



Legislation Alert

Scrutiny of Legislation Committee

53rd Parliament

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

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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*:

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

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

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

Rights and liberties of individuals	Bills and subordinate legislation	
	<ul style="list-style-type: none"> • make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review • are consistent with the principles of natural justice • allow the delegation of administrative power only in appropriate cases and to appropriate persons • 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 	
Institution of Parliament	Bills	Subordinate legislation
	<ul style="list-style-type: none"> • allow the delegation of legislative power only in appropriate cases and to appropriate persons • sufficiently subject the exercise of delegated legislative power to the scrutiny of the Legislative Assembly • authorise the amendment of an Act only by another Act 	<ul style="list-style-type: none"> • is within the power that allows the subordinate legislation to be made • is consistent with the policy objectives of the authorising law • contains only matter appropriate to subordinate legislation • amends statutory instruments only • allows the subdelegation of a power delegated by an Act only – <ul style="list-style-type: none"> – in appropriate cases to appropriate persons – if authorised by an Act.

REPORT

Structure

This report follows committee examination of:

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

Availability of submissions received

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

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

PART 1 – BILLS EXAMINED

1. PEOPLE'S HOUSE BILL 2011

Date introduced:	24 May 2011
Responsible minister:	Mr AP McLindon MP
Nature of bill:	Private members' 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 is to provide for a People's House in the Parliament of Queensland.

LEGISLATIVE PURPOSE

3. The objectives of the bill are to (explanatory notes, 1):
... reinstate an upper house without any extra politicians in Queensland, to be known as the 'People's House'. The People's House is to consist of 45 local government mayors to review legislation that has been divided upon in the Legislative Assembly by not less than five Members of Parliament.
4. The bill would amend the:
 - *Constitution Act 1867*;
 - *Constitution of Queensland 2001*; and
 - *Local Government Act 2009*.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

Sufficient regard to the institution of Parliament

Institution of Parliament

5. Fundamental legislative principles include requiring that legislation have sufficient regard to the institution of Parliament. This requirement is stated in section 4(2) of the *Legislative Standards Act*.
6. **Part 2** would amend sections of the *Constitution Act 1867* which are subject to special enactment procedures.
7. Against this background, clause 3 would insert a new section 1AA to provide that, within Queensland, there shall be a People's House.
8. Clause 4 would amend section 2. Currently, section 2 provides that within Queensland Her Majesty shall have power by and with the advice and consent of the Legislative Assembly to make laws for the peace, welfare and good government of Queensland. Section 2 would be amended to include reference to the People's House also having the law-making power.
9. Clause 5 would amend section 2A to state that:
 - the Parliament of Queensland consists of the Queen, the Legislative Assembly and the People's House (section 2A(1)); and
 - every bill is to pass through the Legislative Assembly and People's House before being presented to the Governor for assent.

10. Clauses 3 to 5 seek to amend sections of the *Constitution Act 1867* that, in the past, the Parliament has conferred with a special significance – the Parliament has sought to inhibit the ability of its successor Parliaments to amend the sections.
11. In addition, clause 6 would expand the protected constitutional provisions by including in that category new section 1AA. Clause 6 would amend section 53(1), discussed below.
12. Section 53 of the *Constitution Act 1867* requires a referendum to be conducted prior to the presentation for assent of a bill expressly or impliedly affecting in any way sections 1, 2, 11A and 11B, as well as section 53 itself, of the *Constitution Act 1867*. Section 53(2) to (5) describes the 'manner and form' that must be followed prior to assent.
13. The effect of section 53 is to reconstitute the legislature for the purposes of enacting the prescribed legislation, with the reconstituted legislature comprising the Legislative Assembly, the electorate and the Governor. In short, for the special purpose of enacting the laws identified in section 53(1), the electorate is added as if it was another chamber.¹
14. Accordingly, SO 126(2) of the *Standing Rules and Orders of the Legislative Assembly* provides for a different form of statement of enacting authority for bills requiring the consent of the electors of Queensland. Consistent with SO 126(2), the enacting words in the bill state:
The Parliament of Queensland with the consent of the electors of Queensland enacts – ...
15. For a manner and form provision to be binding on a legislature, it must be 'doubly entrenched'. Clauses 3 to 6, in seeking to amend doubly entrenched provisions, must be enacted in the prescribed manner and form.
16. Double entrenchment and the nature of section 53 are both outlined in the following passage in *The Constitutional Systems of the Australian States and Territories*:
Double entrenchment means that the manner and form provision is entrenched so that it cannot be amended or repealed by ordinary legislation. Commonly, the same requirements prescribed by the manner and form apply to its own amendment or repeal, but this need not be so. To be effectively entrenched, the special requirements need to be at least as onerous as those which it prescribes. An example of a doubly entrenched provision of the former kind is s 53 of the Constitution Act 1867 (Qld) which not only entrenches a range of provisions by referendum, but also entrenches itself by that same requirement. To remove the referendum requirement to abolish the office of Governor, a referendum is required to amend s 53 accordingly.
17. In respect of the referendum requirement, the committee notes that the People's House Bill was introduced at the same time as the Referendum for an Upper House Bill 2011.
18. The committee's report on its examination of the Referendum for an Upper House Bill is in chapter 2.

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

19. 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;

¹ Carney 183; see also LCARC, Report no 13, [2.3].

- 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.
20. Section 23(2) states that if the explanatory note does not include the information above, it must state the reason for the non-inclusion.
21. Explanatory notes were tabled at the first reading of the bill. They are drafted in clear and precise language. However, the explanatory notes do not contain statements addressing all of the matters prescribed by section 23.

2. REFERENDUM FOR AN UPPER HOUSE BILL 2011

Date introduced:	24 May 2011
Responsible minister:	Mr AP McLindon MP
Nature of bill:	Private members' 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 provide for a referendum on the People's House Bill.
3. The legislation compliments the People's House Bill discussed at 5-7 of this Legislation Alert.

