

# **Legislative Review Committee Guide 2016**

## Table of Contents

<b>Part 1</b>	<b>Preliminary.....</b>	<b>3</b>
1.1	Purpose of Guide .....	3
1.2	Functions of Committee .....	3
<b>Part 2</b>	<b>Committee meetings .....</b>	<b>4</b>
2.1	Meetings of Committee.....	4
2.2	Attendance before Committee .....	4
2.3	Evidence heard at Committee meetings open to public.....	4
2.4	Parliamentary privilege applies to evidence .....	4
<b>Part 3</b>	<b>Regulations .....</b>	<b>5</b>
3.1	Committee scrutinises regulations tabled in Parliament .....	5
3.2	Adoption of Scrutiny Principles .....	5
3.3	Consideration of scrutiny principles.....	5
3.4	Copies of regulations and supporting reports.....	5
3.5	Content of supporting reports .....	6
3.6	Consideration of regulations by Committee .....	7
3.7	Decision to take no action on regulation .....	7
3.8	Decision to defer regulation .....	7
3.9	Decision to recommend disallowance of regulation.....	7
<b>Part 4</b>	<b>Authorisation .....</b>	<b>8</b>
	<b>Appendix A – Flow chart for regulations, rules and by-laws tabled in Parliament.....</b>	<b>9</b>
	<b>Appendix B – Suggested template for supporting reports.....</b>	<b>10</b>

## **Part 1                      Preliminary**

### **1.1      Purpose of Guide**

The purpose of the Legislative Review Committee Guide 2016 is to inform delegated authorities that prepare regulations, rules and by-laws about the functions of the Committee and the needs of the Committee in carrying out these functions.

### **1.2      Functions of Committee**

Section 12 of the *Parliamentary Committees Act 1991* provides that the functions of the Legislative Review Committee are—

- (a) to inquire into, consider and report on such of the following matters as are referred to it under this Act:
  - (i) any matter concerned with legal, constitutional or parliamentary reform or with the administration of justice but excluding any matter concerned with joint standing orders of Parliament or the standing orders or rules of practice of either House;
  - (ii) any Act or subordinate legislation, or part of any Act or subordinate legislation, in respect of which provision has been made for its expiry at some future time and whether it should be allowed to expire or continue in force with or without modification or be replaced by new provisions;
  - (iii) any matter concerned with inter-governmental relations;
- (b) to inquire into, consider and report on subordinate legislation referred to it by the *Subordinate Legislation Act 1978*;
- (c) to perform such other functions as are imposed on the Committee under this or any other Act or by resolution of both Houses.

## **Part 2                      Committee meetings**

### **2.1       Meetings of Committee**

Currently, the Committee meets on a Wednesday morning when both Houses of Parliament sit. However, the Committee may meet at other times as agreed by the Committee.

### **2.2       Attendance before Committee**

- (1) The Committee may ask a person to attend a meeting of the Committee to answer questions from Committee members in relation to:
  - (a) a regulation that is being considered by the Committee; or
  - (b) an Inquiry that is being undertaken by the Committee.
- (2) A witness attending before the Committee may make a brief opening statement at the meeting.
- (3) Generally, each witness, or each group of witnesses, is allocated 30 minutes for their evidence to be heard and for the Committee to ask questions relating to the matter being considered.
- (4) Under section 28(2) of the *Parliamentary Committees Act 1991*, the Committee may send for persons, papers and records.

### **2.3       Evidence heard at Committee meetings open to public**

- (1) Generally, if the Committee is hearing evidence, the Committee meeting is open to the public. However, a witness may ask the Committee that all or part of the witness's evidence be heard in camera.
- (2) If the Committee agrees to hear all or part of a witness's evidence in camera, members of the public are asked to withdraw from the room.

### **2.4       Parliamentary privilege applies to evidence**

Parliamentary privilege applies to evidence given at a meeting of the Committee. However, witnesses are advised that privilege is not extended to statements they may make outside of the Committee.

