SCRUTINY OF LEGISLATION COMMITTEE

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SCRUTINY OF LEGISLATION COMMITTEE

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50TH PARLIAMENT, 1ST SESSION

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Principal Legal Adviser to The Committee:	Professor Charles Sampford
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	Dr Max Spry
Committee Staff:	Mr Christopher Garvey, Research Director
	Ms Anita Sweet, Principal Research Officer
	Ms Lynn Knowles / Ms Carolyn Heffernan, Executive Assistant

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

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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 enacted[1]

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

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

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

SECTION A – BILLS REPORTED ON

1. BUILDING AND OTHER LEGISLATION AMENDMENT BILL 2001

Background

1. The Honourable Nita Cunningham MP, Minister for Local Government and Planning, introduced this bill into the Legislative Assembly on 11 December 2001.

2. The object of the bill, as indicated by the Explanatory Notes, is :

> *to achieve a satisfactory standard of fire safety in budget accommodation buildings by requiring:*
>
> - *budget accommodation buildings not approved under the Building Code of Australia to comply with prescribed minimum fire safety standards; and*
> - *owners of budget accommodation buildings to prepare and implement a fire safety management plan.*

Does the bill sufficiently subject the exercise of delegated legislative power to the scrutiny of the Legislative Assembly?[3]

♦ **Clause 4 (Proposed ss.12D and 12S) and Clause 12 (Proposed ss.104FD and 104FH)**

3. Section 4 inserts into the Building Act 1975 proposed s.12C, which provides that:

> *a regulation may prescribe a standard (the "Fire Safety Standard") for ensuring that all the occupants of a budget accommodation building may be safely evacuated in the event of a fire in the building.*

4. Proposed s.12D, also inserted by cl.4, provides that the chief executive may issue guidelines about ways of complying with the Fire Safety Standard. Proposed s.12S provides that in carrying out a function or power conferred on an entity under the *Building Act* or another local government Act, the entity "must have regard to" the "information in the fire safety standard guidelines". The owner has a similar obligation in ensuring a budget accommodation building conforms with the fire safety standard.

5. Similarly, proposed s.104FA (inserted by cl.12), provides that the owner of a budget accommodation building of the type referred to in the section, must prepare a fire safety management plan for the building within 1 year after commencement of the bill's provisions.

6. Proposed s.104FD, also inserted by cl.12, provides that the chief executive may issue guidelines for preparing fire safety management plans.

7. Proposed s.12S (mentioned above) and proposed s.104FH both provide that in carrying out statutory functions or powers conferred on an entity, the entity "must have regard to" the

[3] 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.

"information in the fire safety management plan guidelines". This must also be done by the owner in preparing a fire safety management plan.

8. The various guidelines mentioned above will of course not be subordinate legislation and will therefore not be subject to the tabling and disallowance provisions of Part 6 of *the Statutory Instruments Act 1992,* nor will they be subject to scrutiny by this committee. The committee has, in the past, commented adversely on provisions permitting matters which it might reasonably be anticipated will be dealt with by regulation, to be processed through an alternative means such as guidelines.

9. In considering whether it is appropriate that matters be dealt with through such alternative processes, the committee takes into account the importance of the subjects dealt with, and the practicality or otherwise of including those matters in subordinate legislation.

10. In this case, whilst the guidelines will deal with matters which are no doubt of some importance it appears likely that they will be essentially practical in nature. Moreover, they are not given the force of law but are only matters to which the relevant entities must have regard.

11. The committee notes that cls.4 and 12 authorise the making by the chief executive of guidelines about various matters, and that these guidelines will not constitute subordinate legislation.

12. Accordingly, they will not be subject to the scrutiny of Parliament.

13. Given the nature of the subject matter, however, the committee considers the adoption of this alternative process is probably acceptable.

Does the legislation confer power to enter premises and to search for or seize documents or other property without a duly issued warrant?[4]

- **Clause 9 (proposed s.55 (2A)) and cl.18 (proposed s.1101 (2)(a))**

14. Section 55(1) of the *Fire and Rescue Service Act 1990* currently confers powers of entry upon "authorised fire officers". However, s.55(2) provides that entry powers must not be exercised in respect of buildings, parts of buildings, vehicles, vessels, tents or other structures used as a dwelling.

15. Section 1101 of the *Local Government Act 1993* currently confers entry powers, under "approved inspection programs", upon "authorised persons". Section 1101(1) provides that entry may be effected "at any reasonable time of the day or night", but this is subject to s.1101(2) which provides that the power of entry does not apply to "a building or other structure, or the part of a building or other structure, used for residential purposes".

16. Clause 9 of the bill amends s.55 to provide that the restrictions upon entry in relation to residential premises, etc., shall not apply "to a budget accommodation building if the entry is made to investigate whether the owner of the building is implementing a fire safety

[4] 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.

management plan". Clause 18 amends s.1101 in similar matter to provide that the prohibition on entering residential premises does not apply "if entry is made to monitor compliance with the requirements for a budget accommodation building under the *Building Act 1975*, Part 2A".

17. The Explanatory Notes justify these extensions of the respective entry powers to include residential premises as follows:

> *These powers of entry are necessary to enable essential inspections to occur to ensure continued operation of smoke alarms and emergency lighting and other fire safety installations as they are critical elements of safe evacuation of occupants in the event of a fire. The potential loss of life in the event of a fire is justification for increased powers of entry into budget accommodation buildings.*

18. The committee notes that cls.9 and 18 of the bill expand current statutory entry powers by relevant officials to enable them to enter residential premises, where such entry is related to ensuring compliance with the bill's requirements for "budget accommodation buildings".

19. The Explanatory Notes argue that these extensions of entry power are necessary for safety reasons.

20. The committee draws these extensions of the relevant entry powers to the attention of Parliament.

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2. CLONING OF HUMANS (PROHIBITION) BILL 2001[5]

Background

1. The Honourable W M Edmond MP, Minister for Health and Minister Assisting the Premier on Women's Policy, introduced this bill into the Legislative Assembly on 27 November 2001.

2. The object of the bill, as indicated by the Explanatory Notes, is:

> *To prohibit the creation or attempted creation of cloned humans, or 'human reproductive cloning', and to prohibit the gestation of human embryo clones. The bill is not intended to prohibit other research into the use of human cells or human tissue which uses cloning technologies.*

The committee's terms of reference

3. This bill is clearly intended to be limited in scope, and much of the criticism has been about what it leaves unregulated rather than what it does regulate. Such concerns raise important questions about this committee's terms of reference.

4. The Scrutiny of Legislation Committee deals with proposed legislation submitted to Parliament and considers whether it pays sufficient regard to fundamental legislative principles – including, especially, the rights and liberties of individuals. It may well be the case that the rights and liberties of the individual might be further enhanced by more extensive legislation.

5. However, there are three problems with this argument:

   (a) It will always be true – it is always possible to do more for human rights. Therefore it offers no guidance as to when Parliament has "done enough", by striking an adequate balance, and when it should be prodded into further action.

   (b) There is no end to the argument. Once you start questioning the justice of legislation because of what it is *not* doing, there is no logical place to stop. This runs into the general logical problem of "proving a negative". It is impossible to exhaustively/ conclusively describe your action in terms of what you are *not* doing, so there would be no end of analysis for the committee in discussing what Parliament has not sought to do.

   (c) Any attempt even to start such a train of argument will lead the committee into deeply controversial policy questions. These are questions that Parliament and its Members can always take up, as it is always open to parliamentarians to suggest amendments to extend the scope and reach of legislation. It is the sort of topic that Select or Standing Committees with a brief to consider legislation on a substantive policy area might well consider. It is better for this committee, though, to steer clear of such issues and keep to the issue of whether the bills presented to Parliament have sufficient regard for the

[5] The committee thanks Professor Charles Sampford, Foundation Professor of Law and Director, Key Centre for Ethics, Law, Justice and Governance, Griffith University for his valued advice in relation to the scrutiny of this bill.

rights and liberties of individuals in what they do try to achieve, rather than in what they fail to attempt or achieve.

Approach to the bill

6. Nevertheless, the committee has decided that, as background only, it will provide a short description of the novel and complex issues raised by cloning and the kinds of cloning-related activities that other jurisdictions have already legislated against.

7. In other words, the committee will comment on the meta-question of the best way to regulate the kind of issues arising from complex technologies that intrude into our expectations. In so doing, it will suggest a reason to keep such legislation limited in its content.

8. Following this, the committee will then comment on a number of provisions of the bill which need scrutiny.

Does the legislation have sufficient regard to the rights and liberties of individuals?[6]

- **Clauses 3 to 7 inclusive**

Background – cloning: the issues

9. The Minister's reason for placing this bill before the Queensland Parliament is to comply with the Council of Australian Governments (COAG's) June 2000 determination that there be uniform legislation across Australia to prohibit human cloning. Three states (Victoria, SA and WA) already have such legislation in place, while others rely on Guidelines issued in 1996 by the National Health and Medical Research Council (NHMRC), prohibiting research involving the destruction of human embryos, save in "exceptional circumstances" where such research offers the likelihood of a significant advance in medical knowledge or improvement of technology or treatment. A 1998 report by the Australian Health Ethics Committee (a sub-committee of the NHMRC on "Scientific, Ethical and Regulatory Considerations Relevant to Cloning of Human Beings" condemned cloning of whole human beings (ie, human-reproductive cloning). It left open for further discussion the cloning of tissue or body parts for therapeutic use. This dichotomous distinction between "reproductive" and "therapeutic" cloning remains controversial – and not just in Australia.

10. After the announcement (on the 23 February 1997) of the cloning of Dolly the sheep by Ian Wilmut of the Roslin Institute, then-President Clinton promptly (4 March) banned federal funding related to any attempts to clone human beings. He also directed the recently appointed National Bioethics Advisory Commission (NBAC) to address within 90 days on the ethical and legal issues related to the cloning of human beings. NBAC's lengthy and thorough report, "Cloning Human Beings", was published in June 1997. However, NBAC's charter expired in October 2001, and in January 2002 it was replaced by a Bioethics Council. One of President George W Bush's first official acts was to endorse stem-cell research. In July Congress debated the *Human Cloning Prohibition Act* of 2001, after hearing testimony from expert witnesses including Francis Fukuyama, Judith Norsigian, and Leon Kass.

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

11. Denmark, Germany, Norway, Slovakia, Spain, Sweden, Switzerland and the UK already have legislation explicitly or implicitly banning human reproductive cloning. Similarly, the governments of France and Germany have recently (August 2001) issued a joint statement to the UN, seeking the creation of a working group to draft a convention that would ban human cloning on the grounds of damage to human dignity.

12. There is an enormous body of published material available on the issue of cloning – some detailed and scholarly, some sensationalist and oversimplified.

The Queensland legislation

13. The Queensland bill, sensibly, does not attempt to reinvent the wheel on this issue, and adopts a succinct, ordinary-language, minimalist approach. However, a consequence of this approach is that it follows rather than leads.

14. The Queensland bill seeks to balance two contrasting policy objectives. First, it prohibits both the creation (or attempted creation) of cloned human beings, ie, "human reproductive cloning" (cl.3) and the gestation of human embryo clones in the body of a human or animal (cl.4). Secondly, however, it makes no attempt to to prohibit use of cloning technologies for other research into human cells or human tissue.

