



Legislation Alert

Scrutiny of Legislation Committee

53rd Parliament

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Index of bills examined:	Use above web link and click on the 'Index of bills examined' link in the menu bar

Table of Contents

PART 1 – Bills examined	1
1. Natural Resources and Other Legislation Amendment Bill (No.2) 2010.....	1
2. Occupational Licensing National Law (Queensland) Bill 2010	9
3. Police Legislation Amendment Bill 2010.....	21
PART 2 – Subordinate legislation examined	28
4. Electrical Safety and Other Regulation Amendment and Repeal Regulation (No.1) 2010 SL274	30
5. Funeral Benefit Business Regulation 2010 SL271	31
6. Statutory Instruments Amendment Regulation (No.2) SL216.....	32
PART 3A – Ministerial correspondence – bills.....	33
7. Holidays Amendment Bill 2010.....	33
8. Justice and Other Legislation Amendment Bill 2010	34

COMMITTEE RESPONSIBILITY

Section 103 of the *Parliament of Queensland Act 2001* confers the committee with a responsibility that has two parts: examination of legislation and monitoring of the operation of certain statutory provisions.

As outlined in the explanatory notes to the *Parliament of Queensland Act* (at 43):

[T]he committee's role is to monitor legislation. The committee may raise issues (such as breaches of fundamental legislative principles) with the responsible Minister, or with a Member sponsoring a Private Member's Bill, prior to pursuing issues, where appropriate, in the Assembly.

1. Examination of legislation

The committee is to consider, by examining all bills and subordinate legislation:

- the application of fundamental legislative principles to particular bills and particular subordinate legislation; and
- the lawfulness of particular subordinate legislation.

Section 4 of the *Legislative Standards Act* states that 'fundamental legislative principles' are 'the principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. They include that legislation have sufficient regard to:

- rights and liberties of individuals; and
- the institution of Parliament.

Section 4 provides examples of 'sufficient regard': see the diagram on the opposite page.

2. Monitoring the operation of statutory provisions

The committee is to monitor generally the operation of specific provisions of the *Legislative Standards Act 1992* and the *Statutory Instruments Act 1992*:

<i>Legislative Standards Act</i>	<i>Statutory Instruments Act</i>
<ul style="list-style-type: none"> • Meaning of 'fundamental legislative principles' (section 4) • Explanatory notes (part 4) 	<ul style="list-style-type: none"> • Meaning of 'subordinate legislation' (section 9) • Guidelines for regulatory impact statements (part 5) • Procedures after making of subordinate legislation (part 6) • Staged automatic expiry of subordinate legislation (part 7) • Forms (part 8) • Transitional (part 10)

Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly* instructs the committee that it is to include in the *Legislation Alert* compliance with requirements in part 4 of the *Legislative Standards Act* regarding explanatory notes.

Fundamental legislative principles require, for example, legislation have sufficient regard to:

Rights and liberties of individuals	<p align="center">Bills and subordinate legislation</p> <ul style="list-style-type: none"> • make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review • are consistent with the principles of natural justice • don't reverse the onus of proof in criminal proceedings without adequate justification • confer power to enter premises, and search for and seize documents or other property, only with a warrant issued by a judicial officer • provide adequate protection against self-incrimination • does not adversely affect rights and liberties, or impose obligations, retrospectively • does not confer immunity from proceeding or prosecution without adequate justification • provide for the compulsory acquisition of property only with fair compensation • have sufficient regard to Aboriginal tradition and Island custom • are unambiguous and drafted in a sufficiently clear and precise way 	
	<p align="center">Bills</p> <ul style="list-style-type: none"> • allow the delegation of legislative power only in appropriate cases and to appropriate persons • sufficiently subject the exercise of delegated legislative power to the scrutiny of the Legislative Assembly • authorise the amendment of an Act only by another Act 	<p align="center">Subordinate legislation</p> <ul style="list-style-type: none"> • is within the power that allows the subordinate legislation to be made • is consistent with the policy objectives of the authorising law • contains only matter appropriate to subordinate legislation • amends statutory instruments only • allows the subdelegation of a power delegated by an Act only – <ul style="list-style-type: none"> – in appropriate cases to appropriate persons – if authorised by an Act.

REPORT

Structure

This report follows committee examination of:

- bills (part 1);
- subordinate legislation (part 2); and
- correspondence received from ministers regarding committee examination of legislation (part 3).

Availability of submissions received

Submissions received by the committee and authorised for tabling and publication are available:

- on the committee's webpage (www.parliament.qld.gov.au/SLC); and
- from the Tabled Papers database (www.parliament.qld.gov.au/view/LegislativeAssembly/tailedPapers).

PART 1 – BILLS EXAMINED

1. NATURAL RESOURCES AND OTHER LEGISLATION AMENDMENT BILL (NO.2) 2010

Date introduced: 5 October 2010
Member: Hon S Robertson MP
Portfolio responsibility: Minister for Natural Resources, Mines and Energy and Minister for Trade

ISSUES ARISING FROM EXAMINATION OF BILL

1. In relation to whether the bill has sufficient regard to rights and liberties of individuals, the committee draws the attention of the Parliament to:
 - **clauses 17-8, 32 and 47** amending existing offence provisions and creating new ones;
 - **clauses 49 and 50** which may make rights and liberties, or obligations, dependent on administrative power which is not subject to appropriate external review;
 - **clause 48** expanding existing powers of entry contained in the *Vegetation Management Act*;
 - **clause 32** limiting the civil liability for a claim based in tort for damages for owners and occupiers of land the subject of a mining tenement;
 - **clause 17** which may not be drafted in a sufficiently clear and precise way; and
 - **clauses 5-8 and 11-4** which may not be drafted in a sufficiently clear and precise way.
2. The committee invites the minister to provide further information regarding whether:
 - **clause 17** has sufficient regard to rights and liberties of individuals; and
 - **clauses 5-8 and 11-4** are drafted in a sufficiently clear and precise way and appropriately delegate legislative power.

BACKGROUND

3. The bill is to provide for a range of environmental regulation measures.

LEGISLATIVE PURPOSE

4. The policy objectives are to amend the (explanatory notes, 1-2):
 - *Environmental Protection Act 1994* to –
 - prohibit the use of specified chemicals to stimulate the fracturing of coal seams and other geological structures; and
 - change requirements regarding notice to landholders of incidents that may cause serious or material environmental harm;
 - *Petroleum and Gas (Production and Safety) Act 2004* and *Petroleum Act 1923* to change requirements regarding notice to affected landholders;
 - *Nature Conservation Act 1992* and *Vegetation Management Act 1999* by consolidating statutory approval processes;
 - *Alcan Queensland Pty. Limited Agreement Act 1965*, *Commonwealth Aluminium Corporation Pty. Agreement Act 1957* and the *Water Act 2000* to define the water rights of Rio Tinto Aluminium Limited in the Wenlock Basin wild river area;
 - *Alcan Queensland Pty. Limited Agreement Act*, *Commonwealth Aluminium Corporation Pty. Agreement Act*, *Holidays Act 1983* and *Environmental Protection Act* to facilitate a proposed restructure of Rio Tinto Aluminium Limited;
 - *Geothermal Energy Act 2010* and *Mineral Resources Act 1989* to ensure consistency with land access provisions in other resource legislation; and
 - *South Bank Corporation Act 1989* to expand the commercial precinct at South Bank.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES**Sufficient regard to rights and liberties of individuals****Rights and liberties**

5. Fundamental legislative principles include requiring that legislation have sufficient regard to rights and liberties of individuals. This requirement is stated in section 4(2) of the *Legislative Standards Act*.

Right to fair and just legal process

6. **Clauses 17-8, 32 and 47** would amend existing offence provisions and create new ones. The proposed offences and maximum penalties are identified in the table below.

Clause	Amended/ new section	Offence	Proposed maximum penalty
<i>Environmental Protection Act</i>			
17	320	Failure to notify of environmental harm [duty expanded to include duty to give written notice to affected occupiers of land]	500 penalty units (\$50 000); [currently 100 penalty units (\$10 000)]
18	New section 320A	Failure to notify of negative impact on, or interconnection with, aquifers	100 penalty units (\$10 000)
<i>Mineral Resources Act</i>			
32	New section 397A	Failure to avoid interference in carrying out authorised activities	500 penalty units (\$50 000)
32	New section 397B	Obstruction of mining tenement holder	500 penalty units (\$50 000)
<i>Vegetation Management Act</i>			
47	New section 20X	Clearing vegetation under plan without clearing notification	50 penalty units (\$5000)

7. In relation to the consistency of clause 17 with fundamental legislative principles, the following information is provided (at 13) in the explanatory notes (see also at 23):

Clause 17 increases the penalty for section 320 of the Environmental Protection Act from 100 penalty units to 500 penalty units. This is justified on the grounds that failure to give notice can significantly increase the risk of a serious or irreversible incident. The current penalty of 100 penalty units does not provide a sufficient incentive to report an environmental incident if a person fears liability or prosecution may result.

8. More specifically, the explanatory notes provide (at 23) the following explanation of the purpose and intended operation of clause 17:

Clause 17 requires a person to notify affected occupiers of land at the same time as notifying the administering authority if they become aware that serious or material environmental harm is caused or threatened. The notice is to be written and include the same information as the notice to the administering authority. Currently, any person carrying out an activity has a duty to notify the administering authority as soon as reasonably practicable if they become aware that serious or material environmental harm is caused or threatened. There is no formal requirement to notify the occupiers of the land that may be affected by an incident. This potentially results in a delay of notification of affected occupiers unless the person notifies them voluntarily.

This provision will ensure that affected occupiers receive timely notification. Additionally, the timing of the notification to both the administering authority and the occupier is being clarified to be within 24 hours.

The occupier of the land that is, or is reasonably likely to be affected by the incident is not limited to the land on which the activity is taking place. It could include, for example, a neighbouring landholder who could be affected by a water contamination incident or air pollution incident.

The Department of Environment and Resource Management has experienced a number of situations where notification has not happened in a timely fashion or at all in accordance with this section. Accordingly, the maximum penalty for this section is being increased to 500 penalty units. This penalty is an interim amount between the existing maximum penalty of 100 penalty units and maximum penalties under section 480 for providing false and misleading information. This is justified on the grounds that failure to give notice can significantly increase the risk of a serious or irreversible incident. The current maximum penalty of 100 penalty units does not provide a sufficient incentive to report an environmental incident if a person fears liability or prosecution may result.

9. A submission regarding the bill was received from the Queensland Law Society and the committee has authorised its tabling and publication.¹ In the submission (at 2), the Queensland Law Society expresses concern about clause 17 and the proposed amendments to section 320 of the *Environmental Protection Act*. Three issues are identified:

- a person who becomes aware of serious or material environmental harm caused or threatened to be caused by an activity must provide written notice to each affected occupier of land (new section 320(3)(b));
- a fivefold increase in the maximum penalty for failing to provide notice (amended section 320(5)); and
- notice must be provided within 24 hours (new section 320(9)).

10. The submission notes (at 2) that, as consultation does not appear to have been undertaken regarding the proposed amendments to the *Environmental Protection Act*, it may be difficult to determine whether clause 17 would have sufficient regard to rights and liberties of individuals, including (at 3) the likely effect upon common law rights and liberties.

11. The committee invites the minister to provide further information about whether clause 17 would have sufficient regard to rights and liberties of individuals.

12. In relation to clause 47, the explanatory notes state (at 13):

Clause 47 amends the Vegetation Management Act to create an offence where a person relying on an area management plan to undertake vegetation clearing activities fails to provide the chief executive with an area management clearing notification.

It is necessary to provide for a penalty as the provision of a clearing notification is an important component of verifying whether a person purporting to clear vegetation under the authority of an area management plan has undertaken the clearing activities in accordance with the conditions set out in the plan.

13. The explanatory notes do not address specifically the consistency of the proposed offence provisions in clauses 18 and 32 with fundamental legislative principles, but provide general information regarding the intended operation of the provisions (at 23-4 and 28-9 respectively).

Administrative power

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

15. **Clauses 49 and 50**, to amend the *Vegetation Management Act*, may make rights and liberties, or obligations, dependent on administrative power which is not subject to appropriate external review.

