

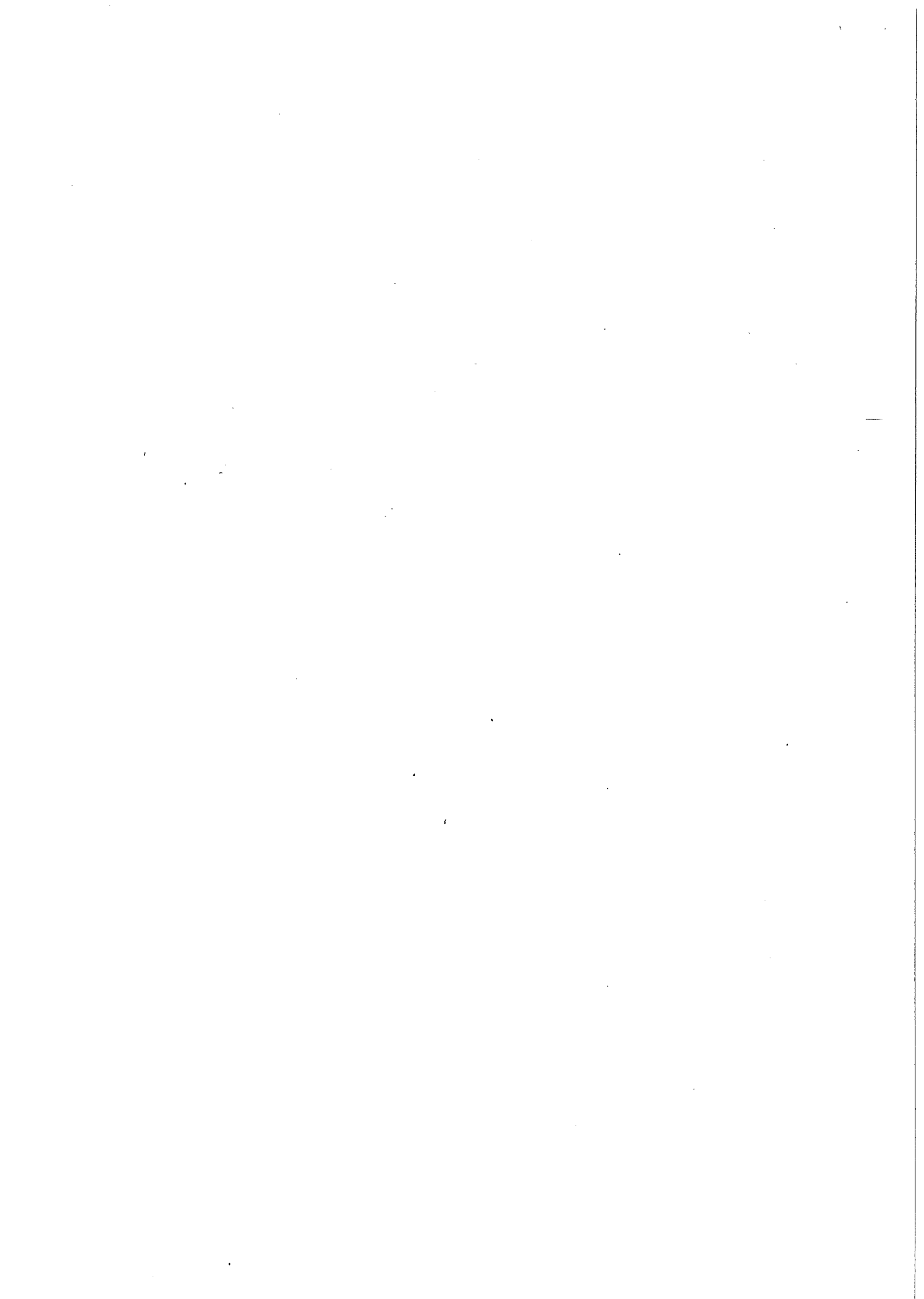
**STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION**

REPORT NO. 19 OF 1995

**CHAIRMEN AND SECRETARIES
OF SCRUTINY COMMITTEES CONFERENCE**

**8 DECEMBER 1995
HELD AT PARLIAMENT HOUSE
HOBART**

14 December 1995



INTRODUCTION

This is a report on the Committee's attendance at the Chairmen and Secretaries of Scrutiny Committees Conference. The Conference was held at Parliament House in Hobart on 8 December 1995 and was hosted by the Joint Standing Committee on Subordinate Legislation of Tasmania.

