



LEGISLATIVE ASSEMBLY OF QUEENSLAND

Scrutiny of Legislation Committee

Annual Report

1 July 1999 – 30 June 2000

October 2000

Scrutiny of Legislation Committee (49th Parliament)

– Membership –

Chair:	Mrs Linda Lavarch MLA, Member for Kurwongbah
Deputy Chair:	Mr Tony Elliott MLA, Member for Cunningham
Other Members:	Mrs Liz Cunningham MLA, Member for Gladstone
	Mr Bill Feldman MLA, Member for Caboolture (from 13 April 2000)
	Hon. Jim Fouras MLA, Member for Ashgrove (until 29 February 2000)
	Dr John Kingston MLA, Member for Maryborough (until 13 April 2000)
	Mrs Jo-Ann Miller MLA, Member for Bundamba (from 29 February 2000)
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CHAIR'S FOREWORD

The Scrutiny of Legislation Committee is pleased to table its Annual Report for the 1999-2000 financial year.

During the year, 93 bills were introduced into Parliament, almost all of which the committee was able to examine. The committee reported to Parliament on issues raised by 78 bills.

During the year, 385 pieces of subordinate legislation were published in the Queensland Subordinate Legislation Series, and 19 pieces of exempt subordinate legislation were made. The committee considered that a total of 55 pieces of subordinate legislation or exempt subordinate legislation potentially raised issues within the committee's terms of reference.

During the year, the committee tabled in the Legislative Assembly 18 Alert Digests, and 3 reports relating to subordinate legislation or exempt subordinate legislation.

As in previous years, the committee notes the high level of support and co-operation received from Ministers, which greatly assisted it in the performance of its statutory functions.

In conclusion, I would like to thank the current members of the committee, along with former members Hon Jim Fouras MLA and Dr John Kingston MLA, for their dedication in dealing with the considerable body of committee materials which required their consideration during the year. I would also like to thank the committee's staff, and the committee's legal advisers, for their work during the financial year.

Linda Lavarch, MLA
Chair
25 October 2000

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1. CONSTITUTION, ROLE AND AREA OF RESPONSIBILITY

Constitution and role of the Scrutiny of Legislation Committee

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

Area of responsibility

- 1.3. Section 22 of the *Parliamentary Committees Act* provides that:
- (1) *The Scrutiny of Legislation Committee's area of responsibility is to consider—*
- (a) *the application of fundamental legislative principles¹ to particular Bills and particular subordinate legislation; and*
- (b) *the lawfulness of particular subordinate legislation;*
- by examining all Bills and subordinate legislation.²*
- (2) *The committee's area of responsibility includes monitoring generally the operation of—*
- (a) *the following provisions of the Legislative Standards Act 1992—*
- *section 4 (Meaning of "fundamental legislative principles")*
 - *part 4 (Explanatory notes); and*
- (b) *the following provisions of the Statutory Instruments Act 1992—*
- *section 9 (Meaning of "subordinate legislation")*
 - *part 5 (Guidelines for regulatory impact statements)*
 - *part 6 (Procedures after making of subordinate legislation)*
 - *part 7 (Staged automatic expiry of subordinate legislation)*

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

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

- *part 8 (Forms)*
- *part 10 (Transitional).*

Fundamental legislative principles

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

Sufficient regard to fundamental legislative principles

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

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

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

2. SCRUTINY OF BILLS

Overview

- 2.1. This chapter provides information about the committee's discharge, during the 1999-2000 financial year, of its function of scrutinising bills and examining explanatory notes to bills. It also provides indicators of the committee's performance in these areas.
- 2.2. Under s.22(1) of the *Parliamentary Committees Act*, the committee is required to consider the application of fundamental legislative principles to particular bills, by examining all bills introduced into the Legislative Assembly. In the course of so doing, the committee also examines the explanatory notes presented with bills.⁵
- 2.3. There are accordingly two primary facets of the committee's bill scrutiny role. The first is what percentage of the bills introduced it was ultimately able to examine and report upon; the second is what issues were raised by those bills which it scrutinised. Those matters are dealt with separately below.⁶

Percentage of bills able to be examined and reported on

- 2.4. During the 1999-2000 financial year, 93 bills were introduced into the Legislative Assembly,⁷ and the committee ultimately scrutinised and reported to Parliament⁸ on 90 (or 97%) of these. Of the 3 bills not scrutinised, 2 were urgent bills⁹ which were passed before the committee was able to report, and the remaining bill was ruled out of order by Mr Speaker on the day it was introduced.¹⁰ Seven of the bills, which were introduced late in the financial year, were reported on in the committee's first 2 reports for the following (2000-2001) financial year.¹¹ In its reports, the committee reported to Parliament any concerns that it may have had about the application of fundamental legislative principles to the bills. These reports, called "alert digests", were usually tabled by the committee's chair on the first day of each sitting week. Each digest dealt

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

⁶ This report assesses each of these two aspects in what it considers to be the most meaningful manner. The committee's capacity to actually examine and report upon bills is measured by reference to bills introduced during the 1999-2000 financial year (even though, as often happens, some bills introduced late in that financial year were not able to be reported upon until early in the next financial year). On the other hand, the assessment of issues raised by bills scrutinised (reported in the committee's Alert Digests) is based upon the contents of Alert Digests tabled during the 1999-2000 financial year.

⁷ In the previous financial year, 95 bills were introduced.

⁸ Where a bill, upon examination, raised issues within the committee's terms of reference the committee reported on those issues: where a bill upon examination appeared to raise no issues, the committee reported that the bill had been "examined but not reported on".

