



SCRUTINY OF LEGISLATION COMMITTEE

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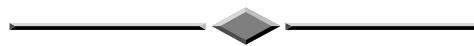
SCRUTINY OF LEGISLATION COMMITTEE
– MEMBERSHIP –

49TH PARLIAMENT, 1ST SESSION

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SECTION A

BILLS REPORTED ON

Note: s.14B of the *Acts Interpretation Act 1954* provides that consideration may be given to “extrinsic material” in the interpretation of a provision of an Act in certain circumstances. The definition of “extrinsic material” provided in that section includes:

... a report of a committee of the Legislative Assembly that was made to the Legislative Assembly before the provision was enacted¹

Matters reported on to Parliament by the Scrutiny of Legislation Committee in its alert digests prior to the enactment² of a provision may therefore be considered as extrinsic material in its interpretation.

¹ Section 14B(3)(c) *Acts Interpretation Act 1954*.

² The date on which an Act receives royal assent (rather than the date of passage of a bill by the Legislative Assembly) s.15 *Acts Interpretation Act 1954*.

SECTION A – BILLS REPORTED ON**1. SCHOOL UNIFORM BILL 1999**

1.1. Mr R J Quinn MLA, Member for Merrimac and Shadow Minister for Education, introduced this bill into the Legislative Assembly on 4 March 1999.

1.2. The object of the bill, as described by the Member in his second reading speech, is as follows:

Mr Speaker, the purpose of this Bill is to ensure that our 1300 state school communities have the legal backing they need to develop and apply their own individual dress codes within an agreed framework, whether or not that involves a student uniform.

Does the legislation have sufficient regard to the rights and liberties of individuals?³**◆ Clause 3**

1.3. Clause 3 inserts into the *Education (General Provisions) Act 1989* a new section (s.26A) which authorises the principal of a state school to make a “dress code” applicable to the school’s students while they are attending or representing the school. The proposed section 26A goes on to provide that the dress code may include provision about the wearing of uniforms by students, and requires prior consultation with staff, parents and students and final approval by the departmental chief executive.

1.4. As indicated by the Member in his second reading speech, proposed section 26A will authorise requirements as to the type of clothing worn by students. These may be limited to a requirement that students be reasonably dressed, but can extend to prescribing a uniform. Depending on how widely one interprets the term “dress” (this question is addressed below) the code may extend to matters such as hairstyles and the wearing of jewellery and body adornments.

1.5. The committee’s general view is that requirements that school students wear clothes of a reasonable standard, or that in addition they wear a prescribed uniform of a reasonable type and price, do not unreasonably intrude upon the rights and liberties of the students or their parents. Reasonable restrictions on other matters such as hairstyles, jewellery and body adornments are considered by the committee to fall into the same category.

1.6. However, whether individual codes made under the bill’s provisions are reasonable would of course depend upon the manner in which the system is administered, and that is not a matter within the committee’s purview.

1.7. Given the circumstances and the nature of “dress codes”, the committee does not object to the fact that the “dress code” is to be instituted by administrative action of the school principal, rather than being incorporated in subordinate legislation.⁴

³ Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to rights and liberties of individuals.

- 1.8. The committee refers to Parliament the question of whether cl.3, in authorising the making of dress codes which compel students to wear specified types of clothing including uniforms, and which may control matters such as hairstyles and the wearing of jewellery and body adornments, has sufficient regard to the rights and liberties of students and their parents.

Is the legislation unambiguous and drafted in a sufficiently clear and precise way?⁵

◆ **Clauses 3 and 4**

“Dress Code”

- 1.9. The term “dress code” in proposed s.26A is not defined. This term clearly encompasses clothing worn by students.
- 1.10. Given the definitions of the word “dress” appearing in general dictionaries, it probably also extends to matters such as hairstyles and the wearing of jewellery and other body adornments.
- 1.11. However, the matter is not free from doubt and the committee accordingly considers the term “dress” or “dress code” should be defined (even if non-exhaustively) in the bill.
- 1.12. It may be that issues such as this are intended to be addressed in regulations made under proposed s.152(2)(ba)(v), which authorises the making of regulations about:
- other matters that may, or may not, be included in a dress code.*
- 1.13. If that were so, the committee would regard that as an inappropriate delegation of legislative power.
- 1.14. The committee’s view is in large part related to the fact that sanctions can be applied to students who do not comply with the dress code (that issue is further addressed below).