The Conference was attended by representatives of all scrutiny committees at both the federal and state level (with the exception of the Northern Territory and the Senate Regulations and Ordinances Committee). Unfortunately the New Zealand committee was also unable to attend.

The ACT was represented by Mr Andrew Whitecross, MLA, (Deputy Chair); Emeritus Professor Douglas Whalan (Legal Adviser); and Ms Beth Irvin (Deputy Secretary). Attached at Attachment 1 is a list of delegates of attended the conference.

The Conference had been organised to discuss Discussion Paper No. 1 - Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles. However other items of interest were also discussed (a copy of the agenda is attached at Attachment 2).

DISCUSSION PAPER NO. 1 - SCRUTINY OF NATIONAL SCHEME LEGISLATION AND THE DESIRABILITY OF UNIFORM SCRUTINY PRINCIPLES

Each Committee has tabled a copy of the Discussion Paper in their Parliament and distributed it to organisations for comment.

Mr Whitecross tabled a copy of the Discussion Paper in the Assembly on 24 August 1995. Copies were also sent to Mr Humphries (Attorney-General), Mr Connolly (opposition spokesperson on Legal Affairs), Ms Kerrie Tucker, Mr Michael Moore, the President of the ACT Bar Association, the Community Law Reform Committee, the President of The Law Society of the Australian Capital Territory and the Chief Justice of the Supreme Court requesting comments by 30 September 1995.

Mr Humphries and The Law Society of the Australian Capital Territory provided comments to the paper (a copy of the responses is attached at Attachment 3).

Committees received a varying level of response. The Queensland Committee of Subordinate Legislation and Senate Scrutiny of Bills Committee received several detailed submissions from Ministers and Departments, Members of Parliament, academics, legal agencies and other organisations. (A complete set of responses is held by the Secretary for information).

RESOLUTION

The Conference passed the following resolution:

"That this conference, in the light of public response to the July discussion paper on the Scrutiny of National Scheme Legislation and the desirability of uniform scrutiny principles, launched in Darwin, appoint a working group to finalise that discussion paper as a matter of urgency, with a view to:

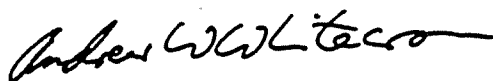
- (a) presenting such paper for consideration at the next meeting of this conference; then
- (b) requesting the Council of Australian Governments (COAG) through the Premier of Tasmania to list the issue of parliamentary scrutiny of uniform national legislation for discussion at the next meeting of that body; and
- (c) requesting the Standing Committee of Attorneys-General (SCAG) through the Attorney-General of the Australian Capital Territory to list the issue of parliamentary scrutiny of uniform national legislation for discussion at the next meeting of that body; and
- (d) requesting COAG and SCAG to adopt such principles for parliamentary scrutiny, and to refer them to all ministerial councils in Australia; and
- (e) requesting all Australian Parliaments to sponsor a resolution embodying such principles for parliamentary scrutiny.

NEXT STEPS

All Scrutiny Committees were included in the working group to finalise the discussion paper. The Queensland Committee offered its services to develop a draft to be discussed at the next meeting of Chairmen and Secretaries to be held in Perth in April/May 1996.

