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SUBORDINATE LEGISLATION

AND

TABLED PAPERS COMMITTEE

FIRST ANNUAL REPORT

1 JULY 1991 - 30 JUNE 1992

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MEMBERS OF THE COMMITTEE

The Membership of the Committee during the year was as follows:

1 July 1991 to 21 November 1991

Mr R A Setter, MLA (Chairman)

Mr M J Palmer, MLA

Mr E H Poole, MLA

Mr T E Smith, MLA

Mr S J Stirling, MLA

25 February 1992 to 30 June 1992

Mr R A Setter, MLA (Chairman)

Mr M J Palmer, MLA

Mr K A Parish, MLA

Mr E H Poole, MLA

Mr S J Stirling, MLA

Secretary: Mrs H M Allmich

TERMS OF REFERENCE OF THE COMMITTEE

The Committee is established under Standing Order 21:-

- (1) A Standing Committee on Subordinate Legislation and Tabled Papers to consist of 5 Members shall be appointed at the commencement of each Assembly. The committee shall examine and report upon all papers which are required by statute to be laid upon the Table.
- (2) The committee shall, with respect to any instrument of a legislative or administrative character which the Legislative Assembly may disallow or disapprove, consider -
 - (a) whether the instrument is in accordance with the general objects of the law pursuant to which it is made;
 - (b) whether the instrument trespasses unduly on personal rights or liberties;
 - (c) whether the instrument unduly makes rights and liberties of citizens dependent upon administrative and not upon judicial decisions;
 - (d) whether the instrument contains matter which in the opinion of the committee should properly be dealt with in an Act;
 - (e) whether the instrument appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made;
 - (f) whether there appears to have been unjustifiable delay in the publication or laying of the instrument before the Assembly; and
 - (g) whether for any special reason the form or purport of the instrument calls for elucidation.

- (3) The committee, if it is of the opinion that an instrument ought to be disallowed or disapproved -
- (a) shall report that opinion and the ground thereof to the Assembly before the end of the period during which any notice of motion for the disallowance of that instrument may be given to the Assembly ; and
 - (b) if the Assembly is not sitting, may refer its opinion and the grounds thereof to the authority by which the instrument was made.

For the purposes of these Standing Orders, "instrument of a legislative or administrative character" has the same meaning as that defined in the Interpretation Act.

- (4) The committee, if it is of the opinion that any matter relating to any paper which is laid upon the Table of the Assembly should be brought to the notice of the Assembly, may report that opinion and matter to the Assembly.
- (5) The committee shall have power to send for persons, papers and records, to sit during any adjournment and to adjourn from place to place.

Note: "instrument of a legislative or administrative character" includes written regulations, rules, by-laws, orders, determinations, proclamations, awards, documents and authorities made, granted or issued under a power conferred by an Act.

ROLE OF THE COMMITTEE

The Committee examines each instrument of a legislative or administrative nature, such as regulations and by-laws, and recommendations under section 103(3) of the Crown Lands Act to determine whether it is in accordance with its enabling legislation. The Committee also has a role in determining whether subordinate legislation or an administrative instrument trespasses unduly on personal rights and liberties. The Committee examines and reports where necessary on all papers presented to the Legislative Assembly.

MEETINGS OF THE COMMITTEE

The Committee met seven times during the year 1991/92 and presented five progress reports to the Assembly.

ISSUES

The Committee considered the following issues during the year -

Independent Legal Advisers

The Committee, as reported in the Department of the Legislative Assembly's Annual Report for 1990/91, investigated the use of independent legal advisers by other delegated legislation committees in Australia.

As a result of this research, it was found that all other Committees of a similar nature either have a legally qualified research officer, a legal adviser and/or recourse to a legal officer where necessary. The legal officer is either from the Crown Solicitor's Office or a private legal practitioner.

Subsequently, the Committee made an approach to the Attorney-General with a view to obtaining the services of a lawyer from the Department of Law to assist the Committee where necessary however the Attorney-General was unable to accede to the request.

The Committee continues to scrutinise subordinate legislation without recourse to professional advice.

The Report on the Use of Independent Legal Advisers by Delegated Legislation Committees was tabled at the Committee's meeting on 13 August 1991.

Explanatory Memoranda

At the meeting held on 1 October 1991, the subject of explanatory memoranda accompanying subordinate legislation was discussed.

The main concern expressed by Members was that memoranda forwarded to the Committee varied considerably in format and quality of information provided. It was postulated that Members would benefit greatly by the establishment of guidelines to be issued to departments when submitting Regulations etc to Parliament.

These guidelines would detail the type of information required by Members. Presently, explanatory memoranda provided to the Committee are, in general, extremely brief and frequently restate information contained in the regulations which of itself explains little and does not expand on the need, cost or purpose for such legislation.

After discussion, the Committee resolved that inquiries be made of other delegated legislation committees interstate to enable the Committee to formulate its own guidelines for explanatory memoranda.

The purpose of explanatory memoranda can be summed up as follows:-

- " The purpose for explanatory statements to accompany delegated legislation is to ensure that both the Committee and other parliamentarians have available an adequate, plain English, explanation of
- (i) the authority for what is a subordinate but also legislative instrument;
 - (ii) the reasons for making the instrument;
 - (iii) its likely impact and effect; and
 - (iv) any unusual aspects of the matter calling for special comment - for example retrospective effects, prior consultations, and other particular legal or practical issues which the drafter of the notices had to take into account."

