Legislation Alert

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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

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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*:

Legislative Standards Act	*Statutory Instruments Act*
• Meaning of 'fundamental legislative principles' (section 4) • Explanatory notes (part 4)	• 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:

<table>
<tr><td rowspan="2">Rights and liberties of individuals</td><td colspan="2">Bills and subordinate legislation
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</td></tr>
<tr><td>Institution of Parliament</td><td>Bills
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</td><td>Subordinate legislation
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 –
in appropriate cases to appropriate persons
if authorised by an Act.</td></tr>
</table>

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/tabledPapers).

PART 1 – BILLS EXAMINED

1. CRIMINAL CODE (ANZAC DAY BETTING) AMENDMENT BILL 2011

Date introduced: 11 May 2011

Responsible minister: Mr Jarrod Bleijie MP

Shadow responsibility: Attorney-General

Nature of bill: Private member's bill

ISSUES ARISING FROM EXAMINATION OF BILL

1. In relation to whether the bill has sufficient regard to fundamental legislative principles, no proposed provisions are drawn to the attention of the Parliament.

BACKGROUND

2. The legislation would amend the Criminal Code to legalise games of two-up at certain Anzac Day celebrations.

LEGISLATIVE PURPOSE

3. The bill is intended to amend the Criminal Code for the following reasons (explanatory notes, 1):

   Two up on ANZAC day has become an Australian tradition. In Queensland, this time honoured game is illegal outside of a casino and participants who engage in two-up games on ANZAC day risk being charged.

4. Clause 3 would amend section 230A of the Criminal Code. Section 230A provides the definitions for chapter 23 of the Code. Within chapter 23, sections of the Code make it illegal to:

   - operate a place for unlawful games – maximum penalty, 600 penalty units ($60 000) or three years' imprisonment (section 232);
   - possess a thing used to play an unlawful game – maximum penalty, 200 penalty units ($20 000) (section 233);
   - conduct unlawful games – maximum penalty, 200 penalty units ($20 000) (section 234(1)); and
   - play unlawful games – maximum penalty, 40 penalty units ($4000) (section 234(2)).

5. Clause 3 would amend the definition of 'unlawful game' in section 230 to exclude an 'exempt two-up game', itself defined as a two-up game played on 25 April at a celebration held at a licensed club or hotel to commemorate Anzac Day.

6. Accordingly, clause 3 would decriminalise the playing of two-up in the specified circumstances, as indicated in the explanatory notes:

   This clause seeks to remove any doubt that the criminal law of unlawful games under section 232 of the Criminal Code does not apply to particular exempt two-up games.

   The insertion of an exempt two up game into the Code means, a two up game held in licensed premises in conjunction with an ANZAC day celebration will be exempt from the criminal law.

7. The committee notes that the bill would not amend the:

   - *Jupiters Casino Agreement Act 1983*; or
   - *Breakwater Island Casino Agreement Act 1984*.

8. For each Act, schedules 1 and 2 appear to provide exclusive licences regarding the playing of two-up.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

9. The explanatory notes state:

   The Bill was drafted using fundamental legislative principles.

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

10. 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)).

11. 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.

2. FAIRER WATER PRICES FOR SEQ AMENDMENT BILL 2011

Date introduced: 12 May 2011

Responsible minister: Hon S Robertson MP

Portfolio responsibility: Minister for Energy and Water Utilities

ISSUES ARISING FROM EXAMINATION OF BILL

12. In relation to whether the bill has sufficient regard to fundamental legislative principles, no proposed provisions are drawn to the attention of the Parliament.

BACKGROUND

13. The legislation is to effect amendments to legislation governing water and wastewater services provided to residential and small business customers in South-East Queensland.

LEGISLATIVE PURPOSE

14. The objectives of the bill are to amend the (explanatory notes, 1):

- *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* to –
  - cap prices charged by distributor-retailers for certain water and wastewater services supplied to residential and small business customers in South-East Queensland by the Consumer Price Index and related amendments;
  - extend the period in which the minister may make a transfer notice; and
  - allow portability of long service leave entitlements when staff move from one distributor-retailer to another;
- *Queensland Competition Authority Act 1997* to remove the price determination role of the Queensland Competition Authority for water and wastewater prices charged by distributor-retailers that was to apply from 1 July 2013;
- *South East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment Act 2010* to provide for the removal of uncommenced amendments to the *Water Act 2000*; and
- *Water Act* to extend the period in which the minister may make a grid contract document.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

15. The explanatory notes state (at 4):

There are no issues with fundamental legislative principles in relation to this Bill.

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

16. 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)).

17. 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.

3. RESIDENTIAL TENANCIES AND ROOMING ACCOMMODATION AMENDMENT BILL 2011

Date introduced: 10 May 2011

Responsible minister: Hon K Struthers MP

Portfolio responsibility: Minister for Community Services, Housing and Minister for Women

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 4** amending an existing offence provision;
   - **clause 5** inserting new offence provisions into the *Residential Tenancies and Rooming Accommodation Act*;
   - **clauses 4 and 5** which may affect rights of individuals to privacy;
   - **clause 8** which would facilitate proof of the contents of a tenancy database; and
   - **clause 10** providing for proposed amendments to apply to listings on tenancy databases made before commencement of the amendments.

BACKGROUND

2. The legislation is to implement national uniform laws regarding residential tenancy databases.

LEGISLATIVE PURPOSE

3. The objectives of the bill are stated in the following way in the explanatory notes (at 1):

   The Bill will amend the Residential Tenancies and Rooming Accommodation Act 2008 *for a particular purpose. The Bill seeks to introduce the national uniform law on residential tenancy databases adopted by the Ministerial Council on Consumer Affairs (MCCA) in December 2010, with some additions and minor variations to ensure the provisions operate effectively in Queensland.*

   The model provisions are similar to the existing provisions in Chapter 9 of the Residential Tenancies and Rooming Accommodation Act 2008 *in that they recognise the rights of lessors and their agents to list former tenants on a residential tenancy database, while introducing limitations and obligations on lessors and their agents to ensure tenancy databases are used fairly for the benefit of those investing in the residential property rental sector.*

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

Sufficient regard to rights and liberties of individuals

Rights and liberties

4. 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 equal application and equal protection of the law

5. **Clause 4** would amend an existing offence provision in the *Residential Tenancies and Rooming Accommodation Act*. The proposed amendment to the maximum penalty is identified below.

Clause	Amended section	Proposed offence	Current maximum penalty	Proposed maximum penalty
4(4)	445(4)	Failing to provide required information about the commission of an offence	10 penalty units ($1000)	15 penalty units ($1500)

6. **Clause 5** would insert new offence provisions into the *Residential Tenancies and Rooming Accommodation Act*. The proposed amendments are identified below.

New section	Proposed offence	Proposed maximum penalty
459(3)	Listing personal information in a tenancy database other than for specified breach	20 penalty units ($2000)
464C	Failing to comply with order of tribunal	50 penalty units ($5000); and 5 penalty units ($500) for each day the offence continues after a conviction
464E(3)	Failing to give written notice of use of database	20 penalty units ($2000)
464F(2)	Failing to give notice of listing	20 penalty units ($2000)
464G(2)	Lessor or agent failing to give notice to ensure quality of listing	20 penalty units ($2000)
464G(3)	Lessor or agent failing to keep copy of notice given to ensure quality of listing	20 penalty units ($2000)
464H(2)	Database operator failing to ensure quality of listing	40 penalty units ($4000)
464I(1)	Lessor or agent failing to provide copy of personal information listed in tenancy database	20 penalty units ($2000)
464I(2)	Database operator failing to provide copy of personal information listed in tenancy database	20 penalty units ($2000)

7. In relation to clause 5 (new section 459(3)), the explanatory notes state (at 5):

The proposed section 459 and section 460 provide for restrictions on listing personal information about a person on a tenancy database. However, the Bill creates an offence only for listing personal information about a person who was not named in a residential tenancy agreement that has ended (see proposed section 459(3)). These are fundamental requirements. For other contraventions, which are the grounds for listing, the person to whom the personal information relates may apply to the tribunal for an order for the amendment or removal of the personal information. The approach of limiting the offence to the circumstances provided in section 459(3) has been taken because it would be extremely difficult for the prosecution to prove that the other restrictions which are the grounds for listing have been contravened. An alternative option could be have no offences and have the tribunal as the only recourse for all contraventions of the restrictions on listing. This would be consistent with the approach in the current Act. However, including the restriction for the circumstances provided in section 459(3) could add value by acting as a further deterrent for contraventions by lessors, their agents and database operators.

8. Clause 5 (new section 464C(2)) would provide for a continuing offence. It may affect rights and liberties of individuals as the penalty for an offence would increase each day the offence continued after a conviction.

9. Part 3 relates to disputes about listings and other matters and allows for applications to be made to the Queensland Civil and Administrative Tribunal about specified matters. New section 464A would allow the tribunal to make an order under part 3 against any person. Failure to comply with an order made under part 3 would create liability to the offence in new section 464C(1). Then, new section 464C(2) would state:

An offence against subsection (1) is a continuing offence and may be charged in 1 or more complaints for periods the offence continues.

Maximum penalty for each day the offence continues after a conviction against subsection (1)—5 penalty units.

10. The explanatory notes state (at 12):

New section 464C is similar to the existing section 463 and provides that a person must comply with an order of the tribunal made about tenancy databases under this Act.

Section 464D is similar to the existing 464 and applies where a court convicts a person of an offence against section 464C. It provides that a court may order the convicted person to pay to a person within a required time an amount for compensation for loss or damage. The person awarded the compensation may enforce the order by filing with a court of competent jurisdiction a certified copy of the order and an affidavit stating the amount remaining unpaid. The order would then become enforceable as if it were an order of the court in which the order and affidavit are filed.

Right to privacy

11. **Clauses 4 and 5** may affect rights of individuals to privacy.

12. Clause 4 would amend section 445 to require individuals to provide information about the commission of suspected offences.

13. Relevant amendments to be made by clause 5 would include new sections:

    - 458 indicating that tenancy databases would be for use by an entity and its officers, employees and agents;
    - 459 allowing listings on tenancy databases in respect of breaches of tenancy agreements by particular persons; and
    - 460 providing that, in the circumstances prescribed, personal information might be included in the tenancy databases.

14. However, the committee notes that proposed provisions to be inserted by clause 5 would include protections of personal information also; for example, new part 3 would allow a person to apply to the Queensland Civil and Administrative Tribunal in respect of a dispute about a listing.

Onus of proof

15. 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.

16. 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.

17. **Clause 8** would be an evidentiary provision, facilitating proof of the contents of a tenancy database.

18. New section 509A would allow a document purporting to be a copy of personal information about a tenant to be evidence of the information about the tenant listed on the tenancy database.

19. The explanatory notes acknowledge possible inconsistency with fundamental legislative principles and provide (at 5-6) justification for the proposed provision:

    Proposed section 509A deems particular documents to be evidence of what is listed in a tenancy database about a particular person. This shifts the onus of proof of what is in fact a listing on the tenancy database onto the person seeking to rely on that matter. The shift in onus potentially breaches the fundamental legislative principles that legislation has sufficient regard to the rights and liberties of individuals because it imposes the obligations relating to evidence on the defendant. The potential breach is justified on the basis that it will facilitate seeking penalties or remedies for contraventions of this law, and that the person seeking to rely on what is listed on the tenancy database will be in a better position to prove the matter.

Retrospective operation

20. Section 4(3)(g) 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 adversely affect rights and liberties, or impose obligations, retrospectively.

21. **Clause 10** would provide for proposed amendments to apply to listings on tenancy databases made before commencement of the amendments.

22. New sections 562 and 563 would provide respectively for proposed amendments to apply to existing listings:

    - new 464G (Ensuring quality of listing – lessor's or agent's obligation) would apply to existing listings if the lessor or agency became aware after commencement that the listing was inaccurate, incomplete, ambiguous or out of date; and
    - new section 464H (Ensuring quality of listing – database operator's obligation) would apply to existing listings if the lessor or agent gave written notice after commencement.

23. The committee notes that both new section 464G and 464H contain proposed offence provisions. However, acts or omissions occurring after commencement only would create liability for the offences.

24. Where legislation may have retrospective operation, the committee examines whether the retrospectivity might have any adverse effects on rights or liberties or whether obligations imposed retrospectively might be unduly onerous. When considering sufficient regard, the committee generally examines whether:

- the retrospective operation would be adverse to persons other than the government; and
- individuals would have relied upon and would have legitimate expectations based on the existing law.

25. The explanatory notes state (at 4-5):

Section 4(3)(g) of the Legislative Standards Act 1992 *provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively. These proposed amendments to the* Residential Tenancies and Rooming Accommodation Act 2009 *may be considered to impose obligations retrospectively by applying the new provisions to listings made on tenancy databases before commencement. However, it is considered that this is justified on a number of grounds:*

- *firstly, the Bill clarifies existing rights for tenants and introduces new obligations on lessors, their agents and database operators for the necessary protection of tenants;*
- *secondly, costs for lessors, their agents and database operators have been minimised by not requiring them to review and amend existing listings in the absence of an application to the tribunal by a tenant. The exception to this rule is in relation to the introduction of the new time limit for listings, in which case database operators have been provided with a 12 month period after commencement in which to update their listings;*
- *finally, this approach, under which the new provisions apply to both existing and new listings is expected to be simpler for the sector to understand and administer, and reflects the general approach to the transition from the* Residential Tenancies Act 1994 *(repealed) to the* Residential Tenancies and Rooming Accommodation Act 2009.

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

26. 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.

27. Section 23(2) states that if the explanatory note does not include the information above, it must state the reason for the non-inclusion.

28. 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

29. In relation to this matter, the explanatory notes include the following statement (at 2-3):

The MCCA formally adopted a revised set of model provisions in December 2010. By this time, the New South Wales Parliament had already passed an earlier version of the model provisions in June 2010, as part of their new Residential Tenancies Act 2010*. The tenancy database provisions included some drafting and substantive variations from the model provisions to address local circumstances. Similarly, in September 2010, the Victorian*

Parliament passed the Residential Tenancies Amendment Act 2010*. The legislation inserted the tenancy database provisions approved by the MCCA with some jurisdictional variations.*

Implementation of the uniform law by states and territories will ensure national consistency in relation to minimum standards. As noted in relation to New South Wales and Victoria, a jurisdiction may add to the rights, obligations or limitations by including or adopting a higher standard for them. This consistency in minimum standards across jurisdictions provides certainty and clarity for tenants, who may move within Australia as it potentially standardises the regulatory regime for tenancy database operators that operate in more than one jurisdiction.

This Bill implements the national uniform legislation for residential tenancy databases in Queensland with some local variations. The new provisions are similar to the existing provisions on tenancy databases in the Act. However, there are some new obligations for lessors, lessors' agents and database operators. The impact of these provisions is to strengthen and offer additional safeguards and protections for tenants.

4. SAFETY IN RECREATIONAL ACTIVITIES BILL 2011

Date introduced: 10 May 2011

Responsible minister: Hon CR Dick MP

Portfolio responsibility: Minister for Education and Industrial Relations

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 21-3, 29-30, 38 and 41** creating new offence provisions; and
   - **clause 40** conferring people engaged in the administration of the legislation with immunity from civil liability.
2. The committee invites the minister to provide further information regarding the application of fundamental legislative principles to:
   - **clause 24** excluding the availability of exculpatory provisions of the Criminal Code in respect of certain offences;
   - **clause 38(2)** imposing an evidential onus on an accused person in proceedings for an offence; and
   - **clause 45** and whether it would have sufficient regard to the institution of Parliament.

BACKGROUND

3. The legislation is to regulate health and safety matters in relation to recreational water activities provided in the conduct of a business or undertaking.

LEGISLATIVE PURPOSE

4. Clause 3(1) and (2) state (see also explanatory notes, 1):

   (1) The main object of this Act is to ensure the health and safety of persons to whom recreational water activities are provided by a person conducting a business or undertaking by—

   (a) protecting the persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from the provision to them of recreational water activities; and

   (b) promoting the provision of advice, information, education and training for health and safety in relation to the provision of the recreational water activities; and

   (c) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and

   (d) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and

   (e) providing a framework for continuous improvement and progressively higher standards of health and safety in relation to the provision of the recreational water activities.

   (2) In furthering subsection (1)(a), regard must be had to the principle that persons should be given the highest level of protection as is reasonably practicable against harm to their health, safety and welfare from hazards and risks arising from the provision of recreational water activities.

5. As the provisions of the Work Health and Safety Bill 2011 would apply also to a person conducting a business or undertaking that provided recreational water activities, clause 3(3) states:

   This Act operates in conjunction with the Work Health and Safety Act 2011 and for that purpose substantial provisions are adopted from that Act and this Act makes provision for the relationship between this Act and that Act.

6. Clause 4 would provide for the application of the Recreational Water Activities Act in circumstances to which the Work Health and Safety Act would apply.

7. The committee's report on its examination of the Work Health and Safety Bill 2011 is contained chapter 7.

8. The bill would amend the:

- *Penalties and Sentences Act 1992*; and
- Work Health and Safety Act 2011.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

9. The explanatory notes provide (at 3) the following information:

The main purpose of this Bill is to provide legislation that will continue to ensure the health and safety of people for whom recreational water activities are provided by a person conducting a business or undertaking. The Bill will operate in tandem with the WHS Bill and mirror its provisions in order to support the harmonisation of WHS laws, while preserving Queensland's regulations and code of practice for recreational diving and snorkelling.

As this Bill has been modelled on the WHS Bill, issues relating to Fundamental Legislative Principles in that Bill are also applicable to this Bill. The Fundamental Legislative Principles are set out in the explanatory notes for the WHS Bill.

