

**Queensland Scrutiny of
Legislation Committee
assessment of impact of its
work**

2. SCRUTINY OF BILLS

Overview

- 2.1 This chapter provides information about the committee's discharge, during the 1999-2000 financial year, of its function of scrutinising bills and examining explanatory notes to bills. It also provides indicators of the committee's performance in these areas.
- 2.2 Under s.22(1) of the *Parliamentary Committees Act*, the committee is required to consider the application of fundamental legislative principles to particular bills, by examining all bills introduced into the Legislative Assembly. In the course of so doing, the committee also examines the explanatory notes presented with bills.⁵
- 2.3 There are accordingly two primary facets of the committee's bill scrutiny role. The first is what percentage of the bills introduced it was ultimately able to examine and report upon; the second is what issues were raised by those bills which it scrutinised. Those matters are dealt with separately below.⁶

Percentage of bills able to be examined and reported on

- 1.4 During the 1999-2000 financial year, 93 bills were introduced into the Legislative Assembly,⁷ and the committee ultimately scrutinised and reported to Parliament⁸ on 90 (or 97%) of these. Of the 3 bills not scrutinised, 2 were urgent bills⁹ which were passed before the committee was able to report, and the remaining bill was ruled out of order by Mr Speaker

⁵ In relation to explanatory notes, the committee also has a general monitoring role under s.22(2) of the *Parliamentary Committees Act*: see Chapter 3 of this Annual Report.

⁶ This report assesses each of these two aspects in what it considers to be the most meaningful manner. The committee's capacity to actually examine and report upon bills is measured by reference to bills introduced during the 1999-2000 financial year (even though, as often happens, some bills introduced late in that financial year were not able to be reported upon until early in the next financial year). On the other hand, the assessment of issues raised by bills scrutinised (reported in the committee's Alert Digests) is based upon the contents of Alert Digests tabled during the 1999-2000 financial year.

⁷ In the previous financial year, 95 bills were introduced.

⁸ Where a bill, upon examination, raised issues within the committee's terms of reference the committee reported on those issues: where a bill upon examination appeared to raise no issues, the committee reported that the bill had been "examined but not reported on".

⁹ Urgent bills are passed under Standing Order 273 which provides that, by leave of the House, a bill may be passed through its several stages "with unusual expedition". In such cases the usual requirement, under Standing Order 241(d), that debate on a bill be adjourned for at least 13 whole calendar days is displaced.

on the day it was introduced.¹⁰ Seven of the bills, which were introduced late in the financial year, were reported on in the committee's first 2 reports for the following (2000-2001) financial year.¹¹ In its reports, the committee reported to Parliament any concerns that it may have had about the application of fundamental legislative principles to the bills. These reports, called "alert digests", were usually tabled by the committee's chair on the first day of each sitting week. Each digest dealt with bills introduced during the previous sitting week.¹² The committee invited ministers to respond to comments made in its digests. Those responses were reported on and reproduced in full in the next digest.

- During the financial year the committee at times operated under some pressure in endeavouring to discharge its responsibilities to Parliament, given the time constraints associated with the passage of bills. On 3 occasions it held a special meeting to adopt an alert digest in respect of a bill considered to be of some importance, in order to ensure that the committee's report was available to Parliament before the bill was debated.¹³

2.6. As in the previous financial year, a significant number of private members' bills (11 in all) were introduced into the Legislative Assembly in 1999-2000. Once again, all of these bills appeared to have been professionally drafted,¹⁴ and their only real distinguishing feature from the committee's perspective was the lack of accompanying explanatory notes.¹⁵

Issues raised by bills scrutinized

¹⁰ This ruling was made on the basis that the bill (the *Liquor (Trading Limitations on Anzac Day) Amendment Bill 2000*) was substantially identical to a bill introduced during 1999 (which was subsequently defeated on its second reading), was therefore in breach of Standing Order 76 and accordingly lapsed.

¹¹ Alert Digest No. 9 of 2000, tabled on 18 July 2000 and Alert Digest No. 10 of 2000, tabled on 22 August 2000 (*Water Bill 2000*).