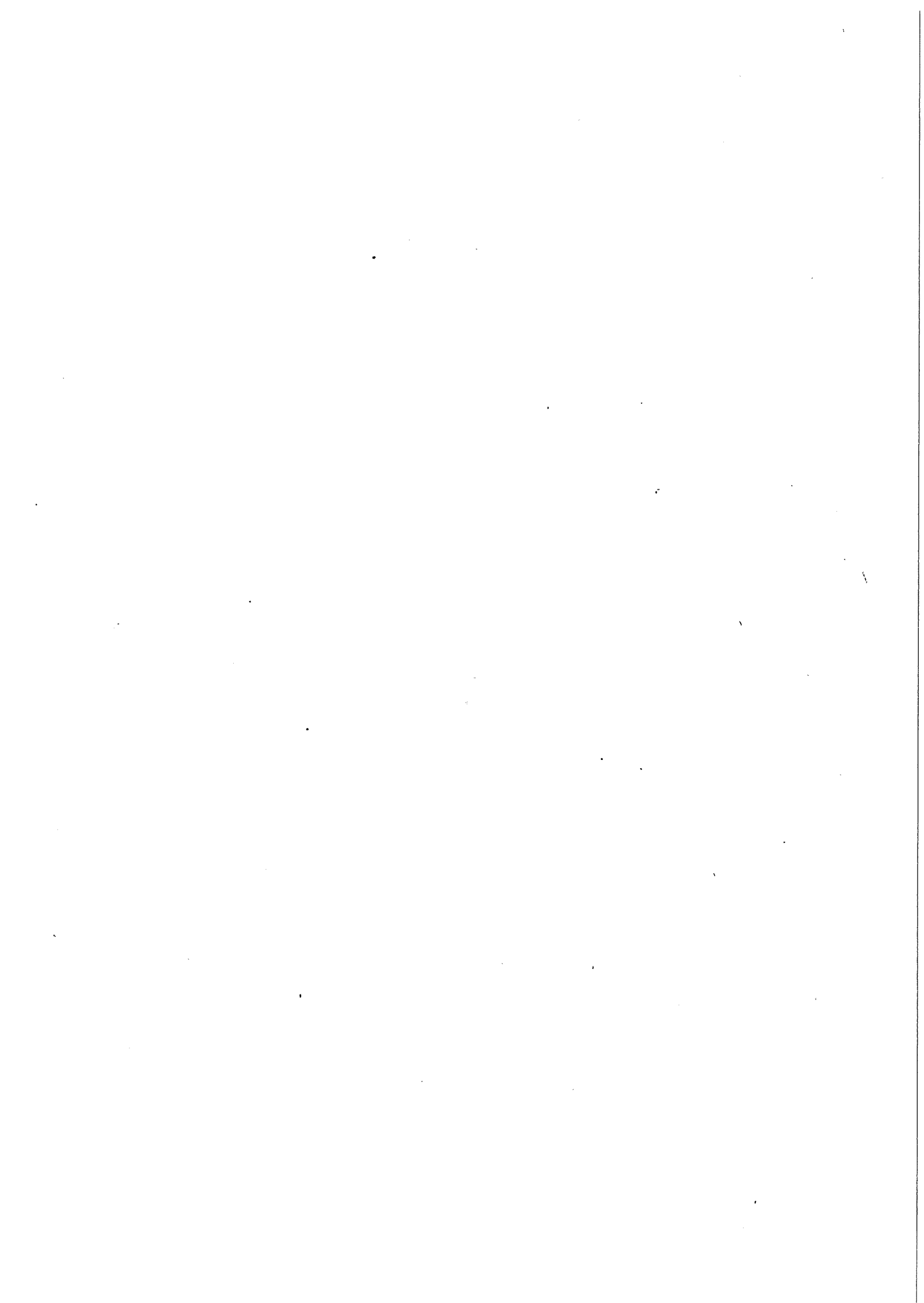
CONCLUSION

The Conference was encouraged by the bi-partisan support for better scrutiny processes for national scheme legislation and by the sympathetic attitude of at least some members of COAG and SCAG. Delegates attending the Conference are optimistic that a workable model for scrutiny of national scheme legislation can be found.



Andrew Whitecross
Deputy Chair

14 December 1995



SCRUTINY COMMITTEES CONFERENCE - ATTENDEES HOBART - 7 AND 8 DECEMBER 1995
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**New South Wales
Regulations Review
Committee**

Greg Hogg - Legal Adviser
Bob Harrison - MP
Doug Sheddon MP - Chairman
Adrian Cruickshank MP
Hon. John Ryan MLC

**Victoria
Scrutiny of Acts and
Regulations Committee**

Helen Mason - Senior Legal Adviser
Victor Perton MP - Chairman

**Western Australia
Joint Standing Committee
on Delegated Legislation**

Jan Paniperis - Committee Clerk
Stewart Kay - Adviser/Research Officer
Hon. Bruce Donaldson MLC - Chairman
Hon. Tom Helm MLC - Deputy Chairman

**Queensland
Committee of Subordinate
Legislation**

Louisa Pink - Research Director
John Sullivan MLA

**ACT
Standing Committee on
Scrutiny of Bills and
Subordinate Legislation**

Beth Irvin - Deputy Secretary
Andrew Whitecross MLA - Deputy Chairman
Professor Douglas Whalan