16. Clause 50 would amend section 63B to exclude external review by the Queensland Civil and Administrative Tribunal in respect of an internal review decision made in relation to an 'area management plan' (see clause 47 in new part 2, division 5B). Accordingly, clause 49 would amend section 63A to provide that a review notice in relation to an original decision about an area management plan need not state that the applicant has a right to seek external review by the Queensland Civil and Administrative Tribunal.

17. The explanatory notes indicate (at 14) that the legislation would have sufficient regard to rights and liberties of individuals:

Clause 49 amends the Vegetation Management Act to enable a person to apply to the chief executive for an internal review of a decision made in relation to an area management plan. However a person who is dissatisfied

¹ It is available at: www.parliament.qld.gov.au/slc

with a review decision made in relation to an area management plan will not be entitled to apply to Queensland Civil and Administrative Tribunal for a review of the review decision.

An area management plan is an alternative approval pathway through which vegetation clearing activities can be undertaken. A decision not to approve an area management plan will not abrogate other avenues through which a person can seek approval to undertake vegetation clearing activities.

For example, a person who is dissatisfied with a decision made in relation to an area management plan is still entitled to submit a development application for vegetation clearing through the Integrated Development Assessment System (IDAS) process under the Sustainable Planning Act 2009. Under that Act, a person who is dissatisfied with a decision in relation to a development application for vegetation clearing may appeal to the Planning and Environment Court.

Power to enter premises

18. Section 4(3)(e) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.
19. **Clause 48** would expand existing powers of entry contained in the *Vegetation Management Act*.
20. Section 30 confers authorised officers with powers to enter places without consent or a warrant for specified purposes. Other provisions in part 3 of the Act confer powers after entry and impose requirements upon people to give an authorised officer information and reasonable help.
21. Clause 48 would insert a new section 30(5) to enable an authorised officer to enter a place if a person proposing to clear vegetation under an area management plan at that place had given the chief executive an 'area management clearing notification' (see clause 47, new sections 20W-20Y).
22. Existing provisions of the Act provide some safeguards of rights and liberties of individuals in respect of entry under new section 30(5); for example, entry without consent to a place where a person resides is not authorised (section 30(3)). However, the committee notes that if a place were to be entered in the absence of a landholder, the legislation would not require written advice of entry without consent, the identity of the authorised person, the purposes of entry or the date and time of entry.
23. In relation to the consistency of the proposed provision with fundamental legislative principles, the explanatory notes state (at 13-4) that clause 48 would have sufficient regard to rights and liberties of individuals:

This provision is necessary to provide a means of verifying that a person clearing vegetation under an area management plan has complied with the requirements of that plan.

This provision only applies where a person has given the chief executive a clearing notification for that place. By giving the chief executive a clearing notification for that place, the person is giving implied consent to the entry of an authorised officer on that place.

Immunity from proceeding or prosecution

24. Section 4(3)(h) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.
25. **Clause 32** would replace section 397 of the *Mineral Resources Act* to provide that the civil liability for a claim based in tort for damages would be limited for owners and occupiers of land the subject of a mining tenement.
26. The explanatory notes provide (at 28) the following explanation of the purpose and intended operation of clause 32:

This section is most likely to apply to claims for negligence by a third party. This section will apply when someone else carries out an authorized activity for the geothermal tenure or someone else carries out an activity on the land which is purportedly an authorised activity for the geothermal tenure, to claims related to the carrying out of the activity.

An owner's or occupier's tortious liability is limited to the extent to which the harm claimed was caused or contributed to by the owner or occupier.

The section provides that the terms claim, damages and harm mean the same as they do for the Civil Liabilities Act 2003.

27. The committee draws to the attention of the Parliament proposed provisions, such as clause 32, which may be inconsistent with the fundamental principle that all people should be equal before the law. In

respect of the consistency of clause 32 with fundamental legislative principles, the explanatory notes state (at 15):

Clause 32 arguably breaches fundamental legislative principles on the basis that it affects the rights of others; particularly if they lack redress against the tenure holder. However, the protection of landholders from civil liability for claims, damage and harm of others due to activities carried out under tenure is critical particularly given the potential risks and impact on the landholder of having activities conducted on their land.

Clear meaning

28. Section 4(3)(k) of the *Legislative Standards Act* 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 way.
29. **Clause 17** may not be drafted in a sufficiently clear and precise way. It would amend section 320 of the *Environmental Protection Act* to require a person to notify affected land occupiers of serious or material environmental harm.
30. A submission received from the Queensland Law Society states that the scope of the proposed obligation is ambiguous. The submission summarises the practical issues regarding clause 17 in the following way (at 2-3)

... it is unworkable to require:

- (a) *That a person who is an employee, agent or contractor should have a duty of notification to neighbours in any circumstances;*
- (b) *Notification within 24 hours*
- (c) *Notification to 'occupiers' as opposed to landowners;*
- (d) *Notification for an indeterminate area;*
- (e) *Notification in circumstances where the required contents are likely to be unknown.*

A further undesirable consequence of the amendment drafting is that it removes the obligation to provide notice to affected occupiers of land about the incidence of environmental harm once the 24 hour period has elapsed. Should the party carrying out the activity who becomes aware that serious or material environmental harm is caused or threatened not comply with their disclosure obligations within the stated timeframe the offence will have been committed. There is then no ongoing obligation in the drafting of the proposed section to oblige the party carrying out the activity to provide notice outside of the required period if that has not have been effected within 24 hours.

31. The committee invites the minister to provide further information about whether clause 17 would have sufficient regard to rights and liberties of individuals.
32. **Clauses 5-8 and 11-4** may not be drafted in a sufficiently clear and precise way. These proposed provisions, examined under the heading 'Delegation of legislative power' also, would amend the *Alcan Queensland Pty. Limited Agreement Act* and the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act* to ensure the Acts accord with fundamental legislative principles. However, the committee's examination of the amending legislation identified an apparently clumsy proposed legislative arrangement. The committee invites the minister to provide information to clarify the approach adopted.

Sufficient regard to the institution of Parliament

Delegation of legislative power

33. Section 4(4)(a) of the *Legislative Standards Act* 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.
34. **Clauses 5-8 and 11-4** raise issues regarding the delegation of legislative power in an inappropriate case. These clauses are examined above also under the heading 'Clear meaning'.
35. Section 3 of the *Alcan Queensland Pty. Limited Agreement Act* provides for an agreement, made under the Act on behalf of the State with Alcan Queensland, to have the force of law 'as though the agreement were an enactment of this Act'. Section 4 states:

Variation of agreement

- (1) The agreement may be varied by a further agreement between the Minister and the company.
- (2) The Minister may make a further agreement only if the proposed further agreement has been approved by regulation.

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- (3) The Minister must notify the making of the further agreement by gazette notice.
- (4) The agreement as varied has the force of law as if it were an enactment of this Act.
36. Clause 5 would amend section 4 by replacing section 4(1) to (3) with:
- (1) The agreement may be varied only—
- (a) by further agreement between the State and the company; and
- (b) under the authority of an Act.
- (2) A variation of the agreement purported to be made other than under subsection (1) is of no effect.
- (3) The Minister must notify the date of the making of each further agreement by gazette notice.
37. Clause 6 would insert a new section 4C authorising the variation of the agreement 'by further agreements corresponding to the proposed further agreements set out in schedules 2 and 3'.
38. Clauses 11 to 14 would amend the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act* in similar terms.
39. The explanatory notes state (at 14-5) that the amendments are to ensure that the legislation has sufficient regard to the institution of Parliament:
- Under the Alcan Queensland Pty. Limited Agreement Act 1965 and the Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957, variations of the Alcan Agreement and the Comalco Agreement respectively must currently be authorised by regulation.*
- The Bill resolves potential fundamental legislative principles issues by amending the Alcan Queensland Pty. Limited Agreement Act 1965 and the Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957 to ensure they have sufficient regard to the institution of Parliament, in that they allow the amendment of those Acts (through the variation of the agreements) by Act, rather than by regulation.*
40. However, clauses 6 and 12 would authorise variation of agreements, and therefore amendment of the respective Acts, 'by further agreements'. The proposed further agreements are contained in new schedules 2 and 3.
41. Clauses 5-8 and 11-4 may delegate legislative power inappropriately. They appear to put in place a very clumsy legislative arrangement. The following information is provided (at 6-7) in the explanatory notes about the legislative authorisation of variations:
- The Bill authorises variations to the Alcan Queensland Pty. Limited Agreement to ensure the principal agreement recognises the successors and assigns of Alcan Queensland Pty. Limited and Commonwealth Aluminium Corporation Pty. Limited. This will be needed should the proposed restructure take place.*
- The Bill authorises variations to the Commonwealth Aluminium Corporation Pty. Limited Agreement which are required to allow the transfer of the rights and obligations under the agreement to RTA Weipa, while at the same time allowing Rio Tinto Aluminium Limited to retain some benefits under that agreement. These will be needed should the proposed restructure take place.*
42. The explanatory notes also state (at 6) that the variations, to be effected by the proposed further agreement in schedule 3 would include future water allocations:
- To ensure consistency with contemporary water resource management principles and facilitate the implementation of the Wenlock Wild River Declaration, amendments are proposed to the Alcan Queensland Pty. Limited Agreement Act 1965 and Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957 (Agreement Acts) and the Water Act. The amendments specify Rio Tinto Aluminium Limited's water rights under the Agreement Acts as limited to a total of 90,000ML in the Wenlock Basin wild river area and provide for the progressive relocation of these water rights into the Water Act framework.*
- The amendments provide certainty for the future allocation of water within the Wenlock Basin wild river area, and are consistent with Government policy to, where practical and with agreement, have the Water Act as the single framework for the sustainable allocation of water. This has previously been achieved with the Mount Isa Mines Limited Agreement Act 1985.*
43. The committee invites the minister to provide information to clarify the approach to be adopted by clauses 5-8 and 11-4. However, the committee notes that section 3 of both the *Alcan Queensland Pty. Limited Agreement Act* and the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act* provided for the original agreements between the States and the corporations to become part of the respective Acts. Accordingly, amendments of those agreements must themselves have the force of an Act and may require the relatively cumbersome legislative approach proposed.
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OPERATION OF CERTAIN STATUTORY PROVISIONS**Explanatory notes**

44. Part 4 of the *Legislative Standards Act* relates to explanatory notes. Section 22(1) requires a member who presents a bill to the Legislative Assembly to circulate to members an explanatory note for the bill before the resumption of the second reading debate. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the bill's short title and a brief statement providing certain information. If the explanatory note does not include the information, it must state the reason for the non-inclusion (section 23(2)).
45. Explanatory notes were tabled at the first reading of the bill. They are clear and precise and contain the information required by section 23.

2. OCCUPATIONAL LICENSING NATIONAL LAW (QUEENSLAND) BILL 2010

Date introduced: 6 October 2010

Responsible minister: Hon AP Fraser MP

Portfolio responsibility: Treasurer and Minister for Employment and Economic Development

ISSUES ARISING FROM EXAMINATION OF BILL

1. In relation to whether the bill has sufficient regard to rights and liberties of individuals, the committee draws the attention of the Parliament to:
 - **section 9 of the Occupational Licensing National Law** prohibiting an individual carrying out prescribed work unless he or she is licensed or exempt from licensing;
 - **section 139 of the Occupational Licensing National Law** allowing disclosure of protected information in specified circumstances;
 - sections 9-12, 14, 28-9, 62-3, 71, 73, 76-7, 84-7, 131, 138 and 149 of the Occupational Licensing National Law containing offence provisions;
 - **section 101 of the Occupational Licensing National Law** which may make rights and liberties, or obligations, dependent on administrative power which is insufficiently defined;
 - **section 102 of the Occupational Licensing National Law** which may delegate administrative power inappropriately;
 - **section 153 of the Occupational Licensing National Law** providing for certificates purporting to be signed by the chief executive officer of the Licensing Authority to be *prima facie* evidence of specified matters;
 - **sections 61-3 of the Occupational Licensing National Law** requiring the provision of information and documents; and
 - **section 151 of the Occupational Licensing National Law** providing a 'protected person' with immunity in respect of functions exercised under the legislation.
2. In relation to whether the bill has sufficient regard to the institution of Parliament, the committee draws the attention of the Parliament to:
 - **clause 2** providing for commencement of different provisions of the legislation at different times, including more than one year after assent;
 - **clause 5** excluding the National Law and statutory instruments made under the National Law from the operation of a number of Acts of the Queensland Parliament;
 - **sections 48 and 160 of the Occupational Licensing National Law** which may allow the delegation of legislative power in an inappropriate case; and
 - **sections 160-2 of the Occupational Licensing National Law** authorising the amendment of the National Law by regulation.
3. The committee invites the minister to provide further information about the practical operation, in specific circumstances, of **clause 8 and sections 4 and 19 of the Occupational Licensing National Law**.

