

Report No. 13

Annual Report 1 July 1998 to 30 June 1999



LEGISLATIVE ASSEMBLY OF QUEENSLAND

Scrutiny of Legislation Committee

Annual Report

1 July 1998 – 30 June 1999

October 1999

Scrutiny of Legislation Committee (49th Parliament)

– Current Membership –

Chair: Mrs Linda Lavarch MLA, Member for Kurwongbah
Deputy Chair: Mr Tony Elliott MLA, Member for Cunningham
Other Members: Mrs Liz Cunningham MLA, Member for Gladstone
Hon. Jim Fouras MLA, Member for Ashgrove
Dr John Kingston MLA, Member for Maryborough
Mr Peter Wellington MLA, Member for Nicklin

Principal Legal Adviser To The Committee: Professor Charles Sampford

Legal Advisers to the Committee: Associate Professor Gerard Carney
Associate Professor Bryan Horrigan
Mr Robert Sibley
Dr Max Spry

Committee Staff: Mr Chris Garvey, Research Director
Ms Veronica Rogers, Principal Research Officer
Executive Assistant – Ms Carolyn Heffernan



Scrutiny of Legislation Committee
Level 6, Parliamentary Annexe
George Street
Brisbane QLD 4000
Phone: 07 3406 7671 Fax: 07 3406 7500
Email: scrutiny@parliament.qld.gov.au

CHAIR'S FOREWORD

The Scrutiny of Legislation Committee is pleased to table its Annual Report for the 1998-1999 financial year. During this year the Committee has continued to perform its primary role of scrutinising bills and subordinate legislation on behalf of the Parliament as well as its role of monitoring legislative standards.

Over the year, 95 bills were introduced into Parliament, and the Committee examined and reported on 77 of these. Much of the legislation scrutinised was very significant, dealing with subjects as diverse as native title, citizen initiated referenda, protection of children, health, mining and industrial relations. A feature of the financial year was the large number of private members' bills introduced into the Parliament.

In respect of subordinate legislation, 334 pieces of subordinate legislation were published in the Queensland Subordinate Legislation Series in the 1998-1999 financial year, together with 30 pieces of exempt subordinate legislation. Fifty-two of these instruments were identified as potentially raising issues within the Committee's terms of reference.

During the year, the Committee tabled in the Legislative Assembly thirteen Alert Digest Reports and two reports relating to subordinate legislation.

The work of the Scrutiny of Legislation Committee is very demanding and I would like to thank all Committee members for their hard work and dedication to enhancing the quality of Queensland legislation.

In performing its scrutiny function, the committee was considerably assisted by the high level of support and co-operation it received from Ministers. On behalf of the committee, I thank them for their assistance.

Finally, I would like to thank and acknowledge the work of the Committee's staff, Mr Chris Garvey, Research Director; Ms Veronica Rogers, Principal Research Officer; and former Executive Assistant, Ms Maree Lane. I also thank the Committee's legal advisers, whose assistance was essential to the Committee's operation during the financial year.

Linda Lavarch, MLA
Chair
25 October 1999

TABLE OF CONTENTS

CHAIR'S FOREWORD	I
1. CONSTITUTION, ROLE AND AREA OF RESPONSIBILITY	1
CONSTITUTION AND ROLE OF THE SCRUTINY OF LEGISLATION COMMITTEE.....	1
AREA OF RESPONSIBILITY	1
FUNDAMENTAL LEGISLATIVE PRINCIPLES	2
SUFFICIENT REGARD TO FUNDAMENTAL LEGISLATIVE PRINCIPLES.....	2
2. SCRUTINY OF BILLS	3
OVERVIEW	3
BILLS SCRUTINISED AND REPORTED ON DURING 1998 - 1999 FINANCIAL YEAR.....	4
ISSUES MOST FREQUENTLY RAISED IN THE SCRUTINY OF BILLS	4
◆ <i>Rights and liberties of individuals</i>	5
◆ <i>Clear and precise drafting</i>	6
◆ <i>Retrospective legislation</i>	7
IMPACT OF THE COMMITTEE'S REPORTS.....	7
MINISTERIAL RESPONSES TO COMMITTEE REPORTS ON BILLS.....	8
SUMMARY OF THE COMMITTEE'S SCRUTINY OF BILLS.....	8
3. SCRUTINY OF SUBORDINATE LEGISLATION	10
OVERVIEW	10
SUBORDINATE LEGISLATION SCRUTINISED AND REPORTED ON IN THE 1998 - 1999 FINANCIAL YEAR	10
ISSUES MOST FREQUENTLY RAISED IN THE SCRUTINY OF SUBORDINATE LEGISLATION	11
◆ <i>Issues relating to clear and precise drafting</i>	12
◆ <i>Issues relating to powers that are insufficiently defined and/or are not subject to appropriate review</i>	12
◆ <i>Issues in relation to Regulatory Impact Statements</i>	12
◆ <i>Issues relating to whether subordinate legislation is within the power conferred by the authorising law</i>	12
EXEMPT SUBORDINATE LEGISLATION	13
IMPACT OF THE COMMITTEE'S ROLE IN RELATION TO SUBORDINATE LEGISLATION	13
SUMMARY OF THE COMMITTEE'S SCRUTINY OF SUBORDINATE LEGISLATION	14
4. MONITORING ROLE	15
OVERVIEW	15
EXPLANATORY NOTES	15
5. COMMITTEE BUSINESS	17
REPORTS.....	17
◆ <i>Commissions of Inquiry (Forde Inquiry- Evidence) Regulation 1998</i>	17
MEETINGS AND HEARINGS	17
TRAVEL.....	17
6. ADMINISTRATIVE MATTERS	19
BUDGET AND EXPENDITURE OF THE COMMITTEE	19

STAFFING OF THE COMMITTEE.....	20
◆ <i>Current committee staff</i>	20
◆ <i>Legal advisers to the committee</i>	20
APPENDIX A – TERMS OF REFERENCE	21
APPENDIX B – MEANING OF "FUNDAMENTAL LEGISLATIVE PRINCIPLES"	22
APPENDIX C – MEETING ATTENDANCE RECORD	23
APPENDIX D – ENDNOTES.....	24

1. CONSTITUTION, ROLE AND AREA OF RESPONSIBILITY

Constitution and role of the Scrutiny of Legislation Committee

- 1.1. The Scrutiny of Legislation Committee was established by the *Parliamentary Committees Act 1995* on 15 August 1995. This committee replaced the Committee of Subordinate Legislation which was first constituted on 26 November 1975.
- 1.2. The main role of a statutory committee, pursuant to s.8 of the *Parliamentary Committees Act*, is to deal with issues within its area of responsibility and to report to Parliament when necessary.

