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Speaker of the Queensland Parliament**

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The Executive versus the Parliament: Who wins?

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The moment I saw the theme of this year's conference the answer was on my lips. If I'd been a contestant on one of those game shows, I would have pressed the buzzer in an instant.

And I'll be just as fast now telling you the answer: The Executive.

At least that is what I can testify from first hand experience this year – in a bruising encounter with the Executive which I will outline to you today in some detail.

In doing so I wish to sound a warning to Parliaments here in Australia and elsewhere: Be on guard. Beware of Executives that seek to intrude and encroach on your area of responsibility.

Be especially aware of the Executive wolf dressed in the sheep's clothing of parliamentary reform.

My advice: Do not trust them. Strike back early, and strike back hard.

Defend your Parliaments, defend them grimly and defend them to the hilt.

My great regret is that I was not on guard. My defences were down. I was trusting. I did not see the attack coming.

And as a result, I went like a lamb to the slaughter as the Executive Government in Queensland successfully implemented its plan to wrest the administration of the Parliament from the Speaker.

In effect, there has been a coup in Queensland, and I use the word coup deliberately, as in *coup d'etat*, to convey a seizure of power – and to indicate an overthrow – because that precisely is what has happened. The Executive has successfully staged a takeover

of the administration of the Parliament by installing a management committee which excludes the Speaker, but includes the Premier and Deputy Premier.

How did this happen? How, you might well ask, could an Executive simply walk in, shove the Speaker aside and take over the running of the Parliament – without someone stopping them.

How could an Executive overturn centuries of tradition, spurn Westminster convention and practice, treat the separation of powers as a joke, and get away with it.

I'll tell you how: by stealth and subterfuge – and just as importantly by being not just prepared to do it, but determined to do it. A few other factors went into the mix, as I'll explain.

Firstly, let's rewind 12 months, back to this time last year.

I had no inkling then of what lay ahead. If asked at the time, I would have said that there was nothing out of the ordinary in terms of the respective roles of the Executive and the Parliament and the relationship between them.

To me, it all appeared fairly normal, and I had no reason to believe it would not continue in that vein – in other words, business as usual.

Little did I know that a plan was being hatched at that very time that involved a seismic change to the position of Speaker.

It was a plan to sideline the Speaker from the running of the Parliament, and to transfer the Speaker's administrative role and duties to a new management committee that included the Executive's two most senior members – the Premier and the Deputy Premier.

The incubator for this plan was a parliamentary committee that had been set up in February of last year to run the ruler over the Parliament's committee system.

By this time last year that committee, the Committee System Review Committee, was at the stage of formulating its report and recommendations.

What I did not know was that the committee had decided to look at more than the Parliament's committee system. It had decided to involve itself in how the Parliament was managed and administered.

I referred a little earlier to stealth and subterfuge. Well, in the Review Committee, we had it in spades.

You see, the Review Committee's terms of reference, were quite clear: the committee was to consider how the parliamentary oversight of legislation could be enhanced and how the existing parliamentary committee system could be strengthened to enhance accountability. This is what the terms of reference said:

A select committee, to be known as the Review of the Parliamentary Committee System Committee, be appointed 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.

In undertaking this inquiry, the committee should consider —

- 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*
- 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 committee should include in its report options on models for structuring the Queensland Parliamentary Committee system.

These terms of reference are all about the role of parliamentary committees in terms of the oversight of legislation and strengthening accountability. The context is quite specific.

The terms of reference certainly did not provide for a review of the management and administration of the Parliament, and the Speaker's role in this regard.

This, however, did not prevent the Review Committee from bringing down a report that included recommendations which had absolutely nothing to do with the role of parliamentary committees and the oversight of legislation, and everything to do with the administration of the Parliament, and the Speaker's role in that regard

In other words, the Review Committee blatantly ignored its terms of reference.

But more seriously than that, it told no-one.

I had appeared before the Review Committee in August last year. As Speaker, I was responsible for the administration of the Parliament. But did the committee tell me that it was considering changes to the role of Speaker that would strip me of my administrative role? At that time, or at any other time?

No. It did not breathe a word. The cone of silence was well in truly in place as the committee prepared its report and recommendations.

No one had made a submission on the role of Speaker or the administration of the Parliament – not me or anyone else – for the very simple reason that no one knew or suspected that the Review Committee was considering this.

Had I known, I most definitely would have made a submission. But I was kept in the dark – duped and deceived – along with everyone else.

The committee delivered its report in December last year, and it was only then that it became clear that I had been ambushed by the committee.

Only then did it become clear that the Review Committee had treated the Speaker, Members of Parliament, the Parliament as an institution, and the people – who the Members are meant to represent and whose Parliament it is meant to be – with total contempt by roaming outside its terms of reference and telling no-one of the additional matters it was considering.

Included with the recommendations to overhaul the parliament's committee system were a number of other recommendations that paved the way for the Speaker to be stripped of his administrative responsibilities and duties relating to the Parliament.

The Review Committee's action – in secret and outside its terms of reference – was only the beginning of the stealth and subterfuge that was to characterise the downgrading of the position of Speaker.

It continued with the government's response to the Review Committee's report, tabled in the Parliament by the Premier in March of this year.

One of the Review Committee's recommendations was to establish a new Committee of the Legislative Assembly, responsible for the functions of the Standing Orders Committee and the Integrity, Ethics and Parliamentary Privileges Committee – what you might call a House committee or governance committee for the Parliament.

It was also to act as a business committee of the House, setting the timetable of the House and scheduling the consideration of legislation, along with being responsible for the budget, resources and facilities for a restructured system of parliamentary committees.

This was all fairly routine – up to a point. It was unclear how the committee's responsibility for the budget, resources and facilities for parliamentary committees would mesh with the Speaker's existing administrative responsibilities, and what would be the demarcation between the respective roles of the Committee and the Speaker.

In hindsight, this delineation of roles did not present any difficulty at all to the government. There would be no need for any delineation when the Speaker no longer had a role. This card it held close to its chest, and when it was played there was sleight of hand involved.

Quietly, without it being drawn to the Parliament's attention, the government substantially expanded the role to be given to the Committee of the Legislative Assembly.

As well as being a governance committee responsible for the business of the House, the government intended it would also be a management committee responsible for running the entire Parliament.

