Legislation Review Amendment Bill

Second Reading
In Committee

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LEGISLATION REVIEW AMENDMENT BILL

Page: 5288

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [5.09 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

In October last year the Legislative Council Standing Committee on Law and Justice tabled its report entitled "A New South Wales Bill of Rights". This bill is the Government's response to that report. The standing committee found that it is not in the public interest for New South Wales to have a bill of rights. The Government endorses that finding. As the Premier indicated in his submission to the standing committee's inquiry, a bill of rights transfers decisions on major policy issues from the Legislature to the judiciary. No right is absolute. Rights conflict. The right to free speech will conflict with the right to equality. The right to equality will, in turn, conflict with the right to freely exercise one's religion. A bill of rights could be interpreted only by balancing these rights and interests. This balancing should be done by an elected Parliament, and not by an unelected judiciary. As the standing committee found:

> It is ultimately against the public interest for Parliament to hand over such decisions to an unelected Judiciary who are not directly accountable to the community for the consequences of their decisions.

Members of Parliament are ultimately responsible to the people for the decisions we make. The people elect us to make difficult decisions about balancing rights and interests. We should not shirk this responsibility, and nor should we put the judiciary in the position of having to make such decisions. The standing committee also found:

> The Committee believes an increased politicisation of the Judiciary is an inevitable consequence of the introduction of a Bill of Rights.

A bill of rights would undermine parliamentary sovereignty, and the independence and quality of the judiciary. It would introduce widespread uncertainty in the law, and would encourage a litigation culture. The Government agrees with the standing committee that a bill of rights must be rejected. The standing committee recommended that the Parliament establish a scrutiny of legislation committee, similar to the Senate Scrutiny of Bills Committee. The standing committee recommended that the new committee should be a joint committee. It also recommended that the new committee should be separate from the Regulation Review Committee. The bill responds to this part of the standing committee's report. Accordingly, the bill proposes to establish a Legislation Review Committee to perform the role proposed by the standing committee.

The Government agrees with the standing committee that the protection of rights and liberties is the responsibility of the whole Parliament. Accordingly, the Legislation Review Committee will be a committee of both Houses. The Government does not agree with the standing committee's recommendation that the scrutiny of legislation committee should be separate from the Regulation Review Committee. The Government notes the standing committee's observation that the criteria for an effective scrutiny committee are already reflected in the way the Regulation Review Committee works. The standing committee recommended a separate committee to ensure that it could give sufficient attention to its task. The Government believes that the standing committee's concern about the Regulation Review Committee's workload can be addressed by the methods adopted in the bill. In particular, the membership of the committee will be expanded from eight members to 12 members. Also, if the Government's proposal is accepted, the Government is prepared to allocate additional funding to the renamed Regulation Review Committee to enable it to carry out this new function.

I now turn to the provisions of the bill. The bill renames the Regulation Review Act as the Legislation Review Act. It also renames the Regulation Review Committee as the Legislation Review Committee. These name changes reflect the proposed new role for the committee in reviewing bills, as well as its current role in reviewing regulations. The bill increases the number of members of the committee from eight members to 12 members. The bill provides for the committee to comprise five members of the Legislative Council and seven members of the Legislative Assembly, which is an increase of two members from each House. The quorum for meetings of the committee is increased from four members to six members. The bill will insert a new section 8A into the Act. This is the section that gives the committee its new functions in

relation to bills. The committee will have the function of considering any bill introduced into Parliament and reporting to both Houses on the bill.

The committee will be required to report on whether a bill, by express words or otherwise, trespasses unduly on personal rights and liberties; makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers; makes rights, liberties or obligations unduly dependent upon non-reviewable decisions; inappropriately delegates legislative powers; or insufficiently subjects the exercise of legislative power to parliamentary scrutiny. These are the same matters on which the Senate Scrutiny of Bills Committee may report. New section 8A will also make it clear that a House of Parliament may pass a bill whether or not the committee has reported on the bill. However, the section also makes it clear that the committee is not precluded from reporting on a bill because the bill has been passed by either House or has become an Act. These provisions are designed to permit flexibility in timing so that bills will not be delayed, but nor will the committee's consideration of a bill be curtailed.

I wish now to make some comments on the intended functioning of the committee. The committee is not intended to be a third House of Parliament. It is not intended to debate matters exhaustively. The committee's decisions will not be final or binding on Parliament. Rather, it is intended to provide a timely digest of brief advice to members on the matters within its jurisdiction. It should be flagging issues for members' attention, rather than attempting to duplicate parliamentary debate. Ultimately, whether a bill unduly trespasses on personal rights and liberties is a matter for Parliament and not for the committee. The committee will make a contribution to Parliament in its new role if it operates as intended by the standing committee-that is, it should put in place mechanisms to refer all new bills quickly to an expert adviser for urgent assessment and advice. As with the Senate committee, a weekly turnaround should be possible-that is, members should have the benefit of the committee's report on a bill in time for debate in the week after the bill was introduced.

The committee should not hold inquiries or invite submissions. This is not the way the Senate committee or committees in other States work. Such a lengthy process would unreasonably interfere with the Government's legislative program and the functioning of the committee. It would be an impossible workload for any committee. If, for example, the Legislative Council wished to inquire more deeply into a particular issue raised by a bill, it could do so through its existing committee structure. Conducting lengthy inquiries is not the role of this committee. As I indicated earlier, if the Government's proposal for the Legislation Review Committee is accepted, the Government is prepared to allocate additional funding to the committee to enable it to carry out its new function. The funding will provide a budget for the committee to obtain academic legal advice, as recommended by the standing committee. This advice, and the budget for it, will be critical to ensuring that the committee can report quickly and avoid delaying the Government's legislative program. I commend the bill to the House.

The Hon. DON HARWIN [5.09 p.m.]: I lead for the Opposition on this bill. I am pleased to indicate that the Opposition will be supporting this bill as amended in the other place. I also speak as a member of the Parliament's Regulation Review Committee. This bill is the culmination of a long campaign by the Parliament's Regulation Review Committee for the establishment of a committee in this Parliament with a scrutiny of legislation function. The New South Wales Regulation Review Committee was established in 1987 with a brief to review delegated legislation. Its function has always been to subject regulations to scrutiny, benchmarked against a number of regulatory quality measures. It has no jurisdiction over policy matters, which are properly matters considered by this Chamber as a house of review when the enabling legislation is passed, and otherwise by the Executive Government. However, just as there is best practice in regulatory quality, there are also a number of fundamental legislative principles that Parliament should always seek to observe.

In a number of jurisdictions Parliaments have established scrutiny of legislation committees to ensure legislative vigilance on these principles. The Commonwealth Parliament established its Scrutiny of Bills Committee in 1981. Committees having a regulatory review function in the Western Australian, Victorian and Queensland Parliaments have also had a scrutiny of bills function since 1989, 1992 and 1995 respectively. The Australian Capital Territory Parliament first gave one of its committees scrutiny of legislation and regulatory review functions in 1989.

Periodically, the New South Wales Regulation Review Committee has commented on the seeming inconsistency of scrutinising only regulations in this State, and not the primary legislation from which these regulations take their force. In this term, report 9/52 of the Regulation Review Committee, entitled "Re-engineering regulations in New South Wales for the Twenty-first Century", has called for a scrutiny of legislation function to be given to a committee of this Parliament. The final impetus leading to this bill has, of course, been the report of the Standing Committee on Law and Justice on the issue of a bill of rights. Chapter 8 of that report, entitled "Parliamentary Scrutiny and Protection of Rights", calls for the establishment of a scrutiny of bills committee as a preferable course to instituting a bill of rights.

