

**REGULATION REVIEW COMMITTEE**

**PARLIAMENT OF NEW SOUTH WALES**

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**Further Report on the Scrutiny of National Scheme Legislation and the  
Desirability of Uniform Scrutiny Principles.**

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**Report 4/51  
April 1996**

**REGULATION REVIEW COMMITTEE**

**MEMBERS**

Mr D Shedden, MP, (Chairperson)  
Ms J Hall, MP, (Vice-Chairperson)  
Ms D Beamer, MP  
Mr B Harrison, MP  
The Hon J Saffin, MLC  
Mr A Cruickshank, MP  
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Mr B Rixon, MP  
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**STAFF**

Mr J Jefferis, B.A. LL.B., Director  
Mr G Hogg, Dip.Law (B.A.B.), Dip.Crim., Legal Officer  
Mr J H Donohoe, B.A., Dip.F.H.S., Committee Clerk  
Mr D Beattie, Research Officer  
Ms M Brown, Assistant Committee Officer

## **FURTHER REPORT ON THE SCRUTINY OF NATIONAL SCHEME LEGISLATION AND THE DESIRABILITY OF UNIFORM SCRUTINY PRINCIPLES**

In September 1995 the Committee tabled Discussion Paper No.1 on the Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles. That paper outlined the following three proposals for the consideration of the public:

1. That all Scrutiny Committees adopt common Terms of Reference for the examination of national scheme subordinate legislation;
2. That all Scrutiny of Bills Committees adopt common Terms of Reference for the examination of national scheme primary legislation; and
3. That uniform legislation be tabled as an exposure draft in each Parliament.

The discussion paper had been released by all Australian scrutiny of legislation committees at their conference in Darwin in July, and each committee was to seek public submissions. The Regulation Review Committee sought submissions on the paper by 1 December 1995 and the Committee emphasised that it was keen to hear comment from the community at large.

By the end of January 1996 the Committee had received nine submissions and most of these were received after the closing date.

### **Conferences on Discussion Paper**

On 8 December 1995 a delegation from the Regulation Review Committee of New South Wales attended the Conference of Chairmen and Secretaries of Australian Scrutiny of Legislation Committees in Hobart to consider the submissions on the discussion paper and future action by the Committees.

After consideration of the submissions made to each Committee, the Chairmen resolved to finalise the discussion paper at a further meeting to be held in Perth, Western Australia, in 1996. The formal resolutions of the Conference are as follows:

1. *That this conference, in the light of public response to the July discussion paper on the Scrutiny of National Scheme Legislation and the desirability*

*of uniform scrutiny principles, launched in Darwin, appoint a working group to finalise that discussion paper as a matter of urgency, with a view to:-*

- (a) presenting such paper for consideration at the next meeting of this conference; then*
  - (b) requesting the Council of Australian Governments (COAG) through the Premier of Tasmania to list the issue of parliamentary scrutiny of uniform national legislation for discussion at the next meeting of that body; and*
  - (c) requesting the Standing Committee of Attorneys-General (SCAG) through the Attorney-General of the Australian Capital Territory to list the issue of parliamentary scrutiny of uniform national legislation for discussion at the next meeting of that body; and*
  - (d) requesting COAG and SCAG to adopt such principles for parliamentary scrutiny, and to refer them to all ministerial councils in Australia; and*
  - (e) requesting all Australian Parliaments to sponsor a resolution embodying such principles for parliamentary scrutiny.*
- 2. That the next meeting of Chairs and Secretaries be held in Perth, Western Australia in May 1996.*

A meeting of the Working Group took place on 6 and 7 March 1996 and a position paper taking into account the submissions is being prepared for the Perth meeting.

