Regulation Review Committee
Parliament of New South Wales

Report upon Principal Statutory Rules in Stages 11 and 12 of the Staged Repeal Programme under the Subordinate Legislation Act, 1989

Report 12/51
November 1997

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Regulation Review Committee

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Functions of Regulation Review Committee

The Regulation Review Committee was established under the Regulation Review Act 1987. A principal function of it is to consider all regulations while they are subject to disallowance by Parliament. In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following:

(a) that the regulation trespasses unduly on personal rights and liberties;
(b) that the regulation may have an adverse impact on the business community;
(c) that the regulation may not have been within the general objects of the legislation under which it was made;
(d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;
(e) that the objective of the regulation could have been achieved by alternative and more effective means;
(f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act;
(g) that the form or intention of the regulation calls for elucidation; or
(h) that any of the requirements of sections 4, 5 and 6 of the Subordinate Legislation Act 1989, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

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

A further function of the Committee is to report from time to time to both Houses of Parliament on the staged repeal of regulations.

Chairman's Foreword

This report concerns the Committees consideration of the principal statutory rules in stages 11 and 12 of the staged repeal programme under the Subordinate Legislation Act 1989 . Stage 11 rules were those published between 2 September 1995 and 1 September 1996 and stage 12 rules were those published between 2 September 1996 and 1 September 1997.

Only those rules in respect of which the Committee raised significant issues or which the Committee considers provide a good example have been included in this report . The full list of the rules in each stage can be found in the publication "Status of Statutory Rules" which is issued three times in each year by the Parliamentary Counsel's Office of New South Wales.

While the terms 'Regulation' and 'Statutory Rule' are often used interchangeably, under the Regulation Review Act 'Regulation' is the broader term and is defined to include statutory rules and certain proclamations and orders that are disallowable by Parliament. `Statutory rule" means a regulation, by-law, rule or ordinance that is made by the Governor or is required by law to be approved or confirmed by the Governor.

"Principal statutory rule" means a statutory rule that contains provisions apart from direct amendments or repeals and provisions that deal with its citation and commencement. In other words they are the major regulations made in the state .

Many of the new rules that were made required the preparation of a Regulatory Impact Statement (RIS) under the Subordinate Legislation Act and in many cases the matters covered by these rules were the subject of previous RIS's carried out in 1991 and 1992 when earlier rules were made in stages 6 and 7 of the program. They are therefore among the first to have been the subject of two RIS's and provide an opportunity to observe whether there have been any improvements in the quality of the rules or the assessment of them.

It is important to note that the Committee does not confine its consideration of rules to compliance with the Subordinate Legislation Act. This, after all, is only one of our eight terms of reference as listed on the previous page. However the procedures under that Act and particularly the public submissions on principal statutory rules often show that one or a number of those other terms of reference should be raised with respect to the rule.

The Committee has now considered many of the rules in stages 11 and 12 and it is apparent that the defects in the earlier rules and their assessments have to a large extent been carried over into the new rules, despite the Committee's earlier recommendations and despite several Ministerial undertakings to improve them. There are however some notable exceptions where the requirements of the Subordinate Legislation Act have been satisfactorily complied with and the Committee considers that the rules do not raise concerns with respect to the committee's other terms of reference under the Regulation Review Act .

Recently the committee was provided with the Crown Solicitors advice in connection with the Aboriginal Land Rights Regulation 1996 which is referred to in this report. The advising is

extensive and among other things indicates that an RIS must address the whole regulation, not merely new matters and must look at alternatives to and the costs and benefits of the substantive provisions of the regulation.

These issues have been stressed by the Committee in its correspondence with Ministers for many years and this advising constitutes an independent verification of the Committees view.

The Committee has entered into discussions with the Cabinet Office and with senior officers in several Departments in order to bring about sustained improvement in rules and the assessment of them. The Committee intends to hold frequent briefings and public hearings in order to raise awareness of the Act's requirements within Departments and the wider community.

Doug Shedden MP
Chairman
Regulation Review Committee.

A. The Staged Repeal Programme

Under the staged repeal program, which is embodied in section 10 of the Subordinate Legislation Act, each principal statutory rule has a five year life span.

In its final stages a decision had to be made as to whether the rule is still required. Three basic options are available:

1. the rule could be repealed under the staged repeal programme and not be replaced;
2. the rule could be repealed under the staged repeal programme and replaced by a new rule or;
3. the staged repeal of the Rule could be postponed for one year in accordance with section 11 of the Act and guidelines issued by the Premier.

The first five stages grouped old rules made prior to the commencement of the Act into convenient sets for repeal.

Stage 1 was statutory rule published before 1 September 1941 and these were repealed on 1 September 1991 unless they sooner ceased to be in force.
stage 2 rules published before 1 September 1964 were repealed on 1 September 1992
stage 3 rules published before 1 September 1978 were repealed on 1 September 1993
stage 4 rules published before 1 September 1986 were repealed on 1 September 1994
stage 5 rules published before 1 September 1990 were repealed on 1 September 1995

Section 11 was amended in 1993 to introduce a common repeal dalte for rules published after stage 5. It provides that unless it sooner ceases to be in force, a statutory rule published on or after 1 September 1990 is repealed:

(a) on the fifth anniversary of the date on which it was published (in the case of a statutory rule published on 1 September in any year;
or

(b) on 1 September following the fifth anniversary of the date on which it was published (in any other case).

Stage 6 therefore contained statutory rules published between 1.9.1990 and 1.9.1991 and which were due for automatic repeal on 1.9.1996.
stage 7, the rules published between 2 September 1991 and 1 September 1992 were repealed on 1 September 1997.
stage 8, the rules published between 2 September 1992 and 1 September 1993 will be repealed on 1 September 1998.
stage 9, the rules published between 2 September 1993 and 1 September 1994 will be repealed on 1 September 1999.
stage 10, the rules published between 2 September 1994 and 1 September 1995 will be repealed on 1 September 2000.
stage 11, the rules published between 2 September 1995 and 1 September 1996 will be repealed on 1 September 2001.
stage 12 the rules published between 2 September 1996 and 1 September 1997 will be repealed on 1 September 2002.

Section 5 of the Subordinate Legislation Act 1989 requires each Minister to ensure that, as far as is reasonably practicable, a regulatory impact statement complying with Schedule 2 is prepared in connection with the substantive matters to be dealt with by each principal statutory rule.

Schedule 2 sets out the following provisions applying to Regulatory Impact Statements:

1. A regulatory impact statement must include the following matters:
   (a) A statement of the objectives sought to be achieved and the reasons for them.
   (b) An identification of the alternative options by which those objectives can be achieved (whether wholly or substantially).
   (c) An assessment of the costs and benefits of the proposed statutory rule, including the costs and benefits relating to resource allocation, administration and compliance.
   (d) An assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance.
   (e) An assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community.
   (f) A statement of the consultation program to be undertaken.

2. (1) Wherever costs and benefits are referred to in this Schedule, economic and social costs and benefits, both direct and indirect, are to be taken into account and given due consideration.

(2) Costs and benefits should be quantified, wherever possible. If this is not possible, the anticipated impacts of the proposed action and of each alternative should be stated and presented in a way that permits a comparison of the costs and benefits.

Under section 6 of the Act, regulatory impact statements are not necessary where the responsible Minister certifies in writing that, on the advice of the Attorney General or the Parliamentary Counsel, the proposed statutory rule comprises or relates to matters set out in Schedule 3; or that, in his or her opinion in the special circumstances of the case, the public interest requires that the proposed statutory rule should be made without an RIS.

Schedule 3 lists the following matters as not requiring a regulatory impact statement:

1. Matters of a machinery nature.
2. Direct amendments or repeals.
3. Matters of a savings or transitional nature.
4. Matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.
5. Matters involving the adoption of international or Australian standards or codes of practice, where an assessment of the costs and benefits has already been made.
6. Matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public, having regard to any assessment of those issues by the relevant agency after the consideration and application of relevant guidelines set out in Schedule 1 to the Act.

The final case where a regulatory impact statement is not required is where the responsible Minister certifies that the proposed statutory rule has been or is to be made by a person or body (other than the Governor) who or which is not expressly subject to the control or direction of the responsible Minister and that it was not practicable to carry out an RIS in the circumstances of the case.

The program makes provision for postponement of repeal by the Governor by order published in the Gazette. A maximum number of five postponements , each of a year in duration, are permitted by the Act. Postponements are usually required when the principal Act is being amended and is likely to result in major changes to the regulations. After a request by the Committee, the Premier has issued guidelines setting out the limited circumstances in which a postponement will be agreed to.

Recently the Act was amended to make special provision for rules in stage one that had been postponed on the maximum of five occasions but were still the subject of an ongoing review. Section 10(3) and (4) provides that the following regulations are repealed on 1 September 1998:

(a) the Construction Safety Regulations 1950,
(b) all regulations under the Factories, Shops and Industries Act 1962 that are in force on the date of assent to the Statute Law (Miscellaneous Provisions) Act 1997 except the Hairdressing Regulation 1992 and the Shops (Trading Hours) Regulation 1992.
(c) the General Traffic Regulations 1916,
(d) the Motor Traffic Regulations 1935,
(e) the General Traffic (Pedestrian) Regulations 1937.

In the case of the last three regulations, the Cabinet Office wrote to the Committee in October 1996 seeking its preliminary view on a proposal that the repeal of the Traffic Regulation be further postponed. Secondly, it sought the Committee's view on an alternative proposal that the Rules be put beyond the reach of the Subordinate Legislation Act by including them in Schedule 4 of the Subordinate Legislation Act. This proposal was made because of delays in implementing the uniform National Road Rules. The Committee wrote to the Cabinet Office as follows:

" *In your memorandum you requested some preliminary view from the Committee on the proposal that the repeal of these regulations be further postponed or alternatively that they be put beyond the reach of the subordinate legislation Act. You enclosed a copy of a letter dated 23 September 1996 from the Minister for Roads relating to this proposal. The Committee examined the Minister's proposal at its meeting on 31 October 1996.*

The Committee does not support any amendment to the Subordinate Legislation Act so as to put these particular regulations beyond the reach of that Act. It considers that such a proposal is unacceptable as it departs from the spirit of that Act, does not comply with the Premier's guidelines on postponements and is inconsistent with the approach taken at the national level under the COAG guidelines. It is also inconsistent with the approach taken by the Australian Scrutiny of Legislation Committees as set out in their Submission Paper of October 1996.

The Committee has examined the reasons set out by the Minister for a further

postponement of repeal of these regulations for one year and does not object to that proposal which would be by way of inclusion in the Statute Law Miscellaneous Provisions Bill currently being finalised by the Parliamentary Counsel. The Committee however, believes that it is important that the current process of developing uniform national road rules including the process of consultation and timing should be examined by the Parliamentary STAYSAFE Committee. That Committee has had a watching brief for several years in regard to the development process of Australian road rules and this was discussed at the 1995 meeting of the Australian Parliamentary Road Safety Committee and forms part of the agenda for the next meeting of this body. I have mentioned the matter to the Chairman of the STAYSAFE Committee and he believes that his Committee would welcome an opportunity to examine the current situation.

Accordingly, my Committee while supporting the further postponement of the regulations in question believes that this should usefully be done in conjunction with an examination by STAYSAFE of the current process and timetable. My Committee accordingly recommends to the Premier that he refer this matter to the STAYSAFE Committee for examination."

