



SCRUTINY OF LEGISLATION COMMITTEE

ALERT DIGEST



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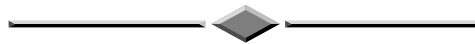
Issue No 4 of 2003

SCRUTINY OF LEGISLATION COMMITTEE

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50TH PARLIAMENT, 1ST SESSION

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NOTE:

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](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 principles¹ 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*

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. CORRECTIVE SERVICES AMENDMENT BILL 2003****Background**

1. The Honourable A McGrady MP, Minister for Police and Corrective Services and Minister Assisting the Premier on the Carpentaria Minerals Province, introduced this bill into the Legislative Assembly on 25 March 2003.
2. The object of the bill, as indicated by the Explanatory Notes, is:

(to amend) the Corrective Services Act 2002 (the Act) to address current operational problems, to improve the clarity and certainty of the legislation and to reduce operational risks. In addition to these enhancements, other amendments within the Bill seek to bolster community protection from the risks posed by prisoners released on conditional release or on post-prison community based release.

Does the legislation have sufficient regard to the rights and liberties of individuals?³**◆ The bill generally**

3. This bill makes a number of changes to the legislative framework established by the *Corrective Services Act 2000*, which commenced on 1 July 2001. The previous Scrutiny of Legislation Committee reported on the bill for that Act in Alert Digest No 10 of 2000 at pages 1 to 14.
4. As the committee stated in its Overview of the earlier bill, that bill established a statutory regime in relation to corrective services. It dealt primarily with the custody and management of prisoners (who would invariably have been convicted by a court of an offence and sentenced to a term of imprisonment), and regulated the conduct of persons who visited or otherwise made contact with prisoners.
5. It contained numerous provisions which restricted or prohibited the activities of prisoners, and authorised actions in relation to them which were intrusive or coercive.
6. The committee went on to consider a matter pertinent to its scrutiny of that bill, namely, what rights prisoners could be said to possess. The committee canvassed various views on this matter, and concluded that prisoners have rights, albeit of a significantly attenuated nature given the status of prisoners and the imperatives necessarily associated with the conduct of corrective institutions.
7. The committee stated that the primary question was whether the earlier bill achieved an appropriate balance between the rights of prisoners and the countervailing rights of the

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

public, corrective services staff and even of other prisoners. That, the committee stated, was ultimately a matter for Parliament to determine.

8. Readers are referred to the full discussion of these issues at pages 1 to 2 of the Alert Digest, which the current committee adopts and repeats.
9. The committee considers that in relation to the current bill, which modifies various aspects of the present statutory regime and whose provisions all impact in some way on the rights and liberties of prisoners, staff and the public, the same considerations apply.
10. Among the changes made by the current bill are provisions relating to:
 - classification of remand prisoners (cl.5)
 - creation of the offence of helping a prisoner at large (c.13)
 - conferral of power, in some circumstances, to detain for up to 4 hours persons near prisoners (cl.14)
 - cancellation of conditional release orders (cl.10)
 - amendment, suspension or cancellation of post-prison community based release orders (cls.21 and 22).
11. The appropriateness or otherwise of these and the other provisions of the bill is again a matter for Parliament to determine.

12. The committee notes that this bill modifies in various ways the statutory regime in relation to corrective services established by the *Corrective Services Act 2000*. Given the nature of the subject-matter, the provisions of the bill all impact in some way on the rights and liberties of prisoners, staff, visitors and the public.
 13. The committee refers to Parliament the question of whether the various provisions of the bill are appropriate in the circumstances.
-

2. LAND LEGISLATION AMENDMENT BILL 2003

Background

1. The Honourable S Robertson MP, Minister for Natural Resources and Minister for Mines, introduced this bill into the Legislative Assembly on 25 March 2003.
2. The objectives of the bill, as indicated by the Explanatory Notes, are to amend:
 - *the Aboriginal Land Act 1991*;
 - *the Land Act 1994*;
 - *the Mineral Resources Act 1989*;
 - *the Valuation of Land Act 1944*; and
 - *the Valuers Registration Act 1992*.

