Standards Act 1992</i> to the Bill and compliance with Part 4 of the <i>Legislative Standards Act 1992</i> regarding explanatory notes (SO132)</li> </ul> <p>The portfolio committee may examine the Bill by:</p> <ul style="list-style-type: none"> <li>calling for and receiving submissions about the Bill;</li> <li>holding hearings and taking evidence from witnesses;</li> <li>engaging expert or technical assistance and advise; and</li> <li>seeking the opinion of other committees (SO133(1))</li> </ul> <p>A portfolio committee may recommend only amendments that are relevant to the subject-matter of the Bill, are consistent with the principles and objects of the Bill, and otherwise conform to Standing Orders and the practices of the House (SO 134).</p> <p>The POQA provides that portfolio committees examine Bills to consider their policy intent and implementation as well as the application of fundamental legislative principles. In addition, the committees consider the lawfulness of items of subordinate legislation and monitor and report on independent statutory offices (s93).</p> <p>The POQA provides that committees also perform a public accounts and public works function. It is noted that a committee has no power to move amendments during the consideration in detail stage of a Bill (s94).</p>
3.2.3 Committees shall have the right to consult and/or employ experts.	Standing Rules and Orders	A portfolio committee may call for and receive submissions about a Bill and engage expert or technical assistance and advice in relation to its examination of a Bill (SO 133(1))

Benchmark	Queensland Parliament	
	Type of Governance	Further information
3.2.4 Committees shall have the power to summon persons, papers and records, and this power shall extend to witnesses and evidence from the executive branch, including officials.	Legislation/ Standing Rules and Orders	<p>The POQA provides that a statutory committee is authorised to call for persons, documents and other things (s25). Under SO205, the House may give a committee power to send for persons, documents and other things, and a committee with that power may summon witnesses, examine witnesses (including on oath or affirmation), and require the production of documents and things.</p> <p>The resolution establishing a select committee usually grants the select committee the power to call for persons, documents and other things. Persons, documents and other things may be summonsed by a committee (under the Clerk's hand) (s26).</p> <p>Failure to comply with the summons may constitute a contempt of the parliament.</p>
3.2.5 Only legislators appointed to the committee, or authorised substitutes, shall have the right to vote in committee.	Standing Rules and Orders	<p>Only members of a committee, or authorised substitutes, have the right to vote (SO202).</p> <p>In the event another member participates in a committee hearing, the participating member shall not have any voting rights (SO209).</p>
3.2.6 Legislation shall protect informants and witnesses presenting relevant information to commissions of inquiry about corruption or unlawful activity.	Legislation	<p>There is nothing specified in the Constitution or the POQA regarding protection of informants and witnesses presenting information to commissions of inquiry about corruption or unlawful activity.</p> <p>It is noted however, that a person required to attend or appear at a commission hearing as a witness has the same protection as a witness in a proceeding in the Supreme Court (s203 of the CCA (Qld) and that a witness summonsed to attend a commission of inquiry has the same protection as a witness in a proceeding in the Supreme Court (Section 14B of the Commissions of Inquiry Act 1950 (Qld).</p>

## Appendix C – Comparative analysis of committee systems

Information drawn from recent reviews and Standing Orders. If information was not located, the table is left blank.

Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
Oversight	Select committees and specialist committees	Permanent committees and 'Subject' committees, of which 8 are specialist policy committees	Standing committees including 3 'Legislative Policy' committees	Permanent committees
Clearly articulated purpose and ethos	Purpose not ethos.	Purpose not ethos.	Purpose not ethos.	Purpose not ethos.
<b>Structure, scope and operation</b>				
Jurisdictional congruence with executive departments.	Yes 13 subject-specific committees: <ul style="list-style-type: none"> <li>• Commerce</li> <li>• Education and Science</li> <li>• Finance and Expenditure</li> <li>• Foreign Affairs, Defence and Trade</li> </ul>	Yes 8 subject committees established at the beginning of each session: <sup>134</sup> <ul style="list-style-type: none"> <li>• Economy, Energy and Tourism</li> <li>• Education and Culture</li> <li>• Health and Sport</li> </ul>	Not really. Intended to align but very small number of 'Legislative Policy' committees: <ul style="list-style-type: none"> <li>• Alberta's economic future</li> <li>• Families and communities</li> <li>• Resource stewardship</li> </ul>	Yes 9 sectoral committees: <ul style="list-style-type: none"> <li>• Institutions</li> <li>• Public finance</li> <li>• Agriculture, fisheries, energy and natural resources</li> </ul>

<sup>130</sup> E McLeay, ['Scrutiny and Capacity: An evaluation of the parliamentary committees in the New Zealand Parliament'](#), *Australasian Parliamentary Review*, vol 21(1), 2006, p 175.

