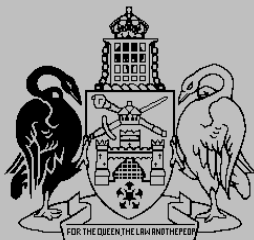


Legislative Assembly for the Australian Capital Territory



Standing Committee on Justice and Community Safety

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

**The electronic version of this report does not contain attachments,
these can be obtained from the committee office**

SCRUTINY REPORT NO. 9 OF 2000

on the

*Third meeting of
Chairs and Deputy Chairs
of Australian Scrutiny
of Primary and Delegated Legislation Committees*

8 May 2000

Parliament House
Brisbane Queensland

27 June 2000

Terms of reference

- (1) A Standing Committee on Justice and Community Safety be appointed (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee).
- (2) The Committee will consider whether:
 - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
 - (i) meet the objectives of the Act under which it is made;
 - (ii) unduly trespass on rights previously established by law;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
 - (b) the explanatory statement meets the technical or stylistic standards expected by the Committee.
 - (c) clauses of bills introduced in the Assembly:
 - (i) do not unduly trespass on personal rights and liberties;
 - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
 - (d) the explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of four members.
- (4) If the Assembly is not sitting when the Committee is ready to report on Bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing and circulation.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) The foregoing provisions of the resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

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
Acting Secretary: Mr Mark McRae
(Scrutiny of Bills and Subordinate
Legislation Committee)
Assistant Secretary: Ms Celia Harsdorf
(Scrutiny of Bills and Subordinate
Legislation Committee)

Role of the Committee

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

0 Introduction

This is a report of the Committee's attendance at the third meeting of Chairs and Deputy Chairs of Australian Scrutiny of Primary and Delegated Legislation Committees. The meeting was held at Parliament House in Brisbane on 8 May 2000 and was hosted by the Queensland Scrutiny of Legislation Committee.

The meeting was attended by representatives of all scrutiny committees from Australian States and Territories. The scrutiny committees of the Australian Senate (which was sitting) were not represented. A list of attendees is at Attachment 1.

The ACT was represented by Mr John Hargreaves MLA (Deputy Chair), Standing Committee on Justice and Community Safety, Mr Peter Bayne, Legal Adviser, and Ms Celia Harsdorf, Assistant Secretary to the Standing Committee on Justice and Community Safety in its role as a Scrutiny of Bills and Subordinate Legislation Committee, were also in attendance.

1 Resolutions agreed to by the meeting

The Conference agreed to the following resolutions on 8 May:

- That the various committees represented at this meeting investigate, both individually and collaboratively, the possibility of modifying the list of categories of National Scheme Legislation which is appended to the 1996 Position Paper, and that the matter be brought on for discussion at the next meeting of this working group.

Further, that the Parliamentary Counsel of the States, Territories and Commonwealth be requested to provide any lists they presently have of primary and secondary legislation falling within the categories of NSL, and be requested to constitute and maintain a register of all future primary and secondary NSL.

- That Mr Doug Kidd, Chair of the New Zealand Regulation Review Committee, be invited to attend the next meeting of this working group as an observer.
- That the Chair of either the Senate Standing Committee for Scrutiny of Bills OR the Senate Standing Committee on Regulations and Ordinances be offered a position of Vice-President of this working group, additional to the current 4 Vice-Presidents drawn from the States and Territories.
- That, subject to discussions with the Chairs of the respective Commonwealth committees, it be left to the executive of this working group to determine the venue and date of the working group's next meeting.

0 The Conference proceedings

Detailed below is a short description of the conference proceedings. The full conference agenda is attached at Attachment 2.

4. Opening by the Speaker of the Queensland Legislative Assembly

The Hon Ray Hollis MLA, Speaker of the Queensland Legislative Assembly opened the meeting and welcomed all participants.

5. Reports from Chairs - Proposed national scheme legislation

Mr Peter Nagle MP (NSW) chaired a discussion of reports from Chairs on exchanges of information, provision of advice re proposed national scheme legislation and preparation of lists of national scheme legislation.

Mrs Linda Lavarch MLA (Queensland) delivered a report on a census of National Scheme Legislation on Queensland's statute books, in the form of both bills and subordinate legislation and tabled a list of National Scheme Legislation in Queensland.

Mr Peter Nagle MP (NSW) tabled a paper entitled *Legislation in Force* prepared by the NSW Parliamentary Counsel's Office, dated 1 April 2000.

6. Reports from relevant Chairs on deputation to Canberra and on current position re ACT Government compliance with *Administrative (Interstate Agreements) Act 1997 (ACT)*

Mr Peter Nagle MP (NSW) chaired a discussion on reports from relevant Chairs on the deputation to Canberra and also on current position re ACT Government compliance with *Administration (Interstate Agreements) Act 1997 (ACT)* (see below).

