REGULATION REVIEW COMMITTEE

FIFTH REPORT TO PARLIAMENT ON REGULATIONS

Contents

Inclusion to Report

11. **Description of Regulations**

In August the Regulation Review Committee wrote to the Parliamentary Counsel requesting that he give consideration to making the titles to regulations more descriptive of their contents. Often the title of a regulation only stated the Act under which it was made and gave no indication of the matters being regulated eg Motor Traffic Act 1909 - Regulation. The Committee felt that a more explanatory title would give members of the public and members of Parliament examining lists of regulations made or tabled a quick and convenient reference guide to the contents of regulations.[1]

In December the Parliamentary Counsel advised the Committee that, with the concurrence of the Attorney General, a short general description would be included in each regulation passing through his office from January 1989. The general description is in addition to the Explanatory Note introduced in 1988 on the Committee's recommendation.

The general description appears in the gazetted regulation under the heading to the Act and it is usually limited to a single line, for example:-

Prisons Act 1952 - Regulation.
(Relating to Medical records)

National Parks and Wildlife Act 1974 - Regulation
(Relating to fees).

Public Finance and Audit Act 1983 - Regulation
(Relating to the Conservatorium of Music).

The Committee welcomes the action taken by the Parliamentary Counsel on this matter.

[1]Regulation Review Committee, Second Report to Parliament, 25 August 1988, p. 16.

REGULATION REVIEW COMMITTEE

MEMBERS

Mr A.J. Cruickshank, M.P. (Chairman)
Mr G.A. Yeomans, B.A., Dip.Ed. M.P. (Vice-Chairman)
Mr R.F. Chappell, M.P.
Mr R.W.J. Christie, M.P.
The Hon. R.D. Dyer, M.L.C.
Mr J.R. Face, M.P.
Mr J.A. Longley, B.Ec., M.Ec., A.A.S.A. (Senior), S.P.T.C., M.P.
The Hon. S.B. Mutch, M.A., LL.B., M.L.C.

STAFF

Mr J.B. Jefferis, B.A. LL.B., Clerk
Mr G.S. Hogg, Dip.Law (B.A.B), Dip.Crim., Legal Officer
Ms L.C. Phillips, B.Ec (Hons), Project Officer/Specialist
Mr A. Larcos, B.H.A., Research Officer
Mrs C. Sciara, Stenographer

REPORT

The Regulation Review Committee was established under the Regulation Review Act 1987. A principal function of it is to consider all regulations while they are subject to disallowance by Parliament.

In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following:-

(a) that the regulation trespasses unduly on personal rights and liberties;

(b) that the regulation may have an adverse impact on the business community;

(c) that the regulation may not have been within the general objects of the legislation under which it was made;

(d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;

(e) that the objective of the regulation could have been achieved by alternative and more effective means;

(f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act; or

(g) that the form or intention of the regulation calls for elucidation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable.

1. **Local Government Act 1919 - Ordinance amending Ordinance No. 5.**

Published in Government Gazette No. 52 of 11 March 1989.

This regulation amended Ordinance No. 5 concerning Rates and Valuations to prescribe the procedures to be used by certain pensioners and beneficiaries to obtain rate reductions allowed under section 160AA of the Act. Clause 28G of the Ordinance allowed officers to verify a person's eligibility for rate reduction through the Client Information Service of the Commonwealth Department's of Social Security and Veteran's Affairs or by "such other means of verification ... as the Secretary of the Department of Local Government may determine from time to time." {Clause 28G(b)}.

The Regulation Review Committee considered that the unlimited discretion granted to the Secretary by Clause 28G(b) could lead to unwarranted invasions into the privacy of applicants for rate reductions and that methods of verifying the financial status of pensioners and beneficiaries should not be used without their prior consent. In its Second Report to Parliament, the Committee recommended that the Minister for Local Government reconsider the necessity for Clause 28G(b) of the regulation as it seemed to trespass unduly on personal rights and liberties.[1]

Mr Hay advised the Committee on 13 January that the Governor had approved of various amendments to Ordinance No. 5, including the deletion of Clause 28G(b) of the Ordinance. A notice giving effect to these amendments was published in Government Gazette No. 183 on 16 December, 1988.

All correspondence on this issue appears in **Appendix 1.**

[1]Regulation Review Committee, Second Report to Parliament, 25 August 1988, p. 7.

2. **Occupational Health and Safety Act 1983 - Occupational Health and Safety (Inspectors' Notices) Regulation. Published in Government Gazette No. 56 of 18 March 1988.** This regulation gives inspectors of the Department of Industrial Relations and Employment powers under the Occupational Health and Safety Act 1983 to issue improvement notices and prohibition notices. Improvement notices may be issued by inspectors to persons contravening any provision of the Act or regulation and require the person to remedy the contravention before the date specified in the notice (a minimum of 7 days after issue). Prohibition notices may be issued where the inspector believes that there is an "immediate risk to the health or safety of any person" and has the effect of prohibiting the activity until the risk is remedied.

Given the significant powers of the inspectors, the Committee believes that they should be obliged to carry and produce official photographic identity cards to avoid any possibility of imposters gaining access to business premises and disrupting production.

To ensure that the regulation would not trespass unduly on personal rights and liberties or have an adverse effect on the business community, the Committee resolved to recommend to the Minister for Industrial Relations and Employment that the regulation be amended to provide that inspectors must carry official photographic identification when exercising their powers under the Act. The Committee wrote to the Minister in these terms on 18 October 1988.

Mr Fahey replied on 1 December 1988 advising that the Department is developing a system to provide all field staff with photographic identity cards and that he had no objection to the regulation being amended to reflect the requirement for identity cards suggested by the Regulation Review Committee.
All correspondence on this issue appears in **Appendix 2.**

3. **Public Sector Management Act 1988 - Public Sector Management (General) Regulation 1988.**
Published in Government Gazette No. 140 of 2 September 1988.
This regulation replaced and generally continued the provisions of the Public Service (General) Regulation 1984 under the former Public Service Act 1979. Apart from the consequential changes required by the abolition of the Public Service Board and other provisions of the new Act, the regulation introduced, amongst other things:-

(a) a new procedure for dealing with disciplinary inquiries which does not involve formal hearings (except on appeal to the Government and Related Employees Appeal Tribunal); and

(b) revised sick leave, maternity leave and adoption leave entitlements.