And because the Speaker was not a member of the Committee of the Legislative Assembly, it meant the Speaker would no longer have any administrative responsibility for the Parliament.

This greatly expanded role for the Committee of the Legislative Assembly and the consequent sidelining of the Speaker was not mentioned by the Premier when she spoke in the debate in the Parliament on the Review Committee's report.

No, to learn that the Executive was proposing to establish the Committee of the Legislative Assembly as a new management committee for the Parliament minus the Speaker required a close reading of the government's response to the Review Committee's report, which the Premier tabled.

There, amid the detail of the government's response to each of the Review Committee's 55 recommendations, it was disclosed that the Committee of the Legislative Assembly would among other things oversee the Parliament's budget and policies for the management of the Parliament, and also be responsible for the management of construction and maintenance of parliamentary buildings and electorate offices.

In other words the whole shooting match for the administration of the Parliament was being handed to the Committee of the Legislative Assembly, and the Speaker was being given the shunt.

Here I should point out that my concerns with the Committee of the Legislative Assembly were not just that the Speaker had been excluded. It was who had been included.

On it were the Leader of Government Business as chair, the Premier, and the Deputy Premier, or their nominees, together with the Opposition Leader, the Deputy Opposition Leader and the Leader of Opposition Business, or their nominees.

Typically, the Leader of Government Business is a senior Minister of the Government. In the current Queensland Parliament, the Leader of Government Business is a Parliamentary Secretary to the Premier, in other words, a member of the Executive.

So what was being proposed was a committee to be responsible for running the Parliament led by the Executive and bearing the very strong stamp of the Executive. No backbenchers. No Independents. And, crucially, no Speaker.

By this stage it was clear that the Opposition were backing the government's plans for how the Parliament was to be run, no doubt attracted to the idea of having three members on the new Committee of the Legislative Assembly – the same number as the government.

And not long after, the Bill to establish the new Committee of the Legislative Assembly gained the support of the government party room, with I suspect, minimal appreciation of the way the Speaker's role within the Parliament was being downgraded. I doubt that government Members were even told.

Bear in mind that attention was easily diverted and distracted from this. This was possible because the changes to the Speaker's role were lumped in with changes to the Parliament's committee system had very strong support across the board, mine included.

It was also easy to downplay the significance of transferring the Speaker's administrative role to a committee made up of MPs, by emphasising how having the Parliament run by parliamentarians could only be a good thing, and how the Speaker would continue to have undiminished authority inside the Legislative Assembly.

In early April, in a statement to the Parliament, I voiced my grave concerns about what was happening to the role of Speaker and the incursion of the Executive into the running of the Parliament.

But support for the government's proposals was firm. Government Members were locked in. Opposition Members were on board.

There were those who felt that as a member of the governing party I too should be locked in and cease my opposition to what was being proposed.

I saw it differently. As Speaker, I believed I had a duty to uphold the office of Speaker, and to resist moves that would downgrade the position and, consequently, diminish the independence of the Parliament and dilute the separation of powers.

I appeared before the Scrutiny of Legislation Committee when the first of two Bills was introduced to implement the intended changes to the parliamentary committee system and to the administration of the Parliament.

This first Bill, introduced in April and passed in May, set up the new Committee of the Legislative Assembly, without the Speaker as a Member. The second Bill, introduced in June and passed in August, basically transferred the Speaker's administrative role to the Committee of the Legislative Assembly.

The Scrutiny of Legislation Committee was wound up on 30 June, with its scrutiny function passing to the seven new portfolio-based committees that came into being on 1 July. The significance of this will become apparent in a minute.

On 10 May, the Scrutiny of Legislation Committee presented its report in relation to the first of the two Bills, the *Parliament of Queensland (Reform and Modernisation) Amendment Bill 2011*.

In its report the Scrutiny Committee expressed concerns that the composition of the Committee of the Legislative Assembly raised the possibility that the legislation was in breach of fundamental legislative principles. This was on the grounds that it might not have had sufficient regard to the institution of Parliament by allowing undue Executive intrusion into the separate parliamentary branch of government.

It referred to advice received from Professor Gerard Carney, deputy Dean of the Faculty of Law at Bond University – citing specifics of Professor Carney's advice not once, but

10 times – and included in its report a copy of Professor Carney’s advice, which ran to 11 pages.

Here is just some of what Professor Carney had to say, firstly about the composition of the Committee of the Legislative Assembly:

The proposed composition of the committee appears to facilitate an intrusion by the Executive in the affairs of the Legislative Assembly, which will undermine the capacity of the House to perform its key constitutional functions.

It is axiomatic within our Westminster system of government that each House of Parliament is a separate institution of government, distinct from the Executive branch.

The reason for that is not explained simply by citing the doctrine of separation of powers. The reason is to enable each House to perform its functions properly, namely, to be able to scrutinise bills and subordinate legislation and to scrutinise the activities of the other two branches of government - the executive and the judiciary.

The Executive should not be allowed to intrude on the control of the House or its management. Yet this is what the Bill appears to do in so far as it purports to stack with executive members what is likely to become the key parliamentary committee.

Professor Carney had much more to say, including this about the Committee of the Legislative Assembly taking over the Speaker’s administrative role and duties.

“Of particular concern is the potential for increased dominance by the Executive in the functioning of the Parliament. This would breach the Commonwealth Parliamentary Association’s Recommended Benchmarks for Democratic Legislatures that “The legislature, rather than the executive branch, shall control the parliamentary service....”

In commenting on the constitutional role of Speaker, Professor Carney stated:

The role of Speaker is inextricably linked to the dual role of the House as a law-making body and as the chief scrutineer of the Executive. This means that the Speaker is an integral figure in our system of responsible government, especially in facilitating the scrutiny of the Executive.

..... there is a natural tension between the Lower House and the Executive to which it is responsible. This needs to be recognised as a normal feature of our system of government, and it needs to be managed appropriately. It should never be the subject of attack by the Executive. A critical figure in managing this natural tension of our system of government is the Speaker.

Even in a Westminster system such as ours where the Speaker retains his or her political allegiance, the Speaker must possess a level of impartiality when exercising the functions of office.

