



PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE
ON
DELEGATED LEGISLATION**

TWENTY-FOURTH REPORT:

*Sixth Australasian & Pacific Conference on Delegated
Legislation and Third Australasian & Pacific Conference
on the Scrutiny of Bills*

Presented by the Hon Robert Laurence Wiese MLA (Chairman)

**24
August 1997**

Joint Standing Committee on Delegated Legislation

Members

Hon Bob Wiese MLA (Chairman)
Hon Nick Griffiths MLC (Deputy Chairman)
Hon Simon O'Brien MLC
Hon Barbara Scott MLC
Hon Jim Scott MLC
Mr Ted Cunningham MLA
Mr Mark McGowan MLA
Mr Iain MacLean MLA

Advisory/Research Officer

Andrew Mason

Committee Clerk

Jan Paniperis

Terms of Reference

It is the function of the Committee to consider and report on any regulation that:

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament;*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

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Report of the Joint Standing Committee on Delegated Legislation

in relation to

Sixth Australasian & Pacific Conference on Delegated Legislation and Third Australasian & Pacific Conference on the Scrutiny of Bills

1 Introduction

1.1 Scrutiny Committees from Australia and New Zealand have been meeting on a bi-annual basis since 1986. Conferences have been held in Brisbane, Canberra, Perth, Melbourne, Darwin and most recently in Adelaide. This Committee, which was only formed in 1987, has been fortunate to attend all of these conferences except Brisbane and Melbourne. The most recent conference was in Adelaide from 16 July 1997 to 18 July 1997. The Committee was represented at this conference by three members and two staff. The following members attended the conference:

Hon Bob Wiese, MLA (Chairman);
Hon Nic Griffiths, MLC (Deputy Chairman); and
Hon Jim Scott, MLC.

1.2 The Conference was attended by representatives, staff and academics in the field from all Australian jurisdictions as well as New Zealand. In particular, the Conference was fortunate to have the participation and contributions of Emeritus Professor Douglas Whalan AM (Legal adviser to the Senate Committee on Regulations and Ordinances and to the ACT Committee on Scrutiny of Bills and Subordinate Legislation), Professor Dennis Pearce (Visiting Fellow, Australian National University), Mr Stephen Argument (Director Advising & Special Projects, Department of Social Security), Dr Janet Hiebert (Assistant Professor, Queens University, Canada) and Dr David Kinley (Legal Specialist, Australian Law Reform Commission).

2 Conference Topics

2.1 The Conference covered many interesting subjects and the papers delivered were all topical and of a high standard. Importantly the Conference has provided the Committee with an insight into regulatory review and scrutiny in general in other jurisdictions. It is readily apparent that the procedures for scrutiny in other jurisdictions are far in advance of those in place in WA. An assessment of some of those procedures is to be conducted by all scrutiny committees that wish to participate in such an exercise.

Although WA is very interested in the outcomes of this appraisal it will not be appropriate for WA to participate as the measures to be appraised are not part of the WA scrutiny process. The appraisal may take a lengthy period to be completed and in the meantime it may be appropriate for WA to conduct its own assessment of some of these procedures to determine whether they are appropriate to the Western Australian system.

- 2.2 The Conference commenced with each Committee providing a brief report on its activities over the preceding two years. These reports were of historical interest only. The Conference then proceeded to the delivery of the various papers. The following papers were delivered:
- 2.2.1 *Recent Developments in Delegated Legislation - Professor Dennis Pearce & Stephen Argument*
 - 2.2.2 *Scrutiny Committees Performance Indicators - Bill Wood, Chair Scrutiny of Bills and Subordinate Legislation Committee, ACT*
 - 2.2.3 *Human Rights and Party Politics - Senator Barney Cooney, Chair Senate Scrutiny of Bills Committee, Commonwealth*
 - 2.2.4 *Strengthening Parliament's Role to "Right" Policy: A Canadian Perspective - Dr J Hiebert, Assistant Professor, Queens University, Canada*
 - 2.2.5 *What is a Right? - General Discussion and brief paper presented by Dr David Kinley, Legal Specialist, Australian Law Reform Commission*
 - 2.2.6 *Scrutiny by the Committee of Regulations providing for the Leasing of Commonwealth Airports - Professor Douglas Whalan, Legal adviser to the Senate Committee on Regulations and Ordinances and to the ACT Committee on Scrutiny of Bills and Subordinate Legislation*
 - 2.2.7 *Scrutiny of Redundant Legislation - Murray Thompson, MP, Deputy Chair Scrutiny of Acts and Regulations Committee, Victoria*
 - 2.2.8 *Scrutiny of National Schemes of Legislation: Where to from here? - Discussion chaired by Jon Sullivan, MLA, Deputy Chair Scrutiny of Legislation Committee, Queensland*
 - 2.2.9 *The Future of Upper Houses in Australia - Hon Robert Lawson QC MLC, Presiding Member Legislative Review Committee, South Australia*
 - 2.2.10 *Are we doing ourselves out of a job? - Mr Peter Ryan, MLA, Chair Scrutiny of Acts and Regulations Committee, Victoria*
 - 2.2.11 *Divining Legislative Intent - Mr Jon Sullivan, MLA, Deputy Chair Scrutiny of Legislation Committee, Queensland*