### **Submissions**

The submissions to the Regulation Review Committee are included in Annexure 1 to this paper and are summarised in the following table:

## SUMMARY OF SUBMISSIONS

<b>SUBMISSION</b>	<b>PROPOSAL 1</b> All scrutiny Committees to adopt common terms of reference but only for the scrutiny of National Scheme Subordinate Legislation	<b>PROPOSAL 2</b> All scrutiny of Bills Committees adopt common terms of reference but only for the scrutiny of National Scheme Legislation Bills	<b>PROPOSAL 3</b> Tabling of Exposure Drafts in each parliament
1) Mr I D MacDougall AC Commissioner New South Wales Fire Brigades (30 October 1995)	An increase in national scheme legislation emphasises the need for a consistent approach to its scrutiny by parliamentary review committees. (New South Wales Fire Brigades has no specific expertise to contribute to the discussion paper, but will comment on specific relevant legislation).		
2) Mr B W Howard AO, MC Director- General, State Emergency Service (1 November 1995)	The State Emergency Service does not have any comments to make on the discussion paper.		
3) Mr R J Eagle, A/Director-General, Department of Public Works and Services (20 November 1995)	The proposals are supported, as they will assist in achieving the worthwhile objective of a uniform approach by each of the States in the Commonwealth to future national scheme legislation.		

<b>SUBMISSION</b>	<b>PROPOSAL 1</b> All scrutiny Committees to adopt common terms of reference but only for the scrutiny of National Scheme Subordinate Legislation	<b>PROPOSAL 2</b> All scrutiny of Bills Committees adopt common terms of reference but only for the scrutiny of National Scheme Legislation Bills	<b>PROPOSAL 3</b> Tabling of Exposure Drafts in each parliament
4) Mr Paul A Broad, Managing Director, Sydney Water (28 November 1995)	Supports expansion of terms of reference to include assessment of Environmental impact of subordinate national scheme legislation. The proposed uniform terms only presently include social and economic assessment.		
5) Mr K P Sheridan, Director-General NSW Agriculture (4 December 1995)	Agrees that opportunities for parliamentary scrutiny and input have at times been limited because of the time consuming process in gaining government acceptance; believes that if individual Parliaments were involved as a second tier review, this could add years to the process of adoption, but nevertheless agrees that Parliaments have an overriding responsibility to review legislation and should not be seen as a rubber stamp; believes the proposals could satisfy the problems in providing adequate parliamentary scrutiny, provided delays in the process can be minimised.		

<b>SUBMISSION</b>	<b>PROPOSAL 1</b> All scrutiny Committees to adopt common terms of reference but only for the scrutiny of National Scheme Subordinate Legislation	<b>PROPOSAL 2</b> All scrutiny of Bills Committees adopt common terms of reference but only for the scrutiny of National Scheme Legislation Bills	<b>PROPOSAL 3</b> Tabling of Exposure Drafts in each parliament
6) The Hon J W Shaw QC MLC, Attorney-General (8 December 1995)	<p>The Attorney indicates that he is a member of the Standing Committee of Attorneys-General (SCAG), as well as the Ministerial Council for Corporations (MINCO).</p> <p>1. He indicates that MINCO will make its response direct to the Senate Committee on Regulations and Ordinances and Senate Standing Committee on the Scrutiny of Bills. (Mr Peter Crawford, Secretary of the Senate Scrutiny of Bills Committee, advised the Secretariat of the Regulation Review Committee that MINCO has not made a submission to his committee.)</p> <p>2. With respect to his representation on the Standing Committee on Attorneys-General, he presented a paper to SCAG on the COAG principles and guidelines for standard setting and regulatory action by ministerial councils. The paper criticises COAG's requirements for regulatory impact statements for regulatory proposals and requests that the issue be removed from SCAG's agenda.</p>		
7) Mr Ian Gilbert Joint Acting Executive Director and Director Legal, Australian Bankers' Association (12 December 1995)	<p>The Association is particularly supportive of the assessment of national scheme legislation with respect to its likely business or economic impact as compared with social benefits. They believe that the requirement for cost benefit analysis that is proposed to be applied to national scheme subordinate legislation should also apply to national scheme primary legislation.</p>	<p>The Association also believes that the relevant State or Territory Legislature should be included in the drafting process of legislation and that appropriate consultation should take place with business and, where appropriate, community interest groups, including the release of exposure drafts of legislation.</p>	