This impartiality needs to be both actual and apparent. It also needs to be recognised and not undermined by the Executive. The capacity of the Speaker to control parliamentary proceedings and to speak on behalf of the House depends on respect for

and the status of the Speaker. Any attempt to undermine the Speaker's status is likely to adversely impact on the status of the Speaker to perform the role of that office and this in turn undermines the effective functioning of the House itself.

It follows that this Bill so far as it alters the status and responsibilities of the office of Speaker will affect the delicate constitutional machinery of this State. The constitutional arrangements under a Westminster system involve complex and at times subtle relationships between the various institutions which are designed to facilitate the optimum operation. Any proposal to alter the role of Speaker must therefore be considered with special care. Even the perception of Executive intrusion tends to undermine the status of the Speaker and in turn that of the Assembly.

Professor Carney's assessment of the Bill can only be described as damning. The Bill did impair the role and undermine the status of the Speaker. It did facilitate an intrusion by the Executive in the affairs of the Legislative Assembly which would undermine the capacity of the House to perform its key constitutional functions. It was inappropriate to transfer responsibility for the management of the parliamentary precinct and electorate offices to the Committee of the Legislative Assembly as constituted.

In its report, the Scrutiny Committee also made reference to a submission by former Clerk of the Australian Senate, Mr Harry Evans, who had this to say about the Committee of the Legislative Assembly.

This committee is to consider "parliamentary powers, rights and immunities" and the rules of procedure of the Assembly. This is a combination of two spheres of immense significance to the operations of the Assembly. It is therefore highly undesirable to restrict the membership of the committee to government and opposition executive members or their nominees, with no direct backbench representation.

The likely result is that decisions on these important matters would increasingly reflect the imperatives of the executive rather than the rights of ordinary members and of the Assembly. A parliament should not be run by government and opposition leaders arranging things to suit themselves, and nor should a parliament be seen simply as a forum for the contest between two monolithic parties with procedures to match.

It is even more undesirable that the Speaker, who should be the representative of all of the members, should be relegated to the position of a second-class member of the committee, joining it only on matters of procedure, and in effect subordinate to the party leaders. I have never seen a presiding officer treated in such a way.

The Scrutiny Committee invited the Premier to respond to the concerns about the provisions of the Bill not having sufficient regard for the institution of Parliament, allowing undue Executive intrusion into the Parliament and impairing the role and status of the Speaker.

The Premier tabled a response to the Committee in the Parliament on the day it debated the Bill. In it she did not directly address any of the matters raised by Professor Carney or Mr Evans. Rather, she chose to use the narrowest of prisms through which to view whether the provisions of the Bill had sufficient regard to the institution of Parliament.

The Premier relied largely on assertion to answer the concerns raised by the Scrutiny Committee, stating, for example: “As to whether the Bill may impair the role and status of the Speaker in the context of whether it offends the fundamental legislative principle of having sufficient regard to the Parliament, the Government does not consider this is the case.”

Predictably, the Premier used the establishment of a new system of parliamentary portfolio-based committees with the ability to scrutinise the Executive as evidence that disproved the Bill allowed Executive intrusion into the separate parliamentary branch of government.

The new portfolio committees, however, are an entirely separate matter. Their ability to scrutinise the Executive does nothing whatsoever to disprove that the composition of the Committee of the Legislative Assembly represents Executive intrusion into the affairs of the Parliament.

There was something else in the Premier’s letter that illustrates the manner in which the Executive has prevented proper parliamentary scrutiny of its move to take over the running of the Parliament and remove the Speaker from involvement in its management and administration.

The Premier stated that there had been discussion in evidence provided to the Scrutiny Committee around matters related to the *Parliamentary Service Act 1998*. This is the Act that, at the time, specified the Speaker’s administrative role and duties, and which also needed to be amended to transfer this role and duties to the Committee of the Legislative Assembly.

“It is worth noting”, the Premier wrote, “that there are no amendments to that Act contained in this Bill, and that should any amendments be proposed to this Act, they will be brought before the Parliament for consideration in the usual manner”.

But this did not happen. The “usual manner” involves Bills being referred to the Scrutiny of Legislation for examination for conformity with fundamental legislative principles. Given the Scrutiny Committee’s report on its inquiries into the first Bill and the submissions it attracted, the second Bill could be guaranteed to receive even more intense scrutiny, and even more intense opposition from the growing number of individuals and groups gravely concerned with the Executive’s blatant grab for power and control over the Parliament.

The Premier introduced the *Parliamentary Service and Other Acts Amendment Bill 2011* on 17 June. Less than two weeks later, the Scrutiny of Legislation Committee ceased to exist – its scrutiny role having been taken over the various portfolio-based committees – without having had sufficient time to examine and report on the Bill.

So what happened to the Bill that proposed the biggest change in the role of Speaker in the 151-year history of the Queensland Parliament, the Bill that even on the admission of the Queensland Solicitor-General, that is, the Executive’s Solicitor-General, did not conform with Westminster convention, and a Bill that set Queensland apart from

parliaments around the rule by excluding the Speaker from having an administrative role?

Was it referred to the relevant portfolio committee for consideration – under the new committee system arrangements designed to improve the Parliament’s oversight of legislation and improve accountability by more effectively evaluating and examining legislative proposals?

In a word, no. The only scrutiny this Bill received before it was debated in the House was advice provided by Professor Carney, which had been requested by the Scrutiny of Legislation Committee before it went out of existence.

Changes in legislation accompanying the creation of the new portfolio committees specified their responsibilities regarding the examination of legislation within their portfolio area. The committees were responsible for examining each Bill referred to them to consider the policy to be given effect by the legislation and the application of fundamental legislative principles to the legislation.

As well as this, new Standing Orders to coincide with the introduction of the portfolio committees nominated how they could examine Bills brought before the Parliament. These included calling for and receiving submissions, holding hearings and taking evidence from witnesses, and engaging expert or technical assistance and advice.

The Standing Orders stated that in examining a Bill, a portfolio committee was to operate in as public and transparent manner as practicable and was to aim to engage likely stakeholders in the Bill.

The only exception to this procedure was if a Bill was declared urgent. The Premier did not declare the Bill urgent. Nor, however, did she move that the Bill be referred to the relevant portfolio committee.

The situation we had was that even though the new portfolio committees had been established and had begun operating from 1 July, new Standing Orders applying to the legislative process did not come into effect until 1 August.