The report states that a scrutiny of bills committee could ensure that some fundamental legislative principles, embodying the rights and liberties of the individual, were observed in bills coming before the Parliament. In this way some of the aspirations of those lobbying for a bill of rights would be realised. At this point I acknowledge the contribution of the Hon. Janelle Saffin, in her absence, as a member of both the Regulation Review Committee and the Standing Committee on Law and Justice, in using the bill of rights inquiry as an opportunity to advance the longstanding policy of the Regulation Review Committee to establish a scrutiny of bills function in the New South Wales Parliament.

I will not repeat the comments I made in October 2001 in the take-note debate in this Chamber relating to the standing committee's report other than to say that I strongly endorsed its recommendation for a parliamentary

scrutiny of bills function. I am pleased the recommendation has also met with a positive response from the Government. However, I am disappointed that the Regulation Review Committee's report making the same recommendation languished in the Cabinet Office for over three years with no progress and no adequate response to the committee. I am also disappointed about the Government's discourtesy to the Regulation Review Committee in not asking for any comment on the restructuring of the committee or an expansion of its brief. I have confirmed those matters with the committee's chairman. The emphasis in the Minister's second reading speech is on the intention of the standing committee. No consideration has been given to the perspective and experience of the Regulation Review Committee, which has been interacting with other scrutiny committees in other jurisdictions for many years.

This is not a particularly complex bill, despite its significance. The bill firstly amends the name of the Regulation Review Act, renaming it the Legislation Review Act; secondly, it amends the name of the Regulation Review Committee, renaming it the Legislation Review Committee; and, thirdly, it inserts a new section 8A, which will extend the role of the committee to include the scrutiny of bills. A fourth proposed change, to the size of the membership of the committee, was deleted in another place with the agreement of both Government and Opposition members. It had been intended to increase the membership of the committee to 12 members. This would have enabled the new committee to establish sub-committees to cope with the expanded brief. I know that some amendments have been circulated that seek to establish sub-committees. I believe that with eight members it is still possible to establish sub-committees, but that debate is for a later time. Instead of the membership being increased to 12, which was the original proposal, it will remain at eight. By way of footnote, the Victorian Committee has nine members and the Queensland Committee has seven members. Both these committees have a dual brief covering scrutiny of bills and regulations.

Proposed section 8A mirrors the scrutiny brief given by the Senate to its Scrutiny of Bills Committee. This is also used in Victoria-amongst other functions-and in the Australian Capital Territory. The Queensland committee has a different brief, but, as I indicated in my remarks on the take-note debate, the Senate formulation is preferable. The committee has no jurisdiction over the policy of a bill. That is the function of debate in the House. Our scope will be more limited. In scrutinising bills, the committee will focus on some fundamental legislative principles that are designed to protect the rights of individual citizens. The provision in this bill is not too prescriptive.

The committee is charged with reporting to Parliament if any bill trespasses unduly on personal rights and liberties; or makes rights, liberties or obligations dependent upon insufficiently defined administrative powers; or makes rights, liberties or obligations unduly dependent upon non-reviewable decisions; or inappropriately delegates legislative powers; or insufficiently subjects the exercise of legislative power to parliamentary scrutiny. This will enable the committee to draw the Parliament's attention to pernicious legislative devices that undermine civil liberties, such as the inappropriate use of retrospectivity, strict liability offences, non-reviewable discretions in decision-making processes, searches of persons and properties without warrants, reversals of the onus of proof, and the like. In most jurisdictions, this is done by tabling a weekly bill digest with a commentary on every bill introduced into Parliament, whether as Government business or private members business.

In August the member for Bathurst, who chairs the Regulation Review Committee, the committee manager and I visited Brisbane and Canberra to meet with members and committee staff of the Queensland, Commonwealth and Australian Capital Territory parliaments. We also visited Melbourne to meet with Victorian members and committee staff. The purpose of these visits was to explore the issue of how the renamed committee will carry out its expanded brief. The Minister has flagged a number of issues in his speech that he regards as fairly straightforward, but they are less clear to the members of the Regulation Review Committee.

The Minister commits to extra funding for staff as the current staffing levels could not possibly cope with the expanded brief. This is welcome. However , we are unsure whether reliance on external academic advice, as he suggests, is the best model for servicing the needs of the committee. In fact, the Victorian committee is serviced tightly by in-house committee staff and the Queensland committee uses external academic consultants for only about 10 per cent of bills, usually the more complex bills. On the other hand, we met Professor Jim Davis, who works with the Senate committee, and Mr Peter Bain, who works with the Australian Capital Territory committee. Both are from the faculty of Law at the Australian National University. In fact, we sat in on a meeting of the Senate committee and saw Professor Davis in action, as it were. Both these committees seem very happy to rely for their advice on external academics from the law faculty at the ANU.

We have four faculties of law in Sydney and a fifth nearby in Wollongong and it would be surprising if there were not suitable academic resources that we could access in order to operate along lines suggested by the Minister. It is certainly true that we are happy with the work of our in-house legal adviser, Mr Greg Hogg, who assists us with our functions in relation to the review of regulations. That has been a significant factor in the committee's deliberations on how to recommend that we operate as a legislation review committee. It is our feeling that the committee would be best served by in-house staff rather than external academic advice. But that matter will need to be discussed with the Presiding Officers and indeed with those in government who will be signing the cheque, at it were, before a final determination is made.

There are other issues. The most serious issue will be how to ensure that the work of the legislation review committee is done in a timely fashion and that maximum use is made of it by honourable members in debate. The Minister seems to be thinking along the lines of the Senate committee. Yet the Legislation Review Committee will be a joint committee, and what works for the Senate committee is not necessarily applicable to joint committees in this Parliament. The Minister sees the process working along the following lines. A bill is introduced in the first week, a bill digest is then prepared by an external consultant the following weekend, and committee consideration of the draft bill digest occurs presumably at a meeting on a Monday at the beginning of the second week before it is tabled

in Parliament the following day. The chairman, Mr Martin, the committee manager and I are far from convinced that this is workable. We have outlined our views to the current Regulation Review Committee, and it is inclined to agree with us. None of the committee members and managers in other jurisdictions that we met with thought that this would be workable in the context of the New South Wales Parliament.

The key issue is the length of the adjournment in the originating House after the first reading and the Minister's second reading speech. The custom in this Parliament is to adjourn debate for five days. In Victoria the custom is two weeks. In the Australian Capital Territory the custom is that no bill passes until the Standing Committee on Legal Affairs has completed scrutiny. In the Senate, the exigencies of Standing Order 111 provide flexibility and time. The Queensland Parliament had a customary six-day adjournment, similar to what we have, but after its scrutiny committee had commenced operation it altered that period to 13 days adjournment at the request of the committee. If forced to, we will have to try to make the scrutiny process work within the customary five days adjournment, but I have serious reservations about it. The Regulation Review Committee has discussed the issue and is making recommendations to the Government for its consideration of an alternative arrangement. Of course, this bill makes clear that the scrutiny of bills function will not hold up the passage of legislation. The Government will still have the ability to proceed with its legislative program. The Committee's jurisdiction will continue even after the passage of the bill.

