

Legislative Assembly for the Australian Capital Territory



**Standing Committee on Justice and
Community Safety**

**(incorporating the duties of a
Scrutiny of Bills and Subordinate
Legislation Committee)**

SCRUTINY REPORT NO. 9 OF 1999

ON THE

**SEVENTH AUSTRALASIAN AND PACIFIC CONFERENCE ON
DELEGATED LEGISLATION AND THE FOURTH
AUSTRALASIAN AND PACIFIC CONFERENCE ON THE
SCRUTINY OF BILLS**

**21-23 JULY 1999
PARLIAMENT HOUSE
SYDNEY, NEW SOUTH WALES**

24 AUGUST 1999

MEMBERS OF THE COMMITTEE

Mr Paul Osborne, MLA (Chair)
Mr John Hargreaves, MLA (Deputy Chair)
Mr Trevor Kaine, MLA
Mr Harold Hird, MLA

Legal Adviser: Mr Peter Bayne
Secretary: Mr Tom Duncan
**Assistant Secretary (Scrutiny of Bills and
Subordinate Legislation): Ms Celia Harsdorf**

Introduction

This is a report on the Committee's attendance at the Seventh Australasian and Pacific Conference on Delegated Legislation and the Fourth Australasian and Pacific Conference on the Scrutiny of Bills. The Conference was held at Parliament House in Sydney, New South Wales, from 21-23 July 1999 and was hosted by the Regulation Review Committee of the Parliament of New South Wales.

The Conference was attended by representatives of scrutiny committees from Australasia, Canada and Italy; the Deputy Speaker of the Parliament of Samoa; OECD representatives; as well as representatives of the various Parliamentary Counsel offices around Australia. The Parliamentary Legal Committee of the Parliament of Zimbabwe, due to unforeseen circumstances, was not able to attend. A list of the Conference attendees is at Attachment 1.

The ACT was represented by Mr John Hargreaves, MLA (Deputy Chair), Mr Harold Hird, MLA and Ms Celia Harsdorf (Assistant Secretary). Mr Peter Bayne also attended in his capacity as Legal Adviser to the Committee.

The Conference was held over 3 days from Wednesday 21 July to Friday, 23 July in the Legislative Assembly Chamber in the New South Wales Parliament.

Resolutions passed

The Conference agreed to the following resolutions on 23 July 1999:

1. That this conference resolves that a report be presented at future conferences of Australian scrutiny committees on the approaches of the Commonwealth, States and Territories in respect of regulatory impact assessment, as compared with international best practice.
2.
 - (a) That this conference establishes a national committee comprised of the chairs of Australian scrutiny of primary and delegated legislation committees for the purposes of reviewing all aspects of proposed national schemes of legislation, including that proposed at this conference by Peter Ryan of Victoria.
 - (b) That the chairs of the Australian scrutiny of primary and delegated legislation committees implement this motion with a view to having the committee not only in place but reporting prior to the next biennial conference.
3. That this conference resolves that Australian scrutiny committees report to the next conference on the desirability of a review model which provides that regulations come into force at the expiry of a specified number of days after tabling, unless the Parliament resolves otherwise.

4. That the question of funding of future conferences be referred to the next conference of Presiding Officers for consideration.

And further, that this conference notes that each jurisdiction will in its turn host a biennial conference, and resolves that the host State will meet the costs associated with hosting that conference.

5. That Hobart, Tasmania, be the venue for the next conference.

The Conference Proceedings

Detailed below is a short description of the conference proceedings. The full conference agenda is attached at Attachment 2. Copies of the conference papers may be inspected by contacting the Committee Secretary (Mr Tom Duncan- telephone 620 50171).

Opening by the Chief Justice of the High Court of Australia

The Chief Justice of the High Court of Australia , the Honourable Murray Gleeson, AC, opened the conference with a welcoming speech to all delegates.

Papers delivered to the Conference

Reports from participating parliamentary committees

Each Committee in the Commonwealth, the States, Territories, and New Zealand gave an account of their operations over the past two years since the last conference. The Deputy Chair of the ACT Committee, Mr John Hargreaves, MLA, gave a report and his speech is at Attachment 3.

Future challenges in regulatory reforms for OECD countries

Mr Scott Jacobs, Head of Programme on Regulatory Reform, Public Management Service, OECD presented a paper considering a medium-term to long-term view of the future challenges for regulatory reform in OECD countries identifying what seem to be key challenges for our governments in facing the issues of regulation.

Assuring regulatory quality – a systematic approach

Mr Rex Deighton-Smith, Administrator, Public Management Service, OECD gave a paper on regulatory quality and regulatory reform. The paper canvassed the elements of regulatory and analytical quality and focused on five elements of system design for high-quality regulation.

Professor Margaret Allars, Faculty of Law, University of Sydney commented on the report by the Public Management Service of the OECD on regulatory impact assessment in New South Wales.

Mr Booth, New South Wales Premiers Department commented on the OECD's quality framework and also addressed the need to have a high-quality regulatory

review and reform process within government as one of the planks on which to get better quality regulation.

Competition policy

The Hon. Kevin Minson MP, Chairman, Standing Committee on Uniform Legislation and Intergovernmental Agreements, Western Australia presented a paper on that Committee's report on competition policy and commented on concerns from various industry sectors in relation to specific industry reforms.

National Scheme Legislation Episode one – The Phantom Menace

Mr Peter Ryan MLA, Chair, Scrutiny of Acts and Regulations Committee, Victoria presented a paper reopening the discussion on a proposed national scrutiny committee structure.

Scrutiny when?

Mr Peter Nagle, MP, Chairman, Regulation Review Committee, New South Wales presented a paper canvassing the "optimal time" at which parliamentary scrutiny of legislation should take place.

Policy and Politics

Dennis Pearce, Emeritus Professor of Law, Centre for International and Public Law, the Australian National University presented a paper considering the various meanings of the word policy. The paper also canvassed the relationship between the judiciary and the executive and Parliament and the judiciary.

Ethics and the Law: A case study of a confusion in the relationship between the two

Dr Bernadette Tobin, Director, Plunkett Centre for Ethics, Sydney gave a paper (by way of a case study) addressing the subject of ethics and the law and the relationship between them.

A critique of criteria and cases: Parliamentary scrutiny of delegated legislation

Professor Margaret Allars, Faculty of Law, University of Sydney, presented a paper aimed at systematically examining the criteria applied by parliamentary committees in Australia in scrutinising delegated legislation. Later the conference held a general discussion on the work of parliamentary committees.

Rounding up the regulators: Time to get delegated legislation under control

The Rt Hon Jonathan Hunt, MP, Chairperson, Regulations Review Committee, New Zealand presented a paper canvassing the Committee's findings of a recent inquiry into instruments deemed to be regulations.

Values and Principles in the scrutiny of legislation

Senator Barney Cooney, Chair, Senate Standing Committee on the Scrutiny of Bills gave a paper concerning the values and principles used by committees in the scrutiny of legislation.

Explanatory material for legislative instruments – the Commonwealth experience

Senator Helen Coonan, Member, Senator Standing Committee on Regulations and Ordinances presented a paper concerning some of the problems which the Committee had experienced with explanatory statements. The paper noted many significant deficiencies in this area and discussed proposals for change to the existing system.

Apples and oranges – A comparison of the work of the various Australian delegated legislation committees

Mr Stephen Argument, Director, Projects and Legal Instruments, Department of Veteran Affairs gave a paper on a comparative assessment of the work of the various delegated legislation committees and presented a scorecard that focused on some of the more important features of the work of the various committees.

John Hargreaves, MLA
Deputy Chair

August 1999