As a result, the Bill on its introduction did not stand referred to its portfolio committee. In turn the Finance and Administration Committee was not able to discharge its responsibilities required by legislation to examine the Bill.

In other words, the Executive allowed the Bill to fall through the gap – the gap between the old committee system and the new committee system – and largely avoid scrutiny.

Perhaps I should say the Executive deliberately ensured that the Bill did fall between the gap. If the Executive had wanted the Bill referred to its portfolio committee, all it needed to do was move a motion to this effect in the House.

This was done with a number of other Bills on the Notice Paper, legislation that had been introduced but not debated.

Significantly, it was not done for the Bill that stripped the Speaker of his administrative role and facilitated the Executive's encroachment on the Parliament. As a result, the Finance and Administration was denied the opportunity to examine the Bill – or more to the point, it was prevented from examining the Bill.

The Premier's assurance about the Bill being brought before the Parliament for consideration in the usual manner amounted to nothing.

As mentioned, Professor Carney provided advice on this second Bill. It was tabled by the Leader of Government Business on the day the House debated and passed the Bill, accompanied by the extraordinary claim that Professor Carney's advice was, and I quote, "an equivalent examination of the Bill that the former Scrutiny of Legislation Committee would have reported had it not dissolved prior to its dissolution on 30 June 2011".

I strongly dispute this claim. I, for one, would have been making a further detailed submission to the Scrutiny of Legislation Committee had it not been dissolved, and I know of others who would have done likewise.

I know for a fact that Members of the Scrutiny Committee, had their committee not been dissolved, would not have confined their examination of the Bill and reporting to the Parliament on that examination to obtaining advice from Professor Carney. Rather, in discharging their responsibilities specified by legislation, they would have pushed for wide-ranging inquiries into what was being proposed, including detailed consideration of whether the Bill had sufficient regard to the institution of Parliament and also the policy to be given effect by the legislation.

This latter aspect of the committee's inquiries, if they had been given the chance, would have been interesting. It would have exposed that there was no policy to be given effect by the legislation. The changes to the role of Speaker had not originated from a policy proposal.

Instead what was being effect by the legislation was something that no one had heard of, something that there had been no notice or warning of, but rather was a wink and nod arrangement between the Executive and the Review Committee to bulldoze the Speaker aside and establish a new management committee to run the Parliament which included the Executive's two most senior members, the Premier and Deputy Premier.

I will refer briefly to Professor Carney's advice on the second Bill:

This Bill facilitates Executive intrusion in the management of the Parliament.

The warning given in my previous advice remains true with this Bill: The position, in which a Speaker will find himself or herself under this Bill, will be one of reduced status and unwarranted compromise in terms of his or her ability to perform the functions of office. This in turn will impair the effective management and functioning of the House. It also threatens the maintenance of an appropriate level of separation between the House and the Executive by undermining the delicate role of a politically appointed Speaker who must try to retain the trust of both government and opposition.

In his summary Professor Carney stated:

The impact of this Bill on the institution of Parliament is therefore twofold:

First, the status of the Speaker is undermined in so far as he is not a permanent member, let alone chair, of the CLA.

Secondly, the management of the parliamentary service, which is there to serve all members of the Assembly, is now vested in a committee which does not adequately represent the vast majority of the members of the Assembly. So long as that role is vested in the Speaker, there is a tradition and expectation that the Speaker will act in the best interests of all members. That tradition and expectation cannot be translated to the CLA constituted as it is with "executive" members.

On the afternoon of the second of August this year, the Premier ushered the Bill through its debate in Parliament. Once again the Premier did not directly address the matters raised by Professor Carney, an expert in constitutional law and public administration, and the only person outside the Parliament who had an opportunity to comment on the Bill.

Several of the Independents attempted in vain to have the Bill referred to the newly created Finance and Administration Committee for "detailed consideration and report to Parliament". The Government and Opposition joined forces to crush this move.

The second reading debate lasted for a mere two-and-a-half hours. The consideration-in-detail stage of the Bill's 76 clauses lasted not much more than two-and-a-half seconds, yes seconds – as long as it took to say the words "Clauses 1 to 76, as read, agreed to".

The new Act duly received assent, and was proclaimed in mid-August.

It is law now, and much as I might disagree with it and object to it, I accept that fact.

What I do not accept is the way it happened – the way, for example, the Review Committee decided to ignore its terms of reference and consider, in secret, changes to the role of Speaker and the administration of the Parliament.

I remain appalled by that conduct of the Review Committee, by the conspiracy of silence on its part – that a parliamentary committee would show such total contempt for the Parliament as an institution, for its Members, and the people of Queensland.

I do not accept the subterfuge that went on – the Review Committee being deliberately vague in its report, opening the way for the Executive to then expand on its recommendations, and to use the Committee as the willing stalking horse to implement its plan to exclude the Speaker from the administration of the Parliament

The Review Committee knew full well that this was what was going to happen. This is plain from comments by members of the Review Committee during the debate on its report and the Bills subsequently brought before the House.

It is clear that the Review Committee was working hand in glove with the Executive all along. It provided the dots in its report, and the Executive with a number of strokes joined these together.

The important point to understand is that the impetus and the imprimatur for the move came from the Executive.

I want to take this opportunity to address the false claim being advanced by the Executive, supported by the Solicitor-General, that it was simply supporting recommendations from a parliamentary committee, and thus it can hardly be accused of intruding or encroaching on the Parliament.

Consider this. If the Review Committee's report last December had contained a recommendation to transfer the Speaker's administrative role to a powerful new management committee set up to run the Parliament, which excluded the Speaker but included the Premier and Deputy Premier, there would have been a massive outcry.

But this is exactly what the Executive proceeded to do, claiming that it was simply implementing the recommendations of the Review Committee.

The Premier advised the Parliament that the Government's Bill to alter the way the Parliament was in support of the Review Committee's report.

In the government's response to the Committee System Review Committee's report, we supported the establishment of a bipartisan CLA to, among other things, oversee the parliament's budget, facilities management for parliamentary committees, maintenance for the parliamentary buildings and policies for the management of the parliament.

The clear inference from the Premier's comments was that the Review Committee had recommended that the Committee of the Legislative Assembly be given the particular functions specified in the Government's Bill, and the government in its response supported the CLA having these functions.