<b>SUBMISSION</b>	<b>PROPOSAL 1</b> All scrutiny Committees to adopt common terms of reference but only for the scrutiny of National Scheme Subordinate Legislation	<b>PROPOSAL 2</b> All scrutiny of Bills Committees adopt common terms of reference but only for the scrutiny of National Scheme Legislation Bills	<b>PROPOSAL 3</b> Tabling of Exposure Drafts in each parliament
8) Mr Ian Ramsey General Manager Workcover Authority (20 December 1995)	Generally supports but believes Committees should accept automatically National Economic Impact assessments which are consistent with the COAG principles and guidelines for National standard setting.	Generally supports	National Occupational Health and Safety regulations are being drafted by individual States based on a national standard and therefore there is no national draft regulation to be tabled. Workcover suggests tabling of public comments on the draft national standard as otherwise tabling the national regulation would cause delays and be too late for intervention.
9) Mr Ron Hardaker, Executive Director, Australian Finance Conference (22 January, 1996)	Based on the Australian Finance Conference's experience with the lengthy delays in national scheme legislation such as the uniform consumer credit code it prefers scrutiny not to be used as a political tool or to detract from the process.	The terms of reference should be explicit in relation to a scrutiny rather than a policy role.	The Conference does not support tabling exposure drafts but prefers instead option 2 - to involve scrutiny of Bills Committees in the process. (as NSW doesn't have a scrutiny of Bills Committee it would be excluded from the process)

### Review of Submissions

What emerges from the submissions is general support from government authorities for an enhanced role for Parliament in the scrutiny of national scheme legislation provided legislative timetables can be maintained. Indeed Sydney Water supports the expansion of the terms of reference in proposal one to include consideration of whether the environmental impact of subordinate legislation has been properly assessed. The Committee adopts the view that the requirement to assess the social costs and benefits of regulations includes a requirement to assess environmental costs and benefits.

The Australian Bankers' Association raise the related issue, which has concerned the committee for some time, of the disparity between assessment and consultation requirements for bills as compared with regulations. The latter are subject to a full assessment and consultation program under the Subordinate Legislation Act 1989, while there is no general assessment requirement for the former. However, it should be noted that COAG has only recently introduced principles and guidelines for national standard setting, which contain public consultation and minimum cost benefit assessment requirements for national scheme legislation proposals. These were referred to at item 2.9 of the discussion paper.

The problem with the COAG principles is that they provide for assessment and public consultation but do not refer to consultation with the individual State and Territory Parliaments. The submission of the New South Wales Attorney-General includes a paper critical of the formal COAG guidelines, preferring instead to rely on existing informal procedures .

The committee's experience is that informal assessment and consultative procedures do not work. Such piecemeal procedures in respect of regulations were abandoned in 1989 with the introduction of the Subordinate Legislation Act. It is difficult to see how there could be any objection to providing the Parliament at least with the same information and opportunity for debate on national scheme proposals as will be provided to the public.

The Workcover Authority supports the acceptance by Parliament of assessments under the COAG principles. However The Australian Finance Conference does not support the tabling of exposure drafts of Bills but prefers instead the involvement of scrutiny of bills committees in the process.

## **Conclusions**

The submissions on the discussion paper can all be characterised as supporting review of national scheme legislation by the scrutiny of bills committees of the parliaments, provided the passage of that legislation is not delayed.

As indicated above, this will present problems for New South Wales which does not yet have a scrutiny of bills committee . That problem would need to be corrected either by an expansion of the role of the Regulation Review Committee or by the creation of a separate scrutiny of bills committee .

D J Shedden  
Chairman  
Regulation Review Committee

# ANNEXURE 1

New South Wales Fire Brigades  
227 Elizabeth Street  
Sydney NSW 2000  
PO Box A249 Sydney South 2000



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Facsimile: (02) 265 2988

CHO/00367

30 October 1995

Mr D J Sheddon MP  
Chairman  
Regulation Review Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Sheddon

I refer to your invitation to comment on discussion paper number 1 on the scrutiny of national scheme legislation and the desirability of uniform scrutiny principles.

An increase in national scheme legislation has emphasised the need for a consistent approach to its scrutiny by parliamentary review committees.

While acknowledging the importance of this matter, the New South Wales Fire Brigades has no specific expertise to contribute to the discussion paper.

