SCRUTINY OF LEGISLATION COMMITTEE

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SCRUTINY OF LEGISLATION COMMITTEE
– MEMBERSHIP –

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Chair:	Mrs Linda Lavarch MLA, Member for Kurwongbah
Deputy Chair:	Mr Tony Elliott MLA, Member for Cunningham
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	Dr John Kingston MLA, Member for Maryborough
	Mr Peter Wellington MLA, Member for Nicklin

Committee Staff:	Mr Christopher Garvey, Research Director
	Ms Veronica Rogers, Principal Research Officer
	Senior Research Officer – vacant
	Ms Maree Lane, Executive Assistant

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

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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 enacted*[1]

Matters reported on to Parliament by the Scrutiny of Legislation Committee in its alert digests prior to the enactment[2] of a provision may therefore be considered as extrinsic material in its interpretation.

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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. COMMUNITY-BASED REFERENDUM BILL 1999

Background

1.1. Mr W P Feldman MLA, Member for Caboolture and Parliamentary Leader of the One Nation Party, introduced this private member's bill into the Legislative Assembly on 9 March 1999.

1.2. The bill's long title describes it as a bill for an Act to:

> *enable the people of Queensland to initiate and vote on legislative proposals.*

Overview of the bill

1.3. The bill is closely related to the Citizens' Initiated Referendum (Constitution Amendment) Bill 1998 ("the CIR bill"), on which the committee reported in Alert Digest No. 7 of 1998 at pp.11–19.

1.4. The current bill is longer and contains substantially more detail than the CIR bill. However, it shares with it the following major characteristics:

1. it establishes a law-making process which is additional to, and separate from, the traditional Parliamentary process

2. this process commences with the registration of a legislative proposal, sponsored by members of the community

3. a stipulated level of community support (evidenced by the signatures of a prescribed percentage of the Queensland voting population) must then be obtained within a 12-month period, failing which the proposal lapses

4. if the prescribed level of community support is obtained, the legislative proposal (drafted in the form of a bill) must then be submitted to a referendum of Queensland voters

5. if passed by a majority of voters in a majority of electorates, the proposed law must be presented to the Governor for assent

6. the *Constitution Act 1867* is to be amended to stipulate the new process as one of the means by which legislation may be made in Queensland

7. the *Constitution Act 1867* is to be further amended so as to "entrench" the new process (in other words, to require that any later parliamentary legislation to amend or terminate the process be first endorsed at a referendum).

1.5. The differences of substance between the current bill and the CIR bill are:

8. the current bill does not attempt to restrict Parliament's power to amend a CIR law (the CIR bill purported to preclude amendments to CIR laws for 12 months after their enactment).

9. the current bill requires that the Premier advise the Governor to assent to a CIR proposed law, whereas the CIR bill provided that the Governor was not bound to consider the advice of his or her Ministers and should instead consider the will of the electors as expressed at the (preceding) referendum about the proposed law.

1.6. The principal common features of, and differences between, the current bill and the CIR bill will be discussed below. Given that a very large number of the issues raised by the current bill were dealt with in the committee's report on the CIR bill, that report will be extensively referred to.

1.7. For convenience, the legislative process established by the current bill, will be referred to as the "CIR process", and laws proposed or made under it as "CIR bills" and "CIR laws" respectively.

Does the legislation have sufficient regard to the institution of Parliament?[3]

The bill provides for a procedure of law-making by citizen initiated referenda which completely by-passes the Parliament

1.8. In its earlier report the committee dealt at length with this issue, noting that it introduced a fundamental change to the constitutional system in this State.

1.9. The committee noted that the establishment of a CIR law-making process would mean that Parliament is no longer the ultimate repository of the sovereign power of the people. The committee referred to various possible consequences of the establishment of such a system, including its impact on the interests of minorities and the role of parliamentarians.

1.10. The committee also commented on the constitutional validity of such a system, noting that the issue had not been decided in Australia and that there was only one direct overseas authority, a 1919 decision of the Privy Council. The committee referred to the argument that the establishment of a CIR system constitutes an abdication by Parliament of part of its legislative power. However, it was noted that where Parliament retains the capacity to revoke the impugned law, the better view was that there is no abdication of power.

1.11. The committee also was of the view that the proposed "entrenchment" of the CIR process was probably not an abdication of power, since Parliament retained the capacity to repeal the CIR procedure with the approval of the people at a referendum.

1.12. Overall, the committee considered that the Queensland Parliament did have the legislative power to enact a system which allowed for laws by referendum of the people, followed by royal assent.

The bill purports to "entrench" the CIR process

1.13. As mentioned above, the committee in considering the CIR bill was of the view that "entrenchment" of the CIR process was probably constitutionally valid, given that

[3] Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

Parliament would retain the capacity to repeal the CIR process with the approval of the people at a referendum.

1.14. The current bill purports to entrench the process, or at least several stipulated elements of it (see cl.63 (proposed s.53A)).

1.15. The bill not only amends the *Constitution Act 1867* to insert an "entrenching" provision (contained in new s.53A) but proposes an amendment to s.53(1) to include s.53A in the list of sections of the Constitution which s.53 says cannot be "in any way affect(ed)" by a bill unless approved by a referendum.

1.16. Given that the referendum process stipulated in existing s.53(4) requires only "a majority of the electors voting", whilst proposed s.53A requires that the bill "has been first approved at a referendum under the *Community-Based Referendum Act 1999*", which in turn requires a majority of voters in a majority of electorates, the committee queries whether it is appropriate to include proposed s.53A amongst the sections mentioned in s.53.

1.17. The matter is further complicated by the fact that, whilst other sections referred to in s.53A effectively prohibit any change to those sections without a referendum, proposed s.53A limits the "entrenched" provisions to only certain parts of the *Community-Based Referendums Act 1999* (which provision is the subject of proposed s.53A).

The bill requires the Premier to advise the Governor to assent to a CIR bill approved at a referendum

1.18. This requirement is imposed by cl.32(9).

1.19. The CIR bill also required CIR bills approved at a referendum to be presented to the Governor for the royal assent. The CIR bill stipulated that:

> *In the exercise of the Governor's discretion whether to give the royal assent, the Governor is under no obligation to consider the advice of his or her Ministers, but instead should give full consideration to the will of the electors as expressed in the referendum.*

1.20. The committee commented on this provision in paras. 3.38 and 3.39 of its report, and expressed reservations about the process relating to assent.

1.21. The current bill differs from the CIR bill in that, in relation to the presentation of a CIR bill to the Governor for royal assent, it simply provides that:

> *the Premier must, within 14 days after the presentation, advise the Governor to assent to the law.*

1.22. There are precedents for legislation which requires that, in certain circumstances, the Governor in Council must make a regulation.[4] On the other hand, a provision requiring the Premier to advise the Governor to assent to a bill is to the committee's knowledge quite novel.

[4] See, for example, *Local Government Act 1993*, ss.95,96,104 and 111 (implementation of reviewable local government matters).

1.23. The committee in its earlier report expressed various reservations about the "royal assent" provision in the CIR bill (see paras. 3.38–3.39 of Alert Digest No. 7 of 1998).

1.24. However, the committee is satisfied that cl.32(9) appears constitutionally valid. Moreover, if the current bill is enacted by the Parliament, cl.32(9) would serve the beneficial purpose of avoiding conflict between a Premier's advice and the will of the people as expressed at the preceding referendum about the proposed law.

1.25. The restriction which the bill places upon the Premier affects the Executive government, and not the institution of Parliament.

The bill does not preclude Parliament from changing a CIR law

1.26. The CIR bill contained a provision which would have deprived Parliament of the power to amend or repeal any CIR law for a period of 12 months. The committee noted that this would introduce a significant new restriction on legislative power, with both constitutional and practical implications.

1.27. The committee expressed the view that this provision was likely to be ineffective or invalid if enacted.

1.28. The committee notes that the current bill does not contain a provision of this type.

The bill does not expressly contemplate its submission to a referendum if it is passed by the Legislative Assembly, before receiving royal assent

1.29. In its report on the CIR bill, the committee referred to the fact that although the second reading speech of the member sponsoring the bill (Mr P W Wellington, MLA) referred to the submission of the bill to a referendum, it was not made clear in that speech or in the bill that this was a constitutional requirement under s.53 of the *Constitution Act 186*7. The reason for the necessity to hold a referendum was that the bill purported to amend ss.1, 2 and 53 of the *Constitution Act*, all of which are "entrenched" by s.53.

1.30. The committee indicated it was desirable that any bill which is required to be submitted to a referendum should expressly cite that requirement.

1.31. The committee notes that the current bill also does not expressly cite the requirement for it to be submitted to a referendum under s.53, although again the second reading speech of Mr Feldman, MLA and the explanatory memorandum provided by him (see the reference to cl.59) refer to the requirement for approval by the electors at a referendum.

The bill does not empower the Scrutiny of Legislation Committee to examine CIR proposed laws

1.32. Both in the second reading speech and in the explanatory memorandum which accompanied the bill, reference is made to the fact that when a "legislative proposal" has obtained the necessary community support for the holding of a referendum and has been drafted in bill form, it will be examined by the Scrutiny of Legislation Committee.

1.33. Clause 16 requires a "proposed law", once drafted, to be given to the Speaker of the Legislative Assembly, who is then required to table the proposed law and the accompanying

presentation speech and explanatory memorandum in the Assembly on the first sitting day after they are received.

1.34. The bill contains no provisions which would specifically empower the Scrutiny of Legislation Committee to examine the proposed law.

1.35. In the opinion of the committee, a "proposed law" given to the Speaker and tabled in Parliament under cl.16 would not be a document which the committee would have power to examine.

1.36. The committee's statutory charter is set out in s.22 of the *Parliamentary Committees Act 1995*. Its relevant power is to:

> *consider the application of fundamental legislative principles to particular bills.*

1.37. "Bills" is in turn defined in the Dictionary to the Act as follows:

> *"Bill" means a Bill proposed for enactment by the Parliament.*

1.38. Accordingly, a specific statutory amendment would in the committee's view be necessary before the committee could fulfil the function adverted to in the explanatory memorandum and second reading speech.

1.39. The committee refers to its report on the earlier CIR bill,[5] and to the various issues canvassed in that report.

1.40. The committee reiterates the general views about the CIR process which it expressed in its report on the earlier bill.

1.41. Those were that whether the CIR process is viewed as an improvement in democracy or an erosion of parliamentary democracy depends essentially on a political or policy judgment. What is clear is that CIR encroaches on the law-making function of Parliament, and as such the committee is obliged to express its concern that the bill does weaken the institution of Parliament. It is a matter for Parliament as to whether this impact is outweighed by the provision to the electorate of a mechanism of direct democracy.

