



SCRUTINY OF LEGISLATION COMMITTEE

ALERT DIGEST



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SCRUTINY OF LEGISLATION COMMITTEE MEMBERSHIP

49TH PARLIAMENT, 1ST SESSION

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TABLE OF CONTENTS

SECTION A – BILLS REPORTED ON.....	1
1. POLICE POWERS AND RESPONSIBILITIES BILL 2000.....	1
Overview of the bill.....	1
Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?	3
◆ <i>Clause 2(1)</i>	3
Does the legislation have sufficient regard to the institution of Parliament?	3
◆ <i>Clause 9 (inconsistency with other Acts)</i>	3
Does the legislation have sufficient regard to the rights and liberties of individuals?	4
◆ <i>Clause 10 (relationship to other Acts)</i>	4
◆ <i>Clauses 14 and 15 (police officers and public officials)</i>	5
◆ <i>Clause 16 (police directions to citizens)</i>	5
◆ <i>Clauses 124 and 138 (surveillance powers)</i>	6
◆ <i>Clause 163 (arrest)</i>	7
◆ <i>Clause 163(1)(k)</i>	7
◆ <i>Clause 197 (detention for investigation and questioning)</i>	7
◆ <i>Clauses 223 to 237 inclusive (gathering information for identifying suspects)</i>	8
◆ <i>Clauses 243(3), 246, 247, 249(2), 250(2), 255(3) and 256(3) (medical and dental procedures)</i>	8
◆ <i>Clauses 266 to 285 inclusive (special events)</i>	9
Does the legislation have sufficient regard to the rights and liberties of individuals?	10
Is the legislation unambiguous and drafted in a sufficiently clear and precise way?	10
◆ <i>Clause 83</i>	10
Does the bill sufficiently subject the exercise of delegated legislative power to the scrutiny of the Legislative Assembly?.....	10
◆ <i>Clause 371 (responsibilities code)</i>	10
Does the legislation confer power to enter premises and to search for or seize documents or other property without a duly issued warrant?	11
◆ <i>Clauses 81 to 96 inclusive (crime scenes)</i>	11
Is the legislation unambiguous and drafted in a sufficiently clear and precise way?	12
◆ <i>Schedule 4 (Dictionary, various definitions)</i>	12
Is the content of the explanatory note sufficient?	12
SECTION B – COMMITTEE RESPONSE TO MINISTERIAL CORRESPONDENCE.....	14
No ministerial correspondence is responded to in this Alert Digest.....	14
APPENDIX A - MINISTERIAL CORRESPONDENCE	16
APPENDIX B – TERMS OF REFERENCE.....	17
APPENDIX C - MEANING OF "FUNDAMENTAL LEGISLATIVE PRINCIPLES"	18
APPENDIX D – TABLE OF BILLS RECENTLY CONSIDERED	19

BILLS EXAMINED BUT NOT REPORTED ON *

NIL

* These bills were considered to raise no issues within the committee's terms of reference

SECTION A

BILLS REPORTED ON

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

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

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

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

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

SECTION A – BILLS REPORTED ON

1. POLICE POWERS AND RESPONSIBILITIES BILL 2000³

1. The Honourable T A Barton MLA, Minister for Police and Corrective Services introduced this bill into the Legislative Assembly on Tuesday 29 February 2000.
2. The objects of the bill, as described in the Explanatory Notes, are as follows:

The Police Powers and Responsibilities Bill 2000 (“the Bill”) completes the process of consolidation of police powers which commenced with the passing of the Police Powers and Responsibilities Act 1997 (“PPRA 1997”) but due to time limitations was not completed.

The legislation has a number of objectives which are-

- (a) to consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law;*
- (b) to provide powers necessary for effective modern policing and law enforcement;*
- (c) to provide consistency in the nature and extent of the powers and responsibilities of police officers;*
- (d) to standardise the way the power and responsibilities of police officers are to be exercised;*
- (e) to ensure fairness to, and protect the rights of, persons against whom police officers exercise powers under this Bill; and*
- (f) to enable the public to better understand the nature and extent of the powers and responsibilities of police officers.*

Additionally, the Bill seeks to rectify any technical defects contained in the PPRA 1997.

Consequently, the Bill provides a central reference point for police and the general community, enabling them both to understand the nature and extent of police powers. This consolidation results in the added benefit of consistency both in the extent of police powers and in the respective safeguards.