Area of responsibility

- 1.3. Section 22 of the *Parliamentary Committees Act* provides that:

- (1) *The Scrutiny of Legislation Committee's area of responsibility is to consider—*
- (a) *the application of fundamental legislative principles¹ to particular Bills and particular subordinate legislation; and*
- (b) *the lawfulness of particular subordinate legislation;*
- by examining all Bills and subordinate legislation.²*
- (2) *The committee's area of responsibility includes monitoring generally the operation of—*
- (a) *the following provisions of the Legislative Standards Act 1992—*
- *section 4 (Meaning of "fundamental legislative principles")*
 - *part 4 (Explanatory notes); and*
- (b) *the following provisions of the Statutory Instruments Act 1992—*
- *section 9 (Meaning of "subordinate legislation")*
 - *part 5 (Guidelines for regulatory impact statements)*
 - *part 6 (Procedures after making of subordinate legislation)*
 - *part 7 (Staged automatic expiry of subordinate legislation)*
 - *part 8 (Forms)*

¹ "Fundamental legislative principles" are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law (*Legislative Standards Act*, s.4(1)). The principles include requiring that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament.

² A member of the Legislative Assembly, including any member of the Scrutiny of Legislation Committee, may give notice of a disallowance motion under the *Statutory Instruments Act*, s. 50.

- *part 10 (Transitional).*

Fundamental legislative principles

- 1.4. The *Legislative Standards Act 1992* defines “fundamental legislative principles” as the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. The principles include requiring that legislation have sufficient regard to—
- (a) *rights and liberties of individuals; and*
 - (b) *the institution of Parliament.*³
- 1.5. Section 4 of the Act sets out examples of what to look for when deciding whether legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.⁴ These include whether the legislation, for example:
- makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review;
 - is consistent with the principles of natural justice;
 - reverses the onus of proof in criminal proceedings without adequate justification; and
 - is unambiguous and drafted in a sufficiently clear and precise way.
- 1.6. Section 4 of the *Legislative Standards Act* does not contain an exhaustive list of matters which may be described as fundamental legislative principles, neither does it enumerate all matters coming within those principles mentioned. This approach affords the committee a substantial degree of flexibility, allowing it to report on matters that are not expressly set out in the Act but still infringe the rights and liberties of individuals or the institution of Parliament. For example, the committee has reported to Parliament on the abrogation of the right to silence, the protection of privacy and adherence to rights recognised in international treaties and conventions, despite the fact that these issues are not specifically mentioned in the *Legislative Standards Act*.

Sufficient regard to fundamental legislative principles

- 1.7. The *Legislative Standards Act* does not require strict compliance with the fundamental legislative principles set out in the Act, but instead sets a threshold test requiring legislation to have “sufficient regard” to them.
- 1.8. The committee therefore carefully assesses each perceived breach of fundamental legislative principles to consider whether it is adequately explained and justified. The committee reports concerns about potential breaches to Parliament, leaving the question of whether the legislation has had “sufficient regard” to the fundamental legislative principle to Parliament to decide.

³ *Legislative Standards Act*, s. 4(2).

⁴ Section 4 of the *Legislative Standards Act* is reproduced as Appendix B.

2. SCRUTINY OF BILLS

Overview

- 2.1. This chapter provides information about the committee's discharge, during the 1998-1999 financial year, of its function of scrutinising bills and examining explanatory notes to bills. It also provides indicators of the committee's performance in these areas.
- 2.2. Under s.22(1) of the *Parliamentary Committees Act*, the committee is required to consider the application of fundamental legislative principles to particular bills, by examining all bills introduced into the Legislative Assembly. In the course of so doing, the committee also examines the explanatory notes presented with bills.⁵
- 2.3. During the 1998-1999 financial year, the committee discharged its responsibility with respect to bills by scrutinising all bills introduced into the Legislative Assembly, with the exception of 13 bills introduced late in the financial year⁶ and 5 urgent bills.⁷ The committee then reported to Parliament any concerns that it may have had about the application of fundamental legislative principles to the bills. These reports, called "alert digests", were usually tabled by the committee's chair on the first day of each sitting week. Each digest dealt with bills introduced during the previous sitting week.⁸ The committee invited ministers to respond to comments made in its digests. Those responses were reported on and reproduced in full in the next digest.
- 2.4. On occasions during the financial year the committee operated under significant pressure in endeavouring to discharge its responsibilities to Parliament, given the time constraints associated with the passage of bills. However, the committee was assisted by the change to Standing Order 241,⁹ which extended from 6 to 13 whole calendar days the minimum period for resumption of debate on bills.
- 2.5. As discussed in the committee's 1997-1998 Annual Report,¹⁰ the previous 6 day minimum period created major difficulties for the committee when Parliament sat on consecutive weeks and substantial numbers of bills were introduced. The amendment of Standing Orders means that in such situations, legislation introduced in the first sitting week cannot now be passed in the second week, and the committee accordingly has more time to prepare and table its report. There were 3 instances during the 1998-1999 financial year of consecutive Parliamentary sitting weeks.
- 2.6. A significant feature of the 1998-1999 financial year was the large number of private members' bills (16 in all) which were introduced into the Legislative Assembly. All of

⁵ In relation to explanatory notes, the committee also has a general monitoring role under s.22(2) of the *Parliamentary Committees Act*: see Chapter 3 of this Annual Report.

⁶ These were scrutinised and reported on in the committee's first Alert Digest for the following financial year (Alert Digest No. 8 of 1999, tabled on 20 July 1999).

⁷ Urgent bills are passed under Standing Order 273 which provides that, by leave of the House, a bill may be passed through its several stages "with unusual expedition". In such cases the usual requirement, under Standing Order 241(d), that debate on a bill be adjourned for at least 13 whole calendar days is displaced.

⁸ Or, where the previous sitting week was the second of two consecutive sitting weeks, with bills introduced during either of those weeks.

⁹ By Sessional Order adopted on 30 July 1998.

¹⁰ At pp 3-4.

these bills appeared to have been professionally drafted,¹¹ and their only real distinguishing feature from the committee's perspective was the lack of accompanying explanatory notes.¹²

Bills scrutinised and reported on during 1998 - 1999 financial year

- 2.7. 95 bills were introduced into the Legislative Assembly during the 1998 - 1999 financial year.
- 2.8. Of these, the committee reported to Parliament on 77 (or approximately 81%), in 13 alert digests. Of the remaining bills, 5 were urgent bills which were passed before the committee was able to report on them, and 13 were bills introduced late in the financial year which were reported on in the committee's first report for the following financial year¹³

Issues most frequently raised in the scrutiny of bills

- 2.9. The table below sets out statistics on the issues raised by the committee in its reports to Parliament on bills, in descending order of frequency. In total, the committee queried or commented on 237 issues in the bills reported on in its digests.