1.42. This report identifies certain difficulties with the procedure proposed by this bill. The principal concerns are:

- The interference with the role of Parliament and of its members.
- The danger of legal challenges frustrating the CIR procedure even after the enactment of CIR legislation[6].
- The absence in the bill of any reference to a referendum for that bill itself.
- the committee would not have jurisdiction to examine proposed CIR laws.

5 See Alert Digest No. 7 of 1998 at pp.11–19

6 See Alert Digest No. 7 of 1998 at pp.17–18, paras. 3.40-3.41

1.43. The committee acknowledges that, while the validity of the CIR procedure is not clear, there are good prospects for its constitutional validity.

1.44. The committee refers to Parliament for its consideration the various matters mentioned above.

Is the content of the explanatory note sufficient?[7]

♦ **Clause 16**

1.45. As mentioned above, both the explanatory memorandum and the second reading speech refer to the fact that when a "legislative proposal" has obtained the necessary community support for the holding of a referendum and has been drafted in bill form, it will be examined by the Scrutiny of Legislation Committee.

1.46. As also mentioned, the committee does not consider that it would have jurisdiction to perform this function unless the current bill expressly provided to that effect.

1.47. In that regard the committee considers the explanatory memorandum to be inaccurate.

1.48. The committee is of the view that, unless the bill is amended to confer express statutory authority, it would not have jurisdiction to examine CIR bills, and accordingly considers the explanatory memorandum's claims to that effect to be inaccurate.

1.49. The committee reiterates its concern that, unless the bill is amended, it would not have the necessary authority to examine CIR proposed laws.

Is the legislation unambiguous and drafted in a sufficiently clear and precise way?[8]

♦ **Clause 3**

1.50. Clause 3 is in the following terms:

> ***Words used in this Act and in Referendums Act***
>
> ***3.*** *Words used in this Act have the same meaning as in the Referendums Act 1997.*

1.51. It is not immediately clear to the committee whether the reference to words having "the same meaning as in the *Referendums Act 1997*" is a reference to words defined in the Dictionary to the *Referendums Act*, or whether it extends to the meaning of <u>any</u> words used in that Act.

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7 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.

8 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.

1.52. In addition, cl.3 represents a rather extreme example of the practice of "cross-referencing", which the committee has previously criticised as detracting from the simplicity and accessibility of legislation. Clause 3 potentially provides for the "cross-referencing" of a very large number of terms.

1.53. The committee seeks information from the Member as to whether cl.3 refers only to words defined in the Dictionary to the *Referendums Act*, or to all words used in that Act.

1.54. The committee has concerns about the range of terms which cl.3 potentially "cross-references", and recommends that consideration be given to amending the bill to reduce reliance on this process.

Does the legislation have sufficient regard to the rights and liberties of individuals?[9]

♦ **Clauses 33–37**

Level of penalties imposed

1.55. The above clauses create a number of offences and impose penalties for breach. The penalties range from 50 penalty units (currently $3,750) to 200 penalty units (currently $15,000) and, in the case of cls.33 and 35, provide for imprisonment for up to 6 months.

1.56. Whilst the committee appreciates the need to protect constitutional processes from fraud, violence and other inappropriate activities, the level of penalties imposed can, in the circumstances, only be described as substantial.

1.57. The committee refers to Parliament the question of whether, given the nature of the offences involved, the level of penalties imposed by cls. 33–37 has sufficient regard to the rights and liberties of potential defendants.

Widely-framed offence

1.58. Whilst the other provisions of Part 5 (cls.33–37) create offences which are of a relatively specific nature, cl.37(6) provides as follows:

> ***37.(6)*** *A person must not contravene the provisions of this Act, or any lawful requirement under this Act.*
>
> *Maximum penalty–200 penalty units.*

1.59. Clause 37(6) creates what is a very widely-framed offence, of a type which seldom appears in current legislation.

1.60. The committee refers to Parliament the question of whether cl.37(6), in creating such a widely-drawn offence, has sufficient regard to the rights and liberties of potential defendants.

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

Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification?[10]

♦ **Clauses 37(7) and 37(8)**

1.61. Clauses 37(7) and 37(8) effectively declare a director or other officer of a body, whether incorporated or unincorporated, to be guilty of any contravention of the Act by the body.

1.62. Clause 37(8) provides grounds upon which the liability imposed by cl.37(6) may be avoided. Those grounds are in effect that the person concerned took reasonable steps to prevent the contravention, was unaware of it, or was not in a position to influence the body's conduct.

1.63. Clauses 37(7) and 37(8) effectively reverse the onus of proof, since under the law a person generally cannot be found guilty of an offence unless he or she has the necessary intent.

1.64. The committee has previously considered provisions which reverse the onus of proof, particularly in relation to corporations.[11]

1.65. Whilst the difficulties of determining liability in certain circumstances (for example, corporations) are appreciated, the committee as a general rule does not approve of such provisions.

1.66. The committee refers to Parliament the question of whether cls.37(7) and 37(8) contain a justifiable reversal of onus of proof, and therefore have sufficient regard to the rights and liberties of individuals.

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?[12]

♦ **Clauses 38 and 39**

1.67. Clause 38 expressly provides that a range of important decisions under the bill are subject to the operation of the *Judicial Review Act 1991*. It would appear, although the clause does not expressly say so, that operation of the *Judicial Review Act* is excluded in relation to all other administrative decisions.

1.68. Clause 39 confers jurisdiction upon the Supreme Court to "deal with a matter or objection by an elector about" a large number of significant issues arising under the bill.

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10 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.

11 See, for example, Alert Digest No. 6 of 1997 at pp.15–16.

12 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.

1.69. Again, and although the bill does not expressly say so, it would appear that the Supreme Court is to have no jurisdiction in relation to any other matters.

1.70. The committee seeks information from the Member as to whether cls. 38 and 39 are intended to exclude all judicial review and Supreme Court jurisdiction, other than in relation to the matters specified in those clauses.

1.71. The committee refers to Parliament the question of whether the review processes provided for under cls. 38 and 39 are appropriate in the circumstances.

Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?[13]

♦ **Clause 58**

1.72. Clause 58 authorises the Governor in Council to "make regulations for this Act". Sub-clause (2) expressly limits that discretion in one particular respect, namely, that offences created by regulations are to have a maximum penalty of not more than 7 penalty units.

1.73. In the committee's view it would be preferable if cl.58 specifically listed at least some of the major matters about which regulations may be made, thereby limiting the scope of the delegation of legislative power under the clause.

Has an explanatory note been prepared?[14]

1.74. As the committee has several times previously reported,[15] there is currently no statutory obligation for explanatory notes to be provided to accompany private member's bills.

1.75. However, Mr Feldman, MLA, who introduced this bill, voluntarily provided an explanatory notes which he tabled with the bill.

1.76. Although its provision was not mandatory, the contents of this explanatory memorandum are "extrinsic material" in terms of s.14B of the *Acts Interpretation Act 1954*, and can be taken into account in interpreting any ambiguities in the bill if ultimately enacted.

1.77. The committee wishes to record its appreciation of Mr Feldman's provision of this explanatory memorandum. This is a practice which the committee would be pleased to see adopted by all members introducing private members' bills.

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13 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.

14 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.

15 See, for example, 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 and Alert Digest No. 2 of 1999 at page 5.

1.78. The committee thanks the Member for voluntarily providing an explanatory memorandum in relation to this private member's bill.

2. CORRECTIVE SERVICES LEGISLATION AMENDMENT BILL 1999

Background

2.1. The Honourable T A Barton MLA, Minister for Police and Corrective Services, introduced this bill into the Legislative Assembly on 9 March 1999.

2.2. The purposes of the bill, as described in the Minister's second reading speech, are as follows:

> *First, to abolish the Queensland Corrective Services Commission and the Government Owned Corporation, Queensland Corrections, and their Boards, and secondly to provide a head of power for the management of maximum security prisoners within the correctional system.*

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

♦ **Clause 7**

2.3. Clause 7 inserts a group of provisions (proposed ss.43A to 43F) under the subdivisional title "accommodation in maximum security facility". Proposed s.43A enables the chief executive to make a "maximum security order" that a prisoner at a prison be accommodated in a "maximum security facility". This latter term is defined, by a new definition inserted in s.10, as a facility for the accommodation of prisoners in which prisoners in the facility are totally separated from other prisoners not in the facility, and in which prisoners in the facility can, where necessary, be totally separated from each other.

2.4. Proposed s.43A requires that, in order for such an order to be made, a prisoner must have been classified into a "maximum security" category under a regulation, and the chief executive must consider on reasonable grounds that there is high risk the prisoner will attempt to escape, inflict death or serious injury on other prisoners, prison staff or other persons, or generally be a substantial threat to prison security and good order. A "maximum security order" must not be longer than 6 months, but consecutive orders can be made.

2.5. Some advocates and interested groups have criticised the use of maximum security facilities in light of Australia's international treaty obligations. They argue that maximum security detention, at least in the form of "solitary confinement", is a breach of human rights. Others would no doubt argue that these measures are necessary for the safety of the community, prison staff and other prisoners.

2.6. Obviously, the various cl.7 provisions will have an impact upon the personal liberties of the affected prisoners. On the other hand, persons who are prisoners will self-evidently be subject to restrictions upon their rights and liberties.

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

2.7. In his second reading speech, the Minister explains the reasons for legislating for this process as follows:

> *The purpose of these (maximum security) facilities is to provide intensive supervision and management of prisoners who have been assessed as highly disruptive within the correctional system.*
>
> *Of the group presently accommodated within the M.S.U. at Woodford – 55% have committed murder, 15% of these are multiple murderers and 45% have been convicted of, or are under investigation for, murders within a prison.*
>
> *This 'hard core' group of prisoners have a propensity for violence and must be managed accordingly. And 75 percent of prisoners in the M.S.U. have either tried to escape and succeeded, many on more than one occasion, or have put staff in danger through their involvement in attempts to escape.*

2.8. The committee seeks information from the Minister as to whether, in the preparation of this bill, consideration was given to Australia's international treaty obligations in relation to human rights.

2.9. The committee refers to Parliament the question of whether cl.7, in establishing a system of maximum security orders and maximum security facilities for certain prisoners, has sufficient regard to the rights and liberties of those prisoners.

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?[17]

♦ **Clause 7**

2.10. Proposed s.43B provides a process whereby a prisoner who is accommodated in a maximum security facility under a maximum security order may seek to have the order reviewed by an "official visitor"[18]

2.11. The official visitor then investigates the matter, and makes a recommendation to the chief executive as to whether the maximum security order should be confirmed, amended or repealed. That recommendation is, however, not binding upon the chief executive.

2.12. The explanatory notes argue that this mode of review, together with the availability of the judicial review process, is appropriate.

2.13. Whilst the review process provided in the bill could be considered to be somewhat limited, the ultimate question is whether, in the circumstances concerned, it is appropriate.

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17 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.

18 "Official visitors" are appointed under Part 2, Division 3 of the *Corrective Services Act 1988*, and have power to investigate complaints made by prisoners.