## **Part 3                      Regulations**

### **3.1      Committee scrutinises regulations tabled in Parliament**

- (1) All regulations (which includes by-laws and rules) are made under an Act of Parliament and are required to be tabled in both Houses of Parliament.
- (2) In accordance with the *Subordinate Legislation Act 1978*, all delegated legislation must be tabled in both Houses of Parliament within 6 sitting days of having been made.
- (3) The Legislative Review Committee of the Parliament is established to scrutinise regulations on behalf of the Parliament.

### **3.2      Adoption of Scrutiny Principles**

The Committee has adopted the following scrutiny principles to guide its inquiry and consideration of regulations:

- (a) whether the regulations are in accord with the general objects of the enabling legislation;
- (b) whether the regulations:
  - (i) unduly trespass on rights previously established by law; or
  - (ii) are inconsistent with the principles of natural justice; or
  - (iii) make rights, liberties or obligations dependent on non-reviewable decisions;
- (c) whether the regulations contain matter which, in the opinion of the Committee, should properly be dealt with in an Act of Parliament;
- (d) whether the regulations are in accord with the intent of the legislation under which they are made and do not have unforeseen consequences;
- (e) whether the regulations are unambiguous and drafted in a sufficiently clear and precise way;
- (f) whether the objective of the regulations could have been achieved by alternative and more effective means;
- (g) whether the regulator has assessed if the regulations are likely to result in costs which outweigh the likely benefits sought to be achieved.

### **3.3      Consideration of scrutiny principles**

Delegated authorities when preparing a regulation should consider the scrutiny principles.

### **3.4      Copies of regulations and supporting reports**

Once a regulation is made, the Committee receives as soon as practicable from the Cabinet Office:

- (a) a signed hard copy of the regulation and the supporting report to the regulation; and
- (b) an electronic copy of the regulation and the supporting report to the regulation; and
- (c) if required—the certificate of validity for the regulation.

### 3.5 Content of supporting reports

- (1) A supporting report to a regulation should include:
  - (a) the name of the regulation; and
  - (b) a statement that demonstrates the delegated authority has considered each of the scrutiny principles set out in section 3.2; and
  - (c) the name, position, telephone number and email address of a contact person who is familiar with the regulation.
- (2) The Committee would appreciate if the report would also explain:
  - (a) the purpose of the regulation, including any policy considerations that were taken into account in the development of the regulation; and
  - (b) the effect of each provision of the regulation; and
  - (c) if the Minister, who is responsible for the administration of the Act under which the regulation is made, specified an early commencement for the regulation under section 10AA(2) of the *Subordinate Legislation Act 1978*—the reasons for the early commencement, as required by section 10A(1a) of that Act; and
  - (d) if the Act under which the regulation was made specifies a requirement that must be complied with before the regulation is made—the nature of the requirement and whether the requirement was complied with before the regulation was made; and
  - (e) unless the regulation increases fees or charges or both as part of a State Budget—the consultation that was undertaken in relation to the regulation before the regulation was made, including:
    - (i) who was consulted, whether any feedback was given in relation to the regulation and the action taken by the delegated authority in response to that feedback using the following table; and

Item	Person or agency consulted	Feedback	Action taken in response to feedback

- (ii) the outcome of the consultative process, including whether any particular person had any concerns in relation to the regulation that were not addressed during the consultative process for the regulation and, if so, the nature of those concerns; and
- (f) if the regulation includes a fee or charge, other than a fee or charge increased in a year in accordance with the indexation rate approved as part of the State budget for the year—include the following table for each fee or charge or both in the regulation:

Item	Provision of amended	Old fee or	New fee or	Percentage increase (or	Reason for increase (or decrease) in fee

	<b>regulation</b>	<b>charge</b>	<b>charge</b>	<b>decrease)</b>	<b>or charge</b>

### **3.6 Consideration of regulations by Committee**

- (1) The Committee considers and reports to Parliament on a regulation before the expiry of 14 sitting days after the regulation is tabled in the Parliament.
- (2) The Committee may, in a meeting of the Committee, decide to:
  - (a) take no action in relation to a regulation; or
  - (b) defer a regulation; or
  - (c) recommend to Parliament that a regulation ought to be disallowed.