15. Significantly, whereas in common usage a "clone" means an *identical* genetic copy, this legislation states (cl.5) that it is sufficient to prove that copying has occurred, and it is not necessary to prove that it is identical. This bold definitional move is to prevent instances where a minor modification would provide a loophole. Otherwise, somatic cell nuclear transfer (SCNT) – the process that produced Dolly the sheep – could fall outside the prohibition.

Likely problem areas

16. The Explanatory Notes quote UNESCO, WHO, NHMRC, the Fertility Society of Australia, and the Australian Academy of Science as evidence of a national and global consensus that cloning is "unacceptable and contrary to human dignity". The notes also refer to consultation with the AHEC, medical researchers, fertility practitioners, health ethicists, and relevant government departments, and to confidential consultation with medical researchers, ethicists, and lawyers over a draft of the bill.

17. The bill itself, its Explanatory Notes, and the Minister's Second Reading Speech are minimalist, offering only a brief canvassing of the issues. While it is sensible to tread carefully, it does mean that the bill will have only limited impact in stimulating community acceptance and public confidence.

18. Dolly has raised the prospect of a "delayed" genetic twin of a single adult. This challenges many people's ingrained conceptions of the natural order of family formation, amplifying fears already often expressed in relation to In-Vitro Fertilisation (IVF) – that it will make men biologically redundant , promote the objectification and commodification of the "made to order" children conceived as a result, and generally instil a view of humans as means, not ends. Concerns have been expressed that cloning will deprive a younger twin or triplet of the spontaneity of "authentically creating and becoming his or her own self" (NBAC Report, "Cloning Human Beings", June 1997, p 67).

19. A related concern is that traditional family roles may become problematic. Would a cloned child be the "sibling" of his or her much older "original", or that person's "child"? Will the child be the son/daughter or the grandchild of the "original's" parents?

20. Public debate is often skewed by an oversimplified view – that genetic make-up is destiny, and that the genome is the key to qualitative identity. This generates a spectre, supported by Hollywood-type "Boys from Brazil" scenarios of armies of evil clones, unquestioningly obedient to their life's script as programmed before birth by some mad scientists.

21. Much of the debate is fuelled by a visceral reaction to cloning. On the one hand, as Kass puts it (*op cit*, p 70):

> *Revulsion is surely not an argument […] But […] in crucial cases repugnance is often the emotional bearer of deep wisdom beyond reason's power to fully articulate it.*

22. On the other hand, as Macklin points out:

> *Intuition has never been a reliable epistemological method, especially since people notoriously disagree in their moral intuition […] If objectors to cloning can identify no greater harm than a supposed affront to the dignity of the human species, that is a flimsy basis on which to erect barriers to scientific research and its application.*

23. Groopman comments:

> *"Kass's vision is dismally remote from what actually goes on in the nation's laboratories. […] While Kass conjures a world of lab-bred James Bonds, two hundred thousand Americans live with spinal-cord injuries […], and four million have Alzheimer's." – Jerome Groopman (2002) "Science Fiction."* The New Yorker *(31 January 2002)*

24. One of the most common objections to cloning and related research (taken very seriously by some expert witnesses before Congress' Subcommittee on Health) is that it is not practicable to insulate "cloning for therapeutic research" (permissible) from "reproductive human cloning" (prohibited). On this view, the only effective way to ban reproduction of humans is to ban all use of cloning to initiate the development of new humans. Such a ban would not interfere with promising medical research, as embryonic stem cell research is being superseded by research using stem cells from adult tissue, placentas, or umbilical cord blood, as well as the prospect of redirecting a patient's body cells to make different kinds of stem cells without producing a cloned embryo (whether this is "spare" or deliberately produced to be destroyed).

The regulation of rapidly changing complex technologies

25. Complex, rapidly-changing technologies are notoriously difficult to regulate. Such technologies and the issues they raise are riven by multi-layered complexities. Criminal law is usually a clumsy means of dealing with the issues such technologies generate. The need for precision in criminal statutes; the emergence of unexpected possibilities; and the increasing pace of technological change – all make criminal law a blunt instrument which cannot be wielded deftly and is as likely to strike the harmless as the harmful.

26. A more effective means of dealing with potential problems is to require prior clearance of the research to be undertaken or the medical procedures to be developed. General guidelines can be set down, institutional committees established, advice given, results compared and new guidelines issued.

27. This is not to leave the matter entirely in the hands of "experts" and "professionals". Complexity should not be delegated to experts, but neither should it be surrendered to a process of sensationalist and simplistic treatment in which debate is dominated by the shrill and the venal – discouraging involvement by researchers and doctors who would seek to distinguish themselves from both.

28. The institutional committees are at the heart of the system – including a mixture of community representatives as well as the relevant professional.

29. There is always reserve power for the Parliament to step in and lay down limits as to what is acceptable. Once a public consensus has emerged, legislators have the sovereign right to take a different view to ethics committees and ban activities which such committees would permit (though we know of no ethics committee in any well-run first-world democracy that has approved human cloning). However, the first and generally best line of defence is in the combination of community and professional representatives found in committees – with outsiders in a majority.

30. The committee refers the above matters, relating to the rights and liberties of individuals, to the attention of Parliament.

Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification?[7]

- **Clauses 8 and 9**

31. Clause 8 provides that individuals and corporations are criminally liable for any cloning done by their "representatives" (including employees and agents) acting under their authority (whether actual or apparent). This imposes strict criminal responsibility. It is a defence if the individual or corporation can show that they could not have prevented the relevant act or omission through the exercise of "reasonable diligence".

32. This defence converts a strict liability offence into one of negligently permitting a cloning to take place by an agent or employee. However, the onus of proof is on the accused to establish that he, she or it (if a corporation) could not have prevented the crime through reasonable diligence.

33. Clause 9 is even more clearly a strict liability offence ("executive officers must ensure the corporation complies with the act"). The only defences are that the officer was not in a position to prevent the criminal act or that the officer exercised reasonable diligence seeking to prevent it.

34. There is nothing wrong with creating a criminal offence of negligence with respect to a significant criminal Act. The creation of offences for senior corporate officers who have failed to put in place systems to prevent serious criminal action has been one of the great innovations of regulatory law over the last decade. An organisation's board and senior management do have a corporate and social responsibility to attempt to prevent wrongdoing

[7] 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.

by the corporation and its employees – and they are better-placed to supervise their own operations than are inspectors or jurors from outside the organisation.

35. However, four objections to these particular provisions can be offered:

(a) It is generally considered that those who are negligent are less criminally culpable than those who intend a criminal action. This is taken into account when fixing custodial sentences (the level of fines may well need to be greater for large corporations if they are to act as a deterrent).

(b) There is no need to reverse the onus of proof in negligence cases. The Explanatory Notes note that this is a reversal of the onus of proof. It provides three justifications:

(i) the seriousness of the offence
(ii) persons should be required to oversee the conduct of their representatives and should therefore make reasonable efforts to ensure that their employees and agents comply with the requirements of legislation
(iii) executive officers should be accountable for his or her actions and should not be able to "hide" behind the corporation.

36. The first of these justifications does not stand up. If seriousness were a justification for reversing the onus of proof, then the onus of proof should be shifted. In general the reverse is true. The more serious the offence, the greater the moral obloquy, the greater the social condemnation, and the greater the penalty. Accordingly, the law is scrupulous in avoiding convicting the innocent and the greater care to ensure that the offence is proven.

37. The second justification is correct in stating that there is an obligation to oversee the conduct of agents and employees. If the state can prove that this obligation has not been fulfilled and that this failure has caused serious harm, it is right that the negligent actor be punished. However, that is not a reason for reversing the onus of proof.

38. The third justification is misplaced. It refers to officers being responsible for their own actions and not "hiding" behind the corporation. Officers are responsible for their own actions under cl.4. If someone is "hiding" behind the corporate veil, then they must have an element of direct intention rather than mere negligence.

39. The obligations are stated in terms that are too strong. There cannot be an obligation to "ensure" that employees and agents comply. The obligation is to take reasonable steps to attempt to *prevent* or *avoid* the criminal conduct of agents or employees. This is what is effectively intended for the provision but the word "ensure" obscures this.

40. Clause 8 requires the proof of a "counterfactual", the proving of a hypothetical – that "the person could not, by the exercise of reasonable diligence, have prevented the act or omission. It is better to require the proof of negligence – in particular, the failure to take reasonable steps (which generally means commonplace procedures or industry best practice) to prevent the harm. However, that is not something which it would be unreasonable to require the State to prove.

41. The committee refers to Parliament the question of whether the reversal of the onus of proof effected by cls.8 and 9 is justified.

Does the legislation have sufficient regard to the institution of Parliament?[8]

♦ **The bill generally**

42. The bill is made pursuant to an intergovernmental agreement.[9] This raises the possibility that it may form part of national scheme legislation.[10]

43. National schemes of legislation have been a source of considerable concern, both to the committee and to its interstate and commonwealth counterparts.[11] These schemes take a number of forms and the objection to them is greatest when they involve predetermined legislative provisions.

44. Whilst this bill is the product of an intergovernmental agreement, the committee notes that the agreement was simply to achieve "nationally consistent provisions" in legislation to prohibit human cloning.

45. The information available suggests that the intergovernmental agreement in question is fairly general in nature, and an examination of the bill suggests that Queensland is, by and large, enacting its own legislation to give effect to the principles embodied in the agreement.

46. This bill is made pursuant to an intergovernmental agreement, which raises the possibility of its forming part of national scheme legislation. Many elements of such schemes have been identified by scrutiny committees nationally as undermining the institution of Parliament.

47. Upon a consideration of the nature of the intergovernmental agreement and the contents of this bill, the committee has concluded that the bill probably does not constitute "national scheme legislation" within the definition of that term adopted by the committee. The bill is therefore unobjectionable in this regard.

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

9 See Explanatory Notes, p.2

10 The committee uses this term to describe broadly:

any and all methods of developing legislation, which is –

- Uniform or substantially uniform in application;
- In more than one jurisdiction, several jurisdictions or nationally.

11 The relevant issues are canvassed in detail in *Scrutiny of National Schemes of Legislation – A Position Paper of Representatives of Scrutiny of Legislation Committees throughout Australia,* October 1996.

3. EDUCATION (QUEENSLAND STUDIES AUTHORITY) BILL 2001[12]

Background

1. The Honourable Anna Bligh MP, Minister for Education, introduced this bill into the Legislative Assembly on 12 December 2001.

2. The object of the bill, as indicated by the Explanatory Notes, is:

- *To create a new legislative regime:*
- *To contribute to high levels of completion of year 12 or its equivalent to improve the social cohesion and the social and human capital of Queensland;*
- *To deal with syllabus development, assessment, certification and tertiary entrance procedures and articulation to post school options across diverse preschool to year 12 education settings and contexts;*
- *To support the development or a coherent set of principles which inform the conditions of learning across the span of schooling and build the foundations for life long learning;*
- *To provide statutory arrangements that will operate to enable schooling sectors and individual schools to achieve their common and specific objectives to meet the needs of their clients; and*
- *To support effective transitions between stages of schooling, formal and informal learning environments, and to post school destinations and active citizenship.*

Additional comments on the bill

3. More specifically, the Queensland Studies Authority develops syllabi for years 1-12, accredits syllabi developed by others, sets testing procedures, tertiary entrance requirements and how those whose qualifications gained out of state are to be ranked alongside those whose qualifications were derived in Queensland. It also has a number of functions in publicising technical and further education and in researching and advising the Minister on a range of matters within the above broad educational portfolio.