“Representation” of school

- 1.15. Under proposed s.26A, the code applies to students while they are “attending” or “representing” the school. The latter term, in the committee’s opinion, may on occasions give rise to interpretational difficulties, given the wide range of school-related activities in which students may participate.

- 1.16. The committee draws to Parliament’s attention the drafting issues mentioned above.
- 1.17. The committee recommends that a definition of “dress” or “dress code” be inserted in the bill.

⁴ The committee has on several previous occasions objected to administratively-generated codes and guidelines. See Alert Digest No.5 of 1996, page 18, paragraphs 5.6 to 5.11, Alert Digest No 6 of 1998, at pages 21 to 23, paragraphs 6.13 to 6.22.

⁵ 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.

Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?⁶**◆ Clause 4**Definition of “dress code”

- 1.18. Clause 4 amends current s.152 to enable regulations to be made about a range of matters relating to the s.26A “dress code”.
- 1.19. As mentioned above, the committee considers that the term “dress” or “dress code” should be defined in the Act itself and, if this question is intended to be primarily elucidated by regulations made under proposed s.152(2)(ba)(v), would regard that as an inappropriate delegation of legislative power.

Sanctions for contravention

- 1.20. Proposed s.152(2)(ba)(iv) provides that regulations may prescribe:

sanctions that may be applied for contravening a dress code.

- 1.21. Although the making of dress codes is subject to a number of procedural requirements (in particular, community consultation and chief executive approval) the committee is concerned by the delegation of such an important matter, in its entirety, to the regulation-making process.

- 1.22. The Member states in his second reading speech:

This Bill does not propose, and the Coalition does not support, heavy-handed compliance measures which would compromise students’ fundamental right to a formal education.

In fact, this Bill does not provide for any sanctions other than those which are to be agreed through proper consultation with our school communities and key education stakeholders.

- 1.23. However, the committee notes that the Member’s speech also contains the following paragraph:

The alternative strategy announced yesterday by the Minister for Education is not entirely without merit, but the Coalition believes it fails to address the central issue of compliance.

- 1.24. Whatever the Member’s expectations may be, the bill as presently drafted permits regulations to be made prescribing a wide range of possible sanctions, probably including exclusion from class, suspension or expulsion.
- 1.25. In the circumstances, the committee considers it essential that the range of sanctions which may be visited upon a student not complying with a s.26A dress code be stipulated in the Act itself, rather than being left to regulations.

⁶ 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.

1.26. The committee notes that current s.28 (suspension of student) and s.33 (exclusion of student) may both be invoked against a student guilty of, amongst other things, “disobedience”. Presumably these provisions are intended to be ousted in relation to contravention of a s.26A dress code, but the committee believes this should be expressly stated.

1.27. The committee recommends that the bill be amended to incorporate a definition of the terms “dress” or “dress code”.

1.28. The committee considers that proposed s.152(2)(ba)(iv), in providing that the sanctions which may be applied for contravention of a dress code may be stipulated entirely by regulation, is an inappropriate delegation of legislative power.

1.29. The committee recommends that the Member amend the bill so that the list of possible sanctions is stipulated in the bill itself.

Does the legislation make individual rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?⁷

◆ **Clauses 3 and 4**

1.30. The committee notes that there is no express reference in the bill to any mode of review of the imposition of a dress code, by students or parents unhappy with its contents. The committee notes, by way of contrast, that under the Part 4 provisions (good order and management of State educational institutions) certain review processes are provided.

