SCRUTINY OF LEGISLATION
COMMITTEE

ALERT DIGEST

Tabled and ordered to be printed

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SECTION A - BILLS REPORTED UPON

1. EDUCATION (TEACHER REGISTRATION) AMENDMENT BILL 1996

Background

1.1 This Bill was introduced on 10 July 1996 by the Honourable R J Quinn MLA, Minister for Education.

1.2 The principle objective of this legislation As stated in the Explanatory Notes, is to introduce a range of necessary amendments to improve the effectiveness of the Act. In addition to some minor amendments, the legislation provides for:

- the Board to conduct inquiries into the fitness of an applicant to be registered as a teacher;
- the Board to conduct inquiries into alleged misconduct by a registered teacher despite the fact that, at the time of the inquiry, the teacher may no longer be registered; and
- the action of a person obtaining registration as a teacher by false pretences to be classified as an offence against the Act.

General additional matters being raised by the Commttee with respect to sufficient regard to fundamental legislative principles - Clauses 12 (ss. 33A(3)(b) and 13(45R)

- The Committee has some concerns with the breadth of the phrase "behaves in a disgraceful or improper way" as a measure of a teacher's fitness to be registered.
- The Committee also has some concerns about the fact that a teacher may, in some circumstances, be dealt with by the Board, the Criminal Justice Commission and the Criminal Courts for the matters arising out of the same incident.

1.3 The Committee does not regard these matters as being of sufficient concern to explore in detail here and is therefore writing to the Minister to seek further information.

Retrospective application? - Clause 15 (ss. 63 and 67)

1.4 Proposed s. 63 provides that the Board may conduct an inquiry into a person who is unregistered at the commencement of the section, provided that the person was registered within one year before commencement of the section and

provided that the event, the subject of the inquiry, happened while the person was registered and within one year of the section's commencement. In effect, the section provides that persons who are no longer registered may now be the subject of inquiry by the Board. The Board, if it finds a matter proven on the balance of probabilities, may take action against such a person under proposed s. 45R(2). A maximum penalty of 20 penalty units ($1500) may now also be imposed by the Board.

1.5 The Committee notes that this section has retrospective application and that obligations (penalty orders) may now be imposed on persons who were previously not subject to the Board's jurisdiction.

1.6 Proposed s. 67 provides that an inquiry already underway before the commencement of the section may be continued under the provisions of the Bill and may take action under proposed s. 45R.

1.7 The Committee is again of the view that this section has retrospective application and again notes that an obligation to pay a penalty order may be retrospectively imposed.

1.8 The Committee has considered information from the Department which has lead it to conclude that there are teachers who are no longer registered, who may now be the subject of inquiries by the Board.

1.9 The Committee is of the view that proposed ss. 63 and 67 have retrospective application.

1.10 The Committee is of the view that, in the absence of compelling reasons for retrospective application, proposed ss. 63 & 67 should be amended to operate prospectively with regard to teachers who become deregistered after the commencement of this amendment Bill.

1.11 The Committee refers this question to Parliament for its consideration.

Other features of the Bill deserving comment from the Committee

1.12 In addition to the points raised above, the Committee notes the care taken to draft this Bill in accordance with fundamental legislative principles. In particular, the Committee notes the express provision requiring observation of the rules of natural justice in proposed s. 45D and the express protection against self incrimination for individuals in proposed s. 45K.

Sufficiency of Explanatory Notes?

1.13 As a general observation, the Committee was particularly impressed by the care and attention with which the Explanatory Notes to this Bill were compiled. In particular, the Committee noted that considerable care had been taken to explain the purpose and intended operation of each clause as required under s.

23(1)(h) of the *Legislative Standards Act*. For example, specific information was provided as to segments of provisions which had been omitted; the reason for the omissions and the difference between the previously existing sections and the newly introduced sections was highlighted.

1.14 In addition, this is one of the first Explanatory Notes that the Committee has encountered which incorporate Explanatory Notes for each of the minor or consequential amendments included in the Schedule to a Bill. THIS IS A PRACTICE WHICH THE COMMITTEE CONSIDERS TO ACCORD WITH THE STATUTORY REQUIREMENTS AND THEREFORE ENCOURAGES OTHER DEPARTMENTS TO ADOPT.

1.15 The Committee reluctantly comments on two other aspects of the Explanatory Note. Firstly, the fact that proposed ss. 63 and 67 had retrospective application was not referred to in the section of the Explanatory Note dealing with fundamental legislative principles. Secondly, the section of the Explanatory Note dealing with proposed s. 45H does not appear to precisely reflect the section in question in that the Note refers only to evidence from proceedings already completed and from other jurisdictions. The section does not appear to be limited to evidence from completed proceedings and appears to include such evidence from Queensland as well as other jurisdictions.

1.16 The Committee commends the drafter of this Explanatory Note and encourages other Departments to adopt a similar procedure in that the note provides:

- **explanations of purpose and intended operation of each clause; and**
- **explanations for minor or consequential amendments dealt with in Schedules to Bills.**

1.17 The Committee seeks further clarification on the meaning of the section of the Explanatory Notes dealing with s. 45H.

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2. EGG INDUSTRY (RESTRUCTURING) AMENDMENT BILL 1996

Background

2.1 This Bill was introduced on 10 July 1996 by the Honourable T J Perrett MLA, Minister for Primary Industry, Fisheries and Forestry.