Sufficient regard to rights and liberties of individuals

Rights and liberties

10. 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 equal application and equal protection of the law

11. **Clauses 21-3, 29-30, 38 and 41** would create new offence provisions, as identified below.

Clause	Proposed offence	Proposed maximum penalty
21(1)	Reckless conduct – category 1	For an individual not conducting a business, 3000 penalty units ($300 000) or five years' imprisonment; for an individual conducting a business, 6000 penalty units ($600 000) or five years' imprisonment; or for a body corporate, 30 000 penalty units ($3mill)
22	Failure to comply with health and safety duty for recreational water activities – category 2	For an individual not conducting a business, 1500 penalty units ($150 000); for an individual conducting a business, 3000 penalty units ($300 000); or for a body corporate, 15 000 penalty units ($1.5mill)
23	Failure to comply with health and safety duty for recreational water activities – category 3	For an individual not conducting a business, 500 penalty units ($50 000); for an individual conducting a business, 1000 penalty units ($100 000); or for a body corporate, 5000 penalty units ($500 000)
29(1)	Failing to notify of notifiable incidents	100 penalty units ($10 000)
29(7)	Failing to keep a record of notifiable incidents	50 penalty units ($5000)
30(1)	Failing to preserve incident sites	100 penalty units ($10 000)
38(1)	Giving false or misleading information	100 penalty units ($10 000)
38(2)	Producing a false or misleading document	100 penalty units ($10 000)
41(2)	Disclosing confidential information	100 penalty units ($10 000)
41(4)	Disclosing name of complainant	100 penalty units ($10 000)

12. **Clause 24** would provide that the duties set out in clauses 22 and 23 would prevail over exculpatoary provisions in sections 23 (intention - motive) and 24 (mistake of fact) of the Criminal Code. Accordingly, in respect of the offences in clauses 22 and 23, sections 23 and 24 would not be available to excuse criminal responsibility.

13. The explanatory notes do not provide information regarding the exclusion of the Criminal Code provisions and, in particular, about whether clause 24 would have sufficient regard to rights and liberties of individuals.

14. The committee invites the minister to provide information about clause 24.

Onus of proof

15. 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.

16. 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.

17. **Clause 38(2)** would impose an evidential onus on an accused person in proceedings for an offence of producing a false or misleading document.

18. Clause 38(1) and (2) would create offences regarding giving false or misleading information. Clause 38(3) makes it clear that the parliamentary intention is for clause 38(2) to impose an evidential burden on a person defending a charge brought under clause 38(2):

> Subsection (2) places an evidential burden on the accused to show that the accused had indicated the extent to which the document was false or misleading or that the accompanying document sufficiently explained the extent to which the document was false or misleading.

19. Where legislation would impose an evidential onus on an accused in criminal proceedings, the committee examines whether the proposed provision would be justified and therefore consistent with section 4(3)(d) of the *Legislative Standards Act*. As the explanatory notes do not provide information about this matter, the minister is invited to provide information about the consistency of clause 38 with fundamental legislative principles.

Immunity from proceeding or prosecution

20. 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.

21. **Clause 40** would confer immunity from civil liability upon people engaged in the administration of the legislation.

22. It would state that an inspector, or other person engaged in the administration of the Act, would not incur civil liability for an act or omission done or omitted to be done in good faith and in the execution or purported execution of powers and functions under the Act. Civil liability would, instead, attach to the State.

23. The committee draws proposed provisions such as clause 40 to the attention of the Parliament as they are exceptions to the general principle that all people are equal before the law.

Sufficient regard to the institution of Parliament

Delegation of legislative power

24. 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.

25. **Clause 45** would delegate legislative power to create offence provisions with maximum penalties up to 300 penalty units ($30 000).

26. Generally, the committee would note that a maximum penalty of this nature might more appropriately be a matter for primary legislation passed by the Legislative Assembly. This is because a large penalty has the capacity to affect adversely and to a significant degree rights and liberties of individuals and, in particular, individuals who might have difficulty paying a large monetary penalty.

27. The committee notes also that section 38(3) of the *Workplace Health and Safety Act 1995* delegates legislative power to prescribe by regulation offences for a breach of a regulation and to fix a maximum penalty of not more than 40 penalty units ($4000) for the breach.

28. The explanatory notes do not provide information about the proposed delegation of legislative power in relation to offences. Accordingly, the committee invites the minister to provide information about whether clause 45 would have sufficient regard to the institution of Parliament.

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

29. 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.

30. Section 23(2) states that if the explanatory note does not include the information above, it must state the reason for the non-inclusion.

31. 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.

Consistency with fundamental legislative principles

32. The committee notes that the explanatory notes did not identify any provisions which might be inconsistent with fundamental legislative principles and, as a result, did not provide reasons for any such inconsistency. While reference is made (at 3) to the explanatory notes regarding the Work Health and Safety Bill 2011, the requirements of section 23 of the *Legislative Standards Act* appear to apply to each bill presented to the Legislative Assembly by a member. Accordingly, where relevant, the committee has invited the minister to provide information regarding the consistency of a number of proposed provisions in this bill with fundamental legislative principles.

Substantial uniformity with legislation of another jurisdiction

33. The explanatory notes state (at 1-2), in relation to reasons for the bill:

> *The harmonisation of work health and safety (WHS) laws throughout Australia is one of the Council of Australian Governments' (COAG) priorities under the* National Partnership Agreement to Deliver a Seamless National Economy. *A National Review into Model Occupational Health and Safety Laws was completed in January 2009, resulting in two reports being submitted to the Workplace Relations Ministers' Council (WRMC).*
>
> *The reports made recommendations on the optimal structure and content of a national model Work Health and Safety Act (model WHS Act). As a result, all jurisdictions have agreed to enact the model WHS Act and the model WHS Regulations by 1 January 2012.*
>
> *During the harmonisation of work health and safety laws coordinated by Safe Work Australia, a majority of jurisdictions decided that the model WHS laws would not include specific regulations or codes of practice for recreational diving and snorkelling. It was considered that to include such regulations would shift the focus of the model WHS laws further in favour of regulating public safety than is currently the case in those jurisdictions.*

As a result, the national model WHS Act and regulations will not specifically regulate recreational underwater diving and snorkelling. In order to continue to regulate this important industry sector in Queensland, it has therefore been necessary to prepare new stand-alone legislation, the Safety in Recreational Water Activities Bill 2011 (the Bill), to maintain Queensland's high standards of safety for the recreational water activities industry.

Recreational diving and snorkelling are regulated in Queensland under the Workplace Health and Safety Act 1995 *(the WHS Act). The provisions made under the WHS Act are the* Workplace Health and Safety Regulation 2008 – *Part 14 (Conducting recreational diving or recreational technical diving), and Part 15 (Conducting recreational snorkelling), and the* Recreational Diving, Technical Diving and Snorkelling Code of Practice 2010. *The regulations and code of practice for recreational diving and snorkelling will be remade under this Bill.*

The definition of recreational water activities *in the Bill has been drafted broadly in the event that Government wishes to regulate other similar activities in the future.*

5. SUSTAINABLE PLANNING (HOUSING AFFORDABILITY AND INFRASTRUCTURE CHARGES REFORM) AMENDMENT BILL 2011

Date introduced: 10 May 2011

Responsible minister: Hon P Lucas MP

Portfolio responsibility: Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of State

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 **part 4**, providing for housing affordability and infrastructure charges reforms.
2. In relation to whether the bill has sufficient regard to the institution of Parliament, the committee draws the attention of the Parliament to **clauses 4 and 5** allowing a regulation to prescribe the date by which the owner of an existing regulated swimming pool must give notice of the pool.

BACKGROUND

3. The legislation is to introduce maximum infrastructure charges, implement a small number of local government boundary changes and extend the period within which pool owners must register their pools.

LEGISLATIVE PURPOSE

4. The bill is intended to (explanatory notes, 1):
   - enable the establishment of a new 'adopted infrastructure charge' for trunk infrastructure;
   - suspend the collection of specified charges in favour of the new adopted infrastructure charge (for local governments) and a new charge for water and waste water services based on the adopted infrastructure charge (for water distributor-retailers);
   - allow for the operation of some aspects of development sequencing, benchmarking and price signalling already provided for under Sustainable Planning Act in relation to the new adopted infrastructure charge, pending completion by local governments of their priority infrastructure plans;
   - implement matters relating to certain local government boundary changes; and
   - provide an extension, for pool owners to register their swimming pool with the Department of Local Government and Planning.
5. Accordingly, the bill would amend the:
   - *Building Act 1975*;
   - *Local Government Act 2009*; and
   - *Sustainable Planning Act 2009*.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

Sufficient regard to rights and liberties of individuals

Rights and liberties

6. 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 adequate standard of living and housing

7. **Part 4**, providing for housing affordability and infrastructure charges reforms, may affect rights and liberties of individuals.

8. Part 4 would amend the *Sustainable Planning Act* to effect changes to adopted infrastructure charges for local government and water and wastewater distributor-retailers. The explanatory notes indicate (at 10) that the amendments to be made to the *Sustainable Planning Act* might require the imposition of charges related the provision of an adequate standard of living and housing:

The Bill provides for a charge to be imposed to fund trunk infrastructure made necessary by development approved under a development approval or compliance permit. It also extends existing arrangements for applicants to be required, through a condition of the approval, to mitigate additional costs imposed due to unanticipated or out-of-sequence development.

The Bill contains extensive provisions to ensure that these arrangements work in a fair, equitable and proportionate way. For example:

- *To the extent the Bill abrogates rights to the enjoyment of property through imposing a charge, this is only in the context of the conferral of a significant benefit to the owner in the form of a development approval. If rights under the approval are not exercised, the Bill requires the charge to be refunded. The Bill requires the charge to be applied to fund trunk infrastructure to service development generally, so cannot be applied to fund items unrelated to the benefit obtained through the approval.*
- *The amount of the maximum adopted charge will be clearly articulated in the SPRP, and will be capped.*
- *There are extensive, consistent and transparent means of determining and applying the charge.*
- *The Bill provides for extensive rights of review and appeal against the calculation and application of the charge.*
- *As additional cost requirements form a condition on a development approval, there are extensive rights of merit based appeal available.*

The Bill allows for the Minister to escalate the maximum charge under the SPRP by an annual amount no greater than the three year rolling average of the Australian Bureau of Statistics PPI Construction Index (Queensland Roads and Bridges). This effectively amends the SPRP without applying the normal consultation arrangements under the SPA. SPA already contains similar arrangements with respect to infrastructure charges schedules (see SPA, section 631(3)) reflecting widely accepted expectations that costs will rise annually generally in line with inflation.

Compulsory acquisition of property

9. Section 4(3)(i) 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 for the compulsory acquisition of property only with fair compensation.

10. **Clause 20** would allow a local government to issue a notice requiring the giving of land in fee simple in lieu of a charge.

11. It would insert new chapter 8, part 1, division 5A of the *Sustainable Planning Act* regarding trunk infrastructure funding and related matters – adopted infrastructure charges. New section 648H would identify when adopted infrastructure charges would be payable. New section 648K would allow for agreements about, and alternatives to, paying adopted an infrastructure charge. Under new section 648K(2), for development infrastructure that is land, a local government might give a person notice requiring the person to give the local government land in fee simple. The intended operation of the provision is explained as follows (explanatory notes, 20):

Section 648K (Agreements about, and alternatives to, paying adopted infrastructure charge) – provides for a person who receives an adopted infrastructure charges notice to reach an agreement with the local government about paying the charge at a different time than that stated in the notice, or about supplying infrastructure instead of the charge. An agreement under this section is an infrastructure agreement for chapter 8, part 2. This allows for an applicant and a local government to agree in a transparent and accountable way for the charge to be "off-set" through the construction of physical infrastructure.

12. Accordingly, as indicated in the explanatory notes (at 9), new section 648K would not provide for compulsory acquisition of property but:

… provides for a local government, in addition to or instead of a charge notice, issue a notice requiring the giving of land in fee simple in lieu of a charge. The value of the land required under the notice cannot exceed the value of the charge. This accommodates circumstances where trunk infrastructure to which the charge will be applied is located on the premises subject to the application (for example parkland). This is a longstanding legislative arrangement in respect of existing charging mechanisms and does not amount to compulsory acquisition, the taking of the land is in lieu of a statutory charge, and the owner has a choice about whether or not to develop the premises, and hence whether the land is taken.

Sufficient regard to the institution of Parliament

Delegation of legislative power

13. 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.

14. **Clauses 4 and 5** would allow a regulation to prescribe the date by which the owner of an existing regulated swimming pool must give notice of the pool and, in effect, the date prior to which proceedings – for a related offence of failing to give notice – would not commence.

15. In 2010, the *Building and Other Legislation Amendment Act 2010* (Act No 21 of 2010) inserted into the *Building Act* provisions to regulate the safety of particular swimming pools.

16. Section 246AR(2) requires an owner of an existing pool regulated by the *Building Act* to give the chief executive of the Department of Local Government and Planning prescribed details about the pool. Currently, the details are required within six months of commencement of section 246AR; that is, by 4 May 2011. Failure to provide the details creates liability to an offence under section 246AR with maximum penalty of 20 penalty units ($2000).

17. Clause 4 would amend section 246AR(2) to require that the details be provided 'by a day prescribed under a regulation (the ***prescribed day***)'. The explanatory notes state (at 12-3):

    Clause 4 will extend the period in which the owner of a swimming pool must give the Chief Executive of the Department of Local Government and Planning details of that pool. The deadline will be extended from 4 May 2011 to a date prescribed by Regulation. The amendment takes effect from 4 May 2011. In the event that the Bill is passed by the House, it is the intention of the Government to recommend that a regulation be made to extend the pool registration date to 4 November 2011.

18. Clause 5 would provide that proceedings could not be started or continued against a pool owner under pre-amended section 246AR (explanatory notes, 13):

    Clause 5 prohibits the starting or continuation of a proceeding against a pool owner under the pre-amended section 246AR of the BA for failing to notify the Chief Executive of details of their pool.

    The intention of the clause is to ensure that pool owners are protected from prosecution in the period between 4 May 2011 and the commencement of the amendments to clause 246AR explained in clause 4.

19. The committee notes that the explanatory notes indicate an intention to allow for a regulation to be made to extend a moratorium period during which pool owners are to provide notice of existing regulated pools. As the period is to be extended from 4 May 2011, a date which has passed, the regulation is intended to have a 'curative' effect in respect of offences committed after 4 May 2011 and prior to the day on which the proposed regulation commences.

20. The committee notes the statement (at 13) in the explanatory notes which appears to indicate an appropriate delegation of legislative power:

    This amendment was introduced in light of the natural disasters that affected the majority of the State in late 2010 and early 2011. It was intended to reduce any impediment of community disaster recovery.

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

21. 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.

22. Section 23(2) states that if the explanatory note does not include the information above, it must state the reason for the non-inclusion.

23. 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.

Explanation of the purpose and intended operation of each clause

24. The committee notes that in the 'Notes on Provisions' section of the explanatory notes, some proposed provisions may be referred to by way of incorrect numbering.

6. WEAPONS AMENDMENT BILL 2011

Date introduced: 12 May 2011

Responsible minister: Hon N 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 32** expanding classes of weapons to which the weapons legislation applies;
   - **the large number of clauses** amending offence provisions in the *Weapons Act* and Weapons Regulation, largely by doubling the maximum penalties;
   - **clause 23** allowing only adults to conduct shooting ranges;
   - **clause 4** expanding the classes of people to whom the *Weapons Act* does not apply;
   - **clause 38** providing that medieval re-enactments and paint pellet sports would be genuine reasons to possess a weapon; and
   - **clause 50** allowing all Queensland Fire and Rescue Service employees to possess and use incendiary devices for the purposes of preventing and controlling fires.
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 18** which may delegate legislative power inappropriately.
3. The committee invites the minister to provide further information about:
   - whether **clause 10** would have sufficient regard to rights of individuals to freedom of belief and religion; and
   - **clause 28** which appears to validate the use of weapons in correctional facilities during periods prior to the commencement of the bill.

BACKGROUND

4. Following a review of weapons legislation, the bill contains the first of a planned two stages of amendments. Stage two will contain 'more contentious policy issues'.[1]

LEGISLATIVE PURPOSE

5. The bill is intended to achieve the following policy objectives (explanatory notes, 1):

   The objective of the Bill is to amend the Weapons Act 1990 *(the Act) and Regulations to give effect to key issues identified through the review of the weapons legislation. The amendments contained in the Bill include amendments which have been previously been announced by the Government.*

6. In addition to the *Weapons Act*, the bill would amend the:
   - Weapons Categories Regulation 1997; and
   - Weapons Regulation 1996.
7. Consequential and minor amendments identified in the schedule would be made to the:
   - *Domestic and Family Violence Protection Act 1989*;
   - Explosives Regulation 2003;
   - *Security Providers Act 1993*; and
   - *Transport Operations (Passenger Transport) Act 1994*.

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1 The Hon N Roberts MP, Minister for for Police, Corrective Services and Emergency Services, Second Reading Speech, *Record of Proceedings (Hansard)*, 12 May 2011, 1646.

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*.

9. In relation to whether the legislation generally has sufficient regard to rights and liberties of individuals, the explanatory notes state (at 8):

> *The Bill has been drafted with due regard to the Fundamental Legislative Principles (FLP's) as outlined in the* Legislative Standards Act 1992 *(the LSA). Section 4(2) (Meaning of fundamental legislative principles) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals. An overarching theme of the Bill is the continued balance between the competing rights and liberties of individuals: 1) the rights and liberties of individuals to possess and use weapons; and 2) the rights and liberties of individuals to be protected from individuals who seek to misuse weapons.*

Right to freedom of belief and religion

10. **Clause 10**, by prohibiting a person from physically possessing a knife for genuine religious purposes in a school, may limit a person's freedom to manifest his or her religion or beliefs.