This, however, is not what happened at all.

The Review Committee only recommended that one of these functions – facilities management for parliamentary committees – be undertaken by the proposed Committee of the Legislative Assembly, together with determining the budget and resources of parliamentary committees.

The Review Committee report made no mention at all of overseeing the Parliament's budget, or of policies for the management of the Parliament, let alone make recommendations that these functions be assigned to the Committee of the Legislative Assembly.

Nor did the Review Committee recommend that the Committee of the Legislative Assembly be responsible for the maintenance of parliamentary buildings. Rather, the Review Committee recommended that responsibility for the construction and

maintenance of parliamentary buildings and electorate offices be transferred to the Department of Public Works.

The vesting of these three latter functions in the Committee of the Legislative Assembly was entirely at the instigation of the government in its response to the Committee's report.

It was not, as the Premier's advice to the Parliament plainly inferred, as well as the Solicitor-General's, a case of the government implementing the recommendations of the Review Committee.

The move to expand the role of the Committee of the Legislative Assembly from that outlined in the Review Committee's report so as to include the administration of the Parliament generally – a role that currently is the province of the Speaker – was first enunciated in the government's response to the Review Committee's report tabled in the House by the Premier on 9 March this year.

In other words, this transfer of the Speaker's administrative responsibilities to the Committee of the Legislative Assembly was engineered by the Executive, not by a parliamentary committee.

I have spoken at some length today on what happened in Queensland in this recent contest between the Executive and the Parliament, and how it happened.

One question that I have been asked many times and have been unable to answer is why did this happen. While I might speculate about the reasons why, I cannot claim to know the answer – the reason being that I do not hold the information.

There have been various explanations given and justifications offered for the changes to the role of Speaker in Queensland.

The most common refrain has been that it is preferable to have administrative power in the hands of parliamentarians rather than exercised solely by the Speaker.

I am willing to accept that. But what that does not explain or justify is why the Speaker has been excluded from the management committee set up for that purpose.

There has never been a satisfactory answer provided on this fundamental point. Why cannot the Speaker retain an administrative role, in keeping with Westminster convention and practice, and as happens throughout the world by being included on the management committee, and appropriately as its chair?

I have no issue with there being a management committee to administer the Parliament, comprised of Members of Parliament. Before my administrative role was removed, I had a Speaker's Advisory Committee with whom I consulted regularly. A management committee chaired by the Speaker would be an extension of that. A management committee, however, without the Speaker is a radically different proposition.

Another argument has been that the Speaker's primary role is as presiding officer, and so long as that role is safeguarded then transferring the Speaker's administrative duties to a new management committee of parliamentarians is nothing to get worked up about.

This line of argument fails to sufficiently take into account the factors that contribute to the Speaker's status and authority, and how excluding the Speaker from a major area of the Parliament's operations and downgrading the role of the Speaker cannot but detract from that status and authority.

It fails to adequately take into account that the Speaker personifies the Parliament, and if the position of Speaker is downgraded, then the Parliament is diminished. More seriously, when the Speaker is demoted and relegated while at the same time the Executive is promoted and advanced, then the independence of the Parliament is weakened. The balance in the relationship between the Executive and the Parliament shifts decisively in favour of the Executive.

Of course, all of these points were made more coherently and cogently than I could do in the expert opinion of Professor Gerard Carney which I have referred to. His advice, however, was brushed aside or, worse still, misrepresented.

The Executive even resorted to inserting a clause in its legislation – legislation which reduced the Speaker's role, curbed the Speaker's power and dismantled the Speaker's authority – to convey it was doing none of these things. This is what the clause states: *Apart from conferring particular administrative functions on the CLA and the Clerk, nothing in this Act derogates from any power, right or immunity traditionally held or exercised by the Speaker on behalf of the Legislative Assembly.*"

When it is understood that the conferring of the particular administrative functions in question on the CLA and the Clerk involve their being removed from the Speaker, that this removal does involve the downgrading of the Speaker's role and a diminution of the Speaker's power and authority, and that the functions being removed from the Speaker are central to the role traditionally held and exercised by the Speaker, then this clause is revealed as grossly misleading.

It employs disguised meaning, combined with the device of introducing a categorical statement with a qualification, to convey that the legislation does not do something that it actually does do.

It says, in effect, that apart from the ways in which the legislation derogates from the Speaker's power, nothing in the legislation derogates from the Speaker's power.

The Executive, backed by the Opposition, points to this clause as proof that it is upholding the traditional role of the Speaker.

Look, they say, the legislation states that the role of the Speaker is safeguarded. What's the problem?

The instigators and the backers of this move to downgrade the role of Speaker, that is the Executive and the Opposition respectively, have been able to pull the wool over

people's eyes by firstly redefining the Speaker's role as relating only to presiding over meetings of the Legislative Assembly, and then declaring that nothing was being proposed to detract from this role.

I illustrate this by quoting the Premier's comments to the Parliament when the legislation was debated:

I also agree with the comments of the opposition and others that the bill provides sufficient safeguards for the traditional role of the Speaker in that nothing in the bill can be seen as taking away from the traditional functions and privileges of the Speaker in managing the business of the chamber when we meet as parliamentarians. The Deputy Leader of the Opposition also made this point in stating that the bill makes it abundantly clear that nothing in the bill derogates from the traditional role of the Speaker.

However, the Speaker's traditional role and powers and authority have always extended beyond presiding over the actual sittings of the Legislative Assembly to encompass the operation of Parliament as a whole. The Speaker has always had a central role in the management and administration of the Parliament – until now in Queensland.

The very clause in the legislation introduced by the Executive that was intended to provide reassurance that the role of Speaker was being safeguarded in fact provides confirmation that the role of Speaker was being usurped.

What did Professor Carney's opinion say about this clause? He observed that while it seemed to be designed to offer a reassurance that the status of the Speaker was unaffected, it did not overcome the concerns that he had expressed in his previous opinion on the Bill establishing the Committee of the Legislative Assembly.

They do not alleviate the adverse impact on the status of the Speaker which flows from the composition of the CLA under the recently enacted s 81 of the Parliament of Queensland Act 2001. To relegate the Speaker to a part-time member of the CLA, only when it is dealing with a matter relating to standing rules and orders, undermines the status of the Speaker. Of equal concern, it undermines public confidence in the capacity of the Legislative Assembly to deal with issues objectively within a highly partisan political framework.

