SCRUTINY OF LEGISLATION COMMITTEE

ALERT DIGEST

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SCRUTINY OF LEGISLATION COMMITTEE
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51ST PARLIAMENT, 1ST SESSION

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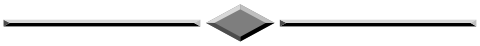

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NOTE:

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

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]

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. CRIMINAL CODE (CHILD PORNOGRAPHY AND ABUSE) AMENDMENT BILL 2004[3]

Background

1. The Honourable R J Welford MP, Attorney-General and Minister for Justice, introduced this bill into the Legislative Assembly on 24 November 2004.

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

> *to respond to the growing incidence of child pornography by inserting specific offences (with appropriate penalties) into the Criminal Code.*

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

- **clauses 5, 6, 9, 11 and 12**

OVERVIEW OF THE BILL

3. Although recognising that existing laws cover most forms of child pornography and child abuse material, including films, photographs, and computer images, the Explanatory Notes observe that legislation designed to classify material to determine who can access it, if at all, does not recognise the nature and conduct involved. The Notes observe that some of the existing offences relating to child phonography are not expressed in terms of "child abuse", and examples are given of people who sell or distribute pornographic computer images (who can only be charged with selling or distributing "objectionable computer games") or people who procure minors for games or films (who can only be charged with offences which refer only to "objectionable" games or films).

4. The Notes state that the policy objective of the bill is more appropriately achieved by introducing specific offences into the *Criminal Code* dealing with involving a child in, and making, distributing and possessing what will now be defined as "child exploitation" material.

5. There is overwhelming public acceptance that persons who produce, distribute or possess materials or images that involve pornographic or abusive exploitation of children should be subject to the full rigours of the criminal law. The bill attempts to achieve this by drawing together in the *Criminal Code* offences that are presently found in both the Code and at least three other Queensland statutes.

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3 The committee thanks Mr Robert Sibley, Senior Lecturer in Law, Queensland University of Technology, for his valued advice in relation to the scrutiny of this bill.

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

THE EXISTING FRAMEWORK OF CRIMINAL OFFENCES

6. Under a joint Commonwealth/State co-operative legislative scheme all publications, films and computer games are classified according to a *National Classification Code* agreed to between the Commonwealth and the States. The relevant Acts are the Commonwealth *Classifications (Publications, Films and Computer Games) Act 1995* and the complementary Queensland Acts, namely the *Classification of Films Act* 1991, the *Classification of Publications Act 1991* and the *Classification of Computer Games and Images Act* 1995 ("the *Classification Acts*"). The definitions of "publications", "films" and "computer games" in these Acts are extremely wide and would likely include virtually any medium in which child pornography or abuse can presently be captured.

7. The *National Classification Code*, which is a schedule to the Commonwealth Act, requires that classification decisions are to give effect, as far as possible, to the following principles:

   (a) adults should be able to read, hear and see what they want;

   (b) minors should be protected from material likely to harm or disturb them;

   (c) everyone should be protected from exposure to unsolicited material that they find offensive;

   (d) the need to take account of community concerns about

      (i) depictions that condone or incite violence, particularly sexual violence; and

      (ii) the portrayal of a person in a demeaning manner.

8. The Classification Board, upon application, must classify any publication, film and computer game according to whether they fall into various descriptions contained in tables in the Schedule. For example, films have the familiar classifications of G, PG, M, MA 15+, R 18+, X 18+. Although the alpha/numeric identification for publications and computer games are different to that for films **all** have a classification of RC which means **Refused Classification**.

9. The description of material that would be RC is common to all forms of media and is material that:

   (a) describes, depicts, expresses or otherwise deal with matters of sex, drug abuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or

   (b) describes or depicts in a way that is likely to cause offence to a reasonable adult, a person who is, or who looks like, a child under 16 (whether the person is engaged in sexual activity or not); or

   (c) promotes, incites or instructs in matters of crime or violence.

10. Once a classification decision has been made by the Classification Board the Director of the Board must issue a Classification Certificate for each publication, film or computer game. The Explanatory Notes explain that although in practice the vast majority of classifications are done by the Commonwealth Board there is a Queensland Classification Officer whose role is unique to Queensland. That role is only to consider material submitted by the police to determine whether or not it is child abuse material (RC) under the *Classification Acts*.

EXISTING CHILD ABUSE OFFENCES UNDER QUEENSLAND *CLASSIFICATION ACTS*

Classification of Computer Games and Images Act 1995

Objectionable computer games

11. Under the *Classification of Computer Games and Images Act 1995* it is a criminal offence to *inter alia* demonstrate in public (s.22), or in the presence of a child (s.23), or to sell or possess an objectionable computer game (ss.24, 25 and 26).

12. An objectionable computer game is defined to mean a computer game that has **or would have** an RC classification under the Commonwealth Act.

13. It is an offence to make an objectionable computer game **for gain** (s.27: maximum 2 years imprisonment). It is also an offence under s.28 to obtain a minor to be in any way concerned in the making or production of an objectionable computer game (maximum 3 years imprisonment).

Child abuse computer games

14. A child abuse computer game is, by definition, a specific form of objectionable computer game, namely one that falls within description (1)(c) of the RC classification under the Commonwealth Act. Thus, it is a computer game that depicts in a way that is likely to cause offence to a reasonable adult person, a person who is or looks like a child under 16 (whether the person is engaged in sexual activity or not).

15. The scheme of the Act creates aggravated offences in the case of child abuse computer games.

16. Under s.26(3) the mere possession, with knowledge, of a child abuse computer game is an offence carrying a maximum 2 years imprisonment. This is unlike the case of an objectionable computer game which is only an offence if possessed for gain or public demonstration.

17. Under s.27(3) the making of a child abuse computer game is an offence carrying a maximum 5 years imprisonment whereas the making of an objectionable computer game is only an offence if done for gain and carries only 2 years imprisonment. The committee notes here that, curiously, it is not specifically an aggravated offence under the *Classification of Computer Games and Images Act 1995* **to obtain** a minor to be in any way concerned in the making or production of a child abuse computer game.

18. Under s.28 of the Act the same maximum penalty applies to obtaining a minor to be concerned in the making of both a child abuse computer game and an objectionable computer game, namely 3 years.

Classification of Films Act 1991

Objectionable films

19. Under the Act objectionable films are those that have or would have an X or RC classification under the Commonwealth Act. An X rating is for films which contain real depictions of actual sexual activity between consenting adults without violence or demeaning and are likely to cause offence to a reasonable adult.

Child abuse films

20. A child abuse film is a specific form of objectionable film in that it falls within the (1)(c) description of the RC classification under the Commonwealth Act.

21. Apart from the additional dimension of prohibition of X classifications the issues addressed in the *Classifications of Films Act 1991* are the same as under the *Classification of Computer Games and Images Act 1995*.

22. Thus, under s.41 it is an offence to possess an objectionable film for sale or public exhibition (maximum penalty 2 years). It is an offence merely to knowingly possess a child abuse film (maximum penalty 12 months), and no element of sale or public exhibition is involved. Under s.42 it is an offence to make an objectionable film for the purposes of gain (maximum penalty 2 years). However, it is an aggravated offence simply to make a child abuse film (maximum penalty 5 years).

23. Under s.43 it is an offence to *procure* a minor to be in any way concerned in the making or production of an objectionable film (maximum penalty 3 years). Again, as is the case with the *Classification of Computer Games and Images Act 1995*, no differentiation is made between child abuse films and other objectionable films for the purposes of penalty.

Classification of Publications Act 1991

Prohibited publications

24. "Prohibited Publications" are defined as those that are or would be classified as RC and Restricted Categories 1 and 2 under the *Commonwealth Act*. Categories 1 and 2 have as their focus activities between consenting adults that is depicted in a way that would cause offence to a reasonable adult.

Child abuse publications and child abuse photographs

25. A child abuse publication is defined essentially in terms of the description in (1)(c) of the RC Classification under the *Commonwealth Act*. A child abuse photograph is also defined essentially in terms of the description in (1)(c) of the RC Classification under the *Commonwealth Act*.

26. In s.12 the Act creates aggravated offences in relation to advertising, selling or distributing child abuse publications or photographs. Section 13 creates aggravated offences in relation

to the possession for publication of child abuse publications and photographs. It is an offence merely to knowingly possess these items (maximum penalty 1 year) (s.14); it is an aggravated offence to exhibit them publicly (maximum penalty 2 years) (s.5), it is an aggravated offence to leave them in a public place (maximum penalty 2 years) (s.16); it is an aggravated offence to produce or copy them for publication (maximum penalty 3 years) (s.17). Under s.18 it is an offence **to *procure*** a minor to be in any way concerned in the making of an RC publication (maximum penalty 3 Years) or a child abuse publication (maximum penalty 5 years). Thus there a differentiation in the case of publications between a prohibited publication and a child abuse publication.

Overview of Elements of Existing Child Abuse Offences under the Queensland Classification Acts

For a child abuse computer game under the *Classification of Computer Games and Images Act 1995*

27. An offence is committed in relation to a computer game involving a child if it is proved beyond reasonable doubt that:

    (a) The game **IS EITHER** *already classified RC* by the Commonwealth Classifications Board applying the description in RC (1)(b) [**ie because it describes or depicts in a way that is likely to cause offence to a reasonable adult, a person who is, or who looks like, a child under 16 (whether the person is engaged in sexual activity or not) OR** (where there has not been a classification) the jury is satisfied that the game does depict those things **AND**

    (b) The game is either demonstrated, sold, possessed etc or made by the person **OR**

    (c) The person has **obtained** a minor to be in any way concerned in the making or production of the game.

For a child abuse film under the Classification of Films Act 1991

28. An offence is committed in relation to a film if it is proved beyond reasonable doubt that:

    (a) The film **IS EITHER** *already classified RC* by the Commonwealth Classifications Board applying the description in RC (1)(b) [**ie because it describes or depicts in a way that is likely to cause offence to a reasonable adult, a person who is, or who looks like, a child under 16 (whether the person is engaged in sexual activity or not) OR** (where there has not been a classification) the jury is satisfied that the film, *if it were classified would be so classified* **AND**

    (b) The film is either exhibited or displayed for sale, possessed etc or made by the person **OR**

    (c) The person has **procured** a minor to be in any way concerned in the making or production or an objectionable film.

For a child abuse publication or child abuse photograph under the Classification of Publications Act 1991

29. An offence is committed in relation to a publication or photograph if it is proved beyond reasonable doubt that:

(a) The publication or photograph is *already classified RC* by the Commonwealth Classifications Board applying the description in RC (1)(b)

[**ie because the photograph or publication depicts or describes in pictorial or other form a person who is, or who looks like, a child under 16 years (whether the person is engaged in sexual activity or not) in a way that is likely to cause offence to a reasonable adult person] OR** (where there has not been a classification) the jury is satisfied that the film *if it were classified would be so classified* **AND**

(b) The publication or photograph is either advertised, sold or distributed, exhibited, printed or produced for publication, or printed or produced or copied or knowingly possessed etc by a person **OR**

(c) The person has **procured** a minor to be in any way concerned in the making or production of the publication or photograph.