STATISTICS ON ISSUES WITHIN THE COMMITTEE'S AREA OF RESPONSIBILITY RAISED IN ALERT DIGESTS 1 JULY 1998 TO 30 JUNE 1999		
ISSUE*	No. of queries	% ¹⁴ of queries
Rights and liberties of individuals ⁱ	63	26.58
Clear and precise drafting ^{xiii}	29	12.24
Retrospective legislation ^{ix}	28	11.81
Delegation of legislative power ^{xiv}	22	9.28
Explanatory notes ^{xxiv}	15	6.33
Institution of Parliament ⁱⁱ	14	5.91
Sufficiently defined administrative power subject to appropriate review ⁱⁱⁱ	13	5.49
Reversal of the onus of proof ^{vi}	9	3.80

¹¹ The committee presumes most were drafted by the Office of Parliamentary Counsel for the sponsoring Members.

¹² The statutory requirement to prepare explanatory notes applies only in respect of Government bills: s.22(1), *Legislative Standards Act 1992*. However, explanatory notes were voluntarily supplied in relation to some of these private members' bills.

¹³ See Alert Digest No. 8 of 1999, tabled on 20 July 1999. Because these 13 bills were reported on in the following financial year, they are not included in the statistics for the 1998-1999 financial year.

¹⁴ Approximate figures only.

STATISTICS ON ISSUES WITHIN THE COMMITTEE'S AREA OF RESPONSIBILITY RAISED IN ALERT DIGESTS		
1 JULY 1998 TO 30 JUNE 1999		
ISSUE*	No. of queries	% ¹⁴ of queries
Natural justice ^{IV}	8	3.38
"Henry VIII clauses" ^{XVI}	8	3.38
Powers of entry, search and seizure ^{VII}	6	2.53
Parliamentary scrutiny of delegated legislative power ^{XV}	6	2.53
Aboriginal tradition and Island custom ^{XII}	6	2.53
Other (for example: comments on the regulatory impact statement guidelines; staged automatic expiry; and compulsory acquisition of property.) ^{XXXIV}	3	1.27
Self-incrimination ^{VIII}	3	1.27
Immunity from proceedings without adequate justification ^X	2	0.84
Delegation of administrative power ^V	2	0.84

*These issues relate to the committee's terms of reference in Appendix A and to the fundamental legislative principles in Appendix B. Each issue is further described in the endnotes (Appendix D) to this report. The roman numerals attached to each issue listed in this table refer to the relevant paragraph of the endnotes.

2.10. It may be useful to review the matters addressed in the three most reported categories. The three topics on which the committee reported most frequently during the year, in descending order, were:

- the rights and liberties of individuals;
- clear and precise drafting; and
- retrospective legislation.

2.11. These three topics also predominated in the 1996 – 1997 and 1997 – 1998 financial years.¹⁵

◆ Rights and liberties of individuals

¹⁵ In the 1996 – 1997 financial year, the committee's most frequently considered principle was rights and liberties of individuals (18% of queries); followed by queries on retrospective legislation (13%) and then clear and precise drafting (11.5%). In the 1997 - 1998 financial year, the most frequently considered principle was rights and liberties of individuals (19%), followed by clear and precise drafting (11.5%) and retrospective legislation (11%).

2.12. Issues raised by the committee under the heading *Does the legislation have sufficient regard to the rights and liberties of individuals?* included many which are not specifically mentioned in s.4 of the *Legislative Standards Act*. As previously mentioned, the list in s.4 is not an exhaustive list and the committee has considered a range of other “rights and liberties” issues under this heading, for example:

- no requirement for the release of information to persons affected by operation of provision;¹⁶
- imposition of very substantial penalties;¹⁷
- disclosure of private confidential information;¹⁸
- undermining of general right to equality before the law;¹⁹
- alteration of avenues of appeal;²⁰
- decision to grant licence unnecessarily dependent on the view of one person;²¹
- power to determine dress code unnecessarily broad;²²
- establishment of maximum security orders and facilities for certain prisoners.²³

2.13. The committee, appropriately in its view, takes an expansive approach in identifying “rights and liberties”. These of course include traditional common law rights,²⁴ but the committee considers they can also encompass, for example, rights which are only incompletely recognized at common law (such as the right to privacy), and rights (especially human rights) which arise out of Australia’s international treaty obligations.

◆ **Clear and precise drafting**

2.14. The issues raised by the committee under this category are diverse. Most queries, however, arose from the committee’s expectations that legislation should:

- be user friendly and accessible so that ordinary Queenslanders can gain an understanding of the laws relating to a particular matter without having to refer to multiple Acts of Parliament.²⁵
- contain provisions that are precisely drafted,²⁶ and
- contain coherent provisions, addressing foreseeable aspects.²⁷

¹⁶ *Child Protection Bill 1998*, Alert Digest No. 11 of 1998.

¹⁷ *Explosives Bill 1998*, Alert Digest No. 11 of 1998.

¹⁸ *Explosives Bill 1998*, Alert Digest No. 11 of 1998.

¹⁹ *Gaming Machine and Other Legislation Amendment Bill 1998*, Alert Digest No. 11 of 1998.

²⁰ *Justice Legislation (Miscellaneous Provisions) Bill 1998*, Alert Digest No. 1 of 1999.

²¹ *Weapons Amendment Bill 1998*, Alert Digest 1 of 1999.

²² *School Uniform Bill 1999*, Alert Digest No. 2 of 1999.

²³ *Corrective Services Legislation Amendment Bill 1999*, Alert Digest No. 3 of 1999.

²⁴ Such as the right of a landowner to the use and enjoyment of his or her land.

²⁵ For example, *Community- Based Referendum Bill 1999*, Alert Digest No. 3 of 1999.

²⁶ For example, *School Uniform Bill 1999*, Alert Digest No. 2 of 1999.

◆ Retrospective legislation

- 2.15. As it has done since its establishment, the committee continued to bring all provisions in bills which have effect retrospectively, to the attention of Parliament—even if it was not concerned about the implications of the provisions. The committee has consistently examined retrospective provisions to ensure that they do not adversely affect rights and liberties, or impose obligations, retrospectively.
- 2.16. Some of the retrospective provisions reported on involved curative measures, which did not concern the committee²⁸, while others of these provisions were not curative but did not disadvantage individuals affected²⁹. As in previous years, the category of retrospective provisions that most concerned the committee were those that adversely affected individuals or had the potential to do so³⁰. In these cases the committee particularly looked at whether individuals had legitimate expectations under the existing law and could reasonably expect to rely on it. The committee most often referred to Parliament for consideration the question of whether any adverse retrospective effect imposed on individuals by the legislation was undue.