2.14. The committee refers to Parliament the question of whether the appeal process provided to a prisoner under cl.7, in relation to the making of a maximum security order, is appropriate.

Is the legislation consistent with the principles of natural justice?[19]

♦ **Clause 7**

2.15. Proposed s.43B requires the chief executive, before making a second or subsequent maximum security order, to give written notice to the prisoner advising that consideration is being given to making such an order, and to provide an opportunity to the prisoner to make submissions.

2.16. The chief executive is then required to consider any such submissions.

2.17. However, none of these requirements apply in relation to the making of the original maximum security order (maximum security orders can be for period of not longer than 6 months).

2.18. The committee refers to Parliament the question of whether the failure to provide a prisoner with an opportunity to make submissions prior to the making of an original maximum security order, is consistent with the principles of natural justice.

Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?[20]

♦ **Clause 7**

2.19. Proposed s.38A authorises the chief executive to:

> *apply different arrangements for the management of prisoners of different classes as classified under a regulation.*

2.20. Given that the classification may be a matter of considerable importance (it may, in terms of proposed s.43A(2)(a), provide grounds for making a maximum security order) the committee is concerned that proposed s.38A does not stipulate criteria upon which the classifications made by the regulations are to be based.

2.21. The committee notes that proposed s.43A(2)(a) appears to anticipate the content of such regulations, in that it refers to a prisoner having been:

> *classified, under a regulation, into the security rating of maximum security.*

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19 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.

20 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.

2.22. The committee recommends that proposed s.38A be amended to stipulate criteria for the different prisoner classifications which may be established by regulation.

Does the legislation have sufficient regard to the rights and liberties of individuals?[21]

♦ **Clauses 14 and 27**

2.23. The bill amends the *Corrective Services (Administration) Act 1988* in order to dissolve the Queensland Corrective Services Commission (QCSC). Proposed s.82(a) provides that:

> *on the commencement of this section -*
>
> *(a) the persons who are the chairperson, deputy chairperson and other commissioners of QCSC go out of office.*

2.24. The Commission currently consists of 8 Commissioners (s.10), appointed by the Governor in Council for terms not exceeding 3 years (s.11(1)). The offices of commissioners become vacant in a number of stipulated circumstances (s.11(2)), and the Governor in Council can remove a commissioner from office in further stipulated circumstances (s.11(3)), including the following:

> *(if the commissioner) … does anything else that, in the Governor in Council's opinion, is a reasonable and adequate justification for removal from office*

2.25. Section 110 of the *Public Service Act 1996*, which empowers the Governor in Council to remove a "term appointee" from a "statutory office" at any time, might also be applicable.

2.26. The current appointed members of the QCSC, although subject to the possibility of removal of office under the various statutory provisions mentioned above, have the capacity to occupy their offices for the entirety of their terms of appointment. The length of those terms is not known to the committee, but under the legislation such terms may be as long as 3 years.

2.27. During their terms of appointment, and subject to the possibility of removal from office, those persons will receive remuneration determined by the Governor in Council under s.12 of the *Corrective Services (Administration) Act 1988*.

2.28. It therefore appears to the committee that the bill could effectively deprive current commissioners of the remuneration which, subject always to the possibility of removal from office, they would have been paid for QCSC services performed by them during their terms of appointment. The bill could accordingly have an adverse financial impact upon the rights of the current commissioners and could raise questions as to whether it has sufficient regard to the rights and liberties of those persons.

2.29. The quantum of the financial detriment which current commissioners will suffer by reason of the bill's provisions will depend upon matters such as the terms for which they are

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

appointed, the amount of remuneration which they are paid for each meeting or other QCSC activity in which they engage, and the number of meetings and other QCSC activities in which they would otherwise have participated.

2.30. The committee seeks information from the Minister as to the amount of potential financial detriment which the bill will occasion current commissioners, and as to whether or not it is intended that they will be financially compensated for any such loss.

3. CRIMINAL CODE (STALKING) AMENDMENT BILL 1999[22]

Background

3.1. The Honourable M J Foley MLA, Attorney-General and Minister for Justice and Minister for the Arts, introduced this bill into the Legislative Assembly on 3 March 1999.

3.2. The object of the bill, as indicated by the Minister in his Second Reading Speech, is to make major reforms to the existing anti-stalking laws.

Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification?[23]

3.3. The bill removes the present requirement that the accused prove any matter on the balance of probabilities, by simply providing that these things are not unlawful stalking. In this way the legal burden of proof is removed from the accused.

3.4. The committee notes that the bill removes a reversal of onus of proof contained in the current anti-stalking laws.

Does the legislation have sufficient regard to the rights and liberties of individuals?[24]

Extension of exculpatory matters

3.5. Section 359A (4) of the *Criminal Code* presently creates defences to a charge of unlawful stalking in the case of *(a) industrial dispute or (b) political or other dispute or issue carried on in the public interest.* The bill extends these matters to include *acts done in the execution of a law or administration of an Act..; reasonable conduct engaged in by a person for ..trade business or occupation; reasonable conduct engaged in by a person to obtain or give information that the person has a legitimate interest in obtaining or giving*.

3.6. The committee notes that the bill extends the range of defences to charges of unlawful stalking.

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22 The committee thanks Mr Robert Sibley, Barrister-at-Law, Senior Lecturer in Law, Queensland University of Technology, for his valued advice in relation to the scrutiny of this bill.

23 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.

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

What is Unlawful Stalking

3.7. Proposed s.359B defines unlawful stalking in such a way that it is possible for someone to commit a crime carrying 5 years imprisonment without intending harm and without causing harm and without even intending that the person stalked be aware of the conduct.

3.8. If a stalker intentionally directs conduct [that has been described as including "almost every act of human behaviour"[25]] at the person stalked without intending that person apprehend or fear violence or suffer any detriment and without the person stalked apprehending such fear or suffering any detriment the stalker commits an offence if it *would cause* apprehension *reasonably arising in all the circumstances*. This is brought about by sub-clauses 359C (1), (4) and (5) which provide that it is *immaterial* whether the stalker intends that the stalked person be aware the conduct is directed at them or intends to cause apprehension and it is immaterial if the apprehension is actually caused.

3.9. Where apprehension is actually caused to the person stalked it is caught by clause 359D (ii) ie **causes** detriment **to** the stalked person. This is because the definition of "detriment" in clause 359A includes apprehension of violence.

3.10. Thus the only "mental element" or fault element in the proposed offence is that the stalker intend to direct the conduct at the stalked person.

3.11. Even under the existing provision, before the offence can be made, it is necessary to prove that the stalker intended that the person stalked be aware of the conduct, that the person stalked be aware that the conduct is directed at them and the conduct is such as would cause a reasonable person to believe unlawful violence is likely.

3.12. All other Australian jurisdictions require the stalker to intend to cause the fear in the person stalked[26] as do most of the United States of America[27]. In the UK the fear must be caused and the stalker must know or ought to know that the conduct will cause fear[28]. In Canada fear must reasonably be caused and the stalker must know or be reckless[29].

3.13. Concerns have been expressed about the overbreadth of stalking legislation[30]. The preferred position in the Department of Justice Discussion Paper was "[redefinition] to clarify that the course of conduct **must cause** the victim reasonably in all the circumstances to fear injury or detriment"[31].

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25 Swanwick, R.A. "Stalkees Strike Back-The Stalkers Stalked: A Review of the First Two Years of Stalking Legislation in Queensland" (1996) 19 *UQLJ* 26 at 31 quoting Judge Robertson DCJ in *R v Clarke* (unreported, District Court Ipswich 27.2.95).

26 Department of Justice and Attorney-General, Qld, *Discussion Paper on the Offence of Stalking* http://www.justice.qld.gov.au/amend-bill98.html (5/3/99) at p 15 of 26

27 Ibid

28 *Protection From Harassment Act 1997 (UK)* s 1 (1)(b); s 4 (1)

29 ibid p 17 of 26

30 Swanwick op cit n 3 at 27; Goode, M, "Stalking : Crime of the Nineties" *(1995) 19 CLJ 21 at 26-27*; Kift, S "Stalking law reform under lawful scrutiny" *Proctor September 1998 19 at 21-22;* Wiener, D "Criminal Responsibility and the infliction of harm" *(1995) LIJ 30 at 31*

31 Department of Justice and Attorney-General, Qld *Discussion Paper on the Offence of Stalking* http://www.justice.qld.gov.au/amend-bill98.html (5/3/99) at p 17 of 26

3.14. The committee draws to the attention of Parliament that the proposed new section 359A broadens the offence of unlawful stalking to make it immaterial–

(a) whether the offender/stalker intended harm; and

(b) whether the conduct actually causes any apprehension or fear of violence.

3.15. The committee refers to Parliament the question of whether, in broadening the offence in this manner, the bill has sufficient regard to the rights and liberties of individuals.

Is the legislation unambiguous and drafted in a sufficiently clear and precise way?[32]

Need the person stalked be aware of the conduct directed at them?

3.16. Under the present provision the person stalked has to be aware that the conduct is directed at them[33]. In the Explanatory Notes accompanying the bill under the heading *Reasons for the objectives and how they will be achieved* on page 1 it is stated that "In the course of time a number of difficulties were identified in the interpretation of the section in Queensland". A number of matters are listed including:

> "The victim had to be aware that the course of conduct was directed at him or her. If the person at whom the stalking conduct was directed was not aware of the conduct but the conduct caused detriment to another person it was not considered to be stalking".

3.17. This suggests that the intent of the bill is to remove such a requirement from the offence.

3.18. If it is not required that the person be aware of the conduct directed at them the Bill should say so clearly in Clause 359C. It may be that as a matter of construction the bill does require such awareness or knowledge. This is because Clause 359C makes a number of matters immaterial for Clause 359B and knowledge by the stalked person in not included amongst them. However Clause 359C(5) provides as follows:

> "For section 359B(d)(i), it is immaterial whether the apprehension or fear, or the violence, mentioned in the section is actually caused."

3.19. This provision could apply to not only the aware persons who are "more robust"[34] and thus do not apprehend violence but also those who do not apprehend violence simply because they are unaware of the conduct.

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32 Section 4 (3) (k) of the *Legislative Standards Act 1992* requires legislation to be unambiguous and drafted in a sufficiently clear and precise way.

33 S 359A (2) (c) *Criminal Code* " the second person is aware that the course of conduct is directed at the second person.

34 Explanatory Notes p 4: notes on provision 359B.

3.20. The committee recommends that if the awareness of the person stalked is irrelevant, that should be made clear in clause 359C. Conversely, if awareness is required before the offence is committed, that should be made clear in clause 359B.

Circumstances known, foreseen or reasonably foreseeable by the alleged stalker

3.21. Clause 359B identifies punishable conduct as conduct that would cause the stalked person apprehension of violence reasonably arising in the **circumstances**.