The Premier in a letter dated 2 December, 1996 advised the Committee that he was considering the Committee's proposal in consultation with the Minister for Roads. On 28 July 1997 the Premier advised that the Minister for Roads would introduce new rules by 1 September 1998 and that this would obviate the need for the STAYSAFE inquiry, although they would be informed in due course of the terms of the draft regulation.

The committee is awaiting the introduction of the new rules.

B. Principal Statutory Rules in Stage 11 of the Staged Repeal Programme of the Subordinate Legislation Act

DESCRIPTION	**Community Services (Complaints, Appeals and Monitoring) Regulation 1996**
GAZETTE	3 April 1996 at page 1405
MINISTER	Community Services

OBJECTIVES

The object of this Regulation is to prescribe various matters for the purposes of the Community Services (Complaints, Appeals and Monitoring) Act 1993.

The Minister provided the Committee with extensive material on this Regulation in addition to the required Regulatory Impact Statement (RIS). A background briefing was also prepared for the Committee setting out the background to the individual clauses to the Regulation. The RIS assesses both social and economic costs and benefits of the regulation. Where possible these have been quantified.
In addition to the normal consultation requirements under the Act a questionnaire was released with a plain English introduction to the Act and Regulation. The consultation period was for six weeks which is double the minimum consultation period required under the Subordinate Legislation Act.

Although the regulatory impact statement (RIS) process has taken considerable time, the RIS having been developed in 1993, it appears to have been a success.

DESCRIPTION	**Plant Diseases Regulation 1996**
GAZETTE	19 April 1996 at page 1818
MINISTER	Agriculture

OBJECTIVES

This Regulation repealed and remade, with minor amendments, the provisions of the Plant Diseases (General) Regulation 1991 under the Plant Diseases Act 1924.

Schedule 1 assessment

Although the regulation was made in conjunction with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989 it has been certified to relate to matters of a machinery nature and is accordingly exempt from the requirements for an RIS. Nevertheless all statutory rules, including those which merely amend principal statutory rules, are subject to the requirements of section 4 and Schedule 1 of the Act.

Among other things these require that before a statutory rule is proposed to be made:

1. The objectives sought to be achieved and the reasons for them must be clearly formulated.
2. Alternative options for achieving those objectives (whether wholly or substantially), and the option of not proceeding with any action, must be considered.
3. An evaluation must be made of the costs and benefits expected to arise from each such option as compared with the costs and benefits (direct and indirect, and tangible and intangible) expected to arise from proceeding with the statutory rule.

The Schedule also states that administrative decisions should be based on adequate information and consultation concerning the need for and consequences of the proposed action.

The department advised the Committee that on the advice of the Parliamentary Counsel a consultation program, which is associated with the advertising of an RIS, was not required to be carried out for this regulation under Schedule 1 of the Act.

However as stated above, Schedule 1 does provide that administrative decisions should be based on adequate information and consultation concerning the need for and consequences of the proposed action.

Apart from this requirement and the general nature of the options assessed, the Committee considered that the Schedule 1 assessment prepared for the regulation was reasonably satisfactory.

The Committee has found that there is a wide divergence in the quality of schedule 1 assessments. The above assessment might be compared with a Schedule one assessment for an amendment to a regulation made two months after the above regulation:

The Fisheries Management (General) Amendment (Prohibited Size Fish) Regulation 1996, which appeared in the Gazette of June 28 1996, provided that the prohibited sizes of fish under the principal regulation also applied to fish frozen after capture. The difficulty with this regulation was that fishermen would need to know at the time they catch fish the size that it will shrink to when it is frozen.

The Committee requested details of the Schedule 1 assessment from the Minister particularly whether the option of listing prohibited sizes of fish as frozen or providing a conversion chart was considered.

With regard to the Committees specific request for advice on whether the options of listing prohibited sizes of fish as frozen or providing a conversion chart were considered, the Minister advised that these options would not clarify the situation but cause more confusion, based on past experience.

Details of the Schedule 1 assessment were provided but this showed that no alternative options were considered and that no costs were identified.

Finally the Minister said that he contacted 6 of the 7 Regional Industry Convenors and two of the biggest Fishermen's co-operatives and that "the general consensus" does not support the options raised by the Committee.

This statement is unclear but would appear to indicate that there was some support for the Committee's view. What it does show is that there were other options for achieving the objectives that should have been considered in the Schedule One assessment.

The Motor Traffic Amendment (Demerit Points) Regulation 1997 which appeared in the Gazette of March 26, 1997 at page1635 which doubled the demerit points for certain offences over the Easter holidays and increased the points for certain other offences under the points system for licence disqualification. The Committee wrote to the Minister as follows:

"My Committee seeks your advice as to the reasons why certain offences had only been increased by one demerit point while others had been doubled. Specifically, were demerit points doubled only in respect of those offences that were directly related to the road toll.

As you would be aware, on 21st April 1997 the Road Safety Committee of Parliament took evidence from officers of the Roads and Traffic Authority on this initiative and asked for details of the assessment of this regulation under Schedule One of the Subordinate Legislation Act 1989.

The officers advised that it was not reasonably practicable to do the assessment before the regulation was made because they had insufficient time in which to do so. My Committee seeks your advice as to why it was not reasonably practicable to do the assessment before the regulation as other administrative arrangements were presumably made well in advance of the approaching Easter holidays.

The officers went on to advise that a follow up assessment would be carried out on the

regulation along the lines of Schedule One of the Subordinate Legislation Act. My Committee would also ask when the follow up assessment will be finished and if the assessment can be provided to the Committee at that time".

The Minister advised that it was not reasonably practicable to do the assessment before the regulation was made because of insufficient lead time in the Easter road safety promotion. However he advised that he carried out an assessment of the amendment of the regulation which extends its operation to public holidays for the subsequent 12 months, and provided a copy of that assessment to the Committee.

This was the Motor Traffic Amendment (Demerit Points) Regulation (No2) 1997 which was published on 5 June, 1997 at page 3977 of the gazette.

The Schedule One assessment is in fact only in respect of the first regulation, that is it only in respect of the Easter holiday campaign. It only identifies the costs to government of the regulation and these are stated as being $507,100, principally the costs of publicity.

There is no indication of the costs to the public or any attempt to quantify the benefits in terms of lives and injuries saved and property damage averted.

Most importantly, because it has only been prepared in respect of the Easter holiday campaign, there has been no attempt to analyse any of the alternatives to the 12 month extension of the regulation, such as limiting the operation of the regulation to one or a few public holidays so as to preserve its impact on the public. This is important because initial media reports indicate that it may have lost some of its effectiveness.

DESCRIPTION	**Occupational Health and Safety (Demolition Licensing) Regulation 1996**
GAZETTE	3 May 1996 at page 2020
MINISTER	Industrial Relations

OBJECTIVES

The object of this Regulation is to provide for the licensing of persons who carry on a business of doing demolition work. It is intended that this Regulation will operate until a national review of demolition licensing is carried out by Worksafe Australia.

The draft regulation had been significantly revised after public submissions on it and its accompanying RIS. The Committee held discussions with officers of WorkCover and an Occupation Health and Safety Consultant on certain remaining issues which hadn't been resolved.

As a consequence of these discussions, the Committee sought clarification of the terms "demolition" and "carrying on the business of demolition work" from the Minister.

The Minister advised that he had obtained the opinion of the Parliamentary Counsel that the term "carrying on of a business" is well understood to mean carrying on a commercial activity for a fee or reward and that there was no necessity to define or advantage in defining in a statutory instrument words that are intended to have their ordinary meaning.

The Committee was satisfied with this advice.

DESCRIPTION	**State Owned Corporations (National Electricity Market) Regulation 1996**
GAZETTE	10 May 1996 at page 2144
MINISTER	Premier

OBJECTIVES

The object of this regulation is to apply specified provisions of the Corporations Law to those statutory State Owned Corporations that are energy services corporations within the meaning of the Energy Services Corporations Act 1995.

The development of a wholesale market for electricity in New South Wales will involve the trading of electricity futures contracts on an electricity futures market.
The Committee wrote to the Premier inviting him to nominate officers to brief it on the futures market and associated matters. After the briefing the Committee wrote to the Premier seeking details of the basis on which it was decided not to prepare a regulatory impact statement, particularly in view of the fact that the issue warranted the setting up of a task force to determine the merits and implementation of the proposal.

The Director-General, Cabinet Office, on behalf of the Premier advised that the Regulation did not play any role in the establishment of the wholesale spot market. The Electricity Supply Act 1995 (and the NSW State Electricity Market Code, established by TransGrid under that Act) established the wholesale spot market. The sole purpose of the regulation is providing the consistent regulatory framework of the Corporations law to the trading of financial contracts between State Owned Corporations and other participants in the wholesale electricity market.

He also said that the role of the Electricity Reform Taskforce was to assist the Government with the design and implementation of micro-economic reform within the NSW Electricity Industry not solely to determine the merits of this regulation.

The Committee was satisfied with this response.

DESCRIPTION	**Occupational Health and Safety (Hazardous Substances) Regulation 1996**
GAZETTE	17 May 1996 at page 2286
MINISTER	Industrial Relations

OBJECTIVES

The explanatory note to the Regulation states that the object of this Regulation is to control the supply of hazardous substances to, and the use of hazardous substances at, places of work.

The Committee wrote to the Minister to ascertain the arrangements his administration has put in place to ensure compliance with the various requirements of the Regulation particularly by suppliers and employers.

The Minister advised that WorkCover is applying an integrated compliance strategy incorporating education programs and where appropriate, enforcement activities.

WorkCover Inspectors have been assisting and advising industry groups on how to meet their obligations under the Regulation. New suppliers of hazardous substances have 12 months to comply with the Material Safety Data Sheets and labelling requirements of the regulation.

He said Inspectors will intervene in those situations where an identified incident or work process involving hazardous substances may impact on the health and safety of people in the workplace. In these situations standard enforcement tools such as Prohibition Notices, Improvement Notices and on the spot fines can and will be used.

Finally he said that in circumstances where a serious breach of the Regulation has been observed and the health and/or safety of people at the workplace has been put at risk WorkCover may initiate prosecutions against suppliers or employers. Intervention in these circumstances will focus on the various obligations of these key groups under the Occupational Health and Safety Act, 1983.

DESCRIPTION	**Occupational Health and Safety (Asbestos Removal Work) Regulation 1996**
GAZETTE	7 June 1996 at page 2888 and 16 August 1996 at page 4635
MINISTER	Industrial Relations

OBJECTIVES

The explanatory note to the Regulation states that the objects of this Regulation are to repeal the Occupational Health and Safety (Asbestos Removal Contractors) Regulation 1988 and to make new provision with respect to the regulation of asbestos removal work. The Regulation

WorkCover received 16 submissions on the draft Regulation and Regulatory Impact Statement.

As a result of the consideration of the submissions the following important changes were made:

(a) The definition of asbestos material has been broadened to include any friable material containing asbestos.
(b) The regulation now applies to work done on asbestos cement having a total area of 200 square metres or more.
(c) The license fee of $2,000 has been varied to $200 application fee, $1,800 licence fee and a permit fee of $500.
(d) License applicants are now required to demonstrate that arrangements are in place to ensure proper training of employees.
(e) Penalties for carrying out work without a licence have been increased from $4,000 to $10,000 in the case of a corporation ($5,000 in any other case).
(f) There is now a register of contractors entitled to work only on asbestos cement.
(g) It is now a requirement to notify WorkCover of the intention to remove asbestos cement.