Does the legislation have sufficient regard to the rights and liberties of individuals?⁴

Does the legislation provide for the compulsory acquisition of property only with fair compensation?⁵

◆ Clause 4

3. Clause 4 of the bill inserts into the *Aboriginal Land Act 1991* new s.137AB (Confirmation of Status of Particular Land). This section, which concerns particular land on Horn Island, declares that a specified Sales Permit issued in 1990 under the *Forestry Act 1959* ‘does not create and never has created, for the purposes of s.19, an interest in land’ and that the amending regulation was valid. The ‘amending regulation’ is defined as the *Aboriginal Land Amendment Regulation (No 1) 2002*.
4. The background to this provision, as set out in the Explanatory Notes (at page 4), is that it is intended to transfer certain land on Horn Island in freehold to the Kaurareg people as native title holders, under s.19 of the *Aboriginal Land Act 1991*. That section, which identifies the types of land which are ‘available Crown land’ (that is, available for transfer in fee simple to trustees for the benefit of Aboriginal people under s.27 of the Act), stipulates that such land be ‘land in which no person other than the Crown has an interest.’
5. It appears that in relation to the relevant land there is a Sales Permit issued under the *Forestry Act 1959*, and a question has arisen as to whether this Permit confers upon its holder an interest in land. The purpose of the provision inserted by cl.4 is to declare that this is not the case, thereby putting the matter beyond doubt and enabling the proposed transfer to the native title holders to proceed.

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

⁵ 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.

6. Given its validating and declaratory nature, proposed s.137AB is retrospective in nature.
7. 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 occasions on which curative retrospective legislation, without significant effects on rights and liberties of individuals, is justified to correct unintended consequences.
8. In the present case, transfer of the land in question will undoubtedly advantage the relevant native title holders. The important issue is whether the transfer will, in any way, disadvantage the holder of the Sales Permit.
9. The Explanatory Notes (at page 3) state, in relation to cl.4:

“There is no imposition of obligations upon any person, nor any adverse effects on the rights and liberties of individuals....”
10. The Explanatory Notes state (at page 4):

(Proposed s.137AB) will enable the presently proposed transfers of land (over which the Sales Permit operates) to proceed without doubt and without the need to surrender and reissue the Sales Permit repeatedly.
11. It would accordingly appear that the holder of the Sales Permit will retain the capacity to exercise the rights currently conferred upon him or her under the Sales Permit. If that is the case, the retrospective provisions would not appear to be adverse to any party.

12. The committee notes that cl.4 inserts a declaratory and validating provision which is retrospective in effect. The purpose of this provision is to enable a proposed transfer of land to native title holders to proceed, despite the existence of a Sales Permit issued to a third party under the *Forestry Act 1959*.
13. It appears to the committee that the provisions of cl.4 do not adversely affect the rights of any party.
14. Accordingly, the committee has no concerns in relation to this provision.

◆ **Clause 8**

15. Clause 8 inserts into the *Mineral Resources Act 1989* provisions relating to specific mining leases over land situated in the Shelburne Bay area. Proposed s.418C provides that from commencement of that provision, ‘the relevant mining leases are cancelled’ and goes on to provide that the leases must not be renewed, despite any entitlements which may exist in that regard. Subsection (2) of the proposed section provides that no compensation is payable to any person because of s.418C.
16. The adverse effect of this provision upon the rights of the holder of the relevant mining leases is self-evident. The Explanatory Notes address the issue as follows:

The amendment to the Mineral Resource Act 1989 breaches section 4(3) (g) and (i) of the Legislative Standards Act 1992. The proposed legislation will effect the cancellation of the mining leases notwithstanding the holder's compliance with section 286(3) of the Mineral Resources Act 1989. The proposed legislation breaches fundamental legislative principles in two aspects:

- *the holders' legislative right to renewal is being revoked for reason of public interest to ensure that the environmental and conservation values are protected.*
- *The amendment has the effect of removing the former holders rights as a lease holder without the payment of any compensation. This is justified for the following reasons:*
 - *it is beyond doubt that State Parliament may if it so elects, remove such rights without the payment of any compensation;*
 - *it is in the public interest that the land subject to the mining leases is protected for future generations;*
 - *it would be nonsensical for the Government to continue to renew the mining leases knowing that the land has never and will never be mined; and*
 - *it is highly unlikely that the Commonwealth Government will issue an export licence for the sand.*

17. As the Explanatory Notes readily concede, cl.8 breaches two of the fundamental legislative principles. The question for Parliament is whether, in the circumstances, those breaches are justified.

