SCRUTINY OF LEGISLATION COMMITTEE

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SCRUTINY OF LEGISLATION COMMITTEE MEMBERSHIP

50TH PARLIAMENT, 1ST SESSION

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	Ms Rosa Lee Long MP, Member for Tablelands
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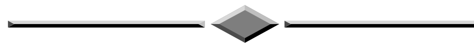
	Mrs Carryn Sullivan MP, Member for Pumicestone
Legal Advisers to the Committee:	Mr Tim Carmody SC
	Professor Gerard Carney
	Mr Robert Sibley
	Ms Margaret Stephenson
Committee Staff:	Mr Christopher Garvey, Research Director
	Ms Anita Sweet, Principal Research Officer
	Ms Meg Hoban, Senior Research Officer (part-time)
	Ms Carolyn Heffernan/Ms Lynn Knowles, Executive Assistants



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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Details of all bills considered by the committee since its inception in 1995 can be found in the Committee's Bills Register. Information about particular bills (including references to the Alert Digests in which they were reported on) can be obtained from the Committee Secretariat upon request.

Alternatively, the Bills Register may be accessed via the committee's web site at:

http://www.parliament.qld.gov.au/Committees/SLC/SLCBillsRegister.htm

TERMS OF REFERENCE

The Scrutiny of Legislation Committee was established by statute on 15 September 1995. It now operates under the provisions of the *Parliament of Queensland Act 2001*.

Its terms of reference, which are set out in s.103 of the *Parliament of Queensland Act*, are as follows:

> ***(1)*** *The Scrutiny of Legislation Committee's area of responsibility is to consider—*
>
> *(a) the application of fundamental legislative principles*[1] *to particular Bills and particular subordinate legislation; and*
> *(b) the lawfulness of particular subordinate legislation; by examining all Bills and subordinate legislation.*
>
> ***(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).*

FUNDAMENTAL LEGISLATIVE PRINCIPLES

The "fundamental legislative principles" against which the committee assesses legislation are set out in section 4 of the *Legislative Standards Act 1992*.

Section 4 is reproduced below:

> ***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.*[2]

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

2 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.

(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.*

PART I

BILLS

PART I - BILLS

SECTION A – BILLS REPORTED ON

1. AGRICULTURAL AND VETERINARY CHEMICALS LEGISLATION AMENDMENT BILL 2002

Background

1. The Honourable Henry Palaszczuk MP, Minister for Primary Industries and Rural Communities, introduced this bill into the Legislative Assembly on 22 October 2002.

2. The object of the bill, as indicated by the Minister in his Second Reading Speech, is:

> (to amend) *two primary industries portfolio acts dealing with control of use of agricultural and veterinary chemicals.*

Does the legislation have sufficient regard to the rights and liberties of individuals?[3]

♦ **Clauses 22, 23, 24 and 26, and Schedule 1**

3. Numerous provisions inserted by the bill substantially increase the maximum penalties for existing offences. Other provisions create new offences carrying maximum penalties at a similarly higher level. The increases range up to 1500%, and the highest maximum penalty will now be 800 penalty units ($60,000).

4. The relevant offences, together with the current and proposed maximum penalties, are set out in a very helpful Table at pages 27 – 34 of the Explanatory Notes.

5. In relation to these increases in maximum penalties, the Explanatory Notes state:

> *The penalties for current offences have been increased to be consistent with those proposed for the new offences created in the Act. The penalties have been set at contemporary levels that are consistent with similar legislation in other States and Territories and with other legislation dealing with chemical issues in Queensland.*

6. The committee notes that numerous clauses of the bill either significantly increase maximum penalties for existing offences, or create new offences carrying equivalent higher penalties.

7. The committee draws these increased penalties to the attention of Parliament.

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

Is the content of the explanatory note sufficient?[4]

8. As mentioned earlier, the Explanatory Notes to the bill contain an excellent Table of Penalties, which sets out a range of information with respect to this important aspect of the bill. In particular, the proposed maximum penalties and (where applicable) the current maximum penalties are highlighted.

9. The committee compliments the Minister on the manner in which the Explanatory Notes deal with the numerous penalty-related provisions of the bill.

[4] Section 23 of the *Legislative Standards Act 1992* sets out the information required to be included in an explanatory note for a bill. If the explanatory note does not include any of this information, it must state the reason for non-inclusion.

2. APPROPRIATION BILL (NO. 2) 2002

Background

1. The Honourable T M Mackenroth MP, Deputy Premier, Treasurer and Minister for Sport, introduced this bill into the Legislative Assembly on 22 October 2002.

2. The purpose of this bill is:

   (to provide) *supplementary appropriation for 2001-2002 for unforeseen expenditure that occurred in that financial year.*

3. The committee considers that this bill raises no issues within the committee's terms of reference.

3. APPROPRIATION (PARLIAMENT) BILL (NO. 2) 2002

Background

1. The Honourable T M Mackenroth MP, Deputy Premier, Treasurer and Minister for Sport, introduced this bill into the Legislative Assembly on 22 October 2002.

2. The purpose of this bill is:

   (to provide) *supplementary appropriation for 2001-2002 for unforeseen expenditure that occurred in that financial year.*

3. The committee considers that this bill raises no issues within the committee's terms of reference.

4. CRIMINAL PROCEEDS CONFISCATION BILL 2002[5]

Background

1. The Honourable Rod Welford MP, Attorney-General and Minister for Justice, introduced this bill into the Legislative Assembly on 22 October 2002.

2. The bill is a complex and wide ranging piece of legislation providing for the confiscation of the proceeds of crime in Queensland. Its main object is said to be:

   ... to remove the financial gain and increase the financial loss associated with illegal activity whether or not a particular person is convicted of an offence because of the activity.[6]

Overview of the bill

3. The bill clearly represents a political commitment to depriving criminals, especially those engaged in organised criminal activity, of the benefits of their crimes by introducing rigorous procedures for divesting them of their illegally accumulated wealth.

4. It introduces a new remedy of non conviction based (or civil) recovery in respect of proceeds of crime and replaces the existing conviction based (or criminal) confiscation scheme under the *Crimes (Confiscation) Act 1989* (the 1989 Act) with stronger and more effective measures for recapturing crime related property. The schemes are conceptually distinct and are intended to operate independently of each other.[7]

5. All proceedings under the bill for the purposes of either scheme are expressly designated as civil, not criminal, in nature. Questions of fact which are to be determined by a Court are to be decided on the civil (balance of probabilities) standard. The rules of evidence applicable to civil litigation govern all confiscation proceedings under the bill.[8] An order in the civil confiscation proceedings is not part of a punishment or sentence for an offence.[9]

6. Neither scheme is intended to apply to lawfully acquired or innocent interests in property which can be excluded from the operation of confiscation orders.[10]

7. The bill also contains a revamped and more coercive set of information gathering powers and investigative procedures enabling the police and the Crime and Misconduct Commission to enforce the bill more efficiently.