11. Section 51(1) of the *Weapons Act* provides that a person must not possess physically a knife in a public place or a school, unless the person has a reasonable excuse.[2]

12. Clause 10(3) would insert:

- new section 51(3A) to state that it would be a reasonable excuse for section 51(1), to the extent that the section related to a public place, to possess a knife for genuine religious purposes; and
- new section 51(3B) to state that it would not be a reasonable excuse to possess a knife for genuine religious purposes in a school.

13. Article 18 of the International Covenant on Civil and Political Rights relevantly states:

> *1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching…*
>
> *3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
>
> *4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

14. Australia is also a signatory to the international *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*.

15. In Queensland, section 7 of the *Anti-Discrimination Act 1991* prohibits discrimination on the basis of religious belief or religious activity.

16. In relation to the consistency of clause 10 with fundamental legislative principles, the explanatory notes state (at 9-10):

> *Clause 10 of the Bill amends section 51 (Possession of a knife in a public place or a school) to clarify that a person may physically possess a knife in a public place for a genuine religious purpose. The Bill examples the Sikh religion which requires baptised members to carry a kirpan (a small blunted sword that is worn underneath the persons clothing). A potential FLP breach is created in the clause by excluding a genuine religious purpose as a reasonable excuse for a knife to be physically possessed in a school.*
>
> *While the potential breach has the capacity to interfere with an individual's freedom to undertake genuine religious practices, the safety and welfare of children attending Queensland schools is of paramount importance. Between 2009 and 2010 there were 164 offences involving knives (including one homicide) committed on Education Queensland premises.*

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[2] The prohibition in respect of possessing a knife in a school was inserted into the *Weapons Act* in 2003: Act No. 5, s 14(2)-(3).

In March 2011, a student was stabbed in the stomach with a knife at a Gold Coast school while attending the school's administration building.

The Department of Education and Training (DET) advises that students are not permitted to bring knives or any other thing that could be considered a weapon to a school. Further, the DET's 'Guidelines for developing a Responsible Behaviour Plan for Students', deem the use of weapons as an unacceptable behaviour for which a student could expect to be recommended for exclusion.

Restrictions on the physical possession of knives, including knives carried for genuine religious purposes, currently exist in relation to commercial air travel. Sections 48 (Weapons on board an aircraft—strict liability) and 49 (Weapons on board an aircraft—general) of the Aviation Transport Security Act 2004 *(Cth) contain strict liability provisions prohibiting the carriage of a weapon, including a knife, on board an aircraft. The maximum penalty for a contravention of these provisions is 100 penalty units for an offence under section 48 and 7 years imprisonment for an offence under section 49. A person required to carry a knife for a genuine religious purpose must place the knife in checked luggage, prior to boarding the plane.*

17. The committee received two submissions regarding the bill from; the Anti Discrimination Commission Queensland; and the Queensland Law Society. The committee has authorised the tabling and publication of the submissions, which are available from the committee's website and the Queensland Parliament's tabled papers site.[3]

18. In relation to freedom of belief and religion, the submission from the Anti Discrimination Commission Queensland states (at 1-2):

Currently, section 51 of the Weapons Act 1990 *prohibits the physical possession of a knife in a public place or school unless there is a reasonable excuse. The Commission welcomes and supports the proposed amendment to clarify that the 'reasonable excuse' exception includes the physical possession of a knife in a public place for genuine religious purposes, with the example of carrying of a kirpan by baptised members of the Sikh religion.*

The 'reasonable excuse' exception has not been extended to the physical possession of a knife for genuine religious purposes in a school. This has the effect of discriminating against students, teachers, contractors and members of the school community who are of a religion that requires the carrying a knife, such as the Sikh religion. It means that people of the Sikh religion cannot be teachers, or perform other work, or attend schools in Queensland, unless they compromise their religion.

Discrimination on the basis of religious belief or activity is unlawful under the Anti-Discrimination Act 1991 *in all of the areas of public life covered by the Act, including work and education.*

The Explanatory Note to the Bill indicates that the reason for not extending the 'reasonable excuse' exemption to schools is the number of offences involving knifes committed on Education Queensland premises (164) between 2009 and 2010. There is no indication or clarification whether any of these offences involved a kirpan or other religious knife.

Further, these offences occurred when the physical possession of a knife in a school was prohibited under Weapons Act 1990 *and Education Queensland prohibited students from bringing knifes or other weapons to school.*

The Commission acknowledges that at times it may be appropriate to displace the Anti-Discrimination Act 1991*, however those circumstances limited to those supported by persuasive evidence, which is then monitored for continued justification of the limitations of human rights.*

19. The committee invites the minister to provide further information about whether clause 10 would have sufficient regard to rights of individuals to freedom of belief and religion.

Right to equal application and equal protection of the law

20. **Clause 32** would expand classes of weapons to which the legislation applies.

21. Clause 32 would amend section 7A of the Weapons Categories Regulation to include specified knives as 'category M weapons'. The explanatory notes provide (at 10-1) the following information regarding the proposed amendments to section 7A:

On 28 July 2008, the Premier and the (then) Minister for Police and Corrective Services publicly announced their intention to strengthen the definition of bladed weapons to meet national standards and reduce the number of knife related offences in Queensland. In 2009/10, knives were used in the following offences where those offences involved the use of a weapon:

- *36% of all homicides;*
- *22% of all assaults;*

[3] Available at: http://www.parliament.qld.gov.au/view/legislativeAssembly/tabledPapers/home.asp and www.parliament.qld.gov.au/slc.

- *23% of all sexual offences;*
- *53% of all robberies; and*
- *30% of all offences against the person.*

Clause 32 facilitates this commitment by amending section 7A (Category M weapons) of the Categories Regulation to include the following knives, and knife related items, in line with the National Prohibited Weapons Agreement:

- *ballistic knife;*
- *butterfly knife;*
- *flick knife;*
- *push knife;*
- *sheath knife;*
- *star knife;*
- *trench knife;*
- *riding crop that contains, conceals or disguises a knife;*
- *walking stick or cane that contains, conceals or disguises a sword; and*
- *any clothing, apparel, accessory or other thing designed to disguise any cutting or piercing instrument capable of causing bodily harm.*

The amendment to section 7A of the Categories Regulation will mirror the definitions of the Prohibited Weapons List. Arguably, a number of the knives on the Prohibited Weapons List may be adequately provided for under subsections (c) and (d), however, the amendment will clarify beyond doubt that the possession of these knives, without a licence, is unlawful.

The Bill does not extend category M weapons to include daggers. The definition of a dagger provided under the National Prohibited Weapons List extends the parameter of category M weapons to capture knives including those used in hunting or fishing. The inclusion of a dagger in the legislation is not required to meet the minimum standards of the National Prohibited Weapons List.

22. **A large number of clauses** would amend existing offence provisions in the *Weapons Act* and Weapons Regulation, largely by doubling the maximum penalties for offences. The proposed amendments to offence provisions, including respective maximum penalties, are identified below.

Clause	Amended section	Proposed offence	Current maximum penalty	Proposed maximum penalty
Weapons Act				
9	50A(1)	Possessing unregistered firearm	60 penalty units ($6000)	120 penalty units ($12 000)
10(1)	51(1)	Unlawfully possessing a knife in a public place or a school	20 penalty units ($2000) or six months' imprisonment	40 penalty units ($4000) or one year's imprisonment
11(1)	56(2)	Discharging weapon on private land without owner's consent	20 penalty units ($2000) or three months' imprisonment	40 penalty units ($4000) or six months' imprisonment
11(2)	56(3)	Carrying weapon on private land without owner's consent	20 penalty units ($2000)	40 penalty units ($4000)
12(1)	57(2)	Carrying a weapon exposed to view in a public place	20 penalty units ($2000) or three months' imprisonment	40 penalty units ($4000) or six months' imprisonment
12(2)	57(3)	Carrying in a public place a loaded firearm or weapon capable of being discharged	60 penalty units ($6000) or one year's imprisonment	120 penalty units ($12 000) or two year's imprisonment
12(3)	57(4)	Discharging a weapon in a public place	100 penalty units ($10 000) or two years' imprisonment	200 penalty units ($20 000) or four years' imprisonment
13	58	Engaging in dangerous conduct with weapon ['weapon' to include 'a laser pointer']	100 penalty units ($10 000) or two years' imprisonment	200 penalty units ($20 000) or four years' imprisonment

Clause	Amended section	Proposed offence	Current maximum penalty	Proposed maximum penalty
14	59(2)	Possessing or using weapon under the influence of liquor or a drug	20 penalty units ($2000)	40 penalty units ($4000)
15	61	Shortening firearms	100 penalty units ($10 000) or two years' imprisonment	200 penalty units ($20 000) or four years' imprisonment
16	62	Modifying construction or action of firearms	100 penalty units ($10 000) or two years' imprisonment	200 penalty units ($20 000) or four years' imprisonment
17	63	Altering identification marks of weapons	100 penalty units ($10 000) or two years' imprisonment	200 penalty units ($20 000) or four years' imprisonment
18	67	Possessing and acquiring restricted items without reasonable excuse ['restricted item' to be amended by clause 34 to include a laser pointer; 'reasonable excuse' to be amended by clause 18]	10 penalty units ($1000)	
24(1)	110(1) and (2)	Possessing or using weapon in unauthorised way	20 penalty units ($2000)	40 penalty units ($4000)
24(2)	110(3)	Failing to com0ply with direction of range officer	10 penalty units ($1000)	20 penalty units ($2000)
25	115(1)	Supplying theatrical ordnances without a licence	60 penalty units ($6000)	120 penalty units ($12 000)
27(1)	127(2) and (3)	Security organisation possessing or using weapon in unauthorised way	No penalty	200 penalty units ($20 000)
27(2)	127(4)	Security organisation failing to ensure employee uses weapon in authorised way	100 penalty units ($10 000)	200 penalty units ($20 000)
Weapons Regulation				
43(1)	66(3)	Exemption holder failing to comply with conditions	10 penalty units	20 penalty units ($2000)
44	New 68CA	Holder of firearms licence possessing an unauthorised magazine		10 penalty units ($1000)

23. In relation to the proposed increases in maximum penalties and whether sufficient regard would be had to rights and liberties of individuals, the explanatory notes state (at 12 and see also at 2) that the existing penalty regime has not had the required deterrent effect:

The Bill increases the penalties for 22 offences found in the current Act and Regulation. The increase in penalties for theses offences is designed to express greater condemnation of offences involving weapons and send a strong message of deterrence to the community. While statistics obtained by the QPS indicate that between 2004-05 and 2009-10 minor decreases have occurred in the rate of offending involving weapons, they do not show that the current penalty regime has made any significant difference to the rate of offending where knives or firearms are used.

24. The submission received from the Queensland Law Society states:

The Government has, with clauses 9-17 of the Bill sought to increase the penalties associated with certain offences. Whilst penalty alone has been amended in the Bill, the Society emphasises the importance of the principle of an unfettered sentencing discretion within any sentencing court.

25. In relation to clauses 13, 18 and 34 (clause 34 would amend section 9 of the Weapons Categories Regulation regarding 'restricted items'), the explanatory notes identify proposed amendments to regulate the use of laser pointers and provide (at 8-9) the following information regarding the consistency with fundamental legislative principles:

Clause 18 of the Bill regulates the possession and use of a laser pointer with an output of more than 1 milliwatt. Laser pointers are a prohibited item under the Customs (Prohibited Imports) Regulation 1956*. The possession of a laser pointer is regulated in all other Australian States and Territories attracting penalties of up to two years imprisonment.*

The risks associated with laser pointers have been highlighted in recent years by incidents involving shining laser pointers into the cockpits of aircraft and cabins of vehicles. In 2008, the Australian Government introduced a prohibition on the importation of laser pointers with a maximum output of 1 milliwatt in response to these incidents. In this regard, Schedule 2 of the Customs (Prohibited Imports) Regulation 1956 *(Cwth) prohibits the importation of laser pointers with an output greater than 1 milliwatt unless approved by the Minister or an authorised person. While Queensland and the Commonwealth have offence provisions (section 26 (Endangering the safe use of a vehicle by throwing an object or by a similar activity) of the* Summary Offences Act 2005 *and section 24* Civil Aviation Act 1988 *(Cwth)) to address behavioural offences with laser pointers, they are targeted to specific acts and do not address the misuse of laser pointers generally within the community.*

The Bill captures behavioural offences involving the misuse of laser pointers that are not currently captured under existing legislation. The Bill will prohibit the possession of a laser pointer with a capacity greater than 1 milliwatt without a reasonable excuse. For the purposes of the Act, it will be a reasonable excuse to possess a laser pointer where a person is a member of or is being personally supervised by a member of a recognized astronomical organisation, if the person is taking part in activities associated with astronomy, if the person requires a laser pointer to take part in activities associated with a recognised occupation or the person holds a licence that authorises the possession of a firearm in relation to which a laser pointer may be used.

Laser pointers are a newly restricted item in Queensland. To ensure the correct parameters are set in determining which astronomical associations or occupations are recognised for the purposes of acquiring or possessing a laser pointer, a list of astronomical associations and occupations will be published on the QPS internet site, rather than immediately prescribed by Regulation. Publication will be for a six month period only. After this time, those published astronomical associations and occupations meeting the requirements for recognition, will be prescribed in the Regulation.

Furthermore, the Bill will classify a laser pointer as a weapon for the purposes of section 58 (Dangerous conduct with weapon prohibited generally). Clause 34 of the Bill will introduce a laser pointer as a restricted item under section 9 (Restricted items, Act s. 67) of the Regulation.

26. Regarding the proposed provisions regulating the use of laser pointers, the Queensland Law Society's submission states:

We note the Government's intention to regulate the possession of laser pointers and their classification as a weapon if found to be more than 1 milliwatt in strength. The Society acknowledges the possible misuse of laser pointers and supports regulation of certain conduct using those which have a strength of greater than 1 milliwatt, to accord with the Customs (Prohibited Imports) Regulations *(Cth).*

27. In relation to clause 44, the explanatory notes indicate (at 11-2):

Clause 44 of the Bill introduces a new section 68CA (Prohibition on possession of particular magazines – Category B weapons) of the Weapons Regulation. The clause regulates possession of high capacity detachable magazines with a maximum capacity of more than 10 rounds for pump or lever action centre fire rifles and high capacity magazines with a maximum capacity of more than 15 rounds for repeating centre fire rifles. The clause is aimed at reducing the overall firepower of weapons on the market and also meets the 2005 APMC resolution to tighten weapons laws to restrict the acquisition and possession of high capacity detachable magazines. The new section does not affect a person's capacity to possess or use a high-capacity detachable magazine, where the person is the registered owner of a category D or R weapon held under another licence which allows the use of a high-capacity detachable magazine, or where a condition on a person's firearms licence authorises the possession of a high-capacity detachable magazine.

Rights of young persons

28. **Clause 23** would allow only adults to conduct shooting ranges.

29. It would amend section 108(2) of the *Weapons Act* to state that a 'range officer' was an adult who met the requirements prescribed in new section 108(2).

30. An 'adult' is defined in section 36 of the *Acts Interpretation Act 1954* to mean an individual who is 18 or more. Accordingly, clause 23 would prevent a person under 18 from being a range officer.

31. The explanatory notes do not address specifically any inconsistency of clause 23 with fundamental legislative principles, but state generally (at 5) about the proposed provision:

The Bill will amend section 108 (Responsibilities of a range operator) to clarify that a person undertaking the duties of a range officer must be an adult. An anomaly in section 23 (Minors licence) of the Weapons Regulation potentially allows a minor to undertake the role of a range officer.

Right to a safe society

32. **Clause 4** would expand the classes of people to whom the *Weapons Act* does not apply.

33. It would amend section 2 of the *Weapons Act* to state that the Act would not apply to a person who was:

- a police officer, special constable or trainee, or any other member of the Queensland Police Service authorised by the commissioner to possess or use a weapon off-duty and who was acting in compliance with the directions of the commissioner (replacement section 2(1)(e)); and
- undergoing an 'approved training course' with respect to the possession or use of a weapon (amended section 2(1)(g)).

34. In addition, a related and consequential amendment would be made by the schedule to section 8 of the Explosives Regulation in respect of government entities exempt from the application of that regulation.

35. In relation to new section 2(1)(e) of the *Weapons Act* and new section 8 of the Explosives Regulation, the explanatory notes provide the following information (at 4-5) about the proposed exemptions from the statutory weapons regimes:

Section 2(1)(e) (Application of the Act) of the Act and section 8 (Exempt government entities) of the Explosives Regulation 2003 (Explosives Regulation), provides an exemption for police personnel, for the purpose of possessing or storing service issued weapons, ammunition or exhibits, whilst on duty. However, the definition of 'possession' in Schedule 2 (Dictionary) of the Act arguably applies in circumstances where a police officer may be in possession a weapon, but is off-duty. Further, the exemption in section 8 of the Explosives Regulation does not apply to an officer who is not acting in the course of the officer's official duties. For example, in a one-officer station where the officer has unfettered access to the station, the weapons safe, the weapon and ammunition, or where a police officer is off-duty while on transfer leave and carries the weapon and ammunition from the original station to the new station under circumstances that may require an overnight stay in a motel.