LEGISLATIVE PURPOSE

4. The objective of the bill is to (explanatory notes, 1):
...put the People's House Bill 2011 to a referendum at the next council elections in Queensland, to be held on March 31, 2011.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

Sufficient regard to rights and liberties of individuals

Clear meaning

5. 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.
6. **Clause 2** would provide for a referendum to be held but does not refer to the *Referendums Act 1997*.
7. Clause 2 would apply if the People's House Bill (see chapter 1) passed the Legislative Assembly and would provide for a referendum to be held.
8. Currently, the *Referendums Act* provides for the conduct of a referendum. Part 7 makes provision for a referendum to be held in conjunction with an election under the *Electoral Act 1992*.
9. The committee notes, however, that the failure to refer to the Referendums Act may not result in ambiguity of clause 2.

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 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.
11. Section 23(2) states that if the explanatory note does not include the information above, it must state the reason for the non-inclusion.
 12. Explanatory notes were tabled at the first reading of the bill. They are drafted in clear and precise language. However, the explanatory notes do not contain statements addressing all of the matters prescribed by section 23.

PART 2 – SUBORDINATE LEGISLATION EXAMINED**SUBORDINATE LEGISLATION TABLED: 11 MAY TO 24 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
54	Proclamation commencing certain provisions	EN	13/05/2011	6/09/2011	24/05/2011	7/09/2011
55	Workplace Health and Safety Amendment Regulation (No.1) 2011	EN	13/05/2011	6/09/2011	24/05/2011	7/09/2011
56	Legal Profession (Society Rules) Amendment Notice (No.1) 2011	EN	13/05/2011	6/09/2011	24/05/2011	7/09/2011
57	Youth Justice Amendment Regulation (No.1) 2011	EN	13/05/2011	6/09/2011	24/05/2011	7/09/2011
58	Planning and Environment Court Amendment Rule (No.1) 2011	EN	20/05/2011	6/09/2011	24/05/2011	7/09/2011
59	Revenue Legislation Amendment Regulation (No.1) 2011	EN	20/05/2011	6/09/2011	24/05/2011	7/09/2011
60	Health Legislation Amendment Regulation (No.2) 2011	EN	20/05/2011	6/09/2011	24/05/2011	7/09/2011
61	South-East Queensland Water (Distribution and Retail Restructuring) and Other Legislation Amendment (Postponement) Regulation 2011	EN	20/05/2011	6/09/2011	24/05/2011	7/09/2011
62	Proclamation commencing certain provisions	EN	20/05/2011	6/09/2011	24/05/2011	7/09/2011
63	Transport and Other Legislation Amendment (Postponement) Regulation 2011	EN	20/05/2011	6/09/2011	24/05/2011	7/09/2011
64	Transport Legislation (Fees) Amendment Regulation (No.1) 2011	EN	20/05/2011	6/09/2011	24/05/2011	7/09/2011
65	Major Sports Facilities Amendment Regulation (No.1) 2011	EN	20/05/2011	6/09/2011	24/05/2011	7/09/2011

* 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

3. TRANSPORT LEGISLATION (FEES) AMENDMENT REGULATION (NO.1) 2011 SL64.11

Date tabled: 24 May 2011
Disallowance date: 7 September 2011

ISSUES ARISING FROM EXAMINATION OF SUBORDINATE LEGISLATION

1. The committee seeks information from the minister regarding whether **sections 4, 6, 21, 23, 25 and 30** which effected significant increases in fees, have sufficient regard to rights and liberties of individuals.

APPLICATION OF FUNDAMENTAL LEGISLATIVE PRINCIPLES

Sufficient regard to rights and liberties of individuals

Rights and liberties

2. Fundamental legislative principles include requiring that legislation have sufficient regard to rights and liberties of individuals. This requirement is stated in section 4(2) of the *Legislative Standards Act*.
3. **Section 4** of the Transport Legislation (Fees) Amendment Regulation (No. 1) 2011 significantly increased fees imposed under the Adult Proof of Age Card Regulation 2010, as detailed in the table below.

Section	Section amended	Nature of fee	Previous fee/s	New fee/s
4	Sch	Application for adult proof of age card	\$35.80	\$42.80
	Sch	Application for replacement adult proof of age card	\$35.80	\$42.80

4. **Section 6** of the Transport Legislation (Fees) Amendment Regulation (No. 1) 2011 significantly increased fees imposed under the Tow Truck Regulation 2009, as detailed in the table below.

Section	Section amended	Nature of fee	Previous fee/s	New fee/s
6	Sch 2. 3(a)	Application for smartcard driver's certificate for 1 year	\$51.15	\$67.05
	Sch 2.5(a)	Application for smartcard assistant's certificate for 1 year	\$51.15	\$67.05
	Sch 2.8	Application for renewal of smartcard driver's certificate for 1 year	\$51.15	\$67.05
	Sch 2.10	Application for renewal of smartcard assistant's certificate for 1 year	\$51.15	\$67.05
	Sch 2.17	Application for replacement of smartcard driver's or assistant's certificate	\$35.80	\$46.95

5. **Section 21** of the Transport Legislation (Fees) Amendment Regulation (No. 1) 2011 significantly increased fees imposed under the Transport Operations (Marine Safety) Regulation 2004, as detailed in the table below.

Section	Section amended	Nature of fee	Previous fee/s	New fee/s
21	Sch 10.13(b)	Application for recreational marine driver licence with a smartcard marine licence indicator	\$68.50	\$52.25
	Sch 10.14(b)	Application for personal watercraft licence with a smartcard marine licence indicator	\$68.50	\$52.25
	Sch 10.19	Minimum pilotage fees for arrival , departure or removal for all pilotage areas		Increased by 9- 22.6%
	Sch 10.20	Pilotage cancellation fees for all pilotage areas		Increased by 10%
	Sch 10.21	Pilotage delay fees for all pilotage areas		Increased by 10%

6. **Section 23** of the Transport Legislation (Fees) Amendment Regulation (No. 1) 2011 significantly increased fees imposed under the Transport Operations (Passenger Transport) Regulation 2005, as detailed in the table below.