8. The Crime and Misconduct Commission (CMC) is given a civil forfeiture function under the bill and the major responsibility for instituting civil forfeiture proceedings on behalf of the

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[5] The committee thanks Tim Carmody SC, Barrister-at-law, for his valued advice in relation to the scrutiny of this bill.

[6] Explanatory notes at p.1.

[7] The philosophy behind the law on civil forfeiture and criminal confiscation and the practical differences between the two schemes was considered at length in the committee's report on the *Civil Forfeiture of the Proceeds of Crime Bill 2002* introduced by Mr LJ Springborg MP, Shadow Attorney General and the Minister for Justice on 16 May 2002 (see Alert Digest No 8 of 2002 at pages 6-25), and it is not intended to repeat the discussion in full here.

[8] Cl.8

[9] Cl.9

[10] Chapter 2, Division 7, Sub-division 1, Cl. 47 - 50.

State. The Director of Public Prosecutions (DPP) will continue to administer the conviction based scheme.

9. The bill also strengthens the conviction based scheme by expanding the range of offences attracting automatic forfeiture to include all serious offences punishable by 5 years imprisonment or more. Under the 1989 Act automatic forfeiture applied only to serious drug offences.[11]

10. The new automatic forfeiture provisions also remove the need for the prosecution to establish a link between the offence charged and the property in question. Thus, all the restrained assets of a person convicted of a serious drug offence will be automatically forfeited after 6 months unless he or she can prove that those assets were lawfully acquired.[12]

<u>Confiscation without conviction</u>

11. There is an international trend towards civil forfeiture. Similar legislation was passed in the Republic of Ireland in 1996[13] in South Africa in 1999[14] and, most recently, the U.K. Proceeds of Crime Act 2002 which comes into force from 1 February 2003.

12. Conviction based laws are founded on the principles of deterrence and retribution based on proven fault. Non-conviction based forfeiture laws, by contrast, are based on the equitable doctrine of unjust enrichment. They have as their main concern restoration, repatriation and atonement, irrespective of personal blame. Among other things, they are designed to financially incapacitate criminals, to remove the profit-making potential and wealth-accumulating capacity of crime, restore the costs of law enforcement and criminal justice expended by the State and compensate the community for the social harm crime causes.

13. The non-conviction based provisions in Chapter 2 of the bill allow action to be taken to confiscate property derived from illegal activity irrespective of whether or not a person who engaged in the relevant activity has been charged with or convicted of any related offence.[15]

14. Proceedings to confiscate property derived from serious crime related activity may also be instituted even though the person who engaged in the relevant activity has not been identified.[16]

15. The process of confiscation without conviction involves the making of three kinds of judicial forfeiture orders:

(a) **restraining order**[17] **-** an order freezing all or stated property of a person suspected of being property derived from a **serious crime related activity**;

(b) **forfeiture orders**[18] - an order which the Supreme Court must make forfeiting all

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11 Cl.146 of the Bill

12 Cl.163(1) of the Bill

13 *Proceeds of Crime Act 1996*

14 Chapter 6, *Prevention of Organised Crime Act, 1998*

15 Cl.1

16 Cl.13(2)

17 Cl.28

18 Cl.56 of the Bill

or any restrained property to the State if it finds it is more probable than not that the property belonged to a person engaged in or was derived from **serious crime related activity** during the limitation period.[19]

(c) **proceeds assessment order**[20] **-** an order requiring a person to pay to the State the assessed value of the proceeds derived by that person's **illegal activity**[21] within 6 years of the application being made.

Fundamental legislative principles

16. Unlike conviction based criminal forfeiture laws, confiscation without conviction is a significant extension of the powers available to the State to deal with the proceeds of crime when using civil concepts of property as a crime prevention measure and issues concerning the bill's conformity with fundamental legislative principles are likely to arise in relation to a number of provisions.

Does the legislation have sufficient regard to the rights and liberties of individuals?[22]

♦ **Clauses 28, 56 and 77**

17. The bill impacts in various ways upon the rights and liberties of individuals whose property may be the subject of confiscation under its provisions.

18. The obvious and most serious civil liberties objection to non-conviction based forfeiture procedures is that a presumptively innocent person may be stripped of assets and interests in property on the basis of unproven suspicion. However, the traditional presumption of innocence does not strictly arise in relation to proceedings under the bill because they are expressly stated to be governed by civil, not criminal, rules and procedures.

19. There are other moderating measures in the bill designed to protect legitimate property rights including a process for excluding the value of innocent interests from the operation of restraining and forfeiture orders. However, it is notoriously difficult for a claimant to prove a negative state of affairs i.e. that restrained property was not illegally acquired.[23] This is especially so as the concept of illegal activity under the bill extends well beyond ordinary criminal offences and claiming can include unrelated taxation contraventions.[24]

20. Although the bill attempts to provide for relief from hardship for dependents of the person liable to forfeit an interest in property, it eliminates the making of such an order in favour of an adult dependent who knew of the criminal origins of the property in question.[25]

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19 The term "limitation period" is defined in cl.58(8) to mean the period of six years before the day the application is made.

20 Cl.77 of the Bill

21 This term is defined in Section 15 of the Bill to include an activity that is serious crime related activity as involving a serious criminal offence viz., an indictable offence for which the maximum penalty is at least imprisonment for 5 years or a prescribed offence under regulation or an ancillary offence cl.17(1))

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

23 Cl.139-141.

24 Cl.15 (definition of illegal activity includes an act or omission that is an offence against the law of Queensland or the Commonwealth).

25 Cl.62

21. There are, however, other more practical safeguards built into the legislation. Neither restraining nor automatic forfeiture orders, for example, can be made except on notice and unless there are reasonable grounds to believe that the property was derived from serious criminal activity then forfeiture can only be ordered on the basis of an adverse finding against the suspected person by a Supreme Court on the balance of probabilities.

22. The adverse effect of restraining or forfeiture orders on legitimate or innocent interests is also ameliorated to some extent by provisions allowing for the payment of reasonable living and (to a limited extent) legal expenses[26] out of restrained property.

23. The bill overrides various privacy rights, duties of confidence and legal professional privilege where a person is being examined on oath by a Judicial Registrar about, or is required to produce a document concerning, the financial affairs and property interests of a suspected person.[27] It also provides that a person is not excused from compliance with an examination or production order on the grounds that it would breach an obligation of confidence, legal professional privilege or might tend to incriminate the person.

24. While the compulsory examination[28] and other information-gathering powers are similar to those that already exist under the 1989 conviction based Act and are commonplace elsewhere in the world, they abrogate traditional protections and privileges and represent a significant extension of State power.

25. Nonetheless, the Attorney would no doubt argue that the extension is justified having regard to the objects of the bill, the ineffectiveness of less coercive and intrusive means in the context of major drug and organised crime, the importance of effective law enforcement in those fields, and the fact that the powers are supervised and regulated by the State's highest court.

26. This bill impacts in various ways upon the rights and liberties of individuals whose property may be subject to confiscation under its provisions.