I would however be pleased to assist through the Minister for Corrective Services and Minister for Emergency Services should the Committee require comment on specific relevant legislation.

Yours sincerely

I D Mac Dougall AC  
COMMISSIONER

9510018vd

# State Emergency Service



1 November 1995

Level 6, 6-8 Regent Street, Wollongong NSW 2500  
PO Box MC 6126 Wollongong NSW 2521  
Phone: (042) 26 2444 Fax: (042) 29 7109

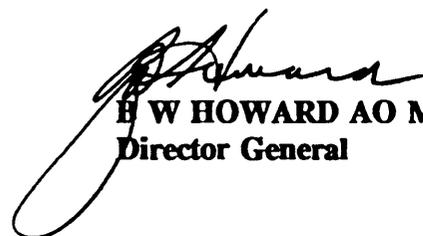
Chairman  
Regulation Review Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Sir

**DISCUSSION PAPER NUMBER 1 ON THE SCRUTINY OF  
NATIONAL SCHEME LEGISLATION  
AND  
THE DESIRABILITY OF UNIFORM SCRUTINY PRINCIPLES**

The State Emergency Service does not have any comments to make on the above discussion paper. Thank you for the opportunity to comment.

Yours faithfully

  
**E W HOWARD AO MC**  
Director General





Mr D. J. Shedden MP,  
Chairman,  
Regulation Review Committee  
of N.S.W. Parliament,  
Parliament House,  
Macquarie Street,  
SYDNEY, N.S.W., 2000.

20 NOV 1995

Dear Mr Shedden,

I refer to your recent invitation to comment on Discussion Paper No. 1 on the Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles.

The proposals will assist in achieving the worthwhile objective of a uniform approach by each of the States and the Commonwealth to future National Scheme Legislation. Accordingly the proposals are supported.

If you have any further enquiries please contact my Senior Legal Officer, Mr Gerard Carter,  
Tel: 372 8013, Fax: 372 8022.

Yours sincerely,

R.J. EAGLE,  
A/Director-General.

28 November 1995

Mr Doug Shedden, MP  
Chairman  
Regulation Review Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Shedden

I am writing in response to your request for written comments on the proposals contained within Discussion Paper Number One, which concerned the **scrutiny of National Scheme Legislation and the desirability of uniform scrutiny principles.**

Sydney Water's comments are submitted in relation to proposal 1, point 3,-

"Whether, having regard to the expected social and economic impact of the subordinate legislation, it has been properly assessed".

Sydney Water believes that this objective should be altered so to take into account the potential negative environmental impacts of national scheme subordinate legislation. Sydney Water is of the view that the potential negative impact should be considered by the NSW Parliament of any national scheme legislation on environmental matters. As a consequence of this, Sydney Water recommends that point 3 be amended to read,-

"Whether, having regard to the expected social, economic and environmental impact of the subordinate legislation, it has been properly assessed".

Sydney Water trusts that these comments will be useful in formulating uniform scrutiny principles and looks forward to receiving further discussion papers and the final report on the proposals for implementation.

Yours sincerely



(PAUL A. BROAD)  
Managing Director

21 DEC 1995  
Office of the Managing Director

Level 23, 115-123 Bathurst Street, Sydney, NSW 2000, Australia Phone (02) 350 5000 Fax (02) 392 3100 DX 14 Sydney

SYDNEY WATER CORPORATION LIMITED ACN 063 279 649



5

4 DEC 1995

# NSW Agriculture

(34695)

Mr D J Shedden MP  
Chairman  
Regulation Review Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Shedden

Thank you for your letter of 2 November 1995 inviting my comments on proposals by the Scrutiny of Legislation Committees in response to the emerging need for effective parliamentary scrutiny of national scheme legislation.

NSW Agriculture has had some experience with national scheme legislation, generally promoted by the Standing Committee on Agriculture and Resource Management. The most recent example is the adoption by all States of the Agricultural and Veterinary Chemicals Code and there are several other schemes currently under consideration.

