

CONSTITUTION AMENDMENT BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Title of Bill

Constitution Amendment Bill 1999

Policy Objectives of the Bill

The objective of this Bill is to:

- amend section 40A of the *Constitution Act 1867* to provide that the powers, rights and immunities of the Queensland Legislative Assembly, its members and committees are those that applied to the House of Commons of the Parliament of the United Kingdom at the date of Australian Federation – 1 January 1901.

Reasons for the Bill

Section 40A of the *Constitution Act 1867* links the powers, privileges and immunities of the Legislative Assembly to those of the House of Commons of the Parliament of the United Kingdom.

It has previously been recognised by the Queensland Legislative Assembly that problems may arise in defining with certainty the powers, rights and immunities applicable in Queensland should the House of Commons divest itself of any of its powers or modify them in any way.

A United Kingdom House of Lords / House of Commons Joint Committee on Parliamentary Privilege tabled a report on 30 March 1999 making 39 recommendations which will entail significant changes to parliamentary privilege in the House of Lords and House of Commons.

If the United Kingdom Parliament adopts any of the 39 recommendations relating to the powers, rights and immunities of the Parliament, those changes may then apply in Queensland under the current section 40A of the *Constitution Act 1867*.

The potential for the Queensland Parliament's powers, rights and immunities to be changed by the United Kingdom Parliament without any consideration by the Legislative Assembly is inappropriate and a dated notion for the independence and maturity of Queensland's Parliament.

The Bill proposes that section 40A of the *Constitution Act 1867* be amended to provide that the powers, rights and immunities of the Queensland Legislative Assembly, its members and committees be those which applied to the House of Commons of the Parliament of the United Kingdom at the date of Australian Federation – 1 January 1901.

Estimated Costs for Government Implementation

Implementation of the amendment will be cost neutral.

Consistency with Fundamental Legislative Principles

This Bill is consistent with fundamental legislative principles as outlined in section 4 of the *Legislative Standards Act 1992*.

Consultation

In its Report No.26 - *First Report on the Powers, Rights and Immunities of the Legislative Assembly, its Committees and Members*, the Members' Ethics and Parliamentary Privileges Committee (MEPPC) indicated problems may arise in defining with certainty the powers, rights and immunities applicable in Queensland should the House of Commons divest itself of any of its powers or modify them in any way. The MEPPC recommended that section 40A of the *Constitution Act 1867* be amended to provide that the powers, rights and immunities of the Queensland Legislative Assembly, its members and committees be those which applied to the House of Commons at the date of Federation – 1 January 1901.

In relation to this report, the MEPPC advertised widely seeking public submissions in respect of its inquiry. MEPPC also released a detailed Issues Paper on Parliamentary Privilege in Queensland in July 1997. MEPPC received 21 public submissions and held a public hearing on 23 October 1997.

In its Report No.34 - *Report on relevance of House of Lords / House of Commons Joint Committee's report on parliamentary privilege*, MEPPC recommended the expeditious amendment to section 40A of the *Constitution Act 1867* in light of the Joint Committee report recommendations. No further consultation on the issue was conducted by MEPPC at this time.

The proposed amendment included in the Bill has previously been incorporated in the *Consolidation of the Queensland Constitution Discussion Drafts, Constitution of Queensland Bill*. The Discussion Drafts were publicly released on 20 July 1999. No comment has been received by the Department of the Premier and Cabinet on the proposed amendment since the release of the Discussion Drafts. Similarly, the Queensland Constitutional Review Commission (QCRC) sought public submissions on possible reform of the Queensland Constitution and has circulated the Government's Discussion Drafts widely. None of the submissions to the QCRC have addressed the Government's proposed amendment to section 40A of the *Constitution Act 1867*.

NOTES ON CLAUSES

Short Title

Clause 1 sets out the short title of the Act—the *Constitution Amendment Act 1999*.

Act amended

Clause 2 states that the Act amends the *Constitution Act 1867*.

Replacement of section 40A (Powers, privileges and immunities of Legislative Assembly) and heading

Clause 3 omits the current section 40A and the heading "POWERS AND PRIVILEGES OF PARLIAMENT".

The clause inserts the new heading "POWERS, RIGHTS AND IMMUNITIES OF PARLIAMENT" and locates this heading before section 40A. The new heading contemporises the description to specify the existence of rights and immunities of the Legislative Assembly, its members and committees.

The clause provides generally for the powers, rights and immunities of the Legislative Assembly. The clause states that the powers, rights and immunities of the Legislative Assembly, its members and committees are those defined by Act and, until defined by Act, are those of the United Kingdom House of Commons as at the establishment of the Commonwealth of Australia on 1 January 1901.

The clause also clarifies that rights includes privileges.