⁹ Urgent bills are passed under Standing Order 273 which provides that, by leave of the House, a bill may be passed through its several stages "with unusual expedition". In such cases the usual requirement, under Standing Order 241(d), that debate on a bill be adjourned for at least 13 whole calendar days is displaced.

¹⁰ This ruling was made on the basis that the bill (the *Liquor (Trading Limitations on Anzac Day) Amendment Bill 2000*) was substantially identical to a bill introduced during 1999 (which was subsequently defeated on its second reading), was therefore in breach of Standing Order 76 and accordingly lapsed.

¹¹ Alert Digest No. 9 of 2000, tabled on 18 July 2000 and Alert Digest No. 10 of 2000, tabled on 22 August 2000 (*Water Bill 2000*).

with bills introduced during the previous sitting week.¹² The committee invited ministers to respond to comments made in its digests. Those responses were reported on and reproduced in full in the next digest.

- 2.5. During the financial year the committee at times operated under some pressure in endeavouring to discharge its responsibilities to Parliament, given the time constraints associated with the passage of bills. On 3 occasions it held a special meeting to adopt an alert digest in respect of a bill considered to be of some importance, in order to ensure that the committee's report was available to Parliament before the bill was debated.¹³
- 2.6. As in the previous financial year, a significant number of private members' bills (11 in all) were introduced into the Legislative Assembly in 1999-2000. Once again, all of these bills appeared to have been professionally drafted,¹⁴ and their only real distinguishing feature from the committee's perspective was the lack of accompanying explanatory notes.¹⁵

Issues raised by bills scrutinised

- 2.7. During the 1999-2000 financial year, tabled 18 Alert Digests reporting to Parliament on its scrutiny of 96 bills.¹⁶
- 2.8. Of the bills scrutinised, 18 (or 19%) were considered to raise no issues within the committee's terms of reference. The remaining 78 bills were considered to raise one or more such issues. The table below sets out statistics on the issues raised in the digests, in descending order of frequency. In total, the committee queried or commented on 391 issues in the bills reported on in its digests.

STATISTICS ON ISSUES WITHIN THE COMMITTEE'S AREA OF RESPONSIBILITY RAISED IN ALERT DIGESTS TABLED 1 JULY 1999 TO 30 JUNE 2000		
ISSUE*	No. of queries	% ¹⁷ of queries
Rights and liberties of individuals ¹	144	36.83

¹² Or, where the previous sitting week was the second of two consecutive sitting weeks, with bills introduced during either of those weeks.

¹³ Alert Digest No. 17 of 1999 (*Vegetation Management Bill 1999*), Alert Digest No. 3 of 2000 (*Police Powers and Responsibilities Bill 2000*) and Alert Digest No. 7 of 2000 (*Police Powers and Responsibilities and Other Acts Amendment Bill 2000*). The length of the two *Police Powers* bills prevented their being examined by the committee within the usual timeframe, and an urgent report on the *Vegetation Management Bill* (tabled 2 days after the bill was introduced into the Legislative Assembly) was considered necessary because of the Minister's apparent intent to have the bill debated during the same sitting week.

¹⁴ The committee presumes most were drafted by the Office of Parliamentary Counsel for the sponsoring Members.

¹⁵ The statutory requirement to prepare explanatory notes applies only in respect of Government bills: s.22(1), *Legislative Standards Act 1992*. However, explanatory notes were voluntarily supplied in relation to some of these private members' bills.

¹⁶ The bills reported upon in these Alert Digests included 13 bills introduced into Parliament late in the preceding (1998-1999) financial year. Those bills were all reported on in Alert Digest No 8 of 1999, tabled on 20 July 1999.

¹⁷ Approximate figures only.

STATISTICS ON ISSUES WITHIN THE COMMITTEE'S AREA OF RESPONSIBILITY RAISED IN ALERT DIGESTS TABLED 1 JULY 1999 TO 30 JUNE 2000		
ISSUE*	No. of queries	%¹⁷ of queries
Clear and precise drafting ^{xiii}	47	12.02
Retrospective legislation ^{ix}	39	9.97
Sufficiently defined administrative power subject to appropriate review ⁱⁱⁱ	23	5.88
Natural justice ^{iv}	19	4.86
Delegation of legislative power ^{xiv}	17	4.35
Institution of Parliament ⁱⁱ	17	4.35
Powers of entry, search and seizure ^{vii}	16	4.09
Reversal of the onus of proof ^{vi}	15	3.84
Explanatory notes ^{xxiv}	13	3.32
Immunity from proceedings without adequate justification ^x	13	3.32
Parliamentary scrutiny of delegated legislative power ^{xv}	10	2.56
Self-incrimination ^{viii}	5	1.28
Delegation of administrative power ^v	4	1.02
"Henry VIII clauses" ^{xvi}	4	1.02
Aboriginal tradition and Island custom ^{xii}	3	0.77
Other (for example: comments on the regulatory impact statement guidelines; staged automatic expiry; and compulsory acquisition of property.) ^{xxxiv}	2	0.51

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

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

- the rights and liberties of individuals;

- clear and precise drafting; and
- retrospective legislation.