BACKGROUND

4. The bill is to provide for a national law to regulate the licensing of certain occupations. Initially, the national law would apply to licences as to air conditioning and refrigeration, electrical, plumbing and gasfitting, property-related occupations, building and building-related occupations, land transport (passenger vehicle drivers and dangerous goods only) and maritime (explanatory notes, 1-2).

LEGISLATIVE PURPOSE

5. The explanatory notes provide the following information (at 1):

The objective of this Bill is to apply the Occupational Licensing National Law set out in the schedule to the Occupational Licensing National Law Act 2010 of Victoria (the Law) as a law of Queensland. The Law is the legislative framework for a national occupational licensing system (NLS).

The purpose of the NLS is to remove overlapping and inconsistent regulation between jurisdictions for the licensing of the specified occupational areas. By so doing, it aims to improve business efficiency and the competitiveness of the national economy, reduce red tape, improve labour mobility and enhance productivity. The NLS will promote consumer confidence and protection without imposing unnecessary costs on consumers or substantially lessening competition.

6. The schedule to the *Occupational Licensing National Law Act 2010* (Vic) was tabled by the Treasurer on 6 October 2010.² Clause 4 of the bill provides for the Occupational Licensing National Law, set out in the schedule and as in force from time to time, to apply as a law of Queensland.
7. Generally, in this chapter, references are to 'sections' of the Occupational Licensing National Law as well as to 'clauses' in the bill.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

Sufficient regard to rights and liberties of individuals

Rights and liberties

8. Fundamental legislative principles include requiring that legislation have sufficient regard to rights and liberties of individuals. This requirement is stated in section 4(2) of the *Legislative Standards Act*.

Right to privacy

9. **Clause 8 and sections 4 and 19 of the Occupational Licensing National Law** allow assessment and use of a person's 'criminal history' in relation to eligibility for a licence.
10. Clause 8(1) would allow the Licensing Authority to ask the commissioner of the police service for 'a report that includes information about a person's criminal history relevant to whether the person satisfies personal probity requirements under the Occupational Licensing National Law'. Under clause 8(2) and (3), if the information provided changed or new information was received by the police service, the commissioner might notify the Licensing Authority.
11. Section 4 states that the 'criminal history' of a person includes:
 - convictions of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of the Occupational Licensing National Law;
 - pleas of guilty or findings of guilt by a court of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of the National Law and whether or not a conviction is recorded for the offence;
 - charges made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of the National Law; and
 - the person's history in relation to traffic offences, in a participating jurisdiction or elsewhere, and whether before or after the commencement of the National Law.
12. Further, part 2, division 3 of the Occupational Licensing National Law regulates eligibility for a licence. Section 18(1)(b) prescribes personal probity requirements to be met. Section 19(1) then states that, for the purposes of section 18(1)(b), the national regulations may identify personal probity requirements which must be satisfied. Section 19(2) states that, for applicants for licences, licensees, nominees (including 'relevant persons' for a body corporate which is one of these), the national regulations may regulate:
 - matters relating to a person's criminal history to the extent connected to the inherent requirements of the relevant occupation;
 - matters relating to the conduct of persons in carrying out business including, for example, matters relating to duties as a director of a corporation or the imposition of civil penalties or orders in relation to carrying out business; and

² It is tabled paper ref no. 3313 and is available from the Queensland Parliament's Table Office or at: www.parliament.qld.gov.au/view/legislativeAssembly/tailedPapers

- a security clearance to be held to the extent that clearance is an inherent requirement of the relevant occupation.
13. In Queensland, in relation to amendments to enable criminal history screening, the *Criminal Law (Rehabilitation of Offenders) Act 1986* established a general rule that after the expiration of a 'rehabilitation period' (five or ten years from the date of conviction for a criminal offence, depending on the nature of the offence):
- a person need not disclose past criminal convictions;
 - other people were prohibited from disclosing the criminal convictions; and
 - officials considering the person's fitness for a profession or for any other purpose had to disregard the conviction.
14. The general rule in the *Criminal Law (Rehabilitation of Offenders) Act* is conditional on the person not having re-offended and is subject to exceptions in relation to specified employment. It is also subject to subsequent inconsistent Acts passed by the Parliament, such as legislation enabling a relevant official to request a copy of a person's 'criminal history' from the commissioner of the police service.
15. Where legislation would permit use of a person's criminal history in employment related matters, the committee draws the attention of the Parliament to any provisions which:
- provide a definition of 'criminal history' that differs from the definition in the *Criminal Law (Rehabilitation of Offenders) Act* – 'the convictions recorded ... in respect of offences';
 - displace the 'rehabilitation period' provisions of the *Criminal Law (Rehabilitation of Offenders) Act*, requiring old convictions to be disclosed; and
 - may be ambiguous as to which aspects of the *Criminal Law (Rehabilitation of Offenders) Act* are to be displaced, particularly regarding the rehabilitation period.
16. In relation to these three matters, the committee notes:
- the definition of 'criminal history' in section 4 includes charges for offences and traffic histories;
 - the rehabilitation period provisions of the *Criminal Law (Rehabilitation of Offenders) Act* may be displaced as the criminal history would include events 'before of after the commencement' of the *Occupational Licensing National Law*; and
 - possible ambiguity as to which aspects of the *Criminal Law (Rehabilitation of Offenders) Act* are to be displaced.
17. Regarding the third point, a note to section 19(2)(a) states:
- Note. Matters relating to the criminal history of persons will be subject to legislation of participating jurisdictions that prohibits, or does not require, the disclosure of spent convictions.
18. Accordingly, it appears that, in particular circumstances, the practical effect upon the rights of an individual under the law may depend upon the operation of competing Acts and regulations. These may include the *Occupational Licensing National Law* and regulations made under it, the *Criminal Law (Rehabilitation of Offenders) Act*, other Acts of the Queensland Parliament and subordinate legislation made either under one of these Acts or under the *Criminal Law (Rehabilitation of Offenders) Act*. Clarity may not be provided by:
- the note to section 19(2)(a) which refers to 'legislation' of participating jurisdictions; or
 - clause 4 of the bill which states that the *Occupational Licensing National Law* 'applies as if it were part of' the *Occupational Licensing National Law (Queensland) Act*.
19. Further, the explanatory notes may not assist statutory interpretation. In relation to clause 8, the explanatory notes state (at 21):
- Clause 8 provides that the Licensing Authority may ask the commissioner of the police service for criminal history information relevant to whether a person satisfies personal probity requirements under the Occupational Licensing National Law, whether as applied in this or another jurisdiction.*
- In this regard, the national regulations will define the extent to which criminal history information can be obtained with respect to a particular occupation.*
20. The explanatory notes indicate also (at 6-7) that sections 4 and 19 would have sufficient regard to rights and liberties of individuals, but may not resolve ambiguity regarding the aspects of the *Criminal Law (Rehabilitation of Offenders) Act* to be displaced in given circumstances:

Section 19(2)(a) of the Law provides that national regulations may provide for matters relating to criminal history of applicants, licensees, nominees or relevant persons for a body corporate, that is an applicant or licensee. The definition of "criminal history" in section 4 of the Law is broad as it includes pleas of guilty, charges and traffic offences. However the scope of this definition is narrowed by the operation of section 19(2)(a) as the criminal history of a person can only be considered to the extent that there is a connection between the criminal history of the person and the inherent requirements of the occupation. The general national regulations will provide the criteria for how criminal history can be assessed and used when determining a person's eligibility.

As a further safeguard, the note to section 19(2)(a) states that matters relating to criminal history will also be subject to legislation of participating jurisdictions that prohibits, or does not require, the disclosure of spent convictions.

The definition of "criminal history" is necessarily broad as it must be wide enough to capture occupation specific requirements. For example, a public passenger driver (school bus driver) who is charged with a sexual offence against minors or a real estate agent who pleads guilty to misappropriation or theft of trust monies, represent significant risks to the public and consumers. Further, a record of traffic offences is relevant to the occupation of a public passenger driver. Accordingly, the Licensing Authority must have the capacity to consider information such as pleas, charges and traffic offences and make an assessment in all the circumstances in relation to whether the person should be licensed, or alternatively, whether there is a need to restrain a person's scope of work until such matters are settled.

Consideration of criminal history that relates to "pleas" and "charges" (both pending or old charges that resulted in an acquittal or where a prosecution did not proceed), when those offences have not been finalised, is considered contrary to the presumption of innocence. However, such arrangements have been accepted by Parliaments when it can be justified on safety/interest grounds.

It must be noted that each criminal history offence in the national regulations will be prescribed in the occupational specific regulation as being an offence that is relevant for that occupation. Furthermore, the offence categories that will apply for each category or type of licence will be further refined to ensure that offences specified in each occupational specific regulation do not apply broadly over all subgroups. For example, the criminal offences that may be relevant for a building contractor will not have the same inherent risks as for an employee carpenter.

The Law also provides that natural justice is observed by providing an applicant and licensee with review and appeal rights on the basis of the person's suitability, including having had regard to any criminal history.

21. The committee invites the minister to provide further information about the practical operation, in specific circumstances, of clause 8 and sections 4 and 19 of the Occupational Licensing National Law.
22. **Section 139 of the Occupational Licensing National Law** allows disclosure of protected information in specified circumstances.
23. A person exercising functions under the National Law may disclose 'protected information' to a jurisdictional regulator or another Commonwealth, State or Territory entity if the disclosure is in connection with functions exercised by that entity. 'Protected information' is defined in section 136 as information that comes to a person's knowledge in the course of, or because of, the person exercising functions under the National Law or a prescribed Act.
24. The explanatory notes state (at 10) that 'this disclosure is strictly limited by section 139 to disclosure that is in connection with the functions exercised by that entity'.

Right to work and work-related rights

25. **Section 9 of the Occupational Licensing National Law** prohibits an individual carrying out prescribed work unless he or she is licensed or exempt from licensing.
26. The consistency of section 9 with fundamental legislative principles is not addressed specifically in the explanatory notes. However, general information provided (at 1-5) indicates that section 9 would have sufficient regard for rights and liberties of individuals; for example (at 2):

Despite mutual recognition, while each State and Territory maintains different licensing regimes, licensees who want to move between jurisdictions must still apply for a licence, meet different non-skills requirements and pay a separate licence fee for the equivalent licence(s) in each jurisdiction in which they wish to work. In certain circumstances they may also need to satisfy other additional requirements not covered by mutual recognition. These arrangements are particularly difficult for individuals and/or businesses operating in multiple jurisdictions and for those working in border areas, both of which must comply with different licensing and regulatory requirements. They are also a disincentive to pursuing work in other jurisdictions – particularly work of a shorter duration.

In this context, the Council of Australian Governments (COAG) entered into the National Partnership Agreement to Deliver a Seamless National Economy (NPA) on 3 July 2008. As part of that Agreement, COAG agreed to develop a NLS that would remove inconsistencies across jurisdictional borders and allow for a more mobile workforce.

Right to fair and just legal process

27. **Section 152 of the Occupational Licensing National Law** imposes a time limit for starting proceedings which differs from some relevant existing Queensland legislation.

28. Section 152 states that a proceeding for an offence against the National Law or the national regulations must start within six years after the commission of the offence. The explanatory notes state (at 10-1) that sufficient regard would be had to rights and liberties of individuals:

The time limits for commencing proceedings in various Queensland licensing statutes vary. For example, section 589 of the PAMDA provides that a proceeding for an offence under the Act must be taken within the later of:- one year after the offence is committed, or six months after the commission of the offence comes to the complainant's knowledge, but within two years of the commission of the offence.

Section 187 of the Electrical Safety Act 2002 (ES Act) has a similar provision to section 589 of the PAMDA but provides that a proceeding must be taken within three years after the commission of the offence. The ES Act has a further provision at section 187(c) that if the offence involves a breach of an obligation causing death and the death is investigated by a coroner under the Coroners Act 2003, the proceeding must be taken within two years after the coroner makes a finding in relation to the death. This may allow prosecution action being instituted outside the three year limit.