(Eighty-Fifth Report of the Senate Standing Committee on Regulations and Ordinances, June 1989, page 15).

The Committee agrees with the above sentiments.

From the information received it was obvious that other committees shared similar concerns regarding the paucity of information provided and some committees had in fact made recommendations to their respective parliaments for specific requirements for information required in explanatory documents attached to subordinate legislation.

The Committee has made an approach to the Chief Minister with a view to upgrading the standard of information provided to the Committee which will make the task of the Committee a more informed one.

The Information Paper on Explanatory Memoranda was tabled at a Committee meeting held on 25 February 1992.

Tabling of Annual Reports

The Committee continued to monitor the tabling of Annual Reports by Departments and Statutory Authorities to ensure the legislative requirements were being adhered to. There has been a mixed response to this scrutiny, but the Committee is hopeful of achieving further and continued improvement in the timely tabling of annual reports.

It was resolved that where legislation provided for reports to be tabled "as soon as practicable" the Committee determined that six months from the close of the operational year was sufficient time in which to prepare and present an Annual Report to Parliament.

The Committee wrote to all Ministers advising them of this resolution and sought their co-operation in having Annual Reports tabled accordingly.

The Chairman made a statement to the Assembly on this subject on Thursday 15 August 1991 (Pages 1514 - 1515 of the Parliamentary Record refers).

During the year the Committee scrutinised 92 Annual Reports.

The Committee raised specific concerns regarding the following Annual Reports -

Territory Insurance Office, 1990-91; and
Publications and Films Review Board 1990 and 1991.

The matter of the Territory Insurance Office Report was resolved and the Committee is awaiting further information regarding the Publications and Films Review Board Reports.

Regulations and By-laws

The Committee scrutinised 94 Regulations and 4 By-laws during this reporting period.

Of the 94 Regulations scrutinised additional information and advice was sought on the following regulations -

Regulations 1990, No 53, Amendments of Supreme Court Regulations;
Regulations 1990, No 64, Amendment of the Records of Depositions Regulations;
Regulations 1991, No 4, Amendments of the Brands Regulations;
Regulations 1991, No 12, Amendment of the Greyhound Racing Rules;
Regulations 1991, No 13, Darwin (Private Swimming Pool) Amendment (No.2) By-laws;
Regulations 1991, No 57, Amendment of the Planning Regulations; and
Regulations 1991, No 63, Registration Regulations.

The Committee wrote to the relevant Ministers and all matters were satisfactorily resolved except for Regulations 1991, No 57 and 63 to which the Committee is awaiting additional information and advice from the Ministers concerned.

The Committee wishes to acknowledge the co-operation of all Ministers and their Departmental staff for the prompt assistance in attending to requests for additional information and advice requested by the Committee.

Other Instruments

The Committee also examined the following instruments required by Standing Order 21 to be tabled -

Recommendations under Section 103 of the Crown Lands Act - 3 Papers;
Agreements and Determinations - 13 Papers;
Community Government Schemes - 2 Papers;
Plans of Management - 12 Papers;
Financial Administration and Audit Act - 4 Papers;
Casino and Licensing and Control Act - 1 Paper.

The Committee sought further information and advice regarding the following paper -

Partial Revocation of Reserve No. 1677, Casuarina Coastal Reserve.

The matter was satisfactorily resolved.

OTHER ACTIVITIES OF THE COMMITTEE

Ten Years of Scrutiny Seminar

The Committee was pleased to receive an invitation from Senator Barney Cooney, Chairman of the Senate Standing Committee for the Scrutiny of Bills to attend a Seminar to celebrate the Tenth Anniversary of the Committee on 19 November 1991.

The Chairman, accompanied by the Secretary, attended the Seminar on 25 November 1991 at Parliament House, Canberra. The seminar was opened by Senator the Hon Kerry Sibraa, President of the Senate and Senator the Hon Michael Tate delivered the opening address.

The First Session - " The operation of the Senate Standing Committee for the Scrutiny of Bills: 1981-1991" was chaired by Miss Anne Lynch, Deputy Clerk of the Senate and Senator Barney Cooney delivered the Paper. The guest commentators were Mr Fred Chaney, MP and Mr Michael Sassella, Principal Adviser, Legal Services Group, Department of Social Security.

Senator Amanda Vanstone delivered a Paper entitled " The five principles: The Committee's terms of reference" and the session was chaired by Emeritus Professor Douglas Whalan. Mr Ian Turnbull QC joined Senators Cooney, Rosemary Crowley, Ian MacDonald, Nick Sherry and Professor Jim Davis in the Panel Discussion.

The Clerk of the Senate, Mr Harry Evans, chaired the Third Session and Dr John Uhr, Lecturer in the Public Policy Program at the Australian National University delivered a Paper entitled " Future directions: Scrutiny of Bills in the 90's and beyond". The commentators were Senators Crowley and Robert Hill.

Senator Cooney delivered the closing address and thanked all who participated.

The Seminar presented a chance to meet with members of other scrutiny committees and also to renew contact with people met at the Delegated Legislation Conferences in Canberra and Perth.