**Federal - Senate
Senate Scrutiny of Bills
Committee**

Peter Crawford - Secretary
Senator Troeth
Professor Jim Davis

**South Australia
Legislative Review
Committee**

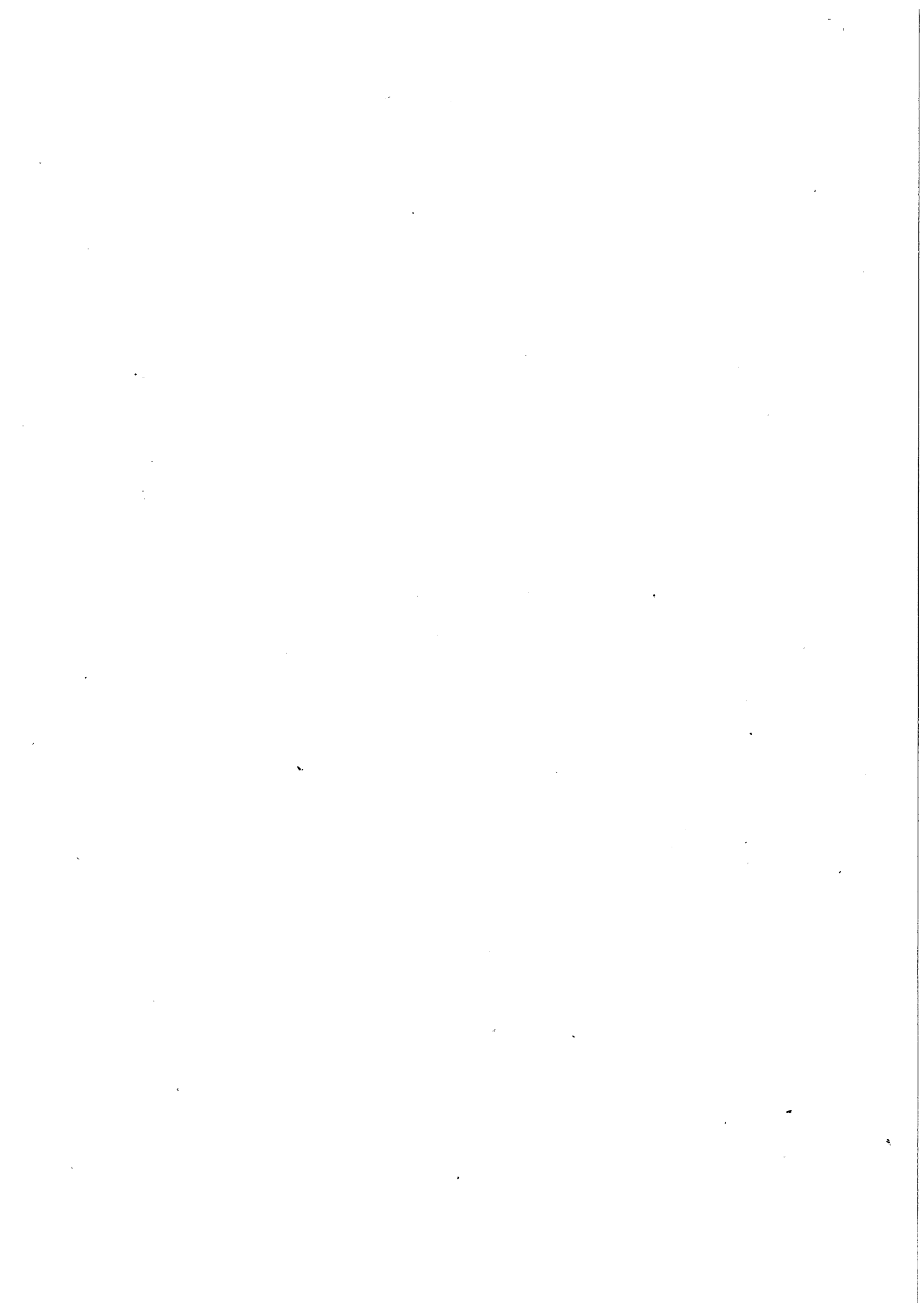
No staff
John Cummins MP

**Tasmania
Joint Standing Committee on
Subordinate Legislation**

Wendy Peddle - Secretary
Tony Benneworth MHA - Chairman

**Western Australia
Standing Committee on
Uniform Legislation and
Intergovernmental Agreements**

Melina Newnan - Legal/Research Officer
Hon. Phillip Pental MLA - Chairman



**CONFERENCE OF CHAIRMEN AND SECRETARIES
OF SCRUTINY COMMITTEES
FRIDAY, 8 DECEMBER 1995
HOUSE OF ASSEMBLY CHAMBER**

AGENDA

- 9.00 a.m. Register
- 9.15 a.m. Opening Address - The Premier of Tasmania,
The Hon. Ray Groom MHA
Topic: Uniform National Legislation
- 9.45 a.m. Draft Discussion Paper
Scrutiny of National Scheme Legislation and the
Desirability of Uniform Principles
(a) Progress Report from each State
(b) Any Feedback?
- 10.45 a.m. Morning Tea
- 11.00 a.m. Draft Discussion Paper (continued)
Where do we go from here?
- 12.30 a.m. Pre-lunch drinks - President's Suite
- 1.00 p.m. Lunch - Strangers Dining Room
- 2.15 p.m. Compensation Clauses
Follow up from Victor Perton's Paper in Darwin
Each State to comment - Resolution from Darwin
Conference refers
- 3.00 p.m. Effect of Prorogation on Committees - Western Australia
- 3.30 p.m. Afternoon Tea
- 3.45 p.m. Scrutiny of Bills Committee Queensland
Update on new Committee
- 4.15 p.m. Finish - Report back to Conference in Adelaide 1997



Gary Humphries MLA

ATTACHMENT 3

Office of the

Attorney General

Minister for the Environment, Land
and Planning

Minister for Police

Minister for Emergency Services

Minister for Arts and Heritage

Minister for Consumer Affairs

Member for Molonglo

Australian Capital Territory

Mr Paul Osborne MLA
Chair
Standing Committee on Scrutiny of
Bills and Subordinate Legislation
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Mr Osborne

Thank you for providing me with an opportunity to comment on the work undertaken by the Working Party of the Chairs of Scrutiny of Legislation Committees, reflected in the discussion paper *Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles*.