Section	Section amended	Nature of fee	Previous fee/s	New fee/s
23	Sch 9.8(a)(i)	Application for smartcard driver authorisation for taxi or limousine for 1 year	\$76.10	\$99.00
	Sch 9.8(a)(ii)	Application for smartcard driver authorisation for taxi or limousine for 2 years	\$140.20	\$165.00
	Sch 9.8(a)(iii)	Application for smartcard driver authorisation for taxi or limousine for 3 years	\$199.95	\$226.55
	Sch 9.8(a)(iv)	Application for smartcard driver authorisation for taxi or limousine for 4 years	\$259.75	\$288.15
	Sch 9.8(a)(v)	Application for smartcard driver authorisation for taxi or limousine for 5 years	\$319.55	\$349.75
	Sch 9.10(a)	Renewal of smartcard driver authorisation for taxi or limousine for 1 year	\$76.10	\$99.00
	Sch 9.10(b)	Renewal of smartcard driver authorisation for taxi or limousine for 2 years	\$140.20	\$165.00
	Sch 9.10(c)	Renewal of smartcard driver authorisation for taxi or limousine for 3 years	\$199.95	\$226.55
	Sch 9.10(d)	Renewal of smartcard driver authorisation for taxi or limousine for 4 years	\$259.75	\$288.15
	Sch 9.10(e)	Renewal of smartcard driver authorisation for taxi or limousine for 5 years	\$319.55	\$349.75

7. **Section 25** of the Transport Legislation (Fees) Amendment Regulation (No. 1) 2011 significantly increased fees imposed under the Transport Operations (Road Use Management-Accreditation and Other Provisions) Regulation 2005, as detailed in the table below.

Section	Section amended	Nature of fee	Previous fee/s	New fee/s
25	Sch 8.2(a)	Application for appointment as accredited pilot vehicle driver in the form of smartcard accreditation document	\$104.10	\$127.80
	Sch 8.2(b)	Application for appointment as accredited escort vehicle driver in the form of smartcard accreditation document	\$104.10	\$127.80
	Sch 8.2(c)	Application for appointment as accredited traffic controller in the form of smartcard accreditation document	\$107.95	\$131.80
	Sch 8.4(a)	Application for accreditation as driver trainer for 1 year in the form of smartcard accreditation document	\$201.55	\$228.20
	Sch 8.6	Application for renewal of accreditation as driver trainer for 1 year in the form of smartcard accreditation document	\$201.55	\$228.20
	Sch 8.9	Application for replacement of accreditation document of accredited person not driver trainer or rider trainer in the form of smartcard accreditation document	\$35.80	\$46.95
	Sch 8.11	Application for replacement of accreditation document of accredited driver trainer or rider trainer in the form of smartcard accreditation document	\$35.80	\$46.95

8. **Section 30** of the Transport Legislation (Fees) Amendment Regulation (No. 1) 2011 significantly increased fees imposed under the Transport Operations (Road Use Management-Driver Licensing) Regulation 2010, as detailed in the table below.

Section	Section amended	Nature of fee	Previous fee/s	New fee/s
30	Sch 1.5(a)	Grant or renewal of smartcard driver learner licence	\$92.45	\$115.80
	Sch 1.7(a)	Grant or renewal of provisional, probationary, restricted or open smartcard driver learner licence for 1 year	\$37.35	\$48.95
	Sch 1.7(b)	Grant or renewal of provisional, probationary, restricted or open smartcard driver learner licence for 2 years	\$52.05	\$68.25
	Sch 1.7(c)	Grant or renewal of provisional, probationary, restricted or open smartcard driver learner licence for 3 years	\$66.75	\$87.50
	Sch 1.7(d)	Grant or renewal of provisional, probationary, restricted or open smartcard driver learner licence for 4 years	\$81.35	\$104.40
	Sch 1.7(e)	Grant or renewal of provisional, probationary, restricted or open smartcard driver learner licence for 5 years	\$96.05	\$119.55
	Sch 1.13, 1.15, 1.17	Issue of replacement smartcard driver licence	\$35.80	\$46.95

9. The fee increases are well in excess of the consumer price index. In this regard, the Office of Economic and Statistical Research provides the following data for the annual change to the end of the March quarter:²

Headline CPI inflation change (annual):

Brisbane 3.6%

Australia 3.3%

Market sector goods and services (core CPI) inflation change (Australia):

Quarter 0.4%

Annual 1.8%

10. Increases in fees of this magnitude affect rights and liberties of individuals. The committee would seek justification for any increase more than double the consumer price index. The committee notes that the smartcard increases relate not just to the roll out of the smartcard but also to renewals.
11. The explanatory notes provided with the regulation do not address this issue other than to state that the amendments are consistent with fundamental legislative principles. The minister is invited to provide information in this regard.

Explanatory notes

12. The committee notes that, given the magnitude of the increases in fees, the amendment regulation may be 'likely to impose appreciable costs on the community or a part of the community'.³ If so, under provisions of the *Legislative Standards Act* and *Statutory Instruments Act*, requirements regarding regulatory impact analysis may have applied to the amendment regulation.
13. The explanatory notes state:
- Queensland Treasury requires State Government fees and charges to be indexed annually. No consultation has been undertaken with external stakeholders.*
- The process for determining heavy vehicle registration fees was the subject of a Regulatory Impact Statement prepared by the National Transport Commission in 2007.*

² See: www.oesr.qld.gov.au/products/briefs/cpi/cpi-201103.pdf.

³ Under the *Legislative Standards Act* and *Statutory Instruments Act*, this is effectively the threshold test as to whether explanatory notes must be prepared.

PART 3A – MINISTERIAL CORRESPONDENCE – BILLS

4. NORTH STRADBROKE ISLAND PROTECTION AND SUSTAINABILITY BILL 2011

Date introduced:	22 March 2011
Responsible minister:	Hon KJ Jones MP
Portfolio responsibility:	Minister for Environment and Resource Management
Date passed:	7 April 2011
Committee report on bill:	4/11; at 1 - 5
Date response received:	2 June 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 10** which would remove the right to apply for renewals of mining interests in the North Stradbroke Island region from the commencement of the bill;
 - **clause 17** which would amend the environmental authority for the Enterprise mine lease to restrict the mine path;
 - **clause 21** limiting the amendments that the minister may grant on an application under the *Environmental Protection Act 1994* to amend the environmental authority for the Enterprise mine;
 - **clauses 6 and 8** which may provide for the acquisition of property without fair compensation.
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 22** which would declare open a road for public use and declare closed a road on land that would become transferrable under clause 24.
3. The committee invites the minister to provide further information about:
 - the mining interests that may be affected by **clause 8**; and
 - the consistency of **part 4** with Aboriginal tradition and Island custom and consultation undertaken.

