

## Jurisdiction Report – Qld – Speaking Notes

At the time of the last conference, Queensland's former dedicated Scrutiny of Legislation Committee had just been wound up and the Parliament's committee system was being comprehensively reformed for the first time in over 20 years.

Out of those reforms came the current committee structure which has now been operative for just on five years.

The current structure consists of three statutory committees (the Committee of the Legislative Assembly, the Ethics Committee and the Parliamentary Crime and Corruption Committee which oversees Queensland's Crime and Corruption Commission); as well as 7 'portfolio' committees whose jurisdictions reflect, as far as possible, ministerial portfolio responsibilities.

The current portfolio committees are:

- Finance and Administration
- Health, Communities, Disability Services and Domestic and Family Violence Prevention
- Legal Affairs and Community Safety
- Agriculture and Environment
- Education, Tourism, Innovation and Small Business
- Infrastructure, Planning and Natural Resources
- Transportation and Utilities

Under the *Parliament of Queensland Act*, a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area, to consider:

- The policy to be given effect by the legislation; and
- The application of "fundamental legislative principles" to the legislation.

"Fundamental legislative principles" (commonly referred to as FLPs) are defined in the *Legislative Standards Act* as the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. The principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

It is a statutory function of the Office of the Queensland Parliamentary Counsel to advise on the application of FLPs to proposed legislation. Departments are required to address the level of compliance of a Bill or sub-leg with FLPs in the Explanatory Notes and typically 'get on the front foot' by raising potential FLP breaches and

**offering explanations as to why a potential breach is necessary in the circumstances.**

**Once a Bill is introduced, the introducing Minister or private Member nominates the relevant portfolio committee to examine the Bill, although the Committee of the Legislative Assembly may move Bills between committees to better balance committee workloads. Bills can also be declared to be “urgent” and not sent to a committee before consideration by the House.**

**The Minister introducing a particular Bill can nominate the date on which the nominated committee is to report back to the House on their examination of the Bill; or, where no such date is nominated, the Committee of the Legislative Assembly sets the reporting date taking account of the Government’s legislative agenda and the workloads of committees.**

**Reporting timeframes can be significantly compressed (the shortest in recent memory being the referral by then Attorney-General Jarrod Bleijie, to the Legal Affairs and Community Safety Committee, of the Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013.**

**That Bill, part of a legislative package that became known as “the bikie laws” - was introduced by the Attorney on 19 November 2013 at 10.12pm, with a reporting date set of 10am on 21 November 2013, leaving the Committee just under 36 hours to examine the extensive amendments proposed by the Bill, undertake public consultation and table a report in the House. Given its introduction was well after close-of-business-hours, the staff tasked to work on the Bill effectively had 24 hours to consider the Bill and submissions; and prepare a report for tabling.**

**Submissions were sought on that Bill but closed on the first business day after its introduction, leaving bodies such as the Law Society, Bar Association, Queensland Council for Civil Liberties, Queensland Police Union and motorcycle clubs struggling to properly consider and communicate their concerns about the arguably draconian measures proposed by the Bill.**

**Fortunately, that outlier example notwithstanding, the average time for committees to examine Bills is around 4-6 weeks, with the default period for Private Members Bills being 6 months. The Constitution of Queensland and Other Legislation Amendment Bill 2016 currently before the House seeks to set a minimum referral time of 6 weeks, unless a Bill is declared “urgent”.**

**In 2015 (an election year) 68 Bills and 193 pieces of subordinate legislation were examined by portfolio committees. In 2014 there were 65 Bills and 345 pieces of subordinate legislation considered by committees.**

Those committees were assisted (in their examination of the Bills and subordinate legislation referred to them) by the staff of the Technical Scrutiny of Legislation Secretariat ('TSS' for short) which comprises a full-time Research Director, a full-time and a part-time Principal Research Officer (all of whom have legal qualifications), and an executive assistant for administrative support.

The TSS performs a very similar role to the former Scrutiny of Legislation Committee, by examining Bills and subordinate legislation for FLP compliance. The TSS then provides written reports and oral briefings to each committee on the compliance of the legislation within that committee's portfolio with FLPs.

Examination of the policy issues surrounding the legislation is provided by the staff of the relevant portfolio committee secretariat. Portfolio committee staff and TSS staff all work out of the same office and coordinate the delivery of TSS reports to the portfolio committees as early as possible in the process to, wherever possible, allow issues raised in the TSS reports to be canvassed in questions to the Department (either in correspondence or at departmental briefings and public hearings). The TSS are also on hand to answer questions from portfolio committee staff as to how certain provisions in a Bill will operate.

Once all submissions are received, public hearings are held (including, in many cases, regional hearings) and the departmental response to both submissions and the TSS advice is provided, the Committee prepares its report for adoption and tabling.

Areas of concern commonly identified by TSS include:

- the increasing use of 'skeletal legislation' and consequent over-reliance on regulations;
- the increased use of Henry VIII clauses;
- clauses removing rights of review;
- adoption of third party material such as guidelines, into legislation;
- a broadening of stop and search powers in counter-terrorism and public order legislation;
- reversals of the onus of proof;
- removal of particular defences from the Criminal Code; and
- the increasing use of retrospective provisions.

Previously the Scrutiny of Legislation Committee would publish reports on the aforementioned issues or make comment in their Annual Reports.

With a strong focus on policy matters, reports of the portfolio committees on Bills and subordinate legislation do make reference to matters such as the adequacy of the

**Explanatory Notes provided, however there are no reports specifically dedicated to FLP issues such as existed under the previous committee system.**

**Which brings us neatly to the final part of this jurisdiction round-up, observations on the ways in which the new committee system differs from the old:**

- **With each committee considering FLP issues, more MPs are gaining exposure to, and experience with, FLP issues, however there is still a substantial focus on policy issues by portfolio committees**
- **TSS lacks control over where or how its reports are used, edited or reported with the result that proper meaning (especially on technical points of law) may be lost or compromised during the editing phase of committee reports**
- **Timeframes for portfolio committees to revert to the House are often short, this has a flow on effect to TSS, which must prepare reports for committees well before the committee is to report to the House**
- **The TSS has to be responsive to the different meeting and hearing schedules of 7 portfolio committees yet has no capacity to influence those timeframes**
- **Controversial legislative initiatives (e.g. Bikie laws) will often have serious incursions into the rights and liberties of the population and involve significant breaches of FLPs, all of which need to be addressed/considered/weighed in TSS reports, often in very compromised timeframes**
- **Legislation cuts across all portfolio areas, with many complex and diverse topics covered (eg. mining and environmental law, criminal law, police powers, town planning and development, agriculture, fisheries, farming, resource law, health, education, finance, transport, local government, housing, building/construction etc.)**
- **A lack of familiarity with industry terms and jargon can considerably slow the process of considering a Bill and understanding the overarching policy framework in which it sits. Also, the TSS researchers are trained as lawyers but generally unfamiliar with the issues concerning many of the different policy areas (eg. environmental management) when compared with departmental drafters and portfolio committee staff who routinely work in defined policy areas.**