¹² Or, where the previous sitting week was the second of two consecutive sitting weeks, with bills introduced during either of those weeks

¹³ Alert Digest No. 17 of 1999 (Vegetation Management Bill 1999), Alert Digest No. 3 of 2000 (Police Powers and Responsibilities Bill 2000) and Alert Digest No. 7 of 2000 (Police Powers and Responsibilities and Other Acts Amendment Bill 2000). The length of the two Police Powers bills prevented their being examined by the committee within the usual timeframe, and an urgent report on the Vegetation Management Bill (tabled 2 days after the bill was introduced into the Legislative Assembly) was considered necessary because of the Minister's apparent intent to have the bill debated during the same sitting week.

¹⁴ The committee presumes most were drafted by the Office of Parliamentary Counsel for the sponsoring Members.

¹⁵ The statutory requirement to prepare explanatory notes applies only in respect of Government bills: s.22(1), *Legislative Standards Act 1992*. However, explanatory notes were voluntarily supplied in relation to some of these private members' bills

1.7 During the 1999-2000 financial year, tabled 18 Alert Digests reporting to Parliament on its scrutiny of 96 bills.¹⁶

1.8 Of the bills scrutinised, 18 (or 19%) were considered to raise no issues within the committee's terms of reference. The remaining 78 bills were considered to raise one or more such issues. The table below sets out statistics on the issues raised in the digests, in descending order of frequency. In total, the committee queried or commented on 391 issues in the bills reported on in its digests.

STATISTICS ON ISSUES WITHIN THE COMMITTEE'S AREA OF RESPONSIBILITY RAISED IN ALERT DIGESTS TABLED 1 JULY 1999 TO 30 JUNE 2000		
ISSUE*	No. of queries	%¹⁷ of queries
Rights and liberties of individuals	144	36.83
Clear and precise drafting ^{xiii}	47	12.02
Retrospective legislation ^{ix}	39	9.97
Sufficiently defined administrative power subject to appropriate review ⁱⁱⁱ	23	5.88
Natural justice ^{iv}	19	4.86
Delegation of legislative power ^{xiv}	17	4.35
Institution of Parliament ⁱⁱ	17	4.35
Powers of entry, search and seizure ^{vii}	16	4.09
Reversal of the onus of proof ^{vi}	15	3.84
Explanatory notes ^{xxiv}	13	3.32
Immunity from proceedings without adequate justification ^x	13	3.32
Parliamentary scrutiny of delegated legislative power ^{xv}	10	2.56
Self-incrimination ^{viii}	5	1.28
Delegation of administrative power ^v	4	1.02
"Henry VIII clauses" ^{xvi}	4	1.02
Aboriginal tradition and Island custom ^{xii}	3	0.77
Other (for example: comments on the regulatory impact statement guidelines; staged automatic expiry; and compulsory acquisition of property.) ^{xxxiv}	2	0.51

* These issues relate to the committee's terms of reference in Appendix A and to the fundamental legislative principles in Appendix B. Each issue is further described in the endnotes (Appendix D) to this report. The roman numerals attached to each issue listed in this table refer to the relevant paragraph of the endnotes.

¹⁶ The bills reported upon in these Alert Digests included 13 bills introduced into Parliament late in the preceding (1998-1999) financial year. Those bills were all reported on in Alert Digest No 8 of 1999, tabled on 20 July 1999

¹⁷ Approximate figures only.

2.9. It may be useful to review the matters addressed in the three most reported categories. The three topics on which the committee reported most frequently during the year, in descending order, were:

-] the rights and liberties of individuals;
-] clear and precise drafting; and
-] retrospective legislation.

2.10. These three topics have predominated in each full financial year since the committee's establishment. Moreover, their order has not varied during the last three financial years (including this financial year).¹⁸

➤ **Rights and liberties of individuals**

2.11 Issues raised by the committee under the heading *Does the legislation have sufficient regard to the rights and liberties of individuals?* included many which are not specifically mentioned in s.4 of the *Legislative Standards Act*. As previously mentioned, the list in s.4 is not an exhaustive list and the committee has considered a range of other "rights and liberties" issues under this heading, for example:

-] a provision empowering a court to order that a person not "locate or attempt to locate" their spouse;¹⁹
-] establishment of broadly-framed offences, based on negligent acts or omissions²⁰
-] the appropriateness of the maximum penalties imposed for particular offences;²¹
-] exemption of certain regulations from the requirement for a regulatory impact statement²²
-] conferral on a largely lay tribunal of power to punish contempts²³

18 In the 1996 – 1997 financial year, the committee's most frequently considered principle was rights and liberties of individuals (18% of queries); followed by queries on retrospective legislation (13%) and then clear and precise drafting (11.5%) In the 1997 - 1998 financial year, the most frequently considered principle was rights and liberties of individuals (19%), followed by clear and precise drafting (11.5%) and retrospective legislation (11%). The results for 1998 -1999 replicated those for 1997 – 1998, except that the relevant percentages were 26.58%, 12.24% and 11.81% respectively.