Summary of Classification Act Offences

30. Each of the above offences is an indictable offence: however, each may be dealt with summarily by a magistrate at the election of the defendant.

31. Although there are some variations in the way an offence is committed according to whether it is a publication, film or computer game, the elements are essentially the same.

32. Thus, whether or not a computer game, film or publication is "child pornograpy" or "child abuse" is essentially determined **according to the RC (1)(b) classification description in the *National Classification Code* (**either because the Classifications Board has applied it or a jury or magistrate would have applied it**).**

CRIMINAL CODE OFFENCES

33. Section 210 of the *Criminal Code* creates various offences in relation to children. Relevantly subsection (1)(b) provides that anyone who **unlawfully** procures a child under the age of 16 to commit an indecent act commits an indictable offence. This would very often be the case where a child is procured to be involved in the making of child exploitative material.

34. Subsection (1)(f) provides that anyone who, without legitimate reason, takes **indecent** photographs or records indecent visual images of a child commits an offence.

35. This offence carries 14 years imprisonment if the child is above 12 years and 20 years if under that age. The element of **"indecency"** would have to be proved by the prosecution whereas for an offence under the *Classification of Computer Games and Images Act 1995* all that is required is proof that a person obtains a minor to be concerned in the making of a game in which a person who looks like they are under 16 years is being depicted in a way that would cause offence to a reasonable adult.

36. The use of the word "unlawfully" introduces the availability of the defences and excuses in the *Criminal Code,* in particular Chapter 5.

37. It is a defence to a charge involving a child above 12 years to prove that the accused believed, on reasonable grounds, that the child was of or above the age of 16 years.

38. Section 228 of the *Criminal Code* makes a person guilty of an offence if, **knowingly** and **without lawful justification or excuse** they publicly sell distribute or expose for sale any **obscene** book or other obscene printed or written matter, computer generated image or any other picture photograph drawing or model or any other object tending to **corrupt morals**. Where the person depicted is or is represented to be under 12 years the penalty is maximum 10 years and under 16 years the penalty is maximum 5 years.

39. The use of the words "without lawful justification or excuse" make it clear that the exculpatory provisions of the Code, particularly Chap 5 apply.

40. Also potentially relevant are s.218A (Using electronic communication to procure a person under 16 years to engage in a sexual act), and s.219 (Taking or enticing a child for the purposes of doing an act in relation to the child which is an offence under s.210 (indecent acts)). It is a defence to both of these offences to prove that the accused believed on reasonable grounds that the child was above the relevant age.

41. These offences are all indictable and none may be dealt with summarily.

THE PROPOSED CHILD ABUSE OFFENCE REGIME

42. Clause 6 of the bill inserts in the *Criminal Code* new ss.228A to 228H. Proposed ss.228A to 228D create offences.

43. The Explanatory Notes state that the new offences are intended to complement, not replace, existing offences and that where a more serious offence involving abuse of a child has occurred, that offence should be charged.

44. The committee notes that the bill does not repeal or amend the existing offences under the various Queensland *Classification Acts* referred to above. The committee notes that although there are differences in the description of the offences under those acts there is also significant overlap with the proposed offences. Of course, many other offences under these acts do not relate to child exploitation material.

45. The Explanatory Notes state that the *Classification Acts* offences will remain operational under the bill to allow consideration of the overlap between the two regimes (and what further legislative change may be necessary as a result of that consideration). It is also stated that this is being done to allow for maximum flexibility to accommodate any developments that may arise at a national level in this area.

46. The Explanatory Notes also state that recent national crackdowns on an internet child pornography ring resulting in hundreds of arrests across Australia has raised the profile of current Queensland and interstate child pornography offences and penalties.

47. The committee raises no objection in principle to the proposed offences introduced by cl.6 of the bill.

48. The committee observes that the proposed amendments to the *Criminal Code* cannot have retrospective effect. In the circumstances, the committee seeks information from the Attorney as to why it is not thought better to consolidate and update the existing offences, in a comprehensive way, in one Act dealing with the classification of all forms of media in accordance with the Commonwealth/State co-operative scheme (as the Commonwealth has

done in the *Classification (Publications, Films and Computer Games) Act 1995*.

Is the legislation unambiguous and drafted in a sufficiently clear and precise way?[5]

- **clause 6**

49. Clause 6 of the bill creates four offences.

50. Proposed s.228A provides that a person who **involves a child** in the making of child exploitation material commits a crime. "Involves" is defined as including "in any way concerns a child in the making of child exploration material".

51. Proposed cl.228B provides that anyone who **makes** child exploitation material commits a crime. Proposed cl.228C provides that a person who **distributes** child exploitation material commits a crime. "Distribute" is very widely defined. Clause 228D provides that a person who **knowingly possess** child exploitation material commits a crime.

52. Proposed s.207A (inserted by cl.5 of the bill) defines ***Child exploitation material*** as:

> *Material that, in a way likely to cause offence to a reasonable adult, describes or depicts someone who is, or apparently is, a child under 16 years:*
>
> *(a) in a sexual context, including for example, engaging in a sexual activity; or*
>
> *(b) in an offensive or demeaning context; or*
>
> *(c) being subjected to abuse, cruelty or torture.*

Material includes anything that contains data from which text, images or sound can be generated.

53. This is different to the definition, under the Queensland *Classification Acts*, of child abuse publications, photographs, films and computer games each of which, as previously identified, mirrors description RC (1)(b) of the *National Classification Code*. They merely require that there be a depiction of a person who is, or looks like, a child under 16 years (whether engaged in sexual activity or not) in a way that is likely to cause offence to a reasonable adult person.

54. The committee notes that under the bill it will always be a defence to prove that the material alleged to be child exploitation material has been classified other than RC (1)(b) under the *Classification Acts*.

55. The committee seeks information from the Attorney as to why it is considered desirable to define the new offence-creating provision in terms different to that which will be applied by the Classification Board in determining whether a classification will be refused, thereby removing any defence available on that basis. Put another way, why is it desirable to define the new offence in terms different to that which will be applied by the Classification Board

[5] Section 4(3)(k) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is unambiguous and drafted in a sufficiently clear and precise manner.

in determining whether a classification will granted [or even refused on a basis other than RC (1)(b)], in which case no offence will be committed even if the magistrate or jury are satisfied beyond reasonable doubt that the elements of the new offence have been made out.

♦ **clause 5 (proposed s.207A)**

56. A reasonable adult person would obviously be offended by the depiction of a child in a sexual context or engaging in sexual behaviour or being subjected to abuse, cruelty or torture. These are familiar concepts and have cogent application in the context of child pornography or child abuse.

57. However, in the committee"s view, the words **"offensive or demeaning context"** in the definition of "child exploitation material" in proposed s.207A are more troubling. These words are to be construed in the context of the creation of serious criminal offences that carry up to 10 years imprisonment.

58. As Gleeson CJ observed in *Coleman v Power* [2004] HCA 391 at 12 "concepts of what is disorderly, or indecent **or offensive**, vary with time and place, and may be affected by the circumstances in which relevant conduct occurs".

59. Reasonable adults could be legitimately offended by a range of materials that do not also sit easily with the notion of "child pornography" or "child abuse" but that are presented in an offensive context depicting someone apparently under 16 years. Since the notion of consent rightly plays no part in these offences examples can be thought of, such as some music videos clips that, absent a Classification, depict children in an offensive or demeaning context (in which the child depicted wholeheartedly joins in) that would meet this definition. Other examples are some images of fashion parades that may, absent a Classification, depict highly-paid models who may appear to be under 16 years in offensive or demeaning (perhaps drug-affected) contexts that would also meet the definition.

60. Moreover, in the committee"s view, the notion of what is a "demeaning context" is even broader than that of "offensive context".

61. There does not seem to be any judicial consideration of the word "demean" or "demeaning". Hence the ordinary meaning of the word would have to be resorted to. The *Concise Oxford Dictionary* states that it means: "lower the dignity of"; The *Macquarie Concise Dictionary* gives the meaning: "to lower in dignity or standing –modelled on debase".

62. As previously observed, the *National Classification Code* requires that the classification decisions are to give effect to, as far as possible, the principles *inter alia*:

> (d) The need to take account of community concerns about:
>
> (i) and
>
> (ii**) the portrayal of a person in a demeaning manner.**

63. However, three principles guide the proper construction of that Code, namely that:

> (1) the Code should be given a sensible meaning which gives effect to its evident purpose;

(2) the presumption against statutory interference with fundamental rights or principles, which include the freedom of speech and expression recognised by the common law, should rarely be treated as being displaced by general words; and

(3) as the Act was passed as an integral part of a uniform national scheme for censorship, the construction of the Act should have regard to its role and function as part of that scheme.

In interpreting the Code, the Classification Board must have regard to an applicant"s right to freedom of political communication and discussion, and to article 19 of the International Covenant on Civil and Political Rights.[6]

64. The committee draws to the attention of Parliament the apparent breadth of the words "offensive or demeaning context" in the definition of "child exploitation material" inserted by cl.5.

65. The committee recommends that the Attorney consider amending the bill to incorporate in the definition other familiar concepts such as *indecent*, *obscene* or *tending to corrupt*, which appear in the existing offence-creating provisions in the *Criminal Code*.

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

- **clause 6 (proposed s.228E(2))**

66. It is a fundamental principle of our criminal justice system that the prosecution should have to prove its case beyond reasonable doubt.[8] The committee underlines that this "golden thread" of the English common law should not be lightly set aside by the Parliament.

67. Proposed s.228E (inserted by cl.6 of the bill) provides for various defences to be available to persons charged with the offences created by proposed ss.228A-228D. These will effectively require the accused person to prove, on the balance of probabilities, the matters of defence. Often this will be not be possible until close to, or during, the trial of the accused person.

68. Proposed s.228E(2) allows the defence to prove that the accused person engaged in the conduct for a genuine artistic, educational, legal, medical, scientific or public benefit purpose and that the conduct was in the circumstances reasonable for that purpose. The Explanatory Notes provide no guidance as to why the prosecution should not have to negative these matters as part of proving this serious criminal offence. These possible exculpatory matters are not peculiarly within the accused person"s knowledge, unlike say the defence of honest and reasonable belief by an accused person in the age of a minor.

6 See *Brown v Members of the Classification Review Board of the Office of Film & Literature Classification* (1997) 145 ALR 464 at 475-7 and 479 extracted from Halisburys Laws of Australia in LexisNexis Butterworths Online [175-4655].