EXAMINATION OF INFORMATION PROVIDED BY MINISTER

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



Hon Kate Jones MP
Member for Ashgrove

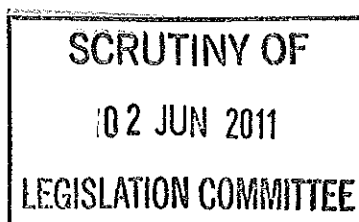


Queensland
Government

Minister for Environment
and Resource Management

Ref: CTS 5714/11

02 JUN 2011



BS. 11

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

Dear Mrs Miller

Thank you for your letter of 4 April 2011 concerning the North Stradbroke Island Protection and Sustainability Bill 2011.

In the issues arising from the examination of the Bill, you invited me to provide information regarding the mining interests that may be affected by clause 8 and the consistency of part 4 with Aboriginal tradition and custom and consultation undertaken.

Clause 8

While this clause is drafted as a catchall provision, in reality, it affects only one lease. This lease is on the decommissioned Amity mine, which is still under rehabilitation in accordance with requirements under the *Environmental Protection Act 1994*. It is expected that the relevant rehabilitation requirements would be met prior to the 31 December 2019 end date however, even if this does not happen, it is not necessary to hold a mining tenure to complete rehabilitation requirements. Accordingly, this provision has limited affect on the rights of the leaseholder.

Consistency of Part 4 with Aboriginal Custom and Consultation Undertaken

The Government and Quandamooka People are in negotiations in relation to an Indigenous Land Use Agreement and Indigenous Management Agreement. Part 4 of the Bill provides the framework for transfer of land and joint management but the detail of the management and its consistency with Aboriginal tradition and custom will be agreed to by the Quandamooka People through this process. This will ensure close alignment with tradition and custom of the Quandamooka People.

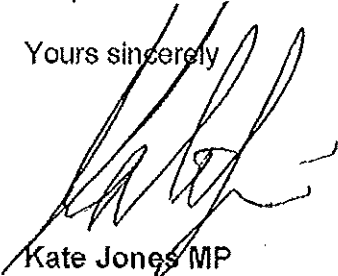
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Engagement was undertaken with the Quandamooka Family Representative Steering Committee through their legal representatives, Queensland South Native Title Services. This is the formally endorsed communication mechanism for native title matters under the Commonwealth *Native Title Act 1993* and was convened and chaired by the National Native Title Tribunal.

More than 15 meetings have been held in 2010 and 2011 to discuss issues relating to the Indigenous Land Use Agreement, Indigenous Management Agreement and the associated legislative requirements. In addition, the Quandamooka People were specifically consulted on an exposure draft of part 4 of the Bill with additional provision of plain English interpretive notes.

I hope this information clarifies the situation. Should you have any further enquiries, please do not hesitate to contact Mr Joshua Cooney, Principal Policy Advisor in my office on telephone 3239 0844.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kate Jones', written over the typed name.

Kate Jones MP
Minister for Environment and Resource Management

5. 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
Date response received:	12 May 2011 (copy commences following page)

ISSUES ARISING FROM EXAMINATION OF BILL

- 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*.
- 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.
- 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.
- The committee invites the Premier to provide information regarding the consistency of the explanatory notes with section 23 of the *Legislative Standards Act*.

EXAMINATION OF INFORMATION PROVIDED BY MINISTER

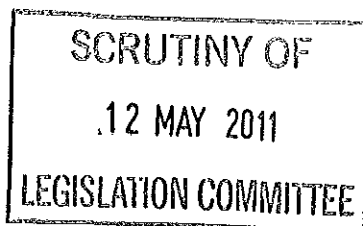
- The committee thanks the Premier for the information provided in her letter.
- The committee makes no further comment regarding the legislation.



Premier of Queensland

For reply please quote: SA/TH

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



B7.11

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Thank you for your letter dated 9 May 2011 providing the Scrutiny of Legislation Committee's comments on the Parliament of Queensland (Reform and Modernisation) Amendment Bill 2011 (the Bill).

The Scrutiny of Legislation Committee in its Legislation Alert 05/11 has made comments on the operation of a number of clauses within the Bill, and has sought further information on the operation of three of these clauses.

I will address the specific comments raised by the Committee in relation to these clauses, however, I would like to raise a few points. Firstly, I note that a number of the issues raised by the Committee will be addressed during the drafting of the amendments to the Standing Rules and Orders which will be required to be passed by the Parliament to implement the changes proposed in the Bill. The Parliament will have further opportunity to consider these issues on debate of the motion proposing these amendments to the Standing Orders.

Secondly, I note that the reforms to the committee system that the Bill is implementing were by and large recommended by a parliamentary committee, the Committee System Review Committee (CSRC). In this regard, I note that the Scrutiny of Legislation Committee considers that holding a past select committee to account would not fall within its statutory responsibilities.

Lastly, there has been discussion in evidence provided to the Committee around matters related to the *Parliamentary Service Act 1988*. It is worth noting that there are no amendments to that Act contained in this Bill, and that should any amendments be proposed to this Act, they will be brought before the Parliament for consideration in the usual manner.

Turning to the matters raised by the Committee, in relation to whether the Bill has sufficient regard to the rights and liberties of individuals, the Committee has queried whether clauses 7 and 29 have been drafted in a sufficiently clear and precise way.



Queensland
Government

In relation to clause 7, the Committee has concerns about the new section 79E(d) which provides that the responsibilities of the Committee of the Legislative Assembly (CLA) include 'any other matters for which the committee is given responsibility under the standing rules and orders'. This provision was included to allow the Parliament the flexibility to refer to the CLA any responsibilities not specifically provided for under the Bill, bearing in mind that the CLA will be the primary business committee of the House.