I pose the following question to the Executive: If the changes to the Speaker's role that have now been passed into law are so benign, why were they made unilaterally without consulting the Speaker?

Could it be because they were such an affront to the position and role of Speaker, and thereby such an affront to the Parliament, to its independence and to its existence and function as a branch of government separate and distinct as far as possible from the Executive, that there was no possible chance of gaining the Speaker's support?

I believe this is the real reason for the why the changes to the role of Speaker were cloaked in such stealth and secrecy as the Executive set about their introduction. Then when they were brought into the open, the Executive employed various devices to manoeuvre and steer the changes into place, not the least of these being to prevent

proper scrutiny of the legislation enacting the changes and giving false assurances that the traditional role of the Speaker was being safeguarded.

At the beginning of my address, I said that I had had first-hand experience this year of the contest The Executive versus The Parliament, and I have outlined some aspects of what that has involved.

How did I feel about it? Disillusioned? Yes, most definitely. Dismayed? Certainly. And also disturbed by the way the Speaker has been shafted, and the way the standing of the Parliament has suffered.

When I became Speaker and up until being ambushed and mugged at the hands of the Review Committee late last year, I do not believe I was starry eyed about the relationship between the Executive and the Parliament.

I fully appreciated that the Executive controls the numbers in the Parliament and also the purse strings through the funding it provides to the Parliament in the annual Appropriation Bill. And if you control the numbers and the money, then that is a very strong position to be in.

But I also believed that the relationship between the Parliament and the Executive should not be simply be seen in terms of a contest between these two branches of government, and framed in terms of The Parliament versus The Executive.

Rather the Parliament and the Executive both had their rightful place in our democratic system of representative and responsible government. Without the Parliament, you could not have the Executive, and without the Executive the Parliament did not provide a means of government.

There was a mutual need to the relationship, indicating it ought to be on established on the basis of mutual understanding and respect for one branch of government for the other and by the other, and not on the basis of one dominating the other, or showing disdain and disregard.

The Executive in Queensland, however, has gone down the latter of these routes.

Without doubt, as Speaker you do get a deeper appreciation of the institution of Parliament – far more so than as a Member.

That is only to be expected. As I mentioned earlier, the position of Speaker personifies the Parliament.

If you take the position seriously, if you approach the job seriously, then you cannot help but gain a greater appreciation of the importance of the Parliament – and the importance of it being separate and distinct from the government.

The message I stress to people visiting the Parliament or when I speak about the Parliament is that the Parliament is not the government.

What most people refer to as the government is actually just one of three branches of government – the Executive branch.

The other two branches are the Parliament – the legislative branch – and the courts, the judiciary – the judicial branch.

And though it may sound esoteric, the doctrine of the separation of powers is really quite straightforward. This doctrine which is one of the foundation stones of a democracy states that the three branches of government should as far as possible be kept separate and distinct.

The reason for this is to act as a safeguard against tyranny and oppression of the people, those who are governed, by not concentrating power and the powers of government in any one arm of government.

And so when something comes along that as Speaker you can see is not in the interests of the Parliament, naturally you will have a heightened sense of the seriousness of the situation, and the need to proceed with the utmost care and caution.

Once the Executive's intentions for the role of Speaker had become clear, I had no hesitation in voicing my strong objection to what was being proposed. Unfortunately, with the Opposition siding with the Executive, there literally was only a handful of Members against the move.

Thus today, I find myself in a difficult position – at odds with the Parliament. However, as much as I am the servant of the House, I also have a duty to the office of Speaker and to the institution of Parliament.

The need to defend the position of Speaker and uphold the independence of Parliament I see as part and parcel of the job as Speaker.

I regard the changes to the role of Speaker and the way the Parliament is administered in Queensland as having major ramifications for the separation of powers and the independence of the Parliament.

The Speaker used to be the chair of the Standing Orders Committee. Not any longer.

The Speaker used to be responsible for the administration of the Parliament. Not any longer.

The Speaker is excluded from the Committee of the Legislative Assembly which is the new management committee for the Parliament.

The Speaker is excluded, but the Premier and the deputy Premier, the two most senior Members of the executive branch of government, are included.

In this committee, you have a combination of powers – a collusion of powers – between the Executive and the Parliament.

The institution of Parliament has changed. The Speaker has been relegated, and the Executive has encroached significantly on the running of the Parliament.

Former Queensland Premier Joh Bjelke-Petersen was never one to shy away from using the law-making function of the Parliament and the government's superior numbers in the Parliament to enact laws as a means of achieving an objective or outcome.

"Governments can do anything" he was fond of saying.

In my encounter with the Executive this year, I have gained an insight into how an Executive can quite easily topple a law that would appear to give certainty to a set of arrangements, and can just as easily ignore laws that might be seen as safeguarding those same arrangements.

Firstly, looking at just how easily a law can be overturned, the administrative role of Speaker was provided for in the *Parliamentary Service Act 1988*. I might have previously believed and said the Speaker's role was enshrined in this Act, but having witnessed just how easily the role was un-enshrined by the Executive a couple of months ago, I now see that enshrined is not an accurate term.

I remember vividly sitting on the veranda outside my office at Parliament House as two senior public servants from the Department of Premier and Cabinet outlined how my administrative role and duties were to be transferred to the Committee of the Legislative Assembly. They had a copy of the Parliamentary Service Act and at the section where it set down the administrative role and of the Speaker and enunciated how the administration was under the Speaker's control, there was a stroke of blue ink through the word Speaker, and above it were the letters CLA, for Committee of the Legislative Assembly.

That was how easily the Speaker's role was un-enshrined. No green paper or discussion paper to canvass the merits of the move and to allow people to make a submission and to have an input. No policy proposal. No consultation. Just the stroke of a pen, and one of the integral functions of the Speaker was put to the sword.

At his meeting I reiterated my objection to what was being proposed and my concern that the Speaker was not a member of the Committee of the Legislative Assembly. But, as I knew, to no avail. Membership of the committee, it was explained to me, had been established under the first Bill, which had already been passed.

