

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

**REPORT NO. 12**

**ON THE**

**SIXTH AUSTRALASIAN AND PACIFIC CONFERENCE ON  
DELEGATED LEGISLATION AND THE THIRD AUSTRALASIAN  
AND PACIFIC CONFERENCE ON THE SCRUTINY OF BILLS**

**16-18 JULY 1997  
PARLIAMENT HOUSE  
ADELAIDE, SOUTH AUSTRALIA**

**SEPTEMBER 1997**

## **Introduction**

This is a report on the Committee's attendance at the Sixth Australasian and Pacific Conference on Delegated Legislation and the Third Australasian and Pacific Conference on the Scrutiny of Bills. The Conference was held at Parliament House in Adelaide, South Australia, from 16-18 July 1997 and was hosted by the Legislative Review Committee of the Parliament of South Australia.

The Conference was attended by representatives of most scrutiny committees in Australia, as well as representatives of the various Parliamentary Counsel offices around Australia. A list of conference attendees is at Attachment 1.

The ACT was represented by Mr Bill Wood MLA (Chair), Mr Harold Hird MLA, and Mr Tom Duncan (Secretary). Emeritus Professor Douglas Whalan also attended in his dual capacity as Legal Adviser to our Committee and the Senate Standing Committee on Regulations and Ordinances.

The Conference was held over 3 days from Wednesday 16 July to Friday 18 July in the Chamber of the Legislative Assembly in the South Australian Parliament.

## **Resolutions Passed**

The Conference agreed to the following resolutions on 18 July 1997:

1. That this conference congratulates Professor Pearce and Mr Stephen Argument on revising the major text on delegated legislation in Australia, and invites them to present their book at a future conference of Delegated Legislation Committees.
2. That the Conference express its gratitude to Chief Justice John Doyle for a stimulating and timely address on the role of the judiciary in law making.
3. That this conference notes that among the topics discussed over the past 3 days were:
  - The role of Parliament and of Scrutiny Committees in the protection of rights.
  - The question, What is a right?
  - Party Politics and Human Rights
  - Regulatory reform and the use of Alternative Compliance Mechanisms
  - Recent developments in delegated legislation
  - A report on Scrutiny of redundant Legislation in Victoria
  - The Role of Upper Houses
  - Scrutiny of National Schemes of Legislation

4. The Conference notes the paper presented by Mr Bill Wood, Chairman of the Scrutiny of Bills and Subordinate Legislation Committee, A.C.T on Scrutiny Committee Performance Indicators and recommends that a session be dedicated to further discussion on this topic and regulatory performance indicators at the next conference.
5. That the next conference be held in Sydney.
6. 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 and that the appraisal should also review other relevant scrutiny options.
7. 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.

### **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 Attorney-General of South Australia**

The Attorney-General of South Australia, the Honourable Trevor Griffin, MLC, 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 and Territories gave an account of their operations over the past two years since the last conference. The Chair of the ACT Committee, Mr Bill Wood MLA, gave a report and his speech is at Attachment 3.

#### *Recent developments in Delegated Legislation*

Professor Dennis Pearce and Mr Stephen Argument, co-authors of the forthcoming publication "*Delegated Legislation*", led a discussion on two sample chapters from their book.

#### *Performance Indicators for Scrutiny Committees*

Mr Bill Wood, MLA, Chair of the ACT Scrutiny of Bills and Subordinate Legislation, gave a paper concerning performance indicators for scrutiny committees. In his paper Mr Wood canvassed the recent financial reforms in the Act and examined the possibility and desirability of applying performance indicators to scrutiny committees across Australian Parliaments.

### *Human Rights and Party Politics*

Senator Barney Cooney, Chair of the Senate Standing Committee on the Scrutiny of Bills presented a paper concerning human rights and its treatment (by way of a case study) by the Parliament and the courts. The case study concerned the issue of the legislation dealing with Cambodian Boat People, and how the Scrutiny of Bills Committee dealt with the legislation and the infringement of civil rights that it contained in it.

### *Strengthening Parliament's role to "Right" Policy: A Canadian Perspective*

Dr Janet Hiebert, Assistant Professor of the Department of Political Studies, Queens University, Canada, gave a paper concerning a Bill of rights, judicial review in protecting rights, and an examination of the Australian Senate's role in a particular case study involving human rights for refugees. Later the conference held a general discussion on the question of what is a right.