This further demonstrates the value of the consultation programme.

DESCRIPTION	**Road Transport (Mass, Loading and Access) Regulation 1996**
GAZETTE	28 June 1996 at page 3375
MINISTER	Minister for Roads

OBJECTIVES

The object of this Regulation is to implement provisions that are to be applied uniformly within Australia regulating the mass and loading of vehicles and combinations. It also deals with the conditions under which oversize or overmass vehicles and combinations exempted from normal dimension or mass limits may travel on roads and road related areas.

In 1995 the Senate Standing Committee on Regulations and Ordinances said that several provisions in the the equivalent Commonwealth Regulations gave cause for concern. The most important of these were provisions under which vehicles may be exempted from prescribed standards. The Senate Committee considered that such exemptions, which may apply to individual vehicles, could have commercial benefit for operators, yet there was no provision for independent review of decisions adverse to vehicle owners or operators.

In response to these concerns the Parliamentary Secretary for Transport of the Commonwealth replied that amendments to include appropriate review provisions would be submitted to the Ministerial Council and that neither set of Regulations would commence before the Ministerial Council agreed to the replacement Regulations.

The Senate Committee accepted this reply but said it would keep the matter under review.

The Regulation Review Committee found that the New South Wales regulations contained similar provisions. However as the regulation was part of a National Scheme, the Regulation Review Committee considered that its action would only be effective if it was part of a national approach with other Committees from around Australia. This was also in line with the position paper on Parliamentary scrutiny of National Schemes of legislation, report number 7/51.

The Committee accordingly wrote to the Chairman of the Senate Standing Committee on Regulations and Ordinances seeking advice on the present position.

He advised that the Federal Minister will ensure that all regulations under the Road Transport Reform (Vehicles and Traffic) Act 1993 will provide for independent review of decisions made under discretionary regulations. He saw this reply as helpful and positive.

DESCRIPTION	**Institute of Sport (Sporting Development Advisory Committee) Regulation 1995**
GAZETTE	5 July 1996 at page 3833
MINISTER	Sport and Recreation

OBJECTIVES

This regulation was discussed fully in report number 10/51. The Committee considered that Clause 10, which purported to disapply certain Acts to make a special provision for the Board members, was invalid.

The Committee drew the invalidity in clause 10 to the Minister's attention. She informed the Committee that on the basis of the Parliamentary Counsels advice she had decided to repeal clause 10.

DESCRIPTION	**Necropolis Regulation 1996**
GAZETTE	16 August 1996 at page 4610
MINISTER	Land and Water Conservation

OBJECTIVES

The object of this regulation is to remake with modifications the Necropolis Regulation 1991. When the Committee considered the 1991 regulation, it found that there were a number of defects in the regulatory impact statement required to be prepared for it. The Committee reported the defects to Parliament in its 15th Report. Among other things it found that only two options were considered in the RIS, the introduction of the regulation or no action. The Committee was of the view that the consideration of options had been a unnecessarily curtailed because the objectives had been confused with the options.

The Committee also noted that no attempt was made to quantify direct or indirect costs of the regulations. It was stated in the RIS that changes to resource allocation, administration and compliance costs could not be adequately quantified but no attempt at quantification was made. It was further stated that the by-laws and regulations were mainly used by the Trust and only played a minor role in the control of cemeteries by Government. The main controls being contained in the Crown Lands Regulations and other acts and regulations and administrative guidelines administered by the Department. The Committee considered that if this was the case then one of the major options would have been further rationalising controls by incorporating the content of the by-laws and regulations within the major controls administered by the department.

The Committee was also concerned that the powers of the trusts as stated in the regulations were broad and unfettered. The committee previously made recommendations concerning the power of cemetery trusts to remove structures without giving notice to relevant persons. The Minister agreed to amend the previous by-laws and regulations to provide for appropriate notice and in 1990 the amendment was made. However, the amended provision was not included in the 1991 regulation and has not since been reintroduced.

The then Minister for Conservation and Land Management in his response of 2 April 1992 said that the Committee's comments had been brought to the attention of officers who may be involved in the development of regulations and in preparation of regulatory impact statements and they were requested to have regard to the principles the Committee raised when drafting future regulations and impact statements. A statement attached to the Minister's letter conceded that the objectives were improperly formulated and undertook to restrict the powers of the trust as earlier agreed.

Despite the previous Minister's assurances with respect to compliance with the requirements of the Act, the standard of the current regulatory impact statement is no better than the previous case.
The Committee wrote to the present Minister who agreed to implement several of its recommendations, however several issues of concern still remain:

1. The poor standard of this and other RISs prepared by the Department, for example, the Commons Management Regulation, the Crown Lands General Cemeteries Regulation and the Water Supply Authorities Benerembah Irrigation District Regulation. In particular the failure to identify the objectives and relevant alternatives to the substantive provisions of the regulations.

2. The failure of the RIS to assess or even identify the earlier undertaking to the Committee that cemetery trusts should not have power to remove structures without giving notice to relevant persons.

3. The Departments apparent inability to quantify the total costs and benefits of regulations.

4. The lack of response to the Committees view that based on statements in the RIS one of the major options would have been further rationalising controls by incorporating the content of the by-laws and regulations within the major controls administered by the Department.

The Minister made available officers of his department to discuss the Regulations at a meeting of the Committee.

The main issue discussed was the lack of improvement in the preparation of regulatory impact statements by the Department of Land and Water Conservation and the improvements that would be put in place after the restructure of that Department.

It emerged in the course of the discussion that it was by no means certain that appropriate staff would be available to carry out the essential tasks under the Subordinate Legislation Act. The Chairman is accordingly undertaking discussions with the Minister and the head of his Department on the issue.

DESCRIPTION **Valuation of Land Regulation 1996**

GAZETTE 16 August 1996, at page 4645

MINISTER Land and Water Conservation

OBJECTIVES

The object of this regulation is to repeal and remake, without any major changes, the provisions of the Valuation of Land Regulation 1991.

When the Committee considered the 1991 regulation which this regulation repeals, it noted that the costs of providing services under the regulation exceeded the income from them and it was said that the administrative processes for increasing the prescribed fees prevented the Department from responding to market price changes. The Committee was advised that the Department was then currently reviewing the fees and was also seeking a deregulation of all fees to allow the Department to operate on a more commercial basis.

The Committee noted that the costs and benefits of the present regulation have not been identified or quantified in the regulatory impact statement. The RIS does however state the revenue for 1994/95, unlike the 1991 regulation, exceeds the expenditure. In the consultation programme on the RIS, the Law Society of New South Wales expressed concern about the structure of the valuation fees schedule. The Law Society indicated that other alternatives are open in terms of the bases for setting of fees and these should have been considered in the RIS.

The Committee wrote to the Minister informing him of the above and said that as the revenue from the fees now exceeds the expenditure it would be useful if his department could clarify the basis on which the fees are now set.

The Minister advised that the fees of the Valuer Generals Office are set on a competitive basis and that the Valuation of Land Further Amendment Bill 1996, which was recently passed, deregulates all the fees of the Valuer Generals Office.

DESCRIPTION **Parliamentary Electorates and Elections Regulation 1996**

GAZETTE 23 August 1996 at page 4803

MINISTER Premier

OBJECTIVES

The object of this regulation is to repeal and remake, with no changes in substance, provisions of the Parliamentary Electorates and Elections Regulation 1991.

Even though the Regulation is a principal statutory rule, the explanatory note indicates that it comprises or relates to matters of a machinery nature and is therefore exempt from the requirement for a regulatory impact statement under the Subordinate Legislation Act. While most of the Regulation does consist of machinery matters such as forms, some of the provisions do deal with more substantive matters. Section 9, for example, sets out the manner in which the ballot to determine the order of candidates on a ballot paper in a Legislative Assembly election is to be conducted. Clause 10 makes similar provision with respect to the Legislative Council elections and Clause 11 for the ballot to determine the order on the ballot paper of candidates not in a group in the Legislative Council.

Another provision is in Clause 12 and form 5 which enables the declaration by a person of the "Jewish persuasion" for the purposes of section 109 of the Act. Form 5 enables that person to object on religious grounds to voting on a Saturday.

The enabling section, section 109, states that if such a declaration is made, the ballot paper is to be dealt with in accordance with the instructions of such person under section 108. Section 108 in turn deals with the marking of ballot papers by persons who need assistance, particularly persons who are so illiterate that they are unable to vote without assistance.

The Committee considered that this provision is anachronistic particularly in referring to persons of the Jewish persuasion, the better course would have been to consider the option of amending the enabling section to provide a general exemption of persons with religious objection to voting on a Saturday and making special provision for their case. The Committee also requested details of the schedule one assessment of the Regulation.

The Acting Premier responded indicating that the Act already substantially provides for persons of other religions whose beliefs prevent them from voting on a Saturday by providing for postal and pre-poll voting.

The Acting Premier nevertheless said that the Committees comments will be borne in mind when the Act is next reviewed.

On the issue of the assessment of this regulation under schedule one of the Subordinate Legislation Act and whether the option of amending the principal Act to provide a general exemption was considered, the Acting Premier replied that consideration of the amendment of the principal Act is outside the requirements of schedule one of the Subordinate Legislation Act

and outside the terms of reference of our Committee.

The Committee wrote to the Premier indicating that the amendment of the principal Act under which a regulation is made has always been considered an option under schedule one of the Subordinate Legislation Act and that the Regulatory Impact Statement Instruction Manual which is issued by the Cabinet Office indicates on page 61 that the requirement to consider options in a Regulatory Impact Statement, which is identical in this respect to the requirement under schedule one, includes not only government statutory rules but also government legislation.

The Committee accordingly recommended that the Premier consider an appropriate amendment to section 109 of the Parliamentary Electorates and Elections Act by way of Statute Law revision to delete the anachronistic provisions with respect to persons of the Jewish persuasion.

In response the Premier reiterated the earlier advice and said that because there had never been any complaint there was no pressing need for the amendment. He nevertheless concluded by saying that the Committees concerns would be borne in mind when the Act is next amended.

DESCRIPTION **Aboriginal Land Rights Regulation 1996**

GAZETTE 30 August 1996 at page 4986

MINISTER for Aboriginal Affairs

OBJECTIVES

The object of this regulation is to repeal and remake, without any major changes of substance, the provisions of the Aboriginal Land Rights Regulation 1983. The Committee noted that the regulatory impact statement prepared for this regulation states that the Government has decided to undertake only a minor revision of the regulation pending a major review of the Aboriginal Land Rights Act. It goes on to state that it is anticipated there will be a further more substantial revision of the regulation following the review of the Act.

The Subordinate Legislation Act requires a full assessment of every regulation which is subject to staged repeal. There is no provision in the Act for a minor revision of the regulation as indicated above. To cover such circumstances, provision is made in the Act for postponement of the staged repeal of the regulations. This can be applied for when they are subject to some other review programme such as the review of the Act in the present case. The Premier has issued guidelines which set out the circumstances in which exemptions may be granted. If the regulation does not come within these guidelines then a full assessment is required. The Committee accordingly request the Minister to make this assessment

The Director General of the department responded on behalf of the Minister that the regulation imposed no additional impact to that of the Act itself. As such it was difficult if not impossible to do an RIS. He advised that the department was seeking the Crown Solicitors advice on this issue .