2.2 The objective of the Bill, as stated in the Explanatory Notes, is to remove the statutory marketing scheme for the Queensland egg industry, administered by Australian Quality Egg Farms Limited.

2.3 The present hens quota scheme which regulates the keeping of hens for the commercial production of eggs remains unaffected, that scheme continues to be administered by the Queensland Egg Industry Management Authority.

Sufficiently clear and precise drafting? - Clause 6

2.4 Clause 6 of the Bill repeals Parts 2 to 4 of the principal Act. Parts 2 to 4 of the principal Act deal with the following matters:

- Chairperson
- Functions of the chairperson
- Functions of statutory director
- Disclosure of interests
- Company's memorandum and articles
- Transfer of assets and liabilities of former egg marketing authorities to the Company
- Share distribution scheme and its administration
- Administrative responsibility of the Company and its review
- Compulsory marketing board

2.5 The Committee notes that existing provisions relating to the compulsory marketing scheme are to be repealed as a part of the restructuring process. However, the Committee is concerned that, by repealing provisions on matters like disclosure of interests and the Company's constitution, there may be areas of the Company's operation which are not properly addressed. To avoid doubt, it may be helpful if the Bill could clarify whether general Corporations Law principles, in particular, those governing officers, constitution, conflicts of

interest, reporting requirements etc will apply to the Company after the amendments.

2.6 The Committee requests further information from the Minister.

3. FINANCIAL ADMINISTRATION AND AUDIT AMENDMENT BILL 1996

Background

3.1 This Bill was introduced on 10 July 1996 by the Honourable J M Sheldon MLA, Deputy Premier, Treasurer and Minister for the Arts.

3.2 The objective of the Bill, as stated in the Explanatory Notes, is to facilitate the implementation of a number of financial management reforms, in particular to:

- *provide for the move to accrual reporting and the adoption of a proposed new Australian Accounting Standard - Financial Reporting by Governments;*
- *revise the current requirement for an accountable officer or statutory body to certify annual financial statements within two months of the financial year end;*
- *expand the existing revenue retention arrangements so as to permit departments, with the Treasurer's approval, to retain the proceeds of the sale of assets other than land and buildings;*
- *allow departmental and statutory body bank accounts to be kept with financial institutions other than banks; and*
- *revise the arrangements for issuing Public Finance Standards (to be renamed Financial Management Standards).*

3.3 There are also other amendments relating to financial management.

Sufficient regard to the institution of Parliament - Exercise of a delegated legislative power sufficiently subject to the scrutiny of the Legislative Assembly? - Clause 31 (s. 46L)

3.4 Clause 31 inserts a new section 46L. Section 46L.(1) provides as follows:

> ***46L.(1)*** *The Treasurer may make standards about the following-*
>
> *(a) the policies and principles to be observed in financial management, including planning, performance management, internal control and corporate management;*
>
> *(b) the content of financial statements and annual reports;*
>
> *(c) the matters to be included in financial management practice manuals.*

(2) A standard may, under the Statutory Instruments Act 1992, section 23, apply, adopt or incorporate the provisions of a document (as in force at a particular time) that is made by the Treasurer or published by the department within which this provision is administered.

(3) Each accountable officer and statutory body must comply with relevant provision of a standard.

(4) A standard is subordinate legislation.

3.5 The Explanatory Notes clearly identify an issue with which the Committee is concerned - that is, the delegation of the legislative power in question. In particular, applying, adopting or incorporating other documents which are not subordinate legislation, may not be sufficiently subjected to the scrutiny of Parliament (possibly contrary to the fundamental legislative principle contained in section 4.(4)(b) of the *Legislative Standards Act 1992*). The Explanatory Note provides:

This Bill is consistent with Fundamental Legislative Principles with the possible exception of clause 31 of the Bill. In order to keep the Financial Management Standards within management proportions, this clause includes a provision to allow the Standards to adopt the provisions of subsidiary documents made by the Treasurer or published by Treasury Department. Examples of such documents are reporting requirements for departmental financial statements, asset valuation policies, risk management guidelines and commercialisation policies. Although these documents will not be subordinate legislation in their own right, they will be tabled in Parliament. Furthermore, each time a new or updated subsidiary document is to be issued, the Financial Management Standards that adopt them will be re-made as subordinate legislation, and subject to disallowance. This process will provide Parliament with exactly the same opportunity for scrutiny of the documents as would be available if each of them were subordinate legislation.

3.6 The documents to be incorporated appear to be in the nature of guidelines. The Committee is satisfied with the practice of tabling these documents in Parliament at the same time as the standards (which are subordinate legislation). However, there is no express provision to require the Treasurer to table these documents in Parliament.

3.7 The Committee notes the value of the information provided in the Explanatory Notes and commends the drafters thereon.

3.8 At present, the Committee is of the view that the process outlined in the Explanatory Notes will sufficiently subject the delegated legislative power to the scrutiny of Parliament.