Disciplinary hearings
The Committee felt that aspects of the regulation dealing with Discipline trespassed on the rights and liberties of officers. Clause 23(1)(a) concerning charges for alleged breaches of discipline provides that an officer may be charged either orally or in writing before a preliminary inquiry be instituted but shall not receive full particulars of the charge in writing until after the preliminary inquiry has been conducted. The Committee felt that this would make it impossible for the officer to prepare a defence during the currency of the preliminary inquiry and could result in a denial of natural justice.

The Committee also believed that Clauses 25(3) and 25(4) restrict the right of officers under investigation to bring forward evidence on their own behalf and may reduce their ability to rebut the charges successfully early in the proceedings. These matters were taken up with the Premier in a letter dated 15 November, 1988. The Premier replied on

23 January saying that he did not believe that Clause 23(1)(a) involved a denial of natural justice as an officer is not required to deny or admit the truth of an alleged breach of discipline until notified of the charge in writing. Unnecessary administrative costs and delays would arise if a formal investigation preceded the preliminary inquiry.

So far as the conduct of preliminary inquiries is concerned, the Premier pointed out that although officers may not call witnesses for examination or cross-examination by virtue of Clause 25(3), they may submit statements made by witnesses on their behalf. Nevertheless the Premier conceded that it is inappropriate to allow an officer to make either oral or written representations on his/her own behalf, but not both. He undertook to arrange for Clause 25(4) to be amended to make it clear that an officer under investigation may make oral and written representations.

Adoption Leave

The Committee noted that the adoption leave provisions of the regulation apply only to females. They considered that the failure to extend adoption leave entitlements to male public servants trespassed on their rights and liberties by denying them the opportunity to take paid leave to care for an adopted child. The Committee was aware that a male public servant who is refused paid adoption leave cannot lodge a complaint of sex discrimination under the NSW Anti-Discrimination Act 1977 by virtue of section 54 (1)(b) and State public servants cannot lodge a complaint under the Commonwealth Sex Discrimination Act 1984. Although the adoption leave provisions are not unlawful, the Committee resolved to write to the Premier to suggest that the regulation conflicted with the spirit of the Anti-Discrimination Act and to request that adoption leave be made available to male and female public servants. The Committee wrote to the Premier in these terms on 15 November 1988.

The Premier's reply dated 23 January 1989 indicated that when adoption, maternity and parental leave were comprehensively reviewed in 1987 it was decided that the status quo should remain because it was felt that extending adoption leave to male public servants would, in the current economic climate, create an unacceptable precedent with cost and serious flow-on implications for the private sector.

All correspondence on this regulation appears in **Appendix 3.**

4. **Weights and Measures Act 1915 - Regulation.**
Published in Government Gazette No. 140 of 2 September 1988.

This regulation amended the Weights and Measures Regulations 1917 to omit Part 7A. This Part had regulated the free space, cavities and recesses in packages. The regulations previously provided that certain products could not be packed or sold if the proportion of free space within the packages exceeded certain prescribed limits.

Officers of Business and Consumer Affairs advised the Regulation Review Committee's Secretariat that Part 7A was repealed in the interests of removing unnecessary regulation as complaints of deceptive packaging can be dealt with under the Fair Trading Act 1987.

While the Committee appreciates the reasons for repeal of Part 7A, it noted that there was no reference in the regulation to the subject matter of Part 7A. The regulation also did not contain an Explanatory Note to make the community aware of the effect of the regulation. In the circumstances, the Regulation Review Committee resolved to draw attention to the consequences of the regulation in an occasional report to Parliament.

5. **Security (Protection) Industry Act 1985 - Security (Protection) Industry Regulation 1986.**
Published in Government Gazette No. 52 of 11 March 1988.
This regulation amended the Security (Protection) Industry Regulation 1986 in a number of ways. Clause 5 of Schedule 1 exempted persons employed in the security and surveillance of the Darling Harbour Casino from the operation of the Security (Protection) Industry Act 1985.

These provisions were appropriate at the time they were made but later came into conflict with the Darling Harbour Casino (Repeal) Act 1988 assented to on 21 June 1988.

The Regulation Review Committee is required to identify regulations which duplicate, overlap or conflict with any other regulation or Act and accordingly, the Committee resolved to write to the Minister for Police to ask that he repeal Clause 5 of Schedule 1 of the regulation.

The Security (Protection) Industry Regulation 1986 has now been amended as requested by the Committee. The amending regulation appeared in Government Gazette No. 23 of 17 February 1989 on page 1064.

All correspondence on this issue appears in **Appendix 4.**

6. **Occupational Health and Safety Act 1983 - Occupational Health and Safety (Asbestos Removal Contractors) Regulation 1988.**
Published in Government Gazette No. 41 of 26 February 1988.
The Department of Industrial Relations and Employment introduced the Asbestos Removal Contractors Regulation with effect from 1 May 1988. Designed to standardise work practices in the asbestos removal industry, the new regulations now require the licensing of those involved in the removal of asbestos material.

The Committee sought clarification from the Minister for Industrial Relations, the Hon. John Fahey, M.P., on two matters arising out of an examination of the regulations.

Firstly, the Committee was concerned that the deeming provision in Clause 7(3) of the regulation might work against an applicant for an asbestos removal licence. This section deals with notice of refusal to grant a contractor's licence by the Co-ordinator of the Occupational Health, Safety and Rehabilitation Services. Clause 7(3) states "The Co-ordinator shall be deemed to have refused to grant a licence (and be deemed to have notified the applicant accordingly), if the Co-ordinator does not give a decision on an application within 3 months after the date of lodgement of the application".

In reply, the Minister has advised the Committee that Clause 7(3) is framed in such a way as to complement the appeal provisions contained in clause 11 of the regulation. An applicant for a licence who has not received a decision within three months after lodgement has the right to appeal to an Industrial Magistrate. The Minister has claimed that it is in the interests of the Division of Occupational Health, Safety and Rehabilitation Services to ensure that a decision is made on an application within the three month time limit and that applicants are notified of

their success or otherwise in seeking a licence within this time.