### *Scrutiny by the Committee of regulations providing for the leasing of Commonwealth airports*

Emeritus Professor Douglas Whalan, AM, Legal Adviser to the Senate Committee on Regulations and Ordinances presented a paper concerning that Committee's consideration of the various airports regulations following the Federal Government's decision to lease airports. The paper demonstrated how the Committee and the Minister dealt with various concerns with some of the regulations.

### *Scrutiny of Redundant Legislation - A Retrospective*

Mr Murray Thompson, MP, Deputy Chair of the Victorian Scrutiny of Acts and Regulations Committee gave a paper on that Committee's recent work on redundant legislation. The paper canvassed some interesting and historically significant legislation which were now no longer required in Victoria.

### *Scrutiny of National Schemes of Legislation - Where to from here?*

Mr Jon Sullivan MLA, Deputy Chair of the Queensland Scrutiny of Legislation Committee led a discussion on various options the conference could take in relation to the work done on the options paper on National Schemes of Legislation. The conference discussed some options and agreed to consider the matter before resolutions were made at the final session of the conference.

### *Address by Chief Justice of South Australia*

Following the second day of the Conference, the South Australian Committee hosted a Conference Dinner at which the Chief Justice of the South Australian Supreme Court, the Honourable John Doyle, gave the after dinner speech.

### *The Future of Upper Houses in Australia*

The Honourable Robert Lawson, QC, MLC, Presiding Member of the South Australian Legislative Review Committee presented a paper concerning the future of upper houses. The paper canvassed recent announcements concerning the Tasmanian Upper House, and covered the history of upper houses in Australia.

*Are we doing ourselves out of a job?*

Mr Peter Ryan MP, Chair of the Victorian Scrutiny of Acts and Regulations Committee presented a paper which posed the question "Are we doing ourselves out of a job?". The paper noted that the Committee was still performing a valuable role, and went on to discuss issues associated with section 85 of the Constitution Act, the Committee's interpretation of what is a right and the latest information concerning national scheme legislation.

*Divining legislative intent*

Mr Jon Sullivan MLA, Deputy Chairman of the Queensland Scrutiny of Legislation Committee gave a paper on the issue of whether Parliaments should direct statutory interpretation by the courts away from a literalist approach and towards a method which would achieve the purpose of Parliament.

*Regulatory Efficiency - The wave after that*

Mr Victor Perton, MP, Chair of the Victorian Law Reform Committee presented a paper on that Committee's work in relation to regulation reform, especially in relation to Victoria. The paper noted recent innovations in regulatory efficiency including Alternative Compliance Mechanisms, Regulatory Impact Statements and Legislative Impact Statements.



Bill Wood, MLA  
Chair

2 September 1997

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

---

**Participants**  
**Australian Parliaments**  
**International Parliaments**  
**Official Observers**  
**listed by**  
**Jurisdiction**