27. The committee refers to Parliament the question of whether the bill has sufficient regard to the rights and liberties of those persons on the one hand, and of the community as a whole on the other.

Does the legislation provide for the compulsory acquisition of property only with fair compensation?[29]

- **Clauses 56, 146, 163 and 200**

28. The bill is clearly designed to take away property rights without providing compensation in the case of serious crime derived property but there is a scheme of compensation to be paid to address the adverse effect on innocent third parties.

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26 cf: Cl230

27 Cls.130 - 132

28 Cls.40, 131

29 Section 4(3)(i) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation provides for the compulsory acquisition of property only with fair compensation.

29. All forfeiture laws, whether civil or criminal, interfere with the basic right of an individual to peaceful enjoyment of property, but it has never been questioned that the confiscation of the proceeds of crime is justified as a matter of principle in the public interest or that no one should be allowed to retain - whether at the expense of someone else or the community as a whole - the proceeds of crime or other unjust enrichments.[30]

30. This bill enables the property rights of individuals to be forfeited, without compensation, in certain circumstances.

31. The committee refers to Parliament the question of whether the provisions of the bill have sufficient regard to the rights of individuals whose property may be subject to forfeiture.

Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification?[31]

♦ **Clause 252**

32. Clause 252 of the bill contains the offence of *possession etc. of property suspected of being tainted property* which is currently contained in s.92 of the 1989 Act. Offences of this type, which relate to the possession of suspected property, have a long tradition in the criminal law. The ultimate onus of proving the offence still lies on the Crown beyond reasonable doubt, but because of the intrinsic difficulty in proving such allegations, the bill requires the defendant to prove legitimacy to a less onerous standard. Although the onus of proof is reversed to some extent, this does not represent a departure from criminal practice in relation to the possession of suspect property.

33. Reverse onus provisions are in fact a natural extension of the basic common law principle that the burden of proving or negativing a state of affairs should rest on the shoulders of the person who is in the best position to do so.[32]

34. The bill also reverses the onus of proving certain matters within the context of the non conviction based forfeiture proceedings.

35. Once the State has satisfied the Supreme Court that a person has been involved in relevant criminal activity within the previous six years, the person (or another person claiming an innocent or lawfully acquired interest) must show that the property was not illegally obtained before it will be excluded from the operation of a forfeiture order.[33]

36. However, the bill specifically provides that proceedings are civil not criminal and the scheme is based on the reasonable assumption that those with ownership rights or other interests relevant in property are in the best position to prove matters in dispute in relation to that property. This may not be so in all cases but there is nothing intrinsically unfair or

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30 45 cf *Australian Law Reform Commission Report - Confiscation That Counts: A Review of the Proceeds of Crime Act 1987* Report No 87 1999 at p.77, para. 4.162.

31 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.

32 cf Brauer v DPP (1989) 91 ALR 490, 501-2

33 Cls.65, 71, 131, 139, 141, 154 - 155 and 165

contrary to the rule of natural justice in transferring the onus in civil proceedings between the parties once reasonable suspicion has been established. It is quite reasonable in the context where it appears to a court that property is likely to be the proceeds of crime that the person in possession of them be asked to account for their source. He or she is usually in a unique position to do so.

37. Moreover, the reverse onus mechanism is central to the effectiveness of civil based forfeiture and its ability to achieve its stated objects. Without provisions of this kind criminals are able to insulate themselves from law enforcement penetration and protect their illicit gains against recapture by distancing themselves from the illegal activity and protecting their accumulated wealth through complex commercial and financial transactions and corporate structures.

38. This bill contains a number of provisions which either expressly or implicitly reverse the onus of proof (see above).

39. The committee refers to Parliament the question of whether these reversals of onus are justified in the circumstances.

Does the legislation provide appropriate protection against self-incrimination?[34]

♦ **Clauses 40 and 143**

40. The bill in cls.40 and 143 provides that, in an examination conducted for the purposes of ascertaining the nature and location of property of a person, the witness is not excused from answering a question or producing a document on the ground of self incrimination.

41. These examination provisions are not dissimilar to powers conferred on a range of state and federal law enforcement and regulatory bodies and the Attorney would no doubt argue for their inclusion on the basis that conventional powers are inadequate to obtain full details of a person's financial dealings and property interests. Comparable provisions can also be found in the *Proceeds of Crime Act 2002* (**Cth**) and the *Criminal Assets Recovery Act 1990* (NSW).

42. In return for the removal of the privilege against self incrimination, the bill confers a direct use immunity which precludes any information given during a compulsory examination from being used in any civil or criminal proceedings.

43. However, the bill stops short of giving the compelled answer derivative use immunity. This means that further evidence derived from or obtained as a result of the answer given or document provided remains admissible in criminal and civil proceedings against the person who provided the answer or produced the document.

44. Existing Commonwealth and proposed Commonwealth legislation and the civil forfeiture legislation in New South Wales provide for both use and derivative use immunity. The 1989 Act also provides both forms of immunity. On the other hand recent amendments to

[34] 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.

similar legislation in other Australian States have tended to exclude derivative use immunity.

45. This bill contains a number of provisions which expressly deny individuals the benefit of the rule against self-incrimination.

46. The committee refers to Parliament the question of whether these provisions are justifiable in the circumstances.

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

♦ **Various clauses**

47. Although applications under the bill may only be made prospectively, the scheme is nonetheless designed to capture property derived from serious crime related activity occurring in the 6 years prior to the date of commencement of the bill. Thus, applications will be able to be made in relation to persons convicted of relevant offences during that period and also in relation to persons who have not been charged or found guilty of any criminal offence. However, only property rights or interests existing after the date of commencement are liable to adjustment or loss under the bill. Thus, in a purely technical sense, the bill is not retrospective in effect.

48. The use of illegal activity occurring prior to enactment as a trigger for confiscation proceedings is arguably justified on the basis of the general principle that a person should not be allowed to unjustly enrich himself at the expense of other individuals or the community generally as a result of unlawful conduct.

49. The approach of the bill is consistent with the one adopted in New South Wales and elsewhere in the common law world.

50. Whilst this bill will affect certain matters which pre-date its enactment, the committee is of the view that it is probably not retrospective in nature.

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[35] 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.

5. FAIR TRADING AND ANOTHER ACT AMENDMENT BILL 2002

Background

1. The Honourable Merri Rose MP, Minister for Tourism and Racing and Minister for Fair Trading, introduced this bill into the Legislative Assembly on 22 October 2002.

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

   - *To implement certain National Competition Policy reforms by amending the Fair Trading Act 1989.*
   - *To implement recommendations made by a Red Tape Reduction Task Force Committee review of the business name registration process under the Business Names Act 1962.*

3. The committee considers that this bill raises no issues within the committee's terms of reference.

6. FINANCIAL SERVICES REFORM (CONSEQUENTIAL AMENDMENTS) BILL 2002

Background

1. The Honourable Rod Welford MP, Attorney-General and Minister for Justice, introduced this bill into the Legislative Assembly on 22 October 2002.