3.22. Clause 359A provides that "**circumstances"** means the following circumstances:

(a) the [stalker's] circumstances

(b) the **circumstances of the stalked person** known, foreseen or reasonably foreseeable **by the alleged stalker**

(c) the circumstances surrounding the [stalking]

(d) any other relevant circumstance.

3.23. The word "means" in a statute generally leads to the interpretation that the definition is exhaustive[35]. Are the circumstances in this *prima facie* exhaustive definition cumulative upon each other or will evidence of any one of them be sufficient if that allows a tribunal of fact to find that it would be reasonable for the person stalked to apprehend fear?

3.24. The existing *Criminal Code* provision identifies punishable conduct, as that which the stalked person *is aware of* and *that would cause a reasonable person* ***in the stalked person's circumstances*** *to believe violence is likely.* Under ss (3) ***the stalked person's circumstances*** *are those known, foreseen or reasonably foreseeable* **by the alleged stalker**.

3.25. It can be seen that the existing test has essentially been imported into the proposed provision. These words have apparently caused difficulties in interpretation[36]. On the one hand it has been held by the courts to involve a purely subjective inquiry of the circumstances[37] and on the other a subjective/objective test[38]. The latter view was expressed by Judge Trafford-Walker DCJ as follows:

> "In determining what a reasonable person would apprehend there are three matters to consider. The first is that a reasonable person is presumed to have knowledge which the accused (actually) has of the complainant's circumstances or (secondly) he's presumed to have knowledge of the victim's circumstances as actually foreseen by the accused, and it seems, thirdly that the reasonable person is presumed to have

35 *Cohns Industries Pty Ltd v Deputy FCT* (1979) 24 ALR 658

36 Department of Justice and Attorney-General, Qld, *Discussion Paper on the Offence of Stalking* http://www.justice.qld.gov.au/amend-bill98.html (5/3/99) at 15 of 26; Stanwick, R.A. "Stalkees Strike Back-The Stalkers Stalked: A Review of the First Two Years of Stalking Legislation in Queensland" (1996) 19 *UQLJ* 26 at 30.

37 Ibid at 29

38 Ibid

knowledge of the victim's circumstances which are reasonably foreseeable by a person in the accused's position."[39]

3.26. A jury may take the view that the stalker/accused, because of his or her particular idiosyncrasy or psychological state, neither knew, foresaw or reasonably could foresee circumstances of the victim that would lead to the apprehension of fear. Examples, perhaps, of such persons in respect of whom a jury might so find are the quasi-autistic or obsessive or "erotomaniac" stalker.

3.27. Could the jury still convict if in their view one or another of the circumstances listed in the definition clause 359A would nevertheless found a reasonable apprehension by the victim?

3.28. To overcome any ambiguity in the application of this provision, the committee recommends that proposed section 359A be amended to either –

(a) add "or" at the end of subsection (a) to (e) in proposed s.359A; or

(b) add an additional paragraph that clarifies how this proposed section is to be applied.

"Other genuine public dispute or issue carried on in the public interest"

3.29. The "breadth and vagueness"[40] of the offence is demonstrated by the absence of any mental element except for the bare necessity of intentionally directing the conduct at the person stalked. Although there has been an extension in Clause 359D of the matters that are not unlawful stalking, the matter of "acts done for the purposes of genuine political or other genuine public dispute or issue carried on in the public interest" has been retained. This has been criticised as a "vague exception".[41] Perhaps a more general exemption such as that in the UK legislation, pointed to by one commentator[42] is warranted. This provides for an excuse based on reasonableness of the conduct in the circumstances[43].

3.30. The Committee recommends that the Minister consider amending the bill to extend the definition of what is not unlawful stalking in clause 359D to include a general exemption in the case of reasonableness.

39 quoted in Stanwick, R.A op cit n 3 at pp 29,30

40 Stanwick, R.A. op cit n 3 at 27

41 Goode, M, Stalking:Crime of the Nineties (1995) 19 CLJ 21 at 27

42 Kift, S, Stalking law reform under lawful scrutiny *Proctor, September 1998 19 at 20*

43 *Protection From Harassment Act 1997 (UK).* Section 1 (3) (c) provides that the conduct is not harassment if it is shown "that in the particular circumstances the pursuit of the course of conduct was reasonable". Section 4 (3) (c) provides a defence to the offence of Putting People in Fear of Violence to show "the pursuit of his course of conduct was reasonable for the protection of himeslf or another or for the protection of his or another's property".

Does the legislation have sufficient regard to rights and liberties of individuals?[44]

Aggravated penalty for the use of threatened use of violence

3.31. Clause 359E (3) provides for an aggravated form of the stalking offence with the maximum penalty increased from 5 to 7 years imprisonment. This occurs in the case where "**the act constituting** the unlawful stalking" involves the use or threatened use of violence.

3.32. Under the existing *Criminal Code* provision the penalty is increased in the case where "**the concerning acts constituting** the offence" involve ***unlawfully*** using or threatening ***unlawful*** violence.

3.33. It is tolerably clear that much of the conduct in clause 359B(c) can be lawful. It becomes unlawful conduct when it *would* cause apprehension of violence reasonably arising in all the circumstances OR *causes* detriment AND is not excluded by clause 359D.

3.34. Further, there may be circumstances where the use or threatened use of violence constitutes another offence, which would raise the question of double punishment.

3.35. In *Police v Leon Peter Flynn*[45] Duggan J, after deploring the alleging in that case of other substantive offences as particulars of stalking in a stalking charge, did observe:

> *I am not suggesting that there will never be an occasion when it is appropriate to include as particulars in a stalking charge a set of circumstances which happens incidentally to constitute the commission of another offence. This may arise where the seriousness of the conduct lies in the aspect of stalking and not the commission of another offence.*

3.36. In *R v Fyduniw*[46] the Queensland Court of Appeal accepted the joinder of a count of rape and a count of unlawful stalking with the aggravating circumstance of using violence. The violence particularised by the crown was the rape in the first count. Two members of the court quashed the conviction for rape on the grounds that it was unsafe and with it fell the circumstance of aggravation. Williams J, who was prepared to uphold the conviction for rape, recognised, however, the problems that arise in such a situation with double punishment. He would have set aside the conviction for aggravated stalking and punished only for the rape and the stalking *simpliciter*.

3.37. Where the question of double punishment arises, the committee notes this will remain a matter for the court.

3.38. It will often be the case however that the offence constituted by the unlawful violence will not be the subject of separate charges and problems of double punishment will not arise.

3.39. The committee recommends that the bill be amended to include the word "**unlawfully"** in Clause 359E before "uses" and "violence", to make it clear that any aggravated penalty

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

45 Supreme Court of South Australia, Duggan J-SCGRG 488 of 1997; S6410 (unreported) 22 April; 9 May 1997

46 Court of Appeal of Queensland ; Fitzgerald P, Pincus JA and Williams J, CA No 165 of 1996, 18 July 3 September 1996

should only be invoked where the actions of the stalker in using or threatening violence are also unlawful per se.

Aggravated penalty for possessing a "weapon" within the meaning of the *Weapons Act 1990*

3.40. It is often lawful to possess a weapon within the meaning of the *Weapons Act 1990* .

3.41. For the same reasons as above, the committee also recommends that the bill be amended to include the word "**unlawfully"** before the word "possesses", again to make it clear that any aggravated penalty should only be imposed where the actions of the stalker in possessing the firearm are also unlawful per se.

4. POLICE POWERS AND RESPONSIBILITIES AND OTHER ACTS (REGISTERS) AMENDMENT BILL 1999

Background

4.1. The Honourable T A Barton MLA, Minister for Police and Corrective Services, introduced this bill into the Legislative Assembly on 10 March 1999.

4.2. The object of the bill, as indicated in the explanatory notes, is to resolve certain problems relating to the keeping of registers.

Is the legislation unambiguous and drafted in a sufficiently clear and precise way?[47]

♦ **Clause 14**

4.3. Proposed section 119R enables "a person to whom (an enforcement act) was done" to request a police officer to give the person a copy or printout of the information concerning that act, recorded in a register of enforcement acts. The police officer must comply with the request.

4.4. Proposed section 119S(1) and (2) empower the chief executive officer, if reasonably satisfied that making information about a particular enforcement act available may not be in the public interest for specified reasons, to direct that the information:

> *be recorded in the entity's register in a way that restricts inspection of the information.*

4.5. Sub-section (4) of proposed s.119S then provides as follows:

> *(4) Despite subsection (1) if, within 3 years after the enforcement act was done, the person to whom the act was done asks the chief executive officer for information restricted under subsection (2), the chief executive officer must give the person a copy or print-out of the information as soon as reasonably practicable.*

4.6. In light of the provisions of proposed s.119S(1) and (2), it could be anticipated that sub-section (4) would prevent the "person to whom the act was done" from obtaining from the register, for 3 years, that part of the registered information whose release the chief executive officer had forbidden under s.119S(2).

4.7. However, s.119S(4) empowers the same person to demand from the chief executive officer (as opposed to a police officer), within the same period, the "information restricted under subsection (2)".

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[47] 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.

4.8. These words would seem to refer to the forbidden part of the registered information, and this interpretation is supported by the segment of the explanatory notes which deals with proposed s.119S.

4.9. However, the committee is unable to discern how this interpretation, if correct, would give effect to the purpose apparent in s.119S(1) and (2). Indeed, it would seem to totally undermine it.

4.10. The committee seeks information from the Minister as to the intended effect of sub-section (4) of proposed s.119S.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?[48]

♦ **Clause 16**

4.11. Clause 16 inserts proposed s.139, which is in the following terms:

> ***Transitional provision relating to registers***
>
> *'**139**. A failure, before the commencement of this section, to keep or record information in the way required by this Act before the commencement does not and never did affect anything done in relation to the act concerned before or after the failure.'.*

4.12. The explanatory notes contain the following statements relevant to this provision:

> *Compliance with present administrative requirements has the potential to seriously affect the security and effectiveness of investigative operations. However, a lack of compliance with requirements could result in evidence obtained during these investigations being excluded in subsequent court proceedings, allowing those who might have been convicted of serious criminal offences to escape punishment.*
>
> ….
>
> *A transitional provision will be included in the proposed Bill to validate any existing arrangements relating to registers that do not strictly comply with the current requirements under the Act. This is necessary to ensure the existing arrangements do not affect the admissibility of evidence in any future proceedings.*
>
> *While this provision will not commence retrospectively it will validate past acts. However, this validation does not affect a person's rights or liberties, or impose any obligation, retrospectively.*

4.13. Whilst questions can sometimes arise as to whether a particular provision has a retrospective effect, the committee is satisfied that proposed s.139 does have such effect in that, as the explanatory notes concede, it "will validate past acts".

[48] 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.