The Committee also questioned the requirement that up to three months was needed for a decision on an application to be reached. However, the Minister has explained that the process involved in considering and examining the merits of each licence application involves a variety of detailed requirements and inspections of both applicant and equipment. This is in keeping with the particularly sensitive nature of the asbestos industry and conforms with the need that a high standard be met by those wishing to work as removal contractors in this area.

All correspondence on this issue appears in **Appendix 5.**

7. **Water Act 1912 - Regulation.**
Published in Government Gazette No. 105 of 24 June 1988.
This regulation extended the classes of users who have to pay a charge for the use of water from a river or lake in which the water supply has been augmented, stabilised or assured by a "work" of the Crown. The classes added were for mining and recreational users.

The Department of Water Resources advised the Committee that all water users needed to obtain a basic licence or authority, the fees for which did not cover the costs of administering the licence. It was only where water supply charges could be imposed on a metered use that realistic returns were received.

Subsequently, the Committee wrote to the Minister for Natural Resources, the Hon. Ian Causley, M.P., seeking clarification on the need to retain basic licences and authorities under the Act if they failed to recover their full costs.

The Minister informed the Committee that all licences under the Act attract a basic fee on issue or on renewal. Although this fee is meant to cover the administrative costs involved in maintaining licence records, the present level has fallen behind total cost recovery. However, the Minister has advised that proposals are in hand to increase fees over the next few years to achieve full recovery.

With regard to the regulation under review by the Committee, the Minister expressed the view that the costs of billing and collection of licence fees for mining and recreational use of water are expected to be adequately recovered.

All correspondence on this issues appears in **Appendix 6.**

8. **Animal Research Act 1985 - Animal Research (Education Advisory Committee) Regulation 1988.**
Published in Government Gazette No. 132 of 12 August 1988.
The Animal Research Act 1985, established an Animal Research Review Panel to investigate and report on the use of animals in research. This regulation establishes in turn the Education Advisory Committee which has the purpose of advising the Panel on matters relevant to the use of animals in education.

The Advisory Committee comprises representatives from all levels of the education system including public and private schools. In examining the regulation, the Regulation Review Committee noted that the Panel is given the power to remove any member of the Advisory Committee from office by virtue of Clause 7(2). There is no requirement for the Panel to give a reason or explanation for such removal and nor is there any express right of appeal.

The Committee considered that it would have been more appropriate for the regulation to require the Animal Research Panel to remove a member of the Advisory Committee only after first giving written notice of the grounds for removal and inviting the member to show cause why he or she should not be removed. The Committee further believes that removal of members from the Education Advisory Committee should also require Ministerial approval.

The Minister for Local Government and Planning, the Hon. David Hay, M.P., has since advised that for various reasons, no members have as yet been appointed to the Advisory Committee and it is not envisaged that this will be done for some time. Nevertheless, he indicated that he will consider amending the regulation in line with the Committee's recommendations when a committee is appointed.

All correspondence on this matter appears in **Appendix 7.**

9. **Darling Harbour Authority Act 1984 - Darling Harbour (Monorail) Regulation 1988.**
Published in Government Gazette No. 102 of 17 June 1988.
This regulation relates to the conduct of persons travelling on the Darling Harbour Monorail.

The Committee sought the advice of the Minister for Local Government and Planning on several issues arising under the regulation. Firstly the Minister was asked why he did not adopt an existing By-Law of the State Rail Authority which covered substantially the same matters as an alternative to this new regulation.

Secondly the Committee sought advice on whether any guidelines had been prepared in respect of certain provisions which enable authorised persons to exclude persons with diseases or soiled clothing from travelling on the monorail, and which forbid persons who annoy passengers or carry dangerous goods from travelling on the monorail.

Finally the Committee questioned how clause 18 of the regulation which created an offence for persons carrying a child with an "infectious or contagious disease" on to the Monorail could be enforced when such terms were not defined and no guidelines for enforcement of this provision were intended to be developed.

The Minister indicated in his response that over 60% of the State Rail By-Law was not directly applicable to the Monorail and that the adoption of the remaining parts of the By-Law would cause confusion amongst the public.

He advised that common sense would be used by authorised persons in policing the provisions of the regulation and that broad guidelines were being developed to assist judgment in implementing the provisions with regard to person's behaviour.

The Minister agreed to amend clause 18 to address the Committee's concerns. This was done in the Gazette of 24 February 1989.

All correspondence on this issue appears in **Appendix 8.**

10. **Tabling Statutory Rules and Instruments.**

According to section 40(1) of the Interpretation Act 1987, written notice of all statutory rules which have been published in the Government Gazette must be laid upon the table of each House of Parliament within 14 sitting days of that House after the day on which they are so published.

In its Fourth Report to Parliament dated December 1988 the Regulation Review Committee noted that from the list printed by the Legislative Assembly Office for 15 November 1988 of Statutory Instruments Laid Upon The Table, a large number of regulations may not have been tabled within the specified time.

The Committee notes that from the details contained in the current list printed for 21 February 1989 there still remain many regulations that may not have been tabled. The Committee wishes to draw this matter again to the attention of Parliament.

APPENDICES

APPENDIX 1

The Hon. D.A. Hay M.P.,
Minister for Local Government and
Minister for Planning,
Parliament House,
SYDNEY 2000.

PARLIAMENT HOUSE,
SYDNEY, N.S.W. 2000

25 AUG 1988

Dear Mr Hay,

Regulation Review Committee

I am enclosing for your examination, a copy of the Second Report to Parliament on Regulations by the Regulation Review Committee. This Report examines and makes recommendations in relation to various regulatory instruments including:

(i) Local Government Act 1919 - Ordinance amending Ordinance No. 46 published in Gazette No. 41 of 26 February, 1988.

(ii) Local Government Act 1919 - Ordinance amending Ordinance No. 5 published in Gazette No. 52 of 11 March, 1988.

These instruments fall within your administration.

I wish to particularly draw your attention to the Committee's recommendation to Parliament that, for the reasons set out in the Report, an undertaking should be given that an amendment would be made to Ordinance No. 46 by deleting Clause 15A(2).