7 Section 4(3)(d) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.

8 *Woolmington v DPP* [1935] AC 462 approved and applied by the High Court of Australia in *Mullen v R* (1938) 59 CLR 124.

69. The committee seeks information from the Attorney as to why it is thought necessary to, in effect, reverse the onus of proof in these cases.

♦ **clause 6 (proposed s.228E(3))**

70. Proposed s.228E(3) provides a defence in the case where a classification exemption has been given under the *Classification Acts* and the conduct is engaged in for that purpose in a way consistent with the exemption including any conditions imposed.

71. The Explanatory Notes provide no guidance as to why the prosecution should not have to prove the absence of these matters. They will have resulted from exemptions given pursuant to the Queensland *Classification Acts*, and should therefore be the subject of easily accessible records within a Government Department.

72. The committee seeks information from the Attorney as to why it is thought necessary to reverse the onus of proof in these cases.

♦ **clause 6 (proposed s.228E(5))**

73. The committee notes that proposed subsection 228E(5) appears to contain an error. It refers to a computer game (sic) that, under the *Classifications (Publications, Films and Computer Games) Act 1995*, is a film classified as R or X.

74. Proposed s.228E(5) provides a defence that the alleged child exploitation material has been classified as something other than RC. The Explanatory Notes state that the purpose of this defence is to ensure that a person can not be convicted of one of the offences *in relation to material that has been approved by the classification system.* As previously observed**, if the Commonwealth classifies the material other than RC because the description in RC (1)(b) is not met then no offence is committed even if a jury or magistrate were to take a different view.**

75. The committee questions why it is appropriate that such a fundamentally exculpatory matter should not have to be negatived by the prosecution beyond reasonable doubt. The Explanatory Notes state:

> *The vast majority of material seized by police is computer images, sometimes numbering in their thousands, and of that material, the vast majority will never be capable of being classified. Requiring the prosecution to prove in every case that the material was either not classified or not capable of being classified will be extremely costly (potentially in the millions) and time consuming. Therefore it is a better balance in those rare cases to allow a defendant who genuinely believes that the material has already been classified, or is capable of being classified (other than RC) to seek to prove this.*

76. The committee notes that material can be classified as RC without meeting the criteria in RC (1)(b) [that it involves a child] in which case no offence will be committed.

77. However, the committee seeks information from the Attorney as to why the State Classifications Officer cannot view the material and issue a classification that is *prima facie*

evidence that the material has not and will not be classified other than RC because it meets the description in RC (1)(b). The Explanatory Notes outline that this is presently the case in Queensland. The presumption raised by the State Classifications Officer"s certificate can, in the unlikely case that the classification officer is wrong, be rebutted by the defence.

78. Since the classification by the board may be made after the offence is committed and even after the accused person is charged and proceeded against, the committee seeks information from the Attorney as to how it will be ensured that an accused will not be dealt with before an application for post-offence classification is sought.

2. EMBLEMS OF QUEENSLAND BILL 2004

Background

1. The Honourable P D Beattie MP, Premier and Minister for Trade, introduced this bill into the Legislative Assembly on 23 November 2004.

2. The objects of the bill, as indicated by the Premier in his Second Reading Speech, are:

> (to effect) *the adoption of the Barrier Reef Anemonefish as the State's aquatic emblem and* (to modernise) *the Badge, Arms, Floral and Other emblems of Queensland Act 1959.*

Does the legislation provide for the reversal of the onus of proof in criminal proceedings without adequate justification?[9]

- **clause 4(2)**

3. Clause 4(1) of the bill provides that a person must not:

> *(a) assume, use or publish the State arms or State badge in connection with a relevant enterprise without lawful authority; or*
>
> *(b) otherwise assume, use or publish the State arms or State badge without reasonable excuse.*

4. Clause 4(1) provides a maximum penalty of 50 penalty units ($3,750) for breach of this prohibition.

5. The term "relevant enterprise" mentioned in paragraph (a) is defined in cl.4(3) as a club or association, business, profession, trade or calling.

6. Clause 4(2) provides that in a proceeding against an individual for breach of the statutory prohibitions, "the onus is on the defendant to prove lawful authority". The term "lawful authority" is defined in cl.4(3) as meaning the authority of the Queen, the Governor in Council, the Minister, an Act or a law of the Commonwealth.

7. The effect of cl.4(2) is that once a person has been shown to have assumed, used or published the State arms they must then, to avoid being convicted of the relevant offence, produce evidence which positively establishes that they had one of the relevant forms of "lawful authority".

8. While a provision which requires the defendant to exculpate him or herself of an offence would normally be of concern to the committee, there are a number of mitigating factors in relation to the current provision.

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[9] 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.

9. Firstly, the defendant will obviously only be required to establish "lawful authority" if the prosecution first establishes that he or she "assumed, used or published" the State arms or State badge in connection with a "relevant enterprise".

10. Secondly, the provision appears (as the Explanatory Notes at page 2 assert) to be consistent with the common law position, which has been described as follows:

> *"Negative averments" have long been part of the common law. A possessor of stolen goods was required to show innocent possession.*
> …
> *Accordingly a party who is charged with doing something without a licence bears a legal onus of proving that he has the appropriate permit: R v Edwards [1975] QB27.*
> …
> *The rationale at common law was that a party should be required to prove those facts that which would be better known to him than to a prosecutor. In these days of comprehensive and accessible government records this explanation seems strained but it was reasserted in R v Edwards [1975] QB27.*

11. Accordingly, it may very well be the case that cl.4(2) does not effectively reverse or otherwise alter the traditional rules of evidence in relation to onus of proof.

12. Finally, the onus in question is one which a defendant who holds the required authority should normally have little difficulty in satisfying, and the maximum penalty prescribed for the offence is relatively modest.

13. The committee notes that cl.4(2) requires a person charged with assuming, using or publishing the State arms or State badge in connection with a "relevant enterprise" to establish that they did so with lawful authority.

14. The provisions of cl.4(2) appear to be consistent with the common law position, and therefore do not create a reversal of onus of proof. Various other factors (mentioned above) also lessen its adverse impact on defendants.

15. In all the circumstances, the committee considers that this provision is probably not objectionable.

♦ **clause 5**

16. Clause 5 of the bill obliges executive officers of a corporation to ensure that the corporation complies with the provisions of the bill, and provides that if the corporation commits an offence against the provisions of the bill, each executive officer also commits an offence.

17. Clause 5 provides grounds upon which liability may be avoided. These are essentially that the executive officer took reasonable steps to ensure compliance and/or to prevent the offending act or omission, or that the executive officer was not in a position to influence the conduct of the corporation in relation to the offence.

18. Clause 5 effectively reverses the onus of proof, since under the law a person generally cannot be found guilty of an offence unless he or she has the necessary intent.

19. The Explanatory Notes, whilst pointing to the defences provided in cl.5, states:

> *It is also noted that the Bill alters the situation currently in operation under the Act by limiting liability to executive officers of corporations, rather than any person connected with an unincorporated club, body or association, and providing less stringent requirements in establishing a defence against liability.*

20. The committee notes that cl.5 of the bill effectively reverses the onus of proof.

21. The committee refers to Parliament the question of whether, in the circumstances, this reversal of onus is justified.

3. INDUSTRIAL RELATIONS (MINIMUM EMPLOYMENT AGE) AMENDMENT BILL 2004

Background

1. Dr B Flegg, Member for Moggill, introduced this bill into the Legislative Assembly on 24 November 2004 as a private member's bill.

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

> *to provide protection for Queensland children in the workforce.*

Does the legislation have sufficient regard to the rights and liberties of individuals?[10]

♦ **clause 3**

3. The bill introduces into the *Industrial Relations Act 1999* a new chapter 2, Part 7 (proposed ss.71A to 71G).

4. The new Part, which is titled "special employment conditions for children", imposes a range of restrictions in relation to the employment of children (that is, persons under the age of 18 years) in the workforce.

5. Proposed s.71D sets out a list of restrictions applicable to children under 15 years of age. They include prohibitions on:

- working during the child's normal school hours
- working at night, other than in family employment
- lifting things above certain weights
- working in mills, plants, factories, boiler rooms etc.
- door-to-door sales work
- potentially dangerous work
- exceeding stipulated total hours of work per day and per week
- employing a child when the employer does not hold a "current positive notice" ("a blue card") under the *Commission for Children and Young People and Child Guardian Act 2000*.

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

6. Proposed s.71E imposes further very severe restrictions on the employment of children under the age of 13 years, and proposed s.71F imposes minimum rest break and shift separation requirements for children under 15.

7. Proposed s.71G provides further prohibitions, with accompanying offences carrying very significant maximum penalties including imprisonment, on employing any child in work which "on reasonable grounds, is or is likely to be sexually exploitative, oriented or suggestive".

8. There are two potentially detrimental aspects of the employment of children. Firstly, their age renders them vulnerable to various forms of exploitation. Secondly, demands imposed on their time and energy by work may detract from their capacity to focus on completing their education. As the Member states, education should be the primary activity of children under the age of 15 years.

9. On the other hand, exposure to the workplace through part-time work is undoubtedly a beneficial learning activity for older children. A significant percentage of children, of course, will ultimately enter full-time employment before attaining adulthood. Appropriate part-time employment also provides a child with a source of income, however modest.

10. In principle the committee has no objection to legislative restrictions which are aimed at preventing the exploitation of children in the workforce and at minimising any interference by work activities with their education. However, subject to those overriding concerns, such legislation should permit children to take advantage of reasonable and appropriate opportunities to engage in employment, as this can obviously be to their benefit.

11. While there will always be room for disagreement as to the precise level of regulation which should be imposed in relation to child employment, the committee is satisfied from an examination of this bill that it addresses the subject in an appropriate manner.

12. The Member notes in his Speech that since the repeal in 1999 of the *Childrens Services Act 1965*, Queensland has not had any industrial legislation specifically aimed at the protection of the rights of children in the workplace. The Member further asserts that current Queensland legislation does not conform with the United Nations *Convention on the Rights of the Child (CROC).*[11]

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[11] *CROC* provides (see article 32) as follows:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;
(b) Provide for appropriate regulation of the hours and conditions of employment;
(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 34 of the *CROC* provides:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent;

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;
(b) The exploitative use of children in prostitution or other unlawful sexual practices;
(c) The exploitative use of children in pornographic performances and materials.

13. The committee notes that the bill imposes various restrictions in relation to the employment of children.

14. The committee does not consider any of the restrictions imposed by the bill to be *prima facie* unreasonable.

15. Whilst the appropriateness of the detailed provisions of the bill is a matter for Parliament to determine, the committee is generally supportive of its contents.

4. MINERAL RESOURCES AND OTHER LEGISLATION AMENDMENT BILL 2004

Background

1. The Honourable S Robertson MP, Minister for Natural Resources and Mines, introduced this bill into the Legislative Assembly on 23 November 2004.