Similar provisions already exist in the *Parliament of Queensland Act 2001* where a committee's responsibility includes any other matter referred to it by the Assembly (see section 84(2) and 85). Amendments to Standing Orders have to be debated and passed by the Parliament and form a part of the public record of the Parliament. A person interpreting this section merely has to refer the relevant provisions of the Standing Orders, if any, to determine the full extent of the CLA's responsibilities, in a similar way that reference to regulations made under an Act is required to determine the full extent of the legal effect of that Act.

In relation to clause 29, the Committee considers that a note should be included regarding the terms 'department' and 'Administrative Arrangements' as defined under the *Acts Interpretation Act 1954*. It is not considered that such a note is necessary. These terms are subject to common usage and I am advised it is not current drafting practice to include a note referring to defined terms in the *Acts Interpretation Act 1954*. One important reason for this is to avoid including unnecessary detail in legislation that impairs its readability.

With respect to clause 41, which inserts provisions that establish an Ethics Committee, the Committee notes that new sections 104B and 104C are based on existing provisions of the *Parliament of Queensland Act 2001*, but asks whether the sections would allow members of the public to make complaints directly to the Ethics Committee, and whether the Ethics Committee would be able to instigate an inquiry into complaints regarding the ethical conduct of a member of the Legislative Assembly on its own initiative. As the provisions are largely based on existing provisions, their application is likely to be similar to current practice. Further, the Standing Orders, *Chapter 40 Procedure for Raising and Considering Complaints*, sets out the procedure on these matters.

However, the Government notes the Committee's comments regarding the drafting of new section 104B and will move an amendment during consideration of the Bill to refer to 'alleged breaches'.

The Committee has made a number of comments on clauses 7, 29 and 41 regarding whether the proposed provisions would have sufficient regard to the institution of Parliament, in particular, whether they would allow undue executive intrusion into the separate parliamentary branch of government and whether they may impair the role and status of the Speaker.

Section 4 of the *Legislative Standards Act 1992* which canvasses the "Meaning of fundamental legislative principles" provides by way of guidance, three examples of whether a Bill has sufficient regard to the institution of Parliament, and depends on whether the Bill—

- (a) allows the delegation of legislative power only in appropriate cases and to appropriate persons;
- (b) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
- (c) authorises the amendment of an Act only by another Act.

The Bill does not delegate any power away from the Parliament or authorise any legislative amendments outside of existing practice. Rather, it provides for the establishment of parliamentary committees, whose membership consists of members of the Legislative Assembly, who in turn are answerable to the Parliament as a whole. In this regard, the Parliament is still master of its own domain.

In relation to the committee's comments that the CLA's membership is dominated by the executive (both government and opposition), I note that the existing Standing Orders Committee currently includes members of the executive, being the Premier and the Deputy Premier and the Leader and Deputy Leader of the Opposition, so this proposal is nothing new to the Parliament.

Further, under section 11 of the *Parliament of Queensland Act 2001*, it is only the Assembly that can adopt Standing Rules and Orders. Accordingly, while the existing Standing Orders Committee and the proposed statutory CLA can advise on Standing Orders, the Parliament will retain responsibility for approving Standing Orders. There is nothing in the existing legislation that would prevent the Assembly adopting Standing Orders without reference to the Standing Orders Committee, nor is there a provision in the Bill that would permit the CLA to alter Standing Orders of its own accord.

As to whether the Bill may impair the role and status of the Speaker in the context of whether the Bill offends the fundamental legislative principle of having sufficient regard to the institution of Parliament, the Government does not consider this is the case. The Bill implements a recommendation of another parliamentary committee, the CSRC, in providing that the Speaker does not chair the CLA. The CSRC also did not recommend that the Speaker be a member of the CLA, however, the Bill provides that the Speaker will be a member of the CLA when considering matters relating to Standing Orders. It is considered that this strikes the appropriate balance between the recommendation of the CLA and maintaining the role and status of the Speaker.

I also note that advice from the Solicitor-General dated 9 May 2011 and tabled in the Parliament on 10 May 2011 states (at p10) that "the reintroduction of a multi-party committee (the CLA) increases the role of the opposition in the administration of parliament, and is a move back toward Westminster convention that tends to lessen the grip of the Executive".

In relation to the Committee's comments about the separate roles of the CLA and the Ethics Committee regarding matters of ethics and privileges, the Government considers it appropriate that the CLA, as the central policy making committee of the Assembly, will have responsibility for developing rules concerning these matters and that the Ethics Committee will then deal with complaints and alleged breaches regarding these issues. It is also worth noting that, in practice, the Ethics Committee will only be called into action when a matter has been referred to it for consideration by the Speaker or the Parliament as whole.

The Government therefore does not see any issues with this arrangement.

In relation to clause 29, which provides for the establishment, operation and role of portfolio committees, the Committee queries whether it would have sufficient regard to the institution of Parliament. As stated above, regard to the institution of parliament in the *Legislative Standards Act 1992* primarily relates to the delegation of power away from Parliament. Nothing in this Bill delegates responsibility away from the Parliament. The provisions reallocate existing responsibilities from a set of parliamentary committees to another set of parliamentary committees. The Bill will improve parliamentary scrutiny of the executive in that the Bill ensures all areas of government administration will be subject to the scrutiny of a parliamentary committee.

I note the comments of the Deputy Chair, Mr Peter Wellington MP, and Dr Alex Douglas MP whose belief is that the Bill may allow executive intrusion into the separate Parliamentary branch of Government. The Bill is consistent with the fundamental provisions of the Westminster tradition in that the executive is drawn from and remains accountable to the Parliament. Indeed, the Bill improves parliamentary scrutiny of the executive through the establishment of the portfolio committees.

By increasing the number of committees, expanding their functions to include public accounts responsibilities, public works responsibilities, scrutiny of legislation functions and estimates functions, as well providing for the scrutiny of the policy objectives of legislation, delivers on the Government's intent to improve parliamentary scrutiny of the executive.