Section 111 of the Queensland Building Services Authority Act 1991 (QBSA Act) provides that a prosecution for an offence may be started within two years after the alleged date of the commission of the offence or within one year after the offence comes to the knowledge of the authority, whichever is the later.

Given the differing limitation periods in this existing licensing legislation, it is considered that a time limit that would be suitable for the diverse occupational groups would be six years from the commission of the offence.

29. **Sections 9-12, 14, 28-9, 62-3, 71, 73, 76-7, 84-7, 131, 138 and 149 of the Occupational Licensing National Law** contain offence provisions. The offences and the associated 'penalties' are identified at pages 11-2 of the explanatory notes.

30. In this context, it is noted that clause 7 states that:

In the Occupational Licensing National Law (Queensland), a penalty stated at the end of a provision indicates that a contravention of the provision is punishable on conviction by a penalty not more than the stated penalty.

31. In respect of the offence provisions in the National Law, the explanatory notes provide the following information (at 13-4):

It is important to note that similar offences to these are contained in current Queensland licensing statutes. For example, section 56 of the ES Act provides that a person must not conduct a business or undertaking that includes the performance of electrical work unless the person is a holder of an electrical contractor licence. Further, section 581 of the PAMDA provides that it is offence to lend or borrow a licence.

In addition, section 71(3) of the PAMDA provides that a person whose licence has been suspended or cancelled must return the licence to the chief executive within 14 days after the suspension or cancellation, unless the person has a reasonable excuse. Section 195 of the ES Act provides that a person must not give an official entity a document the person knows is false or misleading in a material particular. Section 104 of the QBSA Act provides that an inspector must return their identity card after ceasing to be an inspector.

The penalties in sections 9, 10, 11 and 12 are the highest monetary penalties imposed under the Law as the offences committed under these provisions go to the foundation of the national licensing system. Failure to comply with these provisions puts at risk public and worker health and safety as well as consumer protection. Similarly, the offence "lending a licence" carries a higher penalty to curtail or, as far as possible, minimise the practice of licensees lending their licences to other persons.

Also of note is that some offences in the Law provide for a term of imprisonment for offences committed with respect to "prescribed licensed occupations". Section 9(1)(a) of the Law for example, provides for a penalty of up to \$50,000 and/or 12 months imprisonment where an individual repeatedly carries out work that must be undertaken by a licensed person. It is not the intention that maximum penalties of imprisonment apply to all licensed occupations that are covered by the NLS. Instead, the penalty of imprisonment can only apply to those licensed occupations that have been prescribed in national regulations for this purpose. A possible occupation might be the electrical occupation where public safety would be at risk from repeated performance of unlicensed work.

Administrative power

32. Section 4(3)(a) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.
33. **Section 101 of the Occupational Licensing National Law** may make rights and liberties, or obligations, dependent on administrative power which is insufficiently defined.

34. Part 7 of the Occupational Licensing National Law provides for a National Occupational Licensing Authority. Section 101 states that the Licensing Authority may give a direction to a licensee, or a class of licensees, about a matter relating to the way in which the licensee or class of licensees carries out the licensed occupation.
35. The explanatory notes acknowledge (at 9) that section 101 may be inconsistent with section 4(3)(a) of the *Legislative Standards Act*, but indicate that it would have sufficient regard to rights and liberties of individuals:

It could be argued that the directions power is not sufficiently defined and provides a broad power to the Licensing Authority to affect the rights of a licensee and impose obligations on a licensee, thus being contrary to the fundamental legislative principles. There is no detailed procedure provided for imposing a direction or other limits on the power. However, the power may be justified, as the power to give a direction has been inserted into the Law to enable the Licensing Authority to proactively address compliance issues before they manifest into disciplinary matters. Also, the decision to make a direction under this section is reviewable under section 88(g) of the Law.

Delegation of administrative power

36. Section 4(3)(c) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons.
37. **Section 102 of the Occupational Licensing National Law** may delegate administrative power inappropriately. It would allow the Licensing Authority to delegate:
- any of its functions (identified in section 99), other than developing policy about the national licensing system, to –
 - an entity, or the chief executive of an entity or department of government, of a participating jurisdiction nominated by the member of the Ministerial Council that represents that jurisdiction (section 102(1)(a)) – and the entity or chief executive may then subdelegate the function ‘including this power of subdelegation’; or
 - a member of the police service of a participating jurisdiction (section 102(1)(b)); and
 - any of its functions to the chief executive officer or another member of the Licensing Authority’s staff (section 102(2)).
38. However, the explanatory notes state (at 9-10) that section 102 would have sufficient regard to rights and liberties of individuals:

Section 102(1) of the Law provides that the Licensing Authority may delegate any of its functions to an entity or the chief executive of an entity or department of government of a participating jurisdiction nominated by a member of the Ministerial Council that represents that jurisdiction. Section 102(3) provides that an entity or the chief executive to whom a function has been delegated by the Licensing Authority may sub delegate the function. The provision does not specify to whom.

This is arguably contrary to the fundamental legislative principle that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons. As discussed above, prior to coverage by the NLS for each occupation, it will be necessary to enact transitional and consequential amendments to the legislation that relates to that occupation. It is intended that when this occurs, the provisions relating to sub delegation will take account of the need for a sub delegation to be made in appropriate cases and to an appropriately qualified person.

Onus of proof

39. Section 4(3)(d) of the *Legislative Standards Act* 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.
40. Legislation provides for the ‘reversal’ of the ‘onus of proof’ where it declares the proof of a particular matter to be a defence or when it refers to acts done without justification or excuse, the proof of which lies on the accused.
41. **Section 153 of the Occupational Licensing National Law** provides for certificates purporting to be signed by the chief executive officer of the Licensing Authority to be *prima facie* evidence of specified matters (such as, that on a stated day a licence was cancelled). Therefore, a person wishing to contest one of the specified matters would be required to discharge an evidentiary burden.
42. The explanatory notes do not specifically address the consistency of section 153 with fundamental legislative principles.

Protection against self-incrimination

43. Section 4(3)(f) of the *Legislative Standards Act* 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.
44. **Sections 61-3 of the Occupational Licensing National Law** require the provision of information and documents.
45. Sections 61 and 62 require the provision of information or attendance before an authorised officer in relation to the suspected commission of an offence. Failure to comply would create liability to a 'penalty' of \$10 000 for an individual or \$50 000 for a body corporate. However, section 62 provides for a reasonable excuse defence.
46. Section 63 requires a licensee to make available or produce a document if required by an authorised officer. Again, failure to comply without reasonable excuse would be an offence with penalty of \$10 000 for an individual or \$50 000 for a body corporate.
47. The explanatory notes do not address the consistency of section 63 with section 4(3)(f) of the *Legislative Standards Act* but indicate (at 8-9) that sections 61 and 62 have sufficient regard to rights and liberties of individuals:

Part 4 of the Law provides for the monitoring and enforcement powers of authorised officers. Section 61 of the Law provides that if an authorised officer reasonably believes that an offence has been committed against the Law or a prescribed Act and a person may be able to give information about the offence, the authorised officer may, by written notice, require the person to give stated information or attend before the officer. Section 62 provides offences for failing to produce information or to attend before an authorised officer if the person does not have a reasonable excuse.

It may be argued that these provisions are contrary to the fundamental legislative principles as the powers apply to a "person" and are not limited, for example, to licensees or persons who might have access to a particular document or information. It is considered that the powers are necessarily broad because they are required to apply to a broad range of occupations with different business structures. Of note is the fact that some Queensland legislation also contains similar provisions. For example section 557 of the Property Agents and Motor Dealers Act 2000 (PAMDA) provides inspectors with broad powers to require information and sections 87 and 88 of the Taxation Administration Act 2001 also provide the commissioner and investigators with broad powers to require information or documents. Also, section 62(3) of the Law has a safeguard by providing that it is a reasonable excuse to fail to give stated information, answer a question or produce a document if, by doing so, the individual may incriminate themselves.

Immunity from proceeding or prosecution

48. Section 4(3)(h) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.
49. **Section 151 of the Occupational Licensing National Law** provides a 'protected person' with immunity in respect of functions exercised under the legislation.
50. A 'protected person' is defined in section 151(3). Section 151(1) states that a person who is or was a protected person is not personally liable for anything done or omitted to be done in good faith:
 - in the exercise of a function under the National Law; or
 - in the reasonable belief that the act or omission was the exercise of a function under the National Law.
51. In respect of the consistency of section 151 with fundamental legislative principles, the explanatory notes indicate (at 10):

It may be considered that this provision is inconsistent with the legal principle that all people should be equal before the law. It is important to note however, that section 151(2) provides that any liability resulting from an act or omission that would, but for section 151(1) attach to a protected person, attaches instead to the Licensing Authority.

Sufficient regard to the institution of Parliament

Institution of Parliament

52. Fundamental legislative principles include requiring that legislation have sufficient regard to the institution of Parliament. This requirement is stated in section 4(2) of the *Legislative Standards Act*.

53. **Clause 2** would provide for commencement of different provisions of the legislation at different times, including more than one year after assent.
54. Clause 2 makes the following provisions regarding commencement:
- the Act to commence on a day/days to be fixed by proclamation (clause 2(1));
 - different days to be appointed for the commencement of different provisions of the National Law (clause 2(2)); and
 - the non-application of section 15DA of the *Acts Interpretation Act 1954*, which provides for the automatic commencement of an Act one year after assent (clause 2(3)).
55. The explanatory notes provide the following information (at 14):
- Section 15DA of the Acts Interpretation Act 1954 provides for automatic commencement of Acts within one year of assent, unless a regulation is made to extend the time for commencement. As stated above, it is anticipated that the commencement date for the first phase occupations will be 1 July 2012. Although it will be necessary to commence certain provisions in the Bill prior to this date, for example to provide for the operation of the Licensing Authority, it will not be possible to commence the majority of provisions until the national regulations are completed, as well as consequential and transitional amendments to Queensland legislation.*
56. **Clause 5** would exclude the National Law and statutory instruments made under the National Law from the operation of a number of Acts of the Queensland Parliament; namely the:
- *Acts Interpretation Act*;
 - *Auditor-General Act 2009*;
 - *Financial Accountability Act 2009*;
 - *Information Privacy Act 2009*, other than to the extent that functions do not relate to the national registers kept under the National Law;
 - *Ombudsman Act 2001*;
 - *Public Records Act 2002*;
 - *Public Sector Ethics Act 1994*;
 - *Public Service Act 2008*;
 - *Right to Information Act 2009*;
 - *Statutory Bodies Financial Arrangements Act 1982*; and
 - *Statutory Instruments Act 1992*, other than to the extent provided for in section 164 (Parliamentary scrutiny of national regulations) of the National Law (see below, under the heading 'Parliamentary scrutiny of delegated power').
57. Other than for the *Acts Interpretation Act* and *Statutory Instruments Act*, clause 5 would provide for the Acts to apply to the extent that functions were exercised under the National Law by a State entity.
58. Information about clause 5 and whether it has sufficient regard for the institution of Parliament is provided (at 15-6) in the explanatory notes:

The Acts Interpretation Act 1954 will not apply to the proposed Law. Given the nature of the national system, consistency of interpretation across jurisdictions is critical. Consequently, uniform interpretation provisions of a kind usually contained in the Interpretation Act of a State or Territory will apply in accordance with Schedule 1 to the Law.

Other Queensland statutes such as the Information Privacy Act 2009 and the Ombudsman Act 2001 will not apply to the Occupational Licensing National Law (Queensland) or to instruments made under the Law, other than to the extent that functions are being exercised under the Law by a State entity. These provisions are necessary because certain functions will not be delegated by the Licensing Authority, for example administration of the national register. If jurisdictional provisions were to apply to non-delegated functions being exercised by the Licensing Authority, there would be potential for conflicts to occur between State and Commonwealth legislation. The Law therefore provides that certain Commonwealth Acts will apply to functions that are not delegated. See for example, section 150 of the Law (Application of Commonwealth Ombudsman Act).

Therefore, under the "delegated agency model," jurisdictional legislation such as the Information Privacy Act 2009 will apply when functions are being exercised under the Law by a Queensland entity.

Delegation of legislative power

59. Section 4(4)(a) of the *Legislative Standards Act* 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.

60. **Sections 48 and 160 of the Occupational Licensing National Law** may allow the delegation of legislative power in an inappropriate cases.