The Committee wrote again to the Minister for Aboriginal Affairs and said that the regulation contains a number of substantive provisions which are capable of separate assessment from the Act.
These are the following :

4. provisions with respect to Local Aboriginal Land Councils (Part 2), including:
   (i) the constitution of Councils (Division 1),
   (ii) the alteration of boundaries and names of areas (Division 2),
   (iii) membership of Councils and other matters (Division 3),
5. provisions with respect to the Regional Aboriginal Land Councils (Part 3),
6. provisions with respect to the New South Wales Aboriginal Land Council (Part 4), including:
   (i) the calling of elections for councillors (Division 1),
   (ii) ballot-papers (Division 2),
   (iii) postal voting (Division 3),
   (iv) voting at polling places (Division 4),
   (v) the scrutiny of votes (Division 5),
7. financial matters, investigators and administrators (Part 5)

The enabling power in the Aboriginal Land Rights Act , section 68 makes it abundantly clear that these are separate and distinct provisions from the Act which are therefore capable of assessment under the Subordinate Legislation Act.

Regulations are of course authorised by the Act and many of the regulatory provisions, such as, the constitution of Land Councils are derived from the specific sections of the Act. However, within that accepted framework, the regulations have to set the parameters for various matters such as removal of a member of the Land Council from office, the fees, allowances or expenses that may be paid to members, dealing with land and the investment of money by Aboriginal Land Councils etc. It is within this delegated framework that decisions have to be made as to the preferred options or courses of action.
The Committee informed the Minister that in the absence of an adequate assessment, the decision to proceed with the regulation must necessarily be in doubt. It accordingly requested that he refer these matters to the Crown Solicitor for advice

The Director General in his response said that he had obtained the Crown Solicitors advice and had decided to commence work on a new RIS as soon as possible. He attached a copy of the Crown Solicitors advising which vindicates the Committees position. The advising is extensive and among other things indicates that an RIS must address the whole regulation, not merely new matters and must look at alternatives to and the costs and benefits of the substantive provisions of the regulation.

These issues have been stressed by the Committee in its correspondence with Ministers for many years and this advising constitutes an independent verification of the Committees view.

DESCRIPTION	**Adoption Information Regulation 1996**
GAZETTE REF	30 August 1996 at page 5084
MINISTER	for Community Services

OBJECTIVES

The object of this Regulation is to repeal and remake, with a number of modifications, the Adoption Information Regulation 1991.

The Committee noted that there had been extensive consultation about this regulation and that it substantially implements recommendations made by the Law Reform Commission.

The Committee found, however, that the RIS did not quantify the costs and benefits of this regulation. This matter was also the subject of correspondence to the former Minister regarding the Adoption Information Regulation in 1991. That correspondence outlined the requirements of the Subordinate Legislation Act and provided guidelines for cost/benefit analysis.

This Committee also recommended in 1991 that fees payable under the legislation be set out in the regulation for public and parliamentary scrutiny. Fees had not been included in the current regulation and the Committee requested the Minister to give consideration to this matter.

The Minister in response said that he had taken note of the concerns expressed in relation to the preparation of the Regulatory Impact Statement and would bring this matter to the attention of the Department of Community Services.

In relation to fees payable under the legislation he said that the setting of fees by way of regulatory provisions will require an amendment to the legislation but that it was not appropriate at this time that he seek support for an amendment to the Adoption Information Act.

Section 35 of the Adoption Information Act provides for the setting of fees and charges and offers a choice for notification of these charges. It states:

35(2) The Director-General is to notify, in the Gazette, the fees or charges payable under this Act to the Director-General and (if the Director-General has been so informed) to other information sources.

35(5) The regulations may make provision for or with respect to fees and charges payable under this Act.

The Committee, in its letter to the Minister, had not recommended an amendment to the Act to make provision for fees in the regulation as this was already provided for in section 35. The Committee had requested, in line with its recommendation in 1991, that fees be included in the regulation for public and parliamentary scrutiny.

The Committee wrote to the Minister thanking him for his undertaking to bring to the Department's attention the requirements of the Subordinate Legislation Act.

The Committee also informed the Minister that Section 35(5) states that the regulation may make provision for or with respect to fees and charges payable under this Act and that this section provides an alternative which the Minister may wish to consider in future cases where notification of fees are required.

DESCRIPTION **Commons Management Regulation 1996**

GAZETTE 30 August 1996 at page 5252

MINISTER Land and Water Conservation

OBJECTIVES

The object of this Regulation is to repeal and remake, with minor changes, the Commons Management Regulation 1991 made under the Commons Management Act 1989.

The RIS for the regulation had been prepared in a similar manner to that for the Necropolis regulation previously mentioned.

Despite the previous Minister's assurances with respect to compliance with the requirements of the Act, the standard of the current regulatory impact statements was no better than the previous case.

The Committee drew the new Ministers attention to the poor standard of this and other RISs prepared by the Department, in particular the failure to identify the objectives and relevant alternatives to the substantive provisions of the regulations and the Departments apparent inability to quantify the total costs and benefits of regulations.

As indicated previously the Minister made available officers of his department to discuss the Regulations at a meeting of the Committee but that it emerged in the course of the discussion that it was by no means certain that appropriate staff would be available to carry out the essential tasks under the Subordinate Legislation Act. The Chairman is accordingly undertaking discussions with the Minister and the head of his Department on the issue.

DESCRIPTION	**Dentists (General) Regulation 1996**
GAZETTE	30 August 1996 at page 5336
MINISTER	Health

OBJECTIVES

The explanatory note to the Regulation states that the object of this Regulation is to repeal the Dentists Regulation 1991 and to replace it with this Regulation. It deals with the following:

- the contents, alteration and public availability of the Register of dentists,
- the provisional registration of dentists,
- the issue of certificates of registration to dentists,
- advertising by dentists and certain bodies from whom dental services are available,
- the qualifications and practice of dental therapists and dental hygienists,
- infection control standards to be followed by persons engaged in the practice of dentistry,
- miscellaneous matters (such as anaesthesia, sedation and. patients' records).

This Regulation is made under the Dentists Act 1989, and, in particular, under sections 12 (The Register), 13 (Annual roll fee), 17 (Further qualifications for registration), 21 (Provisional registration), 31 (Making of complaints relating to dentists), 32 (Referral of mental health matters to Registrar), 57 (Practice of dentistry by unregistered person) and 67 (the general regulation making power).

This Regulation is made in connection with the staged repeal of legislation under the Subordinate Legislation Act 1989.

The Committee wrote to the Minister for Health requesting the reasons for not permitting dental hygienists to carry out the function of placement of arch-wire fixation including any benefits that would accrue to the community and the dental profession. Included was a request for advice as to the timetable for review of infection control standards.

In a letter dated 29 May, 1997 the Director of Dental Health, on behalf of the Minister, advised as follows:

"I refer to your letter to the Minister for Health, Andrew Refshauge MP regarding the current Dentists (General) Regulation, specifically the aspects of duties allowed by hygienists and infection control standards. The Minister has asked me to reply on his behalf.

While dental hygienists as defined in this Regulation can select orthodontic bands to be used by an orthodontist and can remove orthodontic archwires, bands and attachments these interventions have no bearing on the outcome of the procedure.

The replacement of the attachment securing the orthodontic archwire to the bracket of each tooth was disallowed as the drafting of the Legislation has be consistent with the principles of mutual recognition in the delivery of dental services throughout Australia.

With regard to the present infection control standards, I have been advised that given the recent development in infection control, the Regulation is under constant review and a revised Regulation is being considered. As you are aware, the procedures outlined in the Regulation are part of the minimum standards that must be adopted. However other publications, such as the NH&MRC publication, Infection Control in the Health Care Setting (1996) must be considered for the adoption of best practice in infection control.

The monitoring of breaches of infection control is difficult and in the majority of cases would involve needle stick injuries. These are monitored with self surveillance in private practice and the reporting of these to Worksafe should it be required. There are also needle stick reporting requirements for dental staff including students in the public clinics and the Sydney dental teaching hospitals."

The Committee was satisfied with this response.

No further action.

DESCRIPTION **Education Reform Regulation 1996**

GAZETTE 30 August 1996 at page 5377

MINISTER Education and Training

OBJECTIVES

The object of this Regulation is to repeal and remake the *Education Reform Regulation 1990.* The new Regulation deals with the following matters:

(a) the publication of the results of basic skills testing,
(b) particular kinds of children in respect of whom certain non-government schools may be registered,
(c) the constitution of parents and citizens associations and kindred associations,
(d) the publication of the rules of the Board of Studies
(e) the saving of certain existing syllabuses,
(f) the saving of certain existing district council areas,
(g) miscellaneous formal and technical matters.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989.*

The Committee noted that the regulation is said to be exempt from the requirement for an RIS on two grounds, it contains machinery matters and matters that are not likely to impose an appreciable burden or cost. However, when the 1990 regulation was made it was required to be prepared on the basis of an RIS and no exemption applied.

The Committee wrote in the following terms to the Minister for Education and Training. The letter was sent on 26 November 1997 and a further copy of our letter was delivered to the Ministers office 8 April 1997 when that regulation was the subject of a disallowance motion. As yet no reply has been received:
"This regulation is a remake, with minor modifications, of the Education Regulation 1990. Clause 5(3) of the regulation is currently the subject of a disallowance motion. I will be suggesting to the House that it adjourn debate on the motion so that the Committee can complete its examination of the regulation.

The present regulation has been exempted from the requirement for a formal regulatory impact statement on the basis that it comprises machinery matters and does not impose any appreciable burden or cost. However, costs and benefits still have to be taken into account in the Department's internal appraisal under Schedule 1 of the Subordinate Legislation Act and my Committee would be grateful for details relating to that examination.

I am enclosing a copy of a letter sent by the Committee to the previous Minister, Ms Virginia Chadwick, in May 1991 relating to the Education Reform Regulation 1990 which, having regard to the similarity of the two regulations, raises issues that are still pertinent. I would be grateful for your advice as to whether these issues were taken into account when the new

regulation was formulated".

The Committees 1991 letter to the then Minister set out its view that the RIS did not comply with the Subordinate Legislation Act and sought a further assessment. As it stands the Committee has been awaiting a proper assessment of the regulation for 6 years.
The Committee wrote the following letter to the then Minister in 1991 setting out its view that the RIS did not comply with the Subordinate Legislation Act and that a further assessment should be made:

"A function of my Committee, under the Regulation Review Act 1987, is to consider whether the special attention of Parliament should be drawn to any regulation on any ground including whether any of the guidelines and requirements of the Subordinate Legislation Act 1989 appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

As part of this function my Committee has recently examined a copy of the regulatory impact statement that was prepared by your Administration in connection with the Education Reform Regulation 1990.

The following are my Committee's comments on that regulatory impact statement.

A. OBJECTIVES

(i) Phased introduction of new curriculum requirements for HSC candidates.

(a) The number of key learning areas is ambiguously presented in this section of the RIS. From the RIS it appears that there are only three key learning areas, the first being English, the second being Mathematics, Science or Technological and Applied Science, and the third being Human Society and its Environment, Languages other than English, Creative Arts or Personal Development, Health and Physical Education.

In fact section 9 of the Act shows there are eight key learning areas which are divided by section 12(1) into three groups. The RIS has apparently adopted the grouping in section 12(1) without adequately explaining that each of those groups comprises separate key learning areas.