18. The committee notes that cl.8 of the bill statutorily cancels two current mining leases in the Shelburne Bay area, and declares that no renewals of such leases shall be granted. The clause also provides that no compensation is to be payable as a result of these provisions.

19. The Explanatory Notes and the Minister's Second Reading Speech both refer to this matter at some length.

20. The committee refers to Parliament the question of whether the provisions of cl.8 are justifiable in the circumstances.

3. MOTOR VEHICLES SECURITIES AND OTHER ACTS AMENDMENT BILL 2003

Background

1. The Honourable M Rose MP, Minister for Tourism and Racing and Minister for Fair Trading, introduced this bill into the Legislative Assembly on 25 March 2003.
2. The object of the bill, as indicated by the Explanatory Notes, is:

to extend the registration of security interests to boats and outboard motors in Queensland. In order to do this, the Bill will make amendments to the Act, and the Bills of Sale and Other Instruments Act 1955; and repeal the sections of the Motor Vehicles Securities and Other Acts Amendment 2001 (the 2001 Amending Act) that have not commenced.

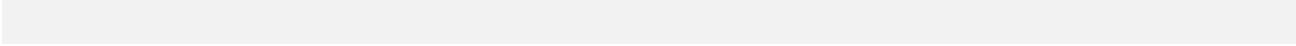
Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?⁶

◆ Clause 26

3. Clause 26 of the bill inserts into the *Motor Vehicles Securities Act 1986* a new s.47, which validates fees charged by the chief executive, before commencement of a specified amending regulation, for applications by persons for renewal of registration of a security interest.
4. The practice of making retrospectively validating legislation is not one which the committee endorses because such law may 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.
5. In the case of cl.26, the fees in question were charged for renewal of registration of a security interest, a process which was presumably of benefit to the persons seeking that renewal. On that basis, and assuming the amount charged reasonably reflected the administrative work involved, the fee may in any event not be inherently objectionable.
6. Moreover, it is not beyond doubt that the imposition of the fees was lawful at the time.
7. The Explanatory Notes, in relation to this matter, state:

... the (validating) provision is considered justified as it is curative and does not in any practical way change previous rights, obligations or expectations.

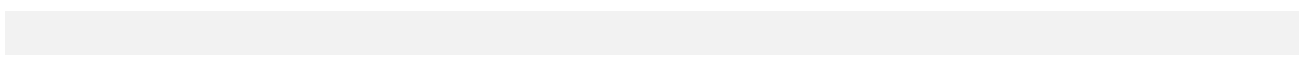
⁶ Section 4(3)(g) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not affect rights and liberties, or impose obligations, retrospectively.

8. The committee notes that cl.26 of the bill validates fees previously charged for renewal of registration of security interests. This provision is retrospective in nature.
 9. However, the administrative process to which it relates would appear to have been of benefit to the person seeking the renewal.
 10. In the circumstances, the committee does not consider this validation provision to be objectionable.
- 

4. PASTORAL WORKERS' ACCOMMODATION AMENDMENT BILL 2003**Background**

1. The Honourable G R Nuttall MP, Minister for Industrial Relations, introduced this bill into the Legislative Assembly on 1 April 2003.
2. The object of the bill, as indicated by the Explanatory Notes, is:

to implement the recommendations resulting from a review of the Pastoral Workers' Accommodation Act 1980 (the Act). The Act provides for the accommodation of workers employed in pastoral work and for matters incidental thereto.