If the committee is to achieve its full potential of providing a useful service to honourable members, it will want to table a report on a bill prior to the second reading debate so that its opinion can be considered. The member for Bathurst and I were interested to note that in both the Queensland and the Australian Capital Territory parliamentary chambers copies of their scrutiny committee's bill digests were quite conspicuous by their presence around the benches, on members' desks and in the bundle of papers being carried around by members. Committee members in other jurisdictions told us how frequently their bill digests were referred to in debate. Those other scrutiny committees are making a difference in other jurisdictions and we need to make arrangements to ensure that that is our experience here in New South Wales.

One of the most interesting observations I made during the meetings held with committee managers in other jurisdictions concerned the educative effect of the scrutiny of bills process. Particular legislative devices are consistently criticised by scrutiny committees in their bill digests. Bill digests, once tabled, are read widely within the offices of parliamentary draftsmen and also some departmental legal service providers. Committee managers for the Senate, Queensland and Australian Capital Territory committees all reported that parliamentary counsel in their jurisdictions were now discouraging departments from including measures in their drafting instructions which they knew would attract criticism from the scrutiny committees. They believe they are seeing fewer bills with, for example, unreviewable discretions, retrospectivity and searches without warrants, because of consistent adverse commentary on them in bill digests. Where such devices still feature, parliamentary counsel are starting to highlight them in the bill's explanatory notes, outlining a justification for departure from best practice.

In this way, the work of a scrutiny committee can still be of use, regardless of the speed of legislation through the Parliament, because they are encouraging a scrutiny culture. I am proud to have been associated in a small way with bringing this important reform to fruition. I believe that a scrutiny of bills function is an important analytical tool for members, The new Legislation Review Committee will play a valuable role in protecting the rights and liberties of the people of New South Wales and the Opposition welcomes and supports the bill.

The Hon. RON DYER [5.27 p.m.]: I speak in enthusiastic support of the Legislation Review Amendment Bill. I do so on the basis partly of my long involvement with the committees of this House, going back to the old Committee of Subordinate Legislation, as it was called, the predecessor of the current Regulation Review Committee, which is a joint House committee. The Committee of Subordinate Legislation was chaired by the late Sir Adrian Solomons when I first became a member of this House. I later succeeded him as chair of the committee for quite a number of years. However, in due course, given that the committee was not adequately resourced, a joint House Regulation Review Committee was set up. It certainly has been well resourced and it has operated very well indeed.

Perhaps it is also relevant for me to note that in 1986 I chaired a committee known as the Select Committee on Standing Committees, which was jocularly referred to from time to time as the committee on committees. The Select Committee on Standing Committees reported in 1986 in favour of a system of standing committees of this House, and in due course that recommendation was given effect. So the report of the popularly so-called committee on committees was the immediate predecessor of the system of standing committees the House now enjoys. Coming more up to date, the immediate origin of this legislation, as the Hon. Don Harwin said, was the report of the Standing Committee on Law and Justice, which I chair, dated October 2001 into a New South Wales Bill of Rights.

As the House will no doubt be aware, for various reasons that are not relevant for me to identify now, that committee reported that it is not in the public interest for New South Wales to have a statutory bill of rights. The committee recommended very strongly that a scrutiny-of-legislation committee ought to be set up as a means of promoting human rights and that it should be modelled, so far as its standing orders and responsibilities are concerned, on the Senate committee. The Standing Committee on Law and Justice gave detailed consideration to two essential issues regarding the committee now being set up. One was whether it ought to be a joint or single House committee and the other was whether it ought to be a joint or single function committee.

Regarding the first issue, the law and justice committee believed that the protection of human rights and liberties ought to be the function or responsibility of the whole Parliament. After all, bills pass through both Houses in this Legislature. The committee formed the view that it ought to be the role of the proposed committee to advise all members of any potential problems in legislation, including human rights issues, before they debate and vote on a bill, and it was not simply a matter of forming only part of the review function of the Legislative Council. The

committee felt that the current approach for regulations, that is a joint House committee, seemed to be the appropriate course to adopt.

The second issue that the law and justice committee considered was whether it would be desirable to combine the functions of the proposed scrutiny-of-legislation committee with the joint Regulation Review Committee, as occurs with the committee of the Queensland Parliament. The law and justice committee, during its bill of rights reference, travelled to Canberra and Brisbane to consult with members of the Senate committee responsible for bill scrutiny and the Queensland committee. The committee formed the view that the dual function of the Queensland committee, namely the scrutiny of regulations and bills, cast a heavy work load on that committee. My colleagues and I were told that a typical meeting of that committee could last for some six hours to discharge its business regarding the review of regulations and statutes going before the Queensland Legislature. Page 132 of the law and justice committee's report states:

> The Regulation Review Committee of this Parliament is already a very active and busy committee with a full schedule.

We expressed a preference that, rather than burden the members of that committee with an additional heavy work load, there is a need for a new joint committee to be established for the scrutiny of legislation to be put before the House. I do not resile from the opinion formed by the law and justice committee, but I do not wish to look a gift horse in the mouth. I recognise the realities. The bottom line, the important consideration, is whether the new committee is to be adequately resourced. That is the essential question. I speak from experience in that regard. The old subordinate legislation committee of the Legislative Council, which was in existence when I became a member of this House a very long time ago, was not appropriately resourced.

When I became chair of that committee I campaigned with then Premier, the Hon. Neville Wran, to have some resources given to that committee. As a result of my importuning he agreed to provide the committee with a part-time adviser, for which I was very grateful. However, I instance that example as an illustration that resourcing is a very important issue. When that old committee of this House was replaced with the joint House committee, the Regulation Review Committee, it is my belief that it was appropriately resourced; I think I can safely claim that. The important consideration will be the resourcing of the new joint House and joint function committee. If that happens it will be able to do its job efficiently and well. The legislation provides that the Regulation Review Committee is to be renamed the Legislation Review Committee, which is entirely appropriate as it will discharge both functions. However, it will become and remain a joint committee of both Houses, but its membership will be increased from eight to 12.

The Hon. Malcolm Jones: No, it is capped at eight.

The Hon. RON DYER: I am told that the legislation was amended in the other House to provide for a membership of eight. That being the case, the comments I have made regarding resources become even more important. I was about to say that if the bill had remained as first proposed, that is with a membership of 12, it would follow as a probable consequence that the committee could establish subcommittees to deal with regulations or legislation, as the case may be. I would have thought that that would be less likely with a membership of eight. The committee might find itself working quite hard, along the lines of the Queensland model to which I have already referred, given that there are dual functions.

The Hon. Don Harwin referred to a perceived discourtesy by the Government, vis-à-vis the Regulation Review Committee. That is not a matter within my knowledge. As chair of the Standing Committee on Law and Justice of this House, I was invited to attend a meeting of the Regulation Review Committee. That invitation was issued by its chair, the honourable member for Bathurst, Mr Gerard Martin. I duly attended and gave what I thought was a clear briefing to the Regulation Review Committee about the purpose and intent of the recommendations made by the Standing Committee on Law and Justice. I formed the view that the Regulation Review Committee understood the recommendations of the committee I chair and the reasons for them.

The Hon. Don Harwin: Absolutely, but your recommendation bears very little resemblance to this bill, and that is the point. There was very little consultation between the Government and the Regulation Review Committee about what is in the bill. There was plenty of consultation from your committee. That is not what I am saying.