2.10. These three topics have predominated in each full financial year since the committee's establishment. Moreover, their order has not varied during the last three financial years (including this financial year).¹⁸

◆ **Rights and liberties of individuals**

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

- a provision empowering a court to order that a person not "locate or attempt to locate" their spouse;¹⁹
- establishment of broadly-framed offences, based on negligent acts or omissions²⁰
- the appropriateness of the maximum penalties imposed for particular offences;²¹
- exemption of certain regulations from the requirement for a regulatory impact statement²²
- conferral on a largely lay tribunal of power to punish contempts²³
- restrictions placed on the owners of freehold land in relation to clearing of vegetation²⁴
- compulsory provision of bodily samples for DNA profiling.²⁵

2.12. The committee, appropriately in its view, takes an expansive approach in identifying "rights and liberties". These of course include traditional common law rights,²⁶ but the committee considers they can also encompass, for example, rights which are only

¹⁸ In the 1996 – 1997 financial year, the committee's most frequently considered principle was rights and liberties of individuals (18% of queries); followed by queries on retrospective legislation (13%) and then clear and precise drafting (11.5%). In the 1997 - 1998 financial year, the most frequently considered principle was rights and liberties of individuals (19%), followed by clear and precise drafting (11.5%) and retrospective legislation (11%). The results for 1998 -1999 replicated those for 1997 – 1998, except that the relevant percentages were 26.58%, 12.24% and 11.81% respectively.

¹⁹ *Domestic Violence (Family Protection) Amendment Bill 1999*, Alert Digest No. 8 of 1999 at page 10.

²⁰ *Sugar Industry Bill 1999*, Alert Digest No.9 of 1999 at page 34.

²¹ *Electricity Amendment Bill 1999*, Alert Digest No. 5 of 2000 at pages 9-10.

²² *Tourism Legislation Amendment Bill 1999*, Alert Digest No.9 of 1999 at page 36.

²³ *Land Court Bill 1999*, Alert Digest No.11 of 1999 at page 10.

²⁴ *Vegetation Management Bill 1999*, Alert Digest No 17 of 1999 at pages 1-3.

²⁵ *Police Powers and Responsibilities and Other Acts Amendment Bill 2000*, Alert Digest No. 7 of 2000 at page 4.

²⁶ Such as the right of a landowner to the use and enjoyment of his or her land.

incompletely recognized at common law (such as the right to privacy), and rights (especially human rights) which arise out of Australia's international treaty obligations.

- 2.13. Given its inherent broadness, it can be expected that this particular principle will continue its dominance in terms of issues raised by the committee.

◆ **Clear and precise drafting**

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

- be drafted in a style which is as simple as possible, consistent with the nature of the subject-matter;
- be structured in a logical, user-friendly and accessible way;
- contain provisions that are precisely drafted.

- 2.15. The following are examples of issues raised by the committee:

- the committee reiterated its view that, where possible, phrases or terms used in a bill should be set out in the bill itself, and that "cross-referencing" or "sign-posting"²⁷ should be kept to a minimum;²⁸
- the committee noted that, as the result of the insertion into an Act of a large body of contiguous amendments, the last such amendment was numbered section "180ZZZZB", and recommended that a renumbered reprint of the amended Act be issued as soon as possible to assist persons attempting to read it;²⁹
- the committee applauded the fact that a bill, in contrast to the Act it replaced, included a definition of a pivotal term.³⁰

◆ **Retrospective legislation**

- 2.16. As it has done since its establishment, the committee continued its general practice of bringing provisions in bills which have effect retrospectively,³¹ to the attention of Parliament—even if it was not concerned about the implications of the provisions. The committee has consistently examined retrospective provisions to ensure that they do not adversely affect rights and liberties, or impose obligations, retrospectively.

²⁷ That is, defining a term or phrase by reference to its definition in another Act.

²⁸ *Police Powers and Responsibilities Bill 2000*, Alert Digest No.3 of 2000 at pages 12-13. The committee noted that that bill, which enacts generic police powers previously contained in a multitude of Acts, contained 47 "cross-referenced" definitions. The committee accepts that some commonly used words and phrases may be (and currently are) defined in the *Acts Interpretation Act 1954*.

²⁹ *Transport (Busway and Light Rail) Amendment Bill 2000*, Alert Digest No.4 of 2000 at page 16.

³⁰ *Mental Health Bill 2000*, Alert Digest No.4 of 2000 at pages 6-7: the bill included a definition of "mental health". The committee conceded the difficulties in defining such a concept and the necessity for any definition to be framed in somewhat general terms. The committee nevertheless considered the insertion of the definition enhanced the rights of persons who might potentially be subject to the bill's provisions.

³¹ On occasions, whether a particular provision in fact has retrospective effect can be a difficult question.

- 2.17. Some of the retrospective provisions reported on involved curative measures, which did not concern the committee,³² while others of these provisions were not curative but did not disadvantage individuals affected.³³ As in previous years, the category of retrospective provisions that most concerned the committee were those that adversely affected individuals or had the potential to do so.³⁴ In these cases the committee particularly looked at whether individuals had legitimate expectations under the existing law and could reasonably expect to rely on it. The committee frequently sought information from Ministers as to whether there were any individuals who were in fact disadvantaged by the relevant provisions, and whether (and when) the intention to change the existing legislation had been made known to such persons. The committee most often referred to Parliament for consideration the question of whether any adverse retrospective effect imposed on individuals by the legislation was justified.

Impact of the Committee's Reports

- 2.18. The principal role of the committee's Alert Digest is to inform Parliament of any issues arising with respect to the fundamental legislative principles in bills introduced into the House. In this way, the committee seeks to enhance debate in the Legislative Assembly on issues arising regarding the rights and liberties of individuals and the institution of Parliament.
- 2.19. The committee cannot directly oppose an objectionable provision in a bill in the way that it can, for example, ask Parliament to support a motion to disallow a provision in subordinate legislation. Instead, the committee must appeal to the relevant minister to accommodate its views or convince members of Parliament that a change in the legislation is justified and necessary.
- 2.20. The committee considers that, during the 1999 - 2000 financial year, it has had an appreciable influence on amendments made to bills during their passage through the Legislative Assembly.
- 2.21. One measure of this is that the committee's Alert Digests tabled during the financial year record 25 instances of Ministers agreeing to amend bills to address the committee's concerns.³⁵
- 2.22. Moreover, and although in a less quantifiable way, the committee has noted that bills drafted subsequent to it having raised a particular issue, sometimes incorporate drafting modifications at least partially addressing the issue of concern.