I agree that opportunities for parliamentary scrutiny and input have at times been limited when such schemes are proposed, principally because the process of gaining government acceptance is so involved and time-consuming that a second-tier review would introduce a whole new area of uncertainty. You will appreciate the difficulties involved in settling the terms of legislation with all States and the Commonwealth and that changes made by or in individual parliaments could add years to the process of adoption of national scheme legislation, particularly given the delays caused by elections and the parliamentary timetables generally. Nevertheless, it has to be accepted that parliaments have an over-riding responsibility to review legislation and should not be seen as, in your terms, a rubber stamp.

For this reason, I believe the proposals in the Discussion Paper could satisfy the problems inherent in national adoption of legislative schemes while ensuring that adequate parliamentary scrutiny can be afforded. I should point out, however, that there are often fairly strict timetables applying to national scheme legislation which are imposed by, for instance, Commonwealth or international commitments and any system which can minimise delays in the process would be of great benefit.

Yours sincerely

**K P SHERIDAN**  
**DIRECTOR-GENERAL**



6

Mr D Shedden, MP  
Chairman  
Regulation Review Committee  
Parliament House  
SYDNEY 2000

Dear Mr Shedden

27 Dec 1995

I refer to your recent letter in which you enclosed a discussion paper entitled 'The Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles', and sought my comments.

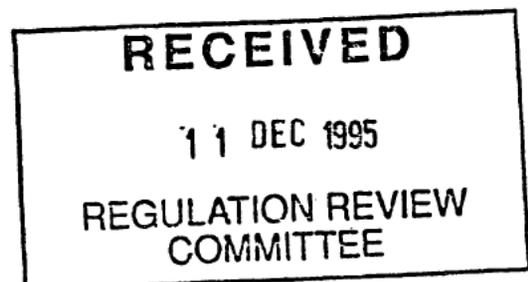
As you would be aware, I am a member of both the Standing Committee of Attorneys General ('SCAG') which also meets as the Ministers responsible for Censorship and the Ministerial Council for Corporations ('MINCO'). I understand that the Secretary to the Ministerial Council for Corporations has arranged for comments to be forwarded on behalf of the Council to the Senate Standing Committee on the Scrutiny of Regulations and Ordinances and the Senate Standing Committee on the Scrutiny of Bills and I have therefore not addressed specific matters which relate to MINCO in this response.

I note that paragraph 2.9 of the discussion paper refers to the adoption by the Council of Australian Governments of 'Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standards Setting Bodies' at its April 1995 meeting. This paper was considered by SCAG at its meeting held on 3 November and I am enclosing a copy of the paper which was unanimously endorsed by Ministers at the meeting.

Thank you for seeking my comments on the discussion paper.

Yours faithfully

JW Shaw QC, MLC  
**ATTORNEY GENERAL**



**STANDING COMMITTEE OF ATTORNEYS-GENERAL**

**ADELAIDE, 2-3 NOVEMBER 1995**

**PRINCIPLES AND GUIDELINES FOR STANDARD SETTING AND  
REGULATORY ACTION BY MINISTERIAL COUNCILS AND STANDARD  
SETTING BODIES**

In its report to the Council of Australian Governments in February 1994, the Committee on Regulatory Reform reported on issues related to the setting of national standards in Australia. Major business associations have suggested that Australia's regulatory system is unnecessarily complex, generates delays, inconsistencies and additional costs for business and inhibits risk taking and enterprise.

At its meeting in April 1995, the Council of Australian Governments adopted a report prepared by the Commonwealth-State Committee on Regulatory Reform entitled Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies. The report is attached to this paper at Annexure A.

On 28 June 1995 the Prime Minister wrote to the Chairman of the Standing Committee of Attorneys General, the Hon Mrs Cheryl Edwardes MLC, indicating that the principles and guidelines set out in the report would apply to legislative proposals which are submitted to Ministerial Councils for decision after 1 September 1995.

It is noted that the Attorney General of Victoria has indicated that it is unnecessary for this matter to remain on the SCAG agenda, and that Ministers will be cognisant of the matters dealt with in the paper when developing proposals.

**SUMMARY OF THE GUIDELINES**

The object of the Guidelines is to ensure that new standards in legislation, regulations or Ministerial Council Agreements do not impose unnecessary regulation or excessive requirements on business. National standards should achieve minimum necessary standards having regard to economic, environmental, health and safety concerns. The principles set out in the paper are consistent with the objects of national competition policy.