4.14. The effect of the proposed section, as the explanatory notes point out, is to eliminate any possibility that arrangements relating to registers, which have been in place up to the present and which may not strictly comply with current statutory requirements, will affect the admissibility of evidence in any future proceedings. Non-compliance might otherwise, in the words of the explanatory notes:

> *allow those who might have been convicted of serious criminal offences to escape punishment.*

4.15. The practice of making retrospectively validating legislation is not one which the committee endorses, because such laws could adversely affect rights and liberties or impose obligations retrospectively and therefore breach fundamental legislative principles. The committee does, however, recognise that there are occasions on which curative retrospective legislation, without significant effects on rights and liberties of individuals, is justified in order to clarify a situation or correct unintended legislative consequences.

4.16. It seems clear from the explanatory notes that proposed s.139 could potentially have an adverse impact on the legal position of certain persons charged with offences. In the committee's view, it would prevent them invoking largely "technical" defences which might otherwise have been open. The explanatory notes refer to the community's interest in ensuring that persons guilty of offences are convicted.

4.17. The committee generally opposes retrospective legislation.

4.18. The committee concedes, however, that on occasions retrospective legislation which is curative or validating in effect can be justified.

4.19. The committee seeks information from the Minister as to the likelihood of evidence in fact being excluded as a result of technical deficiencies in administration of registers, and as to the number of persons potentially affected.

5. RADIATION SAFETY BILL 1999

Background

5.1. The Honourable W M Edmond MLA, Minister for Health, introduced this bill into the Legislative Assembly on 10 March 1999.

5.2. The objective of the bill, in the words of the explanatory notes, is:

> *to protect the people of Queensland from health risks associated with exposure to certain sources of ionising and harmful non-ionising radiation, while recognising the beneficial uses of radiation.*

Overview of Bill

5.3. Before dealing with specific clauses of the bill, the committee considers it appropriate to make some general observations.

5.4. The committee's examination of the bill reveals that it is almost entirely regulatory in nature. Indeed, it is in many respects quite similar to the Explosives Bill 1998, which is presently before Parliament, and which the committee has previously reported on.[49]

5.5. The current bill contains many provisions which impinge upon the rights of individuals. It controls the types of radioactive material and radiation apparatus which may be used, requires that they be used only in accordance with the provisions of the bill and standards and other instruments generated under the bill, imposes various statutory duties in relation to radiation, establishes a licensing system in relation to the possession, use and transport of radiation sources and radioactive substances, contains a range of monitoring and enforcement powers and creates a large number of offences, often punishable by very substantial penalties.

5.6. The Minister would no doubt justify the establishment of this comprehensive set of controls on the basis of the inherently dangerous nature of radiation, and the very substantial potential for harm from misuse or negligent use of it.

5.7. In her second reading speech, the Minister stated:

> *Though radiation offers many benefits, it is well recognised that radiation can threaten our health and the environment. Both ionising radiation and non-ionising radiation can result in biological changes which are potentially hazardous.*
>
> *The most usual adverse health effect from exposure to ionising radiation is cancer. Unfortunately, there is often a lengthy period between exposure to radiation and the detection of a cancer - of the order of tens of years. Exposure to ionising radiation may also cause birth defects and other adverse genetic outcomes.*

[49] See Alert Digest No. 11 of 1998 at pp.15–29.

Exposure to non-ionising radiation may result in a variety of adverse health effects. For instance, exposure to radiation produced by Class IV lasers can result in disfigurement and other forms of skin damage, blindness, damage to organs and, in some cases, even death.

It is for these reasons that strict controls must continue to be placed on those activities which may result in the exposure of persons to radiation.

5.8. Self-evidently, any restrictions which the bill imposes upon the rights and liberties of individuals using, dealing with or associated with the use of, radiation must be balanced against the rights and liberties of other members of the community who may be adversely affected by misuse or negligent use of that radiation. The bill, as indicated earlier, contains many provisions which are restrictive in nature or intrude upon the common law rights of individuals.

5.9. The committee observes that, generally speaking, those provisions appear to have been drafted with significant regard to fundamental legislative principles.

5.10. Nevertheless, various provisions of the bill require comment. These are dealt with below.

Does the legislation have sufficient regard to the rights and liberties of individuals?[50]

♦ **Clauses 12, 13, 14, 15, 23, 24, 25, 26, 42, 43, 44, 47 and 141**

5.11. The bill contains many provisions the breach of which constitutes an offence punishable by a penalty.

5.12. Whilst the amount of many of those penalties is not exceptional, there are a significant number of provisions which impose extremely high penalties. The most striking of these are as follows:

Clause	**Maximum Penalty**
cl.12 (possession of a radiation source without a possession license)	1000 penalty units ($75,000)[51]
cl.13 (use of a radiation source without a use licence)	400 ($30,000)
cl.14 (transportation of radioactive substance by road without a transport licence	400 ($30,000)
cl.15 (transportation of radioactive substance other than by road without a transport licence)	400 ($30,000)
cl.23 (acquisition of a radiation source without a possession	400 ($30,000)

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

51 "Penalty units" are defined in s.5 of the *Penalties and Sentences Act 1992.* The penalty unit applicable to these offences is currently $75.

licence and an approval to acquire)	
cl.24 (supply of a radiation source to another person who is not a possession licensee and holder of an approval to acquire)	400 ($30,000)
cl.25 (relocation of a radiation source without a possession licence and an approval to relocate)	400 ($30,000)
cl.26 (disposal of certain radioactive materials other than in specified circumstances and in accordance with an approval to dispose)	2500 ($187,500)
cl.42 (a possession licensee causing a person to receive a radiation dose higher than a prescribed limit)	500 ($37,500)
cl.43(2) (failure of a possession licensee to take reasonable steps to ensure a person's health and safety)	500 ($37,500)
cl.43(4) (failure of a possession licensee to ensure unlicensed persons do not use a radiation source)	500 ($37,500)
cl.43(6) (failure of a possession licensee to take reasonable steps to ensure a person does not transport radioactive substances without a license	500 ($37,500)
cl.44 (failure by a possession licensee to take reasonable steps, whilst carrying out a radiation practice, to ensure a person's health and safety are not adversely affected)	500 ($37,500)
cl.47 (possession, supply and use of a banned radiation source)	400 ($30,000)
cl.141 (failure to comply with a court order about an improvement or prohibition notice)	500 ($37,500)

5.13. The magnitude of these maximum penalties would doubtless be justified by the Minister on the basis of the level of harm which may result from the misuse of radiation.

5.14. The committee refers to Parliament the question of whether the level of maximum penalties imposed by the bill for breach of many of its provisions, in the context of radiation control, has sufficient regard to the rights and liberties of the persons potentially subject to those penalties.

♦ **Clause 38(6)**

5.15. Clause 38(6) requires that licensees must keep personal monitoring records relating to a person who has been provided with a personal monitoring device, for a period of 30 years after the day when the last assessment occurred.

5.16. At first glance this would appear somewhat onerous from the viewpoint of the licensee. However, as pointed out by the Minister in her second reading speech, there can be lengthy periods between exposure to radiation and the development of a resultant cancer, sometimes in the order of tens of years.

5.17. The committee is satisfied that the 30 year retention period for personal monitoring records, imposed under cl.38(6), has sufficient regard to the rights and liberties of the licensee obliged to maintain those records.

♦ **Clauses 43 and 44**

5.18. Clause 43(2) is in the following terms:

> *The licensee must take reasonable steps to ensure any person's health and safety are not adversely affected by exposure to radiation because of the carrying out of the practice with the source.*
>
> *Maximum penalty - 500 penalty units*

5.19. Clause 44(2) is in the following terms:

> *A person carrying out the practice with the source must take reasonable steps to ensure any person's health and safety are not adversely affected by exposure to radiation because of the way the person carries out the practice.*
>
> *Maximum penalty - 500 penalty units*

5.20. The obligations which these clauses impose on persons performing acts involving radiation sources are quite general in nature, and mirror those imposed under the civil law of negligence. A person suffering injury or adverse health consequences as a result of a negligent act involving radiation sources can sue in the civil courts for damages.

5.21. However, under clauses 43(2) and 44(2), breach of the general common law duty of care will also constitute a statutory offence, for which heavy penalties (500 penalty units) are imposed.

5.22. In this regard the bill continues a legislative trend exemplified in, for example, the *Workplace Health and Safety Act 1995*.

5.23. It could of course be argued that these broadly-framed offence provisions are necessary because of the considerable harm which may result from carelessness in respect of radiation sources.

5.24. The committee refers to Parliament the question of whether the creation of broadly-framed statutory offences, with heavy penalties, for negligent acts in relation to radiation sources, has sufficient regard to the rights and liberties of persons controlling or using those sources.

♦ **Clause 123**

5.25. Clause 123(1) prevents an inspector who has entered, without a warrant, a place where persons are irradiated during a diagnostic or therapeutic procedure, from inspecting "health records" recording the health history or diagnoses of patients of health practitioners. This provision is clearly designed to protect the privacy of the patients.

5.26. However, sub-clause (2) goes on to provide that if the inspector has entered with the occupier's consent, and also has the occupier's consent to inspect health records, the inspector may inspect those records.

5.27. The committee points out that, whilst cl.123(2) incorporates an element of consent, the consent is not given by the patients whose records are to be inspected.

5.28. The committee seeks information from the Minister as to why, in relation to the inspection by an inspector of patients' health records under cl.123, the consent of the patients as well as of the occupier of the place is not required.

♦ **Clause 133**

5.29. Clause 133 provides for the forfeiture of a "seized thing" to the State if the inspector who seized it, after making reasonable efforts or enquiries, cannot find its owner or cannot return it to its owner.

5.30. The committee considers that it would be appropriate to include in such a provision a minimum period during which such efforts or inquiries must be made, before forfeiture occurs.

5.31. The committee recommends that the Minister consider amending clause 133 to provide that reasonable enquiries and reasonable efforts to find the owner and return the "seized thing" must continue for a specified minimum period before it is forfeited to the State.

♦ **Clauses 144 and 145**

5.32. Clause 144 authorises an inspector to require a person to make available for inspection "a document required to be kept by the person under this Act". The inspector can require the person responsible for keeping the document to certify a copy of the document made by the inspector as a true copy of the document or entry. The inspector is entitled to keep the document until the person complies with the requirement to certify.

5.33. Whilst the committee would not be concerned by a provision which simply enabled the inspector to retain the original document until such time as the person certified the copy as a true copy, the committee is concerned that cl.144(3) enables the inspector to require the person to certify, and by the fact that clause 145 then makes non-compliance with that requirement an offence, punishable by a maximum penalty of 50 penalty units.

5.34. The committee is unable to discern the justification for these latter provisions.

5.35. The committee seeks information from the Minister as to why under cls. 144 and 145 it is thought necessary that inspectors should have power to require persons keeping documents under the Act to certify a copy made by the inspector as a true copy, and why non-compliance with that requirement should be constituted an offence.