4. This bill sets out its purposes and the general principles underlying its interpretation.

5. This bill has a number of well-drafted provisions covering conflicts of interest (cl.44) and the preservation of the Authority's independence. Under cl.62, the Director of the Authority is required to act independently, impartially and in the public interest and is not subject to ministerial direction. Under cl.24, the Minister's power to give directions explicitly excludes matters concerning the syllabus and the recording of results.

6. The bill includes a clause authorising judicial review (cl.77), as well as privacy protections (cl.75).

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[12] The committee thanks Professor Charles Sampford, Foundation Professor of Law and Director, Key Centre for Ethics, Law, Justice and Governance, Griffith University for his valued advice in relation to the scrutiny of this bill.

Is the legislation consistent with the principles of natural justice (the bias rule)?[13]

- **Clauses 6 to 21**

7. The committee has a possible concern arising from the fact that the same body is developing the standard syllabus and also accrediting syllabi designed by others. This does not involve a conflict of interest in the normal sense, because there is no financial or other material benefit from rejecting a syllabus designed by others. However, those who design syllabi will almost certainly, have formed their own views about the weight, importance, perspective (, etc) of the topics to be taught. This may make them sensitive and appreciative of the intellectual effort that others who have gone through the same process. However, where the efforts of others have designed a syllabus with different weights, perspectives etc, someone who has designed a different curriculum is biased in that assessment. He or she has, quite literally "pre-judged" the issue.

8. The problem is that the bill gives the Authority both functions. Technically, this means that the Authority might be accused of bias every time it rejects or requires modification of a syllabus developed by outsiders. This is not completely cured by assigning the roles to different individuals within the Authority because it is still the body as a whole that is formally making the decisions. This might suggest that the only solution is the assignment of the accreditation function to a different agency. However, as the bias rule is one of a legitimate apprehension of bias, the allocation of the roles to two different officials and the provision of a clear route of appeal to an independent body would probably be sufficient.

9. Other solutions would no doubt be effective and it is not the role of the committee to prescribe the means for remedying potential breaches of fundamental legislative principles to which it draws the attention of Parliament.

10. The committee draws to the attention of Parliament this possible perception of bias should the Authority refuse to accredit a syllabus developed by a different school or school system.

Does the legislation make individual rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?[14]

- **Clauses 8 and 9**

11. A great deal of intellectual effort goes into the designing of syllabi. There can be considerable ideological or religious importance given to different choices made in the syllabi. Religious institutions put very large resources into the development of schools and curricula and parents sometimes pay large sums of money to send their children to schools run by those institutions. This does not mean that their syllabi should not be accredited by an independent agency. Parents and private educators are not the only stakeholders with interests in the education curriculum. Children have a right to a sound education, too, and the general public (which provides significant sums to all forms of education) has a right to

[13] 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.

[14] 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.

be assured that public money is spent strictly for the educative purposes for which it is appropriated.

12. However, this does mean that, if disputes arise, it is important that they be dealt with fairly and that differences of opinion are dealt with by a suitable and speedy means of independent review. Although the Authority is covered by judicial review, this may well be an area where a specialist panel might be better placed to provide administrative review or mediation at an earlier stage. This is particularly important because of the dual role of the Authority, as outlined in the above point.

13. The Explanatory Notes recognizes this issue and states that "it is intended that the processes, criteria, fees and appeal structures around this range of decisions will be dealt with under regulation". However, rights and liberties may still be affected significantly in the interim before such regulations are made. In a sense, the protection to be provided by the regulations is dependent on the exercise the powers of the Executive. At the time the legislation is debated, Parliament has no way of knowing when the regulations will be put forward and whether they will be adequate to protect rights in this respect. (There may be a change of government: even if there is not, the status and role of the Parliament should not be downgraded by assuming that it will only ever act as a "debating panel appended to the Executive".) Given the importance of appeal rights, the committee could see this as causing problems with section 4.4 of the *Legislative Standards Act*, which states:

> *"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; […]"*

14. The committee refers to Parliament the question of whether some form of review should be provided in relation to any full or partial rejection of a syllabus developed outside the Authority.

4. LAND PROTECTION (PEST AND STOCK ROUTE MANAGEMENT) BILL 2001

Background

1. The Honourable S Robertson MP, Minister for Natural Resources and Minister for Mines of Queensland, introduced this bill into the Legislative Assembly on 11 December 200l.

2. The object of the bill, as indicated by the Explanatory Notes, is:

> *…to provide for pest management for land and stock route network management. The main policy objectives are to protect land and water from the adverse impacts of weeds and pest animals and to manage the stock route network in a sustainable manner for travelling stock and other purposes.*

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

♦ **Clauses 39, 41, 42, 44, 45, 46, 76, 78, 92 and 93**

3. The bill contains a large number of clauses creating offences punishable by financial penalties. In the case of many of these provisions, the maximum penalties imposed are substantial. The most significant clauses are cls.38, 41, 42, 44, 45, 46, 76, 78, 92 and 93, which impose maximum penalties of 800 penalty units ($60,000). In addition, it should be noted that at least one of the statutory offences in the bill (that created by cl.46), does not require intent as a necessary element.

4. The committee draws to the attention of Parliament the substantial monetary penalties imposed for offences against a number of provisions of the bill. The committee also draws to Parliament's attention the fact that at least one of these statutory offences can be committed without any element of intent.

♦ **Clause 77**

5. Clause 77 provides that a landowner must take reasonable steps to keep certain land free of class 1 and class 2 pests. The relevant land consists not only of the owner's land, but certain other lands which are not his or her property. These comprise:

- Unfenced land comprising part of a road or stock route that adjoins or is within the owner's land
- Other land that is fenced in with the owner's land
- The bed, banks and water to the centre-line of a watercourse forming a boundary or part of a boundary, of the owner's land.

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

6. A question naturally arises as to the appropriateness of the extension of a landowner's liability to these additional lands. In relation to this issue, the Explanatory Notes state:

> *... the owner has the use of the* (additional) *land, the best access to the land or receives a benefit from the land in certain situations.*

7. It occurs to the committee that there may be situations in which it would be unreasonable to expect a landowner to personally keep the additional lands pest-free. For example, the pest infesting the land may be difficult to eradicate and require specialised treatment. In such cases the committee assumes the landowner could discharge his or her statutory responsibility by informing the local government or pest management committee of the infestation, and requesting them to eradicate it.

8. The committee notes that cl.77 of the bill requires a landowner to take reasonable steps to keep free from class 1 and class 2 pests not only the landowner's land but certain adjoining lands.

9. The committee seeks advice from the Minister as to whether in certain circumstances a landowner could discharge his or her statutory obligations by informing the relevant authorities of the existence of the pest.

♦ **Clause 302**

10. Clause 302 provides a general entitlement to claim compensation for loss or damage incurred by a person because of the exercise or purported exercise of a power under the bill, other than certain powers stipulated in cl.302(1).

11. A court may, however, only order compensation to be paid if it is satisfied that it is just to make such an order in the circumstances of the particular case.

12. Given the range of powers conferred upon officials by the bill, the inclusion of this general compensation provision (even subject to the qualifications incorporated in it) is a positive step.

13. The committee notes that cl.302 of the bill provides a general entitlement to claim compensation for loss or damage caused by the exercise or purported exercise of powers under the bill, provided the court hearing the application considers it just to make such an order.

14. The committee considers the inclusion of this clause enhances, at least to an extent, the rights of landowners and others affected by the bill's provisions.

♦ **Clause 312**

15. Clause 312 provides that when the bill commences, the Rural Lands Protection Board established under the *Rural Lands Protection Act 1985* (which is repealed by the bill) is dissolved, and that the members of the Board will go out of office. Clause 312(2) provides that no compensation is payable to a member because of these events.

16. Neither the Minister's speech nor the Explanatory Notes indicate what (if any) financial detriment current members of the Board will suffer by virtue of the provisions of cl.312. This would depend, in part, upon the salaries or/and other entitlements which they presently receive and the length of any unexpired portion of their current terms of office.

17. The committee notes that cl.312 dissolves the Rural Lands Protection Board and provides that its members go out of office. Clause 312 also provides that no compensation is payable to members on that account.

18. The committee seeks information from the Minister as to the extent of any financial detriment which may be suffered by any such members.

Does the legislation confer power to enter premises and to search for or seize documents or other property without a duly issued warrant?[16]

- **Clauses 50, 51, 80, 81, 88, 90, 152 and 251 to 277 inclusive**

19. A striking feature of this bill is the number of provisions which confer powers of entry upon officials. Many of these are for specifically-stated purposes (such as cl.50, which is exercisable where a building authority needs to build, inspect or maintain a declared pest fence or to clear the fence line), whilst others are more wide-ranging in nature (in particular cl.251, which confers the most general power of entry in relation to places other than vehicles). Clause 258 confers a specific power of entry to vehicles. It should also be noted that, apart from pest survey programs (see cl.241), the entry powers are exercisable in relation to places where persons reside.

20. The range of situations where entry may be effected under these provisions extends well beyond those in which the occupier has consented or a warrant has been obtained.

21. The bill (see cls.263 to 277) confers an extensive range of general post-entry powers, including powers of seizure and forfeiture and power to require persons to give reasonable help or information. Other provisions (such as cl.152), confer more specific and limited powers.

22. Many of the entry powers conferred by the bill, it must be said, require the giving of a minimum period of written notice prior to entry.

23. Whilst a large number of provisions of the bill confer upon officials powers of entry and often wide consequential investigative and enforcement powers, the committee notes that significant efforts have been made in drafting many of these provisions to take account of fundamental legislative principles.

24. The Explanatory Notes deal in some detail with the bill's entry and post-entry powers (see Explanatory Notes, pages 3 to 6 inclusive). Overall the Notes emphasise the extremely invasive nature of many declared pests (particularly weeds), and the high mobility of some pest animals, as justifying the range and extent of the entry and post-entry powers.

[16] Section 4(3)(e) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to the 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.

25. The committee notes that many provisions of the bill confer on officials powers of entry, which often extend beyond situations where the occupier consents or a warrant has been obtained. The committee notes that once entry has been effected, many of the bill's provisions confer upon officials further wide-ranging powers.

26. The committee draws Parliament's attention to the range and extent of these powers.

5. LOCAL GOVERNMENT AMENDMENT BILL 2001

Background

1. The Honourable H W T Hobbs, Shadow Minister for Local Government & Planning, Shadow Minister for Regional & Rural Communities, Shadow Minister for Racing and Member for Warrego, introduced this bill into the Legislative Assembly on 5 December 2001.