The paper recommends that Ministerial Councils undertake regulatory impact analysis of the potential benefits and costs of regulation. This requires analysis of the need for regulation, involving analysis of its costs and benefits, impact on competition and

public consultation. Quantitative analysis should also be undertaken, which involves risk analysis, cost-benefit analysis and cost-effectiveness analysis.

The paper also discusses the principles and features of good regulation.

The paper sets out the method of assessment of national standards proposed to be adopted by Ministerial Councils, including the details of an impact statement and review of the process. Detailed guidelines for the preparation of regulatory impact statements are attached to the paper.

The guidelines provide for the material to be included in regulatory impact statements, the placing of advertisements, the preparation of a list of those who have put their views and consideration to be given to the views expressed.

A copy of the completed statement must be submitted to the Commonwealth Office of Regulatory Review for information, which may be called upon to advise Ministerial Councils on technical issues so that a consistent approach is adopted.

At the conclusion of the regulatory impact process, jurisdictions may seek a review. An independent review will take place if two Heads of Government write to the Chair of the Ministerial Council requesting a review. The Ministerial Council is precluded from considering the matter further while the review takes place. The report of the independent review body is a public document. If the Ministerial Council fails to act on the findings of the review, the matter may be examined by COAG.

## COMMENTS

The Standing Committee of Attorneys General currently has on its agenda several matters which propose regulatory reform and will necessitate the preparation of impact statements as required by the paper. These matters include uniform powers of attorney, personal property securities, bills of lading and proposed uniform trustee company legislation.

Officers generally consult widely within jurisdictions on proposals before SCAG, with industry bodies, consumers and other regulators, and consider the necessity for regulation, having regard to its impact on business, the economy and consumers. Officers support the features of good regulation identified by the paper.

The object of the paper is the formalisation of the process, with a view to enhancing the accountability of Ministerial Councils to business, consumers and Heads of Government.

The paper does not indicate the point at which regulatory assessment should be undertaken. The conduct of consultation with business, consumers and other agencies on detailed proposals or model standards prior to their adoption in principle by Ministers may create an expectation that the proposals will be adopted by individual jurisdictions. Of course, the adoption of proposals agreed to by SCAG is a matter for the Parliament of each jurisdiction.

The paper argues that the preparation of a regulatory impact assessment will remove the need to undertake similar processes in each jurisdiction. However in many cases there are substantial delays between the adoption of proposals by SCAG and their consideration by individual Governments. Moreover, individual jurisdictions may adopt the view that the differential impact of proposals in each jurisdiction is not given sufficient weight by a national assessment. The regulatory impact process may need to be repeated in such cases.

The paper envisages that the Commonwealth Office of Regulatory Review will receive and consider details of the regulatory impact process and its outcome prior to consideration of proposals by Ministers. However, the Commonwealth may have no role in the development of proposals for SCAG. For example, the Commonwealth is unlikely to have a major interest in the introduction of model provisions governing trustee companies. In the absence of a role for the Commonwealth in the adoption of proposals before SCAG, the role of the Office of Regulatory Review in the examination of proposals is not clear. It may be preferable to refer consideration of such proposals to a corresponding State or Territory body agreed by Ministers.

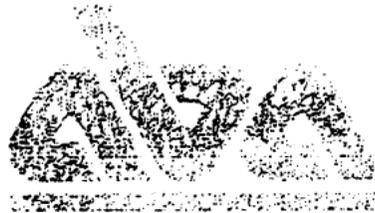
SCAG frequently considers proposals which have been developed by committees or law reform agencies which have conducted their own detailed consultation. In cases where Ministers propose to adopt the recommendations made by such agencies with few changes, the value of further assessments may be questionable.

#### **OFFICERS' RECOMMENDATION**

Officers recommend that Ministers;

1. note the officers' paper on this issue.
2. remove this item from the agenda.