Ministerial Responses to Committee Reports on Bills

- 2.23. Unlike reports from other committees of the Queensland Parliament, ministers are not required by statute to respond to recommendations in reports of the Scrutiny of

³² See, for example, *Equity and Fair Trading (Miscellaneous Provisions) Bill 2000*, Alert Digest No. 5 of 2000 at pages 12-13.

³³ See, for example, *Revenue Laws Amendment Bill 1999*, Alert Digest No. 13 of 1999 at pages 36-37.

³⁴ See, for example, *Local Government and Other Legislation Amendment Bill 2000*, Alert Digest No.2 of 2000 at pages 12-14.

³⁵ An audit of those undertakings indicates that the amendments in question have all ultimately been made.

Legislation Committee.³⁶ Ministers have nevertheless been very supportive of the committee's work.

2.24. This is reflected in the fact that Ministers:

- invariably provided information in relation to the issues raised, where such information was sought by the committee;³⁷
- often provided information even where the committee did not request it;
- advised, in a significant number of cases, that amendments would be introduced to overcome the committee's concerns.

Summary of the Committee's Scrutiny of Bills

2.25. The committee considers the statistics provided in this chapter, and the other indicia mentioned above, demonstrate that the committee operated successfully during the financial year. In short, the committee:

- raised numerous issues within its jurisdiction for the consideration of Parliament, and in so doing enhanced debate on the bills concerned
- clarified issues with, and obtained information from, ministers in respect of matters of potential concern
- was influential in achieving the amendment of various bills to address the issues and concerns raised by it
- believes that through its activities, it had an ongoing influence on the drafting of the bills introduced into Parliament, in respect of the incorporation of fundamental legislative principles.

2.26. The committee believes that as a result the quality of bills, in terms of compliance with fundamental legislative principles, was enhanced.

2.27. The committee wishes to record its appreciation of the high level of support it has continued to receive from ministers. Without the support of the Executive, the committee's capacity to discharge its statutory functions would be significantly reduced.

2.28. The committee also thanks departmental and ministerial staff for providing briefings and information to the committee and its staff on bills throughout the financial year. Many issues which could have given rise to concern have been overcome at an early stage with the help of these officers.

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

³⁷ The committee has not been able to identify any case where a Minister, having been requested by the committee to supply information, ultimately failed to do so (on some occasions where a bill was debated urgently, Ministers were unable to respond prior to the Second Reading Debate. On almost all such occasions, the Ministers tabled a copy of their reply in the House, and on other occasions referred to the relevant matters during their contribution to the Second Reading Debate.

3. SCRUTINY OF SUBORDINATE LEGISLATION

Overview

- 3.1. Section 22(1) of the *Parliamentary Committees Act 1995* provides that one of the committee's areas of responsibility is to consider the application of the fundamental legislative principles to particular subordinate legislation, and to consider the lawfulness of subordinate legislation.
- 3.2. In addition, s 22(2) provides that the committee's area of responsibility includes, amongst other things, monitoring generally part 4 of the *Legislative Standards Act 1992*, relating to explanatory notes, and relevant parts of the *Statutory Instruments Act 1992* relating to regulatory impact statements, procedures after making of subordinate legislation, and staged automatic expiry of subordinate legislation.
- 3.3. To fulfil these responsibilities the committee examines subordinate legislation and, where the committee has concerns about any matters within its terms of reference or requires further information to finalise its consideration, corresponds with the minister responsible for the particular subordinate legislation. If the matter is not resolved, the committee will consider reporting its concerns to Parliament. The committee also has the option of giving notice of a motion to disallow an instrument, if it considers that such action is warranted in the circumstances.
- 3.4. This chapter contains statistical information detailing the issues raised by the committee in relation to subordinate legislation made in the 1999-2000 financial year, and the manner in which issues raised by the committee were addressed. In addition, a brief discussion of the issues most frequently arising is provided.

Subordinate legislation scrutinised and reported on in the 1999 – 2000 financial year

- 3.5. In the 1999 – 2000 financial year there were 385 pieces of subordinate legislation published in the Queensland Subordinate Legislation Series. The committee also examined 19 pieces of exempt subordinate legislation (that is, subordinate legislation that is not required to be drafted by the Office of the Queensland Parliamentary Counsel and does not form part of the subordinate legislation series).
- 3.6. The committee raised issues within its terms of reference with the relevant Minister in relation to 55 pieces of subordinate legislation. In some circumstances the committee was merely making inquiries in order to finalise its consideration of the subordinate legislation. In other cases the committee requested the Minister to take action which would, in the committee's view contribute to the objectives of the *Statutory Instruments Act 1992* and the *Legislative Standards Act 1992*.
- 3.7. As the statistics provided under paragraph 3.32 demonstrate the committee's concerns are frequently addressed by further information provided by the relevant minister. Alternatively, a minister might give the committee an undertaking to take action to address the committee's concerns. On occasion, the committee might determine to take no further action despite the fact that its concerns are not fully resolved. Generally, this occurs where any action to address the committee's concerns involves inherent disadvantages which would be likely to outweigh the benefits, or the issue is

not so serious that the committee considers that further action would be justified in the circumstances.