2. The object of the bill, as indicated by the Explanatory Notes, is:

> *...to amend the Local Government Act 1993, with regards to removing the barrier to local government councillors standing for State Parliament, from which they are presently required to resign from their position on the council in standing for a seat.*

Does the legislation have sufficient regard to the rights and liberties of individuals?[17]

Does the legislation have sufficient regard to the institution of Parliament?[18]

3. The *Local Government and other Legislation Amendment Act 2001* inserted into the *Local Government Act 1993* new s.224A, and made various amendments to the existing s.298. Section 224A provided that a councillor ceases to hold that office if he or she becomes a candidate for election to either the Queensland or Commonwealth Parliaments. The amendments inserted into s.298 provided that a person who is currently a candidate for election to any Australian Parliament is not qualified to nominate for election or appointment as a councillor until the candidature ends.

4. The purpose of the current bill is to delete those amendments (thereby restoring the position to that which existed prior to 2001), and to insert new 299A which provides that, whilst a councillor may now nominate for election to the Queensland Parliament, he or she must take leave of absence during the period of candidature and not act in the office, or receive remuneration for it, during that period.

5. In November 2001 the Queensland Court of Appeal declared the relevant provisions of the 2001 amendment Act invalid, insofar as they related to the Federal Parliament. The Court unanimously held the provisions invalid on the basis of of an implied inconsistency between those provisions and the *Electoral Act 1918* (Commonwealth). A majority of the Justices also held them invalid on the basis that they intruded into an area of exclusive Commonwealth legislative power.

6. The Court's decision was based entirely on constitutional grounds arising from Australia's federal system of government.

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

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

7. Nothing in the Court's decision suggested that the Queensland Parliament lacks a general capacity to make laws prescribing qualifications and disqualifications for candidates and voters at its own elections.

8. Given that the Courts have now determined the relevant provisions of the *Local Government Act* invalid insofar as they relate to the Commonwealth Parliament,[19] the current bill will only have effect in relation to elections to the Queensland Parliament.

9. The imposition of statutory restrictions upon councillors nominating for election to the Queensland Parliament, and prohibitions upon candidates for the Queensland Parliament becoming councillors during their candidature, potentially raises two issues for this committee.

10. Firstly, do such restrictions and prohibitions infringe the rights and liberties of councillors and aspiring councillors? Secondly, does the imposition of prohibitions and restrictions of this type upon persons intending to nominate as candidates for election to Parliament undermine the institution of Parliament?

11. Parliaments in the Westminster tradition have always legislated a range of qualifications and disqualifications relating to voting in, and candidature for, their own elections.

12. Whilst opinions will clearly differ as to the merits of the current statutory provisions and of those which would come into force if this bill were passed, the committee considers these are in the final analysis matters for Parliament to decide.

13. The committee notes that this bill removes provisions under which local government councillors cease to hold office if they nominate for election to the Queensland Parliament, and under which candidates for election to the Queensland Parliament are unable to become local government councillors during their candidature.

14. The committee refers to Parliament the question of whether these provisions have sufficient regard for the rights of the persons concerned, and whether they have sufficient regard for the institution of Parliament.

[19] The committee understands the Queensland Government has stated it does not intend to appeal against the Court's decision.

6. PRIVATE EMPLOYMENT AGENCIES AND OTHER ACTS AMENDMENT BILL 2001

Background

1. The Honourable Gordon Nuttall MP, Minister for Industrial Relations, introduced this bill into the Legislative Assembly on 12 December 2001.

2. The object of the bill, as indicated by the Explanatory Notes, is:

> *to (provide) for the licensing and related operational requirements of private employment agents. Protections are also provided against employees being charged inappropriate fees by agents for the procurement of employment.*

Does the legislation provide appropriate protection against self-incrimination?[20]

- **Clause 9**

3. Clause 9 omits current s.12 of the *Private Employment Agencies Act 1983*.

4. Section 12 provides that a person is not entitled to refuse to comply with requirements by inspectors that they answer questions or produce documents on the ground that the answer or production would tend to incriminate them. The section further provides, however, that any answer given or matter produced shall not be admissible in evidence against the person in proceedings for an offence, if they are given or produced under protest.

5. Provisions which, at least in some circumstances, deny persons the benefit of the common law rule against self-incrimination are included in a significant number of bills examined by the committee. The committee routinely questions, or at least draws attention to, these provisions.

6. The committee is pleased to note that this bill removes a current provision of this nature.

7. The Explanatory Notes state that the removal is "to accord with currently accepted legislative principles". Moreover, there would not appear to the committee to be any obvious justification for the original enactment of such a provision in relation to bodies such as private employment agencies.

8. The committee notes that cl.9 of the bill omits a current provision which denies persons the benefit of the rule against self-incrimination.

9. The committee commends the Minister on this amendment.

[20] 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.

Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification?[21]

- **Clause 20 (proposed ss.36 and 37)**

10. Clause 20 inserts new ss.35 and 36 into the *Private Employment Agencies Act 1983*.

11. Proposed s.36 effectively declares persons (including corporations) to be guilty of offences committed by their representatives (which term, in the case of corporations, includes its executive officers).

12. Proposed s.37 obliges executive officers of a corporation to ensure that the corporation complies with the provisions of the Act, and provides that if the corporation commits an offence against the provisions of the Act, each executive officer also commits an offence.

13. Both ss.36 and 37 provide grounds upon which liability may be avoided. These are essentially that the person took reasonable steps to ensure compliance and/or to prevent the offending act or omission, or that the person was not in a position to influence the conduct of the relevant person or corporation.

14. Sections 36 and 37 effectively reverse the onus of proof, since under the law a person generally cannot be found guilty of an offence unless he or she has the necessary intent.

15. In relation to this issue, the Explanatory Notes state:

> *The proposed sections are considered justifiable and necessary to prevent unscrupulous private employment agents sheltering behind employees or corporations and for the effective enforcement of the legislation.*

16. The committee has previously considered provisions which reverse the onus of proof, particularly in relation to corporations. Whilst difficulties of determining liability in certain circumstances (for example, corporations) are appreciated, the committee as a general rule does not endorse such provisions.

17. The committee refers to Parliament the question of whether proposed ss.36 and 37 contain a justifiable reversal of onus of proof, and therefore have sufficient regard to the rights and liberties of individuals.

Is the legislation consistent with the principles of natural justice?[22]

- **Clause 29**

18. Clause 32 of the bill inserts into the *Industrial Relations Act 1999* new Chapter 11A – "Fees charged by Private Employment Agents". Under proposed s.408F of that Chapter, "a work seeker" who has paid a fee to a private employment agent which is not of a type authorised

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21 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.

22 Section 4(3)(b) of the *legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends o whether, for example, the legislation is consistent with the principles of natural justice.

under proposed s.408D may apply to the Industrial Relations Commission for an order that the fee be repaid.

19. Clause 29 of the bill amends s.139(2) of the *Industrial Relations Act*, which deals with representation of parties, to provide that where such a proceeding is brought before the Commission, or is subsequently remitted by the Commission to an Industrial Magistrate, no party to the proceeding may be represented by a lawyer. At present, the only other category of proceedings in relation to which this absolute prohibition upon representation by lawyers is imposed is s.278 of the *Industrial Relations Act* (power to recover unpaid wages and superannuation contribution etc.).

20. The matter of legal representation of parties in the industrial relations courts and tribunals has been addressed by the committee on several occasions, most recently in its report on the *Industrial Relations Amendment Bill 2001*, which inserted current s.319.[23]

21. As mentioned in that report, the committee generally holds the view that access to legal representation enhances the rights of parties to natural justice, although it concedes that a number of issues such as:

- the nature of the particular tribunal
- the cost and lengthening of proceedings associated with legal representation
- whether all and not merely some parties can afford legal representation; and
- whether matters coming before the tribunal are likely to be practical rather than technical

can also be relevant.

22. The committee does not propose to revisit these issues at this stage, other than by noting that the bill places the recovery of fees illegally paid to private employment agents in the same category as only one other class of proceedings (those under s.278 of the *Industrial Relations Act*).

23. The committee notes that cl.29 prohibits legal representation of parties in actions to recover fees illegally paid by work seekers to private employment agents.

24. The committee refers to Parliament the question of whether this restriction has sufficient regard to the principles of natural justice.

[23] See Alert Digest No. 8 of 2001 at pages 18 – 20.

7. PUBLIC RECORDS BILL 2001

Background

1. The Honourable Paul Lucas MP, Minister for Innovation and Information Economy, introduced this bill into the Legislative Assembly on 12 December 2001.

2. The objects of the bill, as indicated by the Explanatory Notes, are to:

   (a) Facilitate the documentation, management and preservation of Government business through full and accurate records, irrespective of the technological or administrative environment in which Government business is conducted or the custodial arrangements for public records; and

   (b) Better align access principles for public records in the custody of Queensland State Archives (QSA) with certain access principles in the Freedom of Information Act 1992.

3. This bill is in generally similar form to the *Public Records Bill 1999*, which was introduced into the Legislative Assembly on 26 October 1999 but which lapsed when Parliament was dissolved on 23 January 2001. The previous Scrutiny of Legislation Committee reported on the earlier bill in Alert Digest No. 15 of 1999 at pp.19 – 27 and Alert Digest No. 15 of 1999 at pp.39 – 45.

4. Whilst as mentioned earlier the current bill is quite similar to the 1999 bill, it differs from it in a number of respects. The committee has accordingly decided to prepare a fresh report in relation to the current bill, although this report will inevitably contain much material drawn from the earlier reports.

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

♦ **Clause 26 (privacy)**

5. The bill establishes a comprehensive regime for the "making, managing, keeping and preserving of public records in Queensland".[25]

6. Three major issues arise in relation to public records, namely:

   - Appropriate requirements for the making and keeping by public authorities of records of their activities;
   - The provision to the public of reasonable access to those records, having regard to the interests of all stakeholders; and
   - The disposal, on an appropriate basis, of such records.

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

[25] See long title to bill.

7. The bill addresses the first matter by imposing a general obligation upon "public authorities"[26] to "make and keep full and accurate records of (their) activities" (cl.7). In the committee's view this requirement does not, of itself, raise any issues concerning the rights and liberties of individuals.

8. As to the second matter, any access regime for public records must necessarily take account of the following competing interests, namely:

- The interest of public authorities, and of the general public, in obtaining access to records of the previous activities of public authorities; and

- Protecting of the legitimate interests of the State, public authorities or individuals in maintaining the confidentiality of some such records.[27]

9. The bill attempts to strike a balance between these competing interests by:

- Establishing a series of "restricted access periods" for public records, the length of which depends upon the nature of their contents (cl.16); and

- Granting access to public records on the basis that the applicant has obtained an order for access under the *Freedom of Information Act 1992* (cl.18) (this Act incorporates exemptions from access for various types of information which, in the interests of the public or of particular individuals, it is thought appropriate not to release, and also incorporates and appeal process).

10. In the committee's view, the access regime established under the bill strikes a reasonable balance between the competing interests.

11. As to the third matter, the bill imposes a general requirement (see cl.13) that any disposal of a public record, unless authorised under some other law, must be authorised by the archivist or the board. Breach of that provision constitutes an offence punishable by a maximum penalty of 165 penalty units.

12. The process of applying to the archivist for authority to dispose of public records is established under cl.26. However, the only applications referred to in that clause are applications by "the public authority that has control of the records), and it does not contemplate the making of an application for disposal by any other person or entity.