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

5. PRE-ELECTION BUDGET HONESTY BILL 2003**Background**

1. Mr L J Springborg, Leader of the Opposition, introduced this bill into the Legislative Assembly on 2 April 2003 as a private member's bill.
2. The object of the bill, as indicated by the Explanatory Notes, is:

to provide the legislative requirement for governments to present in parliament an updated account of the State's finances prior to holding of a State election.

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

6. SOUTH BANK CORPORATION AND OTHER ACTS AMENDMENT BILL 2003

Background

1. The Honourable P D Beattie MP, Premier and Minister for Trade, introduced this bill into the Legislative Assembly on 25 March 2003.
2. The object of the bill, as indicated by the Explanatory Notes, is:

To provide for the continued effective development and management of the South Bank Corporation area.

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

◆ Clause 37 (proposed s.40E)

3. Clause 37 of the bill inserts a number of provisions relating to security officers. These include proposed s.40E (Resignation). Section 40E(1) provides that a security officer may resign by signed notice given to the South Bank Corporation. However, subsection (2) provides as follows:

However, if holding office as a security officer is a condition of the security officer holding another office, the security officer may not resign as a security officer without resigning from the other office.

4. This provision, which has appeared in many bills previously examined by the committee, recognises that a number of positions in the public sector have, as part of their position description, a requirement that the incumbent also occupy some additional statutory position or office. Occupying the second position usually forms only part of the person's work commitments.
5. While the general principle embodied in proposed subsection (2) is unobjectionable, the committee has recently had cause to consider whether the prescriptive manner in which it is framed might in some cases produce an unfair result.
6. Assume, for example, that a person's principal position was of an administrative nature and performed indoors, but that the subsidiary office required outdoors work. Following an operation for skin cancer, the person's medical advisers might strongly advise against further outdoor work because of the person's perceived susceptibility to that disease. The incumbent could not resign from or cease holding the subsidiary position without prejudicing his or her their principal position.
7. It may well be that in practice such a situation would be handled satisfactorily through an appropriate administrative arrangement. Nevertheless, as mentioned above, the current wording of the provision gives rise to possible concerns. These could be avoided if

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

subsection (2) were amended to, for example, prohibit resignation from the subsidiary office *without the consent of the incumbent's "principal" employing authority.*

8. The committee has recently conveyed similar concerns to the Minister for Transport in relation to a corresponding provision concerning busway safety officers in s.28(2) of the *Transport Infrastructure (Busway) Regulation 2002* SL No. 363 of 2002.

9. The committee notes that proposed s.40E(2) (inserted by cl.37) theoretically prevents a security officer resigning from that position if it is a condition of his/her holding another office, without also resigning from the other office.
10. Whilst the general principle of this provision is unobjectionable, the committee is concerned that it might at least in theory give rise to an injustice if the person had a legitimate reason for wishing to resign from the security officer position.
11. The committee recommends that the Minister consider amending the provision to incorporate a requirement that such resignation not occur without the approval of the person's "principal" employing authority.
-

7. SUGAR INDUSTRY AMENDMENT BILL 2003

Background

1. Mr M H Rowell, Shadow Minister for Primary Industries and Forestry, Shadow Minister for Northern Development, introduced this bill into the Legislative Assembly on 3 April 2003 as a private member's bill.
2. The object of the bill, as indicated by the Member in his Second Reading Speech, is to:

deal with a number of changes that are necessary for the current legislation to function in a way that responds to the present needs of the industry.

Does the legislation have sufficient regard to the rights and liberties of individuals?⁸