3.8. The committee can report on any matter which it considers necessary to draw to the attention of the Legislative Assembly. In addition, where notice of a disallowance motion is given in the Legislative Assembly by a member of Parliament who is not a member of the committee, the committee provides a report on matters within its jurisdiction arising from the relevant subordinate legislation.

3.9. During the 1999-2000 financial year the committee tabled the following reports relating to subordinate legislation³⁸:

- Report in relation to the *Fisheries Amendment Regulation No. 3 of 1999*, Subordinate Legislation No. 58 of 1999 (Tabled 20 July 1999)
- University Statutes (Tabled 9 November 1999)
- Report on the *Fisheries (East Coast Trawl) Management Plan 1999* SL No. 289 of 1999 (Tabled 8 December 1999)

3.10. A brief synopsis of the issues considered in these reports is outlined below.

◆ **Report in relation to the *Fisheries Amendment Regulation (No. 3) of 1999*, Subordinate Legislation No. 58 of 1999 (Tabled 20 July 1999)**³⁹

3.11. On 8 June 1999 Mr Bill Feldman MLA, Member for Caboolture, gave notice of a motion to move that the *Fisheries Amendment Regulation (No. 3) 1999* be disallowed. The committee reported in order to facilitate debate on the disallowance motion.

3.12. The committee noted that the regulation has implications for the commercial fishing industry, recreational fishers and the community as a whole, and expressed the view that the attempt to create an appropriate balance between the competing rights and interests of various stakeholders was a question of policy. The committee did not attempt any assessment of whether the policy adopted by the Minister was appropriate as policy issues are beyond the jurisdiction of the committee.

3.13. However, the committee did consider a number of issues relating to the explanatory notes and regulatory impact statements (RIS) relevant to the subordinate legislation. During the course of its consideration of relevant issues the committee expressed the view that:

- notification of the availability of RISs is an essential part of compliance with the statutory requirements relating to RISs, and failure to advertise an RIS in a *newspaper likely to be read by people particularly affected by the proposed subordinate legislation* would constitute a failure to comply with the requirements of s 45 of the *Statutory Instruments Act 1992*; and

³⁸ In addition, on 18 July 2000 the committee tabled a report on the *Fire and Rescue Authority Amendment Regulation (No. 1) 2000* SL No. 113 of 2000. Although this report was tabled in the 2000-2001 financial year it related to subordinate legislation tabled during the 1999-2000 financial year.

³⁹ The subordinate legislation to which this report relates was tabled in the 1998-1999 financial year.

- it is preferable for specific authorising provisions to be referred to in a RIS, rather than merely the name of the relevant Act or Regulation, with no further detail. This additional information provides clarification and assistance for any person considering the RIS.

3.14. The disallowance motion was not moved within the necessary time frame. Accordingly, the motion lapsed, and was not debated in the Legislative Assembly.

◆ **University Statutes (Tabled 9 November 1999)**

3.15. During the 1998-1999 financial year and the 1999-2000 financial year, the committee considered a number of University Statutes, which are exempt subordinate legislation (that is, subordinate legislation which is not required to be drafted by the Office of Parliamentary Counsel).

3.16. During consideration of these statutes the committee identified a disproportionately large number of matters of potential concern, as regards their compliance with fundamental legislative principles.

3.17. Following correspondence with the Minister the committee considered that the current process for drafting University statutes is creating a fundamental problem, which reflects generally in the quality of the statutes and their compliance with the *Legislative Standards Act 1992*. Further, the committee considered that a more effective process for the preparation of the statutes would be likely to overcome many of the specific concerns which the committee identified with individual statutes.

3.18. The committee determined not to pursue specific matters raised by University statutes. Instead, the committee requested the Minister to review the current process for drafting University statutes, and establish a process that will be more effective in ensuring that the statutes are drafted in compliance with the fundamental legislative principles. The committee reported to Parliament to inform it of the approach the committee was taking in relation to these statutes.

3.19. The Minister for Education is currently reviewing the process for preparing University statutes. The committee looks forward to the outcome of that review.

◆ **Report on the *Fisheries (East Coast Trawl) Management Plan 1999* SL No. 289 of 1999 (Tabled 8 December 1999)**

3.20. On 1 December 1999 Mr Jeff Knuth MLA, independent member for Burdekin gave notice to move a motion that the *Fisheries (East Coast Trawl) Management Plan 1999* (the management plan) be disallowed. The committee reported on the management plan in order to facilitate debate on the disallowance motion.

3.21. The committee considered whether the content of the explanatory notes was sufficient. Specifically, the committee noted that in relation to the results of consultation the explanatory notes merely provided that:

Changes have been made to the proposed plan to accommodate the concerns raised by interested parties.

3.22. The committee was of the view that the provisions of the *Legislative Standards Act 1992* envisage that some specific information regarding the results of consultation and changes resulting from the consultation would be included in explanatory notes.

However, the committee noted that failure to comply with the requirements of the *Legislative Standards Act 1992* relating to explanatory notes does not affect the validity of the management plan.

- 3.23. In addition, the committee noted that the management plan provided for maximum penalties of up to 500 penalty units for certain offences. In assessing whether these penalties were appropriate to subordinate legislation the committee considered information provided in the explanatory notes and further information provided by the Minister in correspondence to the committee. The committee expressed the view that any matter sufficiently serious to warrant such a substantial penalty was more appropriate for inclusion in an Act than subordinate legislation, and referred to Parliament the question of whether the inclusion of the penalties in subordinate legislation was justified in the circumstances.
- 3.24. On the day appointed for the motion to be moved and debated in Parliament it was not moved. Accordingly the motion lapsed and the matter was not debated.