Since it is intended that such other documents are to be tabled in Parliament, the Committee requests:

- **that an express provision be inserted in the Bill to require the tabling of such other documents in Parliament at the same time as the standards; and**

- **that the Treasurer to arrange for copies of the incorporated or referred documents be given to the Committee together with an Explanatory Memorandum as soon as possible when a new or revised standard is made to facilitate the Committee's subordinate legislation scrutiny process.**

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4. FINANCIAL INTERMEDIARIES BILL 1996

Background

4.1 This Bill was first introduced into the House on 20 October 1995 by the Honourable K E DeLacy MLA, Treasurer. The Committee reported on this Bill at pages 11 to 17 of its Alert Digest No. 2 of 1995. The former Treasurer's response to the Report, incorporating advice from the Office of Parliamentary Counsel, is published in Appendix A of this Alert Digest. Please note that this correspondence reflects the views of the former Treasurer. The views of the current Treasurer have not, as yet, been sought in relation to Committee comments on this Bill.

4.2 This was Bill was reintroduced into the House with some amendments on 10 July 1996 by the Honourable J M Sheldon MLA, Deputy Premier, Treasurer and Minister for the Arts.

4.3 The Committee's views as expressed in Alert Digest No. 2 of 1995 will be repeated where they are applicable to this Bill in its current form. Where changes have, however, been made to accommodate the Committee's views, this will also be addressed.

4.4 The primary objective of the Bill is stated in the Explanatory Notes to be the introduction of a system of prudential supervision for cooperative housing societies in particular and certain other societies. The Bill allows the Board of the Queensland Office of Financial Supervision (the QOFS) to develop relevant prudential and other standards.

Power to enter premises, and search for or seize documents without a warrant? - Clause 31

4.5 Section 4(3)(e) of the *Legislative Standards Act 1992* provides as follows:

> ***(3)*** *Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation-*
>
> *(e) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer;*

4.6 Clause 31 allows a QOFS inspector to enter a place if:

- the occupier consents;
- the entry is authorised by a warrant; or
- the place is open for the conduct of business or otherwise open for entry.

4.7 Once the inspector has entered the place there are broad powers to search, copy documents and seizure evidence set out in cls. 35 and 36.

4.8 The Bill therefore appears to allow an inspector entering during business hours or when the place is open allowing entry, to search any part of the place and copy documents.

4.9 It also allows seizure without a warrant if:

(a) the entry is with the occupier's consent; or
(b) an inspector reasonably believes the thing to be seized is evidence of an offence against this Bill and the seizure is necessary; or
(c) the inspector reasonably believes the thing to be seized has just been used to commit an offence.

4.10 In contrast, if an inspector applies to a magistrate for a warrant there are several safeguards in cls. 33 and 34 of the Bill to ensure that the issuing of a warrant is justified, for example:

- the magistrate is to be given all the information the magistrate requires;
- the magistrate must be satisfied that there are reasonable grounds for suspecting that there may be evidence of an offence in the place.

4.11 A warrant allows an inspector to enter the place by force at any time to exercise powers under the Bill. If there is no need for forced entry, however, it would appear that an inspector can merely enter any part of the premises and search without any need to provide notice of such search or to justify such actions beforehand.

4.12 In view of the breadth of the powers in cl. 35 to search, inspect or photograph; make copies of documents etc, and in view of the fact that a person not reasonably providing assistance to carry out these powers commits an offence (maximum penalty $6000 fine[1]), there appears to be a need for some further safeguards.

4.13 The Committee notes that subsections (d) and (e) of proposed s. 31(1) have been omitted from this draft of the Bill. This amendment does not, however, alter the Committee's views on the effects of the remaining subsections (a) to (c).

4.14 The Committee notes the fact that inspectors have substantial powers once inside the premises of a society, even where access is gained without consent or a warrant.

4.15 It would appear reasonable that departures from the safeguards provided by search warrants should be carefully considered and adequately justified.

[1] Section 35(3) - General powers after entering places.

4.16 The Committee brings these concerns to the attention of Parliament.

Rights and liberties, or obligations, dependent on sufficiently defined administrative power? - Clauses 48, 49 and 50

4.17 The Committee is concerned that cls. 48 - 50 of the Bill contain phrases which may be regarded as being insufficiently defined, yet may have substantial consequences when applied by QOFS.

4.18 Some of the phrases which have caused concern are:

- *Trading unprofitably*[2]
- *Improper or financially unsound way*[3]
- *QOFS consideres it undesirable or unsound*[4]

4.19 QOFS may, however, on reaching a conclusion based on one of these tests remove from office director/s and auditor/s of the society and replace them, terminate contracts of employment etc.

4.20 The Committee brings these concerns about the criteria for exercising powers under cls. 48 - 50 being potentially insufficiently defined, to the attention of Parliament.

Consistent with principles of natural justice? - Clause 193

4.21 Clause 193 provides for the examination of officers of a society under investigation by inspectors of the QOFS.

4.22 Clause 193(2) provides as follows:

> ***(2)*** *A legal practitioner acting for the officer¾*
>
> *(a) may attend the examination; and*
>
> *(b) may examine the officer about matters in relation to which the investigator has questioned the officer; and*
>
> *(c) to the extent the investigator permits¾may address the investigator about matters in relation to which the investigator has questioned the officer*

[2] Clause 48(1)(b)
[3] Clause 48(1)(c)
[4] Clause 48(4)(b)

4.23 The Committee notes that a legal practitioner's ability to examine an officer (for whom they are acting) about a matter in relation to which the investigator has questioned the officer. This is no longer subject to the permission of the investigator as was the case under the previous draft of this Bill. The Committee notes that subsection (c) is still subject to this proviso, where the legal practitioner acting for the officer may only address the investigator to the extent that the investigator permits.