It is unlikely that it was ever the intention of the original legislators to create situations where it is unlawful for a police officer to possess a stored service issued weapon or exhibit whilst off-duty and complying with the commissioner's directions. Hence, the Bill amends both sections 2 of the Act and 8 of the Explosives Regulation to clarify that police personnel are exempt from prosecution for possession and storage of service issue weapons or exhibits when off-duty and complying with the directions of the commissioner. The Bill also extends the exemption to police officers from other states and territories appointed as special constables to assist Queensland police during incidents, such as the recent floods, as the definition of police officer in the Police Service Administration Act 1990 *does not include a 'special constable'.*

36. In relation to the proposed amendment to section 2(1)(g), the explanatory notes state (at 14):

This is an amendment of terminology only and replaces the term 'a training course approved by the commissioner'…

The amendment to section 2 supports the new definition of an 'approved training course' which is located in Schedule 2 (Dictionary) and will align with the new section 10AA which will articulate the learning components required for a course to be approved by the commissioner. For a training course to be approved by the commissioner, it must contain specific key units of competence and assessment materials.

37. **Clause 38** would provide that medieval re-enactments and paint pellet sports would be genuine reasons to possess a weapon.

38. It would amend section 4(a) and (d) of the Weapons Regulation to include respectively medieval re-enactments and paint pellet sports as reasons for the possession of a weapon. The following information is provided (explanatory notes, 6):

The recent growth in medieval re-enactments, paint pellet sports and the collection, preservation and study of weapons has placed an increased administrative burden on authorised officers in terms of the approval process. In this regard, the Bill will expand the genuine reasons for the possession of a weapon. Section 4 of the Regulation will include medieval re-enactments, paint pellet sports and the collection, preservation and study of weapons.

39. **Clause 50** would allow all Queensland Fire and Rescue Service employees to possess and use incendiary devices for the purposes of preventing and controlling fires. In this regard, the explanatory notes say (at 7):

Additionally, section 4 of the Schedule provides an exemption from the Act to the QFRS for the purposes of possessing, using or acquiring incendiary devices that are category M weapons. However, the provision is limited to employees of the Rural Fire Service. With the growth of urban/rural interface zones, there is the potential for incendiary devices to be used by urban fire fighters. To recognise the changes in interface zones, Schedule 2 will be amended to exempt all employees of the QFRS where those employees are performing a function that necessitates the possession, use and acquisition of an incendiary device that is a Category M weapon, to prevent and control fires.

Retrospective operation

40. Section 4(3)(g) 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 adversely affect rights and liberties, or impose obligations, retrospectively.

41. **Clause 28** appears to validate the use of weapons in correctional facilities during periods prior to the commencement of the bill.

42. New section 188 of the *Weapons Act* would declare that, during the period from 1 January 2008 to commencement of the bill, Serco Australia Pty Ltd would be taken to have been a government service entity and a prescribed service entity under section 2(9) and therefore exempt from the *Weapons Act* as an entity and in respect of its functions and the functions of its employees.

43. New section 189 would make a similar declaration in respect of GEO Group Australia Pty Ltd for the period from 15 January 2004 to commencement.

44. Each of these provisions is within a new part 8, division 4 of the *Weapons Act*. The explanatory notes state (at 20):

Section 187 clarifies that the transitional provisions included in division 4 apply upon commencement of section 187 (Definition for div 4). The provisions are not retrospective and will not apply prior to the proclamation date.

45. In *Maxwell v Murphy* (1957) 96 CLR 261 at 267, Dixon CJ summarised the approach of the courts to legislation which may have a retrospective operation:

The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liberties which the law had defined by reference to the past events.

46. Further, in *Fisher v Hebburn Ltd* (1960) 105 CLR 188 at 194, Fullagar J provided the following statement of the principle:

There can be no doubt that the general rule is that an amending enactment – or, for that matter, any enactment – is prima facie to be construed as having a prospective operation only. That is to say, it is prima facie to be construed as not attaching new legal consequences to facts, or events which occurred before its commencement.

47. The committee notes that the intended effect of new sections 188 and 189 would appear to be to validate, by excluding from the operation of the *Weapons Act* during the relevant periods, the actions of Serco and GEO as entities and the actions of their employees. Irrespective of whether the legislation would make a 'declaration' or a 'validation' in respect of the relevant periods, it appears that these new sections of the amending Act would operate to 'attach new legal consequences to facts, or events which occurred before its commencement'. Accordingly, by referring to dates in the past, the new sections appear to abrogate in clear terms the applicability of the common law presumption of statutory interpretation that legislation is assumed not to have retrospective operation.

48. Where legislation might have retrospective operation, the committee examines whether the retrospectivity might have any adverse effects on rights or liberties or whether obligations imposed retrospectively might be unduly onerous. When considering sufficient regard, the committee generally examines whether:

- the retrospective operation would be adverse to persons other than the government; and
- individuals would have relied upon and would have legitimate expectations based on the existing law.

49. In relation to 'curative' or validating legislation, the committee's approach has been to note that the practice of making retrospectively validating legislation is not endorsed generally as such legislation might affect adversely rights and liberties of individuals or impose obligations retrospectively and,

therefore, breach fundamental legislative principles. The committee has recognised, however, that there may be occasions when curative retrospective legislation, without significant effects on rights and liberties of individuals, may be justified to correct unintended legislative consequences. New sections 188 and 189 may be of this nature, as indicated by information in the explanatory notes about prospective exemptions from the Act (at 7):

Schedule 2 of the Regulation provides an exemption from the Act for certain government service entities and prescribed functions. These entities and functions currently refer to Queensland Corrections, Australasian Correctional Management Pty Ltd, Corrections Corporation of Australia and the Queensland Fire and Rescue Service (QFRS). The references to Australasian Correctional Management Pty Ltd and Corrections Corporation of Australia are no longer current and an amendment is required to reflect the organisations currently undertaking these roles.

50. The committee invites the minister to provide further information about whether new sections 188 and 189 would have sufficient regard to rights and liberties of individuals.

Sufficient regard to the institution of Parliament

Amendment of Act other than by another Act

51. 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.

52. **Clause 18** may delegate legislative power inappropriately.

53. It would amend section 67 of the *Weapons Act* to state that membership of a recognised astronomical organisation or a recognised occupation would be a reasonable excuse to possess a laser pointer. New section 67(4) and (5) would provide that a recognised astronomical organisation and a recognised occupation might be prescribed under a regulation or on the Queensland Police Service website. New section 67(4) would allow, for a maximum period of six months, for the recognition of an astronomical organisation or occupation by way of publication on the QPS website. For that period, it would appear to allow amendment of an Act by notice on the website. Prior to the expiration of the six month period, a regulation in similar terms could be made under new section 67.

54. A provision of a bill which authorises the amendment of an Act other than by another Act is often referred to as an 'Henry VIII' clause. In January 1997, the committee reported to the Parliament on Henry VIII clauses. While the committee has generally opposed the use of Henry VIII clauses in bills, the committee's report stated that usually it did not consider provisions enabling definitions of terms to be extended by regulation to be Henry VIII clauses. Further, the committee stated that it considered Henry VIII clauses may be excusable, depending on the given circumstances, where the clause is to facilitate:

- immediate executive action;
- the effective application of innovative legislation;
- transitional arrangements; and
- the application of national schemes of legislation.

55. Where provisions fall within the scope of those considered 'Henry VIII' provisions, the committee then examines whether the provisions would represent an appropriate delegation of legislative power.

56. Accordingly, clause 18 would fall within the second of the acceptable categories and, further the explanatory notes indicate (at 12) an appropriate delegation of legislative power:

Clause 18 of the Bill creates a potential breach of the principle of the institution of Parliament by delegating a function of Parliament to the commissioner. The clause will allow the publication of a 'recognised astronomical organisation' and a 'recognised occupation' on the [stet].

Laser pointers will be a newly regulated item in Queensland and it is anticipated that a number of organisations will seek to be recognised under the new legislation. Prior to regulating an organisation as recognised, the QPS will identify parameters and implement a framework to ensure consistency in the selection process.

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

57. 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)).

58. 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.

7. WORK HEALTH AND SAFETY BILL 2011

Date introduced: 23 March 2010

Responsible minister: Hon C Dick MP

Portfolio responsibility: Minister for Education and Industrial Relations

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:
   - **the large number of clauses** amending existing offences penalties or creating new offences;
   - **clauses 118(3), 123-6, 128-9, and 153-50** amending existing civil penalties or creating new civil penalties;
   - **clause 27** providing for officers of corporations to exercise due diligence to ensure compliance with the legislation;
   - **clause 103** providing that part 5 would not apply to prisoners;
   - **clauses 230 and 386** stating that proceedings may only be brought by the regulator or an inspector;
   - **clauses 232 and 386** extending the limitation period to two years;
   - **the large number of clauses** reversing the onus of proof;
   - **clauses 117, 120-121, 163, 166 and 377** allowing entry onto premises without warrant or consent;
   - **clauses 172 and 379** removing protection against self-incrimination;
   - **clauses 270 and 386** conferring immunity from civil liability on an inspector; and
   - **clause 4** incorporating a definition by reference to the *Corporations Act 2001* (Cth).
2. In relation to whether the bill has sufficient regard to the institution of Parliament, the committee draws the attention of the Parliament to:
   - **a number of clauses** which may allow the delegation of legislative power in inappropriate cases; and
   - **clauses 5(6), 36 and 37** which may authorise amendment of the Act by regulation.
3. The committee invites the minister to provide further information regarding the application of fundamental legislative principles to:
   - **clauses 33A and 40E** excluding the availability of sections 23 and 24 of the Criminal Code in respect of criminal responsibility for certain offences; and
   - **clause 276** and whether it would have sufficient regard to the institution of Parliament.

BACKGROUND

4. The legislation is to provide for nationally consistent work health and safety laws.

LEGISLATIVE PURPOSE

5. The bill is intended to harmonise work health and safety laws under the *National Partnership Agreement to Deliver a Seamless National Economy* to *(*explanatory notes, 1):
   - ensure uniform, equitable and effective safety standards and protections for all Australian workers;
   - address compliance and regulatory burdens for employers with operations in more than one jurisdiction;
   - create efficiencies for governments in the provision of regulatory and support services for work health and safety; and
   - contribute to reductions in the incidence of death, injury and disease in the workplace.

6. The bill would also amend the *Workers' Compensation and Rehabilitation Act 2003* to (explanatory notes, 1):

   provide for a review of the workers' compensation scheme every five years, to strengthen insurance and data collection arrangements in the construction industry, and to ensure workers' entitlements to accrue leave while on workers' compensation.

7. The bill would repeal the:

   - *Workplace Health and Safety Act 1995*; and
   - *Dangerous Goods Safety Management Act 2001*.

8. In addition, the bill would amend the:

   - *Coal Mining Safety and Health Regulation 2001;*
   - *Public Health Regulation 2005;*
   - *Mining and Quarrying Safety and Health Regulation 2001*
   - *Workplace Health and Safety Regulation 2008;*
   - *Building and Construction Industry (Portable Long Service Leave) Act 1991;*
   - *Building and Construction Industry (Portable Long Service Leave) Regulation 2002;*
   - *Electrical Safety Act 2002;*
   - *Electrical Safety and Other Legislation Amendment Act 2011;*
   - *Penalties and Sentences Act 1992;*
   - *Workers Compensation and Rehabilitation Act 2003;*
   - *Workplace Health and Safety Act 1995;* and
   - *Dangerous Goods Safety Management Act 2001.*

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

Sufficient regard to rights and liberties of individuals

Rights and liberties

9. 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 legal recognition, equal application and equal protection of the law

10. **A large number of clauses** would create a new regime of:

    - offence provisions in the Work Health and Safety Act; and
    - civil penalties in the Work Health and Safety Act (clauses 118(3), 123-6, 128-9 and 143-50).

11. These proposed provisions, as identified in the table below, have potential to affect rights and liberties of individuals. Acronyms used in the table are:

    - HSR – health and safety representative;
    - PCBU – person conducting a business or undertaking; and
    - WHS – work health and safety.

Clause	Proposed offence	Proposed maximum penalty
31	Recklessly and without reasonable excuse failing to comply with a health and safety duty exposing an individual to risk of death or serious injury or illness -Category 1	Individual (not PCBU) 3000 penalty units ($300 000) or 5 years imprisonment Individual PCBU 6000 penalty units ($600 000) or 5 years imprisonment Body corporate 30000 penalty units ($3 000 000)

Clause	Proposed offence	Proposed maximum penalty
32	Failing to comply with a health and safety duty exposing an individual to risk of death or serious injury or illness -Category 2	Individual (not PCBU) 1500 penalty units ($150 000) Individual PCBU 3000 penalty units ($300 000) Body corporate 15000 penalty units ($1 500 000)
33	Failing to comply with a health and safety duty -Category 3	Individual (not PCBU) 500 penalty units ($50 000) Individual PCBU 1000 penalty units ($100 000) Body corporate 5000 penalty units ($ 500 000)
38	Failing to notify a notifiable incident	100 penalty units ($10 000)
38(7)	Being a PCBU failing to keep a record of a notifiable incident for 5 years	50 penalty units ($5 000)
39	Being a person with management or control of a workplace failing to ensure incident site not disturbed	100 penalty units ($10 000)
41	Conducting a business at unauthorised workplace	500 penalty units ($50 000)
42(1)	Using plant or substance without authorisation	200 penalty units ($20 000)
42(2)	Being a person who conducts a business, directing or allowing a worker to use plant or substance without authorisation	200 penalty units ($20 000)
43(1)	Carrying out work without authorisation	200 penalty units ($20 000)
43(2)	Being a person who conducts a business, directing or allowing a worker to carry out work without authorisation	200 penalty units ($20 000)
44(1)	Carrying out work without prescribed qualifications or appropriate supervision	200 penalty units ($20 000)
44(2)	Being a person who conducts a business or undertaking , directing or allowing a worker to carry out work without prescribed qualifications or appropriate supervision ('PCBU')	200 penalty units ($20 000)
45	Failing to comply with conditions of authorisation given by regulation	200 penalty units ($20 000)
46	Being duty holder failing to consult with other duty holders	200 penalty units ($20 000)
47	Being a PCBU failing to consult with workers	200 penalty units ($20 000)
52(5)	Being a PCBU asked to negotiate with the workers' representative, failing to negotiate with the workers representative for work group	100 penalty units ($10 000)
53	Being a PCBU failing to notify outcome of negotiations to workers	20 penalty units ($2000)
56(2)	Being a PCBU asked to negotiate with the workers' representative failing to negotiate for multiple businesses work groups	100 penalty units ($10 000)
57	Being a(PCBU failing to notify outcome of negotiations to workers for multiple businesses work groups	20 penalty units ($2000)
61(4)	Being a PCBU failing to provide resources, facilities and assistance reasonably necessary or prescribed by regulation to enable elections to be conducted	100 penalty units ($10 000)
70(1)	Being PCBU failing to carry out general obligations in relation to health and safety representatives ('HSRs') and deputy HSRs	100 penalty units ($10 000)
70(2)	Being a PCBU failing to allow HSR and/or deputy HSR time reasonably necessary to perform their functions	100 penalty units ($10 000)
71(2)	Being a PCBU allowing HSR access to personal or medical information of worker without consent	100 penalty units ($10 000)

Clause	Proposed offence	Proposed maximum penalty
72(7)	Being a PCBU failing to allow HSR to attend course decided by the inspector and failing to pay the costs decided by the inspector	100 penalty units ($10 000)
74(1)	Being a PCBU failing to keep and display list of HSRs and deputy HSRs	20 penalty units ($2 000)
74(2)	Being a PCBU failing to supply list of HSRs and deputy HSRs to the regulator	20 penalty units ($2 000)
75(1)	Being PCBU failing to establish health and safety committee	50 penalty units ($5 000)
79	Being PCBU failing to carry out general obligations in relation to each member of health and safety committee	100 penalty units ($10 000)
97(1)	Failing to display provisional improvement notice	50 penalty units ($5 000)
97(2)	Intentionally removing, destroying or damaging a provisional improvement notice	50 penalty units ($5 000)
99(2)	Failing to comply with an improvement notice within the stated time	500 penalty units ($50 000)
104(1)	Engaging in discriminatory conduct for prohibited reason	1000 penalty units ($100 000)
107	Requesting, instructing, inducing, encouraging, authorising or assisting discriminatory conduct	1000 penalty units ($100 000)
108	Coercing or inducing another person	1000 penalty units ($100 000)
109	Making a false or misleading representation to another person	1000 penalty units ($100 000)
118(3)	Being a PCBU failing or refusing to provide relevant documentation to WHS entry permit holder without reasonable excuse	100 civil penalty units ($10 000)
123	Contravening WHS entry permit conditions	100 civil penalty units ($10 000)
124	Entering a workplace without an entry permit under the Fair Work Act or industrial officer authority	100 civil penalty units ($10 000)
125	Failing to have WHS entry permit and photographic identification available for inspection on request	100 civil penalty units ($10 000)
126	Exercising WHS entry permit holder right outside usual working hours	100 civil penalty units ($10 000)
128	Failing to comply with reasonable request while exercising WHS entry permit right	100 civil penalty units ($10 000)
129	WHS entry permit holder entering residential premises	100 civil penalty units ($10 000)
143	Contravening an order of the Queensland Industrial Relations Commission	100 civil penalty units ($10 000)
144	Refusing or unduly delaying entry of WHS entry permit holder to workplace without reasonable excuse	100 civil penalty units ($10 000)
145	Hindering or obstructing WHS entry permit holder in entry or exercise of rights	100 civil penalty units ($10 000)
146	WHS entry permit holder hindering, obstructing, disrupting or otherwise acting improperly	100 civil penalty units ($10 000)
147	Making misrepresentations about authorisation	100 civil penalty units ($10 000)
148	Making unauthorised use or disclosure of documents	100 civil penalty units ($10 000)
149	Failing to return WHS entry permit on revocation, suspension or expiry	20 civil penalty units ($2000)
150	Failure by union to provide information to the Industrial Registrar	50 civil penalty units ($5000)
155(5)	Failing or refusing to comply with written notice to supply information to the regulator without reasonable excuse	100 penalty units ($10 000)