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

   - *improve the operational efficiencies of various Acts by removing anomalies and inconsistencies, and making improvements that will contribute to increased mineral exploration and development and geothermal exploration in Queensland; and*
   - *give effect to the merger of the Queensland Coal and Oil Shale Mining Industry Superannuation Fund with the COALSUPER Retirement Income Fund in New South Wales to form AUSCOAL Superannuation Fund.*

Overview of bill

3. The bill makes a significant number of amendments to the *Mineral Resources Act 1989* and the *Geothermal Exploration Act 2004*. Insofar as the first of these Acts is concerned, the Minister in his Second Reading Speech indicates that the amendments are an interim measure to ensure the Act can continue to operate efficiently pending the completion of a recently announced comprehensive review of its provisions. The Minister describes the amendments as being "largely of an administrative nature".

4. It appears to the committee that most of the contents of the bill are either technical or administrative in nature, and do not call for comment.

5. However, the following matters are mentioned.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?[12]

♦ **clauses 44 and 48**

6. Clause 44 provides that various amendments made to the *Mineral Resources Act* apply to:

   - tenements whether granted before or after the bill's commencement
   - applications made but not decided before commencement
   - permits applied for but not granted before commencement

[12] 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.

- determinations made after commencement where the application was made before commencement.

- applications for grants of mining leases made before commencement, where the tribunal's recommendation is made after that date.

7. Clause 48 of the bill validates existing conservation agreements made or purportedly made under the *Nature Conservation Act 1992*, by the grantees of land under the *Aboriginal Land Act 1991*.

8. Both cls.44 and 48 may have retrospective effect, although for various reasons it is not completely clear that they do so.

9. 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.

10. 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.

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

12. In relation to cl.44, it may be that the most significant provision to which it relates is the new s.138 (inserted by cl.13), which brings forward the payments of rental during individual financial years. The Explanatory Notes (at page 3) argue that the adverse effect is likely to be minor.

13. As to cl.48, the validation of the relevant conservation agreements, on the basis of the information currently available to the committee, would not appear likely to have significant adverse affects. In any event, any such adverse effects might be counter-balanced by the advancement of the public interest achieved through the agreements.

14. The committee notes that cls.44 and 48 insert provisions which may have some retrospective effect.

15. Upon an examination of the subject matter of the relevant provisions, it is not clear to the committee that individuals would suffer any significant adverse effects as a result.

16. The committee makes no further comment in relation to cls.44 and 48.

Does the legislation have sufficient regard to the rights and liberties of individuals?[13]

- **clause 66 (proposed s.55B)**

17. Clause 66 amends the *Geothermal Exploration Act 2004*, which has not yet commenced, by inserting additional provisions in relation to security provided by geothermal exploration permit holders. Proposed s.55B deals with the situation where security has been given and is still in force, and there is a change in the identity of the permit holder. Section 55B(2) states as follows:

> *(2) Despite the change, the security, and any interest that accrues on it, continues for the benefit of the State and may be used under s.53.*

18. Securities may take a variety of forms. On the one hand they may comprise money, which is provided by the permit holder and held by the State. As is equally obvious, and recognised in proposed s.55A and the amendment to s.56 (inserted by cl.67), a security may also take the form of a bond, guarantee or indemnity by, or some other financial arrangement with, a financial institution, insurance company or credit provider. Such entities are referred to in these provisions of the bill as "external security providers".

19. It is apparent from proposed s.55B that an external security provider will remain liable to the State in relation to the security provided by it, even though the permit holder who originally requested it to provide the security, has transferred the permit holder's interest in the exploration permit to some other person.

20. For argument's sake, the transferee could be a person of less experience and/or financial standing than the original permit holder, with the subsequent likelihood of an increased risk to the external security provider.

21. It is not immediately apparent to the committee whether an external security provider has the capacity to object to a proposed transfer of a permit to a person or entity of whom it disapproves.

22. The committee notes that proposed s.55B (inserted by cl.66) provides that an "external security provider" remains liable to the State regardless of the fact that the permit holder at whose behest it originally provided the security has transferred the permit to another person.

23. The committee seeks information from the Minister as to whether an external security provider has any capacity to protect its interests in the face of a proposed transfer of a permit to a person or entity of whom it does not approve, either by objecting to the proposed transfer or by some other means.

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

5. PETROLEUM AND OTHER LEGISLATION AMENDMENT BILL (NO.2) 2004

Background

1. The Honourable S Robertson MP, Minister for Natural Resources and Mines, introduced this bill into the Legislative Assembly on 23 November 2004.

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

- *to amend the Petroleum Act 1923 to include the provisions for the make good obligations in relation to existing Water Act bores and for the holder of a petroleum tenure under the Petroleum Act 1923 to apply for a water monitoring authority.*
- *to amend the Petroleum Act 1923 and the Petroleum and Gas (Production and Safety) Act 2004 to correct irregularities and typographical errors.*
- *to amend the Coal Mining Safety and Health Act 1999 and the Mineral Resources Act 1989 to ensure consistency of nomenclature and the way safety is to be managed in relation to the coal seam gas regime.*

Overview of the bill

3. This bill is the latest in a series of bills reforming the legislation governing the petroleum and gas industries.

4. The first was the bill for the *Petroleum and Gas (Production and Safety) Act 2004*, which the committee reported on in Alert Digest No. 3 of 2004 at pages 16 to 26.

5. The second was the bill for the *Petroleum and Other Legislation Amendment Act 2004*, which the committee reported on in Alert Digest No. 6 of 2004 at pages 3 to 4. The purpose of that second bill, as was indicated in the committee's report, was to protect existing rights and obligations of entities and persons already operating under the then current legislation (the *Petroleum Act 1923* ("the *1923 Act*")), whilst so far as possible subjecting them to the new statutory regime incorporated in the *Petroleum and Gas (Production and Safety) Bill*.

6. The stated reason for retaining the *1923 Act* in relation to most current licensees was the consequences in terms of the "right to negotiate" provisions of the *Native Title Act 1993* (C'wlth) which might accrue if the *1923 Act* were repealed and those licensees were brought directly under the *Petroleum and Gas (Production and Safety) Bill 2004*.

7. The *Petroleum and Other Legislation Amendment Bill 2004* very extensively amended the *1923 Act*, and also made numerous amendments to the *Petroleum and Gas (Production and Safety) Bill*, which at that stage was still before the Parliament. The committee considered that these latter amendments may in large part have been due to feedback received by the Government after the earlier bill was introduced in May 2004.

8. The current bill continues the process apparent in the *Petroleum and Other Legislation Amendment Act 2004*, in that it further amends the *1923 Act* and further amends the *Petroleum and Gas (Production and Safety) Act 2004*, which has still not commenced.

9. The current bill, as was the *Petroleum and Other Legislation Amendment Bill 2004*, is reasonably voluminous (94 pages) and many of its provisions, particularly those amending the *1923 Act,* are highly technical in nature. Moreover, they amend provisions which have not yet taken effect.

10. Whilst the current bill contains several provisions which might potentially raise issues in terms of fundamental legislative principles, none appears in the circumstances to be of major significance.

11. The committee notes that this bill, like the *Petroleum and Other Legislation Amendment Act 2004*, amends the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923*. Neither of the first two Acts has yet commenced.

12. The current bill does not appear, in the overall context, to raise any significant additional issues.

13. Accordingly, the committee makes no further comment in relation to the current bill.

6. POLICE AND OTHER LEGISLATION AMENDMENT BILL 2004

Background

1. The Honourable J C Spence MP, Minister for Police and Corrective Services, introduced this bill into the Legislative Assembly on 23 November 2004.

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

> (to) *provide legislative amendments to the Weapons Act 1990 to ensure continued public and individual safety by continuing to impose strict controls on the possession of weapons, requiring the safe and secure storage and carriage of weapons.*
>
> *In addition, the Bill will provide necessary legislative amendments to the Police Powers and Responsibilities Act 2000, Police Service Administration Act 1990 and Security Providers Act 1993.*

Does the legislation have sufficient regard to the rights and liberties of individuals?[14]

♦ **clause 4**

3. This bill amends various provisions of the *Police Powers and Responsibilities Act 2000* ("the *PP & R Act*"), the *Police Service Administration Act 1990,* the *Security Providers Act 1993* and the *Weapons Act 1990*.

4. However, the amendment of most significance appears to be that contained in cl.4, which relates to s.148 of the *PP & R Act*. Under this section, covert search warrants can currently be obtained from a Supreme Court judge in cases involving organized crime or terrorism. The bill amends s.148 to also include situations involving "designated offences". Clause 21 of the bill amends the dictionary to the Act to add a definition of this term.

5. "Designated offences" include offences against:

- the *Criminal Code*, s.300 (unlawful homicide)
- the *Criminal Code*, s.306 (attempt to murder)
- the *Criminal Code*, s.309 (conspiring to murder)

6. The term also includes the following, more generally defined, group of offences, namely:

> *(b) another offence for which a person is liable, on conviction, to be sentenced to imprisonment for life if the circumstances of the offence involve—*
>
> *(i) a serious risk to, or actual loss of, a person's life; or*
>
> *(ii) a serious risk of, or actual, serious injury to a person.*

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

7. The bill's extension of s.148 is clearly significant, although all of the additional offences involve the actual or contemplated death of or serious injury to persons, or the creation of serious risk to life or of serious injury.

8. The Minister's Second Reading Speech and the Explanatory Notes both address these provisions in some detail. The Minister states:

> *Mr Speaker, the authority to extend covert searches for the investigation of these offences is extraordinary but necessary powers.*
>
> *Where this is an increased level of inquiry, people expect an increased level of safeguards to ensure police powers are not abused.*
>
> *The Public Interest Monitor will continue to perform an independent role, and will be able to overview applications to a Supreme Court Judge for such a search warrant.*
>
> *This overviewing function will continue to include the authority to ask the applicant police officer questions and make submissions to the judge with respect to the application.*
>
> *The use of these intrusive powers is considered justifiable, and is subject to appropriate safeguards presently contained within Chapter 4 of the PPRA.*
>
> *Consequently, it is suggested that an acceptable balance will exist between the power and safeguards provided.*

9. Until 2004, the power of police to seek covert search warrants under s.148 was limited to situations involving organized crime. In that year it was broadened to include situations involving terrorism.[15] In its report on the bill incorporating the 2004 amendments, the committee stated that it regarded those amendments (which related only to terrorism), to be both reasonable and necessary. However, the committee contrasted those amendments with other amendments made by the 2004 bill in relation to covert surveillance warrants, noting that those amendments were not limited to terrorism but extended to all serious indictable offences. The committee drew attention to the obvious impact of those amendments in terms of the rights and liberties of citizens.

10. Although the amendments made by the current bill relate only to covert search warrants, they parallel the 2004 amendments in that they extend relevant police powers beyond organised crime and terrorism (into the area of "designated offences", which are effectively homicide, and similar or related offences).