♦ **Clause 153**

5.36. Clause 153 provides that a person must not give to an inspector a document containing information the person knows is false and misleading in a material particular. A maximum penalty of 50 penalty units is provided for breach of this obligation. The section goes on to provide an exemption where the person, when giving the documents to the inspector, tells the inspector "to the best of the person's ability, how it is false or misleading" and if the correct information is obtainable, gives it to the inspector.

5.37. This seems at first glance a relatively onerous duty to impose on the person giving the document. However, if the document referred to were a document which the Act required the person to hold or keep, a higher standard might reasonably be expected.

5.38. The committee recommends that, if the document referred to in cl.153 is intended to be a document of a type required to be kept under the Act, cl.153 should expressly state this.

5.39. The committee refers to Parliament the question of whether the obligation which cl.153 imposes on persons not to give to an inspector documents containing information known to be false or misleading has sufficient regard, in the circumstances, to the rights and liberties of the person giving the document.

♦ **Clause 200**

5.40. Several provisions of the bill (clauses 200, 201 and 202) enable courts to order defendants to pay to various other persons amounts equal to the costs, loss or damage incurred by them as a result of actions of the defendant which are the subject of the offence proceedings.

5.41. Whilst cls. 201 and 202 make that option available only if the court has convicted the person of the offence with which he or she is charged, cl.200 enables payment to be ordered "whether or not the defendant has been convicted of the offence".

5.42. The amount concerned under cl.200 is costs incurred by the chief executive in taking action to avoid or minimise the adverse effect of a health or safety-threatening situation caused by the defendant.

5.43. The committee notes that clause 200 requires that the court must have made a finding that the defendant has caused this situation, even though it may not ultimately convict him or her of the offence and that it considers the payment to be "just".

5.44. Given that there are a significant number of reasons why a court might not convict a person, even though finding that he or she caused the relevant situation, the committee queries

whether conferral on the court of a power to order payment of the chief executive's remedial costs has sufficient regard to the rights and liberties of the defendant.

Is the legislation unambiguous and drafted in a sufficiently clear and precise way?[52]

♦ **Clauses 120(2) and 145(2)**

5.45. The committee refers elsewhere in this chapter to the fact of cl.120(2) not extending to persons mentioned in that provision the benefit of the rule against self-incrimination, in relation to requirements to produce "document(s) required to be kept by the individual under this Act".

5.46. The committee notes that cl.145(2) extends the self-incrimination benefit to persons required to produce the same type of document under that clause.

5.47. The committee seeks information from the Minister as to why the benefit of the rule against self-incrimination is available to persons referred to in cl.145, whilst being denied to persons in the broadly similar situation dealt with under cl.120.

Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification?[53]

♦ **Clauses 204 and 205**

5.48. Clause 204 effectively declares persons (including corporations) to be guilty of offences committed by their representatives (which term, in the case of corporations, includes its executive officers).

5.49. Cl.ause 205 obliges executive officers of a corporation to ensure that the corporation complies with the bill, and provides that if the corporation commits an offence against the provisions of the bill, each executive officer also commits an offence.

5.50. This latter provision effectively reverses the onus of proof, since under the law a person generally cannot be found guilty of an offence unless he or she has the necessary intent. The effect of cl.204 appears to be generally similar.

5.51. The committee notes that both clauses 204 and 205 provide grounds upon which the liability imposed by the clauses may be avoided. These are essentially that the person concerned took reasonable steps to ensure compliance and/or to prevent the offending act or omission, or that the person was not in a position to influence the conduct of the relevant person or corporation.

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52 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.

53 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.

5.52. The explanatory notes concede that cls.204 and 205 effectively provide for reversal of the onus of proof. The explanatory notes justify this reversal in the following terms:

> *… it is important to note that a number of the offences provided for under the legislation deal with situations where there may be serious risk of harm to the health and safety of persons (eg clause 42 Causing radiation exposure) or serious environmental repercussions (eg clause 26, Disposal of radioactive material). Given that the Bill is to be introduced to protect the health and safety of persons, it is appropriate that:*
>
> - *a person, such as a possession licensee, be required to oversee the conduct of their representatives and, in doing so, make reasonable efforts to ensure that their employees and agents comply with the requirements of the legislation;*
> - *an executive officer, who is in a position to influence the conduct of a corporation, be required to ensure that the corporation complies with the legislation; and*
> - *an executive officer, who is responsible for a contravention of the legislation, be accountable for his or her actions and not able to 'hide' behind the corporation.*
>
> *As such, it is contended that clauses 204 and 205 are warranted, to ensure that there is effective accountability at a corporate level.*

5.53. The committee has previously considered provisions which reverse the onus of proof, particularly in relation to corporations.[54]

5.54. Whilst the difficulties of determining liability in certain circumstances (for example, corporations) are appreciated, the committee as a general rule does not approve of such provisions.

5.55. The committee refers to Parliament the question of whether clauses 204 and 205 contain a justifiable reversal of onus of proof, and therefore have sufficient regard to the rights and liberties of individuals.

Does the legislation confer power to enter premises and to search for or seize documents or other property without a duly issued warrant?[55]

♦ **Clauses 111–149 inclusive**

5.56. The bill confers upon inspectors wide powers of entry, which extend beyond situations where the occupier consents or the entry is authorised by a warrant and include situations where the premises are open to the public or an emergency situation exists (see cl.148). There are also powers of entry and direction in respect of vehicles (see cl.124).

5.57. Once entry has been achieved, the bill confers on inspectors a wide range of powers (see clauses 117–121 inclusive), although cls.122 and 123 impose restrictions at places where

54 See, for example, Alert Digest No. 6 of 1997 at pp.15–16.

55 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.

diagnostic or therapeutic procedures are being carried out. Clauses 125–138 confer powers of seizure.

5.58. The explanatory notes address the issue of the extensive powers of entry, seizure, etc, in the following terms:

> *it is contended that the powers of entry provided for under this clause (cl.111) are warranted given the inherent risks associated with radiation and the diversity of activities involving radiation which are regulated under the bill.*

5.59. The explanatory notes address the extensive "emergency" powers under clause 148 as follows:

> *it is considered appropriate that the bill should equip inspectors with the necessary powers to effectively and efficiently deal with emergency situations involving radiation, given the potential risks to the health and safety of persons exposed to radiation, and the potential environmental harm which may arise from radiation contamination.*

5.60. The committee notes that the bill confers on inspectors wide powers of entry, which extend beyond situations where the occupier consents or where a warrant has been obtained. The committee notes that once entry has been effected, the bill confers on inspectors a further wide range of powers.

5.61. Departures from the safeguards provided by search warrants should be carefully considered and adequately justified.

5.62. The committee brings these concerns to the attention of Parliament.

Does the legislation provide appropriate protection against self-incrimination?[56]

- **Clause 120**

5.63. The committee observes that the bill generally provides exemptions from obligations to answer questions or produce documents if either of those actions would result in the person concerned incriminating him or herself.

5.64. This immunity if granted to persons required by an inspector to give the inspector information to help the inspector ascertain whether the bill has been complied with (cl.121(2)). It is also granted under cls.145 and 147.

5.65. The committee notes, however, that cl.120(2), which relates to persons required by an inspector to give information or produce a document to help the inspector exercise his or her powers, expressly denies persons protection on the ground of self-incrimination where a document in question is "a document required to be kept by the individual under this Act".

[56] 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.

5.66. The rationale for this inconsistency may lie in the fact that the document concerned is "a document required to be kept by the individual under this Act", and that the person is presumably familiar with the facts stated in it.

5.67. The committee is concerned that cl.120 does not confer protection in relation to possible self-incrimination.

5.68. The committee seeks information from the Minister as to why, in the particular context of cl.120, an exception has been made in respect of "documents required to be kept under the Act".

Does the bill authorise the amendment of an Act only by another Act (by a "Henry VIII clause")?[57]

♦ **Clauses 13 and 210**

5.69. In its Report on *The Use of "Henry VIII Clauses" in Queensland Legislation*, January 1997, the committee adopted the following definition of a Henry VIII clause:

> *a Henry VIII clause is a clause of an Act of Parliament which enables the Act to be expressly or impliedly amended by subordinate legislation or Executive action.*

5.70. Clause 13 of the bill provides as follows:

> ***13.(1)*** *A person must not use a radiation source, unless the person is allowed to use it under a use licence.*
>
> *Maximum penalty–400 penalty units.*
>
> *(Clause provides example)*
>
> *(2) Subsection (1) does not apply to a person if–*
>
> *(a) the person is using the source in the presence, and under the personal supervision, of a use licensee who is allowed, under the licence, to use the source to carry out a radiation practice; and*
>
> *(b) the use is for the purpose of–*
>
> *(i) helping the licensee to carry out the practice, if the practice is a prescribed radiation practice; or*
>
> *(ii) the person undergoing training prescribed under a regulation.*
>
> *(3) In this section–*
>
> *"prescribed radiation practice" means a radiation practice, other than the carrying out of a diagnostic or therapeutic procedure involving the irradiation of another person, prescribed under a regulation.*

5.71. Clause 210 provides as follows:

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[57] 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.

> *210.(1) Subject to subsection (2), a regulation may exempt a radiation source from this Act or a provision of this Act.*
>
> *(2) The exemption must not be one that could reasonably be expected to pose any, or more than negligible, health risks to any person.*

5.72. Clause 13(2) enables a particular provision of the bill (cl.13(1)) to be made inapplicable to persons otherwise caught by it, and cl.210 enables any or all provisions of the bill to be made inapplicable to specified radiation sources which would otherwise be subject to those provisions. In both cases, that result is achieved by making a regulation.

5.73. In the opinion of the committee, both clauses 13(2) and 210(i) are "Henry VIII clauses" within the committee's definition.

5.74. Moreover, they fall within the category of "generally objectionable Henry VIII clauses" established in the committee's January 1997 report.[58]

5.75. The issue of clauses 13 and 210 is addressed in the explanatory notes, which emphasise the "narrowly defined … parameters for the regulation-making power".

5.76. The committee opposes the use of "Henry VIII clauses" in Queensland legislation.

5.77. Cls.13(2) and 210 fall within the definition of a "Henry VIII clause" adopted by the committee.

5.78. Whilst the committee recognises that the use of "Henry VIII clauses" may in some circumstances be justifiable, clauses 13(2) and 210 do not fall within that category and are accordingly "Henry VIII clauses" which the committee classifies as "generally objectionable".

5.79. The committee does not consider the use of these clauses justified and recommends their removal.

Does the legislation allow the delegation of administrative power only in appropriate cases and to appropriate persons?[59]

♦ **Clause 213**

5.80. The committee notes that the bill does not include a provision authorising delegation by the chief executive of the functions and powers conferred on him or her by the bill.

5.81. Clause 213, however, specifies certain powers which the chief executive may not delegate. Clause 213 is footnoted as follows:

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58 See abovementioned Report, para 4.8 at p.26.