## DELEGATES, AUSTRALIAN PARLIAMENTS

15/07/97

Title	First Name	Last Name	Position	Organization	Jurisdiction
Mrs	Margaret	Lindeman	Administrative Officer	Senate Committee on Scrutiny of Bills	Commonwealth Parliament
Senator	Bernard	Cooney	Chairperson	Senate Committee on Scrutiny of Bills	Commonwealth Parliament
Prof	James	Davis	Legal Adviser	Senate Committee on Scrutiny of Bills	Commonwealth Parliament
Mr	Peter	Crawford	Secretary	Senate Committee on Scrutiny of Bills	Commonwealth Parliament
Mr	David	Creed	Secretary	Senate Committee on Regulations and Ordinances	Commonwealth Parliament
Ms	Janice	Paull	Senior Research Officer	Senate Committee on Regulations and Ordinances	Commonwealth Parliament
Ms	Dianne	Simpson	Administrative Officer	Senate Committee on Regulations and Ordinances	Commonwealth Parliament
Prof	Douglas	Whalan AM	Legal Adviser	Senate Committee on Regulations and Ordinances	Commonwealth Parliament
Mr	Harold	Hird MLA	Member	Committee on Scrutiny of Bills & Subordinate Legislation	Legislative Assembly Australian Capital Territory
Mr	Tom	Duncan	Secretary	Committee on Scrutiny of Bills & Subordinate Legislation	Legislative Assembly Australian Capital Territory
Mr	Bill	Wood MLA	Chair	Committee on Scrutiny of Bills & Subordinate Legislation	Legislative Assembly Australian Capital Territory
Mr	Rick	Setter MLA	Chairman	Subordinate Legislation and Tabled Papers Committee	Legislative Assembly of the Northern Territory
Mr	James	Jefferis	Director	Regulation Review Committee	Parliament of New South Wales
Ms	Jill	Hall MP	Vice Chairman	Regulation Review Committee	Parliament of New South Wales
Mr	Adrian	Cruickshank MP	Member	Regulation Review Committee	Parliament of New South Wales
Mr	Bob	Harrison MP	Member	Regulation Review Committee	Parliament of New South Wales
Mr	Sze Chai (Simon)	Yick	Senior Research Officer	Scrutiny of Legislation Committee	Parliament of Queensland
Mr	Jon	Sullivan MLA	Deputy Chairman	Scrutiny of Legislation Committee	Parliament of Queensland
Mrs	Liz	Cunningham MLA	Member	Scrutiny of Legislation Committee	Parliament of Queensland
Ms	Louisa	Pink	Research Director	Scrutiny of Legislation Committee	Parliament of Queensland
Mr	Paul Thomas	Lucas MLA	Member	Scrutiny of Legislation Committee	Parliament of Queensland
Mr	Peter	Blencowe	Research Officer	Legislative Review Committee	Parliament of South Australia

## DELEGATES, AUSTRALIAN PARLIAMENTS

15/07/97

Title	First Name	Last Name	Position	Organization	Jurisdiction
Ms	Julle	Magnusson	Administration Officer	Legislative Review Committee	Parliament of South Australia
Mr	David	Pegram	Secretary	Legislative Review Committee	Parliament of South Australia
Hon	Paul	Holloway MLC	Member	Legislative Review Committee	Parliament of South Australia
Hon	Robert	Lawson QC MLC	Presiding Member	Legislative Review Committee	Parliament of South Australia
Mr	Steve	Condous MP	Member	Legislative Review Committee	Parliament of South Australia
Mr	John	Cummins MP	Member	Legislative Review Committee	Parliament of South Australia
Mrs	Robyn	Garaghty MP	Member	Legislative Review Committee	Parliament of South Australia
Hon	Paolo	Nocella MLC	Member	Legislative Review Committee	Parliament of South Australia
Hon	John	Loone MLC	Chairman	Standing Committee on Subordinate Legislation	Parliament of Tasmania
Ms	Wendy	Peddie	Secretary	Standing Committee on Subordinate Legislation	Parliament of Tasmania
Hon	Colin	Ratray MLC	Member	Standing Committee on Subordinate Legislation	Parliament of Tasmania
Hon	Judy	Jackson MHA	Member	Standing Committee on Subordinate Legislation	Parliament of Tasmania
Hon	Geoffrey	Squibb MLC	Deputy Chairman	Standing Committee on Subordinate Legislation	Parliament of Tasmania
Ms	Mary	Gillatt MP	Member	Scrutiny of Acts and Regulations Committee	Parliament of Victoria
Hon	Don	Nardella MLC	Member	Scrutiny of Acts and Regulations Committee	Parliament of Victoria
Hon	Peter	Katsambanis MLC	Member	Scrutiny of Acts and Regulations Committee	Parliament of Victoria
Mr	Carlo	Carli MP	Member	Scrutiny of Acts and Regulations Committee	Parliament of Victoria
Mr	Tony	Plowman MP	Member	Scrutiny of Acts and Regulations Committee	Parliament of Victoria
Mr	Murray	Thompson MP	Deputy Chair	Scrutiny of Acts and Regulations Committee	Parliament of Victoria
Mr	Victor	Perton MP	Chairman	Law Reform Committee	Parliament of Victoria
Mr	Bob	Cameron MP	Member	Scrutiny of Acts and Regulations Committee	Parliament of Victoria
Ms	Tanya	Coleman	Legal Officer	Scrutiny of Acts and Regulations Committee	Parliament of Victoria