2.2.12 *Regulatory Efficiency - The Wave After That (Sequel to Regulatory Efficiency - The Next Wave) - Mr Victor Perton MLA, Chair Law Reform Committee, Victoria*

2.3 While each of these papers was of general interest, the Committee found the papers presented by Mr Peter Ryan MLA and Mr Victor Perton MLA to be of particular interest as they related to advances being made in the Victorian jurisdiction in the processes for creation and review of regulations. Many of the processes that underpin the Victorian system of creation and review of regulations have been the subject of comment from the Committee on previous occasions. In its 16th Report, *The Subordinate Legislation Framework in Western Australia*, the Committee made recommendations for significant reform to the subordinate legislation system in this State. The substance of the reforms were taken up in a proposed *Subordinate Legislation Bill*. Many of these proposed reforms, such as “Regulatory Impact Statements” and “Sunsetting” of regulations, are now a well established part of the Victorian system. Accordingly, it was of great interest to hear of the experience of Victoria with these measures in place. The question that Mr Peter Ryan MLA posed was whether the Committee had become so effective that it was doing itself out of a job? The experience in Victoria is that Departments, Ministerial advisers and Ministers are very responsive to the scrutiny processes in place. The result is that the Scrutiny Committee very rarely is faced with legislation that it can be critical of or which requires any comment. At p4 of his paper Mr Ryan MLA states:

“The point is that I believe a culture of scrutiny has become firmly established in Victoria. The absence of a significant number of offensive provisions means that departments and the Office of Parliamentary Counsel are drafting the legislation carefully with the Committee in mind.”

Such comments are of interest to this Committee as they demonstrate the positive response to scrutiny in general that is emanating from those jurisdictions that have embraced many of the reforms that the Committee has recommended.

2.4 The Committee was also greatly interested in the discussion on National Scheme Legislation chaired by Mr Jon Sullivan MLA. Proposals for scrutiny of National Scheme Legislation had been set out in a Position Paper of a working party of scrutiny committees. This Position Paper was tabled in each jurisdiction in September last year. Subsequently, attempts have been made to have the proposals considered by the Council of Australian Government Leaders or the Standing Committee of Attorneys General. At this point these attempts have been unsuccessful. After discussion on what further approach was to be taken to have the proposals considered at the executive level, a resolution was passed that “following consideration by the Federal Attorney-General, all chairs of scrutiny committees meet to consider further options in relation to the proposals in the Position Paper on Scrutiny of National Scheme Legislation”.

3 Resolutions

3.1 Apart from the resolution concerning National Scheme Legislation, there were a number of procedural and other less significant resolutions to emerge from the

conference. It is not proposed to outline those here. However, there was a resolution concerning “sunsetting” of regulations and the use of cost benefit analysis that has been referred to at paragraph 2.1 above. It was resolved:

- “1. *That the Commonwealth and each of the State and Territory Scrutiny Committees be invited to participate in a joint appraisal of the strengths and weaknesses of employing cost benefit and sunset requirements to scrutinise Acts and Regulations and for this purpose, to set up a steering committee to determine how and when this should be carried out.*
2. *That the appraisal should also review other relevant scrutiny options.”*

3.2 It is not intended for this Committee to participate in this appraisal as the measures to be appraised do not form part of the Western Australian regulatory creation and review process. However, the Committee did express interest in the outcomes of this appraisal and will look forward to any reports received from the steering committee in this regard.