The Hon. RON DYER: Although I understand what the honourable member said, I differ from his statement that what the Government is doing bears very little resemblance to the recommendations made by the law and justice committee, which very clearly recommended that the committee should be a joint House committee rather than a single House committee. That is the fact. That is what the legislation gives effect to. That is a clear departure from the Senate model, which is a single House committee. To the extent that the honourable member said that the recommendations made by the law and justice committee bear very little resemblance to the recommendations made by it, I would have to differ. I have already conceded, if he were listening, that the law and justice committee made a recommendation for a single-purpose committee rather than a dual-purpose committee. I do not resile from that. We had reasons for recommending that.

However, I then went on to say that the more important issue is whether the committee will be properly resourced. That is the bottom line. I adhere to what I have said. Although the committee does not follow the Senate model in terms of being a single House committee, it follows the Senate model to the extent that its terms of reference, the criteria against which the committee will judge legislation, follows precisely the Senate model. There is a mixture. It is partly based on the Senate model and partly not based on it. Its criteria and functioning are very

closely modelled on the Senate committee, but it is a joint House committee, which is what the law and justice committee recommended. I am very pleased that as part of the deliberations of the Standing Committee on Law and Justice into a Bill of Rights we have been able to achieve an outcome that has led to a scrutiny of bills mechanism in this Parliament.

There can be no doubt that the Senate committee has operated, historically, on a bipartisan-perhaps I could even say multipartisan-basis. It has tended to effectively inform debates as a result of the *Alert Digest* that the Senate committee regularly produces. It has directed the attention of honourable members to important criteria, such as whether a bill trespasses unduly on personal rights or liberties, or makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers. There are some other criteria as well that are also important in informing the Senate committee, or in this case the committee we are now setting up in this Parliament, as to whether bills ought to be amended to give effect to the consideration set out within those criteria. There is another virtue in having a committee sit to consider bills against these criteria, regardless of whether amendments are made.

The bureaucracy-and I do not use that expression in any pejorative term-tend to bear in mind criticisms that have been made when attention is given to the drafting of legislation. If repeated attention has been given, or if repeated criticisms have been made arising out of criteria the committee considers, it has been found in other parliaments that Parliamentary Counsel and officers within State departments tend to give some attention to the criticisms that have been articulated. It is with considerable pleasure that I speak in support of the legislation because it represents not only a long-held view of the Regulation Review Committee but a more recently expressed and, I would hope, intelligently argued view arising out of the consideration of the Standing Committee on Law and Justice into the Bill of Rights reference. I warmly support the measure before the House.

The Hon. MALCOLM JONES [5.46 p.m.]: I support the bill. I acknowledge the contribution of the Hon. Don Harwin and the Hon. Ron Dyer, both of whom gave substantive and accurate descriptions of the background and the content of the bill. I have been a member of the Regulation Review Committee since 1999. The previous Chairman, Peter Nagle, the former honourable member for Auburn, did a huge amount of work as Chairman of the Regulation Review Committee-I am not trying to take anything away from the current chairman who has been in the seat for a relatively short time-to make the Regulation Review Committee fire and to educate its members to be fully aware of the available options and of world's best practice.

We examined the scrutiny of bills role particularly in Queensland, Victoria and the Australian Capital Territory, and in the Senate, back to 1999. I echo the comments of the Hon. Don Harwin about our request for a scrutiny of bills committee being sent through to Cabinet many years ago, and about nothing happening until the findings contained within the report of the law and justice committee, which the Hon. Ron Dyer has given a description of. I do not want to belittle that in any way because it was very important work, but it was not until the law and justice committee's report triggered action from the Cabinet that anything happened. The Regulation Review Committee has worked diligently for a long time. In 2001 it organised an international conference held in this Parliament during the winter recess. Politicians from all over the world with a specific interest in scrutiny of legislation, regulations and so on attended the conference.

That conference turned out to be very successful and resulted in new parliaments being able to obtain information from more senior parliaments. One of the most significant features of the conference was the appreciation and accolades paid to Australian parliaments on the work they have done in their processes and the degree of evolution that is taking place in Australia. For example, the House of Lords submitted a paper to the international conference entitled "Why reinvent the wheel when Australia has already done it?"

The Regulation Review Committee continues to subject its members to information about what is done in parliaments around the world. Both the Hon. Don Harwin and I have been beneficiaries of this and we are comfortable with our exposure to what I call world's best practice, having looked at the way many other legislatures process legislation and subordinate legislation. Recently I went on a study tour to a number of countries to look at the methods of processing legislation.

Although we were seeking information, often our processes were scrutinised by the people we were seeking to learn from-so much so that recently I, along with the honourable member for Camden and Russell Keith, was asked to appear before a special task force of the Blair Government to answer questions on the processes of this Parliament. The task force was greatly interested in our automatic five-year sunset of regulations and in our regulatory impact statements, which are required upon the lapsing of regulations and the formulation of new regulations.

There always appears to be a desire by Executive Government to perhaps appear not as open as the rest of the Parliament would like it to be. The move towards the establishment of a legislation review committee will go a long way towards alerting all members of Parliament of the content of bills and to flag in advance areas of concern. The Hon. Don Harwin referred to new section 8A, which identifies areas of concern, and I shall not reiterate those matters. I believe that the legislative digest, which would be circulated to honourable members on a regular basis, will be of great benefit to parliamentarians, to the Parliament and, therefore, to the people of New South Wales.

The Hon. Ron Dyer referred to requests for a new committee. I shall not go into the detail of that, other than to say that the Regulation Review Committee requested an additional role to scrutinise legislation. That request has been granted and, although the membership on the committee is not as requested and is not adequate, the

Regulation Review Committee, which enjoys high morale, has a desire to get on with the job. The committee has already commenced discussing the modus operandi and I do not believe it is appropriate at this stage to grumble about resources. We asked for the additional role and we have been given it, so we will now get on with the job.

I do not think anyone expects the committee to get it right on day one. There will be a settling down period of identifying problems and coming up with resolutions to the problems. This will require considerable work. However, such is the belief within the committee that the work will be worthwhile, meaningful and advantageous that we are prepared to get on with the job. The bill will be part of the evolution of our Parliament. It will improve the Parliament for our people and I commend it to the House.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.56 p.m.]: The Australian Democrats support the bill but we are disappointed that it does not go far enough. The Legislation Review Amendment Bill will amend the Regulation Review Act 1987 to expand the role of the Regulation Review Committee to scrutinise bills as well as regulations. The renamed Legislation Review Committee will examine bills before they are debated and passed by Parliament. It will assess whether the bill impinges upon the personal rights and liberties criteria outlined in its new terms of reference and ensure that legislation will not inappropriately delegate regulation-making powers. Item [11] of schedule 1 to the bill inserts a new section 8A that specifies the terms of the reference of the committee with regards to the scrutiny of bills as follows:

> (1) The functions of the Committee with respect to Bills are:
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> (a) to consider any Bill introduced into Parliament, and
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> (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
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> (i) trespasses unduly on personal rights and liberties, or
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> (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
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> (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
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> (iv) inappropriately delegates legislative powers, or
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> (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

It is the contention of the Australian Democrats that although this is fine for those limited objectives-and it endeavours to bring the legislation under parliamentary scrutiny-the wider function of government is to introduce evidence-based legislation that is widely discussed in the community and expresses the will of the community leadership. It should not be merely what the community seeks now, but what the community would have sought in hindsight. In other words, one should not be a pollster but a leader, taking into account the interests of the community rather than the immediate perception of the community. The ideal legislation review committee would insist on sound evidence for why legislation was necessary, consider other options, identify groups affected by a bill, and seek their input.