7



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AUSTRALIAN BANKERS' ASSOCIATION

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ig/1759rl

12 December 1995

Mr J Donohoe  
Committee Clerk  
Regulation Review Committee  
Parliament of New South Wales  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

(Fax 02 230 3052)

Dear Mr Donohue

**REGULATION REVIEW COMMITTEE - PARLIAMENT OF NEW SOUTH WALES DISCUSSION PAPER NO 1 ON THE SCRUTINY OF NATIONAL SCHEME LEGISLATION**

Thank you for the opportunity to provide comment on the discussion paper.

As a matter of principle, Australian Bankers' Association strongly supports national uniform legislation as banks carry on business nationally and rely upon uniformity for compliance, cost efficiency, certainty and other benefits which uniformity produces.

The Association is unsure as to why the Terms of Reference for national scheme subordinate legislation should differ from national scheme primary legislation. It does not appear that social and economic impacts are to play any part in the examination of national scheme primary legislation, a feature of particular concern to the Association.

The Association believes that any legislation, whether it be primary legislation or subordinate legislation, should be subjected to a number of preliminary tests including the likely business or economic impact of the legislation as compared with the social benefits to be gained.

Accordingly, the Association believes that any uniform standard Terms of Reference should specifically include a requirement that committees seek references covering such things as

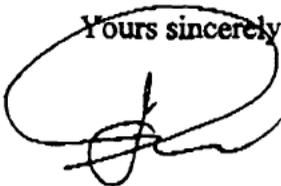
- whether the objective could have been achieved by alternative and more effective means
- whether the cost incurred in administration and compliance with a statute or rule outweighs the benefits
- the adverse impact on the business community
- the regulatory duplication, overlaps or inconsistencies with any other regulation or Act

If these matters were considered in all cases the regulatory environment would be clearer, less complicated and would work in the interests of efficient and effective conduct of business.

The Association also believes that relevant State or Territory legislatures should be included in the drafting processes of legislation and for there to be appropriate consultation with business, and where appropriate, community interests including release of exposure drafts of legislation for consideration by all interested parties with sufficient time allowed to do this.

The Association trusts that these preliminary comments are helpful in your deliberations and would welcome the opportunity to participate further as the process evolves. Should you wish to discuss any aspect of this matter please contact Director Legal, Ian Gilbert on 02 9654 5422.

Yours sincerely



**IAN GILBERT**  
**JOINT ACTING EXECUTIVE DIRECTOR**  
**AND DIRECTOR LEGAL**

Reference  
Our ref: 9501466

WORKCOVER AUTHORITY



20 DEC 1995

Mr Doug Shedden MP  
Chairman  
Regulation Review Committee  
Parliament House  
Sydney NSW 2000

Dear Mr Shedden

Thank you for the opportunity to comment on Discussion Paper No 1 on Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles.

In general the WorkCover Authority supports the proposals outlined in the paper as a method of ensuring effective scrutiny of national scheme legislation. However, I would like to offer several comments regarding the detail of the proposals.

In relation to the third proposed Term of Reference in Proposal One it is considered that it would be appropriate for scrutiny committees to automatically accept national Economic Impact Assessments which are consistent with COAG principles for national standards.

With regard to Proposal Three the development of nationally uniform occupational health and safety regulations is being achieved by individual jurisdictions developing regulations and codes of practice based on national standards which are expressed as common essential requirements. Consequently, there is no exposure draft of a nationally uniform regulation which could be tabled in Parliament as this proposal recommends.

The appropriate document to table would be the public comment draft of the national standard. This would enable scrutiny committees to consider draft documents before there is a national agreement. By the time WorkCover develops a national uniformity draft regulation there has already been national agreement on the essential requirements of that regulation. Therefore, tabling the draft regulation would cause delays and it would be too late for any scrutiny committee to make effective intervention at a national level.

I trust that these comments are of some assistance to the Committee. Should there be any further questions relating to these comments you might care to contact

Denise Adams, Acting Manager, Policy and Legislation Group on telephone 370 5616.

Yours sincerely

*D Adams*  
*for*

**IAN RAMSAY**  
**General Manager**



9

## Australian Finance Conference

Level 22, 68 Pitt Street, Sydney, 2000. G.P.O. Box 1595 Sydney, 2001.  
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22 January 1995

Mr Doug Shedden MP  
Chairman  
Regulation Review Committee  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Shedden,

### SCRUTINY OF NATIONAL SCHEME LEGISLATION - DISCUSSION PAPER No. 1

Thankyou for inviting our comments on the above discussion paper. As the national finance industry association, the Australian Finance Conference (AFC) welcomes the development of proposals to improve the efficiencies and effectiveness of the law-making processes in Australia and in the area of national scheme legislation, in particular.