The existing functions of the Public Accounts and Public Works Committee and Scrutiny of Legislation Committee will be allocated across the Government's proposed seven portfolio committees. The Government has also recommended that the staff of the Scrutiny of Legislation Committee should be retained by the Parliamentary Service to assist each of the portfolio committees to deal with the responsibilities of the *Legislative Standards Act 1992*.

The proposed changes will allow parliamentarians to be subject matter experts and to focus on the policy areas of greatest interest to them, as well as build capacity across the parliament to consider and deal with issues relating to fundamental legislative principles.

Accordingly, I consider that the Bill has sufficient regard to the institution of Parliament.

Finally, in relation to the Committee's comments on the consistency of the Bill with section 23 of the *Legislative Standards Act 1992*, it is considered that the explanatory notes follow the format of section 23 of the *Legislative Standards Act 1992*, and represent an accurate explanation of this Bill's provisions.

Yours sincerely



ANNA BLIGH MP
PREMIER OF QUEENSLAND

6. 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
Committee report on bill: 6/11; at 5 - 9
Date response received: 6 June 2011 (copy commences following page)

ISSUES ARISING FROM EXAMINATION OF BILL

7. 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.

EXAMINATION OF INFORMATION PROVIDED BY MINISTER

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



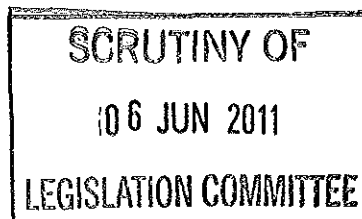
Queensland
Government

Hon Karen Struthers MP
Member for Algeester

Your reference: B12.11
Our reference: COM 6673-2011

Minister for Community Services and
Housing and
Minister for Women

6 JUN 2011



B12.11.

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

Dear Ms Miller

Thank you for your letter of 20 May 2011 concerning the Residential Tenancies and Rooming Accommodation Amendment Bill 2011.

I welcome the opportunity to provide the following information in response to the Committee's comments.

Clause 4 amending an existing offence provision

Clause 4 increases the maximum penalty for failing to provide required information about the commission of an offence from 10 penalty units to 15 penalty units.

The penalty has been increased to ensure that it is appropriate given the nature of the offence and comparable to other penalties in the *Residential Tenancies and Rooming Accommodation Act 2008*.

Clause 5 inserting new offence provisions into the Act

Clause 5 inserts a range of new offence provisions into the Act.

The Committee has noted the rationale for these offences provided in the Bill's Explanatory Notes. The offence provisions were inserted to ensure an appropriate enforcement framework exists for the proposed provisions about listing personal information on a tenancy database.

Clauses 4 and 5 which may affect the rights of individuals to privacy

Clause 4 will amend section 445 of the Act to require individuals to provide information about the commission of suspected offences. However Clause 4 also provides protection for a person not to comply with this requirement, if it would incriminate them.

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Clause 5 includes new sections that allow listings, in prescribed circumstances, of personal information on a tenancy database in respect of tenancy breaches. These provisions are similar to existing provisions in the Act. The provisions aim to balance the competing rights of a tenant or former tenant to privacy with a lessor's legitimate right to obtain information about an individual's poor tenancy history. The provisions limit the circumstances in which a person can be listed to those which comprise a serious breach of a tenancy agreement by a tenant that was not remedied after the tenancy ended. As the Committee notes the provisions also provide a number of measures to protect a person's personal information. The main protections are to allow a person to apply to the Queensland Civil and Administrative Tribunal if they consider the information is inaccurate, out of date or unjust in the circumstances.

Clause 8 which facilitates proof of the content of a tenancy database

Clause 8 is an evidentiary provision to facilitate the proof of the contents of a tenancy database.

The Committee has noted the provision may potentially breach the principle that legislation has sufficient regard to the rights and liberties of the individual. It also notes the justification of this potential breach provided in the Explanatory Notes, which is that the potential breach is justified on the basis that the person seeking to rely on what is listed on the tenancy database will be in a better position to prove the matter.

Clause 10 providing for proposed amendments to apply to listings made before the commencement of the amendments

Clause 10 provides for the proposed amendments to apply to listings on tenancy databases made before the commencement of the amendments.

After considering the information provided in the Explanatory Notes, the Committee has not requested information to further justify the provisions. While the provisions will operate retrospectively, the Bill provides for the reasonable protections for persons whose information is listed, minimises costs for lessors, agents and database operators by phasing in the requirements and finally, provides an approach that is simpler for the sector to understand and administer.

I trust this information is of assistance and I thank the Committee for its consideration of this Bill.

If you require any further information or assistance in relation to this matter, please contact Mr David Breen, Executive Manager, Policy and Education Services, Residential Tenancies Authority, on 3046 5665.

Yours sincerely



Karen Struthers MP
Minister for Community Services and Housing
Minister for Women

7. SAFETY IN RECREATIONAL WATER ACTIVITIES BILL 2011

Date introduced:	10 May 2011
Responsible minister:	Hon CR Dick MP
Portfolio responsibility:	Minister for Education and Industrial Relations
Date passed:	26 May 2011
Committee report on bill:	6/11; at 11 - 15
Date response received:	25 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:
 - **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.

EXAMINATION OF INFORMATION PROVIDED

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



Hon Cameron Dick MP
Member for Greenslopes



Queensland
Government

In reply please quote: 1613800

SCRUTINY OF
25 MAY 2011
LEGISLATION COMMITTEE

Minister for Education
and Industrial Relations

B14.11

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 received on 20 May 2011 regarding the Scrutiny of Legislation Committee's comments on the Safety in Recreational Water Activities Bill 2011 (the SRWA Bill).

In paragraph 13, the Committee notes that 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 for the rights and liberties of individuals.

The primary duty of care under the SRWA Bill (s.16) requires persons conducting a business or undertaking that provides recreational water activities to ensure, so far as is reasonably practicable, that the health and safety of persons for whom the activities are provided are not put at risk by the provision of the recreational water activities. Persons conducting a business or undertaking must do this by providing and maintaining safe plant and structure, safely using, handling and storing plant, structure and substances, providing any necessary information, training, instruction and supervision and monitoring persons and conditions at the place where recreational water activities are provided.