1.31. A person aggrieved by a dress code would, of course, have access to the judicial review process. However, if non-compliance with a dress code is ultimately to involve substantive sanctions against students (suspension, exclusion or expulsion) then the committee would consider some form of merits review should be provided.

1.32. The committee recommends that the bill be amended to incorporate a merits review process for persons aggrieved by the contents of a dress code made under cl.3.

Has an explanatory note been prepared?⁸

⁷ 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.

⁸ 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.

- 1.33. Section 22(1) of the *Legislative Standards Act* presently limits the obligation to provide an explanatory note to bills which are presented by a Minister. They are accordingly not required for private members bills.
- 1.34. The *Statute Law (Miscellaneous Provisions) Bill 1998* proposed extending that obligation to all bills presented to the Legislative Assembly. The *Statute Law (Miscellaneous Provisions) Bill* was not enacted before Parliament was dissolved in May 1998, and accordingly lapsed.
- 1.35. The issues relating to explanatory notes for private member's bills have been canvassed by the committee in a number of previous Alert Digests⁹. The committee refers readers to the comments which it made on those occasions.

- 1.36. The absence of explanatory notes can render the committee's task of scrutinising bills more difficult.
- 1.37. Accordingly, the committee reiterates the views which it has previously expressed concerning the desirability of extending the obligation to produce explanatory notes to all bills.

⁹ Alert Digest No. 1 of 1998 at pp.25–26, Alert Digest No. 2 of 1998 at pp.85–86, Alert Digest No. 2 of 1998 at pp.65–66 and Alert Digest No. 6 of 1998 at p.19.

SECTION B

COMMITTEE RESPONSE TO MINISTERIAL CORRESPONDENCE

Note: s.14B of the *Acts Interpretation Act 1954* provides that consideration may be given to “extrinsic material” in the interpretation of a provision of an Act in certain circumstances. The definition of “extrinsic material” provided in that section includes:

*... a report of a committee of the Legislative Assembly that was made to the Legislative Assembly before the provision was enacted*¹⁰

Matters reported on to Parliament by the Scrutiny of Legislation Committee in its alert digests prior to the enactment¹¹ of a provision may therefore be considered as extrinsic material in its interpretation.

¹⁰ Section 14B(3)(c) *Acts Interpretation Act 1954*.

¹¹ The date on which an Act receives royal assent (rather than the date of passage of a bill by the Legislative Assembly) s.15 *Acts Interpretation Act 1954*.

SECTION B – COMMITTEE RESPONSE TO MINISTERIAL CORRESPONDENCE

2. CHILD PROTECTION BILL 1998

Background

- 2.1. The Honourable A M Bligh MLA, Minister for Families, Youth and Community Care and Minister for Disability Services, introduced this bill into the Legislative Assembly on 10 November 1998. As at the date of publication of this digest, the bill had not been passed.
- 2.2. The committee commented on this bill in its Alert Digest No. 11 of 1998 at pages 1–13. The Minister’s response to those comments was reported upon by the committee in its Alert Digest No. 1 of 1999 at pp.33–43.
- 2.3. In relation to one matter, the committee sought further clarification from the Minister. The Minister’s response to that request for further clarification is referred in part below and in reproduced in full in Appendix A to this digest.

Is the legislation unambiguous and drafted in a sufficiently clear and precise way?¹²

◆ Clause 9(3) (“harm”)

- 2.4. The committee, in its original report, had considered the definition and had recommended that the Minister consider amending cl.9 to define either “harm” or “child in need of protection” with more precision. The Minister’s response referred to examples of “unavoidable accidents and life circumstances”.
- 2.5. In its comments on the Minister’s response, the committee noted that the examples given were “playground accidents, road trauma and childhood illnesses”. The committee sought clarification from the Minister as to the position of parents where the harm to the child arose in circumstances such as incest or rape committed by a family friend/member or other person associated with the parents in circumstances where the parents had no forewarning that the incident/s might occur.
- 2.6. In her latest response, the Minister advises as follows:

The committee

- *notes the examples of “unavoidable accidents and life circumstances” given by the Minister are playground accidents, road trauma and childhood illnesses; and*
- *seeks clarification from the Minister as to the position of parents where the harm to the child arises in circumstances such as incest or rape committed by a family friend/member or*

¹² 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.

