

Australian-New Zealand Scrutiny of Legislation Conference

11-14 July 2016, Perth

Report of the Tasmanian Joint Standing Committee on Subordinate Legislation

1. The Tasmanian Subordinate Legislation Committee

1.1 Committee membership

Hon Tania Rattray MLC (Chair), Hon Leonie Hiscutt MLC (Deputy Chair), Hon Ruth Forrest MLC, Mr Roger Jaensch MP, Ms Madeline Ogilvie MP, Mr Nick Street MP.

1.2 Committee responsibility

The Committee's charter is to examine every regulation, by-law and rule. Regulations comprise all subordinate legislation made by the Governor-in-Council but does not include Orders, Proclamations or Rules of the Supreme Court. By-laws are those made by municipal councils, marine boards and other semi-government authorities.

The Committee is required to conduct its examination of regulations with particular reference to the question of whether or not —

- (a) the regulation appears to be within the regulation-making power conferred by, or in accord with the general objects of, the Act pursuant to which it was made;**
- (b) the form or purport of the regulation calls for elucidation;**
- (c) the regulation unduly trespasses on personal rights and liberties;**
- (d) the regulation unduly makes rights dependent on administrative decisions and not on judicial decisions;**
- (e) the regulation contains matters that, in the opinion of the Committee, should be properly dealt with by an Act and not by regulation; or**
- (f) whether the requirements of the *Subordinate Legislation Act 1992* have been met.**

The Committee also examines other instruments referred to it by Acts.

1.3 Method of reporting

During sittings of the Parliament the Committee is empowered to make recommendations to either House for the disallowance of a regulation or part thereof. The power to amend or disallow lies exclusively with the two Houses. Either the Legislative Council or the House of Assembly may disallow a regulation within fifteen sitting days of the tabling of the regulation in that House. The Committee itself simply reports its recommendations to each House. The Chairman or a Member of the Committee moves the Motion for disallowance.

During any adjournment or recess the Committee is given extra powers, in order to ensure that regulations which it considers undesirable are not implemented before both Houses have been able to examine any report the Committee may have prepared. Under these circumstances the Committee may arrange for a copy of the report to be sent to the Authority initiating the regulation. On receipt of the report, the Authority must amend the regulation in the manner indicated by the Committee or, if the Committee so recommends, rescind it.

If the Authority declines to do this, the Committee may then suspend the Regulation and the operation of the regulation remains suspended until both Houses of Parliament have dealt with the report.

1.4 Committee staff

Mr Stuart Wright, Committee Secretary; Ms Julie Thompson, Executive Assistant

2. Work of the Committee

Subordinate Legislation that is subject to scrutiny must be submitted to the Committee along with a range of other documentation in accordance with section 9 of the Subordinate Legislation Act 1992. The documentation to be submitted is subject to variation but may include –

- Relevant certificates
- Regulatory Impact Statement (in certain circumstances)

The regulation must also be Gazetted and tabled in both Houses of the Parliament.

Although not a legislative requirement, a more recent practice has been established by the Committee, whereby, a detailed factsheet is provided with the set of regulation documents. The provision of a factsheet has assisted the

Committee in its ability to scrutinise each piece of legislation as efficiently as possible.

Similar requirements apply to Local Government By-Laws that are scrutinised by the Committee. The major difference with the examination of By-laws is the requirement for specific certification by a legal practitioner and the Council General Manager in accordance with the *Local Government Act 1993*.

In most cases the information provided is adequate and generally of good quality and informs the Committee in relation to the reason for the legislation and any consultation process undertaken. There have historically been some issues with the timely provision of information in accordance with the Act by Departments. Following discussions with relevant Ministers, this has now largely been overcome and information is generally provided in an appropriate timeframe.

The Committee can also call departmental officers to brief the Committee prior to the examination of any regulation or write to the relevant Minister seeking further detail or clarification. These options are exercised regularly by the Committee, with an increasing use of briefings. This in part has been due to changes in membership of the Committee in recent years, which has included a number of new Members to the Parliament of Tasmania. Briefings have therefore been viewed as an excellent way for Members to quickly gain a better understanding of the wide range of regulations in operation in Tasmania.

On occasion, where an issue of significance cannot be resolved through the briefings process or through the provision of additional information, an inquiry may be commenced by the Committee. Associated with such an inquiry may be a decision for a Member to move a disallowance motion in either House of the Parliament of Tasmania in accordance with the processes noted earlier in this report.

In the last financial year, ninety six (96) instruments were examined by the Committee. The examinations covered a broad range of important areas including health, policing, building, vehicles, law, justice and fisheries matters.

Members have noted that an increasing amount of nationally uniform legislation has been introduced into the Parliament of Tasmania in recent years. Some aspects of this nationally consistent legislation include areas that are not always suited to this state. Some Members believe that such legislation should be adaptable to each state's requirements and have sought to amend the enabling legislation in some cases to achieve this.