Issues most frequently raised in the scrutiny of subordinate legislation

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

STATISTICS ON ISSUES RAISED WITHIN THE COMMITTEE'S TERMS OF REFERENCE FOR SUBORDINATE LEGISLATION GAZETTED 1 JULY 1998 TO 30 JUNE 1999		
ISSUES	NO. OF QUERIES	% ⁴⁰ OF QUERIES
Issues in relation to regulatory impact statement requirements ^{xxix & xxx}	24	30
Sufficient regard to rights and liberties of individuals (general) ⁱ	11	14
Clear and precise drafting ^{xiii}	10	13
Issues relating to whether powers contained in subordinate legislation are sufficiently defined and subject to appropriate review ⁱⁱⁱ	6	8
Legislation within the powers conferred by the authorising law ^{xvii}	6	8
Matter appropriate to subordinate legislation ^{xix}	4	5
Subordinate legislation amending statutory instruments only ^{xx}	4	5
Explanatory notes ^{xxiii & xxv}	4	5
Subdelegation of a power delegated by an Act only in appropriate circumstances ^{xxi}	3	4
Sufficient regard to the institution of Parliament ⁱⁱ	2	3
Subordinate legislation containing retrospective provisions ^{ix & xxvi}	2	3
Natural justice ^{iv}	1	1

⁴⁰ Approximate figures only.

STATISTICS ON ISSUES RAISED WITHIN THE COMMITTEE'S TERMS OF REFERENCE FOR SUBORDINATE LEGISLATION GAZETTED 1 JULY 1998 TO 30 JUNE 1999		
ISSUES	NO. OF QUERIES	% ⁴⁰ OF QUERIES
Immunity from proceeding or prosecution ^X	1	1

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

3.26. Following is a brief review of the three categories most frequently queried in the course of the committee's scrutiny of subordinate legislation:

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

3.27. The committee made numerous inquiries in relation to whether the absence of a regulatory impact statement (RIS) was justified. In some cases, extra information obtained by the minister provided adequate justification for the absence of an RIS⁴¹. In other cases, the committee decided not to pursue the matter on the basis that, having regard to the fact that the regulation concerned was already in force, no net benefit seemed likely to result from so doing.

3.28. The low rate of regulatory impact statements being prepared in relation to subordinate legislation continues to be a matter of some concern for the committee. In this regard, the committee notes that the Department of State Development is currently undertaking a review of the regulatory impact statement process under the *Statutory Instruments Act 1992*.

◆ **Insufficient regard to the rights and liberties of individuals (general)**

3.29. The committee made queries in relation to a broad number of areas affecting the rights and liberties of individuals generally. Within the scope of this fundamental legislative principle the committee sought information necessary to ensure that confidentiality of personal information was protected, freedom of action was not unnecessarily restricted, rights were not unnecessarily diminished, and affected parties would be aware of any obligations imposed upon them.

3.30. In many cases the relevant Minister was able to overcome the committee's concerns by providing the committee with background information, or information about the context within which the provision would operate.

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

3.31. The degree of importance of issues raised within this fundamental legislative principle varied greatly from typographical errors to provisions which lacked certainty or might not have effectively implemented the intended policy. In relation to these drafting issues the committee frequently received a ministerial undertaking to amend the

⁴¹ For example, *Equity and Fair Trading Legislation Amendment Regulation (No. 1) 1999*.

regulation. The resolution of such issues avoids possible confusion and ambiguity and makes legislation more accessible to the people it will affect.

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

3.32. During the 1999-2000 financial year, the committee made a number of formal inquiries and referred matters of concern to ministers. The table below, which details the results of these queries and references, demonstrates the influence which the committee had on the subordinate law-making process.

THE MANNER IN WHICH THE COMMITTEE'S CONCERNS / QUERIES IN RELATION TO SUBORDINATE LEGISLATION WERE ADDRESSED	% ⁴²
The committee received a ministerial response which addressed or overcame the committee's concerns	32
The committee received a ministerial undertaking to take action to address the committee's concerns	26
The committee decided to take no further action in the particular circumstances	17
The relevant matter formed part of a committee report to Parliament	5
As at the date of preparation of the Annual Report the committee had not finalised its consideration of the relevant matters. ⁴³	20

3.33. The committee continues to find itself hampered in its scrutiny of subordinate legislation by the lack of accompanying explanatory material. This issue is discussed in more detail in the following chapter.

Acknowledgments

3.34. The committee appreciates the substantial support it receives from ministers to assist the committee to fulfil its functions. Specifically, Ministers generally provide comprehensive and timely responses to committee inquiries, and have demonstrated a willingness to take action to address the committee's concerns.

3.35. Departmental and ministerial staff also play a significant role in providing information to facilitate the scrutiny process. The committee thanks them for their assistance in the 1999 – 2000 financial year.

⁴² Approximate figures only.

⁴³ These statistics are prepared in relation to subordinate legislation which was made in the 1999-2000 financial year. The committee considers and enters into correspondence regarding subordinate legislation after it is made. In some cases it can take some months for the committee to finalise its consideration of a particular matter.

4. MONITORING ROLE

Overview

- 4.1. This chapter deals with the committee's performance of its monitoring role.
- 4.2. Under s.22(2) of the *Parliamentary Committees Act 1995*, the committee has the responsibility of monitoring generally the operation of a number of provisions of the *Legislative Standards Act 1992* and the *Statutory Instruments Act 1992*. Three issues relating to the performance of that function during the 1999-2000 financial year are reported on below.