- *other person associated with the parents in circumstances where the parents had no forewarning that the incident/s may occur.*

Response:

If a child is harmed by a person other than a parent, in circumstances which could not have been foreseen by the parent, the application of the Child Protection Bill will depend upon the parents' response to the matter. In particular, the question of whether the parents are "able and willing to protect the child" from the source of the harm is relevant.

If parents are taking no action in response to the matter, and a risk of recurrent harm exists, then action under the Child Protection Bill to protect the child may be appropriate.

In the majority of such cases, however, parents will take whatever action is necessary to ensure that there is not a recurrence of the abuse of the child. Because the parents can and will protect their child (possibly with assistance from various authorities, such as the Police) there is no justification for the State to take action under the Child Protection Bill to protect the child.

For a child to be made subject to a child protection order, the court must determine:

- *"that the child is a child in need of protection", ie that the child "does not have a parent able and willing to protect the child from the harm". A court would not make such a finding if the parents were able to provide ongoing protection for the child; and*
- *that the order is "appropriate and desirable for the child's protection". A court could not find it "appropriate and desirable" to make an order which curtailed parents' rights in relation to the child, if the circumstance were that the parents did not cause or contribute to the harm and will take action to guard against any risk of it happening in the future.*

2.7. The committee notes the Minister's comments and thanks her for this information.

3. REVENUE AND OTHER LEGISLATION AMENDMENT BILL 1998**Background**

- 3.1. The Honourable D J Hamill MLA, Treasurer, introduced this bill into the Legislative Assembly on 19 November 1998. As at the date of publication of this digest, the bill had not been passed.
- 3.2. The committee commented on this bill in its Alert Digest No. 1 of 1999 at pages 18–25. The Treasurer's response to those comments is referred to in part below and reproduced in full in Appendix A to this digest.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?¹³**◆ Clauses 2, 7-9, 12, 14, 15, 17, 18-20 (proposed amendment of *Fuel Subsidy Act 1997*)**

- 3.3. Although most of the provisions of Part 3 of the bill are retrospective, the committee was satisfied that with the exception of cl.71 the changes are entirely beneficial to persons other than the State.
- 3.4. The committee had some concerns in relation to the retrospective aspect of cl.17. However, the committee noted that all fuel sale contracts, including the additional ones caught by the amendment, may have been conducted on the basis of the law contained in the current bill during the period of proposed retrospectivity. The committee requested information from the Treasurer as to whether this is in fact the case. The Treasurer provided the following response:

The Fuel Subsidy Act 1997 requires any person selling fuel to an eligible person to sell at a price exclusive of the Commonwealth fuel surcharge. That seller may then claim from the State a subsidy equal to the surcharge. Fuel distributors could have been financially disadvantaged by these arrangements through paying the full cost of fuel purchased by them while having to claim part of the sale price of that fuel from the State.

In consultation with industry in developing the fuel subsidy scheme, it was agreed that the legislation should imply terms in contracts between manufacturers and importers with distributors which ensure that the amount of the sale price equal to the surcharge is not payable to the supplier until the subsidy is payable by the State to the distributor. Section 108 of the Fuel Subsidy Act 1997 does not, however, apply to sales by distributors to sub-distributors.

To have delayed extension of the implied terms to contracts between distributors and sub-distributors would have been inequitable and financially detrimental for sub-distributors. Therefore, following representations by industry, an administrative arrangement was implemented on 22 December 1997 to place all fuel distributors on the same footing in

¹³ 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.

relation to the subsidy scheme. These arrangements were communicated to, and accepted by, industry and are identical to those already in place for manufacturers and importers selling to distributors.