19 *Domestic Violence (Family Protection) Amendment Bill 1999*, Alert Digest No. 8 of 1999 at page 10

20 *Sugar Industry Bill 1999*, Alert Digest No.9 of 1999 at page 34

21 *Electricity Amendment Bill 1999*, Alert Digest No. 5 of 2000 at pages 9-10

22 *Tourism Legislation Amendment Bill 1999*, Alert Digest No.9 of 1999 at page 36

23 *Land Court Bill 1999*, Alert Digest No.11 of 1999 at page 10

-] restrictions placed on the owners of freehold land in relation to clearing of vegetation²⁴
-] compulsory provision of bodily samples for DNA profiling.²⁵

2.12 The committee, appropriately in its view, takes an expansive approach in identifying “rights and liberties”. These of course include traditional common law rights²⁶, but the committee considers they can also encompass, for example, rights which are only incompletely recognized at common law (such as the right to privacy), and rights (especially human rights) which arise out of Australia’s international treaty obligations.

2.13 Given its inherent broadness, it can be expected that this particular principle will continue its dominance in terms of issues raised by the committee.

➤ **Clear and precise drafting**

2.14 The issues raised by the committee under this category are diverse. Most queries, however, arose from the committee’s expectations that legislation should:

-] be drafted in a style which is as simple as possible, consistent with the nature of the subject-matter;
-] be structured in a logical, user-friendly and accessible way;
-] contain provisions that are precisely drafted.

2.15 The following are examples of issues raised by the committee:

-] the committee reiterated its view that, where possible, phrases or terms used in a bill should be set out in the bill itself, and that “cross-referencing” or “signposting” should be kept to a minimum,²⁷
-] the committee noted that, as the result of the insertion into an Act of a large body of contiguous amendments, the last such amendment was numbered section

²⁴ *Vegetation Management Bill 1999*, Alert Digest No 17 of 1999 at pages 1-3

²⁵ *Police Powers and Responsibilities and Other Acts Amendment Bill 2000*, Alert Digest No. 7 of 2000 at page 4

²⁶ Such as the right of a landowner to the use and enjoyment of his or her land

²⁷ That is, defining a term or phrase by reference to its definition in another Act

²⁸ *Police Powers and Responsibilities Bill 2000*, Alert Digest No.3 of 2000 at pages 12-13. The committee noted that that bill, which enacts generic police powers previously contained in a multitude of Acts, contained 47 “cross-referenced” definitions. The committee accepts that some commonly used words and phrases may be (and currently are) defined in the *Acts Interpretation Act 1954*

“180ZZZZB”, and recommended that a renumbered reprint of the amended Act be issued as soon as possible to assist persons attempting to read it;²⁹

-] the committee applauded the fact that a bill, in contrast to the Act it replaced, included a definition of a pivotal term.³⁰

➤ Retrospective legislation

- 2.16 As it has done since its establishment, the committee continued its general practice of bringing provisions in bills which have effect retrospectively,³¹ to the attention of Parliament—even if it was not concerned about the implications of the provisions. The committee has consistently examined retrospective provisions to ensure that they do not adversely affect rights and liberties, or impose obligations, retrospectively.
- 2.17 Some of the retrospective provisions reported on involved curative measures, which did not concern the committee,³² while others of these provisions were not curative but did not disadvantage individuals affected.³³ As in previous years, the category of retrospective provisions that most concerned the committee were those that adversely affected individuals or had the potential to do so.³⁴ In these cases the committee particularly looked at whether individuals had legitimate expectations under the existing law and could reasonably expect to rely on it. The committee frequently sought information from Ministers as to whether there were any individuals who were in fact disadvantaged by the relevant provisions, and whether (and when) the intention to change the existing legislation had been made known to such persons. The committee most often referred to Parliament for consideration the question of whether any adverse retrospective effect imposed on individuals by the legislation was justified.