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

> *To amend certain Acts as a consequence of the enactment of the Financial Services Reform Act 2001 of the Commonwealth*

Does the legislation have sufficient regard to the rights and liberties of individuals?[36]

♦ **Clause 8**

3. Clause 8 of the bill amends s.23 of the *Corporations (Ancillary Provisions) Act 2001*.

4. Section 23 currently provides that the Governor in Council may make regulations amending statutory instruments made or approved by the Governor in Council in the exercise of a power conferred by any Act. The Minister may recommend the making of such a regulation only if the Minister considers each such amendment to be consequential on the enactment or proposed enactment by the Commonwealth Parliament of a range of stipulated corporations-related statutes. These include the new ASIC Act and the new Corporations Act.

5. Clause 8 of the bill adds to the stipulated statutes, Acts which amend either of the two lastmentioned Acts.

6. Importantly, s.23(4) currently provides that the *Statutory Instruments Act 1992*, Part 5, (which requires that regulatory impact statements (RISs) be made in stipulated circumstances) does not apply to regulations made under s.23.

7. The effect of cl.8 is therefore to extend the range of regulations which will be exempt from the RIS regime.

8. On various occasions the committee has been critical of provisions of bills which exempt particular regulations from the operation of the RIS regime. However, s.46(1)(g) of the *Statutory Instruments Act* provides that a regulatory impact statement need not be prepared when the proposed regulations provide for "a matter arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another state". Such legislation is known as "national scheme legislation".

9. This bill, and the various other Acts mentioned above, are all clearly "national scheme legislation".

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

10. In view of the fact that an exemption for the relevant regulations is almost certainly already conferred by Part 5, the provisions of cl.8 are probably not of great significance.

11. The committee notes that cl.8 extends the circumstances under which certain regulations are exempt from the RIS regime established under Part 5 of the *Statutory Instruments Act 1992*.

12. However, the committee notes that under Part 5, "national scheme legislation" (into which category the regulations referred to by cl.8 would fall), are already exempt from the RIS regime.

13. In the circumstances, the committee does not consider the provisions of cl.8 to be objectionable.

Does the bill authorise the amendment of an Act only by another Act (By a "Henry VIII clause")?[37]

♦ **Clause 9 (proposed s.23A)**

14. Clause 9 of the bill inserts into the *Corporations (Ancillary Provisions) Act 2001* new s.23A. This provision authorises the making of regulations which declare how certain types of references in Queensland Acts are to be construed. The provisions in question are references in Queensland Acts to provisions of the Commonwealth's new ASIC Act or the new Corporations Act. The regulations can only be made if the Minister recommending them considers that they are necessary as a consequence of the enactment or proposed enactment by the Commonwealth Parliament of amendments to the new ASIC Act or new Corporations Act. The regulations may, amongst other things, deal with matters of a transitional nature consequent on the enactment of such amendments by the Commonwealth.

15. As the regulations made under proposed s.23A will quite clearly have the effect of amending the Queensland Acts to which they apply, s.23A constitutes a "Henry VIII Clause" within the definition of that term that has been adopted by the committee.[38]

16. Whilst the committee generally opposes the use of "Henry VIII clauses", it accepts that one circumstance in which their use may be justified is to facilitate the application of national scheme legislation, into which category the Acts in question clearly fall.

17. The Explanatory Notes whilst conceding that proposed s.23A might be considered a "Henry VIII Clause", justify its inclusion on the following basis:

> *The provision is, however, justified given its limited application and its purpose. The provision recognises that the Commonwealth will continue to amend the Corporations Act and the ASIC Act and that such amendments may have an effect on the construction of Queensland's Acts. The provision will enable any necessary consequential amendments to be made by regulation where the commonwealth makes or proposes to make amendments to provisions, terms, concepts or expressions in the Corporations Act or the ASIC Act.*

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37 Section 4(4)(c) of *the Legislative Standards Act 1992* provides that whether a bill has sufficient regard to the institution of Parliament depends on whether, for example, the bill authorises the amendment of an Act only by another Act.

38 See the committee's January 1997 report on *The Use of "Henry VIII Clauses" in Queensland Legislation*.

> *The proposed section will enable affected references in Queensland Acts to be adjusted quickly in circumstances where it has not been possible to amend the references in an Act in the time available. It will ensure that action may be taken to safeguard provisions in Acts from inadvertently being made invalid or inoperative as a consequence of amendment to the ASIC Act or Corporations Act.*
>
> *In addition, a regulation made under s.23A will expire after one year, which will allow sufficient time for any necessary amendments to be made to the affected State Act. Any regulations made would also be subject to disallowance by Parliament.*

18. The committee notes that cl.9 of the bill inserts proposed s.23A which is clearly a "Henry VIII Clause". The committee is generally opposed to the inclusion of such provisions.

19. However, the committee also notes that the purpose of the proposed section is to facilitate the effective operation of national scheme legislation on an interim basis, and accepts that this is one circumstance in which the use of "Henry VIII clauses" may be justifiable.

20. The committee makes no further comment in relation to cl.9 of the bill.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?[39]

♦ **Clause 11**

21. Clause 11 inserts into the *Corporations (Ancillary Provisions) Act 2001* s.29, which validates anything done or omitted to be done by a person or body during the "relevant period" had the bill, or none of the provisions of the *Financial Services Reform Act 2001* (Commonwealth), been in operation at the time. The "relevant period" is the period starting on the commencement of the Commonwealth's *Financial Services Reform Act 2001* Schedule 1, Part 1 and ending immediately before the date of assent of the bill.

22. The Explanatory Notes explain the reasons underlying this provision as follows:

> *The bill also inserts a new section 29 into the Corporations (Ancillary Provisions) Act 2001. The Financial Services Reform Act 2001 (Cth) commenced operation on 11 March 2002. The amendments effected by the bill will commence operation after the commencement of the Commonwealth legislation. Therefore, there will be a period of time when Queensland's Acts are not consistent with the Commonwealth Law. Section 29 will validate certain acts and omissions of persons and bodies done or omitted to be done in the period between the commencement of the Financial Services Reform Act 2001 (Cth) but before the commencement of the bill.*
>
> *The validation provision is justified as it has a limited operation and it will only extend to those acts or omissions by individuals or organisations which would have been valid and lawful if the Financial Services Reform Act 2001 (Cth) had not commenced or which would have been valid and lawful if this bill had commenced when the Financial Services Reform Act 2001 (Cth) commenced.*

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[39] 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.

> *In addition, the provision will operate positively to protect individuals or organisations that have relied on provisions in the Queensland Acts referred to the bill, which are outdated or who have relied on provisions in the Corporations Act 2001 which are inconsistent with provisions in Queensland legislation. Section 29 will protect acts done or omissions and will not adversely affect the rights or liberties of individuals or organisations.*

23. 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 effect on rights and liberties of individuals, is justified to correct unintended legislative consequences.