## DELEGATES, AUSTRALIAN PARLIAMENTS

15/07/97

Title	First Name	Last Name	Position	Organization	Jurisdiction
Ms	Helen	Mason	Secretary	Scrutiny of Acts and Regulations Committee	Parliament of Victoria
Mr	Peter	Ryan MP	Chairman	Scrutiny of Acts and Regulations Committee	Parliament of Victoria
Mr	Douglas	Trapnell	Director of Research	Law Reform Committee	Parliament of Victoria
Mr	Neil	Cole MP	Deputy Chair	Law Reform Committee	Parliament of Victoria
Hon	Barbara Mary	Scott MLC	Member	Committee on Delegated Legislation	Parliament of Western Australia
Hon	Robert Laurence	Wiese MLA	Chairman	Committee on Delegated Legislation	Parliament of Western Australia
Hon	Nicholas	Griffiths MLC	Member	Committee on Delegated Legislation	Parliament of Western Australia
Mr	Daniel	Barron-Sullivan MP	Member	Committee on Uniform Legislation and Intergovernmental Agreements	Parliament of Western Australia
Ms	Jan	Paniparis	Committee Clerk	Committee on Delegated Legislation	Parliament of Western Australia
Hon	Jim	Scott MLC	Member	Committee on Delegated Legislation	Parliament of Western Australia
Mr	Andrew	Mason	Advisory/Research Officer	Committee on Delegated Legislation	Parliament of Western Australia

## DELEGATES, INTERNATIONAL PARLIAMENTS

15/07/97

Title	First Name	Last Name	Position	Organization	Jurisdiction
Ms	Lucinda	Osmond	Clerk	Regulations Review Committee	Parliament of New Zealand
Ms	Debra June	Angus	Legislative Counsel	Regulations Review Committee	Parliament of New Zealand
Mrs	Georgina	te Heuheu MP	Member	Regulations Review Committee	Parliament of New Zealand
Ms	Jill	White MP	Member	Regulations Review Committee	Parliament of New Zealand

## OFFICIAL OBSERVERS

15/07/97

Title	First Name	Last Name	Position	Organization	Jurisdiction
Dr	Janet	Hiebert	Assistant Professor	Queens University	Canada
Prof	Dennis	Pearce	Visiting Fellow	Australian National University	Canberra
Mr	Stephen	Argument	Director, Advisings & Special Projects	Department of Social Security	Canberra
Ms	Sandra	Georges	Legislative Counsel	Office of Legislative Drafting Commonwealth Attorney-General's Office	Commonwealth
Mr	Stephen	Gisz	Legislative Counsel	Office of Legislative Drafting Commonwealth Attorney-General's Office	Commonwealth
Mr	John	Leahy	Principal Legislative Counsel	Office of Legislative Drafting Commonwealth Attorney-General's Office	Commonwealth
Dr	David	Kinley	Legal Specialist	Australian Law Reform Commission	New South Wales
Mr	Colin James	Easterbrook	Assistant Parliamentary Counsel	Parliamentary Counsel's Office	New South Wales
Ms	Marion Anne	Pascoe	Assistant Parliamentary Counsel	Parliamentary Counsel's Office	New South Wales
Ms	Rosemary	Ince	Manager Regulatory Reform	Department of Premier & Cabinet	South Australia
Mr	Jeremy	Clark	Senior Asst. Parliamentary Counsel	Parliamentary Counsel	South Australia
Ms	Shirley	Hall	Asst. Parliamentary Counsel	Parliamentary Counsel	South Australia
Mr	Richard	Dennis	Senior Asst. Parliamentary Counsel	Parliamentary Counsel	South Australia

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

## AGENDA

(All sessions to be held in the House of Assembly Chamber, Parliament House)