But I knew if I'd raised the transfer of the Speaker's administrative role to the committee at the time of the first Bill, it would have been explained to me that this was not something proposed in that Bill. So you see, checkmate. It was all hypothetical anyway, as I was not consulted on the first Bill, even though it removed me from the position of chair of the Standing Orders Committee.

It was around this time that I saw the relationship between the two Bills in a clearer light in the way they impacted on my position as Speaker and the removal of my administrative role and functions. The first erected the gallows. The second dropped me through the trapdoor in the floor.

There is further evidence of how easily, and cynically, legislation that might have been expected to offer some form of protection to the position of Speaker was brushed aside.

The relegation of the Speaker and the promotion of the Executive in the administration of the Parliament would appear to be inconsistent with the Queensland constitution, at odds with the *Legislative Standards Act 1992*, which requires that laws have sufficient regard to the institution of Parliament, and also not in keeping with the *Parliamentary Service Act 1988*, which states that the Parliamentary Service is not an instrument of Executive Government.

The *Constitution of Queensland 2001* is an Act of Parliament which consolidated and modernised the Queensland constitution a decade ago. It operates in conjunction with the *Constitution Act 1867*, and provides for the Parliament of Queensland and the law-making power of the Legislative Assembly.

In its preamble, the *Constitution of Queensland* makes reference to the people of Queensland adopting “the principle of the sovereignty of the people, under the rule of law, and the system of representative and responsible government, prescribed by this Constitution.”

Section 42 states that “The Cabinet is collectively responsible to the Parliament.” In other words, the Executive is responsible to the Parliament.

I think it is only reasonable to regard changes that install the Executive in charge of running the Parliament and dispose of the Speaker from having a role in the administration of the Parliament as inimical to the Executive being responsible to the Parliament, as required under the Queensland constitution.

If you were to look for elucidation of this point in the Solicitor-General’s opinion on the government’s two Bills, that is the extent to which the proposed legislative changes upheld the Queensland constitution, you would be disappointed. The Solicitor-General’s opinion was silent on this matter.

So much for thinking that the independence of Parliament was somehow safeguarded in the Queensland constitution in that it makes the Executive responsible to the Parliament, and stacking a committee to be responsible for administering the Parliament with the Executive, including its two most senior members, while excluding the Speaker from that committee, would be seen as a weakening of the independence of the Parliament to which the Executive is meant to be responsible.

Likewise with the Legislative Standards Act. One might have thought that this Act afforded some protection to the institution of Parliament from encroachment and intrusion by the Executive, with its requirement that all legislation conform to fundamental legislative principles, one of which is that legislative proposals have sufficient regard to the institution of Parliament.

It is the role of Office of the Queensland Parliamentary Counsel to draft legislation and to ensure it is consistent with fundamental legislative principles. The Office nominates its clients as including the Parliament and its committees and Members of Parliament.

These clients were poorly served by the Queensland Parliamentary Counsel in relation to the Bills enacting the changes to the role of Speaker and establishing the new management committee of the Parliament which had places for the most senior members of the Executive but no room for the Speaker.

The explanatory notes accompanying both Bills merely stated that they were consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*. That was it. No discussion. No analysis. Nothing. So much for a searching examination of the legislation by the Office of the Queensland Parliamentary Counsel charged with the task of providing advice on whether the legislation had sufficient regard to the institution of Parliament – and this complete absence of any analysis or discussion for legislation directly impacting on the Speaker and the institution of Parliament.

This was not the only instance of the Office of the Queensland Parliamentary Counsel failing in its duty to the Parliament in terms of the advice provided on the legislation to change the role of Speaker. What concerns me is that the Queensland Parliamentary Counsel lacked independence and objectivity in the advice it gave on the Bills. Its advice was tailored to suit the Executive.

For example, the explanatory notes prepared by the Office for the second Bill – this was the one that stripped away the Speaker's administrative role – stated that consultation had occurred with the Speaker of the Legislative Assembly in relation to the changes. That was it – simply that consultation had occurred. There was no mention of my categorical rejection of the legislation, which I had expressed when the consultation took place and which I referred to a little earlier.

My outright objection to the need for and desirability of the changes contained in the legislation was misrepresented by the bald statement that consultation had occurred with the Speaker. A person reading the explanatory notes would understand this to mean that I was consulted and was either supportive of or at least had no difficulty or serious issue with the legislation, whereas the reverse of this is true.

Also the explanatory notes were misleading, in my view, in that no issues were raised in terms of the consistency of the legislation with that of other jurisdictions. The notes stated: "The Bill is specific to the State of Queensland. However, it draws on practices that exist in other Australian and international jurisdictions."

Incredibly, the notes failed to state that the provisions of the Bill were profoundly different from the practices that exist in other Australian and international jurisdictions in terms of the role of Speaker and with regard to the involvement of the executive in the administration of the Parliament.

By this stage, however, it was late in the game of moves and manoeuvres to jettison the Speaker and install the Executive in the driver's seat of managing the Parliament, and nothing surprised me.

For the record, I wrote to the Speakers and presiding officers of Houses of Parliament in other Australian and international jurisdictions drawing to their attention the provisions of the legislation relating to the role of Speaker in Queensland and the administration of the Parliament.

The responses I received confirmed that the changes were out of step with parliamentary practice in the rest of the world.

For indicative purposes, I will refer to just a couple of the responses, the first from the Speaker of the Legislative Assembly of Saskatchewan, the Honourable Don Toth. In his opinion the changes as outlined would significantly impact the role and responsibility of the Speaker. He said, and I quote: "In essence the executive branch would be running the legislative branch which destroys the separation of powers and effectively eliminates the independent office of the Speaker. This would be a significant step backward for the institution of Parliament."

And this from Speaker Roger Fitzgerald of the Newfoundland and Labrador House of Assembly: "While the Executive may try to influence the Speaker in various administrative matters, this has never reached the point of attempting to exclude the Speaker from his historical role in administration. The very notion is astounding."

And further: "I would also like to comment on the Bill's Explanatory Note statement that the Bill "draws on practices that exist in other Australian and international jurisdictions. I can state categorically that I do not know of a single jurisdiction that would exclude the Speaker from the administration of its parliament. Insofar as it purports to describe the role of Speaker, the statement is disingenuous at best ("draws on practices"), but the statement might even be described as deliberately misleading."