<sup>131</sup> Scottish Parliament, [Scottish Parliament committees – what are they and what do they do?](#), December 2014.

<sup>132</sup> Legislative Assembly of Alberta, [A practical guide to the committees of the Legislative Assembly of Alberta](#), November 2011.

<sup>133</sup> National Assembly Quebec, [The Standing Orders of the Assembly](#), October 2015; M Paquin, ['The Quebec National Assembly'](#), *Canadian Parliamentary Review*, Summer 2012.

<sup>134</sup> M Russel, B Morris & P Larkin, [Fitting the Bill: Bringing Commons legislation committees into line with best practice](#), University College London, p 38.

Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
	<ul style="list-style-type: none"> <li>• Government Administration</li> <li>• Health</li> <li>• Justice and Electoral</li> <li>• Law and Order</li> <li>• Local Government and Environment</li> <li>• Māori Affairs</li> <li>• Primary Production</li> <li>• Social Services</li> <li>• Transport and Industrial Relations</li> </ul>	<ul style="list-style-type: none"> <li>• Infrastructure &amp; Capital Investment</li> <li>• Justice</li> <li>• Local Government and Regeneration</li> <li>• Rural Affairs, Climate Change &amp; Environment</li> <li>• Welfare Reform</li> </ul> <p>Mandatory committees established at the beginning of each session:</p> <ul style="list-style-type: none"> <li>• Equal Opportunities</li> <li>• European &amp; External Relations</li> <li>• Finance</li> <li>• Public Audit</li> <li>• Public Petitions</li> <li>• Standards, Procedures &amp; Public Appointments</li> <li>• Delegated Powers &amp; Law Reform.</li> </ul>	<p>Other standing committees include:</p> <ul style="list-style-type: none"> <li>• Legislative Offices</li> <li>• Private Bills</li> <li>• Privileges &amp; elections, Standing Orders and printing</li> <li>• Public accounts</li> <li>• Members' services</li> <li>• Ethics and accountability</li> </ul>	<ul style="list-style-type: none"> <li>• Planning and the public domain</li> <li>• Culture and education</li> <li>• Citizen relations</li> <li>• Transportation and the environment</li> </ul>
Committees are specialist, rather than ad hoc <sup>135</sup>	Yes	Yes	Yes	Yes

<sup>135</sup> M Russel, B Morris & P Larkin, [Fitting the Bill: Bringing Commons legislation committees into line with best practice](#), University College London, pp 31-32.

Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
Comprehensive coverage of policy process from strategic policy development to legislation, budget making and examination of current issues	Mostly. Strategic policy oversight on own initiative.	Yes. Strategic policy referred before Bill preparation.	Mostly. Strategic policy only if initiated by committee.	Mostly. Strategic policy only if initiated by committee.
Dual purpose or multifunctional committees with oversight of legislation and the executive	Yes	Yes	Yes	Yes
Sufficient number of committees to allow time for scrutiny	Yes	Concerns have been raised about the workload of committees and their ability to oversight the executive on top of legislation scrutiny <sup>136</sup> but already it is difficult for 129 MPs to cover existing committees. A review of the committee system was undertaken in 2015 and a report is due this month.	8 Standing committees including 3 Legislative Policy committees.	9 Sectoral committees. Concerns have been raised about workload.

<sup>136</sup> M Russel, B Morris & P Larkin, [Fitting the Bill: Bringing Commons legislation committees into line with best practice](#), University College London, p 39.

Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
Rules allow for subcommittees	Yes. Entrenched in Standing Orders.	Yes	Yes	Yes. Rare but Committee on the National Assembly has a permanent subcommittee to study parliamentary reform on an on-going basis.
Permanency or longevity, so members develop expertise	Yes. Entrenched in Standing Orders.	Permanent and/or for time of the Parliament.	Permanent.	Members, chair & deputy appointed for 2 year term to promote stability.
<b>Membership and appointment</b>				
Manageable/Small size: <i>Fosters collective expertise and corporate identity which will 'enhance the autonomy of the committee as a political actor. Promotes Committee loyalty. Small committees emphasise reciprocity as a social norm</i>	6 – 12	Must have 5 – 15 (entrenched) but most have 7 - 9 at the moment.	9 – 21 members	13 members – 7 Government, 4 from 'official opposition', one from 'second opposition' group and one who is not entitled to vote. OR <i>if an independent is appointed to the committee then</i>  15 members – 8 Government, 4 official opposition, 2 second opposition (one without voting rights, and 1 independent.
Number of members varied to reflect workload (7-15)	Yes. 6 – 12	No. Determined at beginning of each Parliament.	No	No



Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
Membership in proportion to profile of parties elected	Yes	Yes	Yes. Entrenched in Standing Orders. Variable by agreement.	No. Fixed. 6:4 Nothing for minor parties.
Appointment by Parliament not by parties	Yes. But, in practice, appointed by the Business Committee. Parties decide after discussing with MPs.	Yes. Taking into account proportion of party seats and the interests and expertise of members.	Yes	Yes
Limitations to restrict membership of MPs who are part of the executive	Yes. Cabinet ministers excluded from subject committees.	No procedural limitation on committee membership except no Minister or junior minister can be a member of the Audit Committee. In practice, no member appointed as a minister or junior minister has also served as a member of a committee at the same time, and newly appointed ministers have immediately resigned any committee memberships. <sup>137</sup>	No	Entrenched. Ministers' participation limited. May not have a cabinet minister among their ranks EXCEPT when considering a Bill introduced by that minister or when the Assembly has appointed a minister.
Absence of government officials at meetings (other than called to attend)	No. Any MP can attend. Participation only by leave.	By invitation, unless members of the committee.	No. Can attend. Cannot vote.	No. Government officers (Ministers) attend scrutiny of legislation and any member entitled to attend.

<sup>137</sup> Scottish Parliament, [Guidance on Committees: Establishment and membership](#), (accessed 14 January 2016).

Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
Absence of Executive at meetings (other than called to attend)	No. Ministers can attend proceedings for their own Bills but may not vote.	Yes (by practice, not standing order)	No. Can attend. Cannot vote.	No. Bill sponsors attend meetings to scrutinise their own legislation and any member entitled to attend. Entrenched rule that must hear Minister if requested.
Some committee Chairs held by non-Government MPs	Yes. More committee chairs given to non-Government MPs since 1996.	Yes. Chairs distributed proportionately.	No. Chair must be member of Government caucus. Deputy must be a member of the official opposition.	Entrenched. 6 Chairs are Government and 3 Chairs are official opposition.
Certain/particular committee Chairs held by non-Government MPs	Yes. Regulations Review chair held by non-Government MP.	Yes. Audit Committee Chair must be non-Government.	Chair of Public Accounts Committee (by tradition) from the Opposition.	Yes. Chair of Committee on Public Administration always leader of official opposition.
Remuneration of chairs, deputies and members to incentivise committee work as a career path for MPs	Yes. Special salary.	The Salary Scheme for Members of the Scottish Parliament does not indicate any provision for remuneration of committee members or chairs. <sup>138</sup>	Allowance for Chair but not others.	
Remuneration subject to 'attendance related claw back' to incentivise attendance.	No	Not evident	Not evident	

<sup>138</sup> The Scottish Parliament, [Scottish Parliament Salary Scheme](#), (accessed 14 January 2016).

Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
<b>Culture</b>				
Constructive culture – Consensus promoted over partisanship		Not entrenched. Apparent in practice. Evidenced by ministers not being members of committees.	Not reported	Reported for Committee of Public Administration but for others <i>'committees make little use of their powers and are not as autonomous as expected. More than lack of time or resources, blame rests with the control exerted by political parties and the executive'</i> <sup>139</sup>
Independent Chair willing to remain independent of Executive pressure	Not clear. Chair not entirely impartial. Exercises discretion and endeavours to satisfy interests of all members of the committee as far as practicable.	Chair not required to be impartial and is entitled to participate in the work of the committee and express views on topics under consideration. Chairs hold personal and casting vote and there are no conventions on the use of the casting vote.	Chair from Government. Chair has casting vote but, by convention, 'should always vote to preserve the status quo'.	
Appointment of members willing to act independently of their parties if their conscience or judgement so determines				

<sup>139</sup> M Paquin, [Canadian Parliamentary Review](#), Summer 2012, p 14.

Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
Commitment to consensus as a goal				
Committee loyalty stronger than party loyalty.				
MPs wish to participate and attend regularly				
<b>Powers</b>				
Power to initiate legislation	No	Yes	No	No
Controls own timetable for inquiries/scrutiny	Yes	Yes and no. Priority required for referrals from the House. Time constraints will limit choice.	Priority for referrals from House.	No
Power to control/influence Parliament's business agenda and secure time to debate committee proposals	Some influence through Business Committee.	Some influence. Business agenda developed by the 'Parliamentary Bureau', chaired by the Presiding Officer (Speaker) and with members from all parties (> 5 members), then voted on by the Parliament.	No	No. Government controls business agenda. Entrenched in Standing Orders.
Power to summon Ministers, witnesses, civil servants and documents	Yes	Yes	No	No

Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
Power to independently institute and conduct inquiries	Yes	Yes	Yes	Yes
Requirement for Government to respond to committee reports	No		Within 150 days <i>but not for reports on Bills.</i>	Requirement for Assembly to consider report within 15 days.
<b>Resources</b>				
Adequate support from officers		No commentary located. Review anticipated in January 2016.		
Access to independent specialist advice	Yes	Yes	Yes	Yes
Sufficiently large legislature to populate committees without overworking MPs	Yes	129 MPs. Given the number of committees established and the number of members needed to make them effective, it has been necessary for many MPs to be members of two (and occasionally more) committees at once. <sup>140</sup>		

<sup>140</sup> Scottish Parliament, [Guidance on Committees: Establishment and membership](#), (accessed 14 January 2016).

Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
<b><i>Scrutiny of legislation – As part of the legislation process</i></b>				
Power to scrutinise legislation	If referred	Yes	Bills, if referred. Regulations by own initiative.	Not necessarily. Bill may be referred before ‘passage in principle’ or after BUT may not be referred. Power to initiate own inquiry into draft regulations or regulations.
Requirement for scrutiny in procedures for legislation.	Yes	Yes	No	No
Power to scrutinise policy behind legislation (prior to preparation of the Bill).	On own initiative	Yes. Pre-legislative scrutiny, on own initiative, during public consultation stage. <i>The committee of the Parliament expected to consider the Bill when it is introduced may consider the proposals (or draft Bill) at this stage, perhaps taking evidence from interested individuals and bodies. Such ‘pre-legislative scrutiny’ can be useful in allowing members to familiarise themselves with the subject-</i>	On own initiative	Not as part of Bill procedures. Only if invited. Can initiate own inquiry into policy directions and activities of departments.

Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
		<i>matter prior to introduction.</i> <sup>141</sup>		
Routine scrutiny of policy behind legislation. <i>Two-stage scrutiny as in Scotland. Scottish committees report on the principles of Bills before the first plenary discussion.</i>	No	Yes. The Bill process includes:  Compulsory Stage 1: requires Policy Memorandum with the draft Bill to be referred to committees. Committee reports on the general principles of the Bill and then Parliament debates general principles.  Compulsory Stage 2: Detailed, line-by-line consideration by the committee, consideration of proposed amendments. Report to Parliament.	No	No
Comprehensive coverage of policy process from strategic policy development to legislation, budget making and examination of current issues	Multi-functional	Multi-functional committees. Somewhat more entrenched review of policy due to 2 stages of legislative scrutiny.	Multi-functional committees but coverage not entrenched. By own initiative.	Multi-functional committees. Coverage not entrenched. By own initiative.

<sup>141</sup> Scottish Parliament, [Guidance on Public Bills](#), June 2007, p 4.

Indicators of best practice	New Zealand <sup>130</sup>	Scotland <sup>131</sup>	Alberta, Canada <sup>132</sup>	Quebec, Canada <sup>133</sup>
Power to refer legislative scrutiny to a subcommittee of itself	Yes	Yes	Yes	Yes
Power to form <i>joint</i> legislative subcommittees for cross-departmental legislation	Yes	Yes	No	Yes
Power to amend proposed legislation and re-write Bills	Can only recommend amendments	Yes	Can only report to the House	No
Requirement to present minority reports	No. Required to note if recommended amendments to Bills are not supported by all members.	Yes	Yes	No
Power to scrutinise subordinate legislation, to call hearings and propose amendments on statutory instruments before the House	No. Separate Regulations Review committee, so outside the remit of Subject committees.	Subordinate Legislation committee provides the lead committee with a report.	Yes	Yes
Programming of Bills allows sufficient time for scrutiny or committee has power to negotiate timing.	Usually 4-6 months		6 months	



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<b>Democratisation</b>				
Special arrangements (rules) to secure participation for minorities (MPs from minority groups – eg women, indigenous peoples)	No	No. The Parliament has endorsed Equal Opportunity principles for consideration in scrutiny of legislation and in the ‘conduct’ of committees but no arrangements to improve representation on committees.	No	No
Balanced/Gender-neutral assignment of MPs to committees <sup>142</sup>	No	No	No	No
Rules to manage over-representation of women on committees handling ‘female issues’ <sup>143</sup>	No	No	No	No
A specific committee dealing with minority issues and perspectives (eg Scottish Parliament’s Equal Opportunity Committee) <sup>144</sup>	Yes Maori Affairs committee.	Equal Opportunities Committee	No	No

<sup>142</sup> L Wangnerud, [The Principles of Gender-Sensitive Parliaments](#), Routledge, 2015, pp 135-137.

<sup>143</sup> H Coffe & K Schnellecke, [Female representation in German parliamentary committees: 1972-2009](#), European Consortium for Political Research General Conference, Bordeaux, 5-7 September 2013.

<sup>144</sup> O Protsyk, [Representation of minorities in the Romanian parliament](#), Case study report, Inter-Parliamentary Union & United Nations Development Program, 2010, pp 12- 13.