As ACT Attorney General and the former Deputy Chair of the ACT Legislative Assembly's Standing Committee on Scrutiny of Bills and Subordinate Legislation (Scrutiny of Bills Committee), it has been a matter of concern to me that, with the increase in the development of national model legislation and the push for uniformity where such legislation is developed, there is some risk that the protections afforded by the scrutiny of legislation process in the ACT could be foregone, in the interests of a uniform approach.

As you are aware, this was a real issue for the ACT recently when it was realised that some of the model provisions of the national Consumer Credit scheme departed from the standards set by our own Scrutiny of Bills Committee in terms of consent to entry provisions.

I am eager to see that a system is put in place which will ensure that the adoption of national model legislation does not necessitate agreeing to lesser protections for individual citizens that those which would be afforded where ACT legislation is scrutinised by the ACT Scrutiny of Bills Committee.

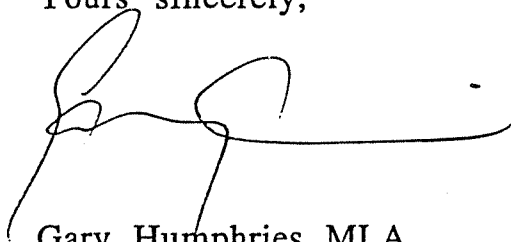
ACT Legislative Assembly,
London Circuit, Canberra ACT 2601
GPO Box 1020, Canberra ACT 2601

Phone (06) 205 0133 Fax (06) 205 0427

To that end, I propose to seek to have this issue considered by the Standing Committee of Attorneys General (SCAG). In particular, I anticipate putting a proposal to SCAG to require that, where national model legislation is developed, the Office of Parliamentary Counsel responsible for the drafting of the legislation will submit the legislation for the scrutiny of either all Scrutiny of Bills Committees or, preferably, a group comprised of representatives of the Scrutiny of Bills Committees of the various jurisdictions.

I would be grateful if you could convey my views on this matter to the Working Party when it next meets (I understand that will be later this week) for its consideration. I would welcome any comments arising out of my suggestion, prior to raising the matter at SCAG.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gary Humphries', with a long horizontal line extending to the right.