### WEDNESDAY 16 JULY 1997

- 8.30 - 9.00      **Registration**      Western entrance Parliament House [*coffee & tea available in House of Assembly Member's Lounge*]
- 9.00      **Welcome & Housekeeping Arrangements** by Hon Robert Lawson MLC
- 9.15      **Official Opening of Conference**  
by the South Australian Attorney-General Hon Trevor Griffin MLC.  
Reply to Opening Address
- 9.30      **Brief Orientation Tour of Parliament House.**
- 10.00      *Formal Morning Tea*      [House of Assembly Lounge, all welcome]
- 10.30      **Morning Session**      **Reports from participating Parliamentary Committees**
- |                              |                 |                   |
|------------------------------|-----------------|-------------------|
| Senate x 2                   | New Zealand     | Western Australia |
| Australian Capital Territory | New South Wales | South Australia   |
| Northern Territory           | Queensland      |                   |
| Tasmania                     | Victoria        |                   |
- Discussion - Resolutions of the Darwin Conference, (If time permits)
- 12.30      *Lunch*      [Member's Dining Room, Parliament House]
- 1.45      *Official Photograph*      [Front Steps of Parliament House]
- 2.00      **Afternoon Session 1**      ***Recent Developments in Delegated Legislation***  
Discussion led by Prof Dennis Pearce & Mr Stephen  
Argument, (co-authors of forthcoming publication  
'Delegated Legislation')  
*Chaired by Ms Jill Hall MP*
- 3.00      *Afternoon Tea*      [House of Assembly Lounge]
- 3.30      **Afternoon Session 2**      ***Scrutiny: What a Performance!***  
***Scrutiny Committees Performance Indicators.***  
Paper by Mr Bill Wood (Chair Scrutiny of Bills  
and Subordinate Legislation Committee, ACT)
- 4.30      *end of session*
- 6.00 - 7.30      **Opening Reception**      [Old Parliament House Chamber]

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

## AGENDA

**THURSDAY 17 JULY 1997**

- |       |  |  |
|-------|--|--|
| 9.00  | Morning Session 1                                      | <p><i>Human Rights and Party Politics.</i><br/>Paper by Senator Barney Cooney, (Chair Senate Scrutiny of Bills Committee)<br/>Chaired by Mr Peter Ryan MP, (Chair, Scrutiny of Acts and Regulations Committee, Victoria)</p>   |
| 10.00 | <i>Morning Tea</i> , [House of Assembly Lounge]        |  |
| 10.30 | Morning Session 2                                      | <p><i>Strengthening Parliament's Role to "Right" Policy: A Canadian Perspective.</i><br/>Paper by Dr J Hiebert, (Assistant Professor, Queens University, Canada)<br/>Chaired by Mr Victor Perton MP, (Chair, Law Reform Committee, Victoria)</p>   |
|       | Morning Session 3                                      | <p><i>What is a Right ?</i><br/>General discussion on Papers given by Senator Cooney and Dr Hiebert. A short discussion paper will be presented by Dr David Kinley, (Australian Law Reform Commission).<br/>Chaired By Hon Paul Holloway MLC, (Legislative Review Committee, SA)</p>                           |
| 12.30 | <i>Lunch</i>   | [Member's Dining Room, Parliament House]   |
| 2.00  | Afternoon Session 1                                    | <p><i>Scrutiny by the Committee of Regulations providing for the Leasing of Commonwealth Airports.</i><br/>Paper by Prof Douglas Whalan AM, Legal Adviser Senate Committee on Regulations and Ordinances.<br/>Chaired by Mr Bill Wood (Chair Scrutiny of Bills and Subordinate Legislation Committee, ACT)</p> |
|       | Afternoon Session 2                                    | <p><i>Scrutiny of Redundant Legislation - A Retrospective</i><br/>Paper by Mr Murray Thompson MP, (Deputy Chair, Scrutiny of Acts &amp; Regulations Committee, Victoria)<br/>Chaired by Hon John Loone MLC, (Chair, Committee on Subordinate Legislation, TAS)</p>   |
| 3.00  | <i>Afternoon Tea</i>                                   | [House of Assembly Lounge]   |
| 3.30  | Afternoon Session 3                                    | <p><i>Scrutiny of National Schemes of Legislation - "Where to from here"?</i><br/>Discussion, Chaired and Introduced by Mr Jon Sullivan MLA (Deputy Chair, Scrutiny of Legislation Committee, Queensland)</p>  |
| 4.30  | <i>end of session</i>                                  |  |
| 7.00  | <i>Pre-dinner drinks followed by Conference Dinner</i> |  |