Overview of the bill

3. This bill repeals and replaces the *Police Powers and Responsibilities Act 1997* (“the 1997 Act”). The committee reported on the bill for that Act at considerable length in its Alert Digest No.12 of 1997 at pages 69-101.⁴

³ 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.

⁴ The 1997 Act was subsequently amended by the *Police and Other Legislation (Miscellaneous Provisions) Bill 1998* (on which the committee reported in its Alert Digest No.2 of 1998 at pages 52-57, by the *Police Powers and Responsibilities Amendment Bill 1998* (on which the committee reported in its Alert Digest No. 6 of 1998 at pages 14-15), and by the *Police Powers and Responsibilities and Others Act (Registers) Amendment Bill 1999* (on which the committee reported in its Alert Digest No.3 of 1999 at pages 23-25). The 1997 Act has also been amended by other Acts which are not relevant for present purposes.

4. The current bill is a voluminous document of 371 pages (the 1997 bill was 106 pages in length).
5. The bill effectively does the following things:
 - it re-enacts the provisions of the 1997 Act, often in a significantly re-drafted form and in a different sequence
 - it enacts some additional generic police powers and responsibilities
 - it amends a large number of Acts which presently confer upon police powers and responsibilities similar to the various generic powers contained in the bill, either by deleting those powers or by amending them to delete any reference to their being exercised by police
 - it transports directly into the current bill a number of specific police powers presently contained in various other Acts, and repeals the current provisions of those other Acts dealing with those matters.
6. To the extent that the bill reproduces provisions contained in the 1997 Act and the subsequent amendments of it, the committee would of course reiterate the comments made in its previous Alert Digests. However the Explanatory Notes, in dealing with the current bill's consistency with fundamental legislative principles, contain the following statement;

Clauses contained in this Bill are similar in nature to those addressed by the Scrutiny of Legislation Committee in its appraisal of the PPRA 1997.

Accordingly, where possible, the comments of the Scrutiny of Legislation Committee were taken into account by the Queensland Parliamentary Counsel during drafting of the Bill.
7. In this report, the committee is naturally concerned to identify the degree to which its concerns about particular provisions of the bill for the 1997 Act have been allayed by the recasting of those provisions in the current bill.
8. The committee has also examined the additional generic police power provisions included in this bill, to ascertain the extent to which they are consistent with fundamental legislative principles.
9. The various specific provisions which have been transported directly into the current bill from other Acts are of concern to the committee, in that they come from a variety of sources and are of differing ages. The committee has no doubt previously reported upon some of these provisions, but many others will pre-date the committee's establishment in 1995. In the time available the committee has not been able to conduct a proper review of these specific provisions, and accordingly makes no comment about them.
10. The committee acknowledges that this bill may be debated in the sitting week commencing Monday 13 March 2000. Given the size of the bill and the multitude of legislative amendments which it effects, the committee has self-evidently been unable to accord this important legislation the degree of scrutiny which it merits. Nevertheless, the committee has endeavoured to address relevant issues within these constraints.
11. The following paragraphs of this chapter address specific issues raised by the bill.

12. Where powers contained in the 1997 Act are substantially re-enacted in this bill without significant enlargement of their scope, the committee reiterates any concerns it may have previously expressed about the impact of these on basic rights or about breaches of the fundamental legislative principles.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?⁵

◆ **Clause 2(1)**

13. The committee notes that the provisions of the bill, other than certain specified provisions, commence “on a day to be fixed by proclamation or 1 July 2000, whichever happens first” (cls.2(1)).

14. The committee notes that the provisions of the bill (other than those specifically excepted by cl.2(1)), will operate retrospectively if the bill is not passed into law by 1 July 2000.

Does the legislation have sufficient regard to the institution of Parliament?⁶

◆ **Clause 9 (inconsistency with other Acts)**

15. Clause 9 provides that this bill prevails over any inconsistent provision contained in another Act, *whether enacted before or after* the bill.
16. When reporting on the bill for the 1997 Act, the committee drew to the attention of Parliament that the corresponding clause of that bill was imprecisely drafted, for the reasons expressed therein. Current cl. 9 continues the language of the previous clause with the addition of the words “*unless the provision makes express provision to the contrary*”. For the reasons expressed previously by the committee, this would not appear to alter the position.
17. The committee notes that the Minister has previously acknowledged that the Parliament cannot fetter future Parliaments, but has stated that the provision is to make clear Parliament’s intention that police should have a single piece of legislation from which to source their powers and responsibilities.
18. The Explanatory Notes concede this point:

In terms of subclause (3), while it is recognised that this Parliament cannot restrict the legislative powers of a future Parliament, is it the intention of this Parliament to strongly indicate that police officers should, as far as is practicable, have a single piece of legislation from which to source their powers and responsibilities.