59 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.

See the Public Service Act 1996, s.57 (Delegation of chief executive powers) for the chief executive's power of delegation.

5.82. The committee has the following concerns about the proposals for delegation of administrative powers under this bill:

- whilst s.57 of the *Public Service Act 1996* authorises a departmental chief executive to delegate "the chief executive's powers under this or another Act", the committee notes that that Act is overwhelmingly concerned with human resource management issues and structuring of departments. Accordingly, the committee considers that whilst it may very well be that s.57 can be invoked, it is at least arguable that the "other Acts" referred to in s.57 are other Acts directed to departmental administration and staffing issues, rather than "operational" legislation such as this bill.

  For this reason alone, the committee would favour a delegation power being included in the current bill itself (such as, for example, appears in cl.129 of the Explosives Bill presently before Parliament).

  In addition, the committee queries whether a delegation power in terms as wide as s.57 of the *Public Service Act* would be appropriate. That section permits delegation to "any person", and moreover permits delegated powers to be sub-delegated. Even if such provisions were appropriate for staff management issues of the type which arise under the *Public Service Act,* the committee queries whether they are appropriate for the delegation of powers related to -matter as dangerous to the health of individuals and the public as radiation. Again, by way of example, the committee notes that cl.129 of the current Explosives Bill, which also deals with dangerous materials, provides for delegation of the chief executive's powers to "an appropriately qualified public service officer or employee", with no power of sub-delegation.

- This leads to the third of the committee's concerns, which is that it has long considered that bills should provide for delegation of administrative powers to "appropriately qualified" persons, with that that term being defined in the manner which has characterised most bills introduced into Parliament during the past two to three years. The committee is concerned that this bill, in rather inappropriate circumstances, appears to embody a reversion to previous unsatisfactory delegation provisions.

5.83. The committee notes that the bill does not include a provision authorising delegation by the chief executive of the functions and powers conferred on him or her by the bill.

5.84. The committee has some reservations about the capacity of the chief executive to invoke s.57 of the *Public Service Act* to authorise delegation of powers under this bill.

5.85. Even if that can be done, the committee is concerned by the fact that s.57 permits delegations to "any person" and also permits sub-delegation of those delegations, both of which may well be inappropriate in the present context.

5.86. The committee strongly recommends that a suitably drafted power of delegation be incorporated into the bill itself.

Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?[60]

♦ **Clause 231**

5.87. Clause 231 authorises the making of transitional regulations.

5.88. The committee has found that transitional regulation-making provisions can give rise to a number of difficulties. The committee is pleased to note that cl.231 raises only some of these, namely:

- the matters with respect to which transitional regulations can be made are fairly broadly defined, being in relation to matters which are "necessary or convenient" to assist the transition from the various possession, use and transport regimes under the old Act to those under the new, and for which "this Act does not make provision or sufficient provision";
- the clause enables the making of transitional regulations which are retrospective to a date not earlier than the commencement date of the bill.

5.89. The committee notes that the regulations, and cl.231, itself are "sunsetted".

5.90. Whilst any attempt by the drafters of bills to avoid extensive reliance on transitional regulations is viewed favourably, the committee feels obliged to reiterate its general opposition to such clauses.

5.91. Overall, and whilst cl.231 is objectionable in a narrower range of respects than many other transitional regulation-making provisions which the committee has encountered, the committee feels obliged to reiterate its general opposition to such clauses.

5.92. The explanatory notes justify cl.231 on the basis that:

> *…there may be unforeseen consequences which are not dealt with in the bill. Given the adverse health risks associated with exposure to sources of ionising radiation, it is imperative that any unintended consequences which may arise during the transition from the repealed Act to the new Act be dealt with swiftly. …*
>
> *This clause would only be used in exceptional circumstances.*

5.93. The committee is pleased to note that both clause 231 and any transitional regulations made pursuant to it are subject to "sunset" clauses. It is also pleased to note the absence of "Henry VIII" provisions also typically found in transitional regulation-making powers.

5.94. However, the committee maintains the view which it has expressed on similar provisions in the past. The committee generally recommends against any provision allowing regulations to be made with respect to matters that are not covered in a principal Act of Parliament but should have been so covered. This is particularly so where the transitional regulations may be made retrospectively.

[60] 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

5.95. The committee recommends that cl.231 be removed from the bill.

Does the bill sufficiently subject the exercise of delegated legislative power to the scrutiny of the Legislative Assembly?[61]

♦ **Clause 16**

5.96. Clause 16 enables the Minister to make radiation safety standards.

5.97. These instruments are of considerable practical importance, as they stipulate matters such as the manner in which radiation practices and associated activities are to be conducted. Clause 16(4) requires the Minister to notify the making of a standard by gazette notice, and provides that the standard takes effect on the day of publication of the gazette notice or (if a later day is stated in the notice) on that later day.

5.98. Clause 16(7) declares the gazette notice to be subordinate legislation.

5.99. The committee has previously commented adversely on provisions which permits matters, which it might reasonably be anticipated would be dealt with by regulation, to be processed through some alternative means which does not constitute subordinate legislation.[62]

5.100. The significance of providing for matters to be dealt with by these alternative processes, as opposed to regulations, is of course that the relevant instruments are not "subordinate legislation" and are not subject to the tabling and disallowance provisions of Part 6 of the *Statutory Instruments Act 1992*.

5.101. The committee notes that whilst, under the bill, the standards themselves are not "subordinate legislation", cl.16(7) declares the gazette notice notifying the making of the standards, to be subordinate legislation.

5.102. The explanatory notes deal with this issue as follows:

> *….the Legislative Assembly will retain ultimate control over the promulgation of these standards as the Bill (Clause 16) specifies that the gazette notice which notifies the making of a radiation safety standard is deemed to be subordinate legislation as defined by section 9 of the Statutory Instruments Act 1992. As subordinate legislation, a gazette notice made under clause 16 of the Bill is subject to the requirements of section 49 of the Statutory Instruments Act 1992, which specifies that subordinate legislation must be tabled in the Legislative Assembly within 14 sitting days after it is notified in the gazette, in order for it to come into effect. The Legislative Assembly will therefore be aware of all radiation safety standards made by the Minister under the Bill. If, for some reason, the Legislative Assembly objects to the substance of a radiation safety standard, section 50 of the Statutory Instruments Act 1992 could be utilised to disallow the gazette notice which notified the*

appropriate persons.

61 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.

62 See, eg, Alert Digest No. 8 of 1998 at pp.9–10.

making of the standard. As a consequence of the notice being disallowed, the standard would cease to have any effect.

5.103. The proposed scheme, so far as the committee has been able to establish, has not previously been incorporated in other Queensland legislation and can be said to be a "half-way house".

5.104. The committee queries why, if Parliament is to have the capacity to effectively disallow the standards by disallowing the gazette notice upon which their commencement relies, the standards themselves should not be declared to be subordinate legislation.

5.105. The committee seeks information from the Minister as to why the standards themselves, rather than the gazette notice which is a pre-condition to their commencement, cannot be declared to be subordinate legislation.

Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?[63]

♦ **Clauses 41, 92 and 151**

5.106. The bill makes provision for regulations on a large number of subjects, and given the complexity of the subject matter and the bill's structure, this is perhaps not surprising.

5.107. The committee notes that the following clauses confer largely unqualified regulation-making powers:

- clause 41(1), which provides that a person must not prescribe for another a therapeutic procedure, or request a diagnostic procedure, involving irradiation, unless authorised to do so under a regulation;
- clause 92(2) provides that the holder of certain "Act instruments" must notify the chief executive of "a change in the holder's circumstances prescribed under a regulation";
- clause 151(5) provides that a regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make a compensation order against the State in respect of loss or expense flowing from the exercise of specified entry and enforcement powers.

5.108. In relation to all of these matters it seems to the committee that it would be desirable, and should certainly be possible, for at least some of the relevant matters to be included in the bill itself, leaving the balance to regulations.

5.109. The committee recommends that the bill be amended to include non-exhaustive lists of the various matters contemplated in cls.41(1), 92(2) and 151(5).

[63] 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.

6. STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 1999

Background

6.1. The Honourable T M Mackenroth MLA, Minister for Communication and Information and Minister for Local Government, Planning, Regional and Rural Communities, introduced this bill into the Legislative Assembly on 10 March 1999.

6.2. In his second reading speech the Minister commented that the bill is essentially an omnibus bill that incorporates legislative amendments that are concise, minor and non-controversial. He further commented that no amendments involving policy changes or issues of substances are included in the bill.

Is the legislation unambiguous and drafted in a sufficiently clear and precise manner?[64]

- **Clause 2 and Schedule: Amendment of Acts - *Education and other Legislation Amendment Act 1997, Health and Other Legislation Amendment Act 1998, and State Financial Institutions and Metway Merger Facilitation Act 1996***

6.3. Clause 2 provides that this Act commences on the day of assent except so far as is otherwise expressly provided.

6.4. At the end of the sections relating the above Acts the bill contains a paragraph which is titled "commencement" and provides for retrospective commencement of the relevant provisions. The paragraph relating to commencement is not numbered, and is printed in a smaller font than the other substantive provisions of the Act. These commencement provisions are printed in the same format as the explanatory notes.

6.5. The committee is concerned that a format which varies from other substantive provisions of the Act and the absence of paragraph numbers may adversely impact on the clear interpretation of the Act. On this basis the committee considers it preferable that commencement provisions relating to specific Acts be numbered sections, using the same format as other substantive sections of the bill.

6.6. The committee recommends that the bill be amended accordingly.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?[65]

64 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.

65 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.

♦ **Clause 2 and Schedule: Amendment of Acts *Education and other Legislation Amendment Act 1997, Health and Other Legislation Amendment Act 1998, and State Financial Institutions and Metway Merger Facilitation Act 1996***

6.7. Clause 2 provides that this Act commences on the day of assent except so far as is otherwise expressly provided. At the end of the sections relating the above Acts the bill provides for the commencement of the provisions which relate to these acts. The provisions are taken to have commenced on the day of assent of the Act being amended. There has been assent to all three of these Acts. Accordingly, the provisions are retrospective.

6.8. The committee always takes care when examining legislation with retrospective effect to evaluate whether there are any adverse effects on rights and liberties or whether obligations retrospectively imposed are undue. In making the evaluation the committee typically has regard to:

- whether the retrospective application is beneficial to persons other than the government;
- whether the retrospective application imposes undue obligations retrospectively; and
- whether individuals have relied on the legislation and have a legitimate expectation under the legislation prior to the retrospective clauses commencing.

6.9. The explanatory notes provide that the amendments either:

- correct errors in drafting;
- make consequential amendments;
- make minor drafting amendments; or
- amend cross-referencing as necessitated by the renumbering of a relevant Act.

6.10. The explanatory notes further provide that the retrospective commencement of these provisions does not adversely affect the rights of any person.