13. The committee can envisage situations in which a member of the public (for example, an individual who si the subject of personal information contained in a particular public records), may wish to have particular public records destroyed (for example, on the basis that the purposes for which the personal information was originally created and held have been fulfilled, and there is no longer any justification for retaining the documents).[28]

14. The committee considers the rights of such individuals would be enhanced if the bill empowered them to make such an application.

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[26] The term is defined in the Schedule to the bill.

[27] For example, the State and/or a public authority might object to access on the basis that it would be detrimental to law enforcement or public safety, whilst an individual might do so on the basis that records contained personal information relating to him or her.

[28] This issue is canvassed in the report of the Legal Constitutional and Administrative Review Committee, *Privacy in Queensland,* April 1998 at pp 91 – 93.

15. The committee seeks information from the Minister as to why the bill does not confer upon individuals with a legitimate interest in the contents of particular public records, the capacity to apply to the archivist for their disposal (that is, for their destruction).

♦ **Clause 12**

16. Clause 12(1) provides that a person must not "damage" a public record more than 30 years old. A maximum penalty of 100 penalty units is prescribed for breach of this provision. Under cl.12(2), the obligation applies whether or not the public record is in the custody of the archives.

17. Clause 12(4) defines "damage" in this context as meaning to change the record in a way that causes, or is likely to cause damage to it. However, the definition also defines "damage" as meaning to "neglect the record in a way that causes, or is likely to cause, damage to the record".

18. It occurs to the committee that a public record may sometimes be "neglected" in this way simply because insufficient funds are available to adequately conserve it. Some older records may be contained in materials which are subject to deterioration, conservation of which may be difficult and costly.

19. Offence provisions sometimes qualify a general prohibition of particular conduct with the words "unless the person has a reasonable excuse".

20. It seems to the committee that in respect of the offence of "neglecting" a public record, it would be appropriate to include such a qualification.

21. The committee recommends that cl.12 be amended to provide that a person is not guilty of the offence of "neglecting" a public record if the person has a reasonable excuse.

Does the bill sufficiently subject the exercise of delegated legislative power to the scrutiny of the Legislative Assembly?[29]

♦ **Clause 25**

22. Clause 25(1)(f) authorises the archivist to "make policies and standards, and issue guidelines, about the making, keeping, preserving, managing and disposing of public records".

23. Clause 7 requires public authorities to "have regard to" these same instruments.

24. The committee has previously commented adversely on bills which permit matters, which it might reasonably be anticipated would be dealt with by regulations, to be processed through an alternative means which does not constitute subordinate legislation.[30]

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[29] 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.

[30] See, for example, Alert Digest No. 8 of 1998 at pp.9 - 10

25. The significance of providing for matters to be dealt with through such alternative processes is that the relevant instruments, not being "subordinate legislation", are not subject to the tabling and disallowance provisions of Part 6 of *the Statutory Instruments Act 1992*.

26. Much of the contents of these instruments will no doubt be of relatively minor importance. Nevertheless, it seems at least possible that some relatively more significant matters could be included.

27. The committee seeks information from the Minister as to the nature of the matters which it is envisaged will be dealt with by policies, standards and guidelines issued under cl.25 of the bill.

Does the legislation make individual rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?[31]

- **Clauses 39 to 41 inclusive**

28. Under these provisions, a process is provided whereby "public authorities" may seek review of decisions of the archivist not to authorise the disposal of particular public records or classes of public records.

29. Under cl.39 an application for review must be made within 14 days after notification of the refusal. Clause 41 provides that the Public Records Review Committee may confirm, amend, revoke, or substitute a new decision for, the archivist's decision. There is no provision for further review of, or appeal against, the committee's decision.

30. This comparatively limited review process is probably adequate in relation to "public authorities", to whom the right to apply for the archivist's authority for disposal of public records is presently limited.

31. However, if the right to seek authority for disposal were, as mentioned earlier in this chapter, to be extended to individuals with a sufficient interest in particular records, then the review process provided may not be adequate. In such situations, an appeal process similar to that provided for under the *Freedom of Information Act 1992* would seem more appropriate.

32. The committee considers that the review process provided for under cl.39 – 41 of the bill is adequate in respect of the range of applicants presently contemplated by the bill.

33. However, if the range of applicants were to be broadened, an enhanced review process should be provided.

[31] 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.

Does the legislation confer power to enter premises and to search for or seize documents or other property without a duly issued warrant?[32]

- **Clauses 46 to 48 inclusive**

34. The bill confers upon "authorised officers" significant powers of entry. There is no requirement to obtain a warrant.

35. Once entry has been effected cl.47 confers upon "authorised officers" a wide range of powers.

36. However, the entry and post-entry powers may only be exercised in relation to the Governor's official residence and a court by agreement with the Governor's secretary or the registrar or proper officer of the court respectively. In relation to Ministerial offices, reasonable notice of the intended entry must be given.

37. These provisions relate only to records which are "in a public authority's possession". "Possession" is defined in the Dictionary to the bill as "includ(ing) having control of the record".

38. The powers in question will therefore be exercisable primarily on the premises of "public authorities", although they would also presumably be exercisable at off-site commercial storage premises where such records are stored for public authorities.

39. The committee notes that the bill confers on "authorised officers" significant powers of entry, and that there is no requirement for a warrant to be obtained. The committee notes that once entry has been effected, the bill confers on 'authorised officers' a further wide range of powers.

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

41. However, the committee notes that the relevant powers are only exercisable at the premises of public authorities (and the premises of those commercial storage contractors engaged by them).

42. The committee refers to Parliament the question of whether the entry and post-entry powers conferred by the bill are reasonable.

[32] 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.

Does the legislation confer immunity from proceeding or prosecution without adequate justification?[33]

♦ **Clause 53**

43. Clause 53 provides that, if access is given to a public record under the bill, no action for defamation or breach of confidence lies against the State or an official because of the giving of the access.

44. The committee considers that conferral of immunity to be reasonable and appropriate, given the access process established under the bill.

45. However, cl.53(2)(b) goes on to protect against actions for defamation or breach of confidence:

> *the author of the public record or another person because the author or other person supplied the record to a public authority or archives* (underlining added).

46. The immunity conferred by this provision appears to be quite wide, and to encompass the original forwarding by an outsider to a public authority of material which then legitimately became part of the public records of that public authority.

47. It is at first glance difficult to see why that transaction should necessarily be accorded immunity simply because, at a later date, a person (perhaps the person defamed or whose confidence has been breached) obtains access to the document under the provisions of the bill.

48. The committee seeks information from the Minister as to the range of persons who will be afforded immunity under cl.53(2)(b), and why it is considered appropriate that all such persons should be afforded protection in respect of the original supply of the record to the public authority or the archives.

Does the legislation have sufficient regard to the institution of Parliament?[34]

♦ **The bill generally**

49. The bill imposes a range of obligations upon "public authorities" in relation to the making, managing, keeping and preserving of public records.

50. The committee notes that the term "public authority", defined in the Dictionary to the bill, includes "the Governor in his or her official capacity". The Governor is not subject to the provisions of the current *Libraries and Archives Act 198*8.

51. The committee further notes, however, that the Legislative Assembly has not been included in the definition, and that the Parliamentary Service is specifically excluded from it. This mirrors the position under the current legislation.

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33 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.

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

52. The committee considers the provisions of the bill, to which the Legislative Assembly and the Parliamentary Service will not be subject, have sufficient regard to the institution of Parliament.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?[35]

♦ **Clause 63**

53. Clause 63 effectively validates acts done prior to the bill's commencement by "a person acting, or purporting to act, as the State Archivist under the *Libraries and Archives Act 1988*".

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

55. The committee notes that the *Libraries and Archives Act* contains no provision expressly authorising another person to act in the position of the State Archivist during the absence of the incumbent.

56. It seems clear from the bill that persons have in fact acted in the position, and the committee assumes cl.63 reflects concerns over possible consequences of this lack of express statutory authority on the validity of acts performed by the relevant persons.

57. Any decisions of acting State Archivists would doubtless at all times have been assumed by all parties involved to be valid.

58. In the circumstances, the committee has no concerns about the retrospective effect of cl.63.

[35] Section 4(3)(g) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not affect rights and liberties, or impose obligations, retrospectively.

SECTION B

COMMITTEE RESPONSE TO MINISTERIAL CORRESPONDENCE

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

... a report of a committee of the Legislative Assembly that was made to the Legislative Assembly before the provision was enacted[36]

Matters reported on to Parliament by the Scrutiny of Legislation Committee in its alert digests prior to the enactment[37] of a provision may therefore be considered as extrinsic material in its interpretation.

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[36] Section 14B(3)(c) Acts *Interpretation Act 1954*.

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

SECTION B – COMMITTEE RESPONSE TO MINISTERIAL CORRESPONDENCE

8. AGRICULTURAL AND VETERINARY CHEMICALS (QUEENSLAND) AMENDMENT BILL 2001

Background

1. The Honourable H Palaszczuk MP, Minister for Primary Industries and Rural Communities, introduced this bill into the Legislative Assembly on 27 November 2001. The committee notes that this bill was passed, without amendments, on 11 December 2001.

2. The committee commented on this bill in its Alert Digest No 9 of 2001 at pages 1 to 3. The Acting Minister's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?[38]

- **Clause 6 (proposed s.28B)**

3. The committee noted that cl.6 of this bill gives retrospective effect to various actions of Commonwealth inspectors and analysts performing functions under Queensland legislation in relation to the Agvet scheme. The committee recognised that there are arguments in favour of the validations effected by this bill and referred to Parliament the question of whether the retrospective operation of the bill has sufficient regard for the rights of persons affected by it.

4. The Acting Minister provided the following response:

> *In relation to the comments in the extract of the Committee's Alert Digest about clause 6, I endorse the view that, generally, the making of retrospectively validating legislation is not considered a favourable form of legislation.*
>
> *However, I share the committee's view that there are respectable arguments (as they are set out in the Explanatory Notes) in favour of the validations made by the Amendment Bill. The broad objective of the Amendment Bill is to ensure a constitutionally sound basis for the effective and continued operation of the National Registration Scheme. Accordingly the amendments seek only to implement measures to avoid any potential deficiency in the National Registration Scheme.*

5. The committee notes the Acting Minister's response.

[38] Section 4(3)(g) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not affect rights and liberties, or impose obligations, retrospectively.

Does the legislation have sufficient regard to the institution of Parliament?[39]

- **The bill generally**

6. The committee noted that the bill forms part of national scheme legislation and that many elements of such schemes have been identified by scrutiny committees nationally as undermining the institution of Parliament. The committee noted that this bill does not appear to be identical to the corresponding Commonwealth and interstate legislation, and appears to incorporate Queensland drafting practices as well as modifications addressing various Queensland-specific issues. The committee referred to Parliament the question of whether the bill has sufficient regard to the institution of Parliament.