4.24 The Committee thanks the Minister for the introduction of this amendment. This compromise allows the legal practitioner the freedom to examine his/her client on relevant matters whilst at the same time allowing the investigator to continue to restrict queries directed to him/her by such a legal practitioner.

4.25 The Committee thanks the Minister for this enhancement of the aspect of the Bill dealing with procedural fairness.

Matter appropriate to subordinate legislation? - Part 12

4.26 The Committee notes the insertion of an entire Part (12) into the Bill dealing with review of decisions and appeals. When the Bill was presented to the Legislative Assembly in 1995, cl. 205 provided for matters about appeals to be prescribed by Regulation. At that time, the Committee was concerned that until appropriate regulations were made, no formal avenue of appeal existed under the Bill. The Committee ultimately expressed the view that the appeal structure was of such significance that it should generally be established in an Act rather than in subordinate legislation.

4.27 The Committee is therefore appreciative of the consideration given to its original views. The newly inserted Part 12 is a substantial improvement which provides better protection for persons effected by decisions of QOFS.

Abrogation of a right to silence? - Clause 2 to 5

4.28 When this Bill was introduced into the House in October 1995, the present cl. 225 read as follows:

> ***False or misleading statements***
>
> ***221.(1)*** *A person must not—*
>
> *(a) state anything to QOFS or a relevant person that the person knows is false or misleading in a material particular; or*

(b) omit from a statement made to QOFS or a relevant person anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—800 penalty units or imprisonment for 4 years.

4.29 In its Alert Digest No. 2 of 1995 which reviewed this clause, the Committee expressed the view that although it agreed with the intent of the clause, cl. 221(1)(b) abrogates the right to silence and the Committee therefore recommended that it be deleted from the Bill.

4.30 Despite advice to the contrary which is attached to the former Treasurer's letter in Appendix A of this Alert Digest, the Committee notes that the subject subsection has been omitted from cl 225 which now reads:

False or misleading statements

225(1) *A person must not state anything to QOFS or a relevant person that the person knows is false or misleading in a material particular.*

Maximum penalty¾800 penalty units or imprisonment for 4 years.

(2) *It is enough for a complaint for an offence against subsection (1) to state the statement made was false or misleading to the person's knowledge.*

4.31 The Committee continues to hold the view that the right to silence includes the right to stop talking and there was a danger that the old cl. 221(1)(b) went too far in this regard.

4.32 The Committee commends the Treasurer for this amendment omitting a subsection from the original draft of the Bill which, in the Committee's view, had the potential to abrogate the right to silence.

Other features of the Bill deserving comment from the Committee

4.33 In addition to the points raised above with respect to this Bill, the Committee previously also expressed its approval at the obvious care taken to preserve fundamental legislative principles in the Act as a whole. It is therefore worthwhile to restate the Committee's comments on the following provisions:

- Clause 29 which requires QOFS inspectors to produce or display identity cards when exercising powers under the Bill;

- Clause 32 which requires an inspector to inform the occupier of a place that the occupier is not required to consent to entry;

- Clause 45 requiring notice to be given of damage caused by inspectors or persons acting under their directions;

- Clause 172 which allows the QOFS to effectively merge societies by direction if the receiving or transferee society agrees. This would protect the property rights of members;

- Clause 194(5) which protects officers from self-incrimination.

4.34 The Committee commends the Minister for the inclusion of such provisions for the protection and benefit of individuals affected by this legislation.

4.35 The Committee also commends the Minister for the improvements brought about by amendments to this Bill.

5. JUVENILE JUSTICE LEGISLATION AMENDMENT BILL 1996

Background

5.1 This Bill was introduced into the House on 11 July 1996 by the Honourable Denver Beanland MLA, Attorney General and Minister for Justice.

5.2 There are five main categories of change in the Bill which:

- ensure that the courts and police have adequate and appropriate powers;
- include the community, the victim and the family in the operation of some aspects of the juvenile justice system;
- provide an alternative means of obtaining the fingerprints and palmprints of children without processing them through the criminal justice system;
- emphasises the role of parents of juvenile offenders;
- transfers responsibility for detention centres to the Queensland Corrective Services commission.

Introductory comments by the Committee

5.3 All Bills dealing with the criminal process involve the rights of citizens - both the citizens whom the criminal law is designed to protect and the citizens who are accused of violating those rules. One of the most difficult tasks of any civilised society is to deal with the rights of each. This is even more difficult when the accused citizens are not yet mature adults. The only way that the balance can been successfully struck has been to ensure sensible process rights for the accused and a corrections system that seeks also to educate and assist the child in his or her moral development.

5.4 As long ago as 1959, the UN Declaration of the Rights of the Child stated that:

> *He shall be given an education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.*

5.5 This right of the child also serves the community. The commission of an offence and the imposition of criminal sanctions does not render these rights inoperative - although they make the fulfilment of that right more problematic.