11. Accordingly, Parliament will again need to consider whether this extension creates a reasonable balance between the rights of individuals and the community interest in the appropriate investigation of crime.

12. The committee notes that cl.4 of the bill extends the power of police to obtain covert search warrants beyond situations involving organised crime and terrorism, so as to include "designated offences".

13. The provisions of cl.4 have an obvious impact upon the rights and liberties of individuals.

[15] See the *Terrorism (Community Safety) Amendment Act 2004*, reported on by the committee in Alert Digest No 2 of 2004 at pages 23 -28.

14. The committee refers to Parliament the question whether the provisions of cl.4 have sufficient regard to the rights of persons against whom they may be used, as well as to the interests of the community as a whole.

7. TRANSPORT INFRASTRUCTURE AMENDMENT BILL 2004

Background

1. The Honourable P T Lucas MP, Minister for Transport and Main Roads, introduced this bill into the Legislative Assembly on 23 November 2004. It was subsequently passed, without amendment, on 25 November 2004, and was assented to on 29 November 2004.

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

> *To amend provisions in the Transport Infrastructure Act 1994 (TIA) dealing with the investigation of railway incidents to adopt a scheme that facilitates the identification of the causes and contributing factors that led to those incidents.*
>
> *To encourage full and open co-operation on the part of witnesses, rail investigations and inquiries will focus on establishing the truth and will not be designed to apportion blame to any individual or to assist in any criminal or civil proceedings arising from the incident.*

3. On 24 November 2004 Parliament resolved to suspend Standing and Sessional Orders to the extent necessary to enable the bill to pass through all remaining stages on that day. It was in fact passed on the following day.

4. As a consequence of the urgent passage of the bill, the committee was unable to report to Parliament on it prior to its enactment.

5. The committee's statutory charter (s.103, *Parliament of Queensland Act 2001*) only confers jurisdiction to examine bills. Once a bill has been assented to and has become an Act the committee would normally have no jurisdiction to comment upon it.[16] However, s.84(2) of the *Parliament of Queensland Act* enables the committee to deal with any issues outside its stated area of responsibility, which the Parliament may refer to it.

6. On 25 November 2004, immediately following passage of the bill, Parliament resolved as follows:

> *That the Transport Infrastructure Amendment Bill be referred to the Scrutiny of Legislation Committee for it to consider the application of fundamental legislative principles to the bill and report to the House, despite that bill having been passed by this House or receiving royal assent.*

7. Accordingly, the committee makes the following comments on the bill.

[16] As mentioned above, the bill was assented to on 29 November 2004.

Does the legislation provide appropriate protection against self-incrimination?[17]

- **clauses 5 and 7**

8. As the Minister indicates in his Second Reading Speech, the introduction of this bill is directly related to a train derailment which occurred at Rosedale near Bundaberg on 16 November 2004. Immediately that accident was reported, an investigation by rail safety officers, pursuant to s.216 of the *Transport Infrastructure Act 1994*, commenced. In the words of the Minister, "it became apparent that it was necessary to modify existing legislation to allow the best possible investigation to be undertaken for the … incident". The committee notes that this bill was introduced 7 days after the derailment, and was passed 2 days later.

9. Prior to this bill the *Transport Infrastructure Act*, Part 6 (ss.214-239) essentially provided for the investigation of "railway incidents" in two stages, namely:

   - initial investigation by a rail safety officer, culminating in a report to the chief executive on the results of that investigation

   - an inquiry by a board of inquiry established by the Minister into a railway incident which the Minister considers to be a "serious incident". Having inquired into the circumstances and probable causes of the incident, the board of inquiry provides the Minister with a written report of its findings and recommendations. The chief executive may make available to the board of inquiry the services of a rail safety officer or officers.

10. In both situations, rail safety officers and the board of inquiry respectively already had power to require persons to answer questions and provide documents. The provisions relative to rail safety officers enabled a person to refuse to comply with such a requirement if the person had "a reasonable excuse" (s.217(9)). On the ordinary rules of statutory interpretation, this would have enabled a person to refuse to answer a question if the answer was likely to incriminate the person.

11. In relation to boards of inquiry, s.235 already provided that a person appearing as a witness at an inquiry was not excused from answering a question or producing a document on the ground that the answer or production might tend to incriminate them. It did, however, provide a general prohibition on use of the answer or the fact of production (or of any evidence derived therefrom) against the person in criminal proceedings.

12. The principal amendments made by the bill may be summarised as follows:

   - it broadens the range of persons whom a rail safety officer may require to answer questions or produce documents (effectively any person can now be subject to this requirement)

   - it expressly provides that self-incrimination is not a ground upon which a person can refuse to answer a question asked by, or to produce a document required by, a rail safety officer

[17] 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.

- it broadens the scope of the exclusion of the self-incrimination rule in the case of boards of inquiry by adding to it the possibility that answering the question or producing the document may "make the person liable to a penalty"

- it provides a detailed and comprehensive list of prohibitions upon the use of:

  (a) the help given by an individual to a rail safety officer;

  (b) an answer given by an individual to a rail safety officer;

  (c) a document produced by an individual to a rail safety officer and the fact of that production; and

  (d) the results of an alcohol, drug or medical test or examination

  in any civil or criminal proceedings. The prohibition extends to any information, document or thing obtained as a direct or indirect result of that evidence (this is described in the bill as "derived evidence").

13. The bill also provides a range of additional protections to offset the ouster and modification of the self-incrimination rule in relation to investigations by rail safety officers and boards of inquiry respectively. These include the following:

- the report by a rail safety officer to the chief executive is not admissible in evidence in any civil or criminal proceeding (except a coronial inquiry)

- reports of a board of inquiry are not admissible in any civil or criminal proceeding other than a coronial procedure

- the existing prohibitions on use of evidence given by a witness to a board of inquiry are broadened so as to approximate that conferred in relation to answers and documents given to rail safety officers

- the bill imposes prohibitions on the use by any person of "restricted information", subject to certain exceptions (including access by the coroner)

- the chief executive, rail safety officers and persons assisting a board of inquiry are not compellable to give evidence in a court (other than a coronial inquest) about matters associated with an investigation or inquiry.

14. The committee has reported on provisions excluding the rule against self-incrimination on a number of previous occasions.[18] The committee's general view is that denial of the protection afforded by the self-incrimination rule is only potentially justifiable if:

- the questions posed concern matters which are peculiarly within the knowledge of the persons to whom they are directed and which it would be difficult or impossible to establish by any alternative evidentiary means; and

- the bill prohibits the use of the information obtained in prosecutions against the person; and

[18] See, for example, the *Guardianship and Administration Bill 1999* (see Alert Digest No. 1 of 2000 at pages 7 and 8).

- in order to secure this restriction on the use of the information obtained, the person should not be required to fulfil any conditions (such as formally claiming the right).

15. As mentioned earlier, the essential purpose of this bill is to exclude the rule against self-incrimination in relation to inquiries by rail safety officers, and to extend the existing exemption in relation to boards of inquiry. As also mentioned, these exclusions and extended exclusions are balanced by a very comprehensive and detailed set of prohibitions on the use of information obtained through the exclusions, and the provision of a range of confidentiality obligations and complementary provisions designed to prevent the use of relevant evidence, reports and other matters in any court. The bill also provides an exemption from the freedom of information regime.

16. The Minister's Second Reading Speech and the Explanatory Notes, in arguing for the amendments made by the bill, both focus heavily on what they state is the overriding purpose of rail safety investigations, namely, to ascertain all possible information in relation to the incident and thereby to improve rail safety. They do not expressly argue that information in relation to rail safety incidents will include information of a type peculiarly within the knowledge of the persons to whom the questions will be directed. However, it is probably safe to assume that this will be a factor in relation to at least some relevant information.

17. The appropriateness or otherwise of the bill's provisions, in the context of rail safety investigations, was a matter ultimately for Parliament to determine. The committee notes that the bill was passed without amendment.

18. The committee notes that cls.5 and 7 of the bill insert provisions which exclude the operation of the self-incrimination rule or broaden the scope of existing exclusions. The committee further notes that the bill provides a detailed and comprehensive list of prohibitions upon the use which may be made of information obtained in consequence of these amendments, and imposes strict confidentiality obligations.

19. The appropriateness or otherwise of these provisions was ultimately a matter for Parliament to determine. The committee notes that Parliament passed the bill without amendment.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?[19]

♦ **clauses 9 and 14**

20. Clause 9 of the bill inserts in the *Transport Infrastructure Act* transitional s.531. This declares that where a relevant railway employee made a statement prior to commencement of the bill's provisions that statement will be inadmissible against the employee in any civil or criminal proceeding, subject to qualifications similar to those applicable under the bill's general provisions. The section only applies in relation to statements about the 16 November 2004 derailment.

[19] 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.

21. Section 531 may therefore have retrospective effect.

22. 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.

23. 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.

24. However, any retrospective effect s.531 may have would appear to be beneficial, rather than adverse, to the employees who have provided relevant statements.

25. The committee notes that cl.9 of the bill inserts a retrospective provision.

26. The committee notes, however, that the provision appears to be beneficial, rather than adverse, to the individuals to whom it relates.

27. The committee accordingly has no concerns in relation to this retrospective provision.

♦ **clause 14**

28. Clause 15 of the bill amends the *Freedom of Information Act 1992* to make the freedom of information regime subject to the confidentiality provisions inserted in the *Transport Infrastructure Act* by cl.8 of the bill.

29. Clause 14 of the bill inserts transitional s.112, which declares any documents in relation to the relevant derailment which are obtained, received or brought into existence by rail safety officer in relation to that derailment before the commencement of the bill's provisions to be exempt from the freedom of information regime. Section 112 goes on to declare that such material shall be deemed to be and to have always been entirely exempt.

30. The section applies even where an application for access to a relevant document under the freedom of information scheme, or for review of a decision made in relation to such access, is underway, thereby effectively terminating such applications.

31. This provision is again arguably retrospective.

32. As mentioned earlier, the committee is always concerned to carefully examine the content and effect of any retrospective provision.

33. The most obvious potential applicants for access to the materials covered by cl.14 might be the media, or persons who were injured in the derailment. The extent and significance of the denial of access produced by cl.14 is difficult for the committee to judge on the information

presently available to it, but it could be said to at least have the potential to adversely affect some individuals.

34. The committee notes that cl.14 inserts into the *Freedom of Information Act* a transitional section which appears to be retrospective in nature. The effect of that provision is to deny persons access to any existing statements obtained by rail safety officers in relation to the November 2004 derailment.

35. Clause 14 appears to the committee to at least have the potential to adversely affect some individuals, although the extent and significance of its impact in the current situation is difficult to assess.