3.5. The committee notes the Treasurer's comments.

Is the legislation unambiguous and drafted in a sufficiently clear and precise way?¹⁴

◆ Clause 22 (proposed amendment of *Land Tax Act 1915*)

- 3.6. Clause 22 inserts a provision which provides that “the commissioner may ask a police officer to perform a function under, and only under section 17B or 45”.
- 3.7. The committee expressed some concerns about the application of cl.22 to the existing s.45 of the Act, which relates to the power to obtain evidence, and sought information from the Minister as to the precise nature of the functions under s.45 which, pursuant to cl.22, are intended to be performed by police officers.
- 3.8. Further, the committee considered that proposed s.4AB should be amended to specifically identify the s.45 functions which police officers may be asked to perform. The Treasurer provided the following information:

Section 4 of the Land Tax Regulation 1936 contemplates that the Commissioner may authorise a police officer to obtain evidence on the Commissioner's behalf pursuant to section 45 of the Land Tax Act 1915. As part of the rewrite of the Regulation, this section is now to be incorporated in the Act as section 4AB. It is envisaged that police assistance may be sought under that section to serve a notice or to have a police officer present during an interview if there was a perceived risk of violence.

Clause 22 of the Revenue and Other Legislation Amendment Bill 1998 provides that the Commissioner may ask a police officer to perform a function under section 45. In that regard, the functions that may be performed under section 45 are to serve a notice, receive documents, question persons and administer an oath. The Land Tax Act 1915 does not contemplate that the Commissioner (or any officer performing a function under section 45) may physically compel a person to attend and give evidence. On that basis, it is considered that the functions which may be performed by a police officer for the purposes of section 45 of the Act are sufficiently clear from, and limited by, section 45.

3.9. The committee thanks the Treasurer for clarifying this issue.

Does the legislation have sufficient regard to the rights and liberties of individuals?¹⁵

¹⁴ 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.

◆ **Clause 47 (proposed amendment of *Stamp Act 1894*)**

- 3.10. Proposed s.88 will operate to exempt from stamp duty a named group of Exchanging Instalment Notes. The committee noted that it appears that the effect of proposed s.88 will be to exempt a specific group of shareholders from the obligation to pay stamp duty on transfers of their shares, whilst not exempting other shareholders from this obligation. The Treasurer provided the following response:

As noted by the Committee, the relevant provision is intended to give effect to a commitment made by the Government when it offered the Suncorp-Metway Exchanging Instalment Notes Series 2 to the public in October 1998.

As the on-market transfer of these Notes would have been liable for stamp duty if traded through a Queensland broker but not if traded through a New South Wales or Victorian broker, Queensland brokers would have been disadvantaged, particularly given the ease with which investors are able to trade marketable securities through interstate brokers. The Government therefore made a policy decision to exempt the on-market transfers of these Notes.

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| 3.11. The committee notes the Treasurer's comments. |
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¹⁵ Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to rights and liberties of individuals.

4. WEAPONS AMENDMENT BILL 1998

Background

- 4.1. Mr W P Feldman MLA, Member for Caboolture, introduced this private member's bill into the Legislative Assembly on 11 November 1998. As at the date of publication of this digest, the bill had not been passed.
- 4.2. The committee commented on this bill in its Alert Digest No. 1 of 1999 at pages 26–31. The Member's response to those comments is referred to in part below and reproduced in full in Appendix A to this digest.

Does the legislation have sufficient regard to the rights and liberties of individuals?¹⁶

◆ Clause 7

Doctor or psychologist's opinion

- 4.3. Under the provisions of the *Weapons Act 1990* a doctor or psychologist may inform the commissioner if the doctor or psychologist is of the opinion that a patient is an unsuitable person to possess a firearm, for reasons outlined in the *Weapons Act*.
- 4.4. The committee noted that under the provisions of the bill the opinion of a single doctor or psychologist that a person is an unsuitable person to possess a firearm will automatically prevent a person from holding a licence or possessing a weapon.
- 4.5. This is in contrast to the current situation where the doctor or psychologist's opinion is a matter which the authorised person must simply take into account, and which could be further investigated.
- 4.6. The committee commented that it could be argued that the conclusive effect which the bill gives to the opinion of a single doctor or psychologist represents an unreasonable intrusion upon the rights and liberties of the licence applicant, and referred the question to Parliament.
- 4.7. Mr Feldman MLA provided the following response:

The Committee is concerned that the opinion of one doctor or psychologist may preclude a person from holding a firearm license. Under this Bill, a single doctor or psychologist may also pronounce the person to be fit and proper. I also make the point that many government departments, both state and federal, base their decisions upon a single medical opinion.