61. Section 160(2)(g)(iii) allows regulations to provide the grounds on which licences are automatically suspended or cancelled and other matters relating to those suspensions or cancellations. Section 48 prescribes grounds for disciplinary action, but section 48(2) states that disciplinary action may not be taken against a licensee on a ground prescribed under section 160(2)(g)(iii).

62. The explanatory notes provide the following information (at 7-8) regarding consistency with fundamental legislative principles:

Section 48(2) of the Law provides that disciplinary action may not be taken against a licensee on a ground referred to in section 48(1) if the ground is prescribed under the regulations as being a ground for which the licensee's licence is automatically suspended or cancelled. Section 160(2)(g)(iii) will enable a regulation to be made prescribing the grounds for automatic suspension or cancellation as well as the procedure for automatic cancellation of licences. The provision is designed to cater for administrative matters, for example the requirements relating to a corporate body losing its nominated person.

Sections 48(2) and 160(2)(g)(iii) are in potential breach of the fundamental legislative principles because the grounds for automatic suspension are not included in the principal legislation - they will be devolved to a regulation. Likewise, the procedure for automatic suspension is not included in the principal legislation and will be devolved to regulation.

This approach is necessary because a particular occupation may have a different ground for automatic cancellation or suspension. As discussed above, the work of the IACs is informing development of the national regulations. These IACs will provide guidance on the necessity to make national regulations under section 48(2) in relation to specific occupations. Please see also discussion below in relation to Regulation making powers in the Law.

Also, the Law does not presently provide an obligation to notify the person that the licence has been suspended or the reasons for the suspension, however, this may be provided for in a national regulation pursuant to section 160(2)(g)(iii).

Parliamentary scrutiny of delegated power

63. Section 4(4)(b) of the *Legislative Standards Act* provides that whether a bill has sufficient regard to the institution of Parliament depends on whether, for example, the bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

64. **Section 164 of the Occupational Licensing National Law** provides for parliamentary scrutiny of national regulations.

65. In the past, the committee has expressed concern about nationally consistent regulation which failed to require the tabling in the Legislative Assembly of regulations made under a national law.³ Therefore, the committee is pleased to note that although clause 5 would exclude the operation of the *Statutory Instruments Act* generally, section 164(1) would require the tabling in the Legislative Assembly of national regulations. Section 164(1) requires the member of the Ministerial Council representing a participating jurisdiction to make arrangements for the tabling of a regulation made under the National Law in each House of the Parliament of the participating jurisdiction.

66. The national regulations could then be disallowed, as outlined (at 17) in the explanatory notes:

A national Law regulation may be disallowed in a participating jurisdiction by a House of Parliament. However, if a national regulation is disallowed under this process, it will not cease to have effect in any participating jurisdiction, unless the regulation is disallowed in a majority of the participating jurisdictions. This approach is consistent with the protocol for the development of national scheme legislation and is to ensure that national legislation is applied consistently in each participating jurisdiction. The approach was adopted in the Health Practitioners Regulation National Law Act 2009. The approach for providing for disallowance by a majority of jurisdictions is also a concession to national scheme legislation which previously did not allow for any disallowance of national regulations.

Amendment of Act other than by another Act

67. Section 4(4)(c) of the *Legislative Standards Act* states 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.

68. **Sections 160-2 of the Occupational Licensing National Law** may authorise the amendment of the National Law by regulation. The explanatory notes outline (at 16) the legislative power which is to be

³ See, for example, *Legislation Alert* 11/10 at 6, regarding the Fair Trading (Australian Consumer Law) Amendment Bill 2010.

delegated by sections 160 and 161 and indicate that the delegation is reasonable in the circumstances:

Sections 160 and 161 of the Law provide broad regulation making powers which would normally be regarded in Queensland as "Henry VIII" provisions. For example, section 161(1)(a) of the Law provides that the national regulations may provide for the different categories of licence, registration and accreditation that may be granted for licensed occupations. Also, section 161(1)(b) provides that national regulations may provide for the scope of work that may be carried out under the authority of the different categories of licences, registration and accreditation.

The Queensland Scrutiny of Legislation Committee in its Report No. 3 The Use of 'Henry VIII Clauses' in Queensland Legislation reviewed the use of Henry VIII clauses in national schemes of legislation. While generally opposed to Henry VIII clauses, in determining whether there is a possibility of a legitimate role for Henry VIII clauses in certain circumstances, the Committee considered that a justifiable use may be to facilitate the application of national schemes of legislation. The Report also stated that it would continue to closely scrutinise all Henry VIII clauses on their merits.

The broad regulation making powers may be justified because the Law is attempting to provide a framework for a number of diverse occupational licences within national legislation. It would be inefficient, complex and potentially confusing to provide specific provisions for a broad range of occupations in the one piece of primary legislation. Flexibility will be needed in the legislation across different occupational areas. For example, eligibility requirements for the electrical trades, which include qualifications, skills and knowledge, will be significantly different to those for property-related occupations.

69. Section 162 would allow for the inclusion of new occupations in national regulations and may authorise the amendment of the Act by regulation also. However, the committee notes that, for the reasons identified above, section 162 may constitute an acceptable delegation of legislative power as well. Further, the explanatory notes state (at 4) that:

When an occupation is prescribed by the national regulations as being a licensed occupation it is envisaged that each jurisdiction will need to return to Parliament to make consequential and transitional amendments to existing legislation regulating the occupation.

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

70. Part 4 of the *Legislative Standards Act* relates to explanatory notes. Section 22(1) requires a member who presents a bill to the Legislative Assembly to circulate to members an explanatory note for the bill before the resumption of the second reading debate. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the bill's short title and a brief statement regarding:
- the policy objectives of the bill and reasons for them;
 - how the bill will achieve the policy objectives and why the method adopted is reasonable and appropriate;
 - if appropriate, any reasonable alternative of achieving the policy objectives and the reasons for not adopting the alternative/s;
 - assessment of the administrative cost to government of implementation of the bill, including staffing and program costs but not the cost of developing the bill;
 - consistency of the bill with fundamental legislative principles and, if inconsistency arises, the reasons for the inconsistency;
 - the extent to which consultation was carried out in relation to the bill;
 - explanation of the purpose and intended operation of each clause of the bill; and
 - a bill substantially uniform or complementary with legislation of the Commonwealth or another State.
71. Section 23(2) states that if the explanatory note does not include the information above, it must state the reason for the non-inclusion.
72. Explanatory notes were tabled at the first reading of the bill. They are drafted in clear and precise language and generally contain the information required by section 23.

Substantial uniformity with legislation of another jurisdiction

73. The explanatory notes provide the following information (at 14-5 and see also 1-3):

The introduction of national legislation in a State or Territory Parliament for adoption by other participating States and Territories is a standard approach to implementing national schemes in areas such as licensing, where Constitutional powers rest with States and Territories, and not the Commonwealth.

Although the legislation for national schemes may take a number of forms, concerns about abrogating the rights of Parliaments tend to be greatest when, as in this case, the proposed law includes pre-determined legislative provisions based on an agreement between governments. A number of Scrutiny of Legislation Committees have previously noted that national scheme legislation may raise concerns about the authority of a State government to respond to, or distance itself from, the actions of a joint Commonwealth and State regulatory authority and the effect of executive pressure upon Parliaments to merely ratify the legislation.

The COAG Agreement identifies Victoria as host of the Law. The Law incorporates the COAG Agreement made between the Premiers and Chief Ministers of all States and Territories. The Law is not Commonwealth law, and participating States and Territories are not referring powers to the Commonwealth.

The institution of Parliament is supreme, and the Queensland Parliament will ultimately, through debate of this Bill, decide whether the proposed legislation will be passed to enable full implementation of the NLS. Other participating Australian States and Territories are expected to bring applied laws or mirror legislation for passage through their respective Parliaments by the end of 2010. Again, Parliaments of each participating jurisdiction are sovereign and will decide whether to pass a Bill to apply or mirror the Law as a law of that jurisdiction.

The Law, and the application of the proposed Law, represent an important step towards improving national licensing regimes through fully implementing the NLS. However, until the NLS's anticipated implementation date (1 July 2012) for the first phase occupations, current State and Territory based legislation will continue to apply for the licensing of occupational areas.

3. POLICE LEGISLATION AMENDMENT BILL 2010

Date introduced: 5 October 2010
Responsible minister: Hon NS Roberts MP
Portfolio responsibility: Minister for Police, Corrective Services and Emergency Services

ISSUES ARISING FROM EXAMINATION OF BILL

1. In relation to whether the bill has sufficient regard to rights and liberties of individuals, the committee draws the attention of the Parliament to:
 - **clause 6** enabling the electronic assessment of criminal history records for police service employment screening purposes;
 - **clause 25** allowing the minister to request the extended criminal history of an applicant for appointment as a member of the Prostitution Licensing Authority or executive director;
 - **clause 13** providing for the automatic suspension and cancellation of a brothel licence or approved manager's certificate following the non-payment of annual fees and which may affect work-related rights;
 - **clause 3** enabling the State-wide rollout of ticketing for public nuisance, public urination, and similar offences;
 - **clauses 16 and 20** providing that, for cancellation and disciplinary inquiries, the Prostitution Licensing Authority would not be bound by the rules of evidence;
 - **clauses 8, 16, 20, 25, 29, 31 and 35** amending existing offence provisions and creating new ones;
 - **clauses 16 and 20** which appear to provide appropriate protection against self-incrimination; and
 - **clause 25** which may not be drafted in a sufficiently clear and precise way.
2. The committee invites the minister to provide information regarding the procedures in place to ensure **clause 3** has sufficient regard to rights and liberties of individuals.

BACKGROUND

3. The legislation would effect a large number of amendments to policing legislation.

LEGISLATIVE PURPOSE

4. The primary objectives of the bill are to amend the (explanatory notes, 1):
 - *Police Powers and Responsibilities Act 2000* to support the state-wide roll out of ticketing for public nuisance, public urination and associated offences;⁴
 - *Police Service Administration Act 1990* to enable the Queensland Police Service to use the full criminal information provided to CrimTrac under the National Police Reference System for the assessment of suitability of records, including the revival of spent convictions, for employment screening purposes; and
 - *Prostitution Act 1999* and *Prostitution Regulation 2000* to:
 - allow for the automatic suspension and cancellation of a brothel licence or an approved manager's certificate for non payment of annual fees;
 - provide the Prostitution Licensing Authority with a prescribed scheme for undertaking disciplinary inquiries; and
 - provide for probity checking of persons seeking to be or who are appointed as a member or executive director of the Prostitution Licensing Authority, or employment as a staff member of the Prostitution Licensing Authority.

⁴ The Summary Offences and Other Acts Amendment Bill 2008, creating a new offence of public urination, was reported on by the committee of the 52nd Parliament in *Alert Digest* 13/08, 41.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

Sufficient regard to rights and liberties of individuals

Rights and liberties

5. Fundamental legislative principles include requiring that legislation have sufficient regard to rights and liberties of individuals. This requirement is stated in section 4(2) of the *Legislative Standards Act*.

Right to privacy

6. **Clause 6** would enable the electronic assessment of criminal history records for police service employment screening purposes.
7. It would amend section 10.2A of the *Police Service Administration Act* to enable the electronic assessment of criminal history records for employment screening purposes. Currently, section 10.2A authorises the Commissioner to disclose criminal history records via CrimTrac or another police service. This is a manual process, requiring the faxing or couriering of relevant information. The disclosure is subject to the non-disclosure provisions of other legislation, including the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

8. In relation to these changes, and any potential impact upon individuals' privacy, the explanatory notes indicate (at 5):

The proposed amendments to the PSAA do not conflict with fundamental legislative principles. NSS [Crim Trac's National Police Checking Service Support System] will change the current process for the vetting and transfer of criminal history information between police services from a process of faxing and couriering of hard copy documents, to an electronic process. The new process will also enhance accountability through a data trail auditing functionality. Furthermore, the disclosure of the person's criminal history to an employer or third party remains unchanged and is only undertaken in accordance with relevant legislation limiting the disclosure to current adult convictions and with the written consent of the relevant person.