Officers of a person conducting a business or undertaking (s.17) must exercise due diligence to ensure that the person conducting the business or undertaking complies with their duty under the SRWA Bill.

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Workers (s.18) providing recreational water activities at work must take reasonable care that their acts and omissions do not adversely affect the health and safety of persons for whom recreational water activities are provided, and comply, so far as they are reasonably able, with any reasonable instruction given by the person conducting the business or undertaking to enable the person to comply with the SRWA Bill.

Other persons who are present at a place where recreational water activities are provided (s.19) have a duty to take reasonable care for their own health and safety; take reasonable care that their acts and omissions do not adversely affect the health and safety of others present and comply, as far as they are reasonably able, with any reasonable instructions given by the person conducting the business or undertaking.

The Bill provides for three categories of offences. Category 1 offences (s.21) involve reckless conduct on the part of a duty holder, while category 2 (s.22) and category 3 (s.23) offences merely involve a failure to comply with a health and safety duty.

Clause 24 overrides the application of sections 23 and 24 of the Criminal Code (which deal with criminal responsibility), meaning that they are not available as a defence in a proceeding for a breach of duty for a category 2 or category 3 offence.

As contemplated by the Report of the National Review into Model Occupational Health and Safety Laws (2009), the offences are (subject to the 'reasonably practicable' qualifier) ones of absolute liability. This recognises that breach of duty offences under occupational health and safety legislation will generally involve omissions, rather than any overt act of commission on the part of the duty holder. There is a need to exclude the application of sections 23 and 24 of the Criminal Code in respect of criminal responsibility for these offences, as the use of those excuses would defeat any prosecution brought for category 2 or 3 offences.

This approach is consistent with the approach taken for similar obligations in the *Workplace Health and Safety Act 1995* (s.24) and other Queensland safety-related Acts including the *Electrical Safety Act 2002* (s.46), the *Transport (Rail Safety) Act 2010* (s.31), the *Mining and Quarrying Safety and Health Act 1999* (s.45) and the *Coal Mining Safety and Health Act 1999* (s. 48).

In paragraph 18, the Committee notes that 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 under clause 38 (2). Further, it is noted that the explanatory notes do not provide information about whether the proposed clause would be justified and therefore consistent with section 4 (3) (d) of the *Legislative Standards Act*.

Clause 38 (2) places an evidentiary burden on the person defending a charge under that clause to show that they 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. An evidential burden requires a person to provide evidence of an asserted fact in order to prove that fact to a court. The reversal of the onus of proof is justified here because it is a circumstance in which only the accused is in a position to know the facts. 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.

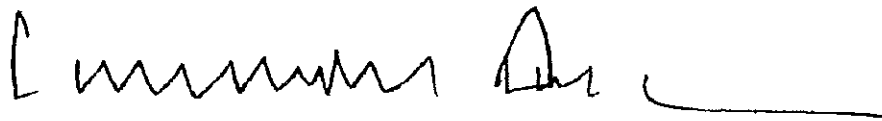
In paragraph 25, the Committee notes that clause 45 would delegate legislative power to create offences with maximum penalties up to 300 penalty units. Further, it is noted that the explanatory notes do not provide information about the proposed delegation of legislative power in relation to offences and whether clause 45 would have sufficient regard to the institution of Parliament.

The increased penalties for regulatory offences reflect a combination of factors, including recommendations from the National Review of occupational health and safety legislation throughout Australia to strengthen the deterrent effect of the penalties, to extend the ability of the courts to impose more meaningful penalties where appropriate and to emphasise to the community the seriousness of the offences under this legislation. In addition, there was a need to take account of inflation over the last 15 years since the *Workplace Health and Safety Act 1995* and Regulation were introduced in Queensland.

The quantum of the penalties supports the policy objective of the national harmonised work health and safety framework endorsed by the Council of Australian Governments, to promote national uniformity in the application of work health and safety laws and to ensure that they are observed.

I thank the Committee for its consideration of this Bill.

Yours sincerely



CAMERON DICK MP
Minister for Education and Industrial Relations

24 May 2011

8. 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
Date passed:	25 May 2011
Committee report on bill:	6/11; at 17 - 20
Date response received:	2 June 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 **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.

EXAMINATION OF INFORMATION PROVIDED

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



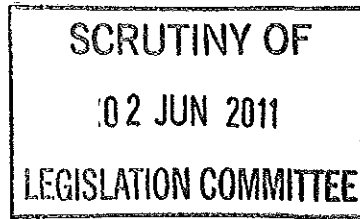
Hon Paul Lucas MP



Queensland
Government

2 JUN 2011

Our ref: MC11/2167
Your ref: B11.11



B11.11

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

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

Dear Mrs Miller

Thank you for your letter of 20 May 2011 about the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Bill 2011*.

I note that the Scrutiny of Legislation Committee has provided comment in relation to whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

Thank you for your comments in relation to the Bill and I take this opportunity to refer you to the attached table which responds to comments made about the Bill.

In view of the matters raised, it is considered that the legislation has sufficient regard to the rights and liberties of individuals in accordance with section 4(2) of the *Legislative Standards Act 1992*.

If you require any further information, please contact Sarah Ramsay, Assistant Policy Advisor on 3224 4600 who will be pleased to assist.

I trust this information is of assistance.

