

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. 16 OF 2000

on the

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

10 November 2000

**Parliament House
Melbourne Victoria**

5 December 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.

1. Introduction

On 10 November 2000 the Deputy Chair of the Standing Committee on Justice and Community Safety (Mr John Hargreaves MLA) attended the fourth meeting of Chairs and Deputy Chairs of Australian Scrutiny of Primary and Delegated Legislation Committees. The Deputy Chair was accompanied by the Committee's Acting Secretary and Legal Adviser (when undertaking its role as the Scrutiny of Bills and Subordinate Legislation Committee).

Permission having been granted by the President of the Victorian Legislative Council, the Honourable Bruce Chamberlain MLC, the meeting was held in the Chamber of the Legislative Council of the Parliament of Victoria. At the commencement of the meeting, delegates were welcomed by the Deputy President of the Legislative Council, the Honourable Barry Bishop MLC.

The meeting was attended by representatives of all scrutiny committees of the Australian States and Territories. A list of those attending is included in the draft minutes of the meeting at Appendix 2 to this report.

2. The meeting

- Mr Peter Nagle MLA (NSW) chaired the meeting. The program for the meeting, including the agenda, is at Appendix 1 to this report.
- The meeting focussed on the proposed establishment of a Scrutiny of National Schemes of Legislation Committee and was dominated by the consideration of a draft Bill for the establishment of such a committee as presented by Ms Mary Gillett MLA (Victoria). At the commencement of the meeting Mr Peter Ryan MLA, the former Chair of the Victorian Scrutiny of Acts and Regulations Committee addressed the meeting and spoke of the benefits to be gained through the establishment of a national committee for the scrutiny of national schemes legislation.
- Time did not permit discussion of the reports of Chairs and Deputy Chairs, nor did it permit the discussion of the agenda item "Reviewable Legislative Instruments – How do we prevent a Parliamentary scrutiny by pass?"

3. The proposed national scrutiny committee

As indicated above, Mr Peter Ryan MLA (Victoria), addressed the meeting at its commencement on the need to establish a national committee for the scrutiny of national schemes legislation. Mr Ryan spoke strongly on the need for such a committee, warning of the risk of the risk of ad hoc outcomes and structure to the legislation and the importance of the role of scrutiny committees. He did warn that to advance the Bill where some of the participating jurisdictions don't have scrutiny committees with the full scrutiny role could be a fatal chink in the armour.

In presenting the draft Bill to provide for the scrutiny of national schemes of legislation Ms Mary Gillette spoke to the draft Bill. In her comments Ms Gillett referred to the danger that national scheme legislation can infringe on the legislative integrity of each legislature with governments claiming that particular bills were locked in as part of intergovernment agreements [and therefore non amendable]. The proposal she outlined aimed to ensure that sound scrutiny principles are taken into account by each jurisdiction when considering such legislation and was as follows:

- a Bill to implement national scheme legislation (ie legislation developed pursuant to or arising out of intergovernment agreement which is proposed to be uniform or substantially uniform and enacted in each jurisdiction) is introduced in the first (primary) jurisdiction and identified as national scheme legislation (“NSL”);
- once it is read a second time (in our jurisdiction this would be once the debate is adjourned on the question “That this Bill be agreed to in principle” following its introduction) the Bill is automatically referred to the proposed national committee (established by statute and with membership consisting of 2 representatives from each jurisdiction);
- the national committee (with terms of reference based on the Senate practice and very similar to those of this committee) considers the Bill and agrees on a report;
- the national committee may also correspond with the Minister sponsoring the Bill and responses may be published in a follow up report; and
- as the Bill is introduced in other jurisdictions the national committee’s relevant alert digest would be tabled in the respective legislatures and would represent the committee’s comments on the Bill.

The benefits of the proposal as summarised by Ms Gillett were:

- all participating jurisdictions could influence the content of national scheme legislation based on good scrutiny principles prior to the relevant Bill’s enactment;
- scrutiny would occur concurrently and contemporaneously rather than the same Bill being scrutinised in each jurisdiction at different points using different scrutiny criteria; and
- the principles of scrutiny would be observed within each participating jurisdiction.

During proceedings at the meeting a range of issues were discussed and the issues discussed are reflected in the draft minutes at Appendix 2.

The proposal is ambitious and radical. There are many legal, practical and parliamentary issues still to be fully addressed before the proposal is finalised and discussion at the meeting focussed on many of these. It is proposed that consideration of the draft Bill will continue at the next meeting of Chairs and Deputy Chairs in Hobart in February.

John Hargreaves
Deputy Chair

December 2000.

Appendix 1

Appendix 2