I believe that this is a necessary compromise between the rights and liberties of the applicant and the obvious necessity of preventing any unsuitable persons from holding a firearm license.

¹⁶ Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to rights and liberties of individuals.

4.8. The committee notes the Member's comments. The committee reiterates its earlier comments in relation to this issue.

Establishment of a prohibited persons register

4.9. The bill establishes a prohibited persons register on which must be entered the names of various categories of persons who are deemed under the bill's provisions not to be fit and proper persons to hold a licence or possess a weapon.

4.10. The committee noted relevant confidentiality provisions. However, it concluded that the establishment of a formal register is itself intrusive upon the privacy of the "prohibited persons" and referred to Parliament the question of whether the provisions have sufficient regard to the rights and liberties of "prohibited persons".

4.11. Mr Feldman MLA provided the following response:

The Committee is concerned that the establishment of a prohibited persons register is detrimental to the rights and liberties of persons on the list. Many such databases exist throughout government both federal and state. Again, I believe that this is a necessary compromise between the rights and liberties of unsuitable persons, and the obvious necessity of preventing any unsuitable persons from holding a firearm license.

Martin Bryant, who had a documented history of mental illness, would not have been able to legally buy a gun under the provisions of this Bill. I believe that the public support the concept of a prohibited persons register.

4.12. The committee notes the Member's comments.

Previous conviction of an indictable offence

4.13. Under the bill a person who has committed an indictable offence in Queensland or anywhere would be disqualified from holding or possessing a weapon. This is in contrast to the present provisions which only impose such a disqualification where the indictable offence involved misuse of drugs, violence or weapons, and was committed within the last 5 years.

4.14. The committee referred to Parliament the question of whether cl.7, in automatically barring persons convicted of indictable offences from holding a licence or possessing weapons, has sufficient regard to the rights and liberties of such persons. Mr Feldman provided the following response:

The Committee is concerned that under the provision of this Bill, a person convicted of an indictable offence is banned for life from obtaining a firearm license. I maintain that a person convicted of an indictable offence has forfeited the privilege of possessing a firearm license just as they have forfeited their rights to most government jobs including the police service, the taxation department, teaching, and the armed services.

4.15. The committee notes the Member's comments.

Is the legislation unambiguous and drafted in a sufficiently clear and precise way?¹⁷**◆ Clause 8**

- 4.16. Currently the Act provides that a licence may only be issued to a person if the person has a reason to possess the weapon or category of weapon. Section 11 lists the “reasons” which are acceptable under the Act.
- 4.17. The bill inserts an additional reason of “defence of a person or the person’s family in the person’s place of residence”.
- 4.18. The committee considered that the provision was open to several interpretations, and sought information from the member as to the intended scope of cl.8. Mr Feldman provided the following information:

Yes, virtually anyone could apply for a firearm license under this Bill, as anyone can apply for a license now. Under the present Act, providing they meet all requirements, a person who wants to obtain a rifle for self defence only has to join a shooting club such as the Sporting Shooters Association. In other words, a person can pay a \$50 membership fee per year and keep a rifle in the home for self-defence and participate at the minimum requirement of any club activities. We recognise that the obligation to join a club in order to get a license is largely pointless.

(Clause 8(da)) must not be misconstrued as a license to carry a firearm for the purpose of self-defence. This only applies to protection in the home.

- 4.19. The committee thanks the Member for clarifying the intended effect of cl.8.