⁵ 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.

⁶ Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

19. The committee reiterates the comment made in its 1997 report that cl.9 may well be of no effect, in respect of later Acts, given that Parliament cannot fetter future Parliaments.

Does the legislation have sufficient regard to the rights and liberties of individuals?⁷

◆ Clause 10 (relationship to other Acts)

20. Clause 10(3) of the Bill provides as follows:

(3) Also, it is lawful for a police officer to exercise a power in accordance with this Act for giving effect to an Act included in schedule 1 even though the other Act specifies the way the power may or must be exercised.

21. This clause could potentially interfere with individual rights and liberties if it overrode provisions of an Act that limit or specify the way police may exercise their powers in given circumstances, or if it overrode a provision requiring that entry to premises, and subsequent search and seizure powers, be exercised only under a warrant obtained from a judge or other judicial officer.
22. The committee wishes to express its particular concern that the primary statutory provisions covering proceedings against children, which are enacted in the *Juvenile Justice Act*, are to be displaced in certain respects by this bill.
23. The proposed general arrest powers in cl. 163 of the current bill provide that a child may be arrested without warrant for **any offence** where a police officer **reasonably suspects** that the child has committed or is committing an offence. This is expressed to be subject to s 20 of the *Juvenile Justice Act 1992*.
24. Section 20 only allows arrest in the circumstances outlined in that section, ie, for a serious offence [one carrying more than 14 years imprisonment] or where the police officer **believes on reasonable grounds** that arrest is necessary to prevent the continuation or repetition of the offence or the commission of another offence or to prevent the concealment, loss or destruction of evidence or where there is a **belief on reasonable grounds** that the child is unlikely to appear or that the child is an adult. In all other circumstances, s 21 of the *Juvenile Justice Act* appears to require that proceedings be started by attendance notices and Complaints and Summonses. Clause 163 therefore represents an enlargement of the powers of arrest without warrant of children.
25. The bill proposes no amendment to the *Juvenile Justice Act 1992* in relation to these provisions. Schedule 1 of the Bill states that “*The Juvenile Justice Act 1992 is not affected by the Bill other than to the extent to which section 163 and chapter 6 of this Act apply to the children*”. However the Bill in cl. 172 addresses matters that police should take account of before proceeding against children by arrest which are similar to those in s 19 of the *Juvenile Justice Act*. However, unlike s. 21 of the *Juvenile Justice Act 1992*, which makes it mandatory for police to proceed by way of attendance notice or complaint and summons

⁷ Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to rights and liberties of individuals.

when section 20 of the Act does not apply, cl. 172 of the bill appears to make this decision only discretionary for the police officer.

26. Clause 163 also appears to require a lesser threshold test for arrest to be satisfied in the case of some offences involving children than in others. This is because s 20 in the *Juvenile Justice Act* requires that **reasonable belief** must be present before arrest is allowed without warrant whereas in all other cases of the arrest of children only **reasonable suspicion** is required as proposed by Clause 163 of the bill. This lesser test is also to apply to the arrest of adults for any offence.

27. The committee is concerned that the bill may displace provisions of other Acts which limit or specify the way police may exercise their powers in given circumstances. The committee has particular concerns at the apparent overriding by the bill of relevant provisions of the *Juvenile Justice Act*, which contain the general law relating to proceedings against children.

28. The committee seeks information from the Minister as to the policy intent in relation to children. If it is intended to alter the regime that applies to instituting proceedings against children, then the committee recommends this should be clearly spelt out by amending the *Juvenile Justice Act* provisions which are inconsistent with the provisions of the bill.

29. The committee draws its concerns about cl.163 of the bill to the attention of Parliament.

◆ **Clauses 14 and 15 (police officers and public officials)**

30. The committee notes that Clauses cls. 14 to 16 appear to increase the existing powers of police officers. Clause 14 appears to have the effect of granting any power, exercisable by any public official under any Queensland Act, to police officers, to be exercised by them even in the absence of the public official if considered reasonably necessary in the circumstances. In so acting, the clause grants the same powers and protection to the police officer as are given to the public official.