9. **Clause 25** would allow the minister to request the extended criminal history of an applicant for appointment as a member of the Prostitution Licensing Authority or executive director.
10. Clause 25 would amend the *Prostitution Act* by inserting a new part 7, subdivision 2, to allow the minister to request the 'extended criminal history' of an applicant for appointment as a member of the Prostitution Licensing Authority or executive director from the Commissioner of Police. Additionally, the bill enables the Executive Director of the Prostitution Licensing Authority to request the 'extended criminal history' of a person seeking employment with the Prostitution Licensing Authority as a staff member from the Commissioner of Police.
11. The 'extended criminal history' includes every conviction or charge of an offence, in Queensland or elsewhere and operates despite the *Criminal Law (Rehabilitation of Offenders) Act* and the *Youth Justice Act 1992* (juvenile cautions and conferences). The Commissioner of Police in complying with a request to prepare an extended criminal history report, only has to include information to which the Commissioner has possession of or has access to.
12. In relation to the potential of the proposed provisions to affect rights to privacy of personal information, the explanatory notes state (at 7):

The disclosure of a person's criminal history, including spent convictions and charges, potentially breaches the fundamental legislative principle that legislation should have sufficient regard to rights and liberties of individuals, with respect to individuals' rights to rehabilitation, privacy and paid employment. This is particularly relevant to untested criminal history information in the form of pending charges, acquittals and withdrawn charges.

However, the potential breach is justified on the basis that the proposed amendments will support the safety and security of clients and sex workers, ensure confidentiality of sensitive information and maintain public and client confidence in the integrity of the PLA. Furthermore, the amendments reflect the principles of natural justice by requiring that prior to using a extended criminal history report, the information must be disclosed to the person and the person is allowed a reasonable opportunity to make representations about the information. Additionally, the amendments only permit the criminal history checking of a prospective PLA members, executive director or staff members with their written consent. With regard to a public service officer seeking employment with the PLA, the appeal processes under Chapter 7, Part 1, Division 1 of the PSA will apply in relation to any adverse decision. The amendments also provide for confidentiality and destruction of criminal history reports.

The extended criminal history checking and disclosure requirements in relation to persons appointed as members of the PLA or as an executive director or prospective appointees are modelled on provisions relating to senior and ordinary tribunal members in Chapter 4, Part 3, Division 3 of the Queensland Civil and Administrative Tribunals

Act 2009. The provisions relating to staff members is reflective of probity provisions contained in the Public Service Act 2008.

Right to work and work-related rights

13. **Clause 13**, providing for the automatic suspension and cancellation of a brothel licence or approved manager's certificate following the non-payment of annual fees, may affect work-related rights. It would amend the *Prostitution Act* to provide for the automatic suspension and cancellation of a licensee's licence or approved manager's certificate following the non-payment of annual fees. New section 24B will enable the following:
- automatic 28 day suspension of the licensee's licence or the approved manager's certificate;
 - lifting of a suspension on the payment of all outstanding annual fees during the suspension period;
 - lifting of a suspension where, in exceptional circumstances, a licensee or approved manager enters into a payment plan with the Prostitution Licensing Authority for the payment of the outstanding annual fees; and
 - automatic cancellation of the licence or approved manager's certificate if the annual fees are not paid during the suspensions period or in accordance with any payment plan.

14. In relation to the effect, if any, this amendment will have on rights and liberties, the explanatory notes indicate (at 6):

The provisions for the automatic suspension and/or cancellation of a licence or certificate for unpaid annual fees remains consistent with other current decisions made under the PA and is considered effective, appropriate and the most efficient way to have the matters dealt with. This model is similar to that found in section 36L of the Liquor Regulation 2002 in relation to the automatic suspension and cancellation of a licence for the non-payment of fees.

Additionally, the Bill, by allowing the licensee or manager to enter into a payment plan with the PLA in exceptional circumstances, provides sufficient flexibility to ensure that licences or certificates are not suspended or cancelled in circumstances that could be considered unjust.

Right to fair and just legal process

15. **Clause 3** would enable the State-wide rollout of ticketing for public nuisance, public urination, and similar offences. It would amend section 394 of the *Police Powers and Responsibilities Act* to remove provisions which limit the issuing of tickets for public nuisance or associated offences, in relation to persons arrested and in custody at a police station, police establishment or watch-house, to the prescribed areas.
16. In this regard, the committee received a submission from Mr Alastair MacAdam, Senior Lecturer in Law, Queensland University of Technology Law School, and barrister of the Supreme Court of Queensland. The committee has, in accordance with section 50(2) of the *Parliament of Queensland Act*, authorised the tabling and publication of the submission. Copies are available from the Queensland Parliament's tabled papers site.
17. The explanatory notes (at 1) to the Summary Offences and Other Acts Amendment Bill 2008, creating the offence of public urination, indicated that the bill aimed to respond to recommendations in the Crime and Misconduct Committee report, *Policing Public Order: A review of the public nuisance offence*.⁵ More specifically, in respect of the legislative change to be effected by the bill, the explanatory notes stated (at 2):

The CMC was required to conduct a review of the public nuisance provisions and prepare a report on the review. This report was tabled in Parliament on 23 May 2008 and contained five recommendations. The recommendations with legislative impact and hence, addressed through this Bill are:

Recommendation 2:

That a separate offence titled 'public urination' be created with the same penalty as section 9(1) of the Summary Offences Act 2005.

Recommendation 4:

That ticketing should be introduced as a further option available to police to deal with public nuisance behaviour. Ticketing should be introduced only in conjunction with a focus on 'de-escalation' and informal resolution of public order issues. The introduction of ticketing as an option should be evaluated to ensure it is not having an adverse effect in Queensland.

⁵ Available from the tabled papers database: www.parliament.qld.gov.au/view/LegislativeAssembly/tabledPapers/home.asp; see also and Alert Digest 13/08

18. The above considerations are not addressed in the explanatory notes to the amending bill. In his second reading speech, in relation to the issue of ticketing, the minister stated:⁶

On 15 June 2010, the Premier and I announced that police state-wide will be given the power to issue on-the-spot fines for public nuisance, public urination and associated offences. This followed a 12-month trial by the Queensland Police Service in 2009 of issuing infringement notices for public nuisance, public urination and associated offences in the Townsville and South Brisbane police districts. The trial was initiated by the Bligh government in direct response to recommendations contained in the Crime and Misconduct Commission's report Policing public order: a review of the public nuisance offence, which identified ticketing as a viable option for dealing with public nuisance behaviour.

Griffith University evaluated the 12-month trial and its report concluded that infringement notices are a cost-effective means of dealing with public nuisance offences. The report found that during the trial period 46 per cent of all persons ticketed had no previous criminal history—consistent with the CMC report findings that policing of public nuisance offending is primarily focused on managing 'party people' in response to public concerns. For this group of people, ticketing for public nuisance offending has the potential to prevent them from entering the criminal justice system.

The ability for police to issue infringement notices will be in addition to current actions available to police, including diversion, cautions, issue of move-on directions, issue of notices to appear, and arrest and charge. The issuing of infringement notices will reduce the need for offenders to be taken into police custody for relatively minor offences and enable police to spend less time on paperwork for public nuisance offenders and be available to perform operational duties.

In implementing state-wide public nuisance ticketing, the Queensland Police Service will maximise the use of alternatives to enforcement action, where appropriate, to ensure ticketing does not unreasonably impact on vulnerable social groups. This includes conducting ongoing evaluation through an operational performance review on public order offending 12 months after state-wide implementation.

19. The committee invites the minister to provide information regarding the procedures in place, as stated in the Police Handbook, to ensure clause 3 has sufficient regard to rights and liberties of individuals.
20. **Clauses 16 and 20** would provide that, for cancellation and disciplinary inquiries, the Prostitution Licensing Authority would not be bound by the rules of evidence.
21. Part 3 of the *Prostitution Act* establishes a licensing system, including:
- brothel licence cancellation and disciplinary action (sections 24-30); and
 - manager's certificate cancellation and disciplinary action (sections 50-56).
22. New section 27A (clause 15) and new section 53A (clause 20) would allow the Prostitution Licensing Authority to conduct a disciplinary inquiry by hearing or on correspondence. New sections 28A and 54A, regarding procedure for disciplinary inquiries by hearing, would state that the Authority must decide the matter in the way it considers appropriate but must:
- observe natural justice; and
 - act as quickly, and with as little formality and technicality as consistent with a fair and proper consideration of the issues.
23. New sections 28A and 54A would provide further that the Authority:
- would not be bound by the rules of evidence;
 - might inform itself in the way, and to the extent, the Authority considered appropriate; and
 - might decide the procedures to be followed for the proceedings; and
 - might receive evidence on oath or by statutory declaration.
24. The committee notes that, in the absence of statutory provision regarding the rules of evidence, the nature of the issues of fact to be decided and the consequences of the finding will have an important bearing on the nature of the rules of evidence governing the proceedings of a tribunal.⁷
25. In relation to whether clauses 16 and 20 have sufficient regard to rights and liberties of individuals, the explanatory notes state (at 6-7):

⁶ Hon NS Roberts, Minister for Police, Corrective Services and Emergency Services, *Record of Proceedings (Hansard)*, 5 October 2010, 3515.

⁷ JD Heydon, *Cross on Evidence*, 7th ed, LexisNexis Butterworths, 2004 [1065]

The PA currently provides power for the PLA to undertake a disciplinary inquiry and action against a licensee or an approved manager, however, provides little direction on how the PLA is to conduct the disciplinary inquiry. The Bill inserts a clear framework for the PLA to undertake a disciplinary inquiry, promoting consistency in undertaking disciplinary inquiries. The disciplinary framework is similar to that provided for disciplinary proceedings of a teacher by the PP&C committee under Chapter 6, Part 1, Division 2 of the Education (Queensland College of Teachers) Act 2005.

26. **Clauses 8, 16, 20, 25, 29, 31 and 35** would amend existing offence provisions and create new ones. The proposed offences and maximum penalties are identified in the table below.

Clause	Amended/ new section	Offence	Proposed maximum penalty
<i>Police Service Administration Act</i>			
8	10.2C(4)	Misuse of information obtained under Act [section redrafted]	100 penalty units (\$10 000) [current penalty]
<i>Prostitution Act</i>			
16	New sections 28C, D, E	<ul style="list-style-type: none"> Failure to take oath or answer question; Failure, without a reasonable excuse, to give the Authority the information the person is required to give by the notice; Failure to attend without a reasonable excuse 	60 penalty units (\$6000)
20	New sections 54C, D, E	<ul style="list-style-type: none"> Failure to take oath or answer question; Failure, without a reasonable excuse, to give the Authority the information the person is required to give by the notice; Failure to attend without a reasonable excuse 	60 penalty units (\$6000)
25	New sections 108AC, 108AD	<ul style="list-style-type: none"> Failure to disclose change extended criminal history Providing an approved form that is false, misleading or incomplete in a material particular (member of the Authority) 	100 penalty units (\$10 000) or 2 years imprisonment
29	New sections 110KB, 110KC	<ul style="list-style-type: none"> Failure to disclose change extended criminal history Providing an approved form that is false, misleading or incomplete in a material particular (executive director) 	100 penalty units (\$10 000) or 2 years imprisonment
31	New section 110S	<ul style="list-style-type: none"> Failure to disclose change extended criminal history Providing an approved form that is false, misleading or incomplete in a material particular (staff member) 	100 penalty units (\$10 000) or 2 years imprisonment
35	New section 133A	Disclosure of confidential information	100 penalty units (\$10 000) or 2 years imprisonment

Natural justice

27. Section 4(3)(b) of the *Legislative Standards Act* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.
28. **Clauses 16 and 20** may be inconsistent with principles of natural justice.
29. New sections 28B and 54B of the Prostitution Act would allow the Prostitution Licensing Authority to continue a disciplinary inquiry and make a determination as to whether a ground for disciplinary action was established, despite a licensee or approved manager failing to attend a hearing or providing a submission where the inquiry was conducted by correspondence.
30. The committee notes that the content of the 'fair hearing rule' will depend upon the circumstances in which it is to be applied, but requires generally:⁸

⁸ P Cane and L McDonald, *Principles of Administrative Law: Legal Regulation of Governance* (2008) 135

- adequate notice of a decision adverse to an individual's interests;
 - disclosure of relevant information on which the decision is based in sufficient detail to enable a meaningful hearing on the critical issues arising for decision;
 - the opportunity to make relevant submissions and adduce relevant evidence; and
 - sufficient time to prepare for the hearing.
31. Parliament may enact legislation inconsistent with principles of natural justice, but 'plain words of necessary intendment' are required.⁹ The courts will not 'impute to the legislature an intention to abrogate or curtail fundamental rights or freedoms unless such an intention is clearly manifested by unmistakable and unambiguous language'.¹⁰
32. In relation to the consistency of clauses 16 and 20 with section 4(3)(b) of the *Legislative Standards Act*, the explanatory notes say (at 6):

The ability for the PLA to continue with a disciplinary inquiry and make a determination where the licensee or approved manager fails to attend a disciplinary hearing or provide a submission is considered essential. Without such power, there would be no consequence for a licensee or approved manager who fails to attend the hearing or make a submission. The ability for the PLA to continue with the inquiry is discretionary on the determination of the PLA and non-compliance by a person should not automatically prevent a decision from being made. This is of particular relevance where the grounds for the disciplinary action may affect the health, safety or wellbeing of any person.