Impact of the Committee's Reports

- 2.17. The principal role of the committee's Alert Digest is to inform Parliament of any issues arising with respect to the fundamental legislative principles in bills introduced into the House. In this way, the committee seeks to enhance debate in the Legislative Assembly on issues arising regarding the rights and liberties of individuals and the institution of Parliament.
- 2.18. The committee cannot directly oppose an objectionable provision in a bill in the way that it can, for example, ask Parliament to support a motion to disallow a provision in subordinate legislation. Instead, the committee must appeal to the relevant minister to accommodate its views or convince members of Parliament that a change in the legislation is justified and necessary.
- 2.19. During the 1998-1999 financial year the committee has had an appreciable influence on amendments made to bills during their passage through the Legislative Assembly as can be seen from the table below.³¹

²⁷ For example, *Land and Resources Tribunal Bill 1998*, Alert Digest No. 1 of 1999.

²⁸ For example, *Health and Other Legislation Amendment Bill 1998*, Alert Digest No. 9 of 1998.

²⁹ For example, *WorkCover Queensland Amendment Bill 1999*, Alert Digest No. 4 of 1999.

³⁰ For example, *Year 2000 Information Disclosure Bill 1999*, Alert Digest No. 5 of 1999, *Integrated Planning and Other Legislation Amendment Bill (No. 2) 1998*, Alert Digest No. 11 of 1998.

³¹ These statistics are based on amendments to bills passed in the 1998-1999 financial year. Based on the committee's records, a total of 481 amendments were moved and 443 adopted during that period.

AMENDMENTS TO BILLS, AND THE PERCENTAGE³² OF AMENDMENTS THAT WERE RELATED TO COMMENTS MADE BY THE COMMITTEE	
1 JULY 1998 TO 30 JUNE 1999	
% of all amendments moved in the Legislative Assembly that relate to committee recommendations ³³	7.90%
% of amendments agreed to that relate to committee's recommendations ³⁴	8.13%
% of amendments moved in the Legislative that related to committee recommendations and were agreed to ³⁵	94.74%

Ministerial Responses to Committee Reports on Bills

2.20. Unlike reports from other committees of the Queensland Parliament, ministers are not required by statute to respond to recommendations in reports of the Scrutiny of Legislation Committee.³⁶ Ministers have nevertheless been very supportive of the committee's work. This is reflected in the following statistics.

2.21. Of the total number of queries raised or concerns expressed by the committee:

- ministers provided information in relation to the issues raised in 51% of cases;
- ministers provided information which overcame committee concerns on 10% of occasions;
- ministers advised that amendments would be introduced to overcome the concerns raised in 10% of instances;
- 9% of the issues raised by the committee did not require a response;
- 19% of the committee's concerns reported to the Legislative Assembly were not responded to.³⁷

Summary of the Committee's Scrutiny of Bills

³² Approximate figures only.

³³ Of the 481 amendments moved, 38 related directly to the committee's recommendations. Therefore 7.90% of the amendments moved in the Legislative Assembly were related to matters that the committee discussed in its alert digests.

³⁴ Of the 443 amendments adopted, 36 related directly to the committee's recommendations. This represents a direct influence on 8.13% of amendments adopted.

³⁵ 38 of the committee's recommendations were moved in the Legislative Assembly, and 36 of these were adopted. Therefore 94.74% of the committee recommendations debated during the committee stage of a bill were adopted.

³⁶ Section 24 of the *Parliamentary Committees Act* requires ministerial responses to committee reports under certain circumstances.

³⁷ This almost always occurred where the committee's report raised multiple issues in respect of a particular bill and the minister's reply, whilst responding to almost all those issues, did not address the remaining issue or issues.

- 2.22. The committee considers the statistics provided in this chapter demonstrate that the committee operated successfully during the financial year. In short, the committee:
- raised numerous issues within its jurisdiction for the consideration of Parliament, and in so doing enhanced debate on the bills concerned
 - clarified issues with, and obtained information from, ministers in respect of matters of potential concern
 - was influential in achieving the amendment of various bills to address the issues and concerns raised by it
 - believes that through its activities, it had an ongoing influence on the drafting of the bills introduced into Parliament, in respect of the incorporation of fundamental legislative principles.
- 2.23. The committee believes that as a result the quality of bills, in terms of compliance with fundamental legislative principles, was enhanced.
- 2.24. The committee wishes to record its appreciation of the high level of support it has continued to receive from ministers. Without the support of the Executive, the committee's capacity to discharge its statutory functions would be significantly reduced.
- 2.25. The committee also thanks departmental and ministerial staff for providing briefings and information to the committee and its staff on bills throughout the financial year. Many issues which could have given rise to concern have been overcome at an early stage with the help of these officers.

3. SCRUTINY OF SUBORDINATE LEGISLATION

Overview

- 3.1. This chapter provides information about the committee's discharge of its scrutiny function in relation to subordinate legislation during the 1998 - 1999 financial year.
- 3.2. The committee examines subordinate legislation in accordance with s.22(1) of the *Parliamentary Committees Act*. Where the committee has concerns about any matters within its terms of reference, it corresponds with the minister responsible for the particular subordinate legislation. If the matter is not resolved, the committee will consider giving notice of a motion to disallow an instrument and/or reporting its concerns to Parliament.
- 3.3. This chapter highlights a number of significant issues that the committee examined in relation to subordinate legislation gazetted during the 1998 – 1999 financial year. It also contains statistical information detailing the issues raised by the committee in relation to that subordinate legislation and the manner in which these matters were addressed.

Subordinate legislation scrutinised and reported on in the 1998 - 1999 financial year

- 3.4. In the 1998 - 1999 financial year, there were 334 pieces of subordinate legislation published in the Queensland Subordinate Legislation Series. The committee also examined 30 pieces of exempt subordinate legislation (that is, subordinate legislation that is not required to be drafted by the Office of the Queensland Parliamentary Counsel). Fifty-two of these instruments were identified as potentially raising issues within the committee's terms of reference; some instruments, however, raised more than one such issue. In accordance with its usual practice, the committee entered into correspondence with the relevant ministers concerning its queries in relation to subordinate legislation. The ministers responded in almost all cases by providing additional information or an undertaking³⁸ to address the committee's concerns.
- 3.5. In accordance with its practice, the committee only reports to the Legislative Assembly on subordinate legislation if the committee considers it necessary to facilitate Parliamentary debate on the legislation. The committee tabled two reports in the Legislative Assembly relating to subordinate legislation made during the 1998 - 1999 financial year. These reports were in relation to the following regulations:
 - *Commissions of Inquiry (Forde Inquiry- Evidence) Regulation 1998*³⁹
 - *Fisheries Amendment Regulation (No. 3) 1999*⁴⁰
- 3.6. In both cases, the committee reported in order to facilitate debate on a disallowance motion which had been moved by a member of Parliament who was not a member of the committee.