31. Clause 15 enlarges the powers of a police officer to demand name address and date of birth.

32. The committee seeks information from the Minister as to why such a wide-ranging increase in police powers is warranted.

33. The committee draws to the attention of Parliament this increase in police powers.

◆ **Clause 16 (police directions to citizens)**

34. Clause 16 enlarges the powers of a police officer to give directions to citizens. Where it is reasonably suspected that a public official has been **obstructed** (a word that is not defined, otherwise than in relation to obstructing police under cl. 357 and special event “authorised persons” under cl. 285), the police officer can ask whether the person has a reasonable excuse. If no excuse, or an excuse that the police officer reasonably suspects is not reasonable, is forthcoming the police officer may give a direction to the person to stop or not repeat the obstruction. Failure to comply with any of the abovementioned requirements will be an offence against cl. 357 and may also be an offence under the Act governing the public

official obstructed or under the general offence provision of sections 204⁸ or 205⁹ of the *Criminal Code*.

35. The committee is concerned that this clause may impact adversely on a person's fundamental right to silence. Thus, those who choose to answer the police officer by giving an excuse that is not a lawful excuse under the *Criminal Code*, or give a reasonable excuse but one which is self-incriminating, may find their right to silence infringed. Clause 357 (4) expressly provides that it is a reasonable excuse for a person not to comply with a *requirement or direction to give information if giving the information would tend to incriminate the person*. This may mean that under cl. 357 (4) it is not a reasonable excuse to fail to comply with a direction under cl. 16 that is otherwise than a *direction or requirement to give information* merely because it may tend to incriminate, either for the cl. 357 offence or any other offence.
36. The committee also notes that, pursuant to cl. 163, a person can be arrested without warrant for a breach of cl. 357.

37. The committee seeks information from the Minister as to why these increases in police powers are warranted.
38. The committee draws to the attention of Parliament these increases in police powers.

◆ **Clauses 124 and 138 (surveillance powers)**

39. The committee notes that the threshold criterion relating to the obtaining of the highly intrusive surveillance warrants is a reasonable belief that a person **is, or is likely to be, involved in the commission of an indictable offence**. Thereafter the person is described as *the person proposed to be placed under surveillance (the "relevant person")*. Under the 1997 Act there must be a reasonable belief that a person **has committed, is committing or is about to commit an indictable offence (the "suspect")**.
40. Although the committee notes that the same judicial powers and controls are provided in relation to the issue of surveillance warrants with the same role played by the Public Interest Monitor, it is considered that the change in language is capable of enlarging the circumstances in which a surveillance warrant may be sought from a judicial officer.

41. The committee seeks information from the Minister as to whether it is intended that the bill should enlarge the circumstances in which a surveillance warrant may be sought.
42. The committee draws its concerns about cls. 124 and 138 to the attention of Parliament.

⁸ Section 204 provides: Any person who without lawful excuse the proof of which lies on the person, does any act which the person is, by the provisions of any public statute in force in Queensland, forbidden to do, or omits to do any act which the person is, by the provisions of any such statute, required to do, is guilty of a misdemeanour, unless some mode of proceeding against the person for such disobedience is expressly provided by statute.

⁹ Section 205 provides: Any person who without lawful excuse, the proof of which lies on the person, disobeys any lawful order issued by...any person authorised by any public statute in force in Queensland to make the order, is guilty of a misdemeanour, unless some mode of proceeding against the person for such disobedience is expressly provided by statute.

◆ **Clause 163 (arrest)**

43. Arrest without warrant is available for any offence if a reasonable suspicion exists that the person has committed the offence and if it is reasonably necessary for one or more of the reasons listed in cls. 163 (a) to (k).
44. In its 1997 report,¹⁰ the committee noted the difference in the standards of “reasonable suspicion” and “reasonable belief”. It is accepted in the bill itself that they connote different criteria. As the High Court in *George v Rockett* observed, the latter standard is more difficult to satisfy than the former. This is implicitly recognised in the bill itself where the two standards are applied in relation to different provisions. For example, in moving the provisions of arrest of persons on bail from the *Bail Act 1980* to the bill, it is noted that the standard of satisfaction has been lessened from reasonable belief to reasonable suspicion.