Clause	Proposed offence	Proposed maximum penalty
157	Failing to return identity card to regulator	40 penalty units ($4000)
165(2)	Refusing or failing to give reasonable help to Inspector without reasonable excuse	100 penalty units ($10 000)
177(2)	Tampering or attempting to tamper with a seized thing without an inspector's approval	100 penalty units ($10 000)
177(6)	Refusing or failing to comply with requirement in relation to thing seized without reasonable excuse	100 penalty units ($10 000)
185(4)	Refusing or failing to supply name and residential address or evidence of correctness without reasonable excuse	100 penalty units ($10 000)
188	Intentionally hindering or obstructing inspector or inducing or attempting to induce another person to do so	100 penalty units ($10 000)
189	Impersonating an inspector	100 penalty units ($10 000)
190	Assaulting, threatening or intimidating or attempting to assault, threaten or intimidate an inspector	500 penalty units ($50 000) or 2 years imprisonment
193	Failing to comply with improvement notice within stated period	500 penalty units ($50 000)
197	Failing to comply with prohibition notice within stated period	1000 penalty units ($100 000)
200	Refusing or failing to comply with non-disturbance notice without reasonable excuse	500 penalty units ($50 000)
210(1)	Failing to display notice issued by inspector	50 penalty units ($5000)
210(2)	Intentionally removing, destroying, damaging or defacing a displayed notice	50 penalty units ($5000)
219	Contravening a WHS undertaking	500 penalty units ($5000)
242	Failing to comply with a court sentencing order without reasonable excuse	500 penalty units ($5000)
268(1)	Giving false or misleading information	100 penalty units ($10 000)
268(2)	Producing a false or misleading document	100 penalty units ($10 000)
271(2)	Breach of confidentiality of information	100 penalty units ($10 000)
271(4)	Intentionally disclosing name of complainant without consent	100 penalty units ($10 000)
273	Levying or charging worker	50 penalty units ($5000)

12. Clauses 358, 367, 377-9 and 386 would amend the *Electrical Safety Act*, inserting new offence provisions.

Clause	New Section	Proposed offence	Proposed maximum penalty
358	40B	Recklessly and without reasonable excuse failing to comply with an electrical safety duty exposing an individual to risk of death or serious injury or illness -Category 1	Individual (not PCBU) 3000 penalty units ($300 000) or 5 years imprisonment Individual PCBU 6000 penalty units ($600 000) or 5 years imprisonment Body corporate 30000 penalty units ($3 000 000)
	40C	Failing to comply with an electrical safety duty exposing an individual to risk of death or serious injury or illness -Category 2	Individual (not PCBU) 1500 penalty units ($150 000) Individual PCBU 3000 penalty units ($300 000)

Clause	New Section	Proposed offence	Proposed maximum penalty
			Body corporate 15000 penalty units ($1 500 000)
	40D	Failing to comply with an electrical safety duty -Category 3	Individual (not PCBU) 500 penalty units ($50 000) Individual PCBU 1000 penalty units ($100 000) Body corporate 5000 penalty units ($ 500 000)
367	52	Contravening electrical safety undertaking	500 penalty units ($50 000)
377	122C	Failing or refusing to comply with written notice to supply information to the regulator without reasonable excuse	100 penalty units ($10 000)
	123A(4)	Failing to return identity card to regulator	40 penalty units ($4000)
378	136B	Impersonating accredited auditor	100 penalty units ($10 000)
379	138B(2)	Refusing or failing to give reasonable help to Inspector without reasonable excuse	100 penalty units ($10 000)
	138D(2)	Tampering with substance or thing with intent to adversely affect the analysis	100 penalty units ($10 000)
	141(6)	Refusing or failing to answer questions or produce documentation required by inspector on entry without reasonable excuse	100 penalty units ($10 000)
	141H	Failing to return thing as required by inspector without reasonable excuse	100 penalty units ($10 000)
	141L(3)	Failing to comply with requirement to make equipment electrically safe without reasonable excuse	40 penalty units ($4000)
	143(5)	Failing to give reasonable help to an inspector inquiring into a serious electrical incident or dangerous electrical event without reasonable excuse	100 penalty units ($10 000)
	144(4)	Refusing or failing to supply name and residential address or evidence of correctness without reasonable excuse	100 penalty units ($10 000)
	145	Intentionally hindering or obstructing inspector or inducing or attempting to induce another person to do so	100 penalty units ($10 000)
	145A	Impersonating an inspector	100 penalty units ($10 000)
	145B	Assaulting, threatening or intimidating or attempting to assault, threaten or intimidate an inspector	500 penalty units ($50 000) or 2 years imprisonment
	146B	Failing to comply with improvement notice within stated period	500 penalty units ($50 000)
	147(6)	Failing to comply with direction or electrical safety prohibition notice	1000 penalty units ($100 000)

Clause	New Section	Proposed offence	Proposed maximum penalty
	148(3)	Failing to comply with unsafe equipment notice without reasonable excuse	1000 penalty units ($100 000)
	149B	Refusing or failing to comply with non-disturbance notice without reasonable excuse	500 penalty units ($50 000)
	150H(1)	Failing to display notice issued by inspector	50 penalty units ($5000)
	150H(2)	Intentionally removing, destroying, damaging or defacing a displayed notice	50 penalty units ($5000)
386	187J	Failing to comply with a court sentencing order without reasonable excuse	500 penalty units ($50 000)
	192(1)	Giving false or misleading information	100 penalty units ($10 000)
	192(2)	Producing a false or misleading document	100 penalty units ($10 000)
	193(2)	Breach of confidentiality of information	100 penalty units ($10 000)
	193(4)	Intentionally disclosing name of complainant without consent	100 penalty units ($10 000)
	195	Levying or charging worker	50 penalty units ($5000)

13. In respect of the proposed offences in the tables above, the committee notes that:

- the bill would substantially increase the maximum penalties for failing to comply with a health and safety duty;
- a large number of offence provisions would have elements of the offence prescribed by regulation (see, below, under 'Delegation of legislative power'); and
- a number of provisions carry civil penalties and would not be offences under the legislation (clause 257).

14. **Clause 27** would require officers of corporations to exercise due diligence to ensure compliance with the legislation.

15. Clause 27 would impose a positive duty on an officer of a PCBU to exercise due diligence to ensure that the PCBU complies with any duty or obligation under the Act.

16. Section 167(2) of the *Workplace Health and Safety Act 1995* provides that if a corporation commits an offence against the legislation, each of the executive officers would also commit an offence of failing to ensure that the corporation complies with the legislation. Two defences are available to the executive officers:

- due diligence; and
- not being in a position to influence the conduct.

17. Clause 27 would recast the current derivative liability of executive officers as a positive duty to exercise due diligence, providing a defence of not being in a position to influence which would be conduct contained in the definition of 'officer' in the Commonwealth *Corporations Act*.

18. The explanatory notes provide (at 9):

> *The provision in the WHS Bill 2011 creates a positive duty that is seen to apply immediately (i.e. the officer must be proactive in taking steps to ensure compliance by the company), rather than accountability only applying after contravention by the corporation. This provision applies whether or not there has been an incident and irrespective of whether the company is prosecuted. The defence of not being in a position to influence the conduct of a corporation is now an element of the definition of an 'officer' of a corporation. The term 'officer' in the WHS Bill 2011 means an officer within the meaning of s9 of the* Corporations Act 2001 *(Cth). The definition in the Corporations Act includes a person who has the capacity to significantly affect the corporation's financial standing.*
>
> *The substance of the defence in s167 of the WHS Act is contained in the definition of 'officer' in the WHS Bill 2011 and gives the same protection, albeit by a different route.*

19. **Clauses 33A and 40E** would provide that the duties set out in clauses 32-3 and 40C-D respectively, would prevail over exculpatory provisions in sections 23 (intention - motive) and 24 (mistake of fact) of the Criminal Code. Accordingly, in respect of the offences in clauses 32-3 and 40C-D, sections 23 and 24 would not be available to excuse criminal responsibility.

20. The explanatory notes do not provide information regarding the exclusion of the Criminal Code provisions and, in particular, about whether clauses 33A and 40E would have sufficient regard to rights and liberties of individuals.

21. The committee invites the minister to provide information about clauses 33A and 40E.

22. **Clause 103** would provide that part 5, relating to consultation, representation and participation, would not apply to a worker who was a prisoner or detainee in custody.

23. The explanatory notes identify an issue raised by the Office of the Queensland Parliamentary Counsel during the drafting of the legislation; namely, that to adequately protect the rights and liberties of prisoners it should be ensured that protections for working prisoners were contained in either the Work Health and Safety Act or corrective services legislation. In response to this issue, the explanatory notes state (at 11):

In the prison environment, prisoners may seek internal reviews or confidentially refer matters of concern to prison management, the Director-General or the Minister. In addition, official visitors attend each centre on a regular basis to hear and make recommendations on complaints. Prisoners may also correspond confidentially with the Ombudsman. Part 6 (of Chapter 6) of the Queensland Corrective Services Act 2006 provides that prisoners can have access to official visitors. This part enables a prisoner to bring any concerns they have about the safety of work activities to the attention of a person who is independent of the prison system and to have the matter investigated by the official visitor.

24. **Clauses 230 and 386** would state that proceedings might be brought only by the regulator or an inspector.

25. Clause 230, for the Work Health and Safety Act, would state that proceedings may only be brought by the regulator or an inspector. Clause 231 would allow an individual who believes that an offence has been committed to make a request to the regulator to bring a prosecution but would not allow an individual direct access to the courts.

26. Clause 386 would insert mirror provisions to clauses 230 and 231 (new sections 186 and 186A) in the *Electrical Safety Act*.

27. The explanatory notes state (at 10-11):

Consistent with the current WHS Act, while proceedings for an offence under the WHS Bill 2011 can only be brought by the regulator or an inspector authorised by the regulator (clause 260), under clause 231 a person who believes that an offence has been committed but a prosecution has not been brought may request the regulator to bring a prosecution. Clause 231 allows for the review by the Director of Public Prosecutions of a regulator's decision not to prosecute a serious offence, that is, a Category 1 or Category 2 offence.

Under subclause 230(3) the regulator must publish general guidelines on the prosecution of offences and the acceptance of WHS undertakings. These guidelines must be published on the regulator's website. Arguably, these guidelines will make a difference and assist in alleviating concerns regarding the limitation on prosecutions.

28. **Clauses 232 and 386** would extend limitation periods regarding the commencement of proceedings.

29. Clause 232, for the Work Health and Safety Act, would extend the limitation period to allow proceedings for an offence to be brought within two years of the offence first coming to the notice of the regulator. A mirror provision would be inserted in the *Electrical Safety Act* by clause 386 (new section 186B).

30. The explanatory notes provide justification (at 9):

The two year limitation period provides an end date at a reasonable point for the liability to be prosecuted, given the seriousness of the conduct and consistent with fundamental legislative principles. For instance, a Category 1 offence under the WHS Bill 2011 is a criminal offence. Prosecutions for a Category 1 offence must be brought within two years of the alleged offence coming to the notice of the regulator; however this period of time may be extended if fresh evidence is obtained. An important factor in time limitations for actions following work-related injuries is the need for there to be sufficient time to gather evidence relating to varying and complex systems of work.

The limitation period in the WHS Bill 2011 is sufficiently long to allow the regulator to recognise and consider an alleged breach and furthers the public interest by providing a consequence for legally wrong conduct harmful to personal safety, while still protecting individuals from the threat of endless prosecution.

Onus of proof

31. 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.

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.

32. **Clauses 110, 118, 144, 165, 177, 185, 200, 242 and 377** may alter the rules regarding the onus of proof ordinarily applying in proceedings.

33. Clause 110 may impose a legal burden on a person charged with an offence under the legislation.

34. Clause 110 would provide that for offences under clauses 104 and 107 alleging discriminatory conduct, once the prosecution proves that discriminatory conduct was engaged in for a prohibited reason, the onus then shifts to the accused to prove, on the balance of probabilities, that the prohibited reason was not the dominant reason for the discriminatory conduct.

35. The explanatory notes provide justification (at 63):

In the absence of such a provision it would be extremely difficult, if not impossible, to establish that a prohibited reason was the dominant reason as the intention of the person who engages in discriminatory conduct will be known to that person alone.

Subclause 110(3) is an avoidance of doubt provision declaring that the burden of proof on the defendant outlined in subclause 110(1) is a legal, not an evidential, burden of proof. The legal burden means the burden of proving the existence of a matter.

36. Clauses 118(3), 144(2), 165(2), 177(6), 185(4), 200(1) and 242(1) would place an evidential burden on a person charged with an offence under the legislation.

37. An evidential burden to show reasonable cause would be imposed on an accused for an offence under:

- clause 118(3) of being a person in control of a business or undertaking failing or refusing to provide relevant documentation to a WHS entry permit holder;
- clause 144(2) of refusing or unduly delaying entry of WHS entry permit holder into a workplace;
- clause 165(2) of failing or refusing to give reasonable help to an Inspector;
- clause 177(6) of refusing or failing to comply with a requirement of an Inspector in relation to a thing to be seized;
- clause 185(4) of refusing or failing to provide his or her name and residential address or evidence of it's correctness;
- clause 200(1) of refusing or failing to comply with a non-disturbance notice; and
- clause 242(1) of failing to comply with a court sentencing order.

38. Clause 377 would insert new sections 122C, 138B(2), 141(6), 141(H), 141L(3), 143(5), 144(5), 148(3), 149B, 187J in the *Electrical Safety Act* which would place an evidential burden on an accused to show reasonable cause in relation to offences of:

- failing or refusing to comply with written notice to supply information to the regulator without reasonable excuse (new section122C);
- refusing or failing to give reasonable help to Inspector without reasonable excuse (new section 138B);
- refusing or failing to answer questions or produce documentation required by inspector on entry without reasonable excuse (new section 141(6);
- failing to return thing as required by inspector without reasonable excuse (new Section 141H);
- failing to comply with requirement to make equipment electrically safe (new section 141L(3));
- failing to give reasonable help to an inspector inquiring into a serious electrical incident or dangerous electrical event (new section 143(5));
- refusing or failing to supply name and residential address or evidence of correctness 9New section 144(5);
- failing to comply with unsafe equipment notice (new section 148(3));
- refusing or failing to comply with non-disturbance notice (new section 149B);
- failing to comply with a court sentencing order(new section 187J);

39. The explanatory notes acknowledge that a number of provisions place an evidentiary burden on the accused to show reasonable excuse. They provide justification (at 12-13):

In regard to those particular provisions, the reversal of the onus of proof is justified because only the accused is in a position to know whether or not they have a reasonable excuse. Because of this, without the reversal of the onus of proof, it would be difficult for the prosecution to prove the offence and the legislation could not otherwise be practically administered. However, the legal burden remains with the prosecutor. It is appropriate for the accused to provide evidence of any reasonable excuse, as evidence of that reasonable excuse will not appear in the prosecution case.

Power to enter premises

40. 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.

41. **Clauses 117, 120-121, 163, 166 and 377** would allow entry onto premises without warrant or consent.

42. Clause 117 would permit a WHS permit holder to enter a workplace for the purpose of inquiring into a suspected contravention of the bill. Clause 118 would permit the WHS entry holder to exercise a number of powers of inspection including requiring the production of relevant documentation. It is an offence, with a maximum penalty of 100 penalty units ($10 000) for a PCBU, without reasonable excuse, to refuse or fail to provide the relevant documentation.

43. Clause 119 would require the WHS entry holder to give notice of entry as soon as reasonably practicable after entry unless giving notice would:

- defeat the purpose of the entry to the workplace; or
- unreasonably delay the WHS entry holder in an urgent case.

44. Where entry was sought under clause 117 for the purpose of inspecting relevant employee records or other documentation, clause 120 would require notice to be given at least 24 hours prior to entry.

45. Clause 125 would require a WHS entry holder to produce their WHS entry permit and photographic identification on request.

46. The bill would provide inspectors with wide powers of entry and powers upon entry to workplaces.

47. Clause 163 would permit an inspector to enter at any time without prior notice a place the inspector reasonably suspected to be a workplace. Clause 166 would require an inspector to notify the relevant person of the entry, unless to do so would:

- defeat the purpose of the entry; or
- cause unreasonable delay.

48. Clause 377 would insert new section 138B(2) in the *Electrical Safety Act* which contains similar general powers of entry for an inspector to the powers found in clause 163.

49. The explanatory notes provide justification (at 13-14):

The WHS Bill 2011 reflects a prevailing public interest to protect the community and the focus of inspectors' powers is to establish the cause of workplace incidents. Without these powers, evidence establishing the cause of workplace incidents may be lost.

The WHS Bill 2011 gives WHS permit holders and inspectors power to enter premises without a warrant, but there are safeguards in the WHS Bill 2011 for the exercise of the powers, as noted by OQPC. In relation to WHS permit holders, the power is only exercisable if: the permit holder reasonably suspects a contravention (clause 117(2)); the rights that the permit holder may exercise while at the workplace are clearly set out (clause 118); notice of entry must be given (clauses 119, 120, 122), the right may be exercised only during usual working hours (clause 126); andthe right cannot be used to enter any part of a workplace that is used only for residential purposes (clause 129).

The entry powers of the inspectors are more extensive than those of the WHS permit holders, including, for example, powers to seize documents and property. However, the safeguards include provision for the return of seized things (clause 180) and the payment of compensation for damage caused (clause 184). Under clause 161, conditions can be placed on inspectors' powers. The inspectors' powers target workplace premises and are therefore appropriate to the object of the WHS Bill 2011 to protect the health and safety of workers.

