

Joint Standing Committee on Delegated Legislation —Forty-ninth Report — “Annual Report 2011”

Resumed from 3 May.

Motion

Hon JIM CHOWN: I move —

That the report be noted.

I bring to the attention of the house that this is an annual report and, as such, I think I should name the members of the committee at the time of the report who participated in the process of dealing with delegated legislation instruments. They were Mr Joe Francis; Hon Sally Talbot, who is the deputy chair; Hon Alyssa Hayden; Ms Janine Freeman; Mr Andrew Waddell; Mr Paul Miles from the other place; Hon Helen Bullock; and me. The Joint Standing Committee on Delegated Legislation is quite a substantial joint standing committee that deals with instruments of all kinds. I note also that, as set out in the 2011 annual report, the workload has increased significantly over that in 2010. In fact, the total number of disallowable instruments referred to the committee was 601 in 2011 compared with 468 in 2010. The number of regulations referred was 370 compared with 300 in the previous year, and the number of local by-laws was 130 in comparison with 93. So, as I have already stated, the workload is increasing annually.

Many instruments are considered by the committee, and they are quite lengthy documents. Irrespective of their size, a great deal of investigation goes into the complex issues that many of these documents entail, and they span a diverse range of subject matters. On that point I thank the staff of the committee, who obviously do a great deal of the workload. I thank them on behalf of all the members of the committee, both in this place and the other place, because without them I do not think this committee could do its duties as stated.

A biannual conference is held and this time it took place at Parliament House, Brisbane on 26 and 28 July. A couple of the guest speakers of note were Sir Gerard Brennan, former Chief Justice of the High Court of Australia, and Hon Paul de Jersey, Chief Justice of Queensland. Our contribution was made by Ms Janine Freeman on behalf of the Standing Committee on Delegated Legislation and was titled “‘Calling up’ of standards: Are we creating a legislative labyrinth?” For those members interested in following up on that very interesting subject matter —

Hon Liz Behjat: It was a very good paper.

Hon JIM CHOWN: Thank you; I am sure it was. Obviously Hon Liz Behjat has read the report. In saying that, if other members want to follow up on this subject matter, I refer them to paragraphs 3.1 to 3.3 of this annual report. It is scintillating stuff, I can assure them.

Regulations, of course, are a very important focus of this committee. As already noted, 370 regulation issues were referred to the committee in 2011. Regulations considered dealt with a range of subject matters of public interest, including mobile phones and GPSs in cars. They are a modern phenomenon, and new regulations need to be drawn up with regard to how drivers can deal with these new instruments in a safe manner without inflicting carnage on road users or pedestrians. There was a fair bit of debate on that matter. Other regulations involved rail safety, building registration and fishing access and licence fees. This government has taken a fairly substantial stand to ensure that the fishing industry, both recreational and professional, is sustainable. We had to deal with those very complex matters. Other issues involved hospital parking fees and other fees and charges.

The committee is reasonably concerned that it is difficult for people to access the full content of the law when standards are called up in delegated legislation. I will read out the only recommendation in this report because recommendations by committees of this place are very important. It states —

The Committee recommends that the Government requires departments, agencies and local governments to advise on their internet site where standards called up in subsidiary legislation can be accessed at no cost.

Currently the public can access regulations at their public library and, as such, a considerable fee is required. The committee believes that regulations and certainly standards surrounding them should be free to the public at large. If they seek information or changes, they should be able to do so. That is why this recommendation refers to the internet site, which is the way most information is circulated.

Of course, one of the roles of the delegated legislation committee is to ensure that government departments keep their fees in line with CPI and not outside the parameters of the regulations. On 23 May 2011 the committee passed the following resolution in respect to this —

If an agency does not have a costing methodology and applies CPI, the Committee will allow the CPI increase.

We want to see how the departments come to their conclusions on the costs of fees to the public. Without denigrating previous committees, I do not believe that issue was applied within the strict letter of the law, and we have taken the stance that it needs to be applied appropriately. The next resolution states —

If an agency has a costing methodology and cost recovery is at 100 per cent or just below and applies CPI, the fees are to be scrutinised.

We take a fair bit of care to do so. The last one reads —

If an agency has a costing methodology and the fees are under recovering, then to accept CPI depending on the quantum of the dollar increase rather than the size of the percentage increase.

I believe that is our preferred option. The committee routinely advised any government department or agency that did not have a costing system in place that it must develop a costing system. I inform this place that a number of departments have been so informed and we hope that next year they will have adopted the committee's resolutions. Some have written back and stated that they will do so. The others have been put on notice.

Another issue the committee dealt with in 2011 identified a number of occasions on which local governments did not directly follow the strict mandatory procedure for making local laws. Hon Alyssa Hayden mentioned them in two reports previously. If the steps set out in section 3.12 of the Local Government Act are not followed exactly in the order in which they are outlined, the requirements of the Local Government Act have not been correctly complied with and the local law is not validly made. That is why a couple of local laws have been disallowed.

The committee takes this view based on the longstanding advice from the State Solicitor's Office. The advice confirms that the procedure set out in section 3.12 of the Local Government Act is mandatory, and a local law that does not follow that procedure in the order in which it is outlined will be invalid. We had made a recommendation to the relevant government department that this particular part of the act needs to be reviewed. In fact, in its forty-eighth report, the committee recommended that the Minister for Local Government amend the Local Government Act 1995 to provide for flexibility in section 3.12 in circumstances in which there is no adverse impact on the integrity of the local law. Obviously, a lot of local governments that fall foul of this section incur great costs in seeking approval from the committee, but we have to knock them back due to lack of due process. We believe it is not quite fair and certainly hope that in due course the Minister for Local Government will adopt the recommendation and amend the act so that local government entities can get their by-laws approved. We await the government's response to that recommendation in the forty-eighth report.

Other than that, I see that I have 19 seconds left. I thank all members of the committee for their contributions in 2011. We shall move forward with our heavy workload for the remainder of this year. Thank you very much.

Hon ALYSSA HAYDEN: In following the fantastic remarks made by my colleague Hon Jim Chown on the Joint Standing Committee on Delegated Legislation I want to highlight again that, as we have pointed out in the forty-seventh and forty-eighth reports, section 3.12 of the Local Government Act 1995 has reared its ugly head once again. This clause causes inflexibility, as has already been explained in the forty-seventh and forty-eighth reports. I hope the minister or one of his staff members listens to the debate on committee reports in the Committee of the Whole. I am sure there are some people out there tuning in to this informative session! We need to stress to them that the recommendation made in the delegated legislation committee's forty-eighth report and in its annual report needs to be heard. This annual report is the sixth report tabled in this place highlighting the committee's concerns with section 3.12. I hope we do not need to make many more recommendations about section 3.12 and that the minister is now well aware of it and that action will be taken.

I would like to follow on from Hon Jim Chown's comments and thank the very hardworking staff on this committee. They have a very busy and heavy workload. Not all the issues are thrilling and exciting, but they still delve into them to the depth required and make sure all the i's are dotted and the t's are crossed. I thank them for their efficiency and the very polite and friendly manner in which they conduct themselves.

Question put and passed.