7. The Acting Minister responded as follows:

> *As the Committee has highlighted, the Amendment Bill forms part of national scheme legislation. I recognise the Committee's concerns about this kind of legislation and the constraints that it may place on Parliament. I agree that an appropriate approach to the implementation of national scheme legislation is that such legislation should be considered, prepared and "tailored" to the Queensland context. I understand that the Amendment Bill was prepared accordingly.*

8. The committee notes the Acting Minister's response.

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

9. CONSTITUTION OF QUEENSLAND 2001 AND PARLIAMENT OF QUEENSLAND BILL 2001

Background

1. The Honourable Peter Beattie MP, Premier and Minister for Trade, introduced these bills into the Legislative Assembly on 9 November 2001. The committee notes that these bills were passed, without amendments, on 27 November 2001.

2. The committee commented on these bills in its Alert Digest No 8 of 2001 at pages 1 to 6. The Acting Premier and Minister for Trade's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

CONSTITUTION OF QUEENSLAND 2001

Does the legislation have sufficient regard to the institution of Parliament?[40]

♦ **The bill generally**

3. This bill consolidates, as far as practicable, Queensland's constitutional provisions into one Act and contains a number of new provisions which reflect current law and practice. The committee drew to the attention of Parliament the limited extent to which these provisions are entrenched, and to the non-justicibility of specified sections of the bill through cl.79.

4. The Acting Premier and Minister for Trade provided the following comments:

> *At the outset, I thank the committee on the Premier's behalf for its overall support of the two Acts and the modernisation and consolidation of Queensland's Constitution that the Acts were designed to achieve. I am also pleased to note that the committee considers that the modern language and drafting style achieves one of the objectives of the Acts, which is also a fundamental legislative principle, and that is for Queensland's constitutional legislation to be 'unambiguous and drafted in a sufficiently clear and precise way.'*
>
> ***Entrenchment***
>
> *The committee made a number of observations about the limited extent to which the provisions of the Constitution of Queensland 2001 are entrenched, noting that:*
>
> - *a referendum could be held to consider whether the existing entrenched provisions should be retained and consolidated into the two new Acts; and*
> - *the Queensland Constitutional Review Commission, in its Report on the Possible Reform of and Changes to the Acts and Laws that relate to the Queensland Constitution, recommended a range of entrenchment mechanisms and other protection mechanisms, which are yet to be addressed by the Government and the Parliament.*
>
> *The committee goes on to suggest that these entrenchment mechanisms deserve close examination in any future review of Queensland's constitutional system which the Premier foreshadowed in his second reading speech.*

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

As the committee acknowledged, the focus of the Constitution of Queensland 2001 and the Parliament of Queensland Act 2001 was to consolidate existing constitutional provisions, which may then facilitate further constitutional review and reform. Hence, no provisions were entrenched to any greater or lesser extent by the passage of the Constitution of Queensland 2001.

As for the committee's observations concerning the future scope of the entrenchment of Queensland's fundamental constitutional provisions, the Government will wait for the Legal, Constitutional and Administrative Review Committee to consider the Queensland Constitutional Review Commission's recommendations concerning the scope of entrenchment before considering this issue further.

Justicibility of Specified Provisions

At paragraphs 21 and 22 of Alert Digest No. 8 of 2001, the committee suggests that the non-justicibility of the five sections listed in section 79 of the Constitution of Queensland 2001 (that is, sections 31, 40, 41, 48 and 50 of that Act) "requires closer scrutiny, given the gradual expansion in the scope of judicial review of the actions of Ministers, the Executive Council, and even of vice-regal representatives in the exercise of statutory powers".

The Constitution of Queensland 2001 does not purport to deal in any way with the susceptibility to judicial review of the actions of any person or body exercising the powers of the Executive Government. The purpose of section 79, as stated in the explanatory notes, is to protect the practical administration of the State by ensuring that the validity of actions of the Executive Government cannot be challenged on the basis that, for example, the Governor has not made the oath or taken the affirmation of allegiance and of office as prescribed by section 31 of the Constitution of Queensland 2001.

The Government considers that the objective of section 79 of protecting the practical administration of the State is justifiable.

5. The committee notes the Acting Premier and Minister for Trade's response.

PARLIAMENT OF QUEENSLAND BILL 2001

Does the legislation have sufficient regard to the institution of Parliament?[41]

♦ The bill generally

6. Clause 8 of the bill enshrines expressly, in statutory form, Article 9 of the Bill of Rights 1689, which provides for the immunity of freedom of speech during the debates, speeches and proceedings of Parliament ('proceedings in the Assembly'). Clause 9 defines 'proceedings in the Assembly' in essentially the same terms as the definition of 'proceedings in parliament' in the Parliamentary Papers Act 1992. The committee noted that cl.154 of the bill gives retrospective effect to the definition in cl.9, although it is unclear whether it thereby gives retrospective effect to all the provisions of that clause. The committee drew this matter to the attention of Parliament.

7. The Acting Premier and Minister for Trade provided the following response:

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

Retrospective application of definition

At paragraph 31 of Alert Digest No. 8 of 2001, the committee suggests that it is unclear whether section 154 of the Parliament of Queensland Act 2001, in purporting to give retrospective effect to the definition in section 9 of 'proceedings in the Parliament', gives retrospective effect to all of the provisions of that clause.

Section 154 gives retrospective effect to "all words spoken and acts done in the course of, or for the purpose of or incidental to, transacting business of the Assembly or a committee", that is, what is defined by section 9(1) to be proceedings in the Parliament. The remaining subsections 9(2) to (5) define with more particularity, without limiting the general statement in subsection (1), which words spoken and acts done constitute proceedings in the Parliament. It would seem clear then, by giving retrospective effect to the general definition in subsection 9(1), section 154 also gives retrospective effect to subsections (2) to (5) which support the interpretation of subsection (1).

8. The committee notes the Acting Premier and Minister for Trade's response.

10. INDUSTRIAL RELATIONS AMENDMENT BILL 2001

Background

1. The Honourable Gordon Nuttall MP, Minister for Industrial Relations, introduced this bill into the Legislative Assembly on 1 November 2001. The committee notes that this bill was passed, without amendments, on 29 November 2001.

2. The committee commented on this bill in its Alert Digest No 8 of 2001 at pages 17 to 20. The Minister's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

Is the legislation consistent with the principles of natural justice?[42]

- **Clause 26**

3. Clause 26 of this bill amends s.319 of the *Industrial Relations Act 1999*, which deals with representation of parties in proceedings before the Queensland Industrial Relations Commission ('the commission'). The committee noted that cl.26 appears to restrict the capacity for legal representation of parties appearing before the commission, in that leave for legal representation will only apply in relation to specified types of proceedings. The committee referred to Parliament the appropriateness of the restriction upon a person's request to be represented by a lawyer.

4. The Minister provided the following response:

> *Clause 26, which restricts the capacity for legal representation at the Queensland Industrial Relations Commission (QIRC), has regard to the principles of natural justice.*
>
> *Under clause 26, the types of matters in which the QIRC retains a discretion to permit legal representation are generally those in which complex legal issues are more likely to arise. Many other cases heard by the QIRC involve issues that affect collective economic and social interests. The award making and award review powers are examples. In such cases, the public interest is better served by hearing representatives from employer and employee organisations who understand the social and economic ramifications of a decision rather than an insistence on legal representation.*
>
> *In cases that directly impinge on an individual's rights, such as unfair dismissal and unfair contract cases, the Bill does not change the current situation, which gives the QIRC a discretion to permit legal representation. Section 319(4) provides guidelines on how the discretion should be exercised, ie. by considering —*
>
> - *the amount claimed in the proceedings (if any);*
> - *the nature and complexity of the matter;*
> - *the nature of the evidence to be adduced;*
> - *the cross-examination likely to be required;*

[42] 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.

- *the capacity of the party to represent him or herself;*
- *the questions of law likely to arise; and*
- *whether the duration or cost of the proceedings will be decreased or increased if the party is represented.*

The application of these tests ensures that the principles of natural justice continue to be applied while the nature of the QIRC as a 'layperson's tribunal' is maintained.

The QIRC has traditionally been a lay tribunal, with parties typically represented by lay representatives (usually industrial advocates employed by unions and employer organisations or industrial officers of the Department of Industrial Relations). In the QIRC, the most effective representatives are not necessarily lawyers but those who understand the jurisdiction. The cases in which individuals represent themselves are usually unfair dismissal and unfair contract cases and, as mentioned above, the QIRC retains a discretion to grant leave for legal representation in these matters.

5. The committee notes the Minister's response.

11. INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT BILL 2001

Background

1. The Honourable Nita Cunningham MP, Minister for Local Government and Planning, introduced this bill into the Legislative Assembly on 28 November 2001. The committee notes that this bill was passed, with amendments, on 12 December 2001.

2. The committee commented on this bill in its Alert Digest No 9 of 2001 at pages 8 to 12. The Minister's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

Does the legislation have sufficient regard to the institution of Parliament?[43]

- **Clause 2(3)**

3. The committee noted that cl.2 of this bill completely displaces the general principle, enshrined in s.15DA of the *Acts Interpretation Act 1954*, that the Executive should not be given indefinite control over the commencement of an Act passed by Parliament. The committee does not generally endorse the complete exemption from automatic commencement and sought information from the Minister as to why the flexibility presently provided by s.15DA(3) of the *Acts Interpretation Act* is insufficient, and even if this is thought to be so, why the bill could not incorporate an extension of automatic commencement rather than completely excluding s.15DA.

4. The Minister provided the following response:

> *The Committee is concerned that the IPOLAA's commencement provisions exclude automatic commencement as provided for under s 15DA of the Acts Interpretation Act 1954.*
>
> *The IPOLAA substantially amends many aspects of the Integrated Planning Act 1997 and complex transitional arrangements are required to protect rights acquired under the existing legislation. The decision has been made to deal with these arrangements separately, in another piece of legislation, which I propose to introduce in the first half of 2002. Related provisions of the two Acts will need to commence simultaneously. The Office of Parliamentary Counsel advised that exclusion from s 15DA was the best course of action to facilitate the commencement arrangements and to avoid any possibility of unintended automatic commencement.*
>
> *I assure the Committee that the exclusion will be removed once its purpose has been accomplished, and in any event, that it will not continue in effect beyond the 4 year maximum period for commencement generally accepted by the Committee.*

5. The committee notes the Minister's response. The committee notes that it is intended the provisions excluding the automatic commencement provisions of s.15DA of the *Acts Interpretation Act* will themselves be repealed or amended so as not to continue in force beyond 4 years.

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

Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?[44]

- **The bill generally**

6. The committee noted that the bill contains many provisions which authorise the making of regulations about matters of significance, and sought confirmation from the Minister that she is satisfied the extent of this delegation of legislative power is appropriate in the circumstances.