³⁸ It has been the committee's practice to closely monitor the fulfilment of the proposed changes promised in the undertakings.

³⁹ Tabled on 17 November 1998.

⁴⁰ Tabled on 20 July 1999.

Issues most frequently raised in the scrutiny of subordinate legislation

3.7. The table below sets out statistics on the issues raised by the committee in relation to subordinate legislation, in descending order of frequency.

STATISTICS ON ISSUES RAISED WITHIN THE COMMITTEE'S TERMS OF REFERENCE FOR SUBORDINATE LEGISLATION GAZETTED 1 JULY 1998 TO 30 JUNE 1999		
ISSUES	NO. OF QUERIES	% ⁴¹ OF QUERIES
Clear and precise drafting ^{xiii}	15	19.2
Subordinate legislation containing powers that are insufficiently defined and/or are not subject to appropriate review ⁱⁱⁱ	11	14.1
Issues in relation to regulatory impact statement requirements ^{xxix & xxx}	10	12.8
Legislation made beyond the powers conferred by the authorising law ^{xvii}	10	12.8
Insufficient regard to rights and liberties of individuals (general) ⁱ	9	11.5
Subordinate legislation containing retrospective provisions ^{ix & xxvi}	9	11.5
Subordinate legislation amending principal legislation ^{xx}	5	6.4
Natural justice ^{iv}	3	3.8
Delegation of administrative power only to appropriate cases/ persons ^v	3	3.8
Matter appropriate to subordinate legislation ^{xix}	1	1.3
Explanatory notes ^{xxv}	1	1.3
Aboriginal tradition and Island custom ^{xii}	1	1.3
Reversal of onus of proof ^{vi}	0	0

*These issues relate to the committee's terms of reference in Appendix A and to the fundamental legislative principles in Appendix B. Each issue is further described in the endnotes (Appendix D) to this report, and the roman numerals attached to each issue listed in this table refer to the relevant paragraph of the endnotes.

3.8. Following is a brief review of the four categories⁴² most frequently queried following the scrutiny of subordinate legislation:

⁴¹ Approximate figures only.

◆ **Issues relating to clear and precise drafting**

- 3.9. The degree of importance of such issues varied greatly, from the identification of a typographical error⁴³, to potential confusion by the inconsistent use of terms⁴⁴, to the absence of a necessary definition⁴⁵. It is on these drafting issues that the committee most often receives a ministerial undertaking to amend the regulation, following the committee's identification of the issue⁴⁶. The resolution of such issues avoids possible confusion and ambiguity and makes legislation more accessible to the people it will affect.

◆ **Issues relating to powers that are insufficiently defined and/or are not subject to appropriate review**

- 3.10. The committee, as in previous years, took issue with a number of provisions which did not stipulate, or which insufficiently stipulated, the matters to which a decision-maker must have regard in exercising a statutory power⁴⁷.
- 3.11. The committee has been pleased to note that subordinate legislation now more commonly incorporates provisions addressing one of its related concerns, namely, that persons affected by a decision-maker's decision should be provided with a statement of the reasons for the decision, together with information on appeal rights.

◆ **Issues in relation to Regulatory Impact Statements**

- 3.12. The most frequent issue that the committee raised in relation to regulatory impact statements (RIS) was the lack of any such statement. In this regard, the committee routinely sought information from the relevant minister as to why it was considered that the absence of an RIS was justified. Other queries made by the committee were in relation to whether there had been compliance with the guidelines for the making of RIS's, including whether the content of the RIS was sufficient⁴⁸ and whether the consultation process had been properly undertaken⁴⁹. In some cases, extra information obtained by the minister provided adequate justification for the absence of an RIS⁵⁰. In other cases, the committee decided not to pursue the matter on the basis that, having regard to the fact that the regulation concerned was already in force, no net benefit seemed likely to result from so doing.

◆ **Issues relating to whether subordinate legislation is within the power conferred by the authorising law**

⁴² By way of comparison, in the 1997–1998 financial year the committee's most frequently considered principles were subordinate legislation amending principal legislation (23.3%), issues in relation to RISs (16.7%) and matter appropriate to subordinate legislation (13.3%).

⁴³ For example, *Magistrates Court Amendment Rule (No. 3) 1998*.

⁴⁴ For example, *Residential Tenancies Amendment Regulation (No. 1) 1998*.

⁴⁵ For example, *Animal Protection Amendment Regulation 1998*.

⁴⁶ As at the tabling date of this Annual Report, the Register of Ministerial Undertakings contained 6 current undertakings of this nature.

⁴⁷ For example, *Drugs Misuse Amendment Regulation (No. 1) 1998*, *Land Amendment Regulation 1999*.

⁴⁸ For example, *Fisheries Amendment Regulation (No. 3) 1999*.

⁴⁹ For example, *Fisheries Amendment Regulation (No. 3) 1999*.

⁵⁰ For example, *Equity and Fair Trading Legislation Amendment Regulation (No. 1) 1999*.

- 3.13. The committee queried whether a number of provisions were within the law-making powers conferred by the authorising Act or other law⁵¹.
- 3.14. This is a difficult area of the law, and opinions may well differ as to whether a particular provision is lawful. It is inevitable that a body of subordinate legislation as large as that scrutinised in the course of a financial year will contain a number of provisions whose validity is at least questionable.⁵² The committee, however, encountered few if any provisions which it considered were clearly invalid.

Exempt subordinate legislation

- 3.15. As mentioned earlier in this chapter, the committee scrutinised a number of pieces of “exempt subordinate legislation” gazetted during the financial year. Exempt subordinate legislation is subordinate legislation which is not required to be drafted by the Office of Parliamentary Counsel.
- 3.16. The instruments scrutinised overwhelmingly consisted of statutes made by university governing bodies.
- 3.17. Regrettably, the committee identified in these instruments a disproportionately large number of matters of potential concern, as regards their compliance with fundamental legislative principles. This phenomenon, in the committee’s view, is a by-product of the lack of drafting input by the Office of Parliamentary Counsel, which possesses considerable expertise in this field. The committee has to date sought to address this underlying problem by advocating the establishment of a system which would provide universities with access to co-ordinated and relevantly skilled drafting facilities, rather than by taking issue with the numerous specific deficiencies it has so far identified. The committee proposes to report to Parliament on this matter in the near future.