(b) From Clause 4(2) of the Regulation, it appears that courses of study are to be offered in English without the same phasing-in period that applies to other key learning areas. It would have been helpful for the RIS to include an explanation of the reasons for this difference.

(ii) Basic Skills Testing

The RIS states that the objective of this proposal is to "comply with the Act by ensuring that an appropriate level of confidentiality is maintained whilst still allowing comparison which can be utilised for departmental planning purposes and resource allocation".

In making these regulations, section 18(5) requires the Minister to have regard to the privacy of students and the potentially adverse effects of public knowledge about the

results for individuals, schools or particular ethnic, racial or socio-economic groups.

Subject to that qualification, section 18(4) allows the regulations to make provisions relating to the extent to which the results of basic skills testing may be publicly revealed or must be kept confidential. The RIS does not detail or explain the exact nature of the adverse effects that makes it necessary for the regulation to impose the specific restrictions set out in clause 6(b) and (c). It is not apparent, for instance, why access to test data for planning purposes cannot in some form, such as by geographical area (e.g. city/country, suburb etc), be made available to parents so that they can choose, if they wish, to live in a particular area because of its educational advantages. Parents might take the view, for instance, that they have a right to such information. Clause 6(c) of the regulation permits the disclosure of state-wide results if comparisons are not capable of being made between different children, different schools or different systems or groups of schools. The RIS should detail the expected manner in which this provision would operate.

The RIS should demonstrate why school authorities should not be afforded wider access to test data. It is not apparent why a school should not be able to compare itself with the results obtained in other districts, regions or areas. This might be of considerable advantage for the individual planning programmes of that school by allowing it to either correct or reinforce current practices. It would have been helpful to have in the RIS information on the kinds of data that are collected and on how they are classified.

(iii) *Parents and citizens associations and kindred associations at Government schools The text of clause 8 would permit the formation by parents of more than one association at a particular government school subject to the consent of the Minister. The RIS should clarify the policy on this issue as it is of concern to the Federation of Parents and Citizens Association.*

(iv) *Publication of Rules of the Board of Studies*
The Federation's suggestion in this respect appears to have merit. It would be unusual for ordinary members of the public to read through the Government Gazette.

B. *ALTERNATIVE OPTIONS*

The RIS lists three alternative options to the proposed regulation. These are (i) commence the Act without taking any action; (ii) take administrative action; (iii) retain the current scheme. Unfortunately none of these represents a real alternative to most of the regulation's provisions.

This is because section 18(5) actually requires the Minister to recommend the making of a regulation regarding disclosure of results of basic skills testing. Similarly, if controls are to be exercised over additional categories of non-government schools, this can only be achieved by regulation (see s. 65(2)(e)).

If parents and citizens wish to form an association in connection with a government school this must be done in accordance with the regulations (s. 115(1). District Councils can only be constituted in accordance with the regulation (s. 115(2). Rules of the Board of Studies must

also be published in accordance with the regulations.

What should therefore be discussed in this case are alternatives to the individual provisions of the regulation, rather than alternatives to making a regulation at all.

For example, in regard to the commencement of the new syllabus, an alternative might be starting the new syllabus earlier (or later); in respect of basic skills testing an alternative might be to stipulate the different sorts of test data which might be collected, retained and/or released; in the case of parents and citizens associations to examine the feasibility of the variations covered in the correspondence of the Federation of Parents and Citizens Associations.

Some of these would involve different costs and benefits from those occasioned by the provisions of the regulation.

C. *COSTS AND BENEFITS*

(i) *Costs Schedule 2(2) of the Subordinate Legislation Act provides that "costs and benefits should be quantified, where possible. If this is not possible, the anticipated impacts of the proposed action and of each alternative should be stated and presented in a way that permits a comparison of the costs and benefits".*

In the RIS there is no attempt to measure any costs or benefits, or to explain why measurement would be impracticable.

Yet, there are several parameters in this regulation that can usefully be quantified, either precisely or with an estimate. Such quantification is a useful tool not only to bring to light the real costs of a regulation but also to permit a revealing comparison of the costs and benefits among the various alternatives. Two main elements which should be able to be estimated with a fair degree of accuracy are the costs of compliance (that is, the cost to schools of complying with regulation), and the cost of administration (that is, the cost to the department of administrating the regulation).

Compliance Costs

To take an example relating to the cost of compliance: if one were working out an average school's cost of compliance with the "new curriculum" the following might be done:-

(a) *work out an estimate that for an average secondary school it would require, say, 50 teacher/hours of familiarisation and preparation to change over to the new syllabus. At a total cost (including superannuation etc see below) of say, $50 an hour, the average school would be incurring $2,500 of extra teacher-related costs to comply with the regulation.*

(b) *the average school might also need $1,000 worth of new text books.*

(c) *The average school might need, say, $1,000 of new laboratory equipment for science and/or language labs.*

(d) You might also have $500 of other new equipment (e.g. for Phys. Ed. Creative Arts or Technological and Applied Science).

The total costs of compliance in the second year would thus be, in this notional example, $2,500 + $1,000 + $1,000 + $500 = $5,000 per average school.

These are only suggestions, to give your staff an indication of the sorts of parameters they may be looking at, and to point up the fact that the regulation may not be "cost neutral" or have "nominal" or "negligible" costs as the RIS claims. (Your staff would be more familiar with the details of the actual situation themselves, and would thus be able to identify actual costs).

This average figure would then be multiplied by the number of high schools in New South Wales, say 300, to get a figure of $1,500,000, which would represent the total cost to New South Wales high schools of complying with the "new curriculum" part of the regulation.

A similar exercise, involving cost identification and estimation, would then be carried out for the other relevant parts of the regulation.

Following this, a five-yearly schedule of total estimated compliance costs would then be drawn up. Five years is the preferred time frame because the life of regulations is five years, as provided by the Subordinate Legislation Act 1989. A compliance cost pattern something like this may emerge:

Year 1	Year 2	Year 3	Year 4	Year 5
300,000	1,500,000	300,000	90,000	30,000

One would then end up with a five-year Schedule of total compliance costs, undiscounted.

Administrative Costs
These are the administrative costs the Department incurs in administering this regulation.

These are not necessarily the Department's total administrative costs. For example, if the Department's total administrative costs amount in the first year to $500,000, and you estimate that the Department spends 5% of its time administering this regulation, then the administrative costs associated with this regulation can be estimated to be, in the first year, $500,000 x 5% = $25,000. This is a broad measure, but it is acceptable, since more precise alternatives would be too time-consuming to prepare.

When arriving at the total administrative cost figure, all the items set out by Treasury in its document "Classification and Control of User Charges Activities within Inner Budget Sector Agencies" (March 1990) should be included. These comprise

- *all direct costs, namely employee costs, maintenance and working costs, and associated debt costs, if any;*

- *accrued costs associated with direct cost items, principally the full cost of accrued employee entitlements such as long service leave and superannuation;*

- *overhead items, such as accommodation and travel, rent, light, gas etc;*

- *depreciation of assets (for commercially operating entities only).*

For further guidance, your accounting staff may refer to the "Financial Reporting Code on Accrual Accounting for Inner Budget Sector Entities" N.S.W. Treasury, November 1990.

The costs, including the cost in terms of the percentage of time required to administer the regulation, should be estimated for each year over a period of five years.

Total Costs
At the end of this entire cost-estimation exercise, you would add up all your costs (of compliance, of administration, and of any other kind you may know of through your familiarity with the industry e.g. costs to the Board) over five years and then discount using a 7% discount rate, which is the rate Treasury currently recommends. A discount table is attached for ease of reference. All the discounted costs are then added up to get their present value.

Normally this whole exercise should be carried out for all the alternative provisions. A cost effectiveness analysis would then be possible. This is a comparison of the costs the various alternatives would incur in achieving the regulation's objective.

To return to the example of the phased introduction of the syllabus, one might assume that Alternative 1 (timing of the introduction of the new syllabus as given in the present Regulation) ended up having a present value total cost, over five years, of say, $5 million; that alternative 2 (introduce the new syllabus immediately) had a present value total cost of $8m, and that alternative 3 (introduce the syllabus a year later than provided for in the regulation), had a present value total cost of $5.5 million.

You would then be able to point to the regulation as incurring the lowest cost of the three alternatives.

If the regulation proved to incur the second-highest cost, you may nevertheless be able to justify choosing it over the others by reference to its benefits.

(ii) *Benefits*
Many of the benefits of this regulation are already touched on in the RIS. Some might warrant further discussion, particularly those dealing with phased introduction and saving of the existing syllabus. The benefits of choosing 1992 for all subjects other than English, and 1991 for English, could usefully be explained.

Benefits should also be discussed in detail for the alternatives.
Quantification of the benefits which are not a mirror image of the costs is too difficult to attempt in this case. All that would be realistic would be a discussion, as outlined above.

COMMITTEE'S OPINION

My Committee is of the opinion that your Department should review its RIS with a view to preparing an adequate appraisal of the costs and benefits of the regulation in line with the comments made in this letter. Your Department would then be in a position to consider whether further public comment could usefully be sought on the regulation and whether the regulation should be modified.

The Committee would also be interested in further elaboration of the points raised in sections A and B of this letter.

I would be grateful if you would advise my Committee whether this course of action is acceptable to you. It would be helpful if that advice was provided before 30 April, 1991 which is the last date for disallowance of this regulation."

Although the former Minister acknowledged receipt of this letter on 21st May 1991 there was no record of any further correspondence received on this matter. As indicated above the Committee is also awaiting advice on the remade regulation.

DESCRIPTION **Employment Agents Regulation 1996**

GAZETTE 30 August 1996 at page 5382

MINISTER for Industrial Relations

OBJECTIVES

Among other things, prescribes application fees for licenses to carry on the business of a Private Employment Agent. Although the regulation is a principal statutory rule, it is said to comprise matters of a machinery nature and hence does not require a regulatory impact statement to be prepared in accordance with the Subordinate Legislation Act 1989.

While many of the provisions of the regulation are machinery in nature in that they prescribe forms and offences that can be dealt with by way of penalty notice, clauses 5 and 6 prescribe licence application fees and annual licence fees which are both $40.

Consistent with its past practice the Committee wrote to the Minister seeking details of the assessment of this regulation that was carried out under Schedule 1 of the Subordinate Legislation Act particularly as to the basis on which the above fees were set and whether they will recover the costs of the services provided under the Act.

MINISTERS RESPONSE

The Attorney General advised that assessment of this regulation was carried out as required under Schedule 1 of the Subordinate Legislation Act.

The Attorney General states that has assessed that the fees be determined in line with the Governments cost recovery policy. He states that the annual fee revenue of approximately $60,000 offsets the remuneration of $48,000 paid to one officer who handles licensing matters under the Act and other costs incurred in respect of licensing.

The Attorney states that he is convinced that the receipt of the determined fees equates with the cost of administering the licensing scheme.

The Attorney concluded by saying that the regulation is supported by the industry which regards it as a safeguard against entry into the industry of undesirable operators seeking to work as private employment agents. He believes that the regulation provides maximised net benefit to the community.

The Committee raised the issue of regulatory fees with the Treasurer in 1996, particularly whether there was a Government policy on fees and whether it was based on cost recovery or CPI increases.