Mr John Hargreaves MLA (ACT) presented a report on the progress of compliance by the ACT Executive in relation to the *Administration (Interstate Agreements) Act 1997 (ACT)* and this was discussed in general terms. (See Attachment 3).

Mr Peter Bayne (Legal Adviser – ACT) tabled a copy of a Compendium of Commonwealth-State Ministerial Councils as at December 1999. The suggestion that the explanatory memoranda prepared in relation to legislation state whether there are any National Scheme Legislation aspects of the proposed law was also raised.

7. Consideration of possible refinement of NSL categories and adoption of common terminology

Mr Peter Nagle MP (NSW) chaired a discussion on the consideration of possible refinement of NSL categories and the adoption of common terminology.

The Hon. Janelle Saffin MLC (NSW) requested that inquiries be made to ascertain whether the Commonwealth has a list of current National Scheme Legislation categories. Queensland agreed to make these inquiries.

Various delegates proposed that a priority for any future national scrutiny committee would be to define National Scheme Legislation requiring scrutiny and to standardise the definitions of the various National Scheme Legislation categories.

8. National Competition Policy

Mr Bruce McCallum, Director, Economic Performance Division, Queensland Treasury, gave a presentation on scrutiny of legislation for compliance with National Competition Policy Requirements and presented a paper entitled National Competition Policy.

9. Consideration of correspondence from NSW Regulation Review Committee - Future meetings

Mr Peter Nagle MP (NSW) tabled a letter to the Chairman, NSW Regulation Review Committee dated 12 April 2000 from Senators Cooney and Coonan and copies of his letters in response dated 19 April 2000 concerning the scheduling of meetings of the working group and he undertook to speak to Senators Cooney and Coonan in relation to the programming of more convenient meeting dates.

10. Consideration of correspondence from New Zealand Regulations Review Committee and Parliament of Zimbabwe – Fifth Commonwealth Conference on Delegated Legislation

Mr Peter Nagle MP (NSW) tabled a facsimile forwarding a letter from the Clerk of the New Zealand Regulations Review Committee, dated 5 May 2000 and an attached letter addressed to the Clerk of the New Zealand Regulations Review Committee from the Clerk of the Parliament of Zimbabwe, dated 3 May 2000, indicating that the dates for the Fifth Commonwealth Conference on Delegated Legislation to be held in Zimbabwe have been fixed for 23 to 27 October 2000.

11. Further consideration of establishment of a formal national NSL committee

A general discussion took place in relation to matters related to the establishment of a formal national NSL committee, including funding issues.

12. Victorian proposal – Proposed scrutiny of National Scheme Legislation

Ms Mary Gillette MLA (Vic) gave further details of and chaired a discussion on the remodelled Victorian proposal re scrutiny of National Scheme Legislation. During discussions, the importance of the working group endeavouring to develop common scrutiny principles was raised by Mr Bayne (Legal Adviser – ACT).

13. Possible invitation to Ministers, etc to address the meetings

Mr Peter Nagle MP (NSW) advised the Committee he had invited the NSW Attorney-General Jeff Shaw MLC to address the Brisbane meeting, however Mr Shaw had been unable to attend because of another engagement. Discussion ensued on the possibility of an invitation being issued to Ministers, appropriate senior bureaucrats and Parliamentary Council to address future meetings.

14. Eighth Australasian and Pacific Conference on Delegated Legislation and the Fifth Australasian and Pacific Conference on the Scrutiny of Bills – Hobart, Tasmania – February 2001

In relation to the Eighth Australasian and Pacific Conference on Delegated Legislation and the Fifth Australasian and Pacific Conference on the Scrutiny of Bills to be held in Hobart in February 2001, the Hon. John Loone, MLC advised that preparations were proceeding. The Secretary of the Tasmanian Standing Committee on Subordinate Legislation requested that delegates give consideration to possible additional conference topics.

Discussion ensued on a suggestion that a meeting of the Working Group of Chairs and Deputy Chairs of Australian Scrutiny of Primary and Delegated Legislation Committees be held in Tasmania on the day prior to the scheduled Conference.

16. Discussion on venue and time for next meeting

Discussion ensued on the suggestion that the next meeting of the working group be held in Canberra with a view to facilitating attendance by the Chairs and Deputy Chairs of the Senate Standing Committee for Scrutiny of Bills and the Senate Standing Committee on Regulations and Ordinances. Ms Mary Gillette MLA (Vic) and the Hon. Maree Luckins MLA (Vic) indicated they would discuss the matter in the near future with Senators Cooney and Coonan, and that the date of the next meeting may need to be changed.

John Hargreaves, MLA
Deputy Chair

June 2000