Delegation of legislative power only in appropriate cases and to appropriate persons? - Clause 7 (s.9B)

5.6 Proposed s.9B allows the delegation of any power by the commission or chief executive officer to any officer of the public service or the commission. The Committee considers all examples of sufficient regard to fundamental legislative principles to be of importance and has been concerned for some time at the wide delegations frequently proposed in apparent breach of s 4(3)(a) of the *Legislative Standards Act 1992.* This concern led to the Committee adopting a formal policy on the delegation of powers[5] which was set out at pp 3-4 of Alert Digest No.4 of 1996.

5.7 The Committee notes that proposed s.9 of this Bill makes provision for ministerial control of the delegation of powers under the Act through the issue of directions and the requirement of the commission and chief executive that officers abide by such directions (s9B 4).

5.8 The Committee approves the idea of such supervision.

5.9 However, the Committee is attracted to the view that conformity with the above mentioned legislative standards might be better achieved if they were included in regulations. In that way is it possible for Parliament to satisfy itself of the appropriateness of the delegations being made. Accordingly, the Committee suggests that the Minister and Parliament consider an amendment so that the ministerial directions take the form of regulations and that delegations are only valid if made in conformity with those regulations.

5.10 If the Minister considers that it is desirable to wait for a short period before making such regulations so that the actual workings of the Act can be better considered, one option may be to include in the Bill a provision permitting delegations in the interim period, but subject to a sunset clause.

5.11 The Committee notes that the scope of the delegation is narrowed through the Ministerial directions, however, the Committee sees merit in placing such directions in the form of regulations and that delegations should only be permitted in conformity to those regulations.

Sufficient regard to rights and liberties of individuals? - Clause 8 (s.10)

5.12 Under proposed s.10, police officers are given the power to apply to the Magistrates Court to obtain fingerprints and/or palmprints of children who are charged but not arrested.

5.13 The Committee notes that, according to the Explanatory Notes, police are currently able to take palmprints and fingerprints if they arrest an offender but

[5] Policy No.1 of 1996 - copies available from the Committee Office.

not if they merely charge them. This section allows such identifying particulars to be obtained without an arrest - although the Magistrate has to be satisfied that conditions exist that would more than justify an arrest (proposed s.10(6)(a) and (c)).

5.14 The Committee also notes, however, that proposed s. 10(1) provides that an enormous range of offences, including some extremely minor ones, trigger the process of application for the power to fingerprint. The Committee accepts that there are safeguards, such as Court application and a requirement for destruction, however the Committee believes that the offences which trigger this process should be more clearly defined so as not to include the most minor ones.

5.15 The Committee requests that the Minister consider introducing an amendment which will ensure that this means of obtaining the finger prints and palmprints of children is only available for the more significant offences in those Acts listed in proposed s. 10(1) (in cl. 8).

Sufficient regard to rights and liberties of individuals? - Clause 8 (s. 10)

5.16 The Committee notes that proposed s.10(5) refers to a hearing and the giving of evidence to a Children's Court Magistrate during an application to have an identifying particular of a child taken. Under these circumstances, the Committee is of the view that a child should have the option of being represented by a legal practitioner or person employed by an agency which provides legal services.

5.17 Although the Committee is cognisant of the fact that Magistrates would be loath to deny a child legal representation it is concerned that in the absence of an express provision (permitting representation by a legal practitioner or person employed by an agency which provides legal services) there is a risk that the child will not be adequately or fairly represented.

5.18 With respect to an application to a Children's Court Magistrate to have an identifying particular of a child taken the Committee is of the view that, to allow a child to be adequately and fairly represented, the child should have the option of being represented by a lawyer or by a person from an agency providing legal services.

5.19 The Committee therefore requests the Minister to consider an appropriate amendment.

Sufficient regard to rights and liberties of individuals? - Part 1C

5.20 Under proposed s.18, a new procedure for "community conferences" is established for children who have admitted offences or been found guilty of offences. These conferences involve the offender, victims, families and others

and lead to agreements where the child admits the offence and agrees to make an apology, restitution and/or to future conduct. If the child does not take part in this process, breaches an agreement or if no agreement is reached, the worst that can happen is that the child is cautioned or is charged with the offence. If a caution is given, under certain circumstances it may be disclosed to a court if the child re-offends.

5.21 There are numerous and proper safeguards concerning confidentiality with regard to the police. However, as the complainant is not bound, the effectiveness of these safeguards are very limited.

5.22 The one concern is that the community conference procedure can be initiated if the child admits committing the offence to a police officer. If the child disputes the admission, the conference procedure is unlikely to be successful and any cautions that were later disclosed could be the subject of "collateral attack" under which the validity is challenged.

5.23 However, to protect the rights of children who deny that they admitted the offence, it would be preferable if a provision were explicitly included which permitted the child to formally refuse to participate by denying the admission. This would formally terminate the community conference process without any "disclosable cautions" arising from that process. The child could, of course, be charged with the offence and the claimed admission used (and challenged) in court.

5.24 The Committee considers that the community conference procedure has many positive features.

5.25 However, it suggests that consideration be given to an amendment that expressly provides that the community conference procedure can be terminated by a written denial by the child or the child's legal representative.

Sufficient regard to rights and liberties of individuals? - Clause 8 (s. 18F)

5.26 Proposed s. 18F deals with the form of a community conference agreement, its content and method of adoption. In subsection (2) provision is made for the agreement to be agreed to and signed by stipulated parties. Subsection (3) requires the agreement to contain a provision under which the child admits committing the offence.