### **3.7 Decision to take no action on regulation**

If the Committee decides to take no action in relation to a regulation it has considered, the Committee reports to Parliament that it has resolved to take no action in relation to the regulation.

### **3.8 Decision to defer regulation**

- (1) If the Committee decides to defer a regulation, the regulation is deferred until the next meeting of the Committee.
- (2) However, if consideration of the regulation extends beyond 14 sitting days, a notice of motion must be given in either House of Parliament to disallow the regulation. The motion is regarded as a holding motion to enable the Committee to complete its deliberations.

### **3.9 Decision to recommend disallowance of regulation**

- (1) If the Committee decides that a regulation ought to be disallowed, the Committee's representative in either House of Parliament reports that opinion, and the Committee's grounds for that opinion, to both Houses of Parliament and gives notice of motion for disallowance.
- (2) If a notice to disallow a regulation is given in a House of Parliament, there is no time constraint for the moving of the notice of motion.
- (3) If the Parliament is prorogued and the motion has not been dealt with, the motion lapses. However, if the regulation has not been tabled for 14 sitting days, any member of either House may give another fresh notice of motion for disallowance of the regulation in the new session of Parliament.

## **Part 4                      Authorisation**

This Guide is authorised by resolution of the Legislative Review Committee.

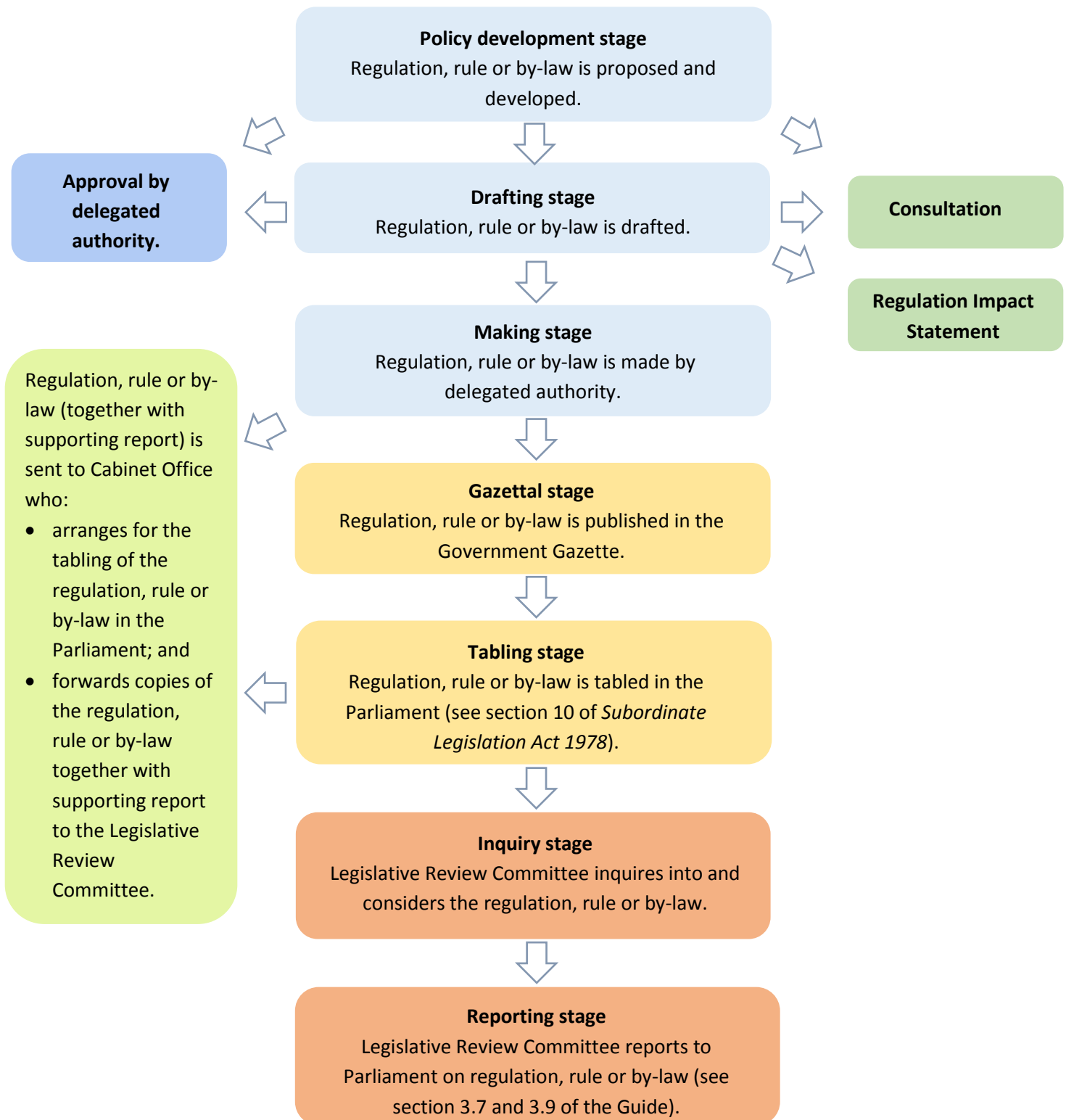
Dated: [*insert date*]