Protection against self-incrimination

33. Section 4(3)(f) of the *Legislative Standards Act* 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.
34. **Clauses 16 and 20** would appear to provide appropriate protection against self-incrimination.
35. New sections 28C to 28E and 54C to 54E of the *Prostitution Act* would provide the Prostitution Licensing Authority with powers to:
- compel the attendance of witnesses;
 - require a witness or the licensee or the approved manager to answer questions; and
 - produce documents or give information the Prostitution Licensing Authority considers relevant.
36. A witness who failed to attend a disciplinary hearing and a licensee, approved manager or witness who failed to answer questions, produce documents or provide information, without a reasonable excuse, would commit an offence with a maximum penalty of 60 penalty units (\$6000). However, a person would not commit an offence in not answering questions, producing documents or providing information which may tend to incriminate the person.
37. Accordingly, the new sections appear to be consistent with section 4(3)(f) of the *Legislative Standards Act* (explanatory notes, 6):

Additionally, whilst the Bill enables the PLA to compel a relevant witness to attend a disciplinary inquiry, and compel a licensee, approved manager or a relevant witness to answer questions and provide information including documents, a person does not commit an offence for failing to answer questions or provide information, if they have a reasonable excuse, including not doing so, when compliance might tend to incriminate the person. The Bill also limits who may be compelled to attend or produce documents or other relevant things at a disciplinary inquiry to a relevant person.

Clear meaning

38. Section 4(3)(k) of the *Legislative Standards Act* 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 way.
39. **Clause 25** may not be drafted in a sufficiently clear and precise way.

⁹ *Annetts v McCann* (1990) 170 CLR 596, 598; for example, in *Brisbane City Council v Valuer-General (Qld)* (1978) 140 CLR 41, Gibbs J at [20] considered the intention to be attributed to the Parliament in relation to section 13(7) of the *Valuation of Land Act* (since amended).

¹⁰ *Plaintiff S157 v Commonwealth* (2003) 211 CLR 476, 492

40. It would amend the *Prostitution Act* by inserting a new part 7, subdivision 2, to allow the minister to request the extended criminal history of an applicant for appointment as a member of the Prostitution Licensing Authority or executive director from the Commissioner of Police, may not be drafted in a sufficiently clear and precise way.
41. New section 10AB, in part, provides as follows:
- (6) Before using information obtained under subsection (2) to decide whether a person should continue or be recommended for appointment as member of the Authority, the Minister must—
 - (a) disclose the information to the person; and
 - (b) allow the person a reasonable opportunity to make representations to the Minister about the information.
 - (7) The Minister must ensure a report given under this section is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.
42. The committee notes that the terms used in new section 10AB, such as ‘a reasonable opportunity’, are quite broad and might result in the legislation being interpreted and applied inconsistently. The terms are not defined in the legislation. The committee notes the significant consequences which could result from an affected person not being able to make representations, or a report not being destroyed in a timely way.
43. The committee invites the minister to provide further information about whether new section 10AB is drafted in a clear and precise way.

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

44. Part 4 of the *Legislative Standards Act* relates to explanatory notes. Section 22(1) requires a member who presents a bill to the Legislative Assembly to circulate to members an explanatory note for the bill before the resumption of the second reading debate. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the bill's short title and a brief statement providing certain information. If the explanatory note does not include the information, it must state the reason for the non-inclusion (section 23(2)).
45. Explanatory notes were tabled at the first reading of the bill. They are clear and precise and contain the information required by section 23.

PART 2 – SUBORDINATE LEGISLATION EXAMINED**SUBORDINATE LEGISLATION TABLED: 5 OCTOBER 2010 (AND SOME MADE BUT NOT YET TABLED)**

(Listed in order of sub-leg number)

SLNo 2010	SUBORDINATE LEGISLATION	Other Docs Tabled (EN, RIS, EI)*	Date Of Gazettal	Tabling Date By	Date Tabled	Disallow Procedures Date
260	Private Health Facilities Amendment Regulation (No.1) 2010	EI	01/10/2010	TBA*	5/10/2010	TBA
261	Water Resource (Burdekin Basin) Amendment Plan (No.1) 2010		01/10/2010	TBA	5/10/2010	TBA
262	Coal Mining Safety and Health Amendment Regulation (No.1) 2010	EI	01/10/2010	TBA	5/10/2010	TBA
263	Mining and Other Legislation Amendment Regulation (No.1) 2010	EI	01/10/2010	TBA	5/10/2010	TBA
264	Mineral Resources Amendment Regulation (No. 4) 2010	EI	01/10/2010	TBA	5/10/2010	TBA
265	Education (Queensland Studies Authority) Amendment Regulation (No.2) 2010	RIS, EN	01/10/2010	TBA	5/10/2010	TBA
266	Child Protection (Offender Reporting) Amendment Regulation (No.1) 2010		01/10/2010	TBA	5/10/2010	TBA
267	Proclamation commencing certain provisions		01/10/2010	TBA	5/10/2010	TBA
268	Primary Industries and Fisheries Legislation Amendment Regulation (No.1) 2010		01/10/2010	TBA	5/10/2010	TBA
269	Chemical Usage (Agricultural and Veterinary) Control Amendment Regulation (No.1) 2010		01/10/2010	TBA	5/10/2010	TBA
270	Rural and Regional Adjustment Amendment Regulation (No.6) 2010		01/10/2010	TBA	5/10/2010	TBA
271	Funeral Benefit Business Regulation 2010	EI	01/10/2010	TBA	5/10/2010	TBA
272	Proclamation commencing certain provisions		01/10/2010	TBA	5/10/2010	TBA
273	Industrial Relations Amendment Regulation (No. 1) 2010		01/10/2010	TBA	5/10/2010	TBA
274	Electrical Safety and Other Regulation Amendment and Repeal Regulation (No.1) 2010	EN	01/10/2010	TBA	5/10/2010	TBA
275	Private Health Facilities (Standards) Amendment Notice (No.1) 2010		01/10/2010	TBA	5/10/2010	TBA
276	Food Amendment Regulation (No.1) 2010		08/10/2010	TBA	TBA	TBA
277	Local Government Legislation Amendment Regulation (No.2) 2010		08/10/2010	TBA	TBA	TBA

278	Urban Land Development Authority Amendment Regulation (No.4) 2010		08/10/2010	TBA	TBA	TBA
279	Sustainable Planning Amendment Regulation (No.4) 2010		08/10/2010	TBA	TBA	TBA
280	Gambling and Other Legislation Amendment (Postponement) Regulation 2010		08/10/2010	TBA	TBA	TBA
281	Land Sales Amendment Regulation (No.3) 2010		08/10/2010	TBA	TBA	TBA
282	Justice Legislation (Costs and Fees) Amendment Regulation (No.1) 2010		08/10/2010	TBA	TBA	TBA
283	Industrial Relations (Mandatory Code of Practice for Outworkers) Notice 2010		08/10/2010	TBA	TBA	TBA
284	Plant Protection (Myrtle Rust) Notice 2010		06/10/2010	TBA	TBA	TBA
285	Land Amendment Regulation (No.1) 2010		08/10/2010	TBA	TBA	TBA
286	Hospitals Foundations Amendment Regulation (No.1) 2010		15/10/2010	TBA	TBA	TBA
287	Weapons Amendment Regulation (No.1) 2010		15/10/2010	TBA	TBA	TBA
288	Food Production (Safety) Amendment Regulation (No.1) 2010		15/10/2010	TBA	TBA	TBA
289	Building Amendment Regulation (No.4) 2010	RIS, EN	15/10/2010	TBA	TBA	TBA
290	Liquor Amendment Regulation (No.2) 2010	EN	15/10/2010	TBA	TBA	TBA
291	Commission for Children and Young People and Child Guardian Amendment Regulation (No.2) 2010		15/10/2010	TBA	TBA	TBA
292	Nature Conservation (Protected Areas Management) Amendment Regulation (No.2) 2010		15/10/2010	TBA	TBA	TBA

* EN – Explanatory Notes. RIS – Regulatory Impact Statement. EI – Explanatory Information received.

TBA – Disallowance date to be advised when 2011 parliamentary sitting dates are available.

SUBORDINATE LEGISLATION UNDER CONSIDERATION

4. ELECTRICAL SAFETY AND OTHER REGULATION AMENDMENT AND REPEAL REGULATION (NO.1) 2010 SL274

Date tabled: 5 October 2010

Disallowance date: TBA

Responsible minister: Hon CR Dick MP

ISSUES ARISING FROM EXAMINATION OF LEGISLATION

1. In relation to whether the subordinate legislation has sufficient regard to rights and liberties of individuals, the committee invites the minister to provide information regarding **section 81D** which may not be sufficiently clear and which may result in difficulty for individuals wishing to access wiring rules when installing ceiling insulation.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

Sufficient regard to rights and liberties of individuals

Rights and liberties

2. Fundamental legislative principles include requiring that legislation have sufficient regard to rights and liberties of individuals. This requirement is stated in section 4(2) of the *Legislative Standards Act*.
3. New section 81D requires that, if any ceiling insulation is installed in a building in the vicinity of recessed luminaires, the installation of the ceiling insulation must comply with the requirements of clause 4.5.2.3 of the Wiring Rules. This is intended to ensure that the installation of ceiling insulation around recessed luminaires does not interrupt airflow and does not increase the risk of temperature rise or fire.
4. Whilst it is noted that the explanatory notes tabled with the regulation (at 9) state that:
The department will make every effort to ensure the Regulation is updated within a reasonable time to reflect any related update in the Wiring Rules. Additionally, the Department will continue to make the relevant clause as updated available to insulation installers on the department's website.
5. However, a note to section 81D indicates that the clause is available on the website but fails to contain a link to the web address.
6. It is acknowledged that this may be because it is anticipated that the website content will be continually updated – and therefore it would be impractical to do so. However, there is potential that considerable confusion may arise for members of the public who are unfamiliar with government websites as to how to obtain this information and, accordingly, ascertain the nature of the obligations to be met. This is of concern given the information is of such a critical nature.
7. The committee invites the minister to provide information about whether the legislation is consistent with fundamental legislative principles.

5. FUNERAL BENEFIT BUSINESS REGULATION 2010 SL271

Date tabled: 5 October 2010

Disallowance date: TBA

Responsible minister: Hon AP Fraser MP

ISSUES ARISING FROM EXAMINATION OF LEGISLATION

1. The committee invites the minister to provide information about the factors that were considered when setting the penalties within the regulation.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES**Sufficient regard to rights and liberties of individuals****Rights and liberties**

2. Fundamental legislative principles include requiring that legislation have sufficient regard to rights and liberties of individuals. This requirement is stated in section 4(2) of the *Legislative Standards Act*.
3. The legislation regulates consumer contracts with funeral benefit businesses. The regulation contains a number of maximum penalties of 1 penalty unit (\$100) for offences pursuant to the regulation, for example:
 - failure by a registered corporation to maintain proper records in a trust account receipt book (section 25);
 - failure by a registered corporation to provide receipts on the receipt of a contribution or other money payable (section 25);
 - failure of a part 3 corporation to ensure that its benefits trust fund is audited annually (section 32).
4. There are a number of similar examples throughout the regulation. For all offences, the maximum penalty is only 1 penalty unit.
5. Offences outlined in the regulation have the potential to adversely affect rights and liberties of individuals who enter into consumer contracts with funeral benefit businesses.
6. As explanatory notes were not tabled with the regulation, the committee invites the minister to provide information about the factors considered when setting these penalties.