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

## AGENDA

**FRIDAY 18 JULY 1997**

- |           |                                 |  |
|-----------|---------------------------------|--|
| 9.00      | Morning Session 1               | <p><b><i>The Future of Upper Houses in Australia</i></b><br/>Paper by Hon Robert Lawson QC MLC (Chair, Legislative Review Committee, SA)<br/>Chaired by Mr Adrian Cruickshank MP, (Regulation Review Committee, NSW)</p>   |
| 10.00     | <i>Morning Tea</i>              | [House of Assembly Lounge]   |
| 10.30     | Morning Session 2               | <p><b><i>Are we doing ourselves out of a job?</i></b><br/>Paper by Mr Peter Ryan MP, (Chair, Scrutiny of Acts and Regulations Committee, Victoria)<br/>Chaired By Mr Geoff Squibb MLC, Committee on Subordinate Legislation, TAS)</p>  |
|           | Morning Session 3               | <p><b><i>Divining Legislative Intent.</i></b><br/>Paper by Mr Jon Sullivan MLA, (Deputy Chair, Scrutiny of Legislation Committee, Queensland)<br/>Chaired by Senator Barney Cooney, (Chair Senate Scrutiny of Bills Committee)</p>   |
| 12.30     | <i>Lunch</i>                    | [Member's Dining Room, Parliament House]   |
| 2.00      | Afternoon Session 1             | <p><b><i>Regulatory Efficiency - The Wave After That (sequel to Regulatory Efficiency - The Next Wave).</i></b><br/>Paper by Mr Victor Perton MP, (Chair, Law Reform Committee, Victoria)<br/>Chaired by Mr Rick Setter MLA, Chair, Subordinate Legislation and Tabled Papers Committee, NT)</p> |
| 3.00      | <i>Afternoon Tea</i>            | [House of Assembly Lounge]   |
| 3.30      | Concluding Session              | <p><b>Resolutions of the Conference</b><br/>Chaired by Hon Robert Lawson MLC, (Chair Legislative Review Committee, SA)</p>   |
| 4.30      | <i>end of conference</i>        |  |
| 5.30-7.00 | <i>End of Conference Drinks</i> | [Ayers House, 288 North Terrace]<br>Transport arranged   |

SIXTH AUSTRALIAN AND PACIFIC CONFERENCE ON DELEGATED  
LEGISLATION AND THIRD AUSTRALASIAN AND PACIFIC  
CONFERENCE ON THE SCRUTINY OF BILLS

REPORT FROM THE AUSTRALIAN CAPITAL TERRITORY STANDING  
COMMITTEE ON SCRUTINY OF BILLS AND SUBORDINATE  
LEGISLATION

MR BILL WOOD, MLA  
CHAIR



FELLOW DELEGATES, LADIES AND GENTLEMEN. AS CHAIR OF THE AUSTRALIAN CAPITAL TERRITORY'S STANDING COMMITTEE ON SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION I AM PLEASED TO REPORT ON THE OPERATION OF THE COMMITTEE SINCE THE LAST CONFERENCE WAS HELD IN DARWIN 2 YEARS AGO. BEFORE DOING SO, I WOULD LIKE TO CONGRATULATE THE SOUTH AUSTRALIAN LEGISLATIVE REVIEW COMMITTEE FOR THE ORGANISATION OF THIS CONFERENCE. THE PROGRAM THAT THEY HAVE PREPARED LOOKS TREMENDOUS, AND I AM SURE THAT DELEGATES ATTENDING WILL BENEFIT FROM PARTICIPATING IN THIS CONFERENCE.

I WOULD ALSO LIKE TO INTRODUCE MY FELLOW COMMITTEE MEMBER, MR HAROLD HIRD, AND APOLOGISE FOR THE ABSENCE OF OUR OTHER MEMBER, MR PAUL OSBORNE WHO COULD NOT BE PRESENT THIS WEEK. WE LOOK FORWARD TO MEETING YOU ALL OVER THE NEXT FEW DAYS.

THE COMMITTEE CONTINUES TO BE ASSISTED BY THE LEGISLATIVE ASSEMBLY SECRETARIAT IN THE FORM OF A SECRETARY AND ADMINISTRATIVE SUPPORT. WE CONTINUE TO RECEIVE VALUABLE ASSISTANCE FROM AN INDEPENDENT LEGAL ADVISER. THIS TASK HAS BEEN PERFORMED EXCEPTIONALLY WELL SINCE THE COMMITTEE'S INCEPTION BY PROFESSOR DOUGLAS WHALAN, WHO MANY DELEGATES WILL KNOW.