45. The committee draws to the attention of the Parliament the inconsistent approach to arrest standards in various provisions.
46. The committee refers to Parliament the question of whether this inconsistency of standards has sufficient regard to the rights and liberties of individuals.

◆ **Clause 163(1)(k)**

47. In its 1997 report, the committee also expressed concern that it is lawful to arrest for any offence where it is reasonably necessary because of the *nature and seriousness of the offence*. The committee has previously noted that the *Criminal Code* addressed the issue by differentiating between Crimes and Misdemeanours, the former being generally arrestable without warrant.

48. The committee maintains the view that the criterion of *nature and seriousness* of the offence is unclear and imprecise.

◆ **Clause 197 (detention for investigation and questioning)**

49. While Part 2 of Chapter 6 relating to detention for investigations and questioning is intended to apply to persons who have been arrested under cls. 163 (1) and (2), this may not be achieved by cl. 197 as presently drafted. Clause 197 (1) provides:

*A police officer may, **under a removal order**, take into custody a relevant person for a reasonable time to investigate, or question the person about-*

if the person is in custody following an arrest for an indictable offence - the offence for which the person was arrested; or

in any case - any indictable offence the person is suspected of having committed, whether or not the offence for which the person is in custody [emphasis added].

¹⁰ And in its report on the *Police Powers and Responsibilities Amendment Bill 1998* (See Alert Digest No. 6 of 1998 at pages 14-15).

50. Division 2 is headed *Removal of persons from lawful custody*. Clauses 193 to 196 in Division 2 appear to only relate to the obtaining of “removal orders” from a magistrate for “relevant persons” who are in custody in a prison or detention centre.

51. At present, cl. 193 is capable of being interpreted as applying only to:

- persons who are removed from a prison or detention upon a magistrate’s order; or (possibly) also to
- the arrested persons in police custody, but only on the order of a magistrate.

52. The committee seeks clarification from the Minister as to whether the power to detain for questioning and investigation is also intended to extend to persons in a police officer’s custody following arrest under cl. 163.

◆ **Clauses 223 to 237 inclusive (gathering information for identifying suspects)**

53. Division 1 of Part 2 of Chapter 7 of the bill provides for the taking of identifying particulars of a person in custody. It proposes an enlargement to the existing powers as follows:

- the number and type of offences in relation to which particulars may be taken is increased
- the power previously only applied when a proceeding had been commenced for the offence.

54. As proposed, the power will extend to persons *who are in custody for an offence that has not been decided*. The committee notes, however, that the identifying particulars still must be destroyed if the person is found not guilty of the offence.

55. The committee appreciates the positive provisions of the bill requiring identifying particulars to be destroyed where a person is found not guilty.

56. However, the committee seeks information from the Minister as to why it is necessary to enlarge the power to take identifying particulars as outlined.

◆ **Clauses 243(3), 246, 247, 249(2), 250(2), 255(3) and 256(3) (medical and dental procedures)**

57. The bill also alters the rights of the suspect in the case of a consensual procedure in the presence of a friend, relative, lawyer or support person. Unlike the provisions of the 1997 Act, the police officer may now exclude the friend relative lawyer or support person if they, in the view of the police officer, are unreasonably interfering with the procedure. No criteria for determining what is unreasonable interference are stipulated in the bill. Therefore, what is unreasonable is left entirely to the judgment of the police officer.

58. Also the doctor, in the cases of both consensual and non-consensual procedures, may now photograph *as part of the examination of the person’s body, anything relevant to the examination*. Similar powers are given to the dentist examining the person’s mouth.

59. The committee draws to the attention of Parliament these increased powers.

◆ **Clauses 266 to 285 inclusive (special events)**

60. Part 2 of Chapter 8 of the bill (cls. 266 to 285) contains provisions relating to “special events”.
61. A “special event” can be declared under cl. 268 by means of a regulation, which must identify the event, the location at which it is to be held and the period during which it is to be held. The Part 2 provisions are intended to be used in connection with, for example, Olympic or Olympic-related events.
62. Clause 267 declares that the purpose of the “special event” provisions is to preserve public order and safety at such events.
63. The bill authorises police officers and “authorised persons”¹¹ at such sites to exercise a range of intrusive powers in relation to persons entering the site. These include powers to ask entrants for reasons for their entry, and to require them to submit to electronic screening devices and to physical searches and inspection (including removal of outer garments and frisk searches). Entrants can be required, on a number of bases including failure to submit to the exercise of these powers, to leave the site. The bill creates a number of offences, including the offence of failing to comply with an order to leave.
64. The Minister, in his second reading speech, provides the following background to the “special event” provisions:

Honourable Members will be aware that Queensland is to be host to more than 100 Olympic teams who will undertake training in preparation for the Sydney 2000 Olympic Games and Brisbane will host a number of Olympic soccer matches.