Impact of the committee’s role in relation to subordinate legislation

- 3.18. As mentioned earlier, the committee’s *modus operandi* is to raise with the minister responsible for particular subordinate legislation any concerns it may have about that legislation. If the matters are not resolved, the committee has the option of initiating a disallowance motion and/or reporting its concerns to Parliament.
- 3.19. During the 1998-1999 financial year, the committee identified and referred to ministers a large number of matters of concern. The table below, which details the results of these references, demonstrates the appreciable influence which the committee had on the subordinate law-making process.
- 3.20. The committee considers it has been to some degree hampered in its scrutiny of subordinate legislation by the lack of accompanying explanatory material.⁵³

⁵¹ For example, *Statutory Instruments Amendment Regulation 1998, Equity and Fair Trading Legislation Amendment Regulation (No. 1) 1999*.

⁵² It is the committee’s experience that issues of validity tend to arise more frequently when the authorising Act is either old or has been frequently amended.

⁵³ This matter is addressed in detail in the following chapter.

THE MANNER IN WHICH THE COMMITTEE'S CONCERNS / QUERIES IN RELATION TO SUBORDINATE LEGISLATION WERE ADDRESSED	%
Ministerial response which overcame the committee's concerns	32.6
Ministerial undertakings to amend provisions queried by the committee	32.6
Matters which ministers responded to but the committee decided not to take action and matters which the committee considered but decided not to call for a response	6.5
Matters which formed part of a committee's report to Parliament	4.3
Matters in relation to which the committee has not finalised its consideration	23.9

Summary of the Committee's Scrutiny of Subordinate Legislation

- 3.21. The committee believes that it plays a vital part in the subordinate law-making process. In scrutinising subordinate legislation for compliance with fundamental legislative principles and for lawfulness, the committee enhances the Executive's accountability in respect of the legislative function Parliament has conferred upon it under a multitude of statutes.
- 3.22. The committee believes the statistics provided in this chapter demonstrate that it has performed this function effectively during the financial year.
- 3.23. The committee is appreciative of the support of its work by ministers, evidenced by their supply of information and their preparedness to introduce amendments which address committee concerns.
- 3.24. Departmental and ministerial staff also play a significant role in providing information to facilitate the scrutiny process. The committee thanks them for their assistance in the 1998 – 1999 financial year.

⁵⁴ Approximate figures only.

4. MONITORING ROLE

Overview

- 4.1. This chapter deals with the committee's performance of its monitoring role.
- 4.2. Under s.22(2) of the *Parliamentary Committees Act 1995*, the committee has the responsibility of monitoring generally the operation of a number of provisions of the *Legislative Standards Act 1992* and the *Statutory Instruments Act 1992*. Two issues arising from the performance of that function during the 1998-1999 financial year are reported on below.

Explanatory Notes

- 4.3. Under the current legislation, the production of explanatory notes is only required in respect of subordinate legislation if that subordinate legislation is "significant".⁵⁵ "Significant subordinate legislation" is in turn defined as subordinate legislation for which a regulatory impact statement must be prepared under the *Statutory Instruments Act*.⁵⁶
- 4.4. Explanatory notes are prepared with respect to only a small proportion of subordinate legislation. As the statutory requirement to prepare explanatory notes is tied to the obligation to prepare regulatory impact statements, this is a direct result of the infrequency with which the latter are produced (as to which, see below).
- 4.5. The committee has previously maintained that substantial benefits flow from the provision of explanatory material with all subordinate legislation,⁵⁷ and has advocated a legislative amendment to require this.⁵⁸
- 4.6. This issue has recently assumed added significance for the committee, with the termination of the previous administrative arrangement under which many departments voluntarily supplied the committee with a copy of the explanatory memorandum prepared for Executive Council in relation to proposed subordinate legislation. In advising the committee of his decision to terminate the arrangement, the Premier cited difficulties arising from the general confidentiality of such documents.
- 4.7. Whilst acknowledging the legitimacy of the Premier's concerns in relation to these memoranda, the committee considers those concerns would be addressed and the needs of the committee met, by the provision of an alternative form of explanatory material.
- 4.8. The committee intends to address this issue as one of a range of matters canvassed in its forthcoming report on explanatory notes.

Regulatory Impact Statements (RIS)

⁵⁵ Section 22(2), *Legislative Standards Act 1992*.

⁵⁶ Section 2, *Legislative Standards Act 1992*.

⁵⁷ See the committee's 1995 - 1996 Annual Report, p. 25.

⁵⁸ See the committee's report, *The Operation of the RIS Process under Part 5 of the Statutory Instruments Act 1992*, April 1998, at p.5.

-
- 4.9. Part 5 of the *Statutory Instruments Act* requires that an RIS be prepared if subordinate legislation “is likely to impose appreciable costs on the community or a part of the community”.⁵⁹
- 4.10. The committee has previously commented adversely on the small number of RISs prepared in Queensland, attributed that situation in part to a restrictive interpretation by the Executive of what is an “appreciable” cost, and made a number of recommendations for statutory and other reform.⁶⁰
- 4.11. Regrettably, the committee’s recommendations have not so far produced any legislative change, and the number of RISs prepared during the 1998-1999 financial year remained low.
- 4.12. The committee notes that the Department of State Development and the Department of the Premier and Cabinet have recently released an Issues Paper and Invitation for Submissions relating to improvements to the RIS process. The committee trusts that this review will result in further consideration being given to the matters raised by it.

⁵⁹ Section 43, *Statutory Instruments Act 1992*.

⁶⁰ See the committee’s report, *The Operation of the RIS Process under Part 5 of the Statutory Instruments Act 1992*, April 1998.

5. COMMITTEE BUSINESS

Reports⁶¹

5.1. In addition to the production of 13 alert digests, the committee tabled the following report during the 1998 - 1999 financial year.⁶²

◆ ***Commissions of Inquiry (Forde Inquiry- Evidence) Regulation 1998***⁶³

5.2. The committee considered the application of the fundamental legislative principles to the *Commissions of Inquiry (Forde Inquiry- Evidence) Regulation* (the regulation). The committee expressed concern that the provisions contained in the regulation were a subject matter more appropriate for legislation. The committee also reported on the fact that the regulation was made under s.5(2A) of the *Commissions of Inquiry Act 1950* which operated to allow “Henry VIII clauses”. The regulation affected the meaning of the secrecy provisions in other Acts and therefore did not “amend statutory instruments only”, as required by s.4(4)(c) of the *Legislative Standards Act 1992*. The committee considered whether the use of a “Henry VIII clause” was justified and examined factors such as urgency and unintended consequences that may flow from legislative changes.

5.3. The committee concluded that there was sufficient regard to the institution of Parliament but that the “Henry VIII clause” included in the *Commissions of Inquiry Act 1950* was objectionable and should be removed.

Meetings and hearings

5.4. During the 1998 - 1999 financial year, the committee regularly met on the Monday of each sitting week to adopt its alert digest to be tabled on the following sitting day and to deal with subordinate legislation and other matters arising since its last meeting. The committee also met in between sitting weeks as required.