5.27 The Committee has already indicated in the section above one safeguard that should be incorporated into the community conference framework. In addition, the Committee is concerned that when a child is to agree to, and sign a community conference agreement, the child should have the option of being represented by a legal practitioner or by a person acting for the child who is employed by an agency providing legal services. This is particularly of concern

when a child may not have high literacy skills or may not have a good comprehension of the English language.

5.28 As previously referred to, other clauses in the Bill make specific reference to such persons representing a child and, in the absence of a similar express provision in proposed s. 18F, the Committee is concerned that the child will not be adequately or fairly represented.

5.29 The Committee is of the view that, when a child is required to agree to and sign a community conference agreement (in proposed s. 18F(2)), a child should have the option of being legally represented (or represented by a person from an agency providing legal services) to ensure that the child is adequately informed and represented.

5.30 The Committee therefore requests the Minister to consider an appropriate amendment.

Sufficient regard to rights and liberties of individuals - Clause 22 (s.56A(3))

5.31 Under proposed s.56A(3), a parent may be required to attend a hearing before a court. This has been extended to include any offence rather than an offence for which the child may be arrested without warrant.

5.32 This could be seen as an infringement on the rights of the parent. It could also impose a financial burden on the parent. Although the court may recommend that the chief executive provide financial assistance for the parent to attend, this is only a recommendation and the chief executive is not required to do so.

5.33 The penalty for failing to attend is 50 penalty units ($3750), a substantial sum.

5.34 The following are considerations relevant to this issue:

- any infringement on a person's movement is to be considered with caution;
- most responsible parents would want to attend;
- the community may consider that parents retain at least partial responsibility for their children's actions and should be prepared to assist in their children's rehabilitation;
- elsewhere, the legislation places a cap on the total liability for damages which parents may be required to pay;
- as witnesses are required to attend in court, it is not unreasonable that parent's may also be so required (with lesser consequences).

5.35 On balance, the Committee prefers the view that this provision does not breach this FLP.

Sufficient regard to the rights and liberties of individuals? - Clause 62

5.36 Under s197, a court may require parents to pay compensation if "a parent of the child may have contributed to the fact the offence happened by not adequately supervising the child". This imposes civil liabilities up to a maximum of $5,025 under s198.

5.37 The liability is based on a far weaker test. No longer is compensation based upon the wilful failure by the parent to exercise proper care of or supervision of the child. There merely has to be a likelihood that the parent is a contributing factor. The onus appears to be on the parent to "show cause".

5.38 The Committee notes the added burden placed upon parents with respect to the actions of their Children.

5.39 The question of whether this amendment has sufficient regard to the rights and liberties of parents is a matter which the Committee refers to Parliament for consideration.

Sufficiency of Explanatory Notes?

5.40 The Committee notes that the Explanatory Notes to this Bill fail to assess its consistency with fundamental legislative principles (FLPs)

5.41 There is a mandatory requirement in s. 23(1)(f) of the *Legislative Standards Act 1992* for such an assessment to be included in the Explanatory Notes.

5.42 In view of the fact that the provisions of this Bill potentially bring it into conflict with the FLP requiring legislation to have sufficient regard to the rights and liberties of individuals, the Committee considers this to be a substantial failing.

5.43 The Committee considers the absence of a section addressing the issue of consistency with fundamental legislative principles in the Explanatory Notes to constitute a failure to comply with the statutory requirements for Explanatory Notes as set out in s. 23(1)(f) of the *Legislative Standards Act 1992*.

5.44 The Committee requests that the Minister ensure that Explanatory Notes from his Department comply with the relevant statutory requirements.

6. MOTOR ACCIDENT INSURANCE LEGISLATION AMENDMENT BILL 1996

Background

6.1 The Motor Accident Insurance Legislation Amendment Bill 1995 was introduced into the House on 2 November 1995 by the former Treasurer, the Honourable K E DeLacy MLA. That Bill was not, however, passed by the House prior to the prorogation of Parliament on 11 March 1996 and therefore lapsed.

6.2 The Bill was re-introduced by the Honourable J M Sheldon MLA, Deputy Premier, Treasurer and Minister for the Arts on 10 July 1996 with minor amendments.

6.3 Amongst other things, the Bill extends the scope of the Nominal Defendant's Scheme to improve protection for persons injured in motor vehicle accidents, and clarifies and reinforces the intent of certain provisions of the *Motor Accident Insurance Act 1994*.

Previous comments by the Committee on this Bill

6.4 When the Bill was first introduced in November 1995, the Committee reported on it in its Alert Digest No. 3 of 1995 at pages 29 to 31. The response of the then Treasurer to those comments is published in full in Appendix A of this Alert Digest.

6.5 In the Committee's Alert Digest No. 3 of 1995, the Committee drew attention to the fact that the phrase "public place" was being specifically introduced into this amendment Bill to extend the scope of cover to various places included in the definition of "public place". The actual definition of "public place", however, was not contained in the Bill but in another Act so that a person reviewing the legislation would not be able to determine the scope of its operation with respect to public places without referring to further legislation.