36. The committee makes no further comment in relation this retrospective provision.

8. VOCATIONAL EDUCATION, TRAINING AND EMPLOYMENT AMENDMENT BILL 2004

Background

1. The Honourable T A Barton MP, Minister for Employment, Training and Industrial Relations, introduced this bill into the Legislative Assembly on 23 November 2004.

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

- *improve the effectiveness of the performance of the advisory and executive functions of the Training and Employment Board (the Board) and the Training and Employment Recognition Council (the Council);*
- *improve the effectiveness of governance arrangements for TAFE institutes; and*
- *ensure that there is a clear legislative authority for certain fees.*

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

PART I - BILLS

SECTION B – COMMITTEE RESPONSE TO MINISTERIAL CORRESPONDENCE

9. COMMISSION FOR CHILDREN AND YOUNG PEOPLE AND CHILD GUARDIAN AMENDMENT BILL 2004

Background

1. The Honourable P D Beattie MP, Premier and Minister for Trade, introduced this bill into the Legislative Assembly on 9 November 2004. The committee notes that this bill was passed, with amendments, on 23 November 2004.

2. The committee commented on this bill in its Alert Digest No 9 of 2004 at pages 6 to 9. The Premier's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

Does the legislation have sufficient regard to the rights and liberties of individuals?[20]

♦ **The bill generally**

3. The committee noted that this bill expands the categories of persons required to hold a "blue card" in order to undertake employment, or operate businesses, in child-related areas. The bill also introduces various provisions relating to the operation of the "blue card" system.

4. The committee referred to Parliament the question of whether these provisions had sufficient regard to the rights of employees and business operators in child-related areas, and on the other hand to the rights of children and the community in general.

5. The Premier commented as follows:

> *I note the Scrutiny of Legislation Committee has raised several issues about the provisions in the Bill which will extend and improve the Working with Children Check (blue card scheme) to strengthen the safeguards for protecting Queensland children from abuse, neglect and exploitation. A number of the issues raised by the Committee highlight the impact of the amendments on the rights of individuals in certain categories of child-related employment. In the development of these amendments, careful consideration was given to the competing interests of employers/employees and business operators in child-related areas and the need to protect children from the risk of sexual abuse and harm. Ultimately, the safety of Queensland children is the paramount consideration and these amendments demonstrate the Government's commitment to a rigorous screening process in the area of child-related employment.*
>
> *My responses to the specific issues raised in your correspondence are detailed below.*

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

The Committee has raised a general issue about expanding the categories of people required to hold a blue card to include home stay providers, school crossing supervisors, cadet supervisors, providers of recreational activities and religious representatives employed before I May 2001. The rationale for the expansion of categories of employment was based on the nature of the contact with the child; whether children are the primary or significant client group; and whether there are other comparable employment screening processes in place.

The Committee also questions whether these provisions have sufficient regard to the rights of employees and operators in child related employment, and on the other hand to the rights of children and the community generally. As discussed above, careful consideration was given to these issues during the development of the Bill. However, in the end the Government has a commitment to a safe and nurturing environment for children and the enhanced blue card scheme is one critical component of this policy objective.

6. The committee notes the Premier's comments.

♦ **clauses 23-25 inclusive**

7. The committee noted that cls.23-25 inclusive of the bill replace the current differential maximum penalties set in ss.108, 109 and 111 of the Act with a single maximum penalty equal to the highest of these currently stipulated. The committee drew to the attention of Parliament these changes to the relevant maximum penalties.

8. The Premier commented as follows:

The Committee notes that clauses 23-25 of the Bill replace the current differential maximum penalties with a single maximum penalty equal to the highest of these currently stipulated. The rationale for replacing the current differential penalties was two fold. First, there was a need to simplify the penalty regime throughout the Act. As you note also, the determination of an appropriate penalty in individual cases will be left to the discretion of the court. Second and more importantly, working in regulated employment or carrying on a regulated business without possession of a current positive notice is a very serious matter and is subject to a significant penalty of 500 penalty units or 5 years imprisonment. The severity of this penalty reflects the Government's commitment to child protection and community expectations.

9. The committee thanks the Premier for this information.

♦ **clauses 32 (proposed s.119A(3) and (6)) and cl.33**

10. The committee noted that cl.32 provides that where a person has been convicted of an "excluding offence" and the court order includes imprisonment or a disqualification order, the commissioner must cancel the person's positive notice. Clause 32 goes on to provide that there is no appeal against this decision of the commissioner, and imposes a lifetime ban upon the person applying for cancellation of the negative notice.

11. The committee further noted that cl.33 redefines review and appeal rights conferred by the bill in relation to decisions of the commissioner to issue a negative notice or refuse to cancel

a negative notice, consequent upon the amendment of other provisions of the bill which dictate how the commissioner shall generally act in a range of stipulated circumstances.

12. The committee referred to Parliament the question of whether the provisions of cls.32 and 33 had sufficient regard to the rights of the relevant "blue card" holders.

13. The Premier commented as follows:

> *The Committee has raised concerns with the provisions of clauses 32 and 33 of the Bill which removes the Children's Commissioner's discretion about issuing a negative notice where a person is convicted of an excluding offence and a period of imprisonment or a lifetime disqualification from holding or applying for a blue card is ordered by the sentencing court. There will be no right of appeal in relation to the cancellation of, or prohibition from holding, a blue card in these circumstances. An excluding offence is a serious child related sexual offence (including abuse of intellectually impaired persons, incest and rape) or an offence of child pornography. There are strong and justifiable community expectations that people convicted of these serious offences should be prevented from ever working in child related employment given the high risk of re-offending. The courts following the conviction of the person for such an offence will determine that the circumstances warrant a period of imprisonment or the imposition of a lifetime disqualification order in relation to applying for a blue card. It should be noted that these provisions only relate to child related employment and do not prevent a person from working in other areas of employment throughout the community.*

14. The committee notes the Premier's comments.

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

- **clause 46**

15. The committee noted that cl.46 inserts a provision which effectively reverses the onus of proof in respect of the liability of executive officers of a corporation. The committee referred to Parliament the question of whether, in the circumstances, this reversal of onus was justified.

16. The Premier commented as follows:

> *The Committee's final issue relates to clause 46 which inserts a new section 151A and obliges executive officers of a corporation to ensure that the corporation complies with the provisions of the Bill, and provides that if the corporation commits an offence against the provisions of the Bill, each executive officer also commits an offence. The Committee is particularly concerned that this provision effectively reverses the onus of proof, since under the law a person generally cannot be found guilty of an offence unless he or she has the necessary intent. As noted, liability can be avoided on the basis that the executive officer took reasonable steps to ensure compliance or that the executive officer was not in a position to influence the conduct of the corporation in relation to the offence. In addition to these defenses, the Bill also introduces a positive obligation on employers and persons running*

[21] Section 4(3)(d) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.

regulated businesses to implement appropriate risk management strategies to ensure child-safe work environments. The Commission for Children and Young People and Child Guardian will develop guidelines to assist employers in developing and implementing such risk management strategies. This together with a communication strategy regarding the amendments to the blue card scheme will ensure employers and employees are clearly aware of their responsibilities under this Bill to ensure child safe work environments.

I trust these comments are of assistance in clarifying the Government's position in respect to the Bill and the issues raised by the Scrutiny of Legislation Committee.

17. The committee notes the Premier's comments.

10. ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2004

Background

1. The Honourable D Boyle MP, Minister for Environment, Local Government, Planning and Women, introduced this bill into the Legislative Assembly on 19 October 2004. The committee notes that this bill was passed, with amendments, on 11 November 2004.

2. The committee commented on this bill in its Alert Digest No 8 of 2004 at pages 9 and 10. The Minister's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

Does the legislation make individual rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?[22]

- **clauses 32, 40 and 41**

3. The committee noted that cls.32, 40 and 41 of the bill included a number of provisions about administrative decisions, in relation to which external merits-based review was not available. The Explanatory Notes dealt with these matters in some detail.

4. In the circumstances, the committee considered these provisions of the bill were probably not objectionable.

5. The Minister commented as follows:

> *I note that the Committee considered clauses 32, 40 and 41 of the Bill include a number of provisions about administrative decisions, in relation to which external merits based review is not available. I note that the Committee considered that the explanatory notes dealt with these matters in some detail and that the provisions were not objectionable.*

6. The committee notes the Minister's comments.

Does the legislation have sufficient regard to the rights and liberties of individuals?[23]

- **clause 176 (proposed s.100F)**

7. The committee noted that proposed s.100F of the bill (inserted by cl.176) provided that a regulation may terminate a captive breeding agreement.

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22 Section 4(3)(a) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights or liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

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

8. The committee sought information from the Minister as to the likely grounds upon which an agreement would be terminated via the making of such a regulation.

9. The Minister provided the following information:

> *I also note that the Committee sought information as to the likely grounds upon which an agreement would be terminated via the making of a regulation under the proposed section 100F of the Bill (inserted by clause 176). I wish to advise that the likely grounds upon which such a regulation would be made relate to where extraordinary circumstances arise.*
>
> *In such circumstances, the captive breeding agreement would no longer facilitate the conservation of native wildlife in the wild through captive breeding programs and the introduction of captive-bred wildlife into the wild. For example, where the party to the agreement with the State refuses to adopt new and critical science with respect to ensuring the survivability of the species in captivity, and subsequently in the wild, due to disease or other disorder.*
>
> *Termination of the agreement by regulation may be required where consultation with the party has failed to effect the necessary change and endangered wildlife is at threat as a result.*

10. The committee notes the Minister's response. However, the committee is not entirely clear as to the nature of the matters which would be covered in the example given by the Minister.

11. The committee seeks further information in this regard.

11. LOCAL GOVERNMENT (COMMUNITY GOVERNMENT AREAS) BILL 2004

Background

1. The Honourable D Boyle MP, Minister for Environment, Local Government, Planning and Women, introduced this bill into the Legislative Assembly on 28 September 2004. The committee notes that this bill was passed, with amendments, on 20 October 2004.

2. The committee commented on this bill in its Alert Digest No 7 of 2004 at pages 14 to 17. The Minister's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

Does the legislation have sufficient regard to Aboriginal tradition and Island custom?[24]

♦ **The bill generally**

3. The committee noted that the overall intention of this bill was to "mainstream" the 15 Aboriginal Councils established under the *Community Services (Aborigines) Act 1994*, by generally bringing them under the provisions of the *Local Government Act 1993* (which applies to all Queensland local governments).

4. However, as the Minister stated in her Second Reading Speech, they will not be subject to certain provisions of the latter Act, in recognition of the unique needs and circumstances of Aboriginal communities. The committee noted several features of the bill which appeared responsive to these special needs and circumstances. The presence of these provisions suggested that the bill had been drafted with Aboriginal tradition in mind.