Does the legislation have sufficient regard to the rights and liberties of individuals?¹⁸**◆ Clauses 9 and 23**

- 4.20. The bill removes the present 5 year maximum term for firearms licences, and replaces it with indefinite terms. The committee referred to Parliament the question of whether cl.9 has sufficient regard to the rights and liberties of the general public.
- 4.21. Mr Feldman provided the following response:

This Bill provides for the issue of lifetime licenses subject or course, to good behaviour, as was recently the practice in Queensland. As the issue of lifetime licenses, subject to good behaviour, did not infringe upon the rights and liberties of the general public in 1990, I cannot see how it would do so now. I respectfully remind the Committee that the Weapons Act 1990 was introduced by the then Police Minister Terry Mackenroth MLA.

¹⁷ 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.

¹⁸ Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to rights and liberties of individuals.

4.22. The committee notes the Member's comments.

4.23. The committee reiterates the point, which it has made on several previous occasions, that it is in no way bound to support new legislation merely because it follows earlier precedents. Indeed the legislation to which the Member refers was enacted before the establishment of this committee and was not subject to scrutiny by it.

◆ **Clause 15**

4.24. The committee noted that the bill expressly restricts the range of persons to whom the commissioner can release the full range of information contained in the register, and expressed concern that this may inhibit the commissioner's capacity to assist in preventing instances of firearms misuse, with a consequent adverse impact on the rights of the general community. Mr Feldman responded as follows:

This Bill clearly and unequivocally allows the Commissioner to release any information to the chief executive of the police force of the Commonwealth or another state for the detection or prevention of crime.

There is no other justifiable reason to release any information, other than information of a statistical nature.

4.25. The committee notes the Member's comments.

◆ **Clause 21**

4.26. The bill provides that a doctor or psychologist must inform the commissioner, and give the commissioner relevant information, if the doctor or psychologist is of the opinion that a patient is an unsuitable person to possess a firearm because of the patient's mental or physical condition, or because the patient may be a danger to the patient or another person.

4.27. This is in contrast with the current position, where the question of whether to notify the commissioner is a matter of discretion for the doctor or psychologist.

4.28. The committee referred to Parliament the question of whether cl.21 has sufficient regard to the rights and liberties of the patients concerned. Mr Feldman provided the following additional information:

This Bill obligates a medical practitioner to notify the Commissioner of a condition under section 151. Doctor patient confidentiality is regularly breached under many other Acts. For example, The Health Act obligates the reporting of notifiable conditions such as AIDS, TB, gun shot wounds, etc. The Traffic Act requires the reporting of conditions which would prevent the obtaining of a drivers license.

I believe the public will support the concept of mandatory reporting to the Commissioner in the interests of public safety, and I refer again to the case of Martin Bryant, who would not get a license under this Bill. Doctors may even owe a duty of care to the public and to potential victims, to report homicidal or suicidal tendencies in a patient.

4.29. The committee notes the Member's comments and can confirm that the *Health Act 1937* requires medical practitioners to inform authorities where a patient suffers from any "notifiable disease". Also, the *Medical Act 1939* deems medical practitioners to be guilty of misconduct if they fail to notify police of the fact that a patient is suffering from gunshot wounds, or other wounds and injuries not apparently accidentally inflicted. However, the committee has been unable to identify the provision of the *Traffic Act 1962* to which the member refers.

◆ **Clause 22**

4.30. Clause 22 has the affect of imposing a general confidentiality obligations in relation to information gained in the administration of the *Weapons Act* or consequentially.

4.31. The committee referred to Parliament the question of whether the confidentiality provisions inserted by cl.22 have sufficient regard to the rights and liberties of all parties, including weapons owners and the general public. Mr Feldman provided the following further information:

Section 36 of the Act is amended by this Bill to allow licensed owners to trade firearms among themselves without using a dealer as an intermediary, as was previously the case in Queensland. The intention of clause 22 is to impose an obligation of confidentiality on persons who collect information in the course of buying or selling firearms. For example, if a person cites or copies another person's license in the act of buying or selling a firearm, that information cannot be disclosed for an illegal purpose.