24. However, the committee accepts that because of the complex nature of the relevant national scheme legislation, protection of the kind offered by proposed s.29 may well be appropriate. Moreover, the committee agrees that the operation of the section does not appear to be adverse to individuals or organisations.

25. The committee notes that proposed s.29, inserted by cl.11, is a validating provision and can therefore be said to operate retrospectively.

26. However, the committee acknowledges that the protection of the type offered by the proposed section may be well be essential to the operation of the relevant national scheme legislation. The committee is unable to identify any adverse consequences of the retrospective operation of this provision.

27. In the circumstances the committee does not consider cl.11 to be objectionable.

7. INTEGRATED RESORT DEVELOPMENT AMENDMENT BILL 2002

Background

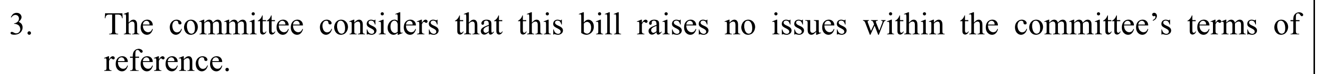
1. The Honourable Nita Cunningham MP, Minister for Local Government and Planning, introduced this bill into the Legislative Assembly on 22 October 2002.

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

   To amend the Integrated Resort Development Act 1987 (IRDA) to provide for:

   - *Changes to schedules of lot entitlements for initial and secondary lots, consistent with the relevant scheme of integrated resort development;*
   - *Subdivision of secondary lots under a scheme of integrated resort development to create additional 'primary thoroughfare'; and*
   - *Clarification of the IRDA's application to the balance area of land, left over in any one allotment, following subdivision by Building Unit or Group Title plan.*

3. The committee considers that this bill raises no issues within the committee's terms of reference.



8. MINERAL RESOURCES AND OTHER LEGISLATION AMENDMENT BILL 2002

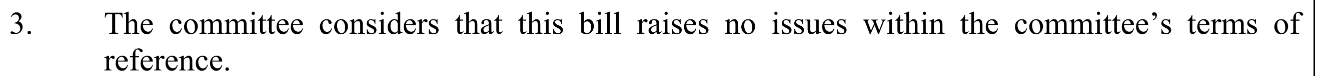
Background

1. The Honourable S Robertson MP, Minister for Natural Resources and Minister for Mines, introduced this bill into the Legislative Assembly on 22 October 2002.

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

> *To implement the Government's Damage to Roads Policy as it applies to the mining industry.*

3. The committee considers that this bill raises no issues within the committee's terms of reference.



9. REVENUE LEGISLATION AMENDMENT BILL 2002

Background

1. The Honourable Terence Mackenroth MP, Deputy Premier, Treasurer and Minister for Sport, introduced this bill into the Legislative Assembly on 22 October 2002.

2. The object of the bill, as indicated by the Treasurer in his Second Reading Speech, is;

> (to make) *a number of amendments to the state's revenue and grant legislation. The amendments to the Duties Act 2001 clarify and improve the operation of the Duties Act 2001, provide new exemptions or benefits to tax payers, simplify compliance, and give legislative force to the existing practices. The amendments to the Fuel Subsidy Act 1997 address operational issues.*

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?[40]

♦ **Clauses 2(1), 13, 14, 24(1), 24(2), 27, 33, 39 and 40, and Schedule (amendments 8, 9, 14, 15, 16 and 20)**

3. Clause 2(1) declares that a number of provisions of the bill are taken to have commenced on 1 March 2002. These provisions will therefore have retrospective effect.

4. The committee always takes care when examining legislation that commences retrospectively or could have effect retrospectively, to evaluate whether there are any adverse effects on rights or liberties or whether obligations retrospectively imposed are undue. In making its assessment on whether the legislation has "sufficient regard", the committee particularly has regard to the following factors:

   - whether the retrospective application is adverse to persons other than the governments; and

   - whether individuals have relied on the legislation and have legitimate expectations under the legislation prior to the retrospective clause commencing.

5. The retrospective provisions, which deal with a range of matters, are in the opinion of the committee accurately summarised in the following passage from the Explanatory Notes (at page 17);

> *The following amendments to the Duties Act 2001 will commence retrospectively on 1 March 2002, being the date of commencement of that Act.*
>
> - *Broadening the definition of de facto relationship instrument (section 422).*

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[40] 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.

- *Providing a credit for duty paid on an option granted pursuant to a lease in some cases (section 243).*
- *Extending securitisation exemptions to cover a full redemption of a mortgage backed security and the securitisation of financial assets receivables (sections 122, 130A – 130I, 289A).*
- *Providing further transitional provisions regarding the payment of lease duty (sections 530 and 531).*

6. As to the effect of these provisions, the Explanatory Notes state;

> *These amendments are beneficial or neutral to taxpayers as they reduce the duty otherwise payable under the Duties Act 2001. The first amendment continues the position that previously existed under the Stamp Act 1894 and broadens the scope of the exemption. The second amendment continues the assessing practice which existed under the Stamp Act 1894. The extension of the securitisation exemptions was publicly notified by the Office of State Revenue by publishing a ruling and practice direction on the Office website. A number of minor consequential amendments to give effect to the extension of the securitisation exemptions are also required to be made and will also commence retrospectively on 1 March 2002.*
>
> *The amendments relating to the lease duty transitional provisions ensure that sufficient provision is made for all relevant lease duty transactions by providing a credit for duty paid under the Stamp Act 1894 or by clarifying whether the Stamp Act 1894 or the Duties Act 2001 applies to a particular transaction. It is necessary for these amendments to commence retrospectively to ensure that there is no legislative gap in the application of the Stamp Act 1894 and the Duties Act 2001, which would result in duty applying twice to the same lease period.*
>
> *The retrospective commencement of these provisions is therefore not considered to raise any fundamental legislative principle issues.*

7. The committee concurs with the view expressed in the Notes that the amendments are either beneficial to taxpayers or, at worst, neutral.

8. The committee notes that cls.2, 13, 14, 24(1), 24(2), 27, 33, 39 and 40, together with amendments 8, 9, 14, 15, 16 and 20 of the schedule, have retrospective effect.

9. The committee is unable to identify any adverse effects of these provisions upon taxpayers, whilst most of the provisions seem clearly beneficial to taxpayers.

10. In the circumstances, the committee has no concerns in relation to these retrospective provisions.

Does the legislation provide appropriate protection against self-incrimination?[41]

♦ **Clause 46**

11. Clause 46 of the bill inserts into the *Fuel Subsidy Act 1997* an additional s.138A.

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[41] 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.

12. This provision, which is in a form similar to that appearing in a number of other statutes examined by the committee, empowers the commissioner, by written notice, to require a person to give the commissioner information or documents within the person's knowledge, position or control, unless the person has a reasonable excuse. Proposed s.138A(3) provides that it is not a reasonable excuse for the person to fail to comply on the basis that compliance might tend to incriminate the person.