THE COMMITTEE HAS CONTINUED IN ITS ROLE OF EXAMINING BOTH SUBORDINATE LEGISLATION AND BILLS. THE COMMITTEE PRESENTS AROUND 20 REPORTS EACH YEAR.

IN RELATION TO BILLS, THE WORKLOAD HAS FLUCTUATED FROM WHEN WE FIRST COMMENCED EXAMINING THEM. IN 1990 THE COMMITTEE EXAMINED 88 BILLS. SINCE THEN THE TREND HAS BEEN AS FOLLOWS:

1991	171 BILLS
1992	111 BILLS
1993	128 BILLS
1994	110 BILLS
1995	80 BILLS
1996	101 BILLS

IN RELATION TO SUBORDINATE LEGISLATION THE COMMITTEE'S WORKLOAD CONTINUES TO INCREASE EACH YEAR. IN 1990, THE COMMITTEE'S FIRST FULL YEAR OF OPERATION, WE EXAMINED 84 PIECES OF SUBORDINATE LEGISLATION. THIS HAS INCREASED



MARKEDLY SINCE THEN AS THE FOLLOWING STATISTICS DEMONSTRATE:

1991	175
1992	251
1993	224
1994	237
1995	242
1996	326

A RECENT DEVELOPMENT SINCE THE LAST CONFERENCE HAS BEEN THE CONSIDERATION BY THE COMMITTEE OF STATUTORY APPOINTMENTS. UNDER THE *STATUTORY APPOINTMENTS ACT 1994* THERE IS A REQUIREMENT FOR A MINISTER TO CONSULT WITH A RELEVANT STANDING COMMITTEE CONCERNING A STATUTORY APPOINTMENT, AND THAT, ONCE CONSULTATION IS COMPLETED, THE INSTRUMENT BECOMES DISALLOWABLE UPON GAZETTAL AND IS THEN CONSIDERED BY OUR COMMITTEE.

AS AN ASIDE, THIS ACT IS A SIGNIFICANT ONE FOR THE PARLIAMENT WHICH, AS FAR AS I AM AWARE, NO OTHER PARLIAMENT IN THE AUSTRALASIAN REGION HAS. IT PUTS A LIMITATION ON WHO THE EXECUTIVE CAN APPOINT AND ALLOWS THE PARLIAMENT TO SCRUTINISE SUCH ACTIONS.

DURING THE PAST 2 YEARS THE COMMITTEE HAS EXAMINED A NUMBER OF THESE APPOINTMENTS AND, UNFORTUNATELY, A NUMBER OF CONSISTENT PROBLEMS HAVE EMERGED. THESE HAVE CENTRED AROUND THE ISSUE OF THE MINISTERS APPOINTMENT

TAKING EFFECT FROM PRIOR TO THE DATE THE INSTRUMENT WAS NOTIFIED IN THE GAZETTE. THIS HAS MEANT THAT, IN SOME CASES, APPOINTEES HAVE BEEN PAID AND MAKING IMPORTANT DECISIONS WHEN THEY HAVEN'T BEEN VALIDLY APPOINTED.

ANOTHER MAJOR ISSUE THAT WAS DEALT WITH BY THE COMMITTEE WAS IN RELATION TO RETROSPECTIVITY FOR DETERMINATION OF FEES. LATE IN NOVEMBER 1996 THE COMMITTEE QUERIED THE RETROSPECTIVITY OF A DETERMINATION OF FEES AND CHARGES FOR A.C.T HOSPITALS WHICH HAD BEEN PREVIOUSLY MADE UNDER AN ACT WHICH NO LONGER EXISTED. IN PARTICULAR THE COMMITTEE RESPECTFULLY SUGGESTED THAT THE VALIDITY OF THE DETERMINATION BE RECONSIDERED, AS THE *SUBORDINATE LAWS ACT 1989* EXPRESSLY PROVIDES THAT:

7. A SUBORDINATE LAW SHALL NOT BE EXPRESSED TO TAKE EFFECT FROM A DATE OF ITS NOTIFICATION IN THE *GAZETTE* WHERE, IF THE LAW SO TOOK EFFECT -
  - (a) THE RIGHTS OF A PERSON ... EXISTING AT THE DATE OF NOTIFICATION WOULD BE AFFECTED IN A MANNER PREJUDICIAL TO THAT PERSON; OR
  - (b) ANY LIABILITIES WOULD BE IMPOSED ON A PERSON ... IN RESPECT OF ANY ACT OR OMISSION BEFORE THE DATE OF NOTIFICATION:

AND WHERE ANY SUBORDINATE LAW CONTAINS A PROVISION IN CONTRAVENTION OF THIS SUBSECTION, THAT PROVISION IS VOID AND OF NO EFFECT.