Yours sincerely

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

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Response to Fundamental Legislative Principles raised by the Scrutiny of Legislation Committee (Committee)

Clause	Response
Fundamental Legislative Principle raised by Committee	
<p><i>Part 2, Clauses 4 and 5</i> Prescribed date for pool owner to give notice of regulated pool</p>	<p><u>Clause 4</u></p> <ul style="list-style-type: none"> I thank the Committee for its comments in relation to clause 4 of the Bill which will enable a regulation to be made to prescribe the date by which a pool owner must give notice of a regulated pool so that the pool can be recorded on the State pool safety register. As the Committee notes, the Government proposes to make a regulation extending the date for providing notice to 4 November 2011. The Committee further notes the statement in the explanatory notes that the amendment was proposed in response to the natural disasters which affected the majority of the State in late 2010 and early 2011. Given this, the Committee expresses the view that the provisions are an appropriate delegation of legislative power. <p><u>Clause 5</u></p> <ul style="list-style-type: none"> The Committee also notes that clause 5 of the Bill will provide that proceedings could not be started or continued under pre-amended section 246AR. It further notes that the proposed regulation is intended to have a "curative" effect with respect to offences committed after 4 May 2011 and prior to the day on which the regulation commences.
<p><i>Part 4</i> Providing for housing affordability and infrastructure charges reforms</p>	<ul style="list-style-type: none"> Part 4 provides for adopted infrastructure charges which replace a range of charges under existing mechanisms, most of which are less transparent and could potentially impose a far greater impact on affordability than the new charge. In its comments, the Committee acknowledged that Part 4 provides the appropriate checks and balances to ensure the proposed charges work in a fair, equitable and proportionate way.
<p>General comments on explanatory notes</p>	<ul style="list-style-type: none"> The Committee's comments on the clear and concise manner in which the explanatory notes are drafted and acknowledgment of the suitability of information within the explanatory notes is greatly appreciated. I thank the Committee for pointing out potential incorrect numbering in the 'Notes on Provisions' section of the explanatory notes. This issue was rectified via the tabling of an Erratum on 25 May 2011.

9. 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
Date passed:	26 May 2011
Committee report on bill:	6/11; at 31 - 45
Date response received:	25 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:
 - **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.

EXAMINATION OF INFORMATION PROVIDED

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



Hon Cameron Dick MP
Member for Greenslopes



Queensland
Government

In reply please quote: 1613797

SCRUTINY OF
25 MAY 2011
LEGISLATION COMMITTEE

Minister for Education and
Industrial Relations

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

B.13.11

Dear ~~Ms Miller~~ Jo-Ann,

Thank you for your letter received on 20 May 2011 regarding the Scrutiny of Legislation Committee's comments on the Work Health and Safety Bill 2011 (the Bill).

In paragraph 20, the Committee notes that 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 the rights and liberties of individuals.

The primary duty of care under the WHS Bill (s.19) requires persons conducting a business or undertaking to ensure so far as is reasonably practicable, the health and safety of workers while at work and that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking. Persons must do this by providing and maintaining a safe work environment, safe plant and structure, safe systems of work, safe use, handling and storage of plant, structure and substances, the provision of adequate facilities for workers' welfare, the provision of any necessary information, training, instruction and supervision and that the health of workers and the conditions at the workplace are monitored.

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Additional duties are imposed on persons who conduct a business or undertaking involving the management or control of workplaces (s.20), the management or control of fixtures, fittings or plant at workplaces (s.21), that design plant, substances or structures (s.22), that manufacture plant, substances or structures (s.23), that supply plant, substances or structures (s.25) and that install, construct or commission plant or structures (s.26).

Officers of a corporation or unincorporated association must exercise due diligence to ensure that the corporation or association complies with its duty (s.27). Workers (s.28) and other persons at a workplace (s.29) have a duty to take reasonable care for their own safety and that their acts and omissions do not adversely affect the health and safety of others.

The Bill provides for three categories of offences. Category 1 offences (s.31) involve reckless conduct on the part of a duty holder, while category 2 (s.32) and category 3 (s.33) offences merely involve a failure to comply with a health and safety duty.

Clauses 33A (which applies to the *Work Health and Safety Bill 2011*) and 40E (which amends the *Electrical Safety Act 2002*) override the application of sections 23 and 24 of the Criminal Code (which deal with criminal responsibility), meaning that they are not available as a defence in a proceeding for a breach of the duty for a category 2 or category 3 offence provision.

As contemplated by the Report of the National Review into Model Occupational Health and Safety Laws (2009), the offences are (subject to the 'reasonably practicable' qualifier) ones of absolute liability. This recognises that breach of duty offences under occupational health and safety legislation will generally involve omissions rather than any overt act of commission on the part of the duty holder. There is need to exclude the application of sections 23 and 24 of the Criminal Code in respect of criminal responsibility for these offences as the use of those excuses would defeat any prosecution brought for category 2 or 3 offences.

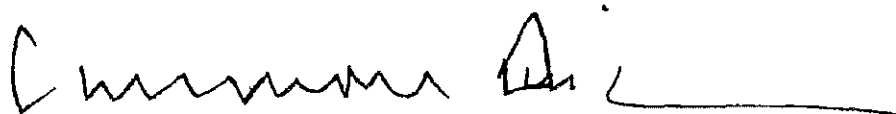
This approach is consistent with the approach taken for similar obligations in the *Workplace Health and Safety Act 1995* (s.24) and other Queensland safety-related Acts including the *Electrical Safety Act 2002* (s.46), the *Transport (Rail Safety) Act 2010* (s.31), the *Mining and Quarrying Safety and Health Act 1999* (s.45) and the *Coal Mining Safety and Health Act 1999* (s.48).

In paragraph 71, the Committee notes the general regulation making power to create offence provisions with maximum penalties up to 300 penalty units. Further it was noted that the explanatory notes do not provide information about the proposed delegation of legislative power in relation to offences and whether clause 276 would have sufficient regard to the institution of Parliament.

The increased penalties for regulatory offences reflect a combination of factors, including recommendations from the national review of WHS legislation throughout Australia to strengthen the deterrent effect of the penalties, to extend the ability of the courts to impose more meaningful penalties where appropriate and to emphasise to the community the seriousness of the offences under this legislation. In addition, there has also been a need to take account of inflation over the last 15 years since the Workplace Health and Safety Act and Regulation was introduced in Queensland. The quantum of the penalties supports the policy objective of the Council of Australia Governments endorsed national harmonised work health and safety framework, which is to promote national uniformity in the application of work health and safety laws and ensure that they are observed.

I thank the Committee for its consideration of this Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cameron Dick', with a long horizontal line extending to the right.

CAMERON DICK MP
Minister for Education and Industrial Relations

24 May 2011