From my point of view as a legislator, when a bill is delivered to my office I-like many of the better members in this place-have a list of lobby and interest groups to which I send the bill, requesting their input. Good legislators then receive that information, digest it and produce amendments in an attempt to improve the legislation. If the task of identifying and informing relevant groups and exploring whether the Government has made a case in support of the legislation were delegated to a review community, legislators would be saved much work. It would also increase community participation, and I believe it would improve legislation generally. It should be noted that legislation is based on anecdotes. It is influenced-I believe far too much-by lobby groups or departments that have the ear of the Government, or by transient current affairs events to which governments respond, particularly at election time, at the expense of more measured and considered views. The law and order debate is a good example of good policy being subsumed by mass hysteria.

People have tried to address the problem of making good legislation. Every bill has a financial impact statement, but it is bizarre that those statements are not considered by Parliament. They are Cabinet documents and, as such, are confidential. That is contrary to the interests of good government. I would love to know whether short-term or long-term assessments are made in financial impact statements on bills that have the effect of imprisoning offenders.

I often wonder whether the long-term sociological impacts of bills such as that are even considered. They will obviously cost money in the short term-more gaols must be built and more court time expended. I wonder whether their impact in terms of the disruption of families and the function of gaols as universities of crime are taken into account, or whether that is totally subsumed and only the short-term impact is gauged. It seems that the financial impact is the only impact specifically considered apart from those that will be considered now. [*Quorum formed.*]

Unfortunately, financial impact statements are not available to the community. That is contrary to the principle of open government, which the Australian Democrats espouse. Local government has complained that changes, particularly in the policing area, have many cost implications for that sector. It claims that it has cost

money to transfer functions to local government when the Government has withdrawn services at a State level. Therefore, local government has asked for an assessment of each bill's impact on local government.

I am sure that honourable members will be aware that I propose to introduce a bill-it is No. 31 on the notice paper-that would measure the impact of legislation on local government. Reverend the Hon. Fred Nile introduced a bill to assess the impact on the family of measures passed in this place. I was critical of that bill as I would have preferred it to have a social impact broader than simply the nuclear family-and I said so at the time. However, both bills address the impact of legislation.

People are concerned about the environment and how it will be affected by legislation. Some bills deal specifically with environmental issues, but bills about water policy or salinity, for example, also affect the environment and it would be good to systematically assess their impact. Lawyers are generally assumed to be more in touch with what is happening with legislation than many other groups. When legislation was introduced to abolish the use of juries in some civil cases, the International Committee of Jurists, New South Wales Branch, noted with concern at its meeting of 10 December the rapidity of the amending bill's progress through both Houses of Parliament and the fact that, increasingly, bills appeared to be progressing through Parliament with limited, if any, community debate or consideration.

That is my point precisely: It is a question not just of informing members about what is going on-which is of course necessary-but of encouraging the wider community to discuss legislation so that Parliament is not perceived as producing thousands of bills that do not relate to the community. If we produced fewer, better quality bills it might improve the image of Parliament in the community.

The terms of reference of this bill are modelled on the Senate Scrutiny of Bills Committee. I refer honourable members to my motion-which I gave notice of on 9 May 2002; it is No. 72 in the order of precedence-to amend the standing orders to establish a scrutiny of bills committee. The Senate committee does not usually recommend specific changes to a bill; it merely highlights provisions that may conflict with the terms of reference. The way in which the Senate committee operates is outlined on page 118 of the Standing Committee on Law and Justice report. It states that the Senate committee generally produces two documents each sitting week, the *Alert Digest* and a report. That is the initial step following the tabling of a bill.

The committee secretariat provides the bill to the legal advisers, together with its explanatory memorandum and the Minister's second reading speech, on the Friday of each sitting week. The legal adviser's role is to examine and report on each bill against the five principles set out in standing order 24. He then provides a written report to the committee by the following Monday, which draws the attention of the secretariat and committee members to those clauses of the bill that appear to infringe principles one to five. The report goes on to outline the other functions of the Senate committee. It is up to the Government and members of the House to exercise their discretion in amending legislation in order to remedy such problems. It would also be up to the Government to justify why it would choose to ignore the comments in the *Alert Digest*, which would be compiled by the secretariat and circulated to all members.

The Australian Capital Territory Government established the Standing Committee on Scrutiny of Bills and Subordinate Legislation in October 1989, the Victorian Government established the Scrutiny of Acts and Regulations Committee in November 1992, and the Queensland Government established the Scrutiny of Legislation Committee in 1995. All committees operate smoothly with little disruption to parliamentary business. The Carr Government intends that it remain a joint committee of both Houses, with the same number of members.

The original bill expanded the membership from eight to 12 but the Opposition moved amendments to retain it at eight. Five members will be appointed from the Legislative Assembly and three from the Legislative Council. The Democrats are disappointed that the Opposition moved this amendment because it has consolidated the power of the Government. We believe that the better approach would have been to have 12 members as in the first print of the bill, or, better still, an even number, such as five, from both Houses. The Upper House is the House of review and maintaining the current composition of the Regulation Review Committee has diminished its independence and role as a check against Executive Government.

Recommendation No. 1 of the Standing Committee on Law and Justice report on a Bill of Rights supported the establishment of a scrutiny of legislation committee similar to that of the Scrutiny of Bills Committee in the Senate. While the committee acknowledged that a Bill Of Rights could undermine the current relationship between the Legislature and the judiciary, it believed that more could be done by members of Parliament if they become more familiar with "the standards of human rights and apply them to their consideration of legislation". If this were to happen there would be no need for a Bill of Rights.

While the Democrats applaud the Government for taking the initiative in establishing a scrutiny of legislation committee, the Government has chosen to ignore a very important and significant point in the recommendation. The report noted that "Former members of the Queensland committee suggested that the volume of work was such that, if members of a committee attempted to review both regulations and bills, it was likely that one of the two functions would suffer." That was at page 132 of the report. The report's first recommendation was, "The committee membership should be separate from the current Joint Regulation Review Committee to ensure it can give sufficient attention to its task."

The Australian Democrats in the Senate have a long association with the Senate Scrutiny of Bills Committee and are encouraged that the Premier has taken my lead and seen fit to establish such a committee in New South

Wales. I believe, however, that we should have evidence-based legislation and this is only a small step on the road to that. I have some amendments which again relate to my notice of motion, which is item No. 72 on the notice paper, and I will move them in Committee-although the Government has indicated, disappointingly, that it will not support them. So, this bill is a start but it does not go far enough. As we often have to do in this House, we support a glass that is one-third full rather than one that is empty.

Ms LEE RHIANNON [6.12 p.m.]: The Greens are happy to support this bill, which significantly expands the role and usefulness of the Regulation Review Committee. I understand that the bill is a response to the report of the Legislative Council Standing Committee on Law and Justice entitled "A New South Wales Bill Of Rights". That is a disappointing response but not a surprising one. As we all know, it is not often these days that Labor is prepared to do something progressive. The progressive side of politics in New South Wales is certainly accustomed to being disappointed by the Carr Government. This was a very minimalist response, but one that the Greens are nevertheless prepared to support because it is a positive step.