Explanatory Notes

- 4.3. Under the current legislation, the production of explanatory notes is only required in respect of subordinate legislation if that subordinate legislation is "significant".⁴⁴ "Significant subordinate legislation" is in turn defined as subordinate legislation for which a regulatory impact statement must be prepared under the *Statutory Instruments Act*.⁴⁵
- 4.4. Explanatory notes are prepared with respect to only a small proportion of subordinate legislation. As the statutory requirement to prepare explanatory notes is tied to the obligation to prepare regulatory impact statements, this is a direct result of the infrequency with which the latter are produced (as to which, see below).
- 4.5. The committee has previously maintained that substantial benefits flow from the provision of explanatory material with all subordinate legislation,⁴⁶ and has advocated a legislative amendment to require this.⁴⁷
- 4.6. This issue has recently assumed added significance for the committee, with the termination of the previous administrative arrangement under which many departments voluntarily supplied the committee with a copy of the explanatory memorandum prepared for Executive Council in relation to proposed subordinate legislation. In advising the committee of his decision to terminate the arrangement, the Premier cited difficulties arising from the general confidentiality of such documents.
- 4.7. Whilst acknowledging the legitimacy of the Premier's concerns in relation to these memoranda, the committee considers those concerns would be addressed and the needs of the committee met, by the provision of an alternative form of explanatory material.
- 4.8. The committee intends to address this issue as one of a range of matters canvassed in its forthcoming report on explanatory notes, which was referred to in last year's Annual Report.

⁴⁴ Section 22(2), *Legislative Standards Act 1992*.

⁴⁵ Section 2, *Legislative Standards Act 1992*.

⁴⁶ See the committee's 1995 - 1996 Annual Report, p. 25.

⁴⁷ See the committee's report, *The Operation of the RIS Process under Part 5 of the Statutory Instruments Act 1992*, April 1998, at p.5.

Regulatory Impact Statements (RIS)

- 4.9. Part 5 of the *Statutory Instruments Act* requires that an RIS be prepared if subordinate legislation “is likely to impose appreciable costs on the community or a part of the community”.⁴⁸
- 4.10. The committee has previously commented adversely on the small number of RISs prepared in Queensland, attributed that situation in part to a restrictive interpretation by the Executive of what is an “appreciable” cost, and made a number of recommendations for statutory and other reform.⁴⁹
- 4.11. Regrettably, the number of RISs prepared during the 1999-2000 financial year did not rise from the levels recorded in previous years. This matter continues to concern the committee.
- 4.12. The committee notes that a review by the Department of State Development and the Department of the Premier and Cabinet of the RIS process, referred to in last year’s Annual Report, is ongoing.

Forms

- 4.13. Part 8 of the *Statutory Instruments Act 1992* imposes a number of requirements in respect of forms approved or made by an entity under the authority of an Act or subordinate legislation.
- 4.14. The Part 8 requirements, which are relatively limited in nature, are basically that:
- all forms must have a heading stating the name of the authorising law and briefly indicating the form’s purpose
 - forms must be uniquely numbered
 - approval or making of a form must be notified in the gazette and, if the form itself is not published in the gazette, the notice must state the abovementioned matters plus a place or places where copies are available.⁵⁰
- 4.15. During the 1999 – 2000 financial year, the committee identified a number of cases where forms, or the relevant gazette notice, did not comply with all of the Part 8 requirements.
- 4.16. The committee wrote to the Departments concerned, and also wrote a general letter to all Ministers reminding them of the Part 8 requirements.
- 4.17. The committee has continued to detect isolated instances of non-compliance and takes this opportunity to again remind Departments and other entities approving or making forms under statutory authority of the Part 8 requirements.

⁴⁸ Section 43, *Statutory Instruments Act 1992*.

⁴⁹ See the committee’s report, *The Operation of the RIS Process under Part 5 of the Statutory Instruments Act 1992*, April 1998.

⁵⁰ Failure to comply with the Part 8 requirements does not affect the validity of the forms.

5. COMMITTEE BUSINESS

Reports⁵¹

- 5.1. In addition to the production of 18 alert digests, the committee tabled 3 reports during the 1999 - 2000 financial year.⁵² In these reports,⁵³ the committee considered the application of the fundamental legislative principles to the *Fisheries Amendment Regulation No.3 of 1999*, *University Statutes* and the *Fisheries (East Coast Trawl) Management Plan 1999*.⁵⁴

Meetings and hearings

- 5.2. During the 1999 - 2000 financial year, the committee regularly met on the Monday of each sitting week to adopt its alert digest to be tabled on the following sitting day and to deal with subordinate legislation and other matters arising since its last meeting. On two occasions the committee held a second meeting during a sitting week to adopt an additional alert digest. The committee also met in between sitting weeks as required.
- 5.3. In total the committee had 21 meetings during the 1999 – 2000 financial year, as detailed in Appendix C.
- 5.4. The committee conducted no hearings during the financial year.

Travel

- 5.5. In July 1999, the committee chair, the Research Director and the Principal Research Officer attended the 7th Australasian & Pacific Conference on Delegated Legislation and 4th Australasian & Pacific Conference on the Scrutiny of Bills, held in Sydney. This biennial conference, which was attended by members and staff of Parliamentary scrutiny committees from Australasia a range of other jurisdictions, as well as academics and other persons associated with the legislative scrutiny process, featured a number of high-quality presentations and provided an invaluable opportunity to discuss matters of mutual interest.
- 5.6. In February 2000 the chair and the Research Director attended a meeting of the Working Group of Chairs and Deputy Chairs of Australian scrutiny committees, held in Darwin. This meeting focused on issues associated with the scrutiny of “national scheme” legislation. The chair delivered a paper outlining the experience of the Queensland committee with the scrutiny of “national scheme” legislation in relation to bills.