4.32. The committee notes the Member's further comments.

Has an explanatory note been prepared?¹⁹

4.33. The committee reiterated its previously expressed views concerning the desirability of extending the obligation to produce explanatory notes to all bills.

4.34. Mr Feldman responded as follows:

I agree with your recommendation that all Bills should have a prepared explanatory note, and I will endeavour to comply with this request in future. I hope I have adequately addressed the concerns of the Committee.

4.35. The committee thanks the Member for his comments.



¹⁹ 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.

This concludes the Scrutiny of Legislation Committee's 2nd report to Parliament in 1999.

The committee wishes to thank all departmental officers and Ministerial staff for their assistance in providing information to the committee office on bills dealt with in this digest.

Linda Lavarch MLA
Chair

8 March 1999

– APPENDICES –

- Appendix A – Ministerial Correspondence
- Appendix B – Terms of Reference
- Appendix C – Meaning of “Fundamental
Legislative Principles”
- Appendix D – Table of bills recently considered

APPENDIX A - MINISTERIAL CORRESPONDENCE

APPENDIX B – 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 principles²⁰ to particular Bills and particular subordinate legislation; and
- (b) the lawfulness of particular subordinate legislation;

by examining all Bills and subordinate legislation²¹.

(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).

²⁰ “Fundamental legislative principles” are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law (*Legislative Standards Act 1992*, 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.

²¹ 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 1992*, s.50.

APPENDIX C - 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.²²
- (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.

²² Under section 7, a function of the Office of the Queensland Parliamentary Counsel is to advise on the application of fundamental legislative principles to proposed legislation.

APPENDIX D – TABLE OF BILLS RECENTLY CONSIDERED

BILL (SHORT TITLE)	DATE INTRODUCED /PASSED	CLAUSE/ SECTION	PRINCIPLE ARISING	MINISTERIAL RESPONSE	AD No.
Child Protection Bill 1998 Bill no. 30	10 November 1998 not yet passed	◆ cl.9(3)	◆ Is the legislation unambiguous and drafted in a sufficiently clear and precise way?	◆ Information provided	11 of 1998 and 1 & 2 of 1999
Revenue and Other Legislation Amendment Bill 1998 Bill no. 39	19 November 1998 not yet passed	◆ cls.2, 3-6, 7-9, 12, 14, 15, 17, 18-20 & 47 ◆ cl.22 ◆ cls.31,34 & 46 ◆ cl.47	◆ Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively? ◆ Is the legislation unambiguous and drafted in a sufficiently clear and precise way? ◆ Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons? ◆ Does the legislation have sufficient regard to the rights and liberties of individuals?	◆ Information provided ◆ Information provided ◆ Information provided ◆ Information provided	1 & 2 of 1999
School Uniform Bill 1999 ²³ Bill no. 2	4 March 1999 not yet passed	◆ cl.3 ◆ cls.3 & 4 ◆ cl.4 ◆ cls.3 & 4	◆ Does the legislation have sufficient regard to the rights and liberties of individuals? ◆ Is the legislation unambiguous and drafted in a sufficiently clear and precise way? ◆ Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons? ◆ Does the legislation make individual rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?		

²³

Private Member's Bill

BILL (SHORT TITLE)	DATE INTRODUCED /PASSED	CLAUSE/ SECTION	PRINCIPLE ARISING	MINISTERIAL RESPONSE	AD No.
		◆ general	◆ Has an explanatory note been prepared?		
Weapons Amendment Bill 1998 ²⁴ Bill no. 35	11 November 1998 not yet passed	◆ cls.7, 9, 15, 21, 22 & 23 ◆ cl.8 ◆ general	◆ Does the legislation have sufficient regard to the rights and liberties of individuals? ◆ Is the legislation unambiguous and drafted in a sufficiently clear and precise way? ◆ Has an explanatory note been prepared?	◆ Information provided ◆ Information provided ◆ Information provided	1 & 2 of 1999