The Greens believe that a Bill of Rights is the way to go in New South Wales. We see it as essential to codify and protect the rights of the people-rights which this Government frequently erodes. When Labor is consistently eroding civil rights it is pretty clear that a fundamental safeguard is required. This bill does not provide that fundamental safeguard, but it does provide an additional layer of scrutiny. By replacing the Regulation Review Committee with a Legislation Review Committee, specifically empowered to report on whether bills trespass on personal rights and liberties, the Government is providing an additional layer of scrutiny to protect rights.

This new committee would, of course, have been far more useful to the people of New South Wales if it had been established before the Government gave wide-ranging powers to sniffer dog squads to conduct arbitrary searches, before it gave extra powers to police to detain and search people in motor vehicles, before it gave unjustified powers to police to act on so-called "gang activity", before it started to deny bail to many people who deserve it, and before it introduced many of the other countless pointless pieces of law-and-order legislation that the people of New South Wales are subjected to. The sad irony of the Carr Government trampling on civil rights for seven and a half years and then introducing a rights committee is certainly not lost on the Greens.

The acute hypocrisy of the Labor Government supporting a rights committee whilst promising to legislate for minimum sentencing is also sadly typical of the Carr Labor style. We have grown accustomed to this style; we have had seven years of it. The Carr Government starts by moving hard to the right, then it throws a couple of promises to the left, then it forgets all about substance and just tries to spin its way to popularity. It is a style which has brought success to Labor in the past but it is starting to wear thin.

So, the Greens will support this bill, and we will support it even more enthusiastically if the amendments to be moved by the Democrats are successful. It is an unexpected pleasure to be able to speak to a bill which enhances civil rights, but it does absolutely nothing to absolve Labor of its seven and a half years of eroding those same rights. And, sadly for the people of New South Wales, it looks like this committee will be very busy well into the future, regardless of who forms a government after the next election.

The Hon. RICHARD JONES [6.15 p.m.]: I congratulate the Hon. Ron Dyer on being largely responsible for this legislation coming before the House. It is very important to have a Regulation Review Committee and it is even more important to have a committee that reviews all legislation. It certainly is badly needed. As Ms Lee Rhiannon said, it is going to be a very busy committee over the next few years because some interesting legislation will be introduced, especially if the Opposition gains power in March next year-as it might. Legislation that has passed through this House recently, not to mention in the past 14½ years, would have had to go before this Legislation Review Committee, and that would have been good. The Regulation Review Committee has done a good job over the years and I believe that this new committee will also do a good job. I congratulate the Hon. Ron Dyer and the Government on introducing the legislation.

Reverend the Hon. FRED NILE [6.16 p.m.]: The Christian Democratic Party is pleased to support this bill, which will amend the Regulation Review Act 1987 to replace the Regulation Review Committee with a Legislation Review Committee, which will be given a broad charter to review the effect of all bills on rights and liberties. As members know, this bill has arisen from the report of the Standing Committee on Law and Justice, which is chaired by the Hon. Ron Dyer. We were very pleased with that committee's report in rejecting the Bill of Rights. We know there was a lot of pressure for a Bill of Rights from minority groups, including members of this House. We were pleased that the committee did not endorse a Bill of Rights but came up with this proposal. We support the proposal and believe it should be given a fair trial.

As other members have said, it will be difficult in many ways for the committee to operate if there is a great deal of legislation, so there will need to be some way of deciding how to scrutinise the bills coming through the Parliament and which bills do not present any problems-machinery bills, et cetera-and to focus on bills that would have a major impact on society.

As members know, the Christian Democratic Party Family Impact Commission Bill puts emphasis on assessing the impact of past legislation on the functioning of families, on the role of parents, and the effect on children. I know that some members-I hope the minority-have reservations about it but when people sit down and think about it they usually agree that the intact family is the foundation unit of society. I believe that is the way that God the creator intended it to be, although I acknowledge there are a lot of other relationships, amalgamations and so on within society. But intact families are the building bricks of society, and society is only as strong as those

families.

So the principle-and I hope this committee will share some of these thoughts in its review of legislation-is that we should have legislation that supports intact families, ensures their continuation, makes them stronger, and does not make it more difficult for them or undermine them. The result is a stronger society, a better society, a more economic society, a safer society, a more caring society, and a society in which children will certainly be in a very secure, nurturing environment.

The committee will be required to assess the impact of bills, and this would include social and economic impacts. Bills passed by this House can have a negative impact on very important units of society such as the family. For example, I hope some fair-mindedness will be exercised in evaluating the threatened species legislation that recently passed through this House. Sometimes bills can have a major negative effect on, say, the farming community and, consequently, the bill should be amended or perhaps withdrawn until further negotiations ensure that it will not have a negative impact. Other legislation in this category includes legislation to legalise Australia's first shooting gallery at Kings Cross, the recent legislation dealing with same-sex spouses and other legislation dealing with drugs. The Government may not be fully aware of the extent of the negative impact that some legislation will have on society at the time it is introduced. A thorough examination of bills should lead to better legislation.

We are also concerned that changes often come from on high rather than from the grassroots of society. When change to legislation is justified, society should be able to indicate its concerns by contacting members. Change should come from a democratic environment rather than from on high from such bodies as the New South Wales Law Reform Commission, which strongly recommended the abolition of the exemption for religious organisations under section 56 (d) of the Anti-Discrimination Act. It even included a draft bill to assist the Government to go down that pathway. We are pleased that that has not happened.

I urge the Government to consider carefully commission-type reports and recommendations before adopting them. The Government should ensure that legislation is in harmony with the will of the people and that it meets their needs. Artificial-type bills, although prepared by academics or well-meaning people with legal experience, may have a negative impact on society or certain sections of society. We support the bill and will be pleased to observe its operation through the Legislation Review Committee.

The Hon. PETER BREEN [6.23 p.m.]: The Legislation Review Amendment Bill is the Government's response to the report of the Standing Committee on Law and Justice about the question of a bill of rights for New South Wales. It is also a response to the ongoing work of the Regulation Review Committee, as the Hon. Don Harwin has pointed out. I must say that I was not aware of that work, but I am grateful that members have been able to work together and reach this conclusion. The Standing Committee on Law and Justice found in its wisdom that the New South Wales Parliament does not need a bill of rights. I did not agree with this conclusion and published a dissenting report to the committee finding. The committee recommended a scrutiny of bills committee, however, and the bill before the House will establish that committee. It will be constituted by expanding the work of the Regulation Review Committee.

The primary function of the committee will be to consider any bill introduced into the Parliament and then report to both Houses of Parliament on whether the bill measures up to certain human rights principles and other procedural matters as listed in the bill. Those principles are the same benchmarks used by the Senate Scrutiny of Bills Committee when considering legislation to be introduced into the Federal Parliament. I firmly believe that the committee will add an important new dimension to debate in both Houses of this Parliament. At present debate often takes place in a vacuum so far as human rights principles are concerned. Important questions of rights and responsibilities raised by members are often dismissed as political rhetoric, when in fact these questions go to the heart of our democracy. And while the Parliament may decide to make laws that answer those questions in a negative way, at least the process will be transparent and the principles involved will have been fully debated. I predict that the report of the Legislation Review Committee on each bill to be debated in both Houses of Parliament will be required reading for those members interested in knowing the impact of legislation on rights, liberties and responsibilities.