While several AFC member companies operate solely within one jurisdiction, most are nationally-operating, or operate in more than one State or Territory. A large measure of AFC resources are therefore focused on assessing, promoting or responding to regulatory change emanating from up to 9 jurisdictions which, more often than not, attempts to impact on the same or similar commercial products, markets or practices.

Over recent years the demands of customers, shareholders and governments for more efficient service provision, underpinned by increasing competition, has accelerated the need to take a "national" approach to regulating national commerce.

Without necessarily endorsing "lowest common denominator" - but uniform outcomes, the AFC strongly supports the achievement of national and consistent results and notes with approval the rigor which the COAG process has introduced in recent years; the discipline of Ministers only agreeing with the prior endorsement of their respective Cabinets is to be encouraged.

The process is however a difficult balance of efficiency, accountability, consensus and timeliness to which there is no easy solution. On the one hand the frustration caused by slow and partial progress to a national regulation must be tempered by the need to ensure adequate and appropriate parliamentary scrutiny in the face of often seductive claims for such progress.

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In the following section AFC views are largely placed in the context of the "Credit" head on page 17 of the paper. Similar views/examples could also be put in the light of stamp duties, security interests and almost all other aspects of nationally-operating business procedures and compliance.

For at least the last ten years the AFC has been involved with the development of the Uniform Consumer Credit Code. Our membership has long been of the view, and has advocated that national uniform consumer credit laws are in the best interests of both credit providers and their customers. Our experience has been that a significant amount of time and resources has been expended by industry, government and consumer organisations to enact the legislation. While we are very pleased that the process is in its final stages, we are conscious of delays which have impacted to the detriment of the process. These have included delays in the final stages of enactment to allow Parliaments to scrutinise the legislation: delays which we believe could and should be avoided because they detract from the enactment of contemporary laws and come at a significant cost for both industry and government in the development of compliance programs. They also jeopardise the uniform approach which has generally been arrived at through the consideration and appropriate balancing of, often competing, interests of the participants.

Achieving and maintaining uniformity of the law across the States once enacted, is also recognised as crucial to the process. What is central to this is the political motivation, willpower and stamina to foster uniformity that is appropriate to both the relevant State's needs and the national perspective.

We recognise that the accountability of the Executive Government to the Parliament, and of the Parliament to the electorate, are integral to the Australian system of responsible government. However, we are also conscious that it is but part of the process and should not be used as a political tool or otherwise to detract from the process.

In our view such scrutiny should occur at a time in the process which ensures the seamless enactment of national scheme legislation, with minimum delay and expenditure. We therefore suggest scrutiny should occur in the initial stages of the process of enactment and that the relevant Scrutiny Committees should be required to conduct their consideration with as consistent a focus on a national basis as possible.

This must mean that the "Standing Committee" or Council involved, should inform its relevant Scrutiny Committee regularly on its workings and rationale, commencing with the particular issue's elevation to a national agenda, through the policy heads of agreement and to the final form of the Bill. In this regard Option 2 at 6.5 is seen as more appropriate than Option 1 at 6.4. This will represent a major challenge as the risk is there that the scrutiny committees may be tempted to re-hear or re-debate already agreed policy and administrative positions. Given the passing parade among the Ministerial, Scrutiny and advisor/public servant participants across the jurisdiction this temptation in the past has proved very real.

There is a need therefore for the Scrutiny Committees' terms of reference to be explicit in relation to its scrutiny rather than policy role. The proposals at 4.9 and 5.5 will need to ensure this.

We strongly support and encourage moves by the Parliamentary Scrutiny of Legislation Committees to streamline and improve the effectiveness of the scrutiny processes for national scheme legislation.

We would be pleased to provide further input as the Committee feels is appropriate.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ron Hardaker', written in a cursive style.

RON HARDAKER  
Executive Director