The Committee is of the view that failing such an undertaking, portion of the Ordinance should be disallowed. The last date for such action to be initiated in the Legislative Assembly would be 30 August, 1988 and I therefore seek your attitude on the matter prior to that date.

The Committee would also be grateful if you would arrange for the other issues raised by the Committee in relation to those Ordinances to be promptly examined.

Yours sincerely,

Adrian Cruickshank
Chairman,
Regulation Review Committee.

P.84/4D

NEW SOUTH WALES
MINISTER FOR LOCAL GOVERNMENT
MINISTER FOR PLANNING

37th Floor
Legal and General House
8-18 Bent Street
Sydney, N.S.W. 2000
Telephone: 221 3244

Mr. A.J. Cruickshank, M.P.,
Member for Murrumbidgee and
Chairman of the Regulation
Review Committee,
Parliament House,
SYDNEY 2000 00

13 JAN 1989

Dear Mr. Cruickshank,

I refer again to your letter of 25/8/88 wherein you enclosed a copy of the Second Report to Parliament on Regulations by the Regulation Review Committee requesting an examination as to the necessity for the retention of clause 28G(b) in Ordinance No. 5 under the Local Government Act 1919.

I apologise for the delay in replying to you but wish to advise that officers of my Department of Local Government contacted your Project Officer, Ms. L. Phillips,on 14/12/88 and informed her that the Governor had on that day approved of various amendments to Ordinance No. 5 and included amongst these was the deletion of clause 28G(b) from the Ordinance.

A notice giving effect to the amendments was published in the Government Gazette on 16/12/88.

I trust that the matter has now been finalised to your satisfaction.

Yours sincerely,

(Sgd) David Hay

DAVID HAY
Minister for Local Government,
Minister for Planning.

APPENDIX 2

PARLIAMENT HOUSE,
SYDNEY, N.S.W. 2000

The Hon. J. Fahey, M.P.,
Minister for Industrial Relations
and Employment,
3rd Floor,
1 Oxford Street,
DARLINGHURST 2010.

18 OCT 1988

Dear Mr Fahey,

At a meeting on 11 October, 1988 the Regulation Review Committee considered a number of regulations that are currently subject to disallowance by one or both of the Houses of Parliament, including the Occupational Health and Safety Act 1983 - Occupational Health and Safety (Inspectors' Notices) Regulation 1988 gazetted on 18 March, 1988 on p. 1713.

As you know the Committee is required to examine all regulations and to determine, amongst other things, whether a regulation trespasses unduly on personal rights and liberties or is likely to have an adverse impact on the business community. Given the significant powers of inspectors under the Act, the Committee believes that inspectors should be required to carry and produce photographic identity cards issued by the Department to confirm their identity and to avoid any possibility of persons gaining access to business premises by impersonating inspectors.

This practice has been followed by various Commonwealth Departments following similar recommendations by the Senate Standing Committee on Regulations and Ordinances.

The Committee recommends the regulations be amended to provide for this requirement when inspectors are exercising their powers under the Act.

Yours sincerely,

Adrian Cruickshank
Chairman,
Regulation Review Committee.

NEW SOUTH WALES

MINISTER FOR INDUSTRIAL RELATIONS
MINISTER FOR EMPLOYMENT
MINISTER ASSISTING THE PREMIER

3rd Level,
1 Oxford Street,
DARLINGHURST NSW 2010.

- 1 DEC 1988

Mr. A. Cruickshank, M.P.,
Chairman,
Regulation Review Committee,
Parliament House,
Macquarie Street,
SYDNEY NSW 2000.

Dear Mr. Cruickshank,

I refer again to your recent correspondence concerning the provision of identity cards for Inspectors of my Department.

The need for the utilisation of proper identification cards which include a photograph of the officer concerned is a matter previously identified by the Department. A system is in an advanced stage of progress whereby all field staff will be provided with identity cards of the type mentioned.

In view of the foregoing I can see no objection to the regulation being amended to provide for this requirement as suggested by your committee.

Yours faithfully,

JOHN FAHEY
Minister for Industrial Relations and Employment
Minister Assisting the Premier

Regulation Review Committee

PARLIAMENT OF NEW SOUTH WALES **APPENDIX 3**

121 Macquarie Street
Sydney, NSW 2000
Tel. (02) 287 6698 or
(02) 287 6695

The Hon N.F. Greiner, M.P.,
Premier,
8th Floor, Premier's Wing,
State Office Block,
Phillip Street,
SYDNEY 2000.

15 NOV 1988

Dear Mr Greiner,

At a meeting on 15 November the Regulation Review Committee considered a number of regulations that are currently subject to disallowance by one or both of the Houses of Parliament. The Public Sector Management Act 1988 - Public Sector Management (General) Regulation 1988 was one of these regulations.

The Committee understands that the Regulation replaces and generally continues the provisions of the Public Service (General) Regulation 1984 under the former Public Service Act 1979. The adoption leave provisions have been updated and revised but the Committee notes that they continue to apply only to female public servants. This seems to the Committee to trespass upon the rights and liberties of male public servants by denying them the opportunity to take paid leave to care for an adopted child. While there are valid reasons for granting special leave rights to women recovering from pregnancy and childbirth as in the case of maternity leave, there seem to be no valid reasons for restricting adoption leave to females.

The Committee appreciates that a male public servant who is refused adoption leave cannot lodge a complaint under the Anti-Discrimination Act, 1977 by virtue of section 54(1)(b). Nevertheless the adoption leave provisions conflict with the spirit of the Anti-Discrimination Act. The Committee is aware that a number of discriminatory regulations have been repealed in recent years to ensure that a complaint cannot be taken under the Commonwealth Sex Discrimination Act, which allowed exemptions for limited periods for discriminatory regulations. Section 14 of the Sex Discrimination Act, prohibiting discrimination against applicants and employees at work, does not bind the Crown in right of a State, leaving State public servants in an anomalous position in regard to discrimination in this area.