5. The committee considered that this bill had sufficient regard to Aboriginal tradition.

6. The Minister commented as follows:

> *I am pleased to note that your Committee considers that "the Bill has sufficient regard to Aboriginal tradition.*

7. The committee notes the Minister's comments.

[24] Section 4(3)(j) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation has sufficient regard to Aboriginal tradition and Island custom.

Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?[25]

- **clause 53**

8. The committee noted that a range of important matters concerning the membership of community governments and elections for community governments are to be provided for by regulations made under cl.53 of the bill, rather than being included in the bill itself. The Explanatory Notes set out arguments in favour of this approach.

9. The committee referred to Parliament the question of whether the provision that these matters are to be dealt with by regulations, rather than being included in the bill itself, was appropriate in the circumstances.

10. The Minister commented as follows:

> *The regulation-making power in regard to electoral arrangements and membership of community governments is intended to provide sufficient flexibility to address the unique circumstances they face. More specifically, the rationale is:*
>
> - *to retain some of the current differences from the Local Government Act 1993 (LGA) model (such as different qualification provisions and the option of election of mayors by councillors); and*
> - *to retain the current flexibility to modify the mode of election for community governments, such as introducing election by Indigenous social groupings.*
>
> *The greater flexibility possible through regulation is considered necessary to accommodate the considerable variations in needs and circumstances of Aboriginal communities. This was foreshadowed in a publication issued to assist in community consultations, Summary of New Laws for Aboriginal Community Governance: Local Government (Community Government Areas) Bill 2004. In this publication it was stated (p.7).*
>
> > *In addition to keeping these differences, another reason to have the rules about elections set out in the regulation rather than coming under the Local Government Act rules is to retain flexibility. In the Government's consultations on the Green Paper in 2003, most people said that there needs to be flexibility because there are differences between communities that may need to be taken into account. In other words there is no "one size fits all" for Aboriginal communities.*
>
> *As stated in the Explanatory Notes, it is intended that the regulations for community government elections will closely follow the LGA provisions. Where these regulations are deemed to be about "reviewable community government matters" (as defined by clause 14), they will only be made after independent advice has been provided by a Local Government Electoral and Boundaries Review Commission. This requirement for independent review is intended to prevent any possibility of abuse of the regulation-making power.*

11. The committee notes the Minister's comments.

[25] Section 4(4)(a) of the *Legislative Standards Act 1992* provides that whether a bill has sufficient regard to the institution of Parliament depends on whether, for example, the bill allows the delegation of legislative power only in appropriate cases and to appropriate persons.

♦ **clause 84**

12. The committee noted that proposed s.84 confers broad transitional regulation-making powers. However, the committee also noted that cl.84 did not incorporate some objectionable provisions sometimes found in provisions of this type, and further noted the express "sunsetting" provisions included in it.

13. The committee referred to Parliament the question of whether the provisions of cl.84 were appropriate in the circumstances.

14. The Minister commented as follows:

> *The power to make transitional regulations is intended solely for the purpose of dealing with any unforeseen issues that may arise. A similar transitional power was included in the LGA.*
>
> *Every effort has been made to identify all the matters that need to be addressed in the process of constituting Aboriginal councils as local governments under the LGA, however there remains the possibility, however slight, that further unanticipated issues might arise. Clause 84 provides a way of dealing with such issues without infringing on the provisions of the Act itself. The transitional regulation-making power may come into effect only when the Act does not make provision or sufficient provision.*
>
> *The power to make a transitional regulation, conferred by clause 84, is in various respects limited. The scope of the power is sufficient but it is not unduly broad, for it is confined to "the doing of anything to achieve the transition, under this Act, of an Aboriginal council to the status of a local government." There is a further limit in the fact that the one-year sunset provision applies not only to the power but also to any transitional regulation made by exercising the power. It is also expressly stated that a transitional regulation must declare it is (only) a transitional regulation.*

15. The committee notes the Minister's comments.

Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively?[26]

♦ **clause 85**

16. The committee noted that cl.85 inserted into the *Community Services (Aborigines) Act* a provision validating the declaration of all current Aboriginal council areas. It appears that the major practical effect of this will be to validate any prosecutions which depended upon the validity of the declaration of the Mapoon Aboriginal Council area.

17. The committee referred to Parliament the question of whether this retrospective validation was appropriate in the circumstances.

[26] 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.

18. The Minister commented as follows:

> *This question relates to clause 85 of the Bill, which provides for the validation of the declaration of council areas under the Community Services (Aborigines) Regulation 1998.*
>
> *The retrospective validation of the Aboriginal council areas is necessary to address uncertainty that arose during the drafting process about the declaration of these areas. The policy intent of the provision is to ensure that the establishment and continued existence of current areas is beyond doubt.*
>
> *Clause 85 is considered necessary, in particular, to meet the public expectation that Aboriginal council areas and any actions taken in reliance on the Aboriginal council areas are securely based. This includes ensuring the validation of any prosecutions, under an Act, that hinged on the validity of the declaration of an Aboriginal council area. Any such prosecutions would have been made with the presumption that the charge was soundly based and that the verdict would not be subject to challenge merely on technical grounds.*
>
> *It is not considered that clause 85 would adversely affect rights or liberties, or impose obligations, retrospectively.*

19. The committee notes the Minister's comments.

12. TOBACCO AND OTHER SMOKING PRODUCTS AMENDMENT BILL 2004

Background

1. The Honourable G R Nuttall MP, Minister for Health, introduced this bill into the Legislative Assembly on 20 October 2004. The committee notes that this bill was passed, with amendments, on 11 November 2004.

2. The committee commented on this bill in its Alert Digest No 8 of 2004 at pages 17 to 19. The Minister's response to those comments is referred to in part below and reproduced in full in Appendix A to this Digest.

Does the legislation have sufficient regard to the rights and liberties of individuals?[27]

- **clauses 34-40 inclusive**

3. The committee noted that the bill strengthened existing provisions, and introduced new provisions, prohibiting persons from smoking in a range of public and semi-public areas. The stated motivation for these provisions was a desire by Government to further reduce exposure by non-smokers to environmental tobacco smoke. The committee referred to Parliament the question of whether the provisions of the bill had sufficient regard to the rights of smokers, of persons conducting relevant businesses, and of the community in general.

- **clauses 4-7, 11, 13-18, 26-31, 36 and 39**

4. The committee noted that the bill significantly increased the maximum penalty levels associated with a large number of offences under the *Tobacco and Other Smoking Products Act 1998.* In most cases, the penalties had been doubled. The committee drew to the attention of Parliament these increases in maximum penalties.

5. The Minister commented as follows:

> *The Explanatory Notes accompanying the Bill provided a thorough analysis of possible fundamental legislative principle issues in the Bill. As noted by the Committee, the increase in existing penalties is required to provide sufficient deterrence against smoking-related practices and behaviours dealt with by the Act.*

6. The committee notes the Minister's comments.

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

Does the bill authorise the amendment of an Act only by another Act (by a "Henry VIII clause")?[28]

- **clause 35**

7. The committee noted that cl.35 of the bill inserted a provision which enables regulations to require progressive conversion of licensed premises to non-smoking areas during the period leading up to 1 July 2006, on which date the bill requires that conversion to be completed.

8. As is well known, the committee does not generally approve of the inclusion of "Henry VIII clauses" in legislation. The committee noted that the Explanatory Notes argue in favour of the provision on the basis that the details of the phasing-in process have not yet been determined.

9. The committee referred to Parliament the question of whether, in the circumstances, the inclusion of proposed s.26RA was appropriate.

10. The Minister commented as follows:

> *I note that the Committee did not raise any major concerns with the Bill and referred specific questions to Parliament for its consideration. As you know, the Bill was passed on 11 November 2004.*

11. The committee notes the Minister's comments.

[28] 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.

PART I - BILLS

SECTION C – AMENDMENTS TO BILLS[29]

BIODISCOVERY BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 3 of 2004 at pages 1 to 9. During the committee stage of debate, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable A McGrady MP, Minister for State Development and Innovation. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 19 August 2004.

2. The amendments proposed by the Minister raised no issues within the committee's terms of reference.

CHILD PROTECTION (OFFENDER REPORTING) BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 9 of 2004 at pages 1 to 5. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable J C Spence MP, Minister for Police and Corrective Services. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 24 November 2004.

2. The amendments proposed by the Minister raised no issues within the committee's terms of reference.

CHILD SAFETY LEGISLATION AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 3 of 2004 at page 10. During the committee stage of debate, Parliament agreed to amendments proposed by the Minister, the Honourable M F Reynolds MP, Minister for Child Safety. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 16 June 2004.

2. The amendments, quite unusually, related not to any child safety legislation but to the *Legal Profession Act 2004*. The principal purpose of the amendments was to clarify the meaning of provisions of s.161 of the *Legal Profession Act* which limited fidelity cover by excluding liability where the money was entrusted to the legal practice for the purpose of investment.

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[29] On 13 May 2004, 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.* (This resolution is identical to that passed by the previous Parliament on 7 November 2001.)

In accordance with established practice, the committee reports 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.*

The bill clarifies that where money is entrusted to a legal practice for investment, cover is only provided if the money was entrusted or held by the practice primarily in the ordinary course of legal practice and where any investment is intended to made only through the ancillary purpose of maintaining or enhancing the value of the money or property pending completion of the matter. The provision is made retrospective to 1 July 2004, that being the date on which the *Legal Profession Act* commenced.

3. The committee agrees that the wording of previous s.161(2) was confusing, although in the circumstances it is difficult to conclude that the ultimate policy intent could have been any different from that achieved by the Minister's amendment.

4. In the circumstances, the committee has no concerns in relation to this amendment, which may be retrospective in nature.

CHILD SAFETY LEGISLATION AMENDMENT BILL (NO.2) 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 7 of 2004 at pages 1 to 4. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable M F Reynolds MP, Minister for Child Safety. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 20 October 2004.

2. The amendments proposed by the Minister addressed a drafting issue identified by the committee in its report.

COMMISSION FOR CHILDREN AND YOUNG PEOPLE AND CHILD GUARDIAN AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 9 of 2004 at pages 6 to 9. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable P D Beattie MP, Premier and Minister for Trade. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 23 November 2004.

2. The amendments proposed by the Premier appeared to raise no issues within the committee's terms of reference.

EDUCATION LEGISLATION AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 8 of 2004 at pages 3 and 4. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable A M Bligh MP, Minister for Education and the Arts. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 9 November 2004.

2. The amendments proposed by the Minister raised no issues within the committee's terms of reference.

ENVIRONMENTAL PROTECTION AND OTHER LEGISLATION AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 8 of 2004 at pages 9 and 10. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable D Boyle MP, Minister for Minister for Environment, Local Government, Planning and Women. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 11 November 2004.

2. The amendments proposed by the Minister raised no issues within the committee's terms of reference.

GAMBLING LEGISLATION AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 3 of 2004 at pages 14 and 15. During the committee stage of debate, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable T M Mackenroth MP, Deputy Premier, Treasurer and Minister for Sport. The bill was subsequently passed, with the amendments proposed by the Treasurer incorporated in it, on 31 August 2004.