IN ITS REPORT ON THE MATTER THE COMMITTEE NOTED THAT THE INTENT OF THE RELEVANT LEGISLATION WAS THAT SUBORDINATE LAWS SHOULD NOT BE MADE RETROSPECTIVE IF THEY ARE PREJUDICIAL TO PERSONS, AND THE DETERMINATION OF FEES WAS THEREFORE POSSIBLY INVALID.

IN RESPONSE TO THE COMMITTEE'S CONCERNS THE GOVERNMENT SOUGHT ADVICE FROM THE GOVERNMENT SOLICITOR'S OFFICE, WHICH DULY ADVISED THE GOVERNMENT (WHO ACCEPTED THE ADVICE) THAT THE DETERMINATION WAS NOT INVALID. THE REASON FOR THIS WAS THAT THE GOVERNMENT CONSIDERED THAT THE INSTRUMENT CONCERNED WAS AN ADMINISTRATIVE INSTRUMENT NOT A LEGISLATIVE INSTRUMENT, AND WAS THEREFORE NOT SUBJECT TO THE RESTRICTIONS SET OUT IN THE SUBORDINATE LEGISLATION ACT. THE OPINION OF THE GOVERNMENT SOLICITORS OFFICE CONCLUDED THAT THE DETERMINATION WAS NOT INVALIDATED BY THE RETROSPECTIVE NATURE OF ITS OPERATION.

ALTHOUGH THE COMMITTEE AND THE GOVERNMENT APPEARED TO BE AT LOGGERHEADS, A SOLUTION APPEARS TO HAVE BEEN REACHED WITH THE INTRODUCTION EARLY THIS YEAR OF A PRIVATE

MEMBERS' BILL WHICH WILL AUTHORISE THE RETROSPECTIVITY OF THE DETERMINATION. WHEN THE BILL WAS BROUGHT ON FOR DEBATE IN THE RECENT JUNE SITTINGS THE GOVERNMENT PROPOSED A NUMBER OF AMENDMENTS WHICH, IF ENACTED, WOULD VALIDATE A RANGE OF OTHER FEES WHERE IT APPEARED THERE WAS SOME DOUBT AS TO THEIR VALIDITY.

FROM THE COMMITTEE'S VIEWPOINT IT IS A SIGNIFICANT DEVELOPMENT, BECAUSE, IF THE BILL AND THE GOVERNMENT AMENDMENTS ARE PASSED, IT WILL HAVE RATIFIED THE COMMITTEE'S INITIAL VIEWPOINT, NAMELY, THAT THERE HAS ALWAYS BEEN A COMMON RESTRICTION ON THE MAKING OF DELEGATED LEGISLATION AND THAT IS, TO PROTECT CITIZENS, THE EXECUTIVE DOES NOT HAVE THE POWER TO MAKE DELEGATED LEGISLATION THAT IMPOSES LIABILITIES RETROSPECTIVELY ON INDIVIDUALS. AS THE COMMITTEE STATED IN ITS REPORT:

"BENEFITS CAN BE CONFERRED RETROSPECTIVELY BY DELEGATED LEGISLATION, BUT NOT BURDENS. IF THE EXECUTIVE WISHES TO IMPOSE BURDENS RETROSPECTIVELY, THAT MUST BE DONE BY THE PARLIAMENT ITSELF AND BE SUBJECT TO PARLIAMENTARY SCRUTINY, DEBATE AND PUBLICITY"

IN CONCLUSION, CAN I SAY THAT AS NEWLY APPOINTED MEMBERS TO THIS COMMITTEE WE LOOK FORWARD TO LEARNING ABOUT HOW OUR COMMONWEALTH, STATE AND TERRITORY COUNTERPARTS OPERATE, AS WELL AS DISCUSSING MATTERS OF MUTUAL INTEREST OVER THE REST OF THE CONFERENCE.