Gary Humphries MLA
Attorney General

7 DEC 1995



THE LAW SOCIETY OF THE AUSTRALIAN CAPITAL TERRITORY

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FIRST FLOOR
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CANBERRA A.C.T. 2601

YOUR REF:

OUR REF:

4 December, 1995

Mr Tom Duncan
Secretary
Standing Committee on Scrutiny of Bills
and Subordinate Legislation
ACT Legislative Assembly
PO Box 1020
CANBERRA ACT 2601

Dear Mr Duncan

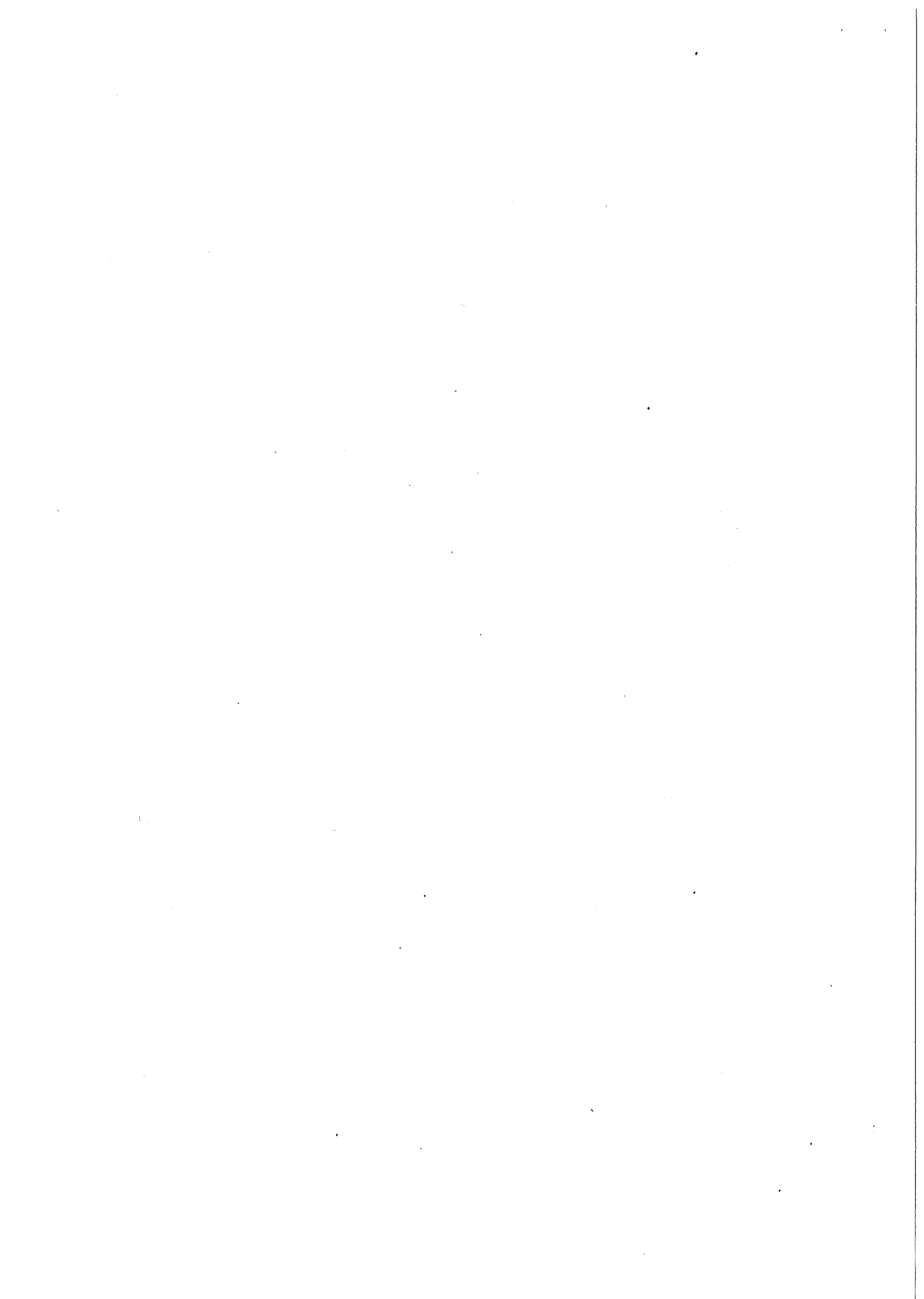
**Scrutiny of National Scheme Legislation and the Desirability of
Uniform Scrutiny Principles Discussion Paper**

I refer to the above report.