2. The amendments proposed by the Treasurer raised no issues within the committee's terms of reference.

JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 7 of 2004 at pages 9 to 12. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable R J Welford MP, Attorney-General and Minister for Justice. The bill was subsequently passed, with the amendments proposed by the Attorney incorporated in it, on 9 November 2004.

2. One of the amendments incorporated in the bill amended s.19 of the *Criminal Proceeds Confiscation Act 2002* by broadening the definition of "property" under the Act to include "property of someone else that is under the effective control of the (person against whom the act is to be utilised)". The Act enables property suspected of being the proceeds of crime, or acquired via the proceeds of crime, to be restrained. The words added by the amendment are designed, according to the Explanatory Notes, to overcome the situation where criminals place crime derived assets in the names of others, usually family, associates or business structures to create an air of legitimacy and reduce the strict legal connection between the person engaging in illegal activity and the asset. However, it is possible to envisage situations in which the owner of the property which is under the effective control of the criminal or suspected criminal may be unaware of that person's criminality. It is not immediately clear to the committee how that situation would be dealt with under the Act. If the committee had had the opportunity, it would have sought further information from the Attorney on this point.

LEGAL PROFESSION BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 2 of 2004 at pages 10 to 15. During the committee stage of debate, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable R J Welford MP, Attorney-General and Minister for Justice. The bill was subsequently passed, with the amendments proposed by the Attorney incorporated in it, on 18 May 2004.

2. The amendments proposed by the Attorney, although voluminous, raised no issues within the committee's terms of reference.

LOCAL GOVERNMENT (COMMUNITY GOVERNMENT AREAS) BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 7 of 2004 at pages 14 to 17. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable D Boyle MP, Minister for Environment, Local Government, Planning and Women. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 20 October 2004.

2. The amendments proposed by the Minister raised no issues within the committee's terms of reference.

MARINE PARKS BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 5 of 2004 at pages 7 to 14. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable R J Mickel MP, Minister for Environment. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 7 October 2004.

2. The amendments proposed by the Minister raised no issues within the committee's terms of reference.

NATURAL RESOURCES LEGISLATION AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 5 of 2004 at pages 15 to 17. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable S Robertson MP, Minister for Natural Resources and Mines. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 19 October 2004.

2. The amendments introduced by the Minister provided transitional provisions related to the fact that the bill imposes additional restrictions on tree clearing. As the process involved is relatively complex (applications followed by decisions on applications followed by potential appeals and potential amendments during appeal in the Planning and Environment Court), the transitional provisions are also necessarily complex. In this situation it is always a moot point as to whether the transitional provisions are in any sense retrospective. It is not entirely clear in the present case whether that can meaningfully be said to be so.

3. The committee makes no further comment in relation to these amendments.

NATURAL RESOURCES AND OTHER LEGISLATION AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 1 of 2004 at pages 10 to 11. During the committee stage of debate, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable S Robertson, Minister for Natural Resources and Mines. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 29 April 2004.

2. The amendments proposed by the Minister appear to raise several issues within the committee's terms of reference.

3. Firstly, an amendment in relation to the *Irvinebank State Treatment Works Repeal Act 2003* retrospectively deprives the former proposed purchaser, Mr Frank Hilla, of a statutory entitlement to be issued with a Permit to occupy the Queensland National Bank building at Irvinebank. This entitlement was one of a number of points in the statutory resolution of a dispute between Mr Hilla and the State, over the occupancy and use of various State buildings and works at Irvinebank. However, the Explanatory Notes tabled with the amendments state that Mr Hilla had subsequently rejected the offered Permit, in which case it may be unfair to categorise the amendment as being adverse to him.

4. Secondly, other amendments retrospectively validate mineral development licences and mining leases previously granted, and previous applications for them, where they inadvertently included land which was apparently intended to be excluded because it was subject to native title. Native title issues are ultimately subject to Commonwealth legislation. The Explanatory Notes describe the amendments as being technical in nature.

5. Finally, amendments in relation to land valuation legislation appear to retrospectively apply provisions authorising a delay in the conduct of new valuations, and declare that the last preceding valuation will continue to have effect. As the Explanatory Notes state, this will probably be beneficial rather than adverse to landowners, given recent general increases in land values.

6. Overall these amendments may well be unobjectionable but the committee, if given the opportunity to comment on them matters prior to enactment, may have referred at least some of them to Parliament for its consideration.

PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 5 of 2004 at pages 20 to 24. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable S Robertson MP, Minister for Natural Resources and Mines. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 19 October 2004.

2. The amendments proposed by the Minister raised no issues within the committee's terms of reference.

PRIMARY INDUSTRY BODIES REFORM AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 7 of 2004 at page 22. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable H Palaszczuk MP, Minister for Primary Industries and Fisheries. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 21 October 2004.

2. The amendments proposed by the Minister raised no issues within the committee's terms of reference.

PROFESSIONAL STANDARDS BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 3 of 2004 at pages 27 to 28. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable R J Welford MP, Attorney-General and Minister for Justice. The bill was subsequently passed, with the amendments proposed by the Attorney incorporated in it, on 2 September 2004.

2. The amendments proposed by the Attorney raised no issues within the committee's terms of reference.

REVENUE LEGISLATION AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 3 of 2004 at pages 29 and 30. During the committee stage of debate, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable T M Mackenroth MP, Deputy Premier, Treasurer and Minister for Sport. The bill was subsequently passed, with the amendments proposed by the Treasurer incorporated in it, on 19 August 2004.

2. The amendments proposed by the Treasurer raised no issues within the committee's terms of reference.

TOBACCO AND OTHER SMOKING PRODUCTS AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 8 of 2004 at pages 17 to 19. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable G R Nuttall MP, Minister for Health, and to an Opposition amendment proposed by Mr S W Copeland, Member for Cunningham. The bill was subsequently passed, with the amendments proposed by the Minister and Mr Copeland incorporated in it, on 11 November 2004.

2. The amendments proposed by the Minister raised no issues within the committee's terms of reference.

3. The amendment proposed by Mr Copeland created an offence of producing, selling or publicly displaying a cannabis utensil. In theory, this impacts on the rights and liberties of individuals. However, as the possession, supply and production of cannabis itself are already prohibited under the *Drugs Misuse Act 1986*, the extent of any additional impact arising from Mr Copeland's amendment is probably not significant. Moreover, as the Minister

argued when Mr Copeland moved his amendment, the matters dealt with in that amendment may already in large part be covered by the provisions of the *Drugs Misuse Act*.

4. The committee makes no further comment in relation to Mr Copeland's amendment.

TRANSPORT AND OTHER LEGISLATION AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 2 of 2004 at pages 29 and 30. During the committee stage of debate, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable P T Lucas MP, Minister for Transport and Main Roads. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 13 May 2004.

2. The amendments proposed by the Minister, which were quite lengthy, raised a number of issues within the committee's terms of reference.

3. One amendment removed a provision declaring gazette notices fixing marine speed limits to be subordinate legislation, and thereby the requirement to table these instruments in Parliament. The amendment validated any past gazette notices which had not been tabled.

4. The amendments introduced a series of very specific requirements in relation to the authorising of persons to drive passenger transport vehicles, which were aimed particularly at ensuring the protection of child passengers. Lengthy lists of offences in three categories were specified, with different prescribed consequences for authorised drivers and authorisation applicants convicted of any such offences. Persons convicted of "Category A" driver disqualifying offences would be absolutely barred from holding driver authorisation.

5. In relation to these driver-related provisions the amendments provided that the new rules applied to offences and convictions occurring before, as well as after, commencement of the amendments. Most notable, a currently authorised driver who committed a Category A offence prior to commencement of the amendments would still have his or her authorisation cancelled immediately upon such commencement, and any entitlement to renewal would be extinguished.

6. Finally, the amendments authorised the making of transitional regulatory amendments in relation to the new system, even if those were adverse to individuals.

7. The Explanatory Notes attributed the introduction of the various amendments to the urgency associated with a recent Magistrates Court decision (in the case of the driver – related amendments) and a need to immediately validate Queensland's marine speed limits.

TRANSPORT AND OTHER LEGISLATION AMENDMENT BILL (NO.2) 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 7 of 2004 at pages 41 and 42. During consideration in detail, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable P T Lucas MP, Minister for Transport and Main Roads. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 21 October 2004.

2. The principal purpose of the amendments was to amend the *Tow Truck Act 1973* in various respects. The amendments provided that in considering whether a person is an appropriate

person to hold or continue to hold a tow truck-related licence, the chief executive must have regard to a range of matters. Whilst these included convictions of the person for offences against a number of specified statutes, it also included charges in relation to breaches of a range of statutes. The amendments also inserted a provision empowering the chief executive to immediately suspend the holder of a tow truck-related licence in stipulated circumstances, without seeking or considering submissions from the relevant licensee. However, a proposed section inserted by the amendments provided the suspended licensee with power to immediately apply to a magistrate's court for a stay of the suspension.

VEGETATION MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 1 of 2004 at pages 18 to 21. During the committee stage of debate, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable S Robertson MP, Minister for Natural Resources and Mines. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 22 April 2004.

2. The amendments proposed by the Minister raised no issues within the committee's terms of reference.

WORKERS' COMPENSATION AND REHABILITATION AND OTHER ACTS AMENDMENT BILL 2004

1. The committee reported on this bill, as originally introduced, in its Alert Digest No 8 of 2004 at pages 20 to 22. During the committee stage of debate, Parliament agreed to amendments proposed by the Minister sponsoring the bill, the Honourable T A Barton MP, Minister for Employment, Training and Industrial Relations. The bill was subsequently passed, with the amendments proposed by the Minister incorporated in it, on 9 November 2004.

2. The amendments proposed by the Minister raised no issues within the committee's terms of reference.

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 *(dates are approximate)*
219	Mining Legislation Amendment Regulation (No.1) 2004	22/2/05
238	Marine Parks and Other Legislation Amendment and Repeal Regulation (No.1) 2004	22/2/05
240	Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004	22/2/05

* 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)*
159	**Transport Operations (Marine Safety) Regulation 2004** ▪ Letter to the Minister dated 10 November 2004 ▪ Letter from the Minister received 27 January 2005 ▪ Letter to the Minister dated 21 February 2005	8/11/04
169	**Rural Adjustment Authority Amendment Regulation (No.1) 2004** ▪ Letter to the Minister dated 11 November 2004 ▪ Letter from the Minister dated 25 November 2004 ▪ Letter to the Minister dated 21 February 2005	8/11/04

(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 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.

This concludes the Scrutiny of Legislation Committee's 1st report to Parliament in 2005.

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.

Ken Hayward MP
Chair

22 February 2005

APPENDIX

CORRESPONDENCE

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