The Committee believes that consideration should be given to removing the discriminatory content of the regulation. I understand that the cost implications would be insignificant given the small number of applications for adoption leave annually, the brief period of paid leave and the likelihood that the majority of applicants will continue to be female. The

availability of unpaid parental leave to public servants who are not entitled to maternity or adoption leave does not redress the situation sufficiently. Although this enables male public servants to share the parenting of an adopted child, the current leave provisions disadvantage males who choose to take on the primary responsibility for parenting.

The Committee also took the view that aspects of Part 4 of the regulation dealing with Discipline trespass on the rights and liberties of officers. Clause 23 1(a) concerning charges and preliminary inquiries for alleged breaches of discipline, provides that an officer may be charged either orally or in writing, with an alleged breach of discipline before a preliminary inquiry is instituted. The officer does not receive full particulars of the charge in writing until after the preliminary inquiry has been conducted and the Department head has decided to proceed with a disciplinary inquiry. This would make it impossible for the officer to prepare a defence during the currency of the preliminary inquiry.

Clauses 25(3) and (4) restrict the right of officers under investigation to bring forward evidence on their own behalf. For example, they may not call witnesses for examination or cross examination and they may make representations on their own behalf either orally or in writing but not both. The Committee appreciates that officers have a right of appeal to the Government and Related Employees Appeal Tribunal, where hearings on disciplinary matters are conducted formally. Nevertheless, if the procedures for preliminary inquiries were more consistent with the rules of natural justice, officers may be able to rebut the charges successfully at an earlier stage in the proceedings.

I would be grateful for your views on these matters at the earliest opportunity.

Yours sincerely,

Adrian Cruickshank
Chairman,
Regulation Review Committee.

Premier of New South Wales
Australia

23 JAN 1989

Dear Mr. Cruickshank,

I refer to your letter of 15th November, 1988, regarding the Regulation Review Committee's concerns about certain aspects of Clauses 51, 23 and 25 of the Public Sector Management (General) Regulation, 1988.

I have carefully considered the issues raised by the Committee, and my views are as follows:

Clause 51, Adoption Leave - The Committee's concerns regarding the discriminatory nature of this provision have been noted. However, this issue was taken into account in a comprehensive review of maternity, adoption and parental leave last year.

It was decided on that occasion that the status quo should remain as it was considered that extending adoption leave to male public servants would, in the current economic climate, create an unacceptable precedent with cost and serious flow-on implications for the private sector.

Clause 23(1)(a), Provision of particulars to officers charged with alleged breaches of discipline - I do not share the Committee's view that there is a denial of natural justice involved.

There is no need for an officer to prepare a defence during the currency of the preliminary inquiry, as the officer is not called upon to deny or admit the truth of an alleged breach of discipline until he/she has been notified in writing of the particulars of the charge, and provided with a copy of the report of the preliminary inquiry as required by Clause 27(2).

A requirement that the officer should receive full particulars of the charge in writing before the preliminary inquiry has been conducted could result in the necessity to hold an investigating inquiry prior to the Preliminary inquiry and this could only lead to unnecessary administrative cost and delays.

Clauses 25(3) and 25(4) Conduct of preliminary inquiry - While noting the Committee's concern that officers under investigation are not entitled to call witnesses for examination or cross-examination, it should be borne in mind that the officers may, in making representations on their own behalf, submit statements made by witnesses for consideration by the person conducting the preliminary inquiry.

8th floor, State Office Block, Macquarie Street, Sydney 2000. Telephone: (02) 228 5555, Telex: AA 121269, Facsimile: (02) 231 1110,
Telegraphic Address: MANIPRETE

Although the person conducting a preliminary inquiry can exercise a discretion to give an officer under investigation an opportunity to make both oral and written representations, I share the Committee's view that the present provision is too prescriptive, and I will ensure that Clause 25(4) is amended to make it clear that an officer under investigation may make both oral and written representations.

I trust this addresses the concerns you have raised.

Yours sincerely,

Premier.

Mr. A. Cruickshank, M.P.,
Chairman,
Regulation Review Committee,
Parliament of New South Wales,
121 Macquarie Street,
SYDNEY. 2000 00

APPENDIX 4

PARLIAMENT HOUSE,
SYDNEY, N.S.W. 2000

The Hon. E.P. Pickering, M.L.C.,
Minister for Police and Emergency Services,
9th Level,
8-18 Bent Street,
SYDNEY 2000.

15 SEP 1988

Dear Mr Pickering,

At a meeting on 13 September, the Regulation Review Committee considered a number of regulations that are currently subject to disallowance by one or both of the Houses of Parliament, including the Security (Protection) Industry Act 1985 - Regulation gazetted on 11 March 1988 on page 1531.

Clause (b) of the regulation amended schedule 1 concerning Exempted Classes of Persons to include a new Clause 5 viz "Persons employed in the security and surveillance of the Darling Harbour Casino and persons who are key employees, operations employees or managers within the meaning of Darling Harbour Casino Act 1986".

As you know, the Committee is required to examine whether a regulation duplicates, overlaps or conflicts with any other regulation or Act. In view of the passing of the Darling Harbour Casino (Repeal) Act 1988 the Committee would appreciate it if action could be initiated to repeal Clause 5 of Schedule 1 of the Security (Protection) Industry Regulation 1986.

Yours sincerely,

Adrian Cruickshank
Chairman,
Regulation Review Committee.

APPENDIX 5

PARLIAMENT HOUSE,
SYDNEY, N.S.W. 2000

The Hon. J. Fahey, M.P.,
Minister for Industrial Relations
and Employment,
3rd Floor,
1 Oxford Street,
DARLINGHURST 2010.

Dear Mr Fahey,

The Regulation Review Committee has recently had the opportunity to examine the Occupational Health and Safety (Asbestos Removal Contractors) Regulation 1988 which appeared in the Government Gazette of 26 February 1988 at page 1223.

The Committee noted that section 7 of the Regulation deals with notice of refusal to grant a licence by the Co-ordinator of Occupational Health, Safety and Rehabilitation Services to an asbestos removal contractor. Subsection 3 here states that "The Co-ordinator shall be deemed to have refused to grant a licence (and be deemed to have notified the applicant accordingly) if the Co-ordinator does not give a decision on an application within 3 months after the date of lodgement of the application".