5.5. In total the committee had 14 meetings during the 1998 – 1999 financial year, as detailed in Appendix C.

5.6. The committee conducted no hearings during the financial year.

Travel

5.7. In June 1999, the committee chair attended a seminar on the Parliamentary Scrutiny of Treaties, held in Canberra. The seminar, hosted by the Joint Standing Committee on Treaties of the Commonwealth Parliament in conjunction with the Australasian Parliamentary Study Group, addressed issues arising from the impact of international law on Australian law and policy at State, Territory and Commonwealth level.

⁶¹ All of the committee's reports are accessible through the Queensland Parliament's internet homepage (www.parliament.qld.gov.au).

⁶² Also tabled was the committee's *1997-1998 Annual Report* (tabled on 21 October 1998).

⁶³ Tabled on 17 November 1998.

- 5.8. The chair, together with other members of State Parliaments, participated in a session of the seminar devoted to State parliamentary perspectives on the treaty-making process.⁶⁴

⁶⁴ The chair reported to Parliament on 19 July 1999 on her attendance at the seminar.

6. ADMINISTRATIVE MATTERS

Budget and expenditure of the committee

6.1. The budgeted and actual expenditure for the committee in the period 1 July 1998 to 30 June 1999 is set out in the table below:

THE COMMITTEE'S BUDGET AND EXPENDITURE FOR 1 JULY 1998 TO 30 JUNE 1999			
	Actual Expenditure	Annual Budget	Budget Remaining
Salaries ⁶⁵	\$119,262.72	\$181,953.44	\$62,690.72
Superannuation ⁶⁶	\$15,260.10	\$22,143.23	\$6,883.13
Stores & Stationery ⁶⁷	\$416.65	\$700.00	\$283.35
Reference Books/Publications ⁶⁸	\$5,080.40	\$3,850.00	-\$1,230.40
Consultants	\$8,530.00	\$25,000.00	\$16,470.00
Entertainment	\$1,083.85	\$3,600.00	\$2,516.15
Printing	\$20,905.05	\$34,000.00	\$13,094.95
Advertising	\$804.00	\$1,200.00	\$396.00
Contractors	\$6,295.30	\$1,500.00	-\$4,795.30
Miscellaneous	\$247.75	\$1,000.00	\$752.25
Travel ⁶⁹	\$440.30	\$42,600.00	\$42,159.70
TOTAL	\$178,326.12	\$317,546.67	\$139,220.55

⁶⁵ Includes salaries; salaries – temp assistance; overtime; extra remuneration; meal allowance; and payroll tax.

⁶⁶ Includes superannuation GoSuper and Qsuper.

⁶⁷ Includes stores and stationery; postage and freight.

⁶⁸ Includes reference books and publications and serial subscriptions.

⁶⁹ Includes Members' travel to Brisbane; Members' travel outside Brisbane; taxis and fares; and authorised staff committee business travel.

Staffing of the committee**◆ Current committee staff**

6.2. The committee's staff currently consists of one Research Director, one Principal Research Officer and an Executive Assistant. The committee's staff is as follows:

- Mr Chris Garvey (Research Director) – PO6
- Ms Veronica Rogers (Principal Research Officer) – PO4
- Executive Assistant (AO3) – vacant.

6.3. The Executive Assistant position, which became vacant in April 1999, has not been filled pending completion of a trial involving the pooling of Executive Assistants amongst a number of Parliamentary committees.

6.4. The committee also has access to a legally-qualified staff member of the parliamentary Table Office, Ms Sarah Lim, who assists it by performing legal research duties on a part-time basis.

◆ Legal advisers to the committee

6.5. Although not employed as members of staff, the legal advisers to the committee play an important role by providing it with expert legal advice.

6.6. In August 1998 the committee resolved to replace the arrangement under which it had a single Legal Adviser, with one involving the appointment of a Principal Legal Adviser and a panel of four Legal Advisers.

6.7. After advertising extensively for expressions of interest from qualified persons, the committee in March 1999 appointed its existing Legal Adviser, Professor Charles Sampford, as Principal Legal Adviser, and Associate Professors Gerard Carney and Bryan Horrigan, Mr Robert Sibley and Dr Max Spry as Legal Advisers.

6.8. During the course of the 1998-1999 financial year, the committee received expert legal advice from its Principal Legal Adviser and Legal Advisers on issues raised by a number of bills scrutinised by it.

APPENDIX A – TERMS OF REFERENCE

The Scrutiny of Legislation Committee was established on 15 September 1995 by s.4 of the *Parliamentary Committees Act 1995*.

Terms of Reference

22.(1) The Scrutiny of Legislation Committee’s area of responsibility is to consider—

- (a) the application of fundamental legislative principles⁷⁰ to particular Bills and particular subordinate legislation; and
- (b) the lawfulness of particular subordinate legislation;

by examining all Bills and subordinate legislation⁷¹.

(2) The committee’s area of responsibility includes monitoring generally the operation of—

- (a) the following provisions of the *Legislative Standards Act 1992*—
 - section 4 (Meaning of “fundamental legislative principles”)
 - part 4 (Explanatory notes); and
- (b) the following provisions of the *Statutory Instruments Act 1992*—
 - section 9 (Meaning of “subordinate legislation”)
 - part 5 (Guidelines for regulatory impact statements)
 - part 6 (Procedures after making of subordinate legislation)
 - part 7 (Staged automatic expiry of subordinate legislation)
 - part 8 (Forms)
 - part 10 (Transitional).

⁷⁰ “Fundamental legislative principles” are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law (*Legislative Standards Act*, s.4(1)). The principles include requiring that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament.

* **The relevant section is extracted overleaf.**

⁷¹ A member of the Legislative Assembly, including any member of the Scrutiny of Legislation Committee, may give notice of a disallowance motion under the *Statutory Instruments Act*, s.50.

APPENDIX B – MEANING OF "FUNDAMENTAL LEGISLATIVE PRINCIPLES"

- 4.(1)** For the purposes of this Act, "**fundamental legislative principles**" are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.⁷²
- (2)** The principles include requiring that legislation has sufficient regard to–
- (a) rights and liberties of individuals; and
 - (b) the institution of Parliament.
- (3)** Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation–
- (a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (b) is consistent with the principles of natural justice; and
 - (c) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (d) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (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; and
 - (f) provides appropriate protection against self-incrimination; and
 - (g) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
 - (h) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (i) provides for the compulsory acquisition of property only with fair compensation; and
 - (j) has sufficient regard to Aboriginal tradition and Island custom; and
 - (k) is unambiguous and drafted in a sufficiently clear and precise way.
- (4)** Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill–
- (a) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (b) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (c) authorises the amendment of an Act only by another Act.
- (5)** Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation–
- (a) is within the power that, under an Act or subordinate legislation (the "**authorising law**"), allows the subordinate legislation to be made; and
 - (b) is consistent with the policy objectives of the authorising law; and
 - (c) contains only matter appropriate to subordinate legislation; and
 - (d) amends statutory instruments only; and
 - (e) allows the subdelegation of a power delegated by an Act only–
 - (i) in appropriate cases and to appropriate persons; and
 - (ii) if authorised by an Act.