OQPC also notes that in the case of the WHS permit holder (section 125), the person exercising the power of entry need only have his or her permit and photographic identification 'available for inspection on request'. OQPC prefers the rule applicable to inspectors, namely, that the permit should be produced or displayed, if practicable.

However it should be noted the requirements under section 125 are consistent with current requirements for production of identification for persons performing union right of entry under the WHS Act 1995.

In terms of new requirements for notification on entry (as per the Scrutiny of Legislation Committee Legislation Alert No 1 of 2011), apart from the need to be consistent with the model provisions, the need to provide notice prior to entry would not be practicable or workable, for example, in a construction site there are numerous duty holders in one place (the head contractor, the owner, other contractors, each contractor could also have a separate health and safety representative). The inspector would need to enter to determine who the notice would need to be given to. Further in section 164(2) a safeguard is provided in the provision in that the inspector must notify as soon as possible after entry. Similar to police powers, an inspector does not need to notify if it would defeat the purpose of entry (in some cases there is a need to entry immediately to assess immediate/imminent dangers). This also furthers the public interest in ensuring health and safety of workers and others at the place.

While the WHS Bill does not specifically include that a person may only be appointed as an inspector if the person has satisfactorily finished approved training, all Queensland Work Health and Safety inspectors undergo extensive training before exercising their powers under the legislation. In addition, a national training program is being rolled out this year to all inspectors across the country on the new model legislation. Further, a new feature of the WHS Bill (section 162) requires the regulator to issue directions to inspectors to ensure that any adverse effect on privacy, confidentiality and security is minimised. This provision provides an important quality control measure.

Protection against self-incrimination

50. 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.

51. **Clauses 172 and 379** may not provide adequate protection against self-incrimination.

52. Clause 172(1) would state that a person would not be excused from answering a question or providing information or a document on the ground that the answer, information or document may tend to incriminate the person.

53. However, clause 172(2) would provide that the answer, information or document provided and any other evidence directly or indirectly derived from it, would not be admissible as evidence against the person who provided it, other than in proceedings arising if the answer was misleading or false.

54. Clause 173(2) would provide that it would not be an offence for an individual to refuse to answer a question or provide information or a document on the ground that the answer, information or document might incriminate them, unless they first received the warning in clause 173(1).

55. Clause 173(1) would require an inspector to:

- identify himself or herself as an inspector;
- warn the person that failure to comply without reasonable excuse would constitute an offence;
- warn the person about the effect of clause 172;
- advise the person about the effect of clause 269 which would state that a person was not required to produce a document or disclose information the subject of legal professional privilege.

56. Clause 379 would insert corresponding provisions, new sections 141A–B, in the *Electrical Safety Act.*

57. Generally, the committee draws to the attention of the Parliament provisions which would deny common law protections against self-incrimination other than in potentially justifiable circumstances; namely where:

- the questions posed would concern matters peculiarly within the knowledge of the person to whom they would be directed and would be difficult or impossible for the Crown to establish by any alternative evidentiary means;
- the legislation prohibits use of the information obtained in prosecutions against the person; and
- the 'use indemnity' would not require the person to fulfil any conditions before being entitled to it (such as formally claiming the right).

58. The explanatory notes provide justification for the proposed provisions (at 14-15):

The WHS Bill 2011 seeks both to ensure there are strong powers to compel the provision of information to secure work, health and safety, and also to protect the rights of persons under the criminal law. The focus of the provision is on determining the facts leading to the breach of workplace health and safety, rather than on subsequent prosecution. This is because identifying the cause of the breach enhances the public interest by preventing future injuries and loss of life caused by unsafe work practices.

Ensuring work health and safety is regarded as a sufficiently important objective to justify some limitation of the right to silence. Although subclause 172(1) provides for the abrogation of privilege against self-incrimination, subclause 172(2) states that the answer provided is not admissible as evidence against that person in civil or criminal proceedings, other than proceedings arising if the answer is misleading or false. It also provides 'derivative' use immunity in that it includes any other evidence directly or indirectly derived from the answer, information or document is not admissible. This means that the person is protected against the evidence being used against them in subsequent legal proceedings if they have answered truthfully, reflecting the focus of the provision. Under clause 173 the inspector must carry out the steps listed before requiring a person to answer the questions under Part 9, e.g.:

- *identify himself or herself to the person as an inspector by producing the inspector's identity card or in some other way; and*
- *warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and*
- *warn the person about the effect of section 172; and*
- *advise the person about the effect of section 269.*

Immunity from proceeding

59. 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.

60. **Clauses 270 and 386** would confer immunity from civil liability on an inspector.

61. Clause 270 would confer immunity from civil liability on an inspector for acts or omissions made in good faith in the execution or purported execution of powers and functions under the legislation. Clause 386 would insert a mirror provision in the *Electrical Safety Act* (new section 192B).

62. The committee notes that, as liability would attach to the State, a person affected would not be without a remedy.

63. In relation to consistency with fundamental legal principles, the explanatory notes provide the following information (at 15-16):

The conferring of personal immunity is necessary to ensure that inspectors are able to carry out their statutory functions. Inspectors may be required to exercise judgments, make decisions and exercise power with limited information and in urgent circumstances. As a result, it is important that they and others engaged in the administration of the legislation are not deterred from exercising their skill and judgment due to fear of personal legal liability. If inspectors could be sued for an incident occurring when they are acting in good faith, they may be reluctant to act and thereby undermine a primary objective of the WHS Bill 2011 to protect the health and safety of workers. The interests of public safety dictate that inspectors be allowed to exercise these powers from an initial position of scrutiny, provided that the scrutiny is exercised in good faith. This is because of the need to acquire information to address the substantive issues behind any possible unsafe work conditions and practices. Workplace Health and Safety Queensland (WHSQ) notes that similar provisions are found in the disaster management legislation, for actions done 'in good faith and without reckless disregard'.

These provisions also serve the purpose of harmonising the conferral of immunity over several jurisdictions when inspectors are expected to work across jurisdictions.

Importantly, checks and balances on the exercise of inspectors' powers are also provided by inspectors being accountable for their acts and omissions under the Public Service Act 2008 and the Public Sector Ethics Act 1994.

Clear meaning

64. 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.

65. **Clause 4** may not be drafted in a sufficiently clear way.

66. It would insert a definition of 'officer' by reference to the *Corporations Act 2001*. As the definition is not reproduced in the bill, the clause may not be drafted in a sufficiently clear and precise way as to promote clear meaning.

67. The committee draws to the attention of parliament, clause 4, regarding the incorporation of definitions in the bill by reference to definitions contained in another Act.

Sufficient regard to the institution of Parliament

Delegation of legislative power

68. 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.

69. **Clauses 52, 56, 61, 70 and 75** may allow the delegation of legislative power in inappropriate cases.

70. Clauses 52(6), 56(4), 61(4), 70(1)(i), 75(1)(b) would delegate legislative power to prescribe specified matters for offences. Proposed maximum penalties for the offences would vary from 50 penalty units ($5 000) for clause 75(1)(b) to 100 penalty units ($10 000) for the other clauses.

71. **Clause 276**, the general regulation-making power, would delegate legislative power to create offence provisions with maximum penalties up to 300 penalty units ($30 000).

72. Generally, the committee would note that a maximum penalty of this nature might more appropriately be a matter for primary legislation passed by the Legislative Assembly. This is because a large penalty has the capacity to affect adversely and to a significant degree rights and liberties of individuals and, in particular, individuals who might have difficulty paying a large monetary penalty.

73. The committee notes also that section 38(3) of the *Workplace Health and Safety Act 1995* delegates legislative power to prescribe by regulation offences for a breach of a regulation and to fix a maximum penalty of not more than 40 penalty units ($4000) for the breach.

74. The explanatory notes do not provide information about the proposed delegation of legislative power in relation to offences. Accordingly, the committee invites the minister to provide information about whether clause 276 would have sufficient regard to the institution of Parliament.

Amendment of Act other than by another Act

75. 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.

76. **Clauses 5(6), 36 and 37** may authorise amendment of the Act by regulation.

77. Clause 5(6) would permit a regulation to exclude prescribed persons in prescribed circumstances from the application of the bill by amending a definition in the bill; namely, the definition of a person who conducts a business or undertaking.

78. Clauses 36 and 37 would provide that the scope of what constitutes a 'serious injury or illness' and a 'dangerous incident' may be extended by regulation.

79. A provision of a bill which authorises the amendment of an Act other than by another Act is often referred to as an 'Henry VIII' clause. In January 1997, the committee reported to the Parliament on Henry VIII clauses. While the committee has generally opposed the use of Henry VIII clauses in bills, the committee's report stated that usually it did not consider provisions enabling definitions of terms to be extended by regulation to be Henry VIII clauses. Further, the committee stated that it considered Henry VIII clauses may be excusable, depending on the given circumstances, where the clause is to facilitate:

- immediate executive action;
- the effective application of innovative legislation;
- transitional arrangements; and
- the application of national schemes of legislation.

80. Where provisions fall within the scope of those considered 'Henry VIII' provisions, the committee then examines whether the provisions would represent an appropriate delegation of legislative power.

81. Accordingly, the clauses would fall within the fourth of the acceptable categories and clauses 36-7 would enable definitions to be extended by regulation.

82. In relation to clause 5(6), the explanatory notes state (at 21):

> *The duties and obligations under the Bill are placed on 'persons conducting a business or undertaking'. This is a relatively new concept to work health and safety and is currently only used in two jurisdictions in Australia. An exemption contemplated by subclause 5(6) may be required to remove unintended consequences associated with*

the new concept and to ensure that the scope of the Bill does not inappropriately extend beyond work health and safety matters. For example, regulations could be made to exempt:

• prescribed agents from supplier duties under the Bill (the duties would instead fall to the principal), and

• prescribed 'strata title' bodies corporate from PCBU duties under the Bill.

83. Further, the explanatory notes provide (at 17) information in relation to clauses 36-7, indicating an appropriate delegation of legislative power:

The WHS Bill 2011 allows certain definitions to be further extended by subordinate legislation, given the breadth of the injuries or illnesses and dangerous incidents possible, for example. This extension is not intended to amend the provisions in question - they would still be read in the same way. Any extension of the definitions is limited to the objects of the WHS Bill 2011. Complex national legislative schemes, such as this one, need to be facilitated by strong regulation making powers.

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

84. 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.

85. Section 23(2) states that if the explanatory note does not include the information above, it must state the reason for the non-inclusion.

86. 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

87. The explanatory notes state (at 1-2)

The harmonisation of work health and safety laws is one of the Council of Australian Governments (COAG) priorities under the National Partnership Agreement to Deliver a Seamless National Economy…

In July 2008, COAG signed the Intergovernmental Agreement for Regulatory and Operational Reform in OHS (IGA). The IGA outlined the commitment of the Commonwealth, state and territory governments to work together to develop and implement model work health and safety laws. The IGA also ensures the harmonised work health and safety laws remain consistent over time by requiring any future changes that affect the operation of the laws to be referred to the Workplace Relations Ministers Council (WRMC) for decision at the national level. If WRMC agrees to the proposed amendment, all jurisdictions must adopt the amendment in order to maintain national consistency.

The National Review into Model Occupational Health and Safety Laws was completed in January 2009 resulting in two comprehensive reports being submitted to WRMC. The reports made recommendations on theoptimal structure and content of the national model WHS Act (model WHS Act) that could be adopted in all jurisdictions by December 2011.

On 18 May 2009, WRMC made decisions in relation to the recommendations of the National Occupational Health and Safety Review and requested that Safe Work Australia commence the development of themodel legislation. An exposure draft of the model WHS Act was releasedfor public comment in late September 2009.

In response to the exposure draft, Safe Work Australia received 480 submissions from individuals, unions, businesses, industry associations, governments, academics and community organisations. Safe Work Australia adopted a number of amendments proposed during the public comment period and submitted a revised version of the national model WHS Act to WRMC. WRMC endorsed the revised laws on 11 December 2009 and authorised Safe Work Australia and the Parliamentary Counsel's Committee to make any further technical and drafting amendments to the national model WHS Act to ensure its workability.

Under the National Partnership Agreement to Deliver a Seamless NationalEconomy timeframe, the Commonwealth, state and territory governments have to enact the national model WHS Act and the national model WHS Regulations by end-December 2011. Development and implementation of further model codes of practice and guidance material will continue beyond December 2011.

PART 2 – SUBORDINATE LEGISLATION EXAMINED

SUBORDINATE LEGISLATION TABLED: 6 APRIL TO 10 MAY 2011

(Listed in order of sub-leg number)

SLNo 2011	SUBORDINATE LEGISLATION	Other Docs Tabled (EN, RIS, EI)*	Date Of Gazettal	Tabling Date By	Date Tabled	Disallow Procedures Date
30	Queensland Reconstruction Authority Regulation 2011	EN	8/04/2011	23/08/2011	10/05/2011	24/08/2011
31	Advised in *Legislation Alert No 05 of 2011*.					
32						
33						
34						
35	Petroleum and Other Legislation Amendment Regulation (No.1) 2011	EN	8/04/2011	23/08/2011	10/05/2011	24/08/2011
36	Nature Conservation (Protected Areas) Amendment Regulation (No.2) 2011	EN	8/04/2011	23/08/2011	10/05/2011	24/08/2011
37	Commissions of Inquiry (Queensland Floods Inquiry-Evidence) Regulation 2011	EN	8/04/2011	23/08/2011	10/05/2011	24/08/2011
38	State Penalties Enforcement Amendment Regulation (No.1) 2011	EN	15/04/2011	23/08/2011	10/05/2011	24/08/2011
39	Local Government (Operations) Amendment Regulation (No.1) 2011	EN	15/04/2011	23/08/2011	10/05/2011	24/08/2011
40	Urban Land Development Authority Amendment Regulation (No.1) 2011	EN	15/04/2011	23/08/2011	10/05/2011	24/08/2011
41	Health Legislation Amendment Regulation (No.1) 2011	EN	15/04/2011	23/08/2011	10/05/2011	24/08/2011
42	Electricity Amendment Regulation (No.1) 2011	EN	15/04/2011	23/08/2011	10/05/2011	24/08/2011
43	Rural and Regional Adjustment Amendment Regulation (No.3) 2011	EN	15/04/2011	23/08/2011	10/05/2011	24/08/2011
44	Petroleum and Gas (Production and Safety) Amendment Regulation (No.1) 2011	EN	15/04/2011	23/08/2011	10/05/2011	24/08/2011
45	Proclamation commencing remaining provisions	EN	15/04/2011	23/08/2011	10/05/2011	24/08/2011
46	Environmental Protection Amendment Regulation (No.1) 2011	EN	15/04/2011	23/08/2011	10/05/2011	24/08/2011
47	Sustainable Planning Amendment Regulation (No.2) 2011	EN	6/05/2011	23/08/2011	10/05/2011	24/08/2011
48	Building and Other Legislation Amendment Regulation (No.1) 2011	EN	6/05/2011	23/08/2011	10/05/2011	24/08/2011
49	Proclamation commencing remaining provisions	EN	5/05/2011	23/08/2011	10/05/2011	24/08/2011

SLNo 2011	SUBORDINATE LEGISLATION	Other Docs Tabled (EN, RIS, EI)*	Date Of Gazettal	Tabling Date By	Date Tabled	Disallow Procedures Date
50	Proclamation commencing certain provisions	EN	5/05/2011	23/08/2011	10/05/2011	24/08/2011
51	Aboriginal Land Amendment Regulation (No.2) 2011	EN	6/05/2011	23/08/2011	10/05/2011	24/08/2011
52	Motor Racing Events Amendment Regulation (No.1) 2011	EN	6/05/2011	23/08/2011	10/05/2011	24/08/2011
53	State Buildings Protective Security Amendment Regulation (No.1) 2011	EN	6/05/2011	23/08/2011	10/05/2011	24/08/2011

* EN – Explanatory Notes. RIS – Regulatory Impact Statement. EI – Explanatory Information received.
TBA – Disallowance date to be advised when subordinate legislation has been tabled.

SUBORDINATE LEGISLATION UNDER CONSIDERATION

8. COMMISSIONS OF INQUIRY (QUEENSLAND FLOODS INQUIRY-EVIDENCE) REGULATION 2011 SL37.11

Date tabled: 10 May 2011

Disallowance date: 24 August 2011

Responsible minister: Hon P T Lucas MP

ISSUES ARISING FROM EXAMINATION OF SUBORDINATE LEGISLATION

1. The committee draws the attention of Parliament to **section 2(1)** of the regulation which may amend Acts of Parliament.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

Sufficient regard to the institution of Parliament

Amendment of statutory instruments only

2. Fundamental legislative principles include requiring that legislation has sufficient regard to the institution of Parliament.
3. Section 4(5)(d) of the *Legislative Standards Act* provides that whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation amends statutory instruments only.
4. **Section 2(1)** may authorise amendment of a number of Acts by regulation.
5. The *Commissions of Inquiry Act 1950* is stated to be:

   An Act to make further and better provision for facilitating inquiries by commissions of inquiry.
6. The *Commissions of Inquiry Act* contains a general power in section 33(2) to make regulations about the conduct of commissions.
7. Section 2(1) of the Commissions of Inquiry (Queensland Floods Inquiry-Evidence) Regulation states that a requirement in writing from the chairperson of the Inquiry is to take precedence over any provision of an Act, which may afford a person a reasonable excuse for not complying with the requirement.
8. The committee notes that section 2(1) is to allow for the Floods Inquiry, a Commission of Inquiry with the powers of a Royal Commission and operating within wide terms of reference, to receive all relevant evidence.
9. Further, the explanatory notes provide (at 15) information indicating an appropriate exercise of the legislative power delegated by section 33(3) of the *Commissions of Inquiry Act*:

   On 17 January 2011, the Premier announced a State-wide independent Queensland Floods Commission of Inquiry (the Inquiry) to forensically examine Queensland's 2011 flood disaster.