6. STATUTORY INSTRUMENTS AMENDMENT REGULATION (NO.2) SL216

Date tabled: 31 August 2010
Disallowance date: 25 November 2010
Responsible minister: Hon AM Bligh MP

ISSUES ARISING FROM EXAMINATION OF LEGISLATION

1. This regulation amends the *Statutory Instruments Regulation 2002*, prescribing various regulations which are deemed exempt from expiry under part 7 of the Act.

OPERATION OF CERTAIN STATUTORY PROVISIONS**Staged automatic expiry of subordinate legislation**

2. Section 56 of the *Statutory Instruments Act* allows for exemptions, by way of regulation, from staged automatic expiry in respect of uniform subordinate legislation. The regulation extended the life of three instruments of uniform subordinate legislation:
 - Classification of Publications (Approval of Codes of Conduct) Order 1992 (grounds for further exemption - uniform);
 - Maintenance Regulation 1967 (grounds for further exemption - uniform); and
 - Prisoners (Interstate Transfer) Regulation 1993 (grounds for further exemption - uniform).
3. In respect of these instruments, the committee notes that each has been extended previously and each has been extended more than once.
4. Section 56A of the *Statutory Instruments Act* allows for exemption of other subordinate legislation from expiry under part 7. The exemption is by regulation and must be on the ground that the Act or provision is under review. Each exemption extension lasts for one year but may be repeated. Section 56A does not limit the number of extensions.
5. When an extension regulation is made, the minister must table a report stating how the Act is subject to review and when the minister expects the review to end. The report is to be tabled within seven sitting days after the extension regulation is made (section 56A(4)) but failure to comply does not affect the validity of the extension regulation.
6. In this regard, it is noted that reports were tabled for all non-uniform instruments and all reports adequately and fully outlined the grounds for exemption from expiry and/or reasons for further review.
7. Section 56 does not require ministerial reports in respect of uniform subordinate legislation.

PART 3A – MINISTERIAL CORRESPONDENCE – BILLS**7. HOLIDAYS AMENDMENT BILL 2010**

Date introduced: 14 September 2010
Responsible minister: Hon CR Dick MP
Portfolio responsibility: Attorney-General and Minister for Industrial Relations
Date passed: 7 October 2010
Committee report on bill: 12/10; at 1 - 2
Date response received: 20/10/10 (copy commences following page)

ISSUES ARISING FROM EXAMINATION OF BILL

1. In relation to whether the bill has sufficient regard to rights and liberties of individuals, the committee draws the attention of the Parliament to **clause 3** which would increase costs to individuals to employ staff to work on Christmas Day 2010 and New Year's Day 2011.

EXAMINATION OF INFORMATION PROVIDED BY MINISTER

2. The committee thanks the minister for the information provided in his letter.
3. The committee makes no further comment regarding the bill.



Hon Cameron Dick MP
Member for Greenslopes



Queensland
Government

In reply please quote: J/10/06309, 533110/1

Attorney-General
and Minister for Industrial Relations

18 OCT 2010

Mrs Jo-Ann Miller MP
Chair
Scrutiny of Legislation Committee
Parliament House
George Street
BRISBANE QLD 4000



B47.10

Dear Mrs Miller Jo-Ann,

Thank you for your email dated 4 October 2010 regarding Legislation Alert 12/10 relating to the Holidays Amendment Bill 2010 (the Bill).

I note that in the Legislation Alert you draw the attention of Parliament to clause 3 of the Bill which would increase costs to individuals to employ staff to work on Christmas Day 2010 and New Year's Day 2011. This has already been acknowledged in the Explanatory Notes to the Bill.

In 2010/2011, Christmas Day and New Year's Day both fall on a Saturday. Normally in such circumstances, those days are not public holidays as substitute public holidays (Tuesday, 28 December for Christmas Day and Monday, 3 January for New Year's Day) are appointed in the week following each day. The effect that the Bill has to public holiday arrangements from previous years is that in addition to the usual substitute public holidays, the Bill prescribes observance of additional public holidays on the actual dates of Christmas Day (Saturday, 25 December 2010) and New Year's Day (Saturday, 1 January 2011).

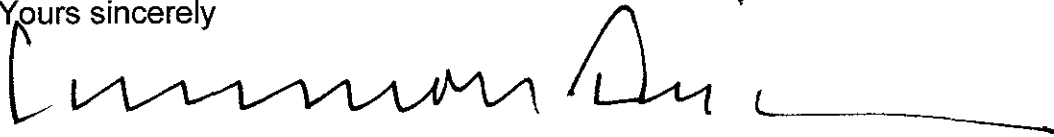
It is fair and appropriate that workers working on Christmas Day and New Year's Day are compensated for being away from their families and friends on days traditionally used for the most special family occasions of the year. The Government believes that any increased costs to employers, including the Government, through the potential for payment of public holiday penalty rates on Christmas Day and New Year's Day will be more than offset by the benefit to hard working employees, who would otherwise receive no additional benefit for working on those days. The Government believes that Queensland workers who have received inferior public holiday entitlements in the past should not continue to suffer a loss of those entitlements this Christmas/New Year.

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It should also be noted that the proposed changes are broadly consistent with current practice for Christmas Day in New South Wales and Western Australia and for New Year's Day in New South Wales, Victoria and Western Australia.

I trust this information is of assistance. However, should you wish to discuss this matter further, please contact Mr Derran Moss, Principal Advisor on 3239 6747.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cameron Dick', followed by a long horizontal line.

**Hon Cameron Dick MP
Attorney-General
and Minister for Industrial Relations**

8. JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2010

Date introduced:	16 September 2010
Responsible minister:	Hon CR Dick MP
Portfolio responsibility:	Attorney-General and Minister for Industrial Relations
Date passed:	6 October 2010
Committee report on bill:	12/10; at 3 - 13
Date response received:	13/10/10 (copy commences following page)

ISSUES ARISING FROM EXAMINATION OF BILL

1. In relation to whether the bill has sufficient regard to rights and liberties of individuals, the committee draws the attention of the Parliament to:
 - **clauses 25-6 and 73** allowing short term authorisation by the chief executive and the adult guardian of the use of 'restrictive practices' other than for containment or seclusion;
 - **clauses 20, 41 and 125** which may affect rights of individuals to information privacy;
 - **clause 22** expanding the costs orders that may be made by in respect of an attempted private prosecution;
 - **clause 64** allowing dismissal of an application to the Family Responsibilities Commission considered to be frivolous or vexatious;
 - **clauses 190, 192-3 and 195** expanding enforcement powers under SPER legislation;
 - **clauses 69 and 108-9** amending existing offence provisions in two Acts and inserting a new offence in one of the Acts;
 - **clauses 98-9 and 104-5** which may make rights and liberties dependent on administrative power which may not be sufficiently defined;
 - **clause 61** reducing the period available to prepare a response to a show cause notice, regarding noncompliance with case plans, issued by the Family Responsibilities Commissioner; and
 - **clauses 2 and 176** which would give retrospective operation to amendments.
2. In relation to whether the bill has sufficient regard to the institution of Parliament, the committee notes that **clauses 4 and 6** are to clarify the legislative power of the Queensland Parliament between the low water mark and the three nautical mile limit.
3. The committee invites the minister to provide further information regarding the application of fundamental legislative principles to:
 - **the schedule** amendment of the 'appropriate rate' of interest prescribed in the *Civil Liability Act 2003* for damages to compensate past monetary loss;
 - **clause 208** which would retrospectively validate legislation; and
 - **clauses 93 and 119** which may raise issues regarding the institutional integrity of courts.

EXAMINATION OF INFORMATION PROVIDED BY MINISTER

4. The committee thanks the minister for the information provided in his letter.
5. The committee makes no further comment regarding the bill.



Hon Cameron Dick MP
Member for Greenslopes

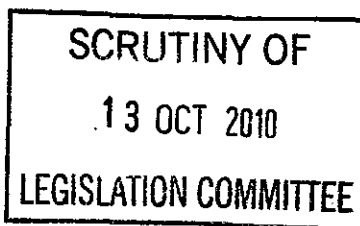


Queensland
Government

Attorney-General
and Minister for Industrial Relations

In reply please quote: J/10/06309, 533110/1

11 OCT 2010



B48.10

Mrs Jo-Ann Miller
Chair
Scrutiny of Legislation Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mrs Miller

Jo - Ann,

Thank you for your letter dated 4 October 2010 forwarding a copy of the relevant pages of the Committee's Legislation Alert No.12 of 2010 that relate to the Justice and Other Legislation Amendment Bill 2010 (the Bill).

In paragraphs 22 to 24, the Committee refers to the schedule amendment to the *Civil Liability Act 2003*, and states that the explanatory notes do not provide information regarding the proposed amendment and invites the Minister to provide information to assist the examination of whether the provision, as amended, would have sufficient regard to the rights and liberties of individuals.

The schedule amendment to the *Civil Liability Act 2003* omits the table name 'Interest rates and yields – capital markets' and replaces the table name with 'Capital Market Yields – Government Bonds – Daily – F2'. The omitted table name is no longer in use and this amendment updates the name of the applicable table. Other than the change in name, the information in the table to be relied upon for the calculation of the relevant interest rate is the same.

In paragraphs 53 to 55, the Committee states that clause 208 of the Bill would retrospectively validate extensions to the commencement of amendments to be effected by the *Transport Legislation Amendment Act 2007* (2007 Amendment Act). The Committee states that the explanatory notes do not indicate whether clause 208 would have sufficient regard to rights and liberties of individuals.

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Clause 208 amends the *Transport Legislation Amendment (Postponement) Regulation (No. 1) 2008* to validate the postponement regulation and to ensure that the amendments to the 2007 Amendment Act made in two amending Acts this year are able to have an effect from the postponement date; that is, 26 October 2010. If the postponement date is not validated the rights and liberties of individuals who were operating on the understanding that the provisions would not commence until this date, could be adversely affected by an earlier commencement of the provisions. For example, the *Transport and Other Legislation Amendment Act (No. 2) 2010* provided for limousine operators and drivers to use either an electronic or paper based booking system. If the postponement regulation was not to be validated, limousine operators and drivers would have been required to use only an electronic booking system up until the commencement of the 2010 Act.

In paragraphs 60 to 62, the Committee refers to clause 93 which amends section 243 to allow a non-judicial president of the Industrial Court to be appointed on a part time basis; and to hold another office, perform other duties or engage in employment in certain circumstances. The Committee states that the explanatory notes do not provide information regarding the effect of clause 93, if any, on the integrity and independence of the Industrial Court of Queensland.

Clause 93 will have no impact on the integrity or independence of the Industrial Court of Queensland. The clause allows the President to convert from working full-time to part-time and vice versa. This can only be achieved by agreement. The President cannot be directed to convert to full-time or part-time work. The amendments provide that a President who is appointed part-time may be permitted to hold another office by agreement with the Minister. This will help attract the highest calibre of appointees to the position of President, for example, a person who holds an honorary office that takes up little of the person's time, and who does not wish to relinquish that office upon appointment as President. It will also help to retain an existing appointee who wishes to take up another role. The Minister's approval is necessary to ensure that the other role is compatible with the office of President. The position of President was previously filled by a Supreme Court Judge who carried out the work, in addition to their other Supreme Court duties, on a part-time basis. The Act still provides the option for the appointment of a Supreme Court Judge to the position.

In paragraphs 63 to 65, the Committee states that clause 119 of the Bill amends section 15 of the *Judges (Pension and Long Leave) Act 1957* to remove the requirement for Governor in Council to provide approval for long leave and the deferment of long leave of the Chief Judge and Chief Magistrate. The Committee states that the explanatory notes do not provide information regarding the effect of clause 119, if any, on the integrity and independence of judges whose leave is governed by the *Judges (Pension and Long Leave) Act 1957*.

It is considered that clause 119 would not have any effect upon the integrity and independence of judges. The management of long leave is a matter that is more appropriately dealt with by the Chief Justice and Chief Judge, whose responsibilities include, amongst other matters, the management of the court diaries and judges' sitting availability.

I thank the Committee for its consideration of this Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cameron Dick', with a large, stylized initial 'C'.A second handwritten signature in black ink, appearing to read 'Cameron Dick', with a large, stylized initial 'C'.

**Hon Cameron Dick MP
Attorney-General
and Minister for Industrial Relations**