◆ Clauses 4 and 8

3. Clause 4 of the bill replaces s.82 of the *Sugar Industry Act 1999*.
4. That section currently requires a mill owner whose mill closes⁹ to immediately give written notice of the closure to the Minister. The replacement section inserted by this bill requires that a mill owner wishing to close a mill may only do so subject to more stringent conditions. These are that the closure may occur, in any year, only after the crushing season for that year has ended, and provided each relevant grower has been given notice of the owner's intention to close. Further, the notice cannot be given after 1 May in any year. The proposed section provides that if a mill closes in contravention of its provisions, the mill owner is liable to each affected grower for any loss suffered because of the contravention.
5. This provision clearly impacts upon the right of a mill owner to make what is an important business decision in respect of its mill.
6. However, as the committee pointed out when examining the bill for the *Sugar Industry Act 1999*,¹⁰ the Queensland sugar industry has a long-standing tradition of comprehensive statutory regulation, dating back to the early years of the 20th century. The committee expressed the view that, on the whole, the issues raised by the 1999 bill were essentially policy-related, and in the final analysis were matters for Parliament to decide.
7. The committee considers the same considerations are applicable to cl.4 of the current bill.
8. In a similar vein, cl.8 of the bill inserts a new s.102A. This proposed section creates a statutory charge, in favour of growers who are parties to a supply agreement with a mill owner, over amounts payable to the mill owner under a payment scheme for sugar vested in QSL. The charge secures payment, in accordance with the supply agreement, of all amounts

⁸ Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to rights and liberties of individuals.

⁹ "Closure" is defined as permanently stopping the carrying on of the business of crushing cane.

¹⁰ See Alert Digest No. 9 of 1999 at p.31.

payable to the growers, and has priority over any other charge or security in relation to those monies.

9. The creation of this statutory charge can be said to affect the rights of mill owners. Again, the charge is consistent with the tradition of extensive statutory regulation of the Queensland sugar industry, and the committee considers its appropriateness is likewise a matter for Parliament to decide.

10. The committee notes that cls.4 and 8 respectively insert provisions which impose restrictions upon the capacity of mill owners to close their mills, and to access certain monies payable to them.

11. The committee refers to Parliament the question of whether, in the context of the Queensland sugar industry, the restrictions imposed by cls.4 and 8 of the bill upon mill owners are appropriate.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?¹¹

◆ **Clause 2**

12. Clause 2(1) provides that various provisions of the bill, including cls.4 and 8, are taken to have commenced on 15 April 2003 if the bill has not been assented to by then. As that date has already passed and the bill has not yet been debated, these provisions will necessarily have retrospective effect as from 15 April.

13. 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 and liberties or whether obligations retrospectively imposed are undue. In making its assessment on whether the legislation has “sufficient regard”, the committee typically has regard to the following factors:

- whether the retrospective application is adverse to persons other than the government; and
- whether individuals have relied on the legislation and have legitimate expectations under the legislation prior to the retrospective clause commencing.

14. The committee has already commented earlier in this chapter on the adverse effects which cls.4 and 8 have upon the position of mill owners. The issues surrounding those clauses (in particular cl.4) are addressed the Explanatory Notes.

15. The committee notes that various provisions of the bill will, if the bill is enacted, have retrospective effect from 15 April 2003.

16. The committee refers to Parliament the question of whether the retrospective application of the relevant provisions of the bill is appropriate.

¹¹ 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.

8. SUGAR INDUSTRY AND OTHER LEGISLATION AMENDMENT BILL 2003

Background

1. The Honourable H Palaszczuk MP, Minister for Primary Industries and Rural Communities, introduced this bill into the Legislative Assembly on 1 April 2003.
2. The object of the bill, as indicated by the Explanatory Notes, is:

To amend the Sugar Industry Act 1999 (the Act) to:

- *transfer the functions of the Bureau of Sugar Experiment Stations (BSES) to a private industry-owned company limited by guarantee;*
- *transfer assets and liabilities of BSES to the new entity;*
- *remove control of sugar variety issues from Sugar Industry Act 1999 and control these under the Plant Protection Act 1989; and*
- *enable Cane Protection and Productivity Boards (CPPBs) to dissolve by 30 June 2004.*

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

◆ Clause 20

3. Clause 20 inserts into the *Sugar Industry Act 1999* a new s.255A. This evidentiary provision provides, amongst other things, that in a proceeding for an offence against the Act which involves false or misleading information, documents or statements:

“Evidence that the document information or statement was given or made recklessly is evidence that it was given or made so as to be false or misleading.”

4. This provision, which achieves a result somewhat akin to that more directly provided for in several other statutes examined by the committee, equates recklessness with intent for the purpose of determining whether a specified offence has been committed. Under the interpretational principles normally applied to criminal and quasi-criminal proceedings, intent is a prerequisite to the commission of an offence.