   The Inquiry was established under the Commissions of Inquiry Act 1950*. It is to have the powers of a Royal Commission and will take public submissions from across Queensland (including government departments). It is required to provide its interim report by 1 August 2011 and final report by 17 January 2012.*

   The Terms of Reference for the Inquiry are wide and some of the information sought may be problematic for government agencies to provide because:
   - *certain legislation may prevent the information from being disclosed; or*
   - *the information sought by the Inquiry (which may itself not be confidential) is included within documents that contain other information which is confidential.*

   The Government is concerned to ensure that the Inquiry will have access to the information it requires in a timely fashion and seeks, by this regulation, to remove any blockages to this occurring…

   This requirement is consistent with the main objects of the Act, that is, to make further and better provision for facilitating inquiries by Commissions of Inquiry.

PART 3A – MINISTERIAL CORRESPONDENCE – BILLS

9. ELECTORAL REFORM AND ACCOUNTABILITY AMENDMENT BILL 2011

Date introduced: 7 April 2011

Responsible minister: Hon PT Lucas MP

Portfolio responsibility: Deputy Premier and Attorney-General, Minister for Local Government and Special Minister of State

Date passed: 11 May 2011

Committee report on bill: 05/11; at 1 - 8

Date response received: 11 May 2011 (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 15** amending the *Electoral Act* to insert new offence provisions;
   - **clause 15** raising issues regarding the freedom of individuals to communicate about political matters prior to an election;
   - **clause 15** imposing limits on who might be appointed as an agent for a registered political party;
   - **clause 15** conferring the Electoral Commission with administrative power which may not be subject to appropriate review;
   - **clause 15** conferring authorised officers with significant post-entry powers after entry had been gained via warrant or consent; and
   - **clause 17** providing for the capping of political donations during the period commencing 1 January 2011; and
   - **clause 15** protecting in prescribed ways specified people acting 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 15** which may, in a number of proposed provisions, allow amendment of the *Electoral Act* by way of regulation.

EXAMINATION OF INFORMATION PROVIDED BY MINISTER

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

Queensland Government

Our ref: 505297/11

Your ref: B9.11

11 MAY 2011

SCRUTINY OF
17 MAY 2011
LEGISLATION COMMITTEE
B9.11

Office of the
Deputy Premier and Attorney General
Minister for Local Government
and Special Minister of State

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

11 MAY 2011

Dear Ms Miller Jo-Ann

Thank you for your letter of 9 May 2011 about Electoral Reform and Accountability Amendment Bill 2011 (the Bill).

The Committee has drawn the attention of the Parliament to the following issues.

Clause 15 amending the *Electoral Act 1992* (the Act) to insert new offence provisions

Clause 15 of the Bill inserts a range of new offence provisions into the Act.

The Committee has not raised any specific issue of concern regarding these offences. These offence provisions were inserted to ensure an appropriate enforcement framework exists for the proposed electoral reforms which are designed to promote transparency and accountability in election funding and financial disclosure.

Clause 15 raising issues regarding the freedom of individuals to communicate about political matters prior to an election

The Bill constitutes an integrated package of measures which work together to serve a legitimate end of ensuring transparency of electoral finance and preventing improper political influence through donations.

It is considered that these measures are reasonably appropriate and adapted to serve that end in a manner that is compatible with the maintenance of the constitutional system of government.

The Bill is designed to create a more level playing field for all election participants and to reduce the capacity of wealthy donors to influence the electoral process.

In particular, the Bill includes elements designed to protect the freedom of political communication.

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The Bill provides both a donation cap and an electoral expenditure cap. It is acknowledged that these caps will limit the ability of political parties and candidates to communicate with the electorate. Therefore, the Bill links the donation and electoral expenditure cap with increased public funding. This is designed to ensure that any disadvantage to candidates and parties by limiting their capacity to fund communication with the electorate is offset by public funding which does not depend on donations.

Clause 15 imposing limits on who might be appointed as an agent for a registered political party

Division 2 of the Schedule to the *Electoral Act 1992* currently provides for the appointment of agents for registered political parties and candidates. Section 290 provides that an agent must be an adult and must not have been convicted of an offence against the Schedule for a particular election.

The Bill retains these restrictions on who may be appointed as an agent.

The appointment of an agent is important administratively as it means that the Electoral Commission knows who to deal with, and who is responsible for the ensuring that the obligations of political parties, candidates and registered third parties are met.

The Bill imposes a range of significant obligations on agents, including:

- the obligation to maintain a State campaign account under section 177C;
- ensuring that political donations are paid into State campaign accounts, under section 177CA;
- ensuring that prohibited amounts are not paid into State campaign accounts, under section 177CB;
- providing donors with receipts for political donations, including warnings against donors exceeding the caps, under section 177FI;
- reporting obligations relating to gifts under section 177GA, loans under section 177GB and expenditure under section 177JA;
- ensuring that political parties' returns to the Electoral Commission are completed, under section 177KB;
- ensuring that all electoral expenditure is paid from the State campaign account, under section 177IB; and
- ensuring that political parties do not exceed their expenditure caps, under sections 177IC and 177ID.

Non-compliance with these obligations can result in substantial penalties.

Accordingly, it is consistent with fundamental legislative principles that appropriate restrictions be placed on the persons who may be appointed as agents to ensure they are able and suitable to discharge these functions.

Clause 15 conferring the Electoral Commission with administrative power which may not be subject to appropriate review

Clause 15 inserts new sections 177DI and 177EF which confer on the Electoral Commission the power to decide whether to accept or refuse claims for election funding and administrative funding. If the Commission refuses a claim an applicant may apply for internal review.

The Committee has raised an issue as to whether these review rights are appropriate.

As noted in the Explanatory Notes, these provisions restate provisions which have been in the *Electoral Act 1992* for some time and which were modelled on those of the *Commonwealth Electoral Act 1918.*

The Explanatory Notes also note that it is considered that the lack of external appeal is justified as the grounds on which an application for funding may be refused are extremely limited and specific and do not involve an exercise of the Commission's discretion.

Applicants will continue to have review rights under the *Judicial Review Act 1991.*

Clause 15 conferring authorised officers with significant post-entry powers after entry had been gained via warrant or consent

The Committee has drawn the attention of Parliament to post-entry powers of authorised officers contained in new Division 16 of Part 9A .

The Committee has not raised any specific issue of concern with particular powers.

As noted in the Explanatory Notes, adequate investigative powers with appropriate safeguards are essential for the Electoral Commission to ensure the integrity of the regulatory regime.

Clause 17 providing for the capping of political donations during the period commencing 1 January 2011

The Government White Paper: *Reforming Queensland's electoral system,* which was released in December 2010, clearly indicated the Queensland Government's intention to implement the donations cap from 1 January 2011. The Paper also contained details of proposed applicable donations caps. Parties and candidates were therefore given appropriate notice of the proposed reforms.

The effect of the Bill is that money must not be deposited in a State campaign account if the money was received as a gift which would contravene the applicable donations cap under Part 9A, division 6, regardless as to whether the gift was accompanied by a statement that it was intended to be used for campaign purposes. This does not impose any unduly onerous retrospective obligation on parties or candidates.

Clause 15 protecting in prescribed ways specified people acting under the legislation.

The Committee has drawn attention to the following provisions.

Section 177SF

The scheme of the Bill is to provide under section 177PB for an authorised officer to require an occupier of the place or person at the place to give the authorised officer reasonable help to exercise a general power, including for example to produce a document or give information.

Section 177PC and section 177SF provide for alternative safeguards in relation to abrogation of the privilege against self incrimination. Section 177PC provides that it is a reasonable excuse not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty. However, section 177SF provides that if a person does comply they will be accorded use and derivative use immunity in relation to the information or documents provided under section 177PB. This will assist in ensuring that information or documents that may be important to effective enforcement of the regulatory regime are provided to authorised officers.

Section 177SG

Section 177SG provides protection from liability for a designated person (i.e. the commissioner, an authorised officer, or a person acting under the authority or direction of an authorised officer). However, the immunity only applies to an act done, or omission made, honestly and without negligence under the Bill.

The conferral of the immunity is balanced by the fact that any civil liability that would otherwise attach to a designated person instead attaches to the State.

Clause 15 which may, in a number of proposed provisions, allow amendment of the *Electoral Act* by way of regulation.

The Committee has drawn attention to the following provisions which allow for subordinate legislation to be made.

Section 177AD (5)

The Act provides for the capping of the amount of donations made to political parties, candidates and third parties, with the definition of "gift" in section 177AD(5) making it clear that gifts include not only monetary amounts, but gifts in kind. The inclusion of gifts in kind is essential to ensure that the purpose of the legislation is not thwarted.

It is submitted that the wording of section 177AD as it stands would be interpreted such that donors would need to use valuation methodologies currently acceptable in law. In other words, any Regulation would be by way of clarification and assistance and would be ultra vires and unenforceable if it attempted to widen or narrow the intent of the provision.

In relation to normal valuation practice, the Commonwealth Electoral Commission's brochure titled "Funding and Disclosure Guide - 2010 to 2011 Financial Year - Donors to Political Parties" at page 7 provides in relation to valuation of gifts in kind as follows: "*gifts in kind are normally disclosed at the commercial or sale value of the item or service as evidenced by arms length quotations, comparative advertisements or expert assessment.*"

Section 177KH(3)

This section allows that a Regulation may provide for a reduction in the amount of information required to be included in a return under the new section 177KF of the Electoral Act. Section 177KF applies to returns by associated entities. Section 177KH(3) replicates section 314AG of the Schedule which has been in the Electoral Act for some time. To date, no regulation has been prescribed under section 314AG.

The details to be reported under section 177KF are extensive. It may be of administrative assistance to both the Queensland Electoral Commission and the associated entities, for regulations to lessen these requirements in the interests of red tape reduction.

Section 177SB(6)

Section 177SB(6) provides that a regulation may prescribe matters for a court to take into account when deciding on compensation to be awarded to a person due to the exercise of powers by authorised officers. It is submitted that any Regulation under the provision would be intended to provide clarity and transparency for a person affected by the provisions.

It should also be noted that this provision has been modelled on section 167(6) of the Fair Trading Inspectors Amendment Bill currently before Parliament.

It is also noted in respect of any regulations made under the above three provisions, that they would be subject to separate review by the Scrutiny of Legislation committee and subject to disallowance.

I trust this information is of assistance.

I thank the Committee for its consideration of this Bill.

Yours sincerely

PAUL LUCAS MP
Deputy Premier and Attorney-General,
Minister for Local Government
and Special Minister of State

10. ELECTRICAL SAFETY AND OTHER LEGISLATION AMENDMENT BILL 2011

Date introduced: 8 March 2011
Responsible minister: Hon CR Dick MP
Portfolio responsibility: Minister for Education and Industrial Relations
Date passed: 22 March 2011
Committee report on bill: 3/11; at 5 - 13
Date response received: 17 May 2011 (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 15** creating offence provisions;
   - **part 4** removing Queensland Workplace Agreements from the industrial relations system;
   - **clauses 4-6** which may make obligations dependent on administrative power which may not be sufficiently defined;
   - **clauses 37 and 38** altering administrative review procedures regarding the Queensland workplace rights ombudsman;
   - **clause 66** limiting the grounds of appeal to the industrial court in respect of a decision of the industrial commission;
   - **clauses 9 and 15** which may impose evidentiary burdens on respondents in proceedings for offences; and
   - **clause 2** which may provide for the retrospective operation of some provisions of 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 8** which may not confine the delegated power to prescribe fees to recovery of the costs of administering the licensing system;
   - **clause 8** allowing the meaning of terms central to the operation of the legislation to be prescribed by regulation;
   - **clause 15** which may delegate legislative power in an inappropriate case; and
   - **clause 8** which may not sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

EXAMINATION OF INFORMATION PROVIDED BY MINISTER

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

Hon Cameron Dick MP
Member for Greenslopes

In reply please quote: IR/11/0067, 536334/1

Minister for Education and Industrial Relations

13 MAY 2011

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

Dear ~~Ms Miller~~ Jo-Ann,

Thank you for your letter dated 21 March 2011 regarding the Scrutiny of Legislation Committee's comments on the Electrical Safety and Other Legislation Amendment Bill 2011 (the Bill). I apologise for the delay in responding.

In paragraph 11, the Committee notes that the offence provision in new section 106(2) may not be sufficiently clear.

Section 106 relates to the sale of in-scope electrical equipment by persons. Subsection (2) creates an offence for persons who sell an item of level 2 or 3 equipment that is not registered. Persons who have an honest and reasonable but mistaken belief that the equipment was registered are able to use subsections (3) and (4) to plead their case. The words used in subsection (3), "*honest and reasonable but mistaken belief*", align with the "*mistake of fact*" provision under section 24 of Queensland's Criminal Code. A direct reference was not made to Queensland's Criminal Code because the Bill is national model legislation to be implemented in all Australian States and Territories. Instead, the section was written in such a way that it would be able to apply across all jurisdictions. The intention here is not to limit the use of subsections (3) and (4). Instead, the intent is to advise on how persons may use it.

In paragraph 12, the Committee notes that section 126E would impose liability for a failure by a distribution entity to ensure that a label was attached to an item of electrical equipment. The Committee writes that 'distribution entity' is not defined for the purposes of Part 6A. I can advise that the term distribution entity is already defined in Schedule 2 of the *Electrical Safety Act 2002* (the ES Act).

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In paragraph 13, the Committee notes that the meaning of 'domestic electrical equipment' may not be sufficiently defined. Section 126G(8) of the Bill defines domestic electrical equipment to mean 'computer equipment, brown goods or whitegoods'. The Committee notes that the term 'browngoods' is not defined.

The term 'browngoods' is not defined in the Bill because its ordinary meaning is intended to apply. The term browngoods refers to relatively light electronic consumer durables such as televisions, stereos and dvd players; as opposed to heavy consumer durables such as air conditioners, refrigerators and washing machines which are called 'whitegoods'. Neither term is defined in the Bill.

In paragraph 14, the Committee refers to the amendments to the *Industrial Relations Act 1999,* to remove Queensland Workplace Agreements (QWAs). QWAs are individual workplace agreements which were introduced by the Queensland coalition government in 1997. There are no QWAs in force in the State jurisdiction and as such, no rights of any individual will be affected by their removal. Queensland is a signatory to a multilateral agreement for a national industrial relations system which prohibits this type of agreement. All States and Territories, apart from Western Australia, have agreed to abolish them.

In paragraph 17, the Committee notes that clauses 4 to 6 of the Bill may make obligations dependent on administrative power which may not be sufficiently defined. This is not the case.

Clause 4 amends current section 26 (obligations for electrical safety) of the ES Act. This section lists the persons who have obligations for electrical safety. Clause 4 inserts another dot point for "*persons who conduct recognised external certification schemes*". It is clause 7 of the Bill that actually creates a new obligation in the ES Act.

Clauses 5 and 6 of the Bill insert notes into the ES Act. These notes clarify how the already existing obligations for importers and suppliers of electrical equipment can apply to circumstances where the importer or the manufacturer is a responsible supplier, and the electrical equipment is in-scope electrical equipment. A responsible supplier is defined in clause 9, which is to be included in the ES Act. Section 14(4) of the *Acts Interpretation Act 1954* confirms that a note is part of an act.

Clause 8 creates a new Part 2A to the ES Act. This new part contains a range of definitions that are relevant to the operation of the in-scope electrical equipment safety system. Some of these terms are defined to have meanings given by a regulation made for the part. This is to facilitate the application of the national model regulations, and these terms are defined within clause 15 of the Bill.

In paragraphs 20 to 23, the Committee refers to the amendments in relation to the Queensland Workplace Rights Ombudsman (Ombudsman) and states that, "*The explanatory notes do not address specifically the consistency of clauses 37 and 38 with fundamental legislative principles. However, general information is provided (at 3 and 5) regarding the reasons for the amendments and the way in which they are to be achieved".*

It is considered that the amendments do have sufficient regard to the rights and liberties of individuals. A review of the Ombudsman and the Queensland Workplace Rights Office was undertaken in late 2010 and the government response to the review will be released shortly. As part of the review, 23 stakeholders were consulted and the methodology set out in the report of the Independent Review of Government Boards, Committees and Statutory Authorities (IRGB), which is intended to identify those government bodies that are necessary and working efficiently and those that can be abolished, was applied.

The general view of stakeholders was that the State had referred its private sector industrial relations powers and should allow the Commonwealth to assume full responsibility for the system but that during the transition period there may be value in continuing some capacity to provide information, advice and referral services for vulnerable workers. The present Federal bodies, for example, the Fair Work Ombudsman (FWO), did not exist when the Ombudsman was established.

The review considered that there was considerable overlap and duplication in relation to the functions of the Ombudsman and other entities including, unions and employer organisations (providing advice to members), FWO, (whose functions and powers exceed those of the Ombudsman and who can undertake national audits of employers to ensure compliance as well as enforce awards and agreements while the Ombudsman has no coercive powers), Fair Work Division of the Federal Court, the Federal Magistrates Court, Queensland Industrial Relations Commission (which has existing powers to undertake industry reviews), Legal Aid Queensland, Training Ombudsman, Dispute Resolution Branch (DJAG), Queensland Building Services Authority, Workcover Queensland, Q COMP, Queensland Civil and Administrative Tribunal, Anti-Discrimination Commission, Australian Human Rights Commission and community organisations (eg Queensland Working Women's Service, Caxton Legal Service, Young Worker's Advisory Service, community legal centres).