⁷²Under s.7 of the *Legislative Standards Act*, a function of the Office of the Queensland Parliamentary Counsel is to advise on the application of fundamental legislative principles to proposed legislation.

APPENDIX C – MEETING ATTENDANCE RECORD

Date	L. Lavarch	T. Elliott	L. Cunningham	J. Fouras	J. Kingston	P. Wellington
3 Aug 1998	✓	✓	✓	✓	✓	✓
24 Aug 1998	✓	✓	✓	✓	✓	✓
14 Sep 1998	✓	✓	✓	✓	x	✓
19 Oct 1998	✓	x	✓	✓	x	✓
9 Nov 1998	✓	✓	✓	✓	✓	✓
16 Nov 1998	✓	✓	✓	✓	✓	✓
14 Dec 1998	✓	✓	✓	✓	✓	✓
1 Mar 1999	✓	✓	✓	✓	x	✓
8 Mar 1999	✓	✓	x	✓	x	✓
22 Mar 1999	✓	✓	✓	✓	✓	✓
12 Apr 1999	✓	✓	x	✓	x	✓
27 Apr 1999	✓	✓	✓	✓	✓	✓
24 May 1999	✓	✓	✓	✓	✓	✓
7 Jun 1999	✓	✓	✓	✓	x	✓

APPENDIX D – ENDNOTES

- I. Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to rights and liberties of individuals.
- II. Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.
- III. Section 4(3)(a) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights or liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.
- IV. Section 4(3)(b) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with the principles of natural justice.
- V. Section 4(3)(c) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons.
- VI. Section 4(3)(d) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.
- VII. Section 4(3)(e) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation 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.
- VIII. Section 4(3)(f) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation provides appropriate protection against self-incrimination.
- IX. Section 4(3)(g) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not affect rights and liberties, or impose obligations, retrospectively.
- X. Section 4(3)(h) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.
- XI. Section 4(3)(i) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation provides for the compulsory acquisition of property only with fair compensation.
- XII. Section 4(3)(j) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation has sufficient regard to Aboriginal tradition and Island custom.
- XIII. Section 4(3)(k) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is unambiguous and drafted in a sufficiently clear and precise manner.
- XIV. Section 4(4)(a) of the *Legislative Standards Act 1992* provides that whether a bill has sufficient regard to the institution of Parliament depends on whether, for example, the bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.
- XV. Section 4(4)(b) of the *Legislative Standards Act 1992* provides that whether a bill has sufficient regard to the institution of Parliament depends on whether, for example, the bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

-
- XVI. Section 4(4)(c) of the *Legislative Standards Act 1992* provides that whether a bill has sufficient regard to the institution of Parliament depends on whether, for example, the bill authorises the amendment of an Act only by another Act.
- XVII. Section 4(5)(a) of the *Legislative Standards Act 1992* provides that whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation is within the power that (under an Act or subordinate legislation - “the authorising law”) allows the subordinate legislation to be made.
- XVIII. Section 4(5)(b) of the *Legislative Standards Act 1992* provides that whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation is consistent with the policy objectives of the authorising law.
- XIX. Section 4(5)(c) of the *Legislative Standards Act 1992* provides that whether subordinate legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation contains only matter appropriate to subordinate legislation.
- XX. Section 4(5)(d) of the *Legislative Standards Act 1992* provides that whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation amends statutory instruments only.
- XXI. Section 4(5)(e) of the *Legislative Standards Act 1992* provides that whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons and only if authorised by an Act.
- XXII. Section 22(1) of the *Legislative Standards Act 1992* provides that a Minister who presents a bill to the Legislative Assembly must, before the resumption of the second reading debate, circulate to Members an explanatory note for the bill.
- XXIII. Section 22(2) of the *Legislative Standards Act 1992* provides that when significant subordinate legislation is tabled in the Legislative Assembly, it must be accompanied by an explanatory note prepared under the authority of the responsible minister. Section 2 of the *Legislative Standards Act 1992* defines significant subordinate legislation to mean subordinate legislation for which a regulatory impact statement must be prepared under the *Statutory Instruments Act 1992*.
- XXIV. Section 23 of the *Legislative Standards Act 1992* sets out the information required to be included in an explanatory note for a bill. If the explanatory note does not include any of this information, it must state the reason for non-inclusion.
- XXV. Section 24 of the *Legislative Standards Act 1992* sets out the information required to be included in an explanatory note for significant subordinate legislation. If the explanatory note does not include any of this information, it must state the reason for non-inclusion.
- XXVI. Section 34 of the *Statutory Instruments Act 1992* provides that a provision of a statutory instrument that does not adversely affect a person’s rights or liberties may be given retrospective operation if the statutory instrument expressly provides for that operation.
- XXVII. Part 5 of the *Statutory Instruments Act 1992* sets out the guidelines for regulatory impact statements.
- XXVIII. Section 42 of the *Statutory Instruments Act 1992* provides that a regulatory impact statement need not be prepared for significant subordinate legislation if other legislation provides requirements for publication or consultation which are of a comparable level to the publication and consultation required under the RIS process.
- XXIX. Section 43 of the *Statutory Instruments Act 1992* provides that if proposed subordinate legislation is likely to impose appreciable costs on the community or a part of the community, then, before the legislation is made, a regulatory impact statement must be prepared about the legislation.
- XXX. Section 44 of the *Statutory Instruments Act 1992* sets out the information required to be included in a regulatory impact statement.
- XXXI. Section 46 of the *Statutory Instruments Act 1992* sets out the situations in which the preparation of a regulatory impact statement is unnecessary.
-

- xxxii. Section 49 of the *Statutory Instruments Act 1992* provides that subordinate legislation must be tabled in the Legislative Assembly within 14 sitting days after it is notified in the Gazette. If a piece of subordinate legislation is not tabled within this time, it ceases to have effect.
- xxxiii. Part 7 of the *Statutory Instruments Act 1992* provides that subordinate legislation expires on the tenth anniversary of the day it is made unless it is sooner repealed or expires, or a regulation is made exempting it from expiry.
- xxxiv. Other (for example: comments on the regulatory impact statement guidelines; staged automatic expiry; and compulsory acquisition of property.)