7. The Minister commented as follows:

> *The Committee raises the question of delegation of legislative power in the IPOLAA, with respect to the extent of the power given to make regulations.*
>
> *The operation of the Integrated Development Assessment System (IDAS) relies on the detail provided in regulations. The regulation-making power already existing under the IPA is extended in the IPOLAA to provide the machinery for the operation of the new "compliance" stage of IDAS, to accommodate changes to the infrastructure provisions, to provide for the effect of State codes, and for the application of the new Environmental Impact Statement process. With respect to the compliance stage, for example, the regulations will prescribe development, documents or works required to be assessed for compliance, and other detail such as who the compliance assessor is, when the stage starts, the form of the request, fees, etc. These are not matters that should normally require the particular attention of Parliament, given the mechanism of disallowance is available. I am satisfied that this level of delegation is appropriate to provide for the type of detail necessary to make the provisions workable.*

8. The committee thanks the Minister for this information.

Does the legislation make individual rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?[45]

- **Clause 27 (proposed s.3.8.6(11) and 3.8.11(9))**

9. The committee noted that cl.27 of the bill re-enacts the Minister's current power to "call in" a development application, and extends it to applications to change or cancel development approvals. The committee further noted that the Minister's ultimate decision on the applications may not be appealed in the normal manner, but is subject to the Planning and Environment Court's declaratory jurisdiction under s.4.1.21 of the *Integrated Planning Act.* The committee brought these matters to the attention to Parliament.

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[44] 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.

[45] 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.

10. The Minister responded:

> *Finally, the Committee has noted that the power of the Minister to call in a development application, already provided for in the Act is extended to applications to change or cancel development approvals. Neither action is open to appeal.*
>
> *The new provisions complete the range of Ministerial reserve powers necessary to protect the interests of the State with respect to development applications and approvals.*

11. The committee notes the Minister's response.

12. LOCAL GOVERNMENT AND OTHER LEGISLATION AMENDMENT BILL (NO 2) 2001

Background

1. The Honourable Nita Cunningham MP, Minister for Local Government and Planning, introduced this bill into the Legislative Assembly on 27 November 2001. The committee notes that this bill was passed, without amendments, on 11 December 2001.

2. The committee commented on this bill in its Alert Digest No 9 of 2001 at pages 15 to 19. The Minister's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

Does the legislation have sufficient regard to the rights and liberties of individuals?[46]

- **Clause 18 (proposed ss.1193A-1193ZZX)**

3. The bill inserts into the *Local Government Act 1993* new Chapter 17A (proposed ss.1193A-1193ZZX inclusive), which deals with 'Regulation of Restricted Dogs'. The committee noted that Chapter 17A establishes a regime which imposes very significant prohibitions and restrictions upon owners and 'persons responsible' for 'restricted dogs'. The committee referred to Parliament the question of whether the provisions of Chapter 17A have sufficient regard for the rights of owners and other persons dealing with 'restricted dogs', on the one hand, and the rights of the general public on the other.

4. The Minister provided the following response:

> *The Bill does establish a regime that imposes significant prohibitions and restrictions upon owners and responsible persons for restricted dogs. However these breeds of fighting dogs have been banned by the Commonwealth from importation into Australia because they pose a threat to public health and safety. It is only appropriate that such dogs that are already in the community should have restrictions placed on their ownership to better protect the general public from damage or injury.*
>
> *It is considered that the legislation strikes an appropriate balance between the rights of those who may wish to own such dogs and the public health and safety rights of the members of the community. Other States have introduced similar legislation to ensure there are controls in place for the breeds of dog that the Commonwealth has banned from importation.*
>
> *In paragraph 6 (page 15 of the Digest) the Committee stated that the Bill displaces any dog control laws that individual local governments in Queensland may have made. While provisions of the Bill would invalidate some local laws in specified circumstances, they would not have the effect of a blanket displacement of any dog control local laws made by individual local governments. The relationship between chapter 17A and local laws is a complex one. I therefore take this opportunity to clarify the provisions of the Bill dealing with the relationship between chapter 17A and local laws made by councils.*

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

Section 1193D of the Bill provides for the relationship between local government local laws that regulate restricted dogs, and the provisions of chapter 17A. The intent of the State regulatory framework is to set minimum standards for the regulation of restricted dogs while allowing local governments to set higher standards through local laws, including prohibiting restricted dogs.

Because local governments have jurisdiction to make local laws in this area, the provisions of section 1193D address a number of scenarios. These are where a local law:

(a) prohibits restricted dogs absolutely;

(b) partially prohibits restricted dogs; and

(c) allows the keeping of restricted dogs.

Subsection (1) provides that where a local government has a local law that prohibits restricted dogs absolutely, chapter 17A does not apply.

Subsection (2) deals with the situation where a local law partially prohibits restricted dogs, for example the local law may prohibit the keeping of one or more of the breeds of restricted dog after a certain date. Subsection (2) provides that chapter 17A must apply to the population of restricted dogs that is allowed under the local law, but does not apply to the population prohibited under the local law. The local law continues to apply to the prohibited population. Chapter 17A applies where a local law has no prohibition on the keeping of restricted dogs.

Subsection (3) provides that chapter 17A does not prevent a local law from imposing requirements in relation to dogs generally. The intent is that provisions of a local government's local law that are not specific to a particular breed or type of dog, such as a general requirement for registration, general hygiene requirements such as faecal collection and removal etc, will continue to apply to all dogs including restricted dogs.

Subsection (4) provides that if chapter 17A and a local law are inconsistent about a requirement, the local law is invalid to the extent of the inconsistency if it imposes a less onerous obligation or lower standard on an owner of, or a responsible person for, a restricted dog than the obligations or standards imposed on the person under chapter 17A. The intent of this section is to apply the minimum standard rule to those matters upon which a local government can make local laws about restricted dogs. Apart from prohibiting restricted dogs, chapter 17A prescribes the matters upon which a local government can make local laws about restricted dogs, as follows:

Section 1193R Requirement for application

Section 1193T Deciding an application

Division 2 – Permit conditions

Section 1193ZI Requirements for application (renewals)

Section 1193ZJ Deciding application (renewals)

As such, where a local government has a local law that complies with the minimum standard rule, the local law would apply to the regulation of restricted dogs in addition to chapter 17A.

5. The committee thanks the Minister for this information.

Does the legislation confer power to enter premises and to search for or seize documents or other property without a duly issued warrant?[47]

- **Clause 18 (proposed ss.1193ZZB-1193ZZG inclusive)**

6. Chapter 17A of the bill includes a range of specific enforcement powers, which are additional to the general powers available under the *Local Government Act*. The committee noted that these included wide powers of entry where there may be a risk to community health or safety or where the dog may be concealed or moved, and powers to seize and destroy 'restricted dogs'. The committee brought to the attention of Parliament the range and extent of these additional enforcement powers.

7. The Minister responded as follows:

> *The specific enforcement powers provided in the Bill are necessary for the effective operation of the regulatory regime for restricted dogs. While chapter 15, part 5 of the Local Government Act 1993 (LGA) provides general powers of entry to local government authorised persons without a warrant, these are not tailored for the specific purposes of regulating the breeds of dog that are subject to the Commonwealth importation ban and as such are insufficient to achieve the objectives of the Bill. The additional powers of entry given in chapter 17A are limited to the following specific circumstances:*
>
> - *where an authorised person reasonably suspects a restricted dog is at a place and:*
>   - *no permit has been issued for the dog; and*
>   - *any delay in entering the place would result in a risk to community health and safety or the dog being concealed or moved to avoid a requirement under chapter 17A; or*
> - *the entry is at a time given in a compliance notice for the purpose of checking compliance with the notice.*
>
> *In exercising these powers, an authorised person may not use force and must follow certain procedural requirements under section 1088 of the LGA to produce an identity card, and tell the occupier the purpose of the entry and that it is permitted without the occupier's consent or a warrant.*
>
> *Additional powers are also given for the subsequent seizure and destruction of restricted dogs in limited circumstances. Provisions of the Bill exclude entitlement for compensation to owners for loss or expense caused by the seizure or destruction of a restricted dog. The circumstances in which these powers may be exercised relate primarily to incidents of non-compliance with the requirements of chapter 17A or where there is a risk to community health and safety. Providing compensation to owners in these circumstances is not considered appropriate.*
>
> *However, local governments can recover certain costs associated with seizure and destruction of restricted dogs. This is consistent with the legislation in other States.*

8. The committee notes the Minister's response.

[47] 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.

♦ **Clause 18 (proposed s.1193ZZW)**

9. Proposed s.1193ZZW deals with the issue of enclosures for 'restricted dogs' which also, wholly or partly, constitute a dividing fence under the *Dividing Fences Act 1953*. The committee sought information from the Minister as to the position of a neighbouring landowner where the relevant boundary is already adequately fenced by a fence of normal specifications (which, however, did not meet the standards required under Chapter 17A).

10. The Minister provided the following information:

> *Section 1193ZZW provides for the liability of costs where a dividing fence forms part of a restricted dog enclosure. The policy intent of these provisions is that the owner of a restricted dog should bear any costs associated with meeting the standards imposed for restricted dog enclosures.*
>
> *Subsection (2) deals with the situation where the owner of a restricted dog is also the owner of the land where the dog is to be kept. Subsection (2) provides that the liabilities and rights under the Dividing Fences Act 1953 (DFA) or a proposed order under that Act, of adjoining owners in relation to the cost of building, altering, repairing, replacing or maintaining the fence must be worked out as if:*
>
> - *there is not, and will not be, any restricted dog in the enclosure; and*
> - *the requirements of chapter 17A relating to the enclosure do not apply.*
>
> *The Committee raised a specific question as to the position of a landowner where there is an existing dividing fence which meets the standards of the DFA but their neighbour wants to demolish it (as opposed to altering the fence) and replace it with a fence that meets the requirements of chapter 17A. The Committee also asked could the dog owner require this fence to be demolished and replaced by a higher-specification fence that met the enclosure standards, and if so, could the dog owner seek any contribution at all from the neighbour.*
>
> *The effect of section 1193ZZW is that if a dividing fence is built or extended to form part of an enclosure for a restricted dog, the DFA procedures for resolving the liability for costs apply. As such, in the particular circumstances outlined above, the following procedures under the DFA would apply.*
>
> *Firstly, section 7 of the DFA provides that (subject to the Act) the owners of adjoining lands not divided by a sufficient fence shall be liable to join in or contribute to the construction of a dividing fence between such lands in equal proportions.*
>
> *Under section 8 of the DFA, if an owner wants to compel an owner of adjoining land to join in or contribute to the construction of a dividing fence (including demotion of an existing dividing fence and the erection of a new fence) the owner must give their neighbour notice in writing or a notice to fence. The notice to fence must clearly state:*
>
> - *where the fence will be erected;*
> - *what sort of fence is planned;*
> - *a proposal for construction of the fence, which should include who will undertake the construction, the proposed dates, the expected cost and expected contribution.*
>
> *The neighbour then has one month within which to reach an agreement with the owner of the restricted dog about the construction of the fence. If the parties reach an agreement within one month, they will be bound by that agreement. Where no agreement is reached within one month, either party may apply to a Magistrates Court or Small Claims Tribunal for an order to fence. The Magistrates Court or Tribunal then determines:*

- *the kind of fence to be constructed;*
- *the apportionment of costs for the fence;*
- *the time within which the fence is to be built; and*
- *if necessary, the fencing line, and any compensation by way of annual payment to be paid to an owner for the loss of occupation of any land.*

The DFA sets out a process to enable the interests of each landowner to be taken into account and it is open to a referee or a magistrate to apportion costs between the parties as determined by the merits.

11. The committee notes the Minister's response.

13. MAJOR SPORTS FACILITIES BILL 2001

Background

1. The Honourable Terry Mackenroth MP, Deputy Premier, Treasurer and Minister for Sport, introduced this bill into the Legislative Assembly on 8 November 2001. The committee notes that this bill was passed, with amendments, on 28 November 2001.