6.6 The Committee expressed the view that in instances where phrases with specified definitions are used in a Bill, within reason, the Bill should contain that definition. The former Treasurer responded as follows:

> *I agree with this suggestion that a footnote should be included detailing the definition of "public place" as incorporated in the Motor Vehicles Control Act 1975. I understand the Parliamentary Counsel is attending to these specifics.*

6.7 At pages 30 to 31 of Alert Digest No. 3 of 1995 the Committee also reported that despite cls. 5(1) and (10) having retrospective effect, the amendments were

inserted for clarification purposes only and the Committee therefore had no concerns about detrimental impact caused by retrospectivity.

6.8 The Committee also commended the drafters of the Explanatory Notes for this Bill for dealing thoroughly with all matters covered in s. 23(1) of the *Legislative Standards Act 1992* (Content of Explanatory Note for Bill).

Committee comments on the version of the Bill currently before the House

6.9 The Committee notes that the version of the Bill currently before the House also does not incorporate the definition of "public place". The Committee Chairman has, however, received notification from the Parliamentary Secretary to the Treasurer that a suitable footnote should be introduced as an amendment in the Committee stage of this Bill.

6.10 The Committee reiterates its comments at paragraphs 5.7 and 5.8 above concerning retrospectivity and the Explanatory Notes.

6.11 The Committee has no further comment with respect to this Bill.

7. TOBACCO INDUSTRY (RESTRUCTURING) BILL 1996

Background

7.1 This Bill was introduced into Parliament on 10 July 1996 by the Honourable T Perrett, MLA, Minister for Primary Industries, Fisheries and Forestry.

7.2 The objectives of the Bill, as stated in the Explanatory Notes, are to deregulate and restructure the Queensland tobacco industry.

Sufficient regard to rights and liberties of individuals? - Clause 18

7.3 Part 5 of the Bill deals with distribution of shares in the association. Proposed cl. 16 requires an invitation to be issued to quota holders, inviting them by letter to apply for shares in the association. Proposed cl. 18 stipulates that any share or part share not taken up by a quota holder (or the holder's nominee) is forfeited to the association.

7.4 The Committee notes the onus being placed upon quota holders to take action to enable them to retain the value of their existing entitlements. In addition, if through unforeseen circumstances a quota holder cannot be contacted or a quota holder does not receive the association's invitation to apply for the shares through no fault on their part, the quota holder loses their shares.

7.5 In this situation, it would appear that there could be compulsory acquisition of an interest (quota) without compensation. This should only occur if it results from a fully informed decision of the quota holder to so forfeit the interest, rather than resulting from being unaware of the obligations imposed to maintain the value of the interest and the consequences of failing to fulfil those obligations.

7.6 To ensure that quota holders' existing entitlements are sufficiently protected, the Committee would prefer a stronger obligation to be placed upon the administrator to ensure that the quota holders are made aware of the requirement that they apply for shares and of the consequences of failing to take up the shares.

7.7 The Committee's concerns would be allayed by the addition of words to the effect of the following (underlined) in proposed cl. 18:

> *Forfeited shares*
>
> *18.(1) <u>Following reasonable enquiry after quota holders failing to take up their shares</u>, shares that are not taken up by a quota holder or the holder's nominee are forfeited to the association.*

7.8 The Committee requests that the Minister consider a means of providing further protection for the existing interests of quota holders before they will be considered to be forfeited.

SECTION B - COMMITTEE RESPONSE TO MINISTERIAL CORRESPONDENCE

8. ENVIRONMENTAL PROTECTION AMENDMENT BILL 1996

Background

8.1 This Bill was introduced into Parliament on 1 May 1996 by the Honourable B G Littleproud MLA, Minister for Environment and was passed, unamended on 14 May 1996.

8.2 The Committee commented on this Bill at pages 5 - 11 of its Alert Digest No.3 of 1996 and pages 33 - 36 of Alert Digest No.4 of 1996.

Delegated legislative power sufficiently subject to the scrutiny of the Legislative Assembly? - Clause 17 (s.196(3))

8.3 In the course of issues being commented upon in this Bill, the question of compliance with fundamental legislative principles (FLPs) by Local Laws, made by Local Governments, was raised. The Committee brought these comments to the attention of the Minister for Local Government and Planning and requested that she consider the best means by which Local Government by-laws may be scrutinised for their compliance with FLPs.

8.4 The Minister for Local Government and Planning responded to these queries in a letter which is published in full in Appendix A of this Alert Digest. The Minister informed the Committee of the existing procedures in her Department for the protection of FLPs. She concluded:

> *I am of the view that the current process as outlined above ensures that there is sufficient regard for FLPs in the development of model local lows and local laws made by local governments.*

8.5 The Committee thanks the Minister for her response. The Committee is pleased to be informed of processes already in existence for the consideration of FLPs at the drafting stage and again during subsequent scrutiny of Local Laws by the Department of Justice.

8.6 The importance of continued scrutiny of model local laws and local laws made by local governments, and the regular review of the procedures for such scrutiny by local government and departments alike, seems clear.

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9. LOCAL GOVERNMENT (MORAYFIELD SHOPPING CENTRE ZONING) BILL 1996; and LOCAL GOVERNMENT (ROBINA TOWN CENTRE PLANNING AGREEMENT) AMENDMENT BILL 1996

Background

9.1 These Bills were introduced into Parliament by the Honourable D E McCauley MLA, Minister for Local Government and Planning, on 15 May, 1996. The Bill concerning the Robina Town Centre Planning Agreement was passed unamended on the following day as an urgent Bill. The second reading debate on the Bill concerning the Morayfield Shopping Centre was adjourned and had not yet proceeded as at publication of this Digest.