**Hon. Gerry Kandelaars MLC**

**PRESIDING MEMBER**



## Appendix A – Flow chart for regulations, rules and by-laws tabled in Parliament



## Appendix B – Suggested template for supporting reports

<b>1. Name of regulation</b>	<i>Please state the name of regulation</i>
<b>2. Commencement date of regulation</b>	<i>Please include the commencement date of the regulation</i>
<b>3. Name of the delegated authority responsible for the regulation</b>	<i>Please state the name of the delegated authority responsible for the regulation</i>

<b>4. Statement in relation to the scrutiny principles</b>
<i>Please include a statement that addresses each of the scrutiny principles set out in section 3.2 of the Guide.</i>

<b>5. Contact details</b>	<i>Please include the name, position, telephone number and email address of a person sufficiently familiar with the regulation</i>
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<b>6. Purpose of the regulation</b>
<i>Please explain the purpose of the regulation, including any policy considerations that were taken into account in the development of the regulation.</i>

<b>7. Effect of each provision in regulation</b>
<i>Please explain the effect of each provision in the regulation.</i>

## 8. Early Commencement

*If the Minister specified early commencement for the regulation under section 10AA(2)(a) of the Subordinate Legislation Act 1978, please specify the reasons for early commencement.*

## 9. Statutory requirement

*If the Act under which the regulation was made specifies a certain requirement that must be complied with before the regulation is made—please explain the nature of the requirement and whether the requirement was complied with before the regulation was made.*

## 10. Consultation

*Unless the regulation increases fees or charges or both as part of a State Budget, please explain the consultation that was undertaken in relation to the regulation before the regulation was made, including:*

*(a) who was consulted, any feedback that was given in relation to the regulation and the action taken by the delegated authority in response to the feedback using the table set out below for each person or agency that was consulted; and*

Item	Person or agency consulted	Feedback	Action taken in response to feedback

*(b) the outcome of the consultative process, including whether any particular person had any concerns in relation to the regulation that were not addressed during the consultative process for the regulation and, if so, the nature of those concerns.*

**11. Fees and Charges**

*Other than for a fee or charge increased in a year in accordance with the indexation rate approved as part of the State budget for the year, include the following table for each fee or charge or both in the regulation:*

Item	Provision of amended regulation	Old fee or charge	New fee or charge	Percentage increase (or decrease)	Reason for increase (or decrease) in fee or charge