13. The committee's view on provisions denying persons the benefit of the rule against self-incrimination are well known.[42] In short, the committee normally considers such provisions are only potentially justifiable if:

- *The matters concerned are matters peculiarly within the knowledge of the persons denied the benefit of the self-incrimination rule, and which it would be difficult or impossible to establish via any alternative evidentiary means.*
- *The bill prohibits the use of information obtained in prosecutions against the person.*
- *In order to secure this restriction of the use of the information obtained, the person should not be required to fulfil any conditions such as formerly claiming the right.*

14. In relation to cl.46, the Explanatory Notes state;

> *Under proposed new section 138A of the Fuel Subsidy Act 1997, a person may not fail to comply with an information or lodgement requirement on the basis that complying may incriminate the person. However, as the principle in abrogating the self-incrimination privilege is to ensure that the Commissioner can access all relevant information to properly determine a licensee's fuel subsidy entitlement, any information so obtained cannot be used in civil or criminal proceedings except where the falsity or misleading nature of the information is relevant.*
>
> *This approach recognises that licensees often uniquely possess the information necessary to enable the Commissioner to determine whether or not they have properly satisfied their obligations, so that any refusal to provide that information would preclude the accurate determination of the licensee's fuel subsidy entitlement. It is therefore considered to strike an appropriate balance between revenue protection for the State and licensees' rights.*

15. The committee notes that the Explanatory Notes assert that licensees often uniquely possess necessary information. The committee further notes that proposed s.138A(4) prohibits the "derivative use" of evidence, whether directly or indirectly derived from provision of the information or document, against the person in any civil or criminal proceeding, subject to one reasonable exception.

16. The committee notes that proposed s.138A, inserted by cl.46, denies persons the benefit against the rule of self-incrimination in relation to the production of documents or provision of information pursuant to a written notice given by the commissioner.

17. The committee generally opposes the removal of the benefit of the self-incrimination rule, and usually only considers it potentially justifiable if certain conditions (mentioned above) are satisfied.

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[42] See, for example, the committee's report on the *Queensland Building Tribunal Bill 1999* (Alert Digest No. 13 of 1999 at pages 31 – 32) and the *Guardianship and Administration Bill 1999* (Alert Digest No. 1of 2000 at pages 7 – 8)

18. The committee refers to Parliament the question of whether the denial of the benefit of the self-incrimination rule by cl.46 is justifiable in the circumstances.

PART I - BILLS

SECTION B – COMMITTEE RESPONSE TO MINISTERIAL CORRESPONDENCE

(NO MINISTERIAL CORRESPONDENCE IS REPORTED ON IN THIS ALERT DIGEST)

PART I - BILLS

SECTION C – AMENDMENTS TO BILLS[43]

(NO AMENDMENTS TO BILLS ARE REPORTED ON IN THIS ALERT DIGEST)

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[43] On Wednesday 7 November 2001, Parliament resolved as follows:

> *the House confers upon the Scrutiny of Legislation Committee the function and discretion to examine and report to the House, if it so wishes, on the application of the Fundamental Legislative Principles to amendments* (to bills)*, whether or not the bill to which the amendments relate has received Royal Assent.*

On 18 February 2002 the committee resolved to commence reporting on amendments to bills, on the following basis:

- *all proposed amendments of which prior notice has been given to the committee will be scrutinised and included in the report on the relevant bill in the Alert Digest, if time permits*
- *the committee will not normally attempt to scrutinise or report on amendments moved on the floor of the House, without reasonable prior notice, during debate on a bill*
- *the committee will ultimately scrutinise and report on all amendments, even where that cannot be done until after the bill has been passed by Parliament (or assented to), except where the amendment was defeated or the bill to which it relates was passed before the committee could report on the bill itself.*

APPENDIX

MINISTERIAL CORRESPONDENCE

PART II

SUBORDINATE LEGISLATION

PART II – SUBORDINATE LEGISLATION

SECTION A – INDEX OF SUBORDINATE LEGISLATION ABOUT WHICH COMMITTEE HAS CONCERNS*

Sub-Leg No.	Name	Date concerns first notified
144	Building and Construction Industry (Portable Long Service Leave) Regulation 2002	30/7/02
201	Workplace Health and Safety Legislation Amendment Regulation (No.1) 2002	22/10/02
205	Plant Protection Regulation 2002	17/9/02
210	Fair Trading Amendment Regulation (No.1) 2002	17/9/02
215	Residential Services (Accreditation) Regulation 2002	22/10/02
228	Public Works Legislation Amendment Regulation (No.1) 2002	22/10/02
243	Coroners Amendment Rule (No.1) 2002	5/11/02
260	Electrical Safety Regulation 2002	22/10/02

* Where the Committee has concerns about a particular piece of subordinate legislation, it conveys them directly to the relevant Minister in writing. The Committee sometimes also tables a Report to Parliament on its scrutiny of a particular piece of subordinate legislation.

PART II – SUBORDINATE LEGISLATION

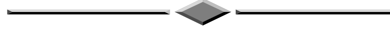
SECTION B – INDEX OF SUBORDINATE LEGISLATION ABOUT WHICH COMMITTEE HAS CONCLUDED ITS INQUIRIES**

(INCLUDING LIST OF CORRESPONDENCE)

Sub-Leg No.	Name	Date concerns first notified
49	**Transport Operations (Passenger Transport) Amendment Standard (No.1) 2002 SL No 49 of 2002** • Letter to Minister dated 9 May 2002 • Letter from Minister dated 5 June 2002 • Letter to Minister dated 25 June 2002 • Letter from Minister dated 22 July 2002 • Letter to Minister dated 31 July 2002 • Letter from Minister dated 22 October 2002 • Letter to Minister dated 4 November 2002	8/5/02

(Copies of the correspondence mentioned above are contained in the Appendix which follows this Index)

** This Index lists all subordinate legislation about which the Committee, having written to the relevant Minister conveying its concerns, has now concluded its inquiries. The nature of the committee's concerns, and of the Minister's responses, are apparent from the copy correspondence contained in the Appendix which follows this index.



This concludes the Scrutiny of Legislation Committee's 10th 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

6 November 2002

APPENDIX

CORRESPONDENCE

LEGISLATIVE ASSEMBLY OF Queensland

Scrutiny of Legislation Committee

Reference: SL 49.01.01

9 May 2002

The Honourable Stephen Bredhauer MP
Minister for Transport and Minister for Main Roads
GPO Box 2644
Brisbane Qld 4001

Dear Mr Bredhauer

RE: Transport Operations (Passenger Transport) Amendment Standard (No 1) SL No 49 of 2001

The committee considered the above subordinate legislation at its meeting on 7 May 2002. The committee has asked me to request the following information from you about the subordinate legislation.

Section 7 of the standard has been amended to include as a prerequisite for obtaining a driver authorisation for a relevant vehicle, the possession, for at least 3 years, of a foreign driver's licence for a car, truck or bus.