9.2 The Committee commented on these two Bills in its Alert Digest No. 4 of 1996 and the Minister's response to those comments is published in full in Appendix A of this Digest.

9.3 With respect to both Bills, the Committee thanks the Minister for her response. With respect to the Local Government (Morayfield Shopping Centre Zoning) Bill, however, the Committee has the following additional comment on one aspect of the Minister's response.

Sufficient regard to the institution of Parliament by authorising the amendment of an Act only by another Act (a Henry VIII clause)? - Clause 5

9.4 On pages 9 - 10 if its previous Alert Digest the Committee stated the view that cl. 5 was a Henry VIII clause because it allows a planning deed, made pursuant to a Regulation, to make lawful an act that would other wise be unlawful under another Act. In addition, the Committee was also concerned about the identification of laws being overridden.

9.5 Information received from the Minister prior to the publication of (and extracted in) the last Alert Digest and her response to the comments in that Digest (in Appendix A of this Digest) indicate that the planing deeds will be limited to the development and use of the shopping centre land.

9.6 The Committee notes that advice received by the Minister was that an amendment to cl.5 is not necessary because the planning deed will not be inconsistent with other Acts.

9.7 Having regard to the information provided by the Minister, however, the Committee continues to hold the view that the clause is too broadly drafted.

9.8 On the basis of the information provided, it does not seem to the Committee that there is any need for such broad drafting. The Committee therefore recommends that the scope of cl.5 be restricted to serve the purpose outlined by the Minister in her correspondence to ensure that it no longer constitutes a Henry VIII clause.

9.9 The Committee notes that the views expressed by the Minister on the intended operation of this clause, and published in the Committee's Alert Digests, will be admissible in a court as extrinsic material[6] should there be a query on the interpretation of this aspect of this clause.

[6] In accordance with s.14B(3)(c) of the *Acts Interpretation Act 1954*

10. MURRAY-DARLING BASIN BILL 1996

Background

10.1 This Bill was introduced on 16 May 1996 by the Honourable H W T Hobbs MLA, Minister for Natural Resources and was commented upon by the Committee at pages 15 to 16 of its Alert Digest No. 4 of 1996. At the date of publication of this Digest, the Bill had not yet been passed.

10.2 The Minister's response to the Committee's comments in its previous Alert Digest is published in full in Appendix A of this Alert Digest, excerpts of which are referred to below.

Sufficient regard to the institution of Parliament by authorising the amendment of an Act only by another Act (Henry VIII clause)?

10.3 In its last Digest, the Committee expressed concerns about the fact that the agreement (in a Schedule to the Bill[7]) could be amended by means other than a further Act of Parliament. The agreement specifically provides for its own amendment (for example in cl. 50(7) and cl. 134). Furthermore, the agreement provides that these amendments to the agreement have effect except in certain specified circumstances. None of the specified circumstances refer to an amendment by Act of Parliament.

10.4 Despite its misgivings, the Committee has been pleased to receive the following advice from the Minister:

> *Such procedures will result in amendment of the Agreement, but the process of amending the Agreement will not have the effect of automatically amending the Murray-Darling Basin legislation. Should the Agreement be amended in the future, a Bill will need to be introduced into the Legislative Assembly to provide for any necessary amendments to the schedule required because the text of the Agreement contained in the schedule has been changed. The fulfilment of the procedures laid down in the Agreement itself to effect an amendment of the Agreement will be a pre-condition for the presentation to Parliament of a Bill to amend the schedule to the Act.*

10.5 The Committee is most appreciative of this view adopted by the Minister which means that he will not allow the amended agreement to have effect without introducing an amendment to the subject Bill. This would mean that the Bill would not be amended by a Henry VIII clause.

[7] Section 14 *Acts Interpretation Act* - a Schedule to a Bill/Act is treated as part of the Bill/Act.

10.6 To ensure that the Minister's intention is reflected in the Bill, however, and to ensure that no other means is used by any successors to his portfolio, the Committee requests that the Minister incorporate his intentions into the Bill.

10.7 The Committee notes the Minister's comment on the uniform nature of the legislation:

> … *the legislation is a component part of similar legislation in four other Parliaments which together establish the Agreement. It would not be proper for Queensland to vary unilaterally those arrangements.*

10.8 The Committee fully appreciates the ramifications of the Minister's comment on the fact that the agreement is part of a national scheme of legislation and therefore can not be varied unilaterally. The amendment which the Committee requests, however, is not to be incorporated in the agreement (the schedule to the Bill) but in the Bill itself.

10.9 The Committee is also of the view that, to ensure that the Bill is not amended by a Henry VIII type arrangement under a different Minister in future, the definition of "agreement" in clause 2 should be amended to make it clear that the effective agreement is reflected by the actual text in the schedule to the Bill and not the text of the agreement as it may be (purported to be) amended from time to time.

10.10 The Committee is considerably encouraged at the Minister's undertaking that this Bill will only by amended by a further Act of Parliament. As this is a personal undertaking, however, and to ensure that this laudable and appropriate intention is reflected in the legislation itself and in future amendments under a different Minister or a different administration, the Committee requests that the Minister introduce suitable amendments to ensure this end.