5. The committee notes that cl.20 inserts a provision which effectively equates reckless behaviour with intent, in relation to the commission of certain offences.

6. The committee draws this provision to the attention of Parliament.

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

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 BILLS¹³**

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

¹³ 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

*(in the electronic version of the Alert Digest, this
correspondence is contained in a separate document)*

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 <i>(dates are approximate)</i>
2002		
363	Transport Infrastructure (Busway) Regulation 2002	2/4/03

* Where the committee has concerns about a particular piece of subordinate legislation, or wishes to comment on a matter within its jurisdiction raised by that subordinate legislation, it conveys its concerns or views 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 (dates are approximate)
2002		
255	The Drugs Misuse Amendment Regulation (No.1) 2002 <ul style="list-style-type: none"> • Letter to the Minister dated 3 December 2002 • Letter from the Minister dated 18 December 2002 • Letter to the Minister dated 27 February 2003 • Letter from the Minister dated 6 March 2003 • Letter to the Minister dated 27 March 2003 • Letter from the Minister dated 9 April 2003 	29/11/02
260	Electrical Safety Regulation 2002 <ul style="list-style-type: none"> • Letter to the Minister dated 22 October 2002 • Letter from the Minister dated 31 October 2002 • Letter to the Minister dated 3 December 2002 • Letter from the Minister dated 13 February 2003 • Letter to the Minister dated 27 February 2003 • Letter from the Minister dated 5 March 2003 • Letter from the Minister dated 24 March 2003 • Letter to the Minister dated 2 April 2003 	22/10/02
267	Nature Conservation Legislation Amendment and Repeal Regulation (No.1) 2002 <ul style="list-style-type: none"> • Letter to the Minister dated 27 February 2003 • Letter from the Minister dated 7 March 2003 • Letter to the Minister dated 25 March 2003 	25/2/03
339	Fisheries Amendment Regulation (No.4) of 2002 <ul style="list-style-type: none"> • Letter to the Minister dated 1 April 2003 • Letter from the Minister dated 16 April 2003 • Letter to the Minister dated 28 April 2003 	2/4/03

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

Sub-Leg No.	Name	Date concerns first notified <i>(dates are approximate)</i>
343	Education (Queensland Studies Authority) Amendment Regulation (No.1) 2002 <ul style="list-style-type: none"> • Letter to the Minister dated 11 March 2003 • Letter from the Minister dated 25 March 2003 • Letter to the Minister dated 2 April 2003 • Letter to the Office of Queensland Parliamentary Counsel dated 2 April 2003 • Letter from the Office of Queensland Parliamentary Counsel dated 16 April 2003 • Letter to the Office of Queensland Parliamentary Counsel dated 28 April 2003 	11/3/03
353	Food Production (Safety) Regulation 2002 <ul style="list-style-type: none"> • Letter to the Minister dated 27 March 2003 • Letter from the Minister dated 10 April 2003 • Letter to the Minister dated 28 April 2003 	25/3/03
378 379	Water Resource (Barron) Plan 2002 Water Resource (Pioneer Valley) Plan 2002 <ul style="list-style-type: none"> • Letter to the Minister dated 11 March 2003 • Letter from the Minister dated 17 March 2003 • Letter to the Minister dated 2 April 2003 	11/3/03
2003		
24	Trade Measurement (Miscellaneous) Amendment Regulation (No.1) 2003 <ul style="list-style-type: none"> • Letter to the Minister dated 2 April 2003 	2/4/03

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



This concludes the Scrutiny of Legislation Committee's 4th report to Parliament in 2003.

The committee wishes to thank all departmental officers and ministerial staff for their assistance in providing information to the committee office on bills and subordinate legislation dealt with in this Digest.

Warren Pitt MP
Chair

29 April 2003

PART II – SUBORDINATE LEGISLATION

APPENDIX

CORRESPONDENCE

*(in the electronic version of the Alert Digest, this
correspondence is contained in a separate document)*