Section 7 as amended reads as follows (amendments inserted are underlined):

> ***Qualifications for operating relevant vehicles other than motorbikes***
>
> *7.(1) An applicant for driver authorisation for the operation of a relevant vehicle, other than a motorbike, must hold a prescribed licence of the appropriate class.*
>
> *(2) The applicant must also subject to subsection (3)—*
>
> *(a) have held continuously for at least 3 years—*
>
> *(i) an open or provisional licence for a car, truck or bus; or*
>
> *(ii) a corresponding licence to an open or provisional licence for a car, truck or bus; or*
>
> *(iii) a foreign driver licence for a car, truck or bus; or*
>
> *(iv) a series of any of the licences mentioned in subparagraph (i), (ii) or (iii); or*
>
> *(b) have passed an approved competence test for the operation of the type of vehicle the person intends to drive under the driver authorisation.*
>
> *(3) Also, for at least 2 years of the continuous 3 year period mentioned in subsection (2)(a) or for at least 2 years for subsection (2)(b), the applicant must have held continuously—*

Parliament House George Street BRISBANE QLD 4000
Telephone (07) 3406 7671 Facsimile (07) 3406 7500

(a) an open or provisional licence for a car, truck or bus; or

(b) a corresponding licence to an open or provisional licence for a car, truck or bus; or

(c) a series of any of the licences mentioned in paragraph (a) or (b).

The amending standard omitted the previous sub section (3) and inserted the new subsection (3) which is similar in most respects to the previous subsection.

The previous subsection is set out below:

> *(3) Also, for at least 2 years of the continuous 3 year period mentioned in subsection (2), the applicant must have held continuously—*
>
> *(a) an open or provisional licence for a car, truck or bus; or*
>
> *(b) a corresponding licence to an open or provisional licence for a car, truck or bus issued under the law of another State; or*
>
> *(c) a series of any of the licences mentioned in paragraph (a) or (b).*

As presently worded the meaning of this subsection is extremely unclear and gives rise to uncertainty as to its meaning. It is noted that subsection (3) will not qualify in any way the requirement that applicants possess an open or provisional or corresponding licence for a specified vehicle for a continuous period of three years. For this reason making this requirement subject to a requirement that they possess these for a lesser period is peculiar and unnecessary.

The committee has tentatively interpreted the provision to have the effect of preventing:

- a person who has held a foreign drivers licence for a continuous period of three years from obtaining a driver authorisation unless they have also held an open or provisional licence for a car, truck or bus in Australia for a period of 2 years; and
- a person who has passed an approved competence test from obtaining a driver authorisation unless they have also held a licence or combination of licences for a continuous period of two years prior to passing the approved competence test.

The committee seeks an explanation as to the effect of subsection (3) and questions whether this section could not be drafted in a way that makes its meaning clearer.

In order to allow us to consider your response at our next meeting, we would appreciate it if you could respond by 30 May 2002.

Yours sincerely

[Original Signed]

Warren Pitt MP
Chair

Honourable Steve Bredhauer MP
Member for Cook

Queensland
Government

Minister for Transport
Minister for Main Roads

SCRUTINY OF
LEGISLATION
COMMITTEE
-6 JUN 2002

05 JUN 2002

Mr Warren Pitt MP
Chair
Scrutiny of Legislation Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Mr Pitt

Transport Operations (Passenger Transport) Amendment Standard (No.1) SL No. 49 of 2001

I refer to your letter dated 9 May 2002 in which you have requested certain information be provided to the Scrutiny of Legislation Committee regarding the above-mentioned subordinate legislation.

I am advised that the amended section 7of the standard has the following effect and purpose.

Firstly, section 7(1) requires that an applicant for driver authorisation must be the current holder of an appropriate drivers licence.

Secondly, section 7(2) requires the applicant to have held a driver licence (beyond a learners permit) for a continuous period of three years or to have passed a competency test. This three year driving experience can be on comparable drivers licences issued within Australia and/or overseas.

Thirdly, section 7(3) requires that the applicant to have at least two years experience on an Australian issued drivers licence. However this requirement does not extend to services mentioned in section 7(4).

From the above, a person who has just three years driving experience on an Australian drivers licence (beyond a learners permit) will satisfy both the requirements of sections 7(3) and 7(4). Similarly a person who has two years experience on an Australian drivers licence and one years experience on a overseas licence will also meet the requirements of sections 7(3) and 7(4) provided that the cumulative three years experience is unbroken.

Capital Hill Building
85 George Street Brisbane
Queensland 4000 Australia
GPO Box 2644
Queensland 4001 Australia

Telephone +617 3237 1949
Facsimile +617 3224 4242

However if a person has held an Australian drivers licence for less than two years, but has three years cumulative experience on licences issued overseas or in Australia, then this person will not satisfy the requirements of s 7(3) unless the service type for which they intend to drive is identified in s 7(4). So, such a person could be authorised to drive for a scheduled passenger service (which is identified in s 7(4)) but could not be authorised to drive for a tourist service (which is not mentioned in s 7(4)).

Similarly, if a person satisfies s 7(2) because they have passed an approved competency test, that person is also required to have held an Australian drivers licence for 2 years if they want drivers authorisation for a service type that is not identified in s 7(4).

It is agreed that the wording of this section appears cumbersome. However, this is largely because it is necessary to specify the types of drivers licences under consideration (i.e., open or provisional licences; corresponding licences issued interstate; foreign drivers licences). Furthermore, it is the case that in some circumstances a person's experience on a combination of these licences will be acceptable and not be acceptable in other circumstances. In preparing this legislation, Queensland Transport presented its policy objectives to the Office of the Queensland Parliamentary Counsel who prepared the final drafting. I am advised that the legislation achieves the desired ends and that neither the department nor the Office of the Queensland Parliamentary Counsel were able to identify a simpler way of stating these requirements.

I trust that this information is of assistance. Should the Committee require any further clarification you may care to contact Mr Peter Bradley, Acting Manager (Policy and Legislation), telephone (07) 3267 1989, who will be pleased to assist.

Yours sincerely

[Original Signed]

Steve Bredhauer
Minister for Transport
and Minister for Main Roads
Member for Cook

LEGISLATIVE ASSEMBLY OF Queensland

Scrutiny of Legislation Committee

Reference SL 49.01.02

25 June 2002

The Honourable Stephen Bredhauer MP
Minister for Transport and Minister for
Main Roads
GPO Box 2644
Brisbane Qld 4001

Dear Mr Bredhauer

RE: Transport Operations (Passenger Transport) Amendment Standard (No 1) SL No 49 of 2001

Thank you for your letter dated 5 June 2002 in relation to the above subordinate legislation. The committee considered your response at its meeting on 17 June 2002.

The committee notes that you agree that the wording of the provision is cumbersome. The committee believes this provision is a striking example of a provision which has considerable practical application but which would be incapable of proper interpretation by members of the public. The Committee is of the view that it is desirable that provisions be drafted so that they cannot be loosely interpreted by those entrusted with their administration.