Copies of my letter and the responses received will be accessible online via the ASPG website, together with the extended version of my address to the conference today.

I wish to conclude my address today on a positive note. While the office of Speaker, and consequently the Parliament, has been subjugated by the Executive in Queensland this year, I am optimistic that the pendulum will swing back in due course. Just when this will happen will depend on the make-up of a future Parliament that is willing to reconsider what has transpired.

If the present government is re-elected to office at the next State election, then the prospects for the changes to be reversed during the term of the next Parliament are not particularly bright.

If, on the other hand, the government is not re-elected, who is to know what might happen. Perhaps the change of personnel on both sides of the House accompanying a change of government might be a sufficient catalyst for the matter to be reconsidered, and the situation rectified.

If it is not the upcoming 54th Parliament that makes the correction, then I remain confident that it will occur during the life of the Parliament after that.

My optimism is anchored in the fact that what was done to the office of Speaker in Queensland this year and to the Parliament is indefensible.

Indeed, I see what has happened as an opportunity to strengthen the independence of the office of Speaker and as a result the independence of the Parliament – in other words to strengthen and reinforce the separation of powers on which our system of democratic government is based.

The first step in this process would be legislative amendments reinstating the Speaker's administrative role and responsibilities and appointing the Speaker as chair of the Committee of the Legislative Assembly. The committee would relinquish those responsibilities for which it was not appropriate for the Speaker to be involved, for example, matters relating to the business of the House. These would be handled by a separate House committee.

These changes would essentially restore the position of Speaker to the central place it deserves to be in the parliamentary sphere of government, and needs to be for the purpose of establishing unambiguously the pre-eminent nature of the position of Speaker and the status and authority attaching to the position.

However, I believe there needs to be a number of further steps taken to further consolidate and safeguard the role of the Speaker, and by so doing to enhance the independence of the Parliament.

The Queensland constitution ought to be amended so as to formally recognise the Speaker as the independent and impartial representative of the Parliament. This matter was raised in the legal opinions provided by Professor Carney to which I made earlier reference.

He discussed how traditionally the Speaker had two key functions integral to the functioning of the Assembly. The Speaker chaired and controlled the proceedings of the House, and represented the House as a whole and spoke on its behalf as a separate and distinct institution of government. The appropriateness of the Speaker chairing the body responsible for the management of the Parliament stemmed from the integral function of the Speaker to represent the House as a whole.

Professor Carney pointed out how the representative function of the Speaker was expressly confirmed in the New South Wales constitution where the Speaker of the Legislative Assembly was recognised as the independent and impartial representative of the Assembly. He stated how the same position existed in Queensland as a matter of constitutional principle, although it was not expressly included in the Queensland constitution.

I see the virtue in Queensland enacting a similar provision in its constitution to that of New South Wales. It would give constitutional recognition not just to the position of Speaker but to how the Speaker was the independent and impartial representative of the Parliament. Hopefully, the presence of such a clause in the constitution would make a covetous Executive baulk at treating a Speaker in the manner in which the Executive in Queensland treated the Speaker of the State's Parliament this year.

Other measures that I see as worthwhile and necessary include elevating the Speaker in the State's order of precedence to a level equivalent to the Australian order of precedence.

Currently, the Speaker in Queensland ranks below Cabinet Ministers. I believe that as the head of one of the three branches of government, the Speaker deserves to rank ahead of Cabinet Ministers.

Previously in Queensland, the Speaker was paid a salary equivalent to that of a Cabinet Minister. That changed some years ago, and the Speaker receives a lesser salary. I believe that in terms of remuneration, the Speaker should receive the same salary as a Cabinet Minister.

A further change would be to end the practice of the Premier nominating and the Deputy Premier seconding the government's candidate for the position of Speaker. In the interests of giving symbolic expression to the separation of powers, I believe the current practice of the Speaker being nominated and seconded by the two most senior members of the Executive should cease. It would be more appropriate for the government's nominee for the position to be nominated and seconded by backbench government Members.

Another change that I would strongly recommend is that the Speaker does not attend party room meetings. Even though the Speaker does not attend these meetings as Speaker but rather with their Member of Parliament's hat on, I believe in giving practical effect wherever possible to the sentiment that that Speaker must not only be independent and impartial but also be seen to be independent and impartial.

And finally, I believe that in the interests of recognising the Speaker as the pre-eminent office-holder of the Parliament and as the representative of the House, the Speaker should be distinguished from other Members in some aspect of appearance or dress.

In the past this has been achieved through the Speaker wearing a wig. I am not advocating a return to that practice, but I do believe that perhaps by wearing a formal coat or some other item of apparel or clothing accessory the objective of the Speaker being distinguished by their appearance could be achieved.

While I readily acknowledge that this latter suggestion sits firmly in the symbolic category of measures to reinforce the role of Speaker and uphold the authority and dignity of the position, I believe it warrants consideration.

I close by offering the following advice to other Parliaments and other presiding officers who may be, like I was 12 months ago, if not entirely relaxed and comfortable about their relationship with the Executive at least not anxious about it.

Do not underestimate what the Executive may have in store. Do not expect to be consulted, or for the Executive to be up front about what it plans to do. Do not be lulled into a false sense of security by apparent safeguards in existing legislation. Do not take

a benign view of unfolding events and circumstances, as by the time the scales drop from your eyes it may be too late.

Do get the very best legal advice on behalf of the Parliament, and get it as early as possible. Do expect the Executive to produce legal advice from its Solicitor-General, and do expect this to be touted as authoritative and independent advice when in fact it will be shamelessly pro-Executive. Be wary of advice from your parliamentary counsel's office accompanying any legislation that the Executive puts forward.

Above all, do not think there is some kind of force field surrounding your legislature protecting it from a predatory Executive. There isn't.

When all is said and done, even though I have not enjoyed what has happened to me as Speaker, the experience has given me a much greater insight into the role of Speaker and the relationship between the Parliament and the Executive.

There is a line from a song, I fought the law, and the law won. Well, I fought the Executive, and the Executive won.

There is a valuable lesson in what happened in the contest The Executive versus the Parliament, Queensland 2011. I hope that it is a lesson that other Parliaments, and not other Executives, heed and learn from.

Vive le Parlement. En garde. Long Live Parliament. On guard.