In all the circumstances, although the amendments allow for a future alteration of the administrative review procedure for the Ombudsman, it is not considered that this translates into an 'insufficient regard for the rights and liberties of individuals'. Similarly, in relation to the carrying out of industry or sector wide investigations, the Ombudsman does not presently have any specific function to carry out industry or sector wide investigations, although his general powers allow him to conduct them. The amendments provide the Ombudsman with that specific function subject to a request by the Minister to ensure the appropriate use of scarce resources and to avoid duplication. This new function does not impinge on the Ombudsman's function to carry out individual investigations and is not considered to have 'insufficient regard to the rights and liberties of individuals' particularly having regard to the number and variety of other entities providing the same or similar services.

In paragraph 24, the Committee refers to clause 66 limiting the grounds of appeal. This clause was removed in the Amendments in Committee.

In paragraph 30, the Committee notes that Clauses 9 and 15 may impose evidentiary burdens on respondents for proceedings for offences under the ES Act.

Clause 9 inserts a new section 181A into the ES Act. This section provides that, in a complaint starting a proceeding, if the regulator claims that an item is in-scope electrical equipment (i.e. it is designed, or marketed as suitable, for household, personal or similar use), it will be taken to be that way unless the responsible supplier or manufacturer proves that the contrary is true. In order to claim an exemption from the scope of the system, the responsible supplier or manufacturer would need to show that the equipment is designed for commercial or industrial purposes only. The reason why the onus is placed on them is that they are in the best position to know what their products are intended for. These are the persons who are designing or importing products for a particular use for particular markets. The regulator has no role in this, and would find it incredibly difficult to establish what the intended use is.

Clause 15 identifies matters that may be proved by respondents in defence of liability for an offence under the *Electrical Safety Regulation 2002* (the ES Regulation). The Explanatory Notes do not address the consistency of clause 15 with section 4(3)(d) of the *Legislative Standards Act 1992* because the onus of proof is not reversed in any of these matters.

In paragraph 44, the Committee notes that Clause 8 may not confine the delegated power to prescribe fees to recovery of the costs of administering the system. This is the case. As stated in the Explanatory Notes, the Bill introduces a user-pays system. The registration fees will be used to fund the national register and the associated administrative functions. Registration fees are also to be used to fund improved compliance and post-market surveillance activities.

Clause 8 of the Bill inserts a new section 48I into the ES Act. New section 48I(2) states that fees may be prescribed at a 'premium-level'. Clause 10 of the Bill creates a new Division 1A 'In-scope electrical equipment (registration fees fund)' in the ES Act. This Division establishes the fund and contains requirements for its purpose and administration. Amounts are payable from the fund only to participating jurisdictions for providing electrical safety services relating to in-scope electrical equipment.

In paragraph 55, the Committee notes that Clause 15, new section 126D(4), may delegate legislative power in an inappropriate case. This is not the case.

New section 126D provides the chief executive with the capacity to prohibit the sale or use of electrical equipment on safety grounds. Under this section, the chief executive may, by gazette notice, prohibit the sale or use of an item of electrical equipment if the chief executive believes, on reasonable grounds that the item does not comply with the safety criteria in AS/NZS 3820 (Essential safety requirements for electrical equipment). This section equally applies to the sale *or* use of electrical equipment. So it applies to:

1. equipment being sold; and/or

2. equipment being used in a workplace or home (or similar situation).

Section 126D(2) provides that the prohibition remains in force for the time stated in the gazette notice or, if no time limit is stated, without limit of time. This is required as prohibitions issued under section 126D could apply to a situation where a large or complex piece of machinery is being used in an industrial workplace. In such a situation, the prohibition issued under section 126D could be issued without limit of time until the equipment meets the safety criteria under AS/NZS 3820. This would provide for the equipment to be repaired or modified so that it meets the safety criteria and is then able to be operated again.

The Committee notes that under section 126D(5), unless a court decides otherwise in the circumstances, it would not be a reasonable excuse for a contravention of the prohibition if the person did not receive an information notice in respect of the prohibition. This is because there is an already existing overarching obligation for electrical safety in the ES Act. Depending on the specifics of the case, the obligation of manufacturers of electrical equipment, importers of electrical equipment, suppliers of electrical equipment, and the obligation of persons in control of electrical equipment, among others, could be applicable. Given these existing and overarching electrical safety obligations, unless a court decides otherwise, it would not be a reasonable excuse for a contravention of the prohibition if the person did not receive an information notice in respect of the prohibition. As a result, there is no tension with fundamental legislative principles.

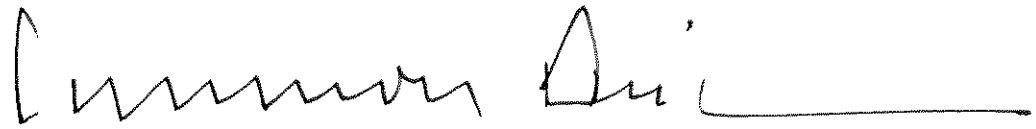
In paragraph 60, the Committee notes that Clause 8 may not sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly. This is not the case.

Clause 8, new section 48J(1), allows the chief executive to declare recognised external certification schemes. Clause 15, inserts a new Division into the ES Regulation that relates to recognised external certification schemes. Under these provisions, a person can apply to the chief executive to be declared to be a recognised external certification scheme under the Act. The ES Regulation contains certain technical requirements (such as technical accreditations) for applications to be made to the chief executive. The ES Regulation also contains procedures relating to declarations being advertised, procedures about the cancellation of declarations, and the term of declarations. This approach has been modelled on existing provisions in New South Wales law and will be used as national model regulations.

New section 48K will allow the chief executive to make the equipment safety rules. As stated in the Explanatory Notes, these rules are not subordinate legislation. They will be a very technical document that contains detailed administrative procedures as they relate to the certification of in-scope electrical safety equipment. These equipment safety rules are intended to ensure a nationally consistent and transparent approach in verifying that equipment is safe prior to its sale on the market. They will also be used to improve efficiencies in the pre-market administration processes for in-scope electrical equipment. Given that they are to be used in an environment of rapid technological change, and that they are highly technical and administrative in nature, they are not subordinate legislation.

I thank the Committee for its consideration of this Bill.

Yours sincerely



CAMERON DICK MP
Minister for Education and Industrial Relations

11. GAS SECURITY AMENDMENT BILL 2011

Date introduced: 6 April 2011
Responsible minister: Hon SJ Hinchliffe MP
Portfolio responsibility: Minister for Employment, Skills and Mining
Date passed: 12 May 2011
Committee report on bill: 5/11; at 21 - 25
Date response received: 11 May 2011 (copy commences following page)

ISSUES ARISING FROM EXAMINATION OF BILL

5. 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 4** which amends the definition of affected land for the purposes of the Collingwood Park State guarantee;
   - **clause 16** creating new offence provisions which may impose liability for acts or omissions of others and would impose an evidential burden on defendants;
   - **clauses 6 and 26** which may adversely affect rights and liberties retrospectively;
   - **clause 5** which would insert a definition of market value for the purposes of the Collingwood Park State guarantee; and
   - **clauses 18 and 28**, which would incorporate definitions in the *State Development and Public Works Organisation Act 1971* in the *Petroleum and Gas (Production and Safety) Act* .
6. In relation to whether the bill has sufficient regard to the institution of Parliament, the committee draws the attention of the Parliament to **clause 16** which may allow the delegation of a legislative power in an inappropriate case.
7. The committee invites the minister to provide further information about:
   - the boundary changes to Collingwood Park, including any map of the boundary changes; and
   - the effect that clause 6 will have on the rights and liberties of individuals under the Collingwood Park State guarantee.

EXAMINATION OF INFORMATION PROVIDED BY MINISTER

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

Hon Stirling Hinchliffe MP
Member for Stafford

Queensland Government

Minister for Employment, Skills and Mining

Your ref: B8.11
Our ref: CLLO/11063

11 MAY 2011

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

Dear Jo-Ann

Thank you for your letter dated 9 May 2011 regarding the Scrutiny of Legislation Committee's comments on the *Gas Security Amendment Bill 2011* (the Bill) outlined in the Legislation Alert No. 05 of 2011.

I note that the Committee draws to the attention of the Parliament aspects of the Bill with respect to the rights and liberties of individuals and with regard for the institution of Parliament.

The Committee has invited me to provide further information about whether sufficient regard to the institution of Parliament has been given in relation to clause 16 of the Gas Security Amendment Bill 2011 (the Bill). The Committee raises concerns regarding the delegation of legislative power to the *Petroleum and Gas (Production and Safety) Regulation 2004* (the Regulation) to prescribe the nature of certain records; the manner in which these records must be kept; and the duration for which they must be kept. These requirements will apply to both a tenure holder subject to an "Australian Market [gas] Supply Condition" (Condition) and an entity to which a tenure holder subject to the Condition has sold the gas.

Clause 16 proposes to amend the *Petroleum and Gas (Production and Safety) Act 2004* (the Act) to provide a legislative framework to implement a Prospective Gas Production Land Reserve (PGPLR) policy, if market analysis indicates that there may be a future shortage of gas supply to domestic users.

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In order to ensure the effective operation of the PGPLR, if a decision is made to implement it, a clear outline of the record-keeping requirements for sales of gas produced from PGPLR land should be publicly available to those entities that may wish to apply for tenure over PGPLR land or entities that may wish to buy gas from such land. It was determined that the details of the records to be kept should be contained in the Regulation due to the administrative / operational nature of such details. It should be noted that the Regulation currently includes similar provisions regarding the nature of samples and records required to be kept by a tenure holder under the Act for other purposes. The Committee may refer, for example, to section 47 of the Regulation, which details the manner in which certain samples are required to be kept by a tenure holder and the duration for which they are required to be kept.

The Committee has also questioned the appropriateness of delegating an offence in relation to these record keeping requirements to the Regulation – namely that an internal auditor or chief financial officer (CFO) commits an offence in certain circumstances if their inspection of such records indicates a wilful breach or intention to breach an Australian Market Supply Condition and the auditor or CFO fails to report the potential breach to the Minister or Chief Executive of the Department administering the Act. It is considered appropriate that this offence be contained in the Regulation because:

- it is directly related to the auditor/CFO's inspection of the records detailed in the regulatory amendment; and
- the proposed penalty for such an offence (ie. 20 Penalty Units) is minor in nature, particularly when compared to the offence, contained in the Bill, of breaching an Australian Market Supply Condition (1000 Penalty Units).

With respect to Collingwood Park, the Committee has invited me to provide further information about the boundary changes and the effect that clause 6 will have on the rights and liberties of individuals under the Collingwood Park State Guarantee.

Although the suburb boundaries of Collingwood Park have changed since the making of the State Guarantee, the area to which the State Guarantee applies has not been altered.

The boundary change to Collingwood Park that occurred in October 2010 undertaken by the Department of Environment and Resource Management to reflect changes in the course of Six-Mile Creek which serves as the western boundary (refer to attached map).

Clause 4 amends the definition of "affected land" to ensure that the area of Collingwood Park that became subject to the State Guarantee in November 2008 continues to be subject regardless of any boundary changes to the suburb of Collingwood Park.

Clause 4 also amends the definition of "affected land" to clarify that it is limited to land used only for a residential, charitable or religious purpose.

The purpose of clause 6 is to confirm that the changes in clause 4 have applied since the commencement of the State Guarantee in 2008. The amendment confirms the original intent of the State Guarantee and will not negatively impact any claims submitted to date. There are no existing claims in relation to land other than residential land. As such, clause 6 does not affect the rights and liberties of individuals.

I thank the committee for its careful consideration of the legislation and for its comments and trust the above information has been of assistance.

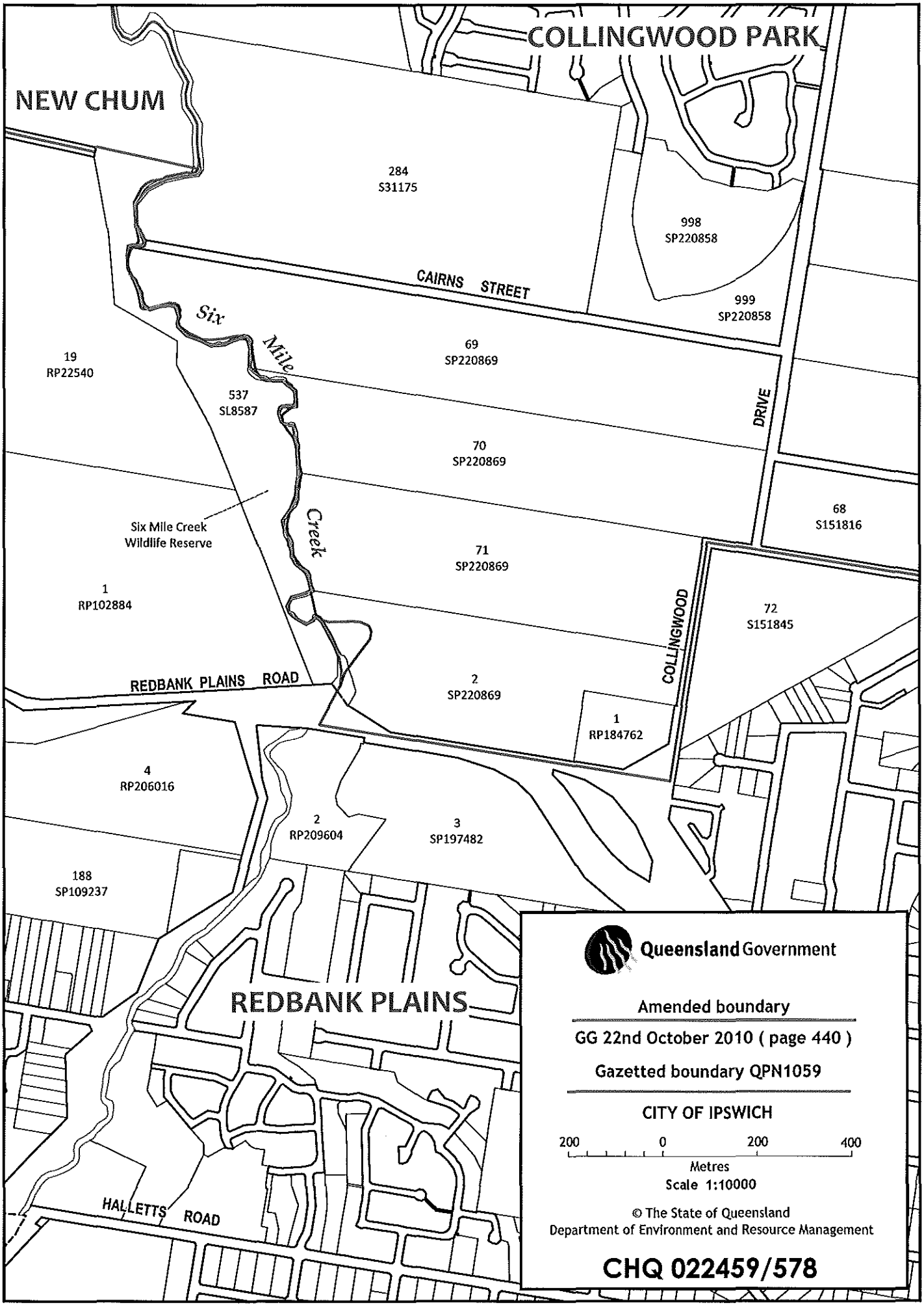
Yours sincerely

Stirling Hinchliffe MP
Minister for Employment, Skills and Mining

Att.

ATTACHMENT

CITY OF IPSWICH



12. PARLIAMENT OF QUEENSLAND (REFORM AND MODERNISATION) AMENDMENT BILL 2011

Date introduced: 5 April 2011

Responsible minister: Hon AM Bligh MP

Portfolio responsibility: Premier and Minister for Reconstruction

Date passed: 12 May 2011

Committee report on bill: 5/11; at 27 - 39

Response: Tabled on 12 May 2011; not sent to committee, copy is available at: http://www.parliament.qld.gov.au/view/legislativeAssembly/tabledPapers/home.asp.

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 35** amending powers conferred on an authorised person to enter land without warrant or consent;
   - **clause 2(1)** providing for certain amendments to have retrospective operation;
   - **clause 7**, conferring responsibilities on the statutory Committee of the Legislative Assembly and which may not be drafted in a sufficiently clear and precise way; and
   - **clause 29** which may not be drafted in a sufficiently clear way as it does not include a note regarding definitions of terms included in the *Acts Interpretation Act*.
2. The committee invites the Premier to provide further information regarding the application of fundamental legislative principles to:
   - **clause 41** and whether it is unambiguous and drafted in a sufficiently clear and precise way;
   - **clause 7** and whether it would allow undue Executive intrusion into the separate parliamentary branch of government;
   - **clauses 7 and 41**, respectively conferring responsibilities on the proposed statutory Committee of the Legislative Assembly and Ethics Committee, and whether the proposed provisions would have sufficient regard to the institution of Parliament;
   - **clause 29**, providing for the establishment, operation and role of portfolio committees, and whether it would have sufficient regard to the institution of Parliament; and
   - **clause 7** and whether it might impair the role and status of the Speaker.
3. In relation to the consideration of the bill, and if the bill in its current drafted form has sufficient regard to the institution of Parliament, two members of the committee – the Deputy Chair, Mr Peter Wellington MP, and Dr Alex Douglas MP – find the bill in its current draft form, may allow undue executive intrusion by the Government, into the separate Parliamentary branch of Government, and that this part of the bill should not be supported in its present form.
4. The committee invites the Premier to provide information regarding the consistency of the explanatory notes with section 23 of the *Legislative Standards Act*.