Impact of the Committee's Reports

- 2.18 The principal role of the committee's Alert Digest is to inform Parliament of any issues arising with respect to the fundamental legislative principles in bills introduced into the House. In this way, the committee seeks to enhance debate in the Legislative Assembly on issues arising regarding the rights and liberties of individuals and the institution of Parliament.

²⁹ *Transport (Busway and Light Rail) Amendment Bill 2000*, Alert Digest No.4 of 2000 at page 16

³⁰ *Mental Health Bill 2000*, Alert Digest No.4 of 2000 at pages 6-7: the bill included a definition of “mental health”. The committee conceded the difficulties in defining such a concept and the necessity for any definition to be framed in somewhat general terms. The committee nevertheless considered the insertion of the definition enhanced the rights of persons who might potentially be subject to the bill's provisions. ³¹ On occasions, whether a particular provision in fact has retrospective effect can be a difficult question.

³² See, for example, *Equity and Fair Trading (Miscellaneous Provisions) Bill 2000*, Alert Digest No. 5 of 2000 at pages 12-13

³³ See, for example, *Revenue Laws Amendment Bill 1999*, Alert Digest No. 13 of 1999 at pages 36-37

³⁴ See, for example, *Local Government and Other Legislation Amendment Bill 2000*, Alert Digest No.2 of 2000 at pages 12-14

- 2.19 The committee cannot directly oppose an objectionable provision in a bill in the way that it can, for example, ask Parliament to support a motion to disallow a provision in subordinate legislation. Instead, the committee must appeal to the relevant minister to accommodate its views or convince members of Parliament that a change in the legislation is justified and necessary.
- 2.20 The committee considers that, during the 1999 - 2000 financial year, it has had an appreciable influence on amendments made to bills during their passage through the Legislative Assembly.
- 2.21 One measure of this is that the committee's Alert Digests tabled during the financial year record 25 instances of Ministers agreeing to amend bills to address the committee's concerns.³⁵
- 2.22 Moreover, and although in a less quantifiable way, the committee has noted that bills drafted subsequent to it having raised a particular issue, sometimes incorporate drafting modifications at least partially addressing the issue of concern.

Ministerial Responses to Committee Reports on Bills

- 2.23 Unlike reports from other committees of the Queensland Parliament, ministers are not required by statute to respond to recommendations in reports of the Scrutiny of Legislation Committee.³⁶ Ministers have nevertheless been very supportive of the committee's work.
- 2.24 This is reflected in the fact that Ministers:
-] invariably provided information in relation to the issues raised, where such information was sought by the committee;³⁷
 -] often provided information even where the committee did not request it;
 -] advised, in a significant number of cases, that amendments would be introduced to overcome the committee's concerns.

Summary of the Committee's Scrutiny of Bills

- 2.25 The committee considers the statistics provided in this chapter, and the other indicia mentioned above, demonstrate that the committee operated successfully during the financial year. In short, the committee:
-] raised numerous issues within its jurisdiction for the consideration of Parliament, and in so doing enhanced debate on the bills concerned

³⁵ An audit of those undertakings indicates that the amendments in question have all ultimately been made.

³⁶ Section 24 of the *Parliamentary Committees Act* requires ministerial responses to committee reports under certain circumstances

³⁷ The committee has not been able to identify any case where a Minister, having been requested by the committee to supply information, ultimately failed to do so (on some occasions where a bill was debated urgently, Ministers were unable to respond prior to the Second Reading Debate. On almost all such occasions, the Ministers tabled a copy of their reply in the House, and on other occasions referred to the relevant matters during their contribution to the Second Reading Debate

-] clarified issues with, and obtained information from, ministers in respect of matters of potential concern
-] was influential in achieving the amendment of various bills to address the issues and concerns raised by it
-] believes that through its activities, it had an ongoing influence on the drafting of the bills introduced into Parliament, in respect of the incorporation of fundamental legislative principles.

2.26 The committee believes that as a result the quality of bills, in terms of compliance with fundamental legislative principles, was enhanced.

2.27 The committee wishes to record its appreciation of the high level of support it has continued to receive from ministers. Without the support of the Executive, the committee's capacity to discharge its statutory functions would be significantly reduced.

2.28 The committee also thanks departmental and ministerial staff for providing briefings and information to the committee and its staff on bills throughout the financial year. Many issues which could have given rise to concern have been overcome at an early stage with the help of these officers.