The Hon. Malcolm Jones pointed out that the proposed digest to be published by the committee will be a valuable guide to members and of great benefit to the community. I support those remarks. A process of reviewing legislation before it is debated rather than leaving the issues for the courts to resolve is an important and necessary function of the Parliament. This is particularly so in a democracy where the human rights benchmarks are not established in a bill of rights. In Australia we are obliged to debate many bills that would be unthinkable in common law countries where the rights of citizens are protected by a citizen's charter of rights or other form of legislative protection of human rights principles.

The most obvious example that comes to mind is the sentencing legislation passed by this Parliament in 1997 and again in 2001 that, to use the Premier's words, "cemented in" certain prisoners. Against all the basic principles of human rights and due process in the criminal law, including the Universal Declaration of Human Rights, we in this Parliament legislated that prisoners whose files were marked "never to be released" must wait 20 years, according to the 1997 legislation, and then 30 years, according to the 2001 legislation, before applying for a determination of their life sentences. We also added the proviso that a prisoner could not apply for a fixed term sentence until he or she "is in imminent danger of dying, or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person".

As I foreshadowed in my contribution to debate on that legislation in 2001, draconian sentencing legislation

is vulnerable to appeal to the High Court of Australia, which may ultimately strike down legislation that offends the judicial powers under chapter 3 of the Constitution. Members will recall the fate of the Community Protection Act passed by the Fahey Government. That legislation, which again did not have the benefit of any kind of scrutiny of bills examination, was struck down by the High Court in the case of Kable, in which Justice McHugh said that the Parliament has the power to make a community protection order but it must exercise the power correctly. Disregarding that advice, this Parliament passed the "cement" laws in 2001. Members from both sides of politics have told me that voting for those bills was a shameful thing to do. Such is the power of party politics in Australia.

I can also say with confidence that the "cement" laws are likely to suffer the same fate as Mr Fahey's Community Protection Act. I expect the challenge to be argued in the High Court before Christmas. If the challenge is successful the 10 "never to be released" prisoners who were identified as being the subject of the legislation will be eligible for parole, which is the exact opposite of the result intended by the legislation. And it must be said that I predicted that result when we debated the legislation. It is a result that might have been avoided if at the time the Parliament had a scrutiny of bills committee of the kind contemplated by the bill before the House. For the record, the way for this Parliament to make laws for the preventive detention of serious criminals is to create an independent forum like the Mental Health Tribunal. This piece of sensible advice might have been provided to the Parliament by the Legislation Review Committee.

Like the Hon. Lee Rhiannon, I am also pleased to be able to support a bill that promotes protections for human rights. This is the best piece of legislation I have had the privilege to vote on in this Parliament and it is a credit to the work of the Hon. Ron Dyer in the Standing Committee on Law and Justice and the work of the Hon. Don Harwin and others in the Regulation Review Committee. I commend the bill to the House.

The Hon. IAN MACDONALD (Parliamentary Secretary) [6.29 p.m.], in reply: The Hon. Don Harwin, in leading for the Opposition, referred to reliance being placed on external academics. This is likely to be the most effective means of ensuring that advice is delivered in a timely manner. It is important, however, that the new system does not delay the legislative program. It is for this reason that the model proposed in the bill has been put forward by the Government.

The Hon. Don Harwin criticised the consultation process for developing the committee's role. While that concern is noted, it is recognised that the Standing Committee on Law and Justice consulted widely before publishing its original report. I also note his concern about the need to properly resource the committee. That approach is considered more efficient than establishing a completely new committee, notwithstanding the views of the law and justice committee. This system should be timely and effective. I will deal with the comments of the Hon. Dr Arthur Chesterfield-Evans in Committee after his amendments are moved. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

Schedule 1

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.31 p.m.], by leave: I move Australian Democrats amendments Nos 1 to 4 in globo:

No. 1 Page 3, schedule 1. Insert after line 18:

[7] Section 8A

Insert after section 8:

8A Sub-committees

(1) The Committee may appoint sub-committees consisting of 3 or more of its members (including at least one Government member) to assist the Committee in the exercise of its functions. The Committee may abolish a sub-committee or alter its membership.

(2) A sub-committee is to report to the Committee on any matter referred to it by the Committee. The Committee may:

(a) adopt the report, or

(b) reject the report, or

(c) adopt the report with variations.

(3) The Committee is to appoint one of the members of a sub-committee to preside at meetings of the sub-committee, and the member so appointed has a deliberative vote and, in the event of an equality of votes, has a casting vote.

(4) At a meeting of a sub-committee, 2 members (one of whom must be the member

appointed to preside) constitute a quorum.

(5) A question arising at a meeting of a sub-committee is to be determined by a majority of the members present and voting.

(6) The procedure for calling meetings of a sub-committee and for the conduct of business at those meetings is (subject to this Act and any determination of the Committee) to be determined by the sub-committee.

(7) Sections 8 (8) and (9), 11, 12, 13 and 14 apply to a sub-committee in the same way as they apply to the Committee.

No. 2 Page 3, schedule 1 [7], lines 21-25. Omit all words on those lines. Insert instead:

8A Functions with respect to Bills and Acts

(1) The functions of the Committee with respect to Bills and Acts are:

(a) to consider any Bill introduced into Parliament and any Act of the State (whether enacted before or after the commencement of this section), and

(b) to report to both Houses of Parliament as to whether any such Bill or Act, by express words or otherwise:

No. 3 Page 4, schedule 1. Insert after line 14:

[9] Section 10 Reports as to Bills, Acts or regulations

Insert in section 10 before subsection (1):

(1A) The Committee must report to the Houses of Parliament under section 8A or 9 within 10 calendar days of the Committee adopting a report on the matter concerned.

No. 4 Page 4, schedule 1. Insert after line 19:

[10] Section 10A

Insert after section 10:

10A Dissenting reports

Any member of the Committee is entitled to have appended to a report of the Committee to a House of Parliament a statement of dissent in relation to any part of the report.

The amendments are very modest and far less detailed than the motion of which I gave notice on 9 May. The motion is modest in the sense that it seeks the establishment of a scrutiny of bills committee to replace a bill of rights, as I referred to in my contribution to the second reading speech. Australian Democrats amendment No. 1 seeks to insert proposed section 8A-a provision referred to my motion. The Senate and the Victorian scrutiny of legislation committees provide for subcommittees. This amendment also will facilitate the establishment of subcommittees when needed. The report of the Standing Committee on Law and Justice noted on page 22 that the subcommittees of the Victorian Scrutiny of Acts and Regulations Committee can take on specific roles such as reviewing regulations and redundant legislation and conducting inquiries with specific references relevant to the committee's role. As this legislation will have the job of reviewing bills and subordinate legislation, it would be appropriate for it to have the right to exercise discretion in the establishment of subcommittees. I acknowledge that this will be more difficult now that the membership has been reduced from 12 to8, but I suggest that such a right should be given. I commend the amendment to the Committee.

Amendment No. 2 includes wording similar to that of the terms of reference of the Senate's Scrutiny of Bills Committee. It will clearly specify that the committee may inquire into bills that may conflict with current statutes. The committee may also review current statutes and subordinate legislation. Amendment No. 3 will require the committee to present a report relating to the review of bills within 10 calendar days. Amendment No. 4 allows for members of the committee to make dissenting reports. I am sure that honourable members would agree that the amendments contain great improvements. I commend them to the Committee.