2. The committee commented on this bill in its Alert Digest No 8 of 2001 at pages 21 to 23. The Minister's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

- **Clauses 58(2) and 66(2)**

3. Clauses 58(2) and 66(2) of this bill vest all property of the Lang Park Trust and Brisbane Cricket Ground Trust in successor bodies established under the bill. The committee noted that all such property will now be free from any trust associated with it. The committee sought information from the Treasurer as to whether either of the abolished trust bodies currently holds funds or other assets of the type mentioned in cls.58(2) and 66(2) and if any such funds are held, why it is considered appropriate that the relevant assets should now be freed from the terms of such trusts.

4. The Treasurer provided the following information.

> *In relation to the matters raised I am advised by the General Managers of both the Lang Park and Brisbane Cricket Ground Trusts that these entities do not hold any funds or other assets which were originally bequeathed or donated or otherwise acquired by the Trusts subject to an express trust for a charitable purpose.*
>
> *In an event, should it be discovered at a later date that these trust bodies had received any bequests on trust for charitable purposes, the relevant Authority (i.e. Major Sports Facilities Authority or Stadium Redevelopment Authority as the case may be) could simply resolve to honour the original terms of any such charitable trust.*

5. The committee thanks the Treasurer for this information.

14. NATIONAL TRUST OF QUEENSLAND AND OTHER LEGISLATION AMENDMENT BILL 2001

Background

1. The Honourable Dean Wells MP, Minister for the Environment, introduced this bill into the Legislative Assembly on 27 November 2001. The committee notes that this bill was passed, without amendments, on 13 December 2001.

2. The committee commented on this bill in its Alert Digest No 9 of 2001 at pages 20 to 22. The Minister's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

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

- **Clause 19 (proposed s.31)**

3. Clause 19 of this bill (proposed s.31) amends the *National Trust of Queensland Act 1963* to give retrospective effect to various actions taken by the National Trust after its general meeting of 27 September 2000, which appeared to be invalid. The committee recognised that there are occasions on which curative retrospective legislation, without effects on rights and liberties of individuals, is justified and in the circumstances, made no further comment on the retrospective aspects of the bill.

4. The Minister responded as follows:

> *It is acknowledged that retrospectivity should only be used as a legislative solution, if all other options are not available, and it does not offend s.4(3)(g) of the Legislative Standards Act 1992.*
>
> *After exploring in considerable detail the difficulties faced by the National Trust of Queensland, the Crown Solicitor concluded that because the National Trust of Queensland Act 1963 did not contemplate the failure of an Annual General Meeting, there are no provisions in the Act or in the Rules of the National Trust to remedy difficulties flowing from such a failure.*
>
> *Accordingly, in the absence of any remedy within the existing legislation, the Crown Solicitor advised that the only way the situation could be resolved in the interests of the National Trust of Queensland was through validating legislation.*
>
> *The Clause has been drafted to make clear that the retrospectivity relates to things done for or at, and decisions made, at meetings, the elections and appointments of councillors and members of the executive committee, and the adoption of budgets and financial statements.*
>
> *I am advised that none of these matters raise issues of impropriety or illegality, or adversely affect the Trust's position financially or in any other significant way.*

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[48] Section 4(3)(g) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not affect rights and liberties, or impose obligations, retrospectively.

Indeed, the proposed section 31 will permit a number of important decisions and actions relating to the governance of the National Trust to be validated, and allow the 1999-2000 and 2000-2001 accounts to be concluded to the benefit of the National Trust.

5. The committee thanks the Minister for this information.

Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?[49]

- **Clause 22**

6. The committee noted that cl.22 of this bill increases the maximum penalty which can be prescribed under by-laws made under the *Recreation Areas Management Act 1988* from 20 penalty units to 40 penalty units. The committee does not generally endorse the delegation of legislative power to impose penalties exceeding 20 penalty units, and recommended that the Minister consider alternative legislative options which would give effect to the policy intent without infringing fundamental legislative principles.

7. The Minister providing the following response:

It is acknowledged that it is the view of the Scrutiny Committee that maximum penalties applied under subordinate legislation (such as the Recreation Areas Management By-law 1991) should be generally limited to 20 penalty units. Further, it is accepted that for the majority of offences this penalty is sufficient.

Whilst the Environmental Protection Agency (EPA) has consistently had regard to the views of the Committee, it has been previously explained to the Committee that Nature Conservation legislation covers a wide range of offences applying to both recreational and commercial situations and that some commercial offences can be of an extremely serious nature. Currently, penalties are available under the Nature Conservation Regulation 1994 up to a maximum penalty of 165 penalty units depending on the nature of the offence.

For example, in connection with protected plant legislation, the EPA advised the Committee in April 2001 that 20 penalty units was quite inadequate when dealing with matters such as unlawful harvesting of protected plants and international illegal trafficking, where there are potentially high profits to be made. Significant community concerns and expectations led to the Government proposing legislation, which reflected the seriousness of the matters being addressed.

The situation with dingo/human interactions on Fraser Island Recreation Area, clearly warrants a penalty higher than 20 penalty units in view of the seriousness of the offence and past conduct by commercial operators, residents and visitors in the past.

The suggestion of the Scrutiny of Legislation Committee that every offence, which might require a penalty of an amount higher than 20 penalty units, should be written into an Act rather than being contained in subordinate legislation, has been considered by the EPA.

There are concerns, however, that this may not be a practical solution. If this approach were to be adopted, it would involve major review of Nature Conservation legislation generally, with a large number of offences related to protected animals and plants and activities within protected areas needing to be inserted into primary legislation.

[49] 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.

In relation to recreational and tourism activities on national parks, the Nature Conservation Regulation 1994 routinely provides maximum penalty units higher than 20 for camping, group activities, special activities, commercial activities, fires, structures and other matters.

Almost all of the land within existing recreation areas such as Fraser Island and Moreton Island Recreation Areas is protected area estate subject to the Nature Conservation Act 1992. The proposed amendment of the Recreation Areas Management Act 1988 which will allow the relevant maximum penalty in the By-law to be increased to 40 penalty units is consequently essential to ensure consistency with similar offences under the Nature Conservation Regulation 1994.

8. The committee notes the Minister's response.

15. SUBCONTRACTORS' CHARGES AMENDMENT BILL 2001

Background

1. The Honourable R E Schwarten MP, Minister for Public Works and Minister for Housing, introduced this bill into the Legislative Assembly on 27 November 2001. As at the date of publication of this digest the bill had not been passed.

2. The committee commented on this bill in its Alert Digest No 9 of 2001 at pages 23 to 25. The Minister's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

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

- **Clause 5**

3. This bill amends the *Subcontractors' Charges Act 1974* to enhance security of payment to subcontractors within the building and construction industry. The committee noted that cl.5 of this bill extends the statutory charge in favour of subcontractors, so that it can also apply to securities given by banks or other institutions in favour of the contractors and superior contractors to whom the subcontractor's charge relates. The committee further noted that the bill will impact adversely upon the contractor or superior contractor in whose favour the security is given and referred to Parliament the question of whether the extension of the statutory charge in this manner is reasonable in the circumstances.

4. The Minister provided the following response:

> *The committee notes that the bill will impact adversely upon the contractor or superior contractor in whose favour the security is given, as that security may become more difficult or expensive for the contractor or superior contractor to obtain.*
>
> *The commercial arrangements concerning the provision of such securities apply costs on the party taking out the security and additional costs if the security is called upon, whether in full or in part. It is unlikely that the costs to acquire such securities would increase under the proposals contained in the bill. The costs incurred due to calls on the security may be greater on a quantum basis as the security may now be called upon in a greater number of circumstances. However, it is unlikely that the actual costs of a call being made on the securities will increase.*
>
> *While the extension of the moneys able to be the subject of a charge does make it more likely that securities provided for the performance of a contract will be utilised to satisfy creditors, it is consistent with the underlying principle of the Act that subcontractors are afforded greater certainty of payment by contractors or superior contractors. It should be remembered that a charge is only advanced when moneys are claimed to be owed and unpaid by the contractor or superior contractor in the performance of work.*
>
> *In deliberations over the extension to include securities, stakeholders considered the issue of greater costs for obtaining securities. It was determined that while additional costs may be*

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

incurred by calls being made on securities, the Act does not prevent the contractor or superior contractor from negotiating with the employer in order to avoid calling upon securities to satisfy charges. Such arrangements would reduce the instances of calls being made upon securities and the attendant costs, both in financial and reputation terms, while still securing funds for the benefit of subcontractors. It is therefore felt that the Bill does have sufficient regard to the rights and liberties of individuals.

5. The committee notes the Minister's response.

♦ **Clause 17**

6. Clause 17 of this bill amends s.22 of the Act, which deals with vexatious notices of claim. The committee noted that cl.17 appears to extend the range of circumstances in which a person may be taken to have given a notice of claim of charge 'without reasonable grounds', and to therefore be liable to pay damages to persons prejudicially affected by the giving of the notice. The committee referred to Parliament the question of whether this amendment has sufficient regard for the rights of subcontractors who give notices of claim of charge.

7. The Minister provided the following response:

It is conceded that clause 17 of the Bill may adversely affect persons who give notices under section 22 of the Act. The committee is correct in its assumption that the amendment is partially as a result of trends observed in the industry, where inflated or excessive claims are used too frequently.

Clause 17 is inserted in the Bill to give clarity to the responsibilities of persons giving such notices, in that they must not give notice of an excessive amount. It is therefore felt that the amendment balances the rights between the parties, having sufficient regard to the rights and liberties of all parties.

8. The committee notes the Minister's response.

This concludes the Scrutiny of Legislation Committee's 1st report to Parliament in 2002.

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.

Warren Pitt MP
Chair

18 February 2002

APPENDICES

Appendix A	—	Ministerial Correspondence
Appendix B	—	Terms of Reference
Appendix C	—	Meaning of "Fundamental Legislative Principles"
Appendix D	—	Details of Bills considered by the committee.

APPENDIX B – TERMS OF REFERENCE

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

Terms of Reference

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

(a) the application of fundamental legislative principles[51] to particular Bills and particular subordinate legislation; and

(b) the lawfulness of particular subordinate legislation;

by examining all Bills and subordinate legislation[52].

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

(a) the following provisions of the *Legislative Standards Act 1992*–

- section 4 (Meaning of "fundamental legislative principles")
- part 4 (Explanatory notes); and

(b) the following provisions of the *Statutory Instruments Act 1992*–

- section 9 (Meaning of "subordinate legislation")
- part 5 (Guidelines for regulatory impact statements)
- part 6 (Procedures after making of subordinate legislation)
- part 7 (Staged automatic expiry of subordinate legislation)
- part 8 (Forms)
- part 10 (Transitional)

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51 "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.

52 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.[53]

(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.

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[53] 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 – DETAILS OF BILLS CONSIDERED BY THE COMMITTEE

Details of all bills considered by the committee since its inception in 1995 are contained in the Bills Register kept by the Committee's Secretariat.

Information about particular bills (including references to the Alert Digests in which they were reported on) can be obtained from the Secretariat upon request.

48.