Visits

⁵¹ All of the committee's reports are accessible through the Queensland Parliament's internet homepage (www.parliament.qld.gov.au).

⁵² Also tabled was the committee's *1998-1999 Annual Report* (tabled on 27 October 1999).

⁵³ Tabled on 20 July 1999, 9 November 1999 and 8 December 1999 respectively.

⁵⁴ Details of these reports appear in Chapter 3 of this Annual Report.

- 5.7. In May 2000, the committee hosted a further meeting of the Working Group of Chairs and Deputy Chairs of Australian scrutiny committees. This meeting was held to further progress steps agreed on at the Darwin meeting.
- 5.8. During the financial year, the committee received visits from the New South Wales Regulation Review Committee, the Chairman of the Northern Territory Subordinate Legislation and Publications Committee, and the Victorian Scrutiny of Acts and Regulations Committee. The first two visits were for the purpose of examining the Queensland process for the scrutiny of bills.

6. ADMINISTRATIVE MATTERS

Budget and expenditure of the committee

6.1. The budgeted and actual expenditure for the committee in the period 1 July 1999 to 30 June 2000 is set out in the table below:

THE COMMITTEE'S BUDGET AND EXPENDITURE FOR 1 JULY 1999 TO 30 JUNE 2000			
	Actual Expenditure	Annual Budget	Budget Remaining
Salaries ⁵⁵	\$145,315.65	\$158,487.19	\$13,171.54
Superannuation ⁵⁶	18,995.22	22,893.81	3,898.59
Stores & Stationery ⁵⁷	293.50	Nil	-293.50
Reference Books/Publications ⁵⁸	2,304.22	3,500.00	1,195.78
Consultants	4,680.00	17,500.00	12,820.00
Entertainment	1,993.85	2,000.00	6.15
Printing and Binding	24,820.08	26,000.00	1,179.92
Advertising	Nil	1,200.00	1,200.00
Contractors	Nil	1,500.00	1,500.00
Miscellaneous	3,851.28	3,400.00	-451.28
Travel ⁵⁹	3,689.53	15,607.27	11,917.74
TOTAL	\$205,943.33	\$252,088.27	\$46,144.94

⁵⁵ Includes salaries; salaries – temp assistance; overtime; extra remuneration; meal allowance; and payroll tax.

⁵⁶ Includes superannuation GoSuper and Qsuper.

⁵⁷ Includes stores and stationery; postage and freight.

⁵⁸ Includes reference books and publications and serial subscriptions.

⁵⁹ Includes Members' travel to Brisbane; Members' travel outside Brisbane; taxis and fares; and authorised staff committee business travel.

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

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

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

6.3. The committee also had access during the financial year to a legally-qualified staff member of the parliamentary Table Office, Ms Sarah Lim, who assisted it by performing legal research duties on a part-time basis.

◆ Legal advisers to the committee

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

6.5. The committee has a Principal Legal Adviser and several Legal Advisers. During the course of the 1999-2000 financial year, the committee received expert legal advice from its these advisers on issues raised by a number of bills scrutinised by it.

APPENDIX A – TERMS OF REFERENCE

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

Terms of Reference

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

- (a) the application of fundamental legislative principles⁶⁰ to particular Bills and particular subordinate legislation; and
- (b) the lawfulness of particular subordinate legislation;

by examining all Bills and subordinate legislation⁶¹.

(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).

⁶⁰ “Fundamental legislative principles” are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law (*Legislative Standards Act*, s.4(1)). The principles include requiring that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament.

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

⁶¹ A member of the Legislative Assembly, including any member of the Scrutiny of Legislation Committee, may give notice of a disallowance motion under the *Statutory Instruments Act*, s.50.

APPENDIX B – MEANING OF "FUNDAMENTAL LEGISLATIVE PRINCIPLES"

- 4.(1) For the purposes of this Act, "fundamental legislative principles" are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.⁶²
- (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.

⁶²

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

APPENDIX C – MEETING ATTENDANCE RECORD

Date	L. Lavarch	T. Elliott	L. Cunningham	J. Fouras	J. Kingston	P. Wellington
19 July 1999	✓	✓	✓	✓	✓	✓
16 Aug 1999	✓	✓	x	✓	✓	✓
17 Aug 1999	✓	✓	✓	✓	✓	x
23 Aug 1999	✓	✓	✓	✓	✓	✓
13 Sep 99	✓	✓	✓	✓	x	✓
4 Oct 1999	✓	✓	✓	✓	✓	✓
25 Oct 1999	✓	✓	✓	✓	x	✓
8 Nov 1999	✓	x	✓	✓	✓	✓
22 Nov 1998	✓	✓	✓	✓	x	✓
30 Nov 1999	✓	✓	✓	✓	✓	✓
7 Dec 1999	✓	✓	✓	x	✓	✓
9 Dec 1999	✓	✓	✓	x	✓	✓
				J Fouras replaced by J Miller		
28 Feb 2000	✓	✓	✓	✓	✓	✓
13 Mar 2000	✓	✓	✓	✓	✓	✓
14 Mar 2000	✓	x	✓	✓	x	✓
10 Apr 2000	✓	✓	✓	✓	x	✓
				J Kingston replaced by B Feldman		
15 May 2000	✓	✓	✓	✓	✓	✓
29 May 00	✓	✓	✓	✓	✓	✓
31 May 00	✓	x	✓	✓	✓	✓
19 Jun 00	✓	x	✓	✓	✓	✓
22 Jun 00	✓	x	✓	✓	x	✓

APPENDIX D – ENDNOTES

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

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

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