The Committee was advised that regulations should pass on "efficient costs", that is, they should not automatically pass on all costs as this would remove the agency's incentive to become more efficient and fail to pass on the benefits of these efficiencies .

The Committee asked the Attorney whether the full cost of administering the licensing scheme is passed on in fees or whether they are reduced by an amount to reflect the efficient costs of the scheme and if so, by how much.

The Attorney General responded as follows:

"The fees for application for a licence and annual renewal are $40.00. There have been no increases in these fees since 1982.

During the period from 1982 to the present time, the department has experienced increased costs by way of salary increases and technology costs. On the other hand, the department has also put into place better work practices, leading to increased efficiency in the performance of tasks involved in the administration of the scheme, and more sophisticated technology which has also greatly enhanced efficiency in this area.

Recent departmental estimates on costs and revenue in relation to the licensing scheme indicate that salary costs of approximately $60,000 are incurred in the administration of the scheme. Costs relating to technology and police checks of applicants for a licence are additional to this figure. Revenue from applications and renewals is also an amount of approximately $60,000.

It has been estimated that licence fees of $100.00 and renewal fees of $60.00 each would recover the full cost of administering the scheme, including covering CPI increases. However, for the present, it has been decided to keep the fees at $40.00.

The decision to keep fees at this level is based on the view that the licensing of private employment agents provides a valuable protection for industry practitioners and their clients at a cost which the industry has indicated is acceptable and which reflects a passing on of reasonable costs of administering the licensing scheme efficiently. In my view, the licence and renewal fees do represent 'efficient costs' of administering the scheme as defined by the Treasury."

The margin for efficiency in this case is very high and ranges between 150% and 50%. However it would appear that this is as much due to the fact that the industry has indicated that these fees are acceptable as the fact that the fees reflect a passing on of reasonable costs of administering the licensing scheme efficiently.

DESCRIPTION **Children (Care and Protection) Regulation 1996**

GAZETTE 30 August 1996 at page 5180

MINISTER for Community Services

OBJECTIVES

The object of this Regulation is to repeal 5 regulations concerned with the care and protection of children and remake them as a single, amalgamated Regulation.

The Committee wrote to the Minister on seeking his advice as to the reasons for exempting contracted services from the licensing and authorisation requirements and the arrangements for enforcement of the conditions in respect of a contracted service.

The Minister for Community Services responded as follows:

"I refer to your correspondence concerning the Children (Care and Protection) Regulation 1996.

You raise the issue of the exemption of contracted non-government residential child care centres and authorised private fostering agencies from the Regulation.

I am advised that the exemption reflects the fact that for the majority of the services affected by the Regulation, the Department of Community Services has had a monitoring role in relation to both licensing and funding responsibilities. The Department of Community Services also frequently works directly with these services to plan for and review the circumstances of wards who are placed in non-government care."

The Regulatory Impact Statement prepared stated that:

"Where services are funded by the Department of Community Services, minimum standards currently set by regulation could be incorporated into funding contracts. Funding contracts would be for a fixed time period, in order to facilitate regular review of both funding and compliance with standards and funding could be withdrawn if service delivery was not satisfactory."

The Regulatory Impact Statement was widely distributed in June, 1996. A total of fourteen responses were received by the Department.

In relation to enforcement of the conditions in respect of contracted services, the following actions have occurred:

1. Any new substitute care services which have been funded since 1994, are subject to a contract which includes a requirement to meet specified standards.

2. All funded substitute care services are currently undergoing a transition process so that the

future delivery of services meets client needs and is in accordance with standards of good practice.

Once negotiations on future service arrangements are completed and approved the Department of Community Services will enter into new funding contracts with each service. The new contracts will include detailed annual reporting requirements.

3. A standards monitoring and accreditation system for substitute care services is currently being developed by the Department through a major consultancy project. This project will review existing standards and pilot an accreditation process. It is anticipated that by early 1998 a mechanism for monitoring standards in all services, both government and non-government, will be established.

4. As an interim measure, before new funding contracts and reporting requirements are introduced, a Memorandum of Understanding has been prepared which I will be forwarding to all agencies for consideration. The Memorandum of Understanding sets out the proposed requirements for residential child care centres and fostering agencies in relation to those matters previously monitored through the licensing provisions.

The Department of Community Services recently appointed new Managers for Service Planning, Monitoring and Evaluation in each Area of the State. These positions are now responsible for coordinating the Department's monitoring and licensing responsibilities.

I hope this advice clarifies the matter for your committee."

DESCRIPTION **Irrigation (Water Supply) Regulation 1996**

GAZETTE REF 30 August 1996 page 5439

MINISTER Land and Water Conservation

OBJECTIVES

The object of this regulation was to repeal and remake with minor changes the Irrigation Areas (Water Supply) Regulation 1991.

The Committee found that none of the costs and benefits of the regulation had been quantified in the RIS. This was also the major failing in respect of the assessment of the 1991 regulation which it replaced.

One of the major issues raised in the consultation programme, by the Secretary of the MIA Council of Horticultural Associations, was the fact that charges by the Ministerial Corporation were not announced prior to the start of each season. The department advised that the concerns of the Horticultural Association were referred to the Parliamentary Counsel for advice as there was doubt about whether the relevant section of the Act enabled early announcement of water charges.

The Committee wrote to the Minister pointing out the above defects in the RIS and sought advice as to whether the concerns of the Murrumbidgee Irrigation Area Council of Horticultural Associations had been taken into account in making the Regulation. The Committee also wrote to the Council seeking their views on the final Regulation, particularly whether they were satisfied with the Minister's response and their view as to the costs and benefits of the Regulation to their Association members.

The Committee said *"When my Committee considered the 1991 regulation it noted that there had been no estimate of the costs or benefits of the regulation made in the regulatory impact statement which was required to be prepared under the Subordinate Legislation Act. Its findings were summarised in the Committee's 23rd Report to Parliament of 1991. The Committee wrote to the then Minister indicating that future RISs should contain appropriate costing.*

In the case of the present regulatory impact statement none of the costs and benefits of the regulation have been quantified and accordingly no improvement has been made in the standard of the RIS.

Significant issues were raised by the Murrumbidgee Irrigation Area Council of Horticultural Associations in the consultation programme. My Committee seeks your advice as to whether the concerns of the Council were taken into account in preparing this regulation."

The Minister advised that at the time the RIS was prepared the Land and Water Management Plans for the irrigation areas had not been finalised by the relevant community advisory committees and the detailed analysis of financial impacts had not been completed.

He said that this has now been done and can be made public and that the Department will therefore complete a more detailed RIS when it reviews identical regulations under part 6 of the Water Act.

The Minister also advised that the concerns of the Murrumbidgee Irrigation Area Council of Horticultural Associations had been responded to before making the Regulation and that the Council did not pursue the matter further .

It should be noted that the costs and benefits of the regulation were required to be set out in the RIS irrespective of whether the Land and Water Management Plans for the irrigation areas had been finalised.

DESCRIPTION **Liquor Act 1982 - Liquor Regulation 1996**

GAZETTE 30 August.1996 at page. 5473

MINISTER Gaming and Racing

OBJECTIVES

The explanatory note for the regulation says that the object of this Regulation is to repeal the Liquor Regulation 1983 and to remake, with modifications, the provisions of that Regulation which are still required.

The Committee wrote to the Minister making the observation that the minimum number of sanitary facilities required to be provided under the Act for women may not be adequate and that Committee is concerned that there was likely to be cost to Government of about $6 million annually where licence fees are paid by instalments rather than up-front.

In his response the Minister advised:

"The overall validity of the State's power to impose liquor licensing and registration fees, as you may know, is now subject to doubt as a result of the High Court's judgment of 5 August 1997 in Ha and Anor v State of New South Wales and Walter Hammond & Associates Pty Limited v State of New South Wales.

"While the implications of the judgement for liquor fees in NSW are yet to be fully assessed, the instalment schemes will not be available to licensees and registered clubs in their established form. This means that your Committee's proposal for the imposition of a high fee structure where fees are paid by instalments could not now be implemented."

In respect of the ratio of male to female toilets the Minister stated:

"I have noted the Committee's interest in clause 26 of the Liquor Regulation 1996, which sets out the minimum number of sanitary facilities required to be installed in licensed restaurants of varying sizes. These requirements are longstanding and, as you have suggested, were introduced to accommodate a greater demand for facilities by males.

"Your comment about changing social patterns is acknowledged, and I agree that it may be timely to have the matter reconsidered. Accordingly, I have asked the Department of Gaming and Racing to freshly examine the appropriateness of the current ratio of male to female toilets in clause 26, as part of the Department's ongoing review of the liquor laws. I will also seek the views of the Liquor Administration Board. In undertaking the review, it will also be necessary for the Department to consult with the liquor industry."

DESCRIPTION **Public Sector Management (General) Regulation 1996**

GAZETTE 30 August 1996 at page 5737

MINISTER Premier

OBJECTIVES

The Committee reported this regulation in full in its 11th report.

The Premier advised that it was not possible to accurately quantify the costs and benefits of the regulation and its alternatives because the regulation provides a safety net by setting out conditions of employment for public service employees not otherwise covered by industrial agreements or other legislation.

The Subordinate Legislation Act in section 5 states that Schedule 2 has to be complied with as far as is "reasonably practicable". Therefore it requires only a reasonably accurate quantification of the direct and indirect costs and benefits.

The Committee noted that even though the RIS said that the regulation's impact was largely unknown it nevertheless said that it governs the employment of the core public service of about 70,000 people.

DESCRIPTION **Surveyors (Practice) Regulation 1996**

GAZETTE 30 Aaugust 1996 at page 5840

MINISTER Land and Water Conservation

OBJECTIVES

The object of this Regulation is to repeal and remake the provisions of the *Survey Practice Regulation 1990.*

RIS

The RIS was one of the better documents prepared recently. Each part was succinctly presented and reasonably addressed the requirements of the Act.

A quantified cost benefit analysis was carried out on each of the four options.

CONSULTATION

The regulation and the RIS was circulated to relevant bodies. In addition, an advising that the draft regulation and the RIS was available was sent to every Surveyor registered in NSW.

Eighteen submissions were received. The Minister's office reported that the submissions were considered by the Board of Surveyors on 21 March, 1996 and additional comments concerning the final drafting of the Regulation were forwarded to the Parliamentary Counsel and incorporated into the final regulation.

DESCRIPTION	**Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996**
GAZETTE	30 August 1996 at page 5882
MINISTER	Land and Water Conservation

OBJECTIVES

The object of this Regulation is to repeal the Water Supply Authorities(Benerembah Irrigation District Environment Protection Trust) Finance Regulation 1991 and to replace it with this Regulation.

The RIS for the regulation had been prepared in a similar manner to that for the Necropolis 1996 Regulation previously mentioned.

Despite the previous Minister's assurances with respect to compliance with the requirements of the Act in connection with the 1991 regulation, the standard of the current regulatory impact statements was no better than the previous case.

The Committee drew the new Ministers attention to the poor standard of this and other RISs prepared by the Department, in particular the failure to identify the objectives and relevant alternatives to the substantive provisions of the regulations and the Departments apparent inability to quantify the total costs and benefits of regulations.

As indicated previously the Minister made available officers of his department to discuss the Regulations at a meeting of the Committee. It emerged in the course of the discussion that it was by no means certain that appropriate staff would be available to carry out the essential tasks under the Subordinate Legislation Act. The Chairman is accordingly undertaking discussions with the Minister and the head of his Department on the issue.