6.11. On the basis of the information available it appears that the bill does not adversely affect rights and liberties, or impose obligations, retrospectively.

6.12. The committee has no further comment on the retrospective aspects of the bill.

Is the legislation unambiguous and drafted in a sufficiently clear and precise manner?[66]

♦ **Schedule: Amendment of Acts - *Fair Trading Act 1989* cl.3**

6.13. Clause 3 of the amendment of the *Fair Trading Act 1989* amends s.193(1), (1A) and (2).

[66] 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.

6.14. The *Fair Trading Act 1989* does not contain a s.193. It appears to the committee that this clause is intended to amend s.103.

6.15. The committee draws this matter to the Minister's attention.

Does the legislation have sufficient regard to the rights and liberties of individuals?[67]

- **Schedule Amendment of Act - *Public Service Act 1996* cl.14**

6.16. Clause 14 of the amendments to the *Public Service Act 1996* inserts a new s.71(1A).

6.17. Section 71 of the *Public Service Act 1996* applies to an officer who is employed on a contract which is terminated under certain circumstances, expires or is not renewed, where the officer was employed on tenure prior to entering into the contract. The section provides that such a person becomes an officer on tenure, and sets out the conditions to apply to that tenure.

6.18. The proposed amendment provides that s.71 does not apply to a person employed in a department as an officer on a contract for a fixed term that was in existence before 1 December 1996.

6.19. The explanatory note provides that:

> *Amendment 14 removes an automatic right of reversion to tenured employment for officers on contracts in existence before the commencement of the Act, which inadvertently adversely affected their pre-existing legislative and contractual entitlements.*

6.20. The committee notes that prior to the *Public Service Act 1996* coming into force s.20(4) of the *Public Service Management and Employment Act 1988* applied to the circumstances to which s.71 of the *Public Service Act* now applies. The significant difference between the two provisions is that s.71 of the *Public Service Act 1996* provides that people to whom the provision applies become officers employed on tenure. Section 20(4) of the *Public Service Management and Employment Act 1988* gave people to whom the provision applied the entitlement to elect to continue to be employed as an officer. It appears that officers also had the option of pursuing their entitlements under their contract.

6.21. The committee requests clarification from the Minister as to whether it is the intention of proposed s.71(1A) that officers who entered contracts before 1 December 1996 (but would otherwise meet the requirements under s.71) would be entitled to elect to return to tenure, or to pursue their entitlements under their contract.

6.22. If this is the Minister's intention, the committee seeks clarification as to how this is achieved by providing that s.71 is not to apply to such officers.

6.23. If this is not the Minister's intention, the committee requests clarification as to:

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

- the policy which this provisions seeks to implement.
- what were the pre-existing legislative and contractual entitlements, which were inadvertently adversely affected by s.71; and
- the extent to which these pre-existing legislative and contractual entitlements will exist after the proposed amendment is made.

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*[68]

Matters reported on to Parliament by the Scrutiny of Legislation Committee in its alert digests prior to the enactment[69] of a provision may therefore be considered as extrinsic material in its interpretation.

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

69 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

7. GAMING MACHINE AND OTHER LEGISLATION AMENDMENT BILL 1998

Background

7.1. 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.

7.2. The committee commented on this bill in its Alert Digest No. 11 of 1998 at pages 30–37. The Treasurer's response to those comments was reported upon by the committee in its Alert Digest No. 1 of 1999 at pages 53–61.

7.3. In relation to one matter the committee sought further clarification from the Treasurer. The Treasurer's response to that request for further clarification 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?[70]

- **Clauses 2(1) and 113**

7.4. In response to inquiries from the committee in relation to the retrospectivity of certain provisions of the bill, the Treasurer advised that a Public Benefit Test is currently being conducted. The committee sought an undertaking from the Treasurer that the bill will not be debated until the completion of the Public Benefit Test. The Treasurer provided the following response:

> *A Draft Public Benefit Test Report has been published and has been provided to the key stakeholders for comment.*
>
> *Public notification of this Report was also made in The Courier-Mail on Saturday, 27 February 1999, with copies of the Report available on 1 March from the Queensland Office of Gaming Regulation (QOGR) or from the QOGR web site (www.qogr.qld.gov.au).*
>
> *Comments on the Draft Report will close on Monday, 15 March 1999, with the final version of the Public Benefit Test Report scheduled for submission to me by 22 March 1999.*
>
> *Accordingly, the Bill will not be debated until completion of the Public Benefit Test.*

7.5. The committee further noted that persons who have entered into the relevant agreements will be retrospectively rendered liable to prosecution for breach of s.189(1), which is punishable by a maximum penalty of 200 penalty units or 1 year's imprisonment.

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[70] 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.

7.6. The committee commented that it would strongly oppose any retrospective imposition of liability to prosecution and sought information from the Treasurer as to whether it is in fact intended that persons should be subject to that liability. The Treasurer provided the following relevant information:

> *With respect to the retrospective amendment to section 189, you are advised that it was never the intention of the Government to create a liability for any person including club executives, for conduct that was lawful when the various contractual arrangements were put in place.*
>
> *It is certainly not the Government's intention to take action - other than to void affected contracts - with respect to any sites or individuals involved in actions which were legal at the time they were undertaken.*
>
> *Moreover, section 11(1) of the Criminal Code provides as follows:*
>
> *"A person cannot be punished for doing or omitting to do an act unless the act or omission constituted an offence under the law in force when it occurred; nor unless doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when the person is charged with the offence."*
>
> *Accordingly, and subject to the outcome of the final Public Benefit Test Report, I do not propose any changes to these provisions.*

7.7. The committee thanks the Treasurer for his response.

7.8. The committee notes that the Public Benefit Test is expected to be completed by 22 March 1999, and that the bill will not be debated until after that date.

7.9. As to the issue of retrospective liability to prosecution, the committee notes the Treasurer's advice that the bill's retrospective effect is not intended to extend beyond invalidation of the relevant contracts.

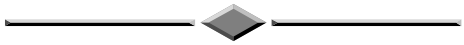
7.10. The committee further notes the Treasurer's reference to s.11 of the Criminal Code, and his statement that he does not propose to amend the retrospective provisions.

7.11. The committee respectfully disagrees with the implication in the Treasurer's letter that s.11 would protect from prosecution those persons who have entered into contracts which have been retrospectively forbidden.

7.12. S.11 does not deal with situations involving adverse retrospective changes to legislation, expressly made. In the committee's view the question is essentially one of statutory interpretation, specifically, whether the retrospective narrowing of the categories of contracts which licensees can legally enter into has the effect of also activating, in relation to the relevant contracts, the s.189(1) offence provision linked to the making of forbidden contracts.

7.13. Whilst courts, in interpreting legislation, apply a quite strict presumption against retrospectivity where the creation of offences is concerned, the terms of current s.189(1) and the bill's retrospective provision, in the committee's opinion, are probably sufficiently explicit when taken in conjunction to produce a liability to prosecution.

7.14. The committee recommends that the bill be amended to explicitly state that no person can be prosecuted for having, prior to the bill's commencement, entered into any of the agreements which the bill retrospectively forbids.



This concludes the Scrutiny of Legislation Committee's 3rd 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

22 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 principles[71] to particular Bills and particular subordinate legislation; and

(b) the lawfulness of particular subordinate legislation;

by examining all Bills and subordinate legislation[72].

(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).

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71 "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.

72 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.[73]

(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.

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[73] 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.
Community-Based Referendum Bill 1999[74] Bill no. 3	9 March 1999 not yet passed	♦ general ♦ cl.16 ♦ cl.3 ♦ cls.33–37 ♦ cls.37(7) & 37(8) ♦ cls.38 & 39 ♦ cl.58 ♦ general	♦ Does the legislation have sufficient regard to the institution of Parliament? ♦ Is the content of the explanatory note sufficient? ♦ Is the legislation unambiguous and drafted in a sufficiently clear and precise way? ♦ Does the legislation have sufficient regard to the rights and liberties of individuals? ♦ Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification? ♦ 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? ♦ Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons? ♦ Has an explanatory note been prepared?		
Corrective Services Legislation Amendment Bill 1999 Bill no. 5	9 March 1999 not yet passed	♦ cls.7, 14 & 27 ♦ cl.7 ♦ cl.7 ♦ cl.7	♦ Does the legislation have sufficient regard to the rights and liberties of individuals? ♦ 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? ♦ Is the legislation consistent with the principles of natural justice? ♦ Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?		

[74] Private Member's Bill

BILL (SHORT TITLE)	DATE INTRODUCED /PASSED	CLAUSE/ SECTION	PRINCIPLE ARISING	MINISTERIAL RESPONSE	AD No.
Criminal Code (Stalking) Amendment Bill 1999 Bill no. 1	3 March 1999 not yet passed	♦ general ♦ general ♦ general	♦ Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification? ♦ 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?		
Gaming Machine and Other Legislation Amendment Bill 1998 Bill no. 40	19 November 1998 not yet passed	♦ cls.2(1) & 113	♦ Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?	♦ Information provided	11 of 1998 and 1 & 3 of 1999
Police Powers and Responsibilities and Other Acts (Registers) Amendment Bill 1999 Bill no. 8	10 March 1999 not yet passed	♦ cl.14 ♦ cl.16	♦ Is the legislation unambiguous and drafted in a sufficiently clear and precise way? ♦ Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?		

BILL (SHORT TITLE)	DATE INTRODUCED /PASSED	CLAUSE/ SECTION	PRINCIPLE ARISING	MINISTERIAL RESPONSE	AD No.
Radiation Safety Bill 1999 Bill no. 7	10 March 1999 not yet passed	♦ cls.12, 13, 14, 15, 23, 24, 25, 26, 38(6), 42, 43, 44, 47, 123, 133, 141, 144, 145, 153 & 200 ♦ cls.120(2) & 145(2) ♦ cls.204 & 205 ♦ cls.111–149 inclusive ♦ cl.120 ♦ cls.13 & 210 ♦ cl.213 ♦ cls.41, 92, 151 & 231 ♦ cl.16	♦ 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 legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification? ♦ Does the legislation confer power to enter premises and to search for or seize documents or other property without a duly issued warrant? ♦ Does the legislation provide appropriate protection against self-incrimination? ♦ Does the bill authorise the amendment of an Act only by another Act (by a "Henry VIII clause")? ♦ Does the legislation allow the delegation of administrative power only in appropriate cases and to appropriate persons? ♦ Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons? ♦ Does the bill sufficiently subject the exercise of delegated legislative power to the scrutiny of the Legislative Assembly?		
Statute Law (Miscellaneous Provisions) Bill 1999 Bill no. 6	10 March 1999 not yet passed	♦ cl.2 & Schedule ♦ cl.2 & Schedule ♦ Schedule	♦ Is the legislation unambiguous and drafted in a sufficiently clear and precise manner? ♦ Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively? ♦ Does the legislation have sufficient regard to the rights and liberties of individuals?		