I now enclose a submission which has been prepared by the Law Reform & Review Committee of this Society for your consideration.

Yours faithfully

CHRISTINE S HARVEY
EXECUTIVE DIRECTOR



Report by Law Reform and Review Committee

Scrutiny of National Scheme Legislation
and the
Desirability of Uniform Scrutiny Principles

Discussion Paper No 1 - July 1995

Purpose

This paper responds to the Discussion Paper No 1 prepared by the Working Party of Chairs of Scrutiny of Legislation Committees. The covering letter from the Chair of the ACT Standing Committee asked for comment by 30 September, although subsequent contact indicates they will be happy to receive submissions within a reasonable time after that.

Background

The 1993 Australasian and Pacific Conference on the Scrutiny of Bills and Delegated Legislation called for examination of how the scrutiny function could best be carried out on national scheme legislation.

Each state and territory parliament has at least one committee to scrutinise subordinate legislation or legislation generally. The ACT has a Standing Committee for Scrutiny of Bills and Subordinate legislation.

National scheme or uniform legislation is a growth industry, a tendency which, I think, deserves support from the legal profession. National scheme legislative proposals go through COAG (Council of Australian Governments) or ministerial councils like SCAG (Standing Committee of Attorneys-General). There are a range of consultation processes that such proposals go through (not including state and territory parliaments), and, by the time they reach state and territory parliaments, they are more or less set in concrete by inter governmental agreements.

So, as the Discussion Paper suggests, "(p)ractically speaking, it is fair to say that there is effectively no parliamentary scrutiny of national scheme legislation".

Proposals 1 and 2

Each of the state and territory scrutiny committees have their own terms of reference. They vary considerably.

Proposals 1 (subordinate legislation) and 2 (primary legislation) attempt to codify the essential principles behind the multifarious existing terms of reference. In the interests of uniformity and simplicity, we would generally support them.

Proposal 1 states:

"That all Scrutiny Committees adopt the following separate Terms of Reference for the examination of national scheme subordinate legislation.

- *Whether the subordinate legislation is in accordance with the provisions of the Act under which it is made and whether it duplicates, overlaps or conflicts with other regulations or Acts;*
- *Whether the subordinate legislation trespasses unduly on personal rights and liberties;*
- *Whether, having regard to the expected social and economic impact of the subordinate legislation, it has been properly assessed."*

The first two terms of reference correspond closely with those of ACT Standing Committee. They also fit well with the role of such a committee as a non-partisan, technical, quality-controller of subordinate legislation.

However, the third term of reference, as worded may indicate a review of the policy of the subordinate legislation. This would contradict the ACT Standing Committee's stated role as that "(i)t does not make comments on the policy aspects of the legislation". Substituting "sufficiently" for "properly" may clarify that the policy itself is beyond the reach of the scrutiny committee.

Proposal 2 states:

"That all Scrutiny of Bills Committees adopt the following separate Terms of Reference for the examination of national scheme primary legislation.

- *Whether the Bill unduly affects personal rights and liberties;*
- *Whether the Bill inappropriately delegates legislative powers."*

Both these terms of reference correspond closely with those of ACT Standing Committee. They also fit well with the role of such a committee.

Proposal 3

This goes to the heart of the problem of state and territory scrutiny committees missing their opportunity to comment on national scheme legislation. It states:

"Ensure that uniform legislation is tabled as an exposure draft in each Parliament."

Having uniform legislation tabled as an exposure draft in each Parliament before COAG or a ministerial council enters into an inter governmental agreement makes good sense and deserves support.

Conclusion

The Law Reform and Review Committee recommends to the Executive that it respond to the Chair of the Standing Committee on Scrutiny of Bills and Subordinate Legislation along these lines:

- That the third term of reference in Proposal 1 should be clarified to exclude partisan comment on policy.
- That otherwise it supports the proposals made in the Discussion Paper.
- More generally, in the Society's view, scrutiny committees, and particularly the ACT Standing Committee, serve a very useful purpose in vetting legislation. In carrying out its important work, the ACT Standing Committee could make more use of the wide array of relevant expertise among legal practitioners in the Territory.

Prepared by Gary Tamsitt on behalf of the Law Reform and Review Committee
28 September 1995

