

Your Ref:

Our Ref: Direct Advocacy

29 April 2011

Ms Julie Copely  
Research Director  
Scrutiny of Legislation Committee Qld Parliament  
Parliamentary Annex  
Alice Street  
BRISBANE QLD 4000

Dear Ms Copely

## FUNDAMENTAL LEGISLATIVE PRINCIPLES

Thank you for the opportunity to review and make comments on the fundamental legislative principles set out in section 4 of the *Legislative Standards Act 1992* (QLD).

The Queensland Law Society commends the Scrutiny of Legislation Committee in calling for submissions to examine the contemporary meaning of 'fundamental legislative principles.' Upholding the rule of law, the rights and responsibilities of individuals and the provision of natural justice are the cornerstones of parliamentary democracy. It is therefore important that these principles, which are benchmarked beside proposed legislation, be regularly reviewed and updated to ensure the rights of individuals continue to be adequately protected as well as to ensure good governance.

The Society has reviewed the principles and considers that some expansion could be contemplated under the following headings:

1. Separation of Powers;
2. Institution of Parliament;
3. Rights and Responsibilities of individuals; and
4. Good governance.

A detailed commentary and consideration of these principles are set out below.

### 1. Separation of Powers

Legislation is the tool of the Parliament and also the Executive Government to exercise its constitutional power. The separation of powers inherent in our Westminster system of Government is to ensure that there is some balance between the various arms of the State. Legislation is a key area where due regard should be had to ensure that this balance is maintained. Our proposal is to:

- Ensure that legislation has due regard to the division of the legislative, executive, and judicial functions of government; and
- Ensure that legislation involves the justified exercise of executive power.

## 2. Institution of Parliament

The current provisions proposing due regard to the institution of Parliament are in the Society's view a good encapsulation of the relevant legislative principles.

## 3. Rights and Responsibilities of Individuals

The Society has considered the Terms of Reference for the Victorian Scrutiny of Acts and Regulations Committee and recommends that the following additional principles be adopted when considering proposed legislation which:

- Ensure legislation does not “make rights, freedoms or obligations dependent upon non-reviewable administrative decisions”<sup>1</sup>
- Ensure legislation does not “unduly require or authorise acts or practices that may have an adverse effect on personal privacy;”<sup>2</sup>
- Ensure legislation does not “unduly require or authorise acts or practices that may have an adverse effect on privacy of health information.”<sup>3</sup>
- Ensure that legislation and practices accord with Australian's obligations under international treaty law and custom (as recommended by the Human Rights Council' Working group on the universal periodic review Australia in their Draft report of the Working Group, Tenth session, Geneva, 24 January – 4 February 2011)
- Ensure that legislation and practices accord with national and international human rights standards and promote respect for the principles of equality and non-discrimination (as recommended by the Human Rights Council' Working group on the universal periodic review Australia in their Draft report of the Working Group, Tenth session, Geneva, 24 January – 4 February 2011)
- Ensure that legislation accords with the principles of natural justice and procedural fairness.
- Ensure that legislation does not take away the rights of citizens without due compensation and justification.

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<sup>1</sup> Section 4D of the *Parliamentary Committees Act 1968* (VIC)

<sup>2</sup> Section 4D of the *Parliamentary Committees Act 1968* (VIC)

<sup>3</sup> Section 4D of the *Parliamentary Committees Act 1968* (VIC)

#### 4. Good Governance

The Society recommends that a further principle be adopted which seeks for legislation to adhere to good governance standards. This may include consideration to:

- Ensure legislation does not unduly place high levels of administrative burden on individuals in order to access Government services or funding support; and
- Ensure that legislation has expeditious but practical timeframes for action for both individuals and Government with respect to applications and reviews of administrative decisions.

Thank you for providing the Queensland Law Society the opportunity to contribute these comments to your review.

Kind regards

Bruce Doyle  
**President**