C. Principal Statutory Rules in Stage 12 of the Staged Repeal Programme of the Subordinate Legislation Act

Regulatory Impact Statements for Principal Statutory Rules in Stage 12 of the Staged Repeal Programme of the Subordinate Legislation Act

At its meeting of 16 October 1997 the Committee considered the RIS's for the principal statutory rules in stage 12 of the Staged repeal programme that were subject to disallowance.

The Committee considered that the standard of compliance with the Subordinate Legislation Act was poor except in respect of the public consultation requirement.

The Committee noted that it was not alone in this regard, the Commonwealth Industry Commission in a report published in the same week entitled 'Regulation and Its Review-1996-1997' said that there was poor compliance by Commonwealth departments with their longstanding RIS requirements.

In respect of rules in the previous stage, stage 11, the Committee held discussions with departmental officers and reported several of the rules to Parliament in order to endeavour to bring about an improvement in the standard of the RISs.

The Chairman wrote to the Deputy Director-General of the Cabinet Office in September seeking the Premiers approval of the tabling of RISs in Parliament to give Parliamentarians a better background understanding of the new rules and to put Departments on notice of the need to ensure a reasonable standard for RISs.

DESCRIPTION **Noise Control (Marine Vessels) Regulation 1996**

GAZETTE 4 October 1996

MINISTER for the Environment

OBJECTIVES

The Committee noted that the Noise Control (General) regulation 1995, the Noise Control (Miscellaneous Articles) Regulation 1995, Noise Control (Motor Vehicles and Motor Vehicle Accessories) Regulation 1995, and this draft regulation concerning marine vessels were all assessed in one regulatory impact statement.

It wrote to the Minister for the Environment in the following terms:
"My Committee recently considered the above regulation, the object of which is to repeal the Noise Control Regulation 1975 and replace it.

My Committee notes that the Noise Control (General) regulation 1995, the Noise Control (Miscellaneous Articles) Regulation 1995, Noise Control (Motor Vehicles and Motor Vehicle Accessories) Regulation 1995, and a draft regulation concerning marine vessels were all assessed in one regulatory impact statement.

The problem with this approach is that it is difficult for both Parliament and the public to determine which one of the old clauses are now embodied in the new regulations, and indeed, in which regulation. It is not clear to the Committee a separate regulatory impact statement could not have been prepared for each of the regulations.

Another problem is that the RIS does not assess the provision of the new regulations, but each of the parts of the old regulations. These parts may or may not be adopted in all or some of the four new regulations. This approach does not comply with section 5 in schedule 2 of the Subordinate Legislation Act , which require the substantive provisions of each principal statutory rule to be assessed as to their costs and benefits as compared with other alternatives.

Another defect in the RIS is there is no statement of the proposed consultation program. Tis is a major departure from the requirements of section 5 in schedule 2 of the Subordinate Legislation Act .

The Secretariat of my Committee had to separately request a copy of the submissions provided to the Department and was provided with a document which stated that submissions were received from industry, councils, the Police Service, community groups, government agencies and individuals, and that most of them related to motor vehicle intruder alarms, comparison with proposed national transport legislation and product labelling.

This document failed to identify the individual organisations that made submissions or provide copies of those submissions. As such, it does not constitute compliance with the Subordinate Legislation Act.

With respect to the issue of intruder alarms, it appears that this matter is still being resolved with industry and that the fourth regulation concerning marine vessels has not been introduced because of the overlap with other controls. Had a proper consultation program been included in the regulatory impact statement in the first place, this delay might have been avoided.

The Committee is of the view that the regulatory impact statement fails to comply with the Subordinate Legislation Act in that it fails to identify the substantive provisions assessed, and it does not contain a statement of the proposed consultation program, which is an express requirement of the Subordinate Legislation Act . Your comments on these issues would be appreciated."

MINISTER'S RESPONSE

The Minister for the Environment responded that separate regulatory impact statements were not prepared for the 3 separate regulations because, as part of the drafting process, the provisions of the old regulation was split into 4 separate regulations. While separate RIS's could have been prepared, this would have involved a lot of duplication and in the interests of the economy a single RIS was chosen.

The Minister believed that the consultation program was sufficiently stated in the RIS particularly as the stake-holders and organisations consulted during the development of the draft regulations were listed and the RIS shows that a great deal of informal consultation occurred prior to the formal consultation period. The main concern to the Committee was that the RIS failed to identify the substantive provisions assessed.

DESCRIPTION	**Commercial Tribunal Amendment (Consumer Credit Regulation 1996 and Consumer Credit (New SouthWales) Special Provisions Regulation 1996**
GAZETTE	25 October 1996 at page 7098 and 7105
MINISTER	Minister for Fair Trading

OBJECTIVES

The first of these regulations lists the fees for certain actions before the Tribunal. The Committee sought details of the assessment of this regulation under Schedule 1 of the Subordinate Legislation Act particularly with regard to the basis on which the fees were set.

With respect to the Consumer Credit (New South Wales) Special Provisions Regulation, the Committee noted that one of the objects of the regulation is to prescribe the maximum interest rate at 48% per annum and that a credit contract is void if it imposes a rate in excess of this. Although the regulation is said to implement substantially uniform legislation the Committee noted that the maximum rate is not part of the uniform code.

The Committee accordingly sought the Minister's advice as to the basis upon which this rate was set and whether any alternative rates were considered in the assessment of this regulation, which was required to be carried out under Schedule 1 of the Subordinate Legislation Act.

The Minister provided the details of the Schedule One assessment which included the assessment of three different options for the setting of the fees under the Commercial Tribunal Amendment (Consumer Credit) Regulation 1996.

With respect to the Consumer Credit (New South Wales) Special Provisions Regulation, the Minister advised that the setting of the maximum interest rate at 48% was recommended by the Commercial Tribunal after its extensive inquiry into high interest lenders. The Minister considered that this satisfied Schedule One as industry and consumer bodies were represented.

The Committee was satisfied with this response particularly with the consultation on the assessment under Schedule One of the *Subordinate Legislation Act*.

DESCRIPTION **Waste Minimisation and Management Regulation 1996**

GAZETTE 1 November 1996, at page 7217

MINISTER for the Environment

OBJECTIVES

This regulation complements the Waste Minimisation and Management Act 1995 by specifying the classes of waste facilities that have to be licensed and certain other particulars of the licence such as fees.

The regulatory impact statement was well prepared. The objectives as stated in that regulatory impact statement were to minimise the environmental impacts from waste generation, storage, transport, reprocessing, treatment and disposal and to reduce distortion in waste disposal pricing. A number of alternative options were considered for each of the substantive provisions of the regulation. The substantive provisions were licensing, non licensed activities, waste disposal levy and levy enforcement.

The RIS states that the benefits and costs of provisions contained in the proposed regulation have been assessed and compared with alternative options. Estimates of economic and financial benefits and costs have been made where ever possible. When viewed on a provision by provision basis using quantifiable factors, the proposed regulation has been assessed to provide greater net benefits to the community and the environment than the alternative options considered. The regulatory RIS states that the total quantifiable annual benefits of the regulation range from $38.4 million to $62 million while the annual costs are estimated to range from $31 million to $43 million.

On the basis of these figures, even on a worse case scenario, there is a net benefit to the community of $7 million arising from this regulation.

The Director-General of the Environmental Protection Authority informed the Committee that over 90 submissions on the draft regulation were received as part of the consultation programme required to be carried out under the Subordinate Legislation Act and a report on the determination of issues raised from the public consultation programme was prepared and released to those persons who made submissions.

One significant issue raised was the definition of hazardous waste contained in the draft regulation. As a consequence of this the EPA intended to further amend the regulation after a further cost benefit analysis.

The Committee itself received submissions from the Local Government Association criticising the regulation on a number of grounds including lack of consultation. The Committee noted however that the consultation programme involved the issue of information booklets, public seminars and seminars for particular stake holders. In this respect the consultation programme was more extensive than for most other statutory rules.

The Committee resolved to send a copy of the Association's submission to the Minister seeking advice as to whether the issues raised will be assessed in preparing the proposed amending regulation.

The Minister for the Environment responded to the Committee on 6 March, 1997. She said that the draft amendment related to the definition of 'hazardous waste' was currently being circulated in a document seeking public submissions. The regulation will be amended as necessary after considering public comments.

The Minister considers that the issues raised by the Local Government Association were adequately answered in the Public Consultation Report prepared on the original regulation. She also states that the Standing Committee on State Development is currently inquiring into the matter.

RECOMMENDED ACTION

The Committee considered this a good example of a well prepared RIS and in particular the consultation programme which involved the issue of information booklets, public seminars and seminars for particular stake holders and was more extensive than for many other regulations.

DESCRIPTION **Home Detention Regulation 1997**

GAZETTE 21 February 1997, at page 800

MINISTER Minister for Corrective Services

OBJECTIVES

This Regulation contains provisions prescribing, among other things:

(a) offences, in addition to those mentioned in theHome Detention Act 1996 in respect of which home detention is not available, and
(b) the standard conditions applicable to home detention, and
(c) forms to be used for the purposes of the Act.

The Committee considered that this Regulatory Impact Statement is defective in that it considers only two options, either to make the regulation in its entirety or to do nothing. The cost/benefit assessment is also defective in that it is not only unquantified but it fails to address the costs and benefits of the substantive provisions of the regulation. Instead the Regulatory Impact Statement contains a narrative description of the general benefits of home detention which was the subject dealt with by the Act itself. What was required under Section 5 of the Subordinate Legislation Act was an assessment of the costs and benefits of the substantive provisions of the regulation.

The Committee noted that in the Consultation programme, only the Council for Civil Liberties recommended amendment of the regulation and this was to delete clause 9 (o) which required the prospective detainee to authorise Medical Practitioners and other persons to release information to a supervising officer. The concern was that this broad demand violated client confidentiality. The Minister in his covering letter which accompanied the RIS had advised that the clause was amended to replace the reference to "other person" with 'therapist'. The Committee considered that while this may make the clause less broad it can still be argued that it violates client confidentiality.

The Committee sought the Minister's advice as to whether the Council for Civil Liberties were approached to determine if this amendment satisfied their recommendations.

Finally the Committee noted that Clause 8 of the Regulation enables the Commissioner of Corrective Services to give consent on behalf of children under the age of 18 years and mentally incapacitated persons to the making of an order.

Although the Commissioner of Corrective Services must have regard to the assessment referred to in clause 7 when determining whether to give consent, the Committee considered that it might be more appropriate if the consent were given by the Director-General of the Department of Community Services who logically would be more likely to understand the needs of children under the age of 18 years and mentally incapacitated persons than the Commissioner of Corrective Services. This is also a matter that should have been addressed in the RIS for the regulation.

The Committee accordingly requested the Minister to amend clause 8 to require that the consent to the order be given by the Director-General of the Department of Community Services rather than the Commissioner of Corrective Services.

In his response, with respect to the amendment to delete clause 9 (o) recommended by the Council for Civil Liberties, the Minister reiterated his earlier advice that the clause was amended to narrow its range by replacing the reference to "other person" with "therapist". He says he has received no further comment from the Council for Civil Liberties and he assured the Committee that supervising officers will only seek the advice of professional persons as mentioned in the clause.