The Committee is concerned that this clause will in effect, excuse the Co-ordinator from supplying a notice of refusal setting out the reasons for such a refusal. Under these circumstances, the applicant will not be made aware of the reasons for which the application for a licence was refused.

It is not clear to the Committee why, in circumstances where the Co-ordinator fails to make a decision on an application, that the presumption should not be in favour of the grant of a licence rather than the refusal of it. Overall, however, the Committee is of the view the regulations should require the Co-ordinator to make a decision on an application.

It should also be noted that there is an apparent conflict between sections 7(2) and 7(3) on this matter. The former clause states that "A notice of refusal shall state the reasons for the refusal". Consequently a failure to supply an applicant with the reasons for refusal as in 7(3) cannot be accepted as an authorised notice of refusal as required in 7(2).

Furthermore, the Committee resolved to seek additional information from you as to the reasons why an application for an asbestos removal licence would require a period of three months before a decision is reached. It is felt that the stated three months needed to assess applications is too lengthy a period a time and that such an application should for practical purposes be assessed within a shorter time span.

I would appreciate your advice on these issues.

Yours sincerely,

Adrian Cruickshank
Chairman,
Regulation Review Committee.

7 NOV 1988

NEW SOUTH WALES

MINISTER FOR INDUSTRIAL RELATIONS
AND EMPLOYMENT
MINISTER ASSISTING THE PREMIER

Level 3,
1 Oxford Street,
DARLINGHURST. N.S.W. 2010

M88/885

Mr. A. Cruickshank, M.P.,
Chairman,
Regulation Review Committee,
Parliament House,
SYDNEY. N.S.W. 2000.

20 FEB 1989

Dear Mr. Cruickshank,

I refer again to your recent correspondence relating to the Occupational Health and Safety (Asbestos Removal Contractors) Regulation, 1988.

I understand that the provisions of Clause 7 of the Regulation represent a standard style of provision and were included in the Regulation on the advice of the Parliamentary Counsel.

The Clause is framed to complement the appeals provisions contained in Clause 11 of the Regulation. An applicant may appeal to an Industrial Magistrate against the refusal of the Co-ordinator to grant a licence.

Clause 7(3) is a deeming provision that allows an applicant to appeal should he not have received a decision on his application within 3 months after he lodged an application for a licence. This is a safeguard provided in the Regulation to ensure a decision is made on an application within a reasonable time, i.e. 3 months. Should the Co-ordinator refuse to grant a licence then the notice of refusal shall state the reasons for this decision.

The maximum period of 3 months in which to consider an application was determined as a reasonable period in view of the processes involved in examining applications. Upon receipt of an application, the Division of Inspection Services of my Department of Industrial Relations and Employment is required to examine the applicant and inspect his range of equipment in accordance with Clause 6 of the Regulation.

In addition, the application and the recommendation of the Division following this examination and inspection is forwarded to the Building Industry Committee of the Occupational Health, Safety and Rehabilitation Council of N.S.W., for consideration. This Committee is tripartite and is able to provide the expertise and intimate knowledge necessary for the Co-ordinator to make an informed decision on applications.

The Committee meets on a monthly basis and I am sure you will appreciate that the processes I have outlined in the consideration of applications involve a reasonable period of time being necessary to complete the processes involved. I am advised that in practice the consideration of applications is handled as speedily as possible and applications handled well inside the 3 month period.

I am satisfied, at this time, that the Regulation should remain, appreciating the sensitivity of asbestos matters.

Yours faithfully

JOHN FAHEY,
Minister for Industrial Relations and Employment
Minister Assisting the Premier.

APPENDIX 6

PARLIAMENT HOUSE,
SYDNEY, N.S.W. 2000

The Hon. I. Causley,
Minister for Natural Resources,
1st Floor, Lands Buildings,
Bridge Street,
SYDNEY 2000.

Dear Mr Causley,

The Regulation Review Committee was established under the Regulation Review Act 1987 to review regulations while they are subject to disallowance by Parliament and to consider whether the special attention of Parliament should be drawn to them on any ground including, amongst other things, whether the form or intention of the regulation calls for elucidation.

The Committee is currently considering a regulation made under the Water Act 1912 which appeared in the Government Gazette of 24 June, 1988.

This regulation extends the classes of users who are charged for the use of water from a river or lake in which the water supply has been augmented, stabilised or assured by a work of the Crown.

Your Department has advised the Secretariat of my Committee that these water supply charges are usually imposed on a use where a meter is attached to the supply or where the supply can be measured by some other means, such as in the case of irrigation areas. It was indicated that all water users have to obtain a basic licence or authority but that the fees in respect of these do not cover their costs of recovery. Your Department therefore considers that it is only where water supply charges can be imposed under this regulation that realistic returns are received.

My committee can understand that you may need to retain the basic licences and authorities for monitoring water use however it seeks clarification on whether the fees for them should be retained if they do not cover recovery costs.

Yours sincerely,

Adrian Cruickshank
Chairman,
Regulation Review Committee.

8 NOV 1988

NEW SOUTH WALES

MINISTER FOR NATURAL RESOURCES

23-33 BRIDGE STREET
SYDNEY 2000

W 833

Mr A.J. Cruickshank, MP
Chairman
Regulation Review Committee
Parliament House
SYDNEY NSW 2000

25 JAN 1989

Dear Mr Cruickshank,

I refer again to your letter of 8 November 1988 regarding regulations made under the Water Act, 1912, which appeared in the Government Gazette of 24 June 1988.

There appears to be some confusion over the definition of the costs of recovery of licence fees.

Depending on the type of river from which a licence is issued, there could be two components of a charge. Firstly, all licences attract a basic fee on issue (or on renewal, mostly each five years). This fee is to cover the administrative costs involved in maintaining licence records and ensuring that licencees comply with the conditions attaching to the licence.

The present level of charge has fallen behind total cost recovery to the extent that the overall licensing costs of the Department of Water Resources amount to some $2.25 million and the fees only recover $1.25 million. Proposals are in hand to increase fees over the next few years to achieve full recovery.

Secondly, on rivers where flow is regulated by a State-owned storage work (e.g. the Murrumbidgee River from Burrinjuck Dam), a further charge is also levied on an annual basis. This charge covers the full costs incurred in metering the amount of water taken by each licencee, plus a proportion of the costs incurred in distributing the water from the dam, down river to the point of diversion.