Next year Queenslanders will benefit from the Goodwill Games and the Commonwealth Heads of Government Meeting.

It is essential to maintain Queensland’s reputation as a safe environment for international spectators and visitors to special events.

Therefore, it is necessary to provide our police with specific powers to minimise the risk of criminal threats arising at those events.

Consequently, this Government has specifically designed special events legislation which has been incorporated in this Bill.

65. The bill contains provisions in relation to “special events” which intrude upon the rights and liberties of persons who enter, or are within, the areas declared for such events. The powers may be exercised not only by police officers but by “authorised persons”.

¹¹ “Authorised persons” are persons the commissioner of the police service believes have “the necessary expertise or experience to be an authorised person” (cl.273).

66. The committee refers to Parliament the question of whether the inclusion of these provisions, in the relevant circumstances, has sufficient regard to the rights and liberties of the persons affected by them.

Does the legislation have sufficient regard to the rights and liberties of individuals?¹²

Is the legislation unambiguous and drafted in a sufficiently clear and precise way?¹³

◆ **Clause 83**

67. Under the 1997 Act, in the case of a public place, the obtaining of a warrant from a Supreme Court judge is mandatory if “structural damage” will be caused (s 22 (2)). However, under cl. 83 of the bill a warrant need only be considered in the case of a public place if the occupier requires a police officer to leave the place. In that event the police officer *may* apply for a warrant. It is thus not even mandatory for a police officer to do so and this extends the present powers of police.

68. Also, cl. 95 empowers a police officer to continue to exercise the wide crime scene powers in cl. 93 and 94 (including *remove(ing) wall or ceiling linings or floors of a building, or panels or fittings vehicle*) for the time reasonably necessary for an application for a crime scene, even if the occupier of a public place asks the police officer to leave.

69. The way subclause 83 (4) is presently drafted, the mandatory application to a Supreme Court judge where structural damage is intended may only be required in the case of places **other than public places**. It is also unclear what the concluding words “*the thing must not be done*” in subclause 83 (4) are meant to convey.

70. The committee recommends that, if it is intended a warrant from a Supreme Court judge be required in *all* cases where structural damage is intended, this should be made clear by redrafting cl. 83. The committee notes that the Explanatory Note to cl. 83 does not indicate the intention of the clause in this regard.

Does the bill sufficiently subject the exercise of delegated legislative power to the scrutiny of the Legislative Assembly?¹⁴

◆ **Clause 371 (responsibilities code)**

71. In its 1997 report, the committee noted concerns about the responsibilities code incorporating substantive as well as procedural matters and dealing with matters that affect the rights of individuals. The committee considered it arguable that the contents of the code

¹² Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to rights and liberties of individuals.

¹³ 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.

¹⁴ 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.

should be set out in the bill itself. The committee also sought clarification as to how it was intended the regulation-making powers would be utilised with respect to operational guidelines, and still be sufficiently subjected, as delegated legislation, to the scrutiny of the Legislative Assembly.

72. The committee notes that cl. 371 of the bill is in substantially similar terms to the 1997 Act and as the *Police Powers and Responsibilities Regulations 1998* will be repealed by the current bill, the same concerns are raised. No proposed operational guidelines in the form of proposed regulations are presently available.

73. The committee draws to the attention of Parliament these concerns about the responsibilities code provided for under cl.371, and about the operational guidelines (which will not be subject to the scrutiny of Parliament).

Does the legislation confer power to enter premises and to search for or seize documents or other property without a duly issued warrant?¹⁵

◆ Clauses 81 to 96 inclusive (crime scenes)

74. In its 1997 report, the committee noted that the establishment of a crime scene may often involve interference with private rights by allowing for the search for and gathering of evidence at the scene. Although the bill introduces a requirement that police *reasonably suspect* the place is either a primary or secondary crime scene, there is still no requirement that it be necessary to protect it because evidence will be lost, concealed, damaged or destroyed.