The committee is of the view that it would be possible for an experienced drafter within the Office of Parliamentary Counsel (OPC) to make the exact meaning of this provision much clearer. Accordingly the committee requests that you seek further advice from the OPC regarding alternative ways of expressing the requirements of this provision.

In order to allow us to consider your response at our next meeting, we would appreciate it if you could respond by 18 July 2002.

Yours sincerely

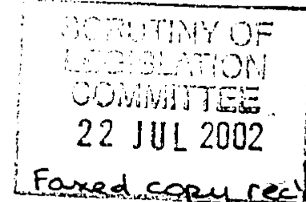
[Original Signed]

Warren Pitt MP
Chair

Parliament House George Street BRISBANE QLD 4000
Telephone (07) 3406 7671 Facsimile (07) 3406 7500
E-mail: scrutiny@parliament.qld.gov.au

Honourable Steve Bredhauer MP
Member for Cook

Minister for Transport
Minister for Main Roads



22 JUL 2002

Mr Warren Pitt MP
Chair
Scrutiny of Legislation Committee
Legislative Assembly of Queensland
Parliament House
George Street
Brisbane Qld 4000

Dear Mr Pitt

Thank you for your letter of 25 June 2002 and to previous correspondence in relation to the Transport Operations (Passenger Transport) Amendment Standard (No. 1) SL No 49 of 2001 subordinate legislation.

In your latest letter you suggest that this legislation might be loosely interpreted by those persons entrusted with its administration. I am advised that although these provisions are complex in structure, these provisions are also quite specific in their application and not open to loose interpretation by administering Queensland Transport officers.

The provisions were made to support complex policy matters and it is considered that the current drafting effectively achieves this purpose. It may be the case that the drafting of the supporting legislation will be complex of necessity, simply because the policy issues covered are complex.

Nevertheless, I have requested the Office of the Queensland Parliamentary Counsel to consider the concerns expressed by the Scrutiny of Legislation committee.

The committee may care to note that any amendment to the provisions referred to must be made in accordance with Chapter 9 of the *Transport Operations (Passenger Transport) Act 1994*. This chapter requires, amongst other things, — the issue of a public notice inviting submissions on the proposal to amend a standard; the issue of a public notice inviting submissions on the draft (amendment) standard; that a minimum 14 days be allowed for the making of any submission; and that regard be given to any submissions properly received.

Capital Hill Building
85 George Street Brisbane
Queensland 4000 Australia
GPO Box 2644
Queensland 4001 Australia
Telephone +617 3237 1949
Facsimile +617 3224 4242

Should the committee need any more information you may care to contact Queensland Transport's Mr Peter Bradley, Acting Manager (Policy & Legislation) on phone (07) 3253 4347, who will be happy to help.

Yours sincerely

[Original Signed]

Steve Bredhauer
Minister for Transport
and Minister for Main Roads
Member for Cook

LEGISLATIVE ASSEMBLY OF Queensland

Scrutiny of Legislation Committee

Reference

SL 49.01.03

31 July 2002

The Honourable Stephen Bredhauer MP
Minister for Transport and Minister for Main Roads
GPO Box 2644
Brisbane Qld 4001

Dear Mr Bredhauer

RE: Transport Operations (Passenger Transport) Amendment Standard (No 1) SL No 49 of 2001

Thank you for your letter dated 22 July 2002 in relation to the above subordinate legislation. The committee considered your response at its meeting on 29 July 2002.

The committee notes that you intend to have the Office of Queensland Parliamentary Counsel consider the Committee's concerns. The Committee would appreciate you apprising the committee of the OQPC's views regarding the redrafting of this provision.

The committee thanks you for your attention to this matter.

Yours sincerely

[Original Signed]

Warren Pitt MP
Chair

Parliament House George Street BRISBANE QLD 4000
Telephone (07) 3406 7671 Facsimile (07) 3406 7500
E-mail: scrutiny@parliament.qld.gov.au

Honourable Steve Bredhauer MP
Member for Cook

Queensland
Government

Minister for Transport
Minister for Main Roads

SCRUTINY OF
LEGISLATION
COMMITTEE
25 OCT 2002

22 OCT 2002

Mr Warren Pitt MP
Chair
Scrutiny of Legislation Committee
Legislative Assembly of Queensland
Parliament House
George Street
Brisbane Qld 4000

Dear Mr Pitt

Thank you for your letter dated 31 July 2002 further to previous correspondence in relation to the Transport Operations (Passenger Transport) Amendment Standard (No 1) 2002, SL No. 49 2002. This correspondence has regard to the structure and operation of section 7 of the *Transport Operations (Passenger Transport) Standard 2000.*

I have now received comments from the Office of the Queensland Parliamentary Counsel (OQPC) about the concerns expressed by the Scrutiny of Legislation Committee.

In previous correspondence I have outlined the intended operation of section 7. OQPC have advised their view that the legal effect of the current drafting achieves the intended outcome.

Section 7 has regard to the driving qualifications necessary for the issue and holding of driver authorisation. It should be noted that there is no administrative discretion in the operation of section 7. People either meet the criteria necessary for the issue of driver authorisation or they do not.

Section 7(2) requires applicants for driver authorisation to have held one of the specified types of driver licence for at least 3 years, or to have held some combination of the specified types of driver licences for at least 3 years, or to have passed a competence test. The types of driver licence specified in section 7(2) include foreign driver licences.

Capital Hill Building
85 George Street Brisbane
Queensland 4000 Australia
GPO Box 2644
Queensland 4001 Australia
Telephone +617 3237 1949
Facsimile +617 3224 4242

In addition to the section 7(2) requirement, if the application is for a driver authorisation for a type of public passenger service not identified in section 7(4), then section 7(3) works to require that the applicant must have at least 2 years experience on Australian issued driver licences.

I trust this information is of assistance

Yours sincerely

[Original Signed]

Steve Bredhauer
Minister for Transport
and Minister for Main Roads
Member for Cook

LEGISLATIVE ASSEMBLY OF *Queensland*

Scrutiny of Legislation Committee

Reference
SL 49.01.04

4 Nov 2002

The Honourable Stephen Bredhauer MP
Minister for Transport and Minister for Main Roads
GPO Box 2644
Brisbane Qld 4001

Dear Mr Bredhauer

RE: Transport Operations (Passenger Transport) Amendment Standard (No 1) SL No 49 of 2001

Thank you for your letter dated 22 October 2002 in relation to the above subordinate legislation. The committee considered your response at its meeting on 31 October 2002.

The committee notes that you have received advice from the Office of Parliamentary Counsel and that it is their view that this provision as currently drafted achieves its intended outcome. While the committee maintains that this provision is not easily comprehensible to members of the public it does not intend to pursue this matter further.

The committee thanks you for your attention to this matter.

Yours sincerely

[Original Signed]

Warren Pitt MP
Chair

Parliament House George Street BRISBANE QLD 4000
Telephone (07) 3406 7671 Facsimile (07) 3406 7500
E-mail: scrutiny@parliament.qld.gov.au