This second component of the water charge is designed to recover the relevant costs, as defined in the present Government's policies.

In summary, charges associated with water licensing are intended to recover costs and will do so within a few years once the subsidies that were allowed to develop under the last Government are gradually removed.

With regard to the new regulation in question, the costs of billing and collection of licence fees for mining and recreation use of water are expected to be adequately recovered.

Yours sincerely,

Ian Causley

IAN CAUSLEY, MP
MINISTER FOR NATURAL RESOURCES

Regulation Review Committee

PARLIAMENT OF NEW SOUTH WALES

APPENDIX 7

121 Macquarie Street
Sydney, NSW 2000
Tel. (02) 287 6698 or
(02) 287 6695

15 NOV 1988

The Hon. D.A. Hay M.P.,
Minister for Local Government and
Minister for Planning,
37th Level,
Legal and General House,
8-18 Bent Street,
SYDNEY 2000.

Dear Mr Hay,

At the last meeting of the Regulation Review Committee the Animal Research (Education Advisory Committee) Regulation 1988, was considered.

That regulation appeared in the Gazette of 12 August 1988 at p. 4258.

The Committee noted that under the regulation the members of the Advisory Committee hold office at the pleasure of the Animal Research Review Panel which is constituted under the Act. For example, under Clause 6 of the regulation the term of office of each member is determined exclusively by the Panel and under clause 7(2), the Panel may remove a member from office. No reason or explanation is required to be given for such removal nor is there any express right of appeal. My Committee considers that the regulation as it stands may trespass unduly on the personal rights and liberties of the Advisory Committee members.

In these circumstances it would be appropriate if the regulation were amended to provide that the panel may remove a Committee member only after first having given written notice of the grounds for the proposed removal and inviting the member to show cause why he or she should not be removed. If after having considered any reply by the member the Panel decided to proceed with removal, it should be required to first obtain your approval.

The Committee recommends these changes for your consideration.

Yours sincerely,

Adrian Cruickshank
Chairman,
Regulation Review Committee.

NEW SOUTH WALES
MINISTER FOR LOCAL GOVERNMENT
MINISTER FOR PLANNING

37th Floor
Legal and General House
8-18 Bent Street
Sydney, N.S.W. 2000
Telephone: 221 3244

AW.85/88
RML 5159

The Hon. Adrian Cruickshank, M.P.,
Chairman,
Regulation Review Committee,
Parliament of N.S.W.,
121 Macquarie Street,
SYDNEY NSW 2000

- 9 JAN 1989

Dear Mr. Cruickshank,

I refer to your recent letter concerning the Animal Research (Education Advisory Committee) Regulation 1988.

I have noted the points you have made and am most grateful for your advice. However, since gazettal of the Regulation in August, 1988, a change in circumstances has rendered it unnecessary to appoint an Education Advisory Committee as the Regulation provides. While I anticipate that such an appointment will become necessary in the future, I do not foresee that this will happen for some time.

It is my intention to review the provisions of the Regulation when it becomes apparent that the need to appoint a Committee is likely to arise and I will consider amending the Regulation in line with your recommendations at that stage.

At the present time, I am concerned that the preparation of such amendments would divert urgently needed Departmental resources from the development and drafting of further regulations to the Animal Research Act, containing administrative provisions to enable the Act's implementation.

Yours sincerely,

David Hay

DAVID HAY
Minister for Local Government,
Minister for Planning.

APPENDIX 8

PARLIAMENT HOUSE,
SYDNEY, N.S.W. 2000

The Hon. D.A. Hay M.P.,
Minister for Local Government and
Minister for Planning,
Parliament House,
SYDNEY 2000.

18 August 1988

Dear Mr Hay,

The Regulation Review Committee was established under the Regulation Review Act to review all statutory rules whilst they are subject to disallowance by Parliament.

Statutory rules are defined in the Act to include regulations.

My Committee's attention has been drawn to regulations recently made under the Darling Harbour Authority Act 1984. Those regulations are entitled the Darling Harbour (Monorail) Regulation 1988.

One of the functions of my Committee is to consider whether any regulation could be achieved by more effective means. In the present case my Committee is concerned to know why the authority did not adopt By Law 1360 of the State Rail Authority, particularly with regard to behaviour of passengers, instead of devising a fresh body of regulations.

My Committee also considers that certain of these regulations call for elucidation in order to determine their impact on the personal rights and liberties of persons wishing to travel on the monorail.

Firstly regulations 16(1)(b) and 18 calls for elucidation to the extent that the regulations do not define infectious or contagious disease. My Committee would welcome an indication from you as to whether it is intended to adopt a list of infectious diseases in implementing this regulation. Furthermore what procedures are to be used to detect these diseases? The Committee has been informed that a similar provision, clause 16 of By Law 1360 of the State Rail Authority, has not been enforced in any case and that officers of the Transit Squad are advised in their training not to enforce the provision unless they are a qualified medical practitioner. In practical terms therefore the Committee gathers this provision is not considered enforceable.

With respect to Regulation 17 my Committee wishes to know whether any guidelines will be adopted as to dress standards in implementing this regulation.

With respect to regulation 25 my Committee wishes to know whether any guidelines have been prepared to enable authorised officers to determine whether particular goods are likely to be a source of annoyance or discomfort to persons.

Similarly with respect to regulation 39, have any guidelines been issued with respect to those matters which are likely to interfere with the comfort or safety of persons. Whilst these matters call for clarification the Committee was otherwise pleased to note that the regulations are drafted in plain english and are sufficiently clear to enable the ordinary passenger to understand them.

I would welcome your assistance in clarifying the above matters.

Yours sincerely,

Adrian Cruickshank.
Chairman,
Regulation Review Committee.

NEW SOUTH WALES

MINISTER FOR LOCAL GOVERNMENT
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Legal and General House
8-18 Bent Street
Sydney, N.S.W. 2000
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30.SEP1988

Mr Adrian Cruickshank
Chairman
Regulatory Review Committee
Parliament House
SYDNEY NSW 2000

Dear Mr Cruickshank

I refer to your letter of 18th August 1988 concerning your Committee's queries regarding the Darling Harbour (Monorail) Regulation 1988.