The Hon. IAN MACDONALD (Parliamentary Secretary) [6.34 p.m.]: The Government opposes Australian Democrats amendment No. 1. As stated in the second reading debate, it is the Government's view that the committee should not be a third House of Parliament set up to debate issues exhaustively. The committee should provide a timely digest, including, if appropriate, best brief advice to members on the various matters that fall within its jurisdiction. However, making a final decision on the matters raised then becomes a matter for each member of the House. The Government is of the view that this outcome can be achieved if the committee can have access to the advice of external advisers. Such advisers can help it identify issues of significance. The Government will provide additional resources to the committee for that purpose.

Granting the Legislation Review Committee the power to establish subcommittees would result in those extra resources being diverted to servicing subcommittees. Further, the committee would not be able to fulfill the

role outlined for it by the legislation in a timely and effective manner if the proposal to give formal voting rights to subcommittees were successful. The important work of the committee would be bogged down in endless debate in subcommittees. The committee should be identifying important issues for the House to debate, and the House will ultimately decide what is appropriate. That is the way that the Commonwealth Senate system for the scrutiny of legislation operates and that is what the Government has proposed for New South Wales. In that regard I note that the advice provided by Professor Kinley to the Standing Committee on Law and Justice, which recommended the Legislation Review Committee, did not identify the need to include the power to appoint subcommittees. Accordingly, the amendment to establish subcommittees is not supported by the Government.

The Government opposes Australian Democrats amendment No. 2. The Government is concerned to ensure that the system is workable. If the amendment is supported, the committee's resources would be diverted away from bills currently before the House into various inquiries into legislation that was passed possibly decades ago. Parliaments, both past and present, have already given appropriate scrutiny to such legislation. It is difficult to see what benefit would be gained from conferring power on the Legislation Review Committee to inquire into legislation that has already been enacted. I note that proposed section 8A expressly recognises the power of the committee to report on a matter when a bill becomes an Act before the committee can report. That is a more appropriate and measured response. Further, to the extent that the Parliament believes that a particular piece of legislation is in need of review, Parliament can refer the matter to any one of the other parliamentary committees for review.

The Government opposes Australian Democrats amendment No. 3. It is important that the reports of the committee be made available to Parliament as soon as possible. The system proposed by the Government envisages that advice will be provided within a very short time frame. Ten days is too long a period in which to deliver a report to either House in circumstances in which the committee has made up its mind. This amendment would mean that important issues raised by the committee might not be considered during debate on the legislation.

The Government opposes Australian Democrats amendment No 4. As was outlined in the second reading speech, what is required is a system that ensures that timely advice is provided to Parliament on issues that might be of concern. It is the Government's view that it is the responsibility of Parliament as a whole to debate the issues. The reports prepared by the committee are, as is the case in the Senate, intended to simply highlight matters of potential concern for consideration of the whole House. It is difficult to see what value dissenting reports could add in such a system. If a member of the committee does not support a particular aspect of the bill, the member can contribute to the second reading debate.

The Hon. DON HARWIN [6.37 p.m.]: For several reasons the Opposition does not support any of the Australian Democrats amendments. If the Hon. Dr Arthur Chesterfield-Evans understood the way in which the current Regulation Review Committee and the Senate Scrutiny of Bills Committee worked he would understand that the work of scrutiny committees can be successful only if a bipartisan approach is taken by their members; that is, if both Government and Opposition members forget that they are Government and Opposition members and concentrate on the fundamental legislative principles. The comments of the Hon. Dr Arthur Chesterfield-Evans about the size of the committee and the fact that the Government would have four of the eight members are completely misplaced and do not reflect a proper understanding of how effective scrutiny committees work.

In that respect the remarks about subcommittees are also a bit off the mark. The Victorian committee is the only committee in Australia that has subcommittees. That committee has responsibilities that go beyond the scrutiny of primary and delegated legislation. The Victorian committee has subcommittees because it has a redundant legislation function: it reviews old Acts of the Victorian Parliament that are no longer needed. When I visited the Victorian Parliament recently I discovered that the Victorian committee is virtually a standing committee that can review any policy. It is currently undertaking a review of Anzac Day, which has virtually no relevance to fundamental legislative principles. It is simply a policy review. The second amendment, which would extend the jurisdiction of the committee to Acts, constitutes a massive expansion of the committee's brief. The points put by the Hon. Ian Macdonald in that regard are well made.

The committee has jurisdiction over bills even after they pass through the Parliament, and this point is relevant to the third amendment, which relates to reporting times. There is no reason that this committee, when it is established, could not continue to examine a bill after it is enacted and proclaimed. There is no particular benefit in either the second amendment or the third amendment moved by the Hon. Dr Arthur Chesterfield-Evans. It is perhaps worth pointing out that all joint committees of the Parliament have identical provisions for dissenting reports. Such provisions in the Legislation Review Amendment Bill are no different from those that apply to the Staysafe committee, the Public Accounts Committee or any other parliamentary committees. If we are going to make changes in relation to one committee, we should deal with them all and consider all the issues relating to reports. It should not be done in piecemeal fashion, which is what these amendments seek to do.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [6.42 p.m.]: I put it to the Committee that new amending legislation cannot be considered without considering first the overall function of the Act to which it relates. That is not a big ask. The Government was concerned that a delay of 10 days would slow down the system. Bills should not be rammed through this House: that does not make good legislation. Rather, they should be discussed slowly and deliberately. We should be given more time to consider them. The Hon. Ian Macdonald said that the main place for debate is in the Parliament. That is all very well and good, but work that could be done by a common bipartisan committee is duplicated in almost every office. Discussion that takes place outside the Parliament and is presented in a digested form would help to inform the debate and enable members to more easily make a decision.

The Hon. Don Harwin referred to the need for bipartisanship in committees. I certainly have no problem with that. One of the requirements of a motion that I moved on 9 May was that the committee should be an upper House committee comprising three Government members, two Opposition members and two crossbench members, thus reflecting the composition of the Parliament. Anything done by the Parliament should reflect its composition. The Parliament should represent the primary votes cast in the community. That is democracy. Obviously, the size and composition of the committee should reflect bipartisanship. I do not accept the honourable member's assumption, which is a misunderstanding, that I favour partisanship within the committees. I am very much in favour of a bipartisan conclusion as part of a good democratic process.

Amendments negatived.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

Bill reported from Committee without amendment and passed through remaining stages.

[*The Deputy-President (Reverend the Hon. Fred Nile) left the chair at 6.46 p.m. The House resumed at 8.30 p.m.*]

Bill Name:	Legislation Review Amendment Bill
Stage:	Second Reading, In Committee
Business Type:	Bill, Debate
Keywords:	2R, COMM
Speakers:	Macdonald, The Hon Ian; Harwin, The Hon Don; Dyer, The Hon Ron; Jones, The Hon Malcolm; Chesterfield-Evans, The Hon Dr Arthur; Rhiannon, Ms Lee; Jones, The Hon Richard; Breen, The Hon Peter; Nile, Reverend The Hon Fred
Database:	LC Hansard Extracts - 52nd Parliament of NSW / 523pc049 / 37

Next Page
Previous Page