75. No attempt has been made to define “structural damage” to identify the cases that will require the warrant of a Supreme Court Judge.

76. In 1997, the committee further expressed concerns in respect of secondary crime scenes which are defined as:

... place(s) (a) where there may be evidence, of significant probative value, of the commission of a serious violent offence that happened somewhere else; and (b) it is necessary to protect for the time reasonably necessary to search for and gather evidence of the commission of the offence.

77. The committee notes that there is no information in the Explanatory Notes addressing the need for such wide crime scene powers in the case of secondary crime scenes.

78. The committee seeks information from the Minister as to why the ordinary powers exercisable in the case of search warrants are inadequate to deal with secondary crime scenes.

¹⁵ 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.

79. The committee refers to Parliament the question of whether these clauses have sufficient regard to the rights and liberties of persons affected by them.

Is the legislation unambiguous and drafted in a sufficiently clear and precise way?¹⁶

◆ Schedule 4 (Dictionary, various definitions)

80. As mentioned earlier, this bill enacts generic police powers which replace those previously contained in a multitude of other Acts. Alternatively, it transports into the bill specific police powers currently contained in other Acts.
81. The purpose of this, as indicated by the Explanatory Notes and in the Minister's Second Reading Speech, is to centralise in a single Act the vast majority of police powers and responsibilities. However, a by-product of this process is that a large number of terms used in the bill (approximately 47 of 166) are defined in the Dictionary by reference to the meaning which they bear in other Acts.
82. The committee has frequently expressed the view¹⁷ that legislation should be drafted in a way which makes it accessible to the lay person. In particular, where phrases or terms which have a specified meaning are used in a bill, the committee is of the view that where reasonable the full terms of that specified meaning should also be set out in that bill. This means that if a person has the need to clarify the law in a particular area by reference to a specific piece of legislation, that person will have access to all the applicable definitions in the one document. The only general exception to this approach is that some commonly used words and phrases are defined in the *Acts Interpretation Act 1954*.
83. The committee concedes that it is often impracticable to fully define, within the main body of a bill, all of the various terms requiring definition, and accordingly accepts that some "cross-referencing" can be justified. However, the number of "cross-referenced" definitions in this bill is quite substantial, doubtless due in large part to the nature of the legislation (as outlined above).

84. The committee has frequently expressed the view that "cross-referencing" or "sign-posting" of definitions is undesirable, as it makes legislation less accessible to the reader. The committee recognizes that a certain amount of "cross-referencing" may be unavoidable, but considers it should be kept to the minimum reasonably achievable.

85. The committee seeks confirmation from the Minister that he is satisfied the use of "cross-referencing" in this bill has been kept to that level.

Is the content of the explanatory note sufficient?¹⁸

¹⁶ 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.

¹⁷ See, for example, Alert Digest No.5 of 1997 at pages 3-4, and Alert Digest No.9 of 1997 at pages 12 and 25.

¹⁸ 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.

86. This is a very large and complex bill, which re-enacts many provisions of the current 1997 Act and incorporates provisions taken from a range of other Acts.
87. In scrutinising this bill, the committee has found that the lack of any form of cross-referencing between the 1997 Act, the bill and the various other Acts from which provisions are taken, to be a significant problem.
88. The committee considers that, in the case of a bill of this type, the Explanatory Note should, in order to properly explain the various clauses, incorporate an appropriate table of comparative provisions.

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| <p>89. The committee draws this shortcoming in the Explanatory Note to the attention of the Minister.</p> |
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SECTION B – COMMITTEE RESPONSE TO MINISTERIAL CORRESPONDENCE

No ministerial correspondence is responded to in this Alert Digest.



This concludes the Scrutiny of Legislation Committee's 3rd report to Parliament in 2000.

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

15 March 2000

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

NIL

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 principles¹⁹ to particular Bills and particular subordinate legislation; and
- (b) the lawfulness of particular subordinate legislation;

by examining all Bills and subordinate legislation²⁰.

(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).

¹⁹ “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.

²⁰ 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.²¹
- (2) The principles include requiring that legislation has sufficient regard to—
1. rights and liberties of individuals; and
 2. 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.

²¹ 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

(Appendix D is not reproduced in this Alert Digest – copies of the Appendix can be obtained from the Committee’s Secretariat upon request.)