A major Authority objective for the Regulation was that it was clear, complete, unambiguous and readily able to be interpreted and used.

As a consequence, and in concert with Parliamentary Counsel, the requirements that were drafted were geared both to the particular needs and character of the monorail system (and its mode of operation) and the array of behaviour that was considered necessary to be regulated.

Whilst S.R.A. By Law 1360 certainly relates to passenger behaviour on a public transport system, adopting it "in toto", by reference, would, it is considered, have been confusing in the extreme to passengers and operating personnel alike. This is because: -

(i) any consequent Monorail Regulation would, by itself, merely identify, that by reference, By Law 1360, was adopted. Hence the Regulation would not detail any actual requirements; causing additional documentation to be sought - namely 1360;

(ii) if such an adoption by reference were made it would be immediately confusing to persons alleged to be in breach of the Regulation, since the transgression would relate to action/behaviour on SRA trains. Whilst in law this wouldn't matter, to the ordinary person the perception would be that they were on a monorail not a train. This would lead to unnecessary confusion and debate between passengers and staff;

(iii) By Law 1360 is not in fact directly applicable to the monorail. It has been specifically drafted to SRA needs and equipment. Hence many of the actual requirements are not relevant to monorail operations at all. Again this would lead to confusion both for customers and staff. In all, over 60% of the By Law's clauses either relate to SRA specific operations, practice and infrastructure, that are not applicable to the monorail, or would require specific editing and/or redrafting to make them pertinent. As such it was not practicable merely to adopt By Law 1360.

Partial adoption, meanwhile, would necessitate many clauses being excluded together with numerous others requiring redrafting. Such a Regulation would be difficult to interpret and use by authorised persons and would be confusing to passengers. Further, it would not have incorporated into it any specific requirements related purely to the monorail.

With regard to Regulations 16(1)(b) and 18, common english language definitions are to be utilised. It is not intended that authorised persons will medically determine what is or isn't an infectious/contagious desease. As a consequence the onus is upon the passengers if they are aware they have such a disease. However common sense judgement on behalf of authorised persons would be expected where they might form a reasonable suspicion that an intending passenger has such a condition and is likely to cause alarm or discomfort to other passengers.

Concerning Regulation 17 it is intended that authorised persons will use common sense and prudent judgement in determining what clothing or luggage might spoil or damage either the monorail itself or other persons clothing and luggage. Of foremost concern is the comfort and convenience of other passengers. Broad guidelines to assist such judgements are currently being prepared by TNT.

Regarding Regulations 25 and 39, it is intended that authorised persons use common sense and prudence in determining what might be dangerous goods or what action and behaviour might interfere with the comfort and/or safety of passengers or monorail works. Again broad guidelines are being prepared by TNT to assist such judgements.

Whilst it is noted that Regulations in respect of the matters above may not be enforced by the State Rail Authority, it is the view of the Darling Harbour Authority that they address quite proper concerns of both TNT and the public. Therefore, it is considered appropriate that they are included in the Monorail Regulations since whilst the preparation of a set of finite all inclusive definitions covering all circumstances may not be practically feasible, this is not considered valid enough reason for not having any such provisions at all.

Yours sincerely

DAVID HAY
Minister for Local Government
Minister for Planning

PARLIAMENT HOUSE,
SYDNEY, N.S.W. 2000

The Hon D.A. Hay M.P.,
Minister for Local Government and
Minister for Planning,
37th Level,
Legal and General House,
8-18 Bent Street,
SYDNEY 2000.

18 OCT 1988

Dear Mr Hay,

Darling Harbour (Monorail) Regulation 1988
(Ref: Your letter dated 30 September 1988)

Thank you for the detailed examination in your letter of the matters raised by the Regulation Review Committee. I note that, as suggested by the Committee, guidelines will be prepared for the purpose of Regulations 17, 25 and 39.

There remains, however, the practical difficulties associated with the enforcement of Regulations 16(1)(b) and 18.

Under Regulation 16(1)(b) if an authorised person forms the opinion that a person has any infectious or contagious disease that person may be directed not to enter or remain on the monorail. In your letter you indicate that common sense judgement on behalf of the authorised person will be relied upon for the purpose of enforcing this provision and that the authorised person will not medically determine what is or isn't an infectious/contagious disease. The Committee recognises that this would be a be a practical approach to the enforcement of Regulation 17(1)(b).

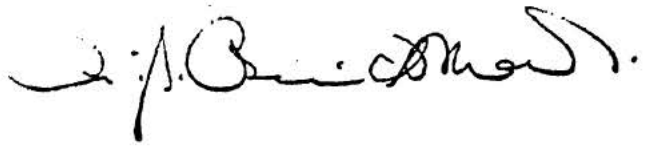
However in the case of Regulation 18 such an approach leaves members of the public subject to a penalty of up to $2,000 with no guidelines to assist them. That regulation makes it an offence for a person to take into or on the monorail any child who has an infectious or contagious disease. As the ambit of the words "infectious or contagious disease" is not defined and no guidelines are intended to clarify it, then this regulation must, in the Committee's view, place members of the public in an inequitable position.

.../2

It would seem to the Committee that Regulation 18, if it is to stand, should at least be amended to place the prohibition on a person who knowingly brings onto the monorail any child who has an infectious or contagious disease.

I would be grateful for your urgent views on the matter.

Yours sincerely,



Adrian Cruickshank
Chairman,
Regulation Review Committee.

THE DARLING HARBOUR AUTHORITY

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Mr Adrian Cruickshank
Chairman
Regulation Review Committee
Parliament House
SYDNEY NSW 2000

Dear Mr Cruickshank

Darling Harbour (Monorail) Regulation 1988

I refer to your letter of 18 October 1988 in regard to the above.

Your comments with regard to implementation of Regulation 18 are noted and agreed with. I have requested the Darling Harbour Authority to take action for the Regulation to be amended to place a prohibition on a person who knowingly brings onto the monorail any child who has an infectious or contagious disease.

Thank you for your interest in this matter.

Yours sincerely

DAVID HAY
Minister for Local Government
Minister for Planning