With respect to the Committees request that clause 8 be amended to require that the consent to the order be given by the Director-General of the Department of Community Services rather than the Commissioner of Corrective Services, the Minister produced a letter from the Minister for Community Services indicating that, despite some initial reservations, he supported the regulation.

This was chiefly because both Departments procedures had been revised to ensure that the welfare of the child was paramount.

With respect to the major issue of the RIS he maintains that only two options were available and that each of the individual clauses of the regulation had to be made in their precise terms.

He acknowledges that the scheme will impose a cost on the community generally and says that this is relative to the cost of full-time imprisonment but he fails to assess these costs as required under the Act.

What was required under Section 5 of the Subordinate Legislation Act was an assessment of the costs and benefits of the substantive provisions of the regulation.

The Committee's views are supported by recent advice on the Aboriginal Land Rights Regulation, provided by the Crown Solicitor which is referred to earlier in this report. That advice states that an RIS must address the whole regulation, not merely new matters and must look at alternatives to and the costs and benefits of the substantive provisions of the regulation.

DESCRIPTION	**Bank Mergers (St. George Partnership Banking) Regulation 1997**
GAZETTE	26 March 1997, at page1668
MINISTER	Treasurer

OBJECTIVES

The Bank Mergers Act under which the regulation is made, amended schedule four of the Subordinate Legislation Act to provide that regulations of this kind are exempt from the requirements of the Subordinate Legislation Act. Schedule four was included in the Subordinate Legislation Act to exempt regulations in respect of non government and semi-government bodies from the sunset and RIS provisions.

The Subordinate Legislation Act already has a mechanism for amending schedule four, section 14(2) provides that regulations may, after consultation with the Regulation Review Committee, be made amending or replacing schedule four.

The Bank Mergers Act therefore effectively set aside the requirement for consultation with the Committee in respect of this exemption from the Subordinate Legislation Act.

This is however not an isolated incident, for example, the Westpac Banking Corporation Act 1995 provided in Section 9 that the Subordinate Legislation Act did not apply to regulations under that Act. In that case schedule four was not amended which may indicate that the exemption was hastily drafted. In any event there was no consultation with the Committee on this provision.

The Committee wrote to the Premier, who administers the Subordinate Legislation Act, in connection with amendments made to the Interpretation Act by the Statute Law Miscellaneous Provisions Act in 1995. The Committee requested the referral to it of any Bills which affect the publication, validity or disallowance of statutory rules in future. As a consequence of this the Premier agreed to require referral of such bills in future. Details of the new referral arrangements are set out in the General Issues section at the end of this report.

DESCRIPTION **Pawnbrokers and Second-hand Dealers Regulation 1997**

GAZETTE 28 April 1997, at page 2249

MINISTER Fair Trading

OBJECTIVES

This Regulation is cognate with the Pawnbrokers and Second-hand Dealers Act 1996. When the Minister introduced the Bill she said that its purpose was: "to establish a new regulatory scheme for pawnbrokers and second-hand dealers. The scheme involves streamlined licensing of pawnbrokers and second-hand dealers who deal in 'high risk of theft' goods. It also requires licensees to observe certain minimum standards of conduct, including record keeping. The main purpose of this legislation is to restrict the trade in stolen goods".

The Committee received submissions on the regulation which indicated that certain second hand dealers had not been consulted before the regulation was introduced and weren't aware of the increase in the licence fees. They were also concerned over the costs of the computer system relative to the small volumes traded by these dealers and the need to meet the costs of training.

The Privacy Committee also wrote to the Committee and raised concerns over the privacy aspects of certain of the provisions relating to records particularly the records required to be kept by second-hand dealers.

As the Regulation raised a number of issues of concern, the Committee sought a briefing from the Minister, the Privacy Committee and representatives of Antique Dealers and Pawnbrokers on the Regulation.

On Wednesday, 17 September, 1997 the Committee received a briefing on the regulation from officers of the Department of Fair Trading and the Police Department and certain organisations and businesses that had raised concerns in respect of the regulation.

These were: the Privacy Committee, the Pawnbrokers Association of NSW, the Antique Dealers Association, Worboys & Associates and the Chester Hill Loan Office. The Member for Myall Lakes was also present during the course of that briefing.

The Regulation Review Committee had a number of concerns which emerged in the course of its initial consideration of the regulation.

The first of these deals with quantification of costs. Certain of the costs and benefits of the regulation have been quantified in this Regulatory Impact Statement. However, the total quantified costs and benefits have not been stated but instead there is a summary in narrative form of the costs and benefits to government industry and the community.

The Committee's second concern arises out of the consultation programme carried out under the Subordinate Legislation Act. Under this programme, submissions on the draft regulation and

RIS were considered and summarised by the Minister.

The Summary states that the requirement for computerisation of records drew the most comment. These comments related to the cost of the computer system, its incompatability with existing business systems and the security of records.

Significantly the summary states that "the impact of mandatory computerisation on small businesses, especially those in the country and antique or other specialist dealers who deal in a very low volume of list goods, may need to be evaluated".

The Committee is concerned that this evaluation should in fact have taken place before the regulation was made as part of the assessment of the regulation under the Subordinate Legislation Act particularly as the Minister in her second reading speech on the Bill for the enabling Act said that "Regulations will allow for the phasing in of on-line computer records for the use of the licensing bodies subject to a cost-benefit analysis."

The Committee's third concern was that the RIS states that it would cost a minimum of $4.16M per annum for police to visit the eight thousand licensees in the state for one hour per month under the existing system in order to check lists of stolen property. However, there is no statement of the comparative costs of running the computerised inspection system.

There would be two components to this, the cost to government of monitoring the computer records and the cost to licensees of installing or modifying their computers. The first of these components hasn't been identified in this assessment . In fact on page 12 of the RIS in the assessment of the licence fees it is stated that part of the very large increase in the licence fee from $30 and $80 to $325 for the initial application fee and the renewal of $235 will go towards meeting the costs of the computer records generated on a contract basis by the Infringement Processing Bureau for enforcement of the regulation. The RIS failed to state these readily quantifiable costs. These costs would need to be compared to the quantified benefits over the life of the regulation for the RIS to properly comply with the Subordinate Legislation Act.

The Committee's fourth concern is that while the RIS purports to assess the alternative of requiring computerised records only for high volume and high value transactions or only for pawnbrokers, this assessment does not attempt to quantify any of the costs and benefits and in particular it does not assess the impact of mandatory computerisation on small businesses, especially those who deal in a very low volume of list goods.

The briefing and discussion centred on the most contentious clauses of the regulation which increase licence fees and impose mandatory computerisation of records. It emerged in the course of the briefing that this regulation requiring mandatory computerisation had been put in place in April this year and was due to commence next May and yet the details of that computerisation were yet to be finalised by the Departments. The lack of ongoing consultation with pawnbrokers and dealers also appeared to be a problem that required further work by the Departments.

At the conclusion of the briefing it was agreed that the Department Fair Trading would examine

the merits of the issues raised and the submissions made by the other parties and that this examination would be by way of a supplementary regulatory impact statement. It was also agreed that the further assessment would be distributed to the other parties and to the Regulation Review Committee.

It emerged that the Departments were prepared to improve consultation and in particular on consultation with small business. Mr Martin of the Chester Hill Loan Office was appreciative of the role of our committee in bringing this about. When he was asked whether or not he was consulted by the Department, he said:

"Yes and no. I heard that there were changes. Because there were changes I made phone calls. I did get invited to come here, I have submitted a written submission, before and I have found the Department to be very reasonable. I was impressed with their attitude that, 'we don't know about pawnbroking but we are willing to listen to pawn brokers'. I thought that was great. The Department can't know everything about every industry. I am pleased that you are actually asking us the questions. I am a small business and I am glad that the legislators are asking me. I didn't receive a letter at the beginning of the process, but I knew that I could give a submission and I did".

On 11 November 1997 the Minister advised as follows:

"The Department of Fair Trading has examined in detail the issues raised at the meeting and the comments of Committee Members in relation to the Regulation. The response to the issues is attached. I will make arrangements for the response to be made available to the parties who made submissions to your Committee.

It is noted that of major concern to the Regulation Review Committee and the pawnbroking and second-hand dealing industry is the requirement that licensees create and maintain records in a computerised format.

The primary objective of the Pawnbrokers and Second-hand Dealers Act is to restrict the trade in stolen goods through pawnbroking and second-hand dealing outlets. The requirement under the legislation that licensees use computerised records is fundamental in achieving this objective as the provision of transaction details to the Police Service on a timely basis dramatically enhances the capacity of Police to locate stolen goods.

Upon the commencement of the legislation I established a Strategic Operations Unit within the Department of Fair Trading to develop and implement strategies to ensure the efficient and effective administration of the Act.

Following some five months of operational experience of the Act and Regulation a comprehensive review of the legislation was undertaken. This resulted in proposed amendments to the legislation which substantially address many concerns which have been raised the pawnbroking and second-hand dealing industry. On 20 October 1997 Cabinet approved in principle the proposed amendments to the legislation.

The most significant amendment approved by Cabinet is the recommendation to exempt

second-hand dealers from the requirement to be computerised on a yearly basis if:

1. *their gross receipts for the previous financial year totalled $150,000 or less, and*
2. *they held a second-hand dealers licence prior to the introduction of the new legislation.*

The proposed exemption will substantially alleviate many concerns raised by second-hand dealers who operate small business in relation to the computerisation requirements.

I trust the attached document clarifies any concerns your Committee may have had in relation to the Pawnbrokers and Second-hand Dealers Regulation 1997.

DESCRIPTION: **Nurses (General) Regulation 1997**

GAZETTE 29 August 1997, at page 7124

MINISTER: Health

The Regulation is a remake of the provisions of the Nurses (General) Regulation 1992 which was the subject of the Committee's report number.

In making the new Regulation the responsible Department considered that the matters included were not likely to "impose any appreciable burden, cost or disadvantage on any sector of the public" so that it would not be necessary to comply with the requirements of section 5 Subordinate Legislation Act 1989 i.e. those relating to preparing a Regulatory Impact Statement (RIS). However, contrary to section 6(1) of that Act, the responsible Minister did not provide the necessary certificate stating that, on the advice of the attorney General or the Parliamentary Counsel, the Regulation related to matters set out in Schedule 3 of the Act. After the regulation had been made and Gazetted, the responsible members of the Department of Health realised their error and consulted with Parliamentary Counsel. The Department subsequently proposed and the Minister approved, that a Regulatory Impact assessment Consultation process be carried out for the Regulation. The Department stated that full documentation of the consultation process and any amendments to the Regulation as result of the consultation process will be provided to the Committee by the end of October 1997.

The objectives of the Regulation are stated in the RIS to be "to establish a mechanism which provides a minimum standard of nursing care to consumers and better inform consumers to make choices on that care". No alternative options (either wholly or substantially) were identified for achieving these objectives other than not making the Regulation.

There was little discussion in the RIS of the substantive matters dealt with in the Regulation other than an indirect reference to the rationale behind registration of professionals. An assessment of the costs and benefits was made only in relation to procedures relating to infection control and in this case it was stated that " the costs and benefits of the Infection Control Procedures ....do not add any appreciable burden on the nursing services as these were already required as professional nursing standards prior to 8 September 1995" i.e. the date the Infection Control Procedures were introduced. The RIS did not disclose the basis for any of the prescribed the fees.

A costs and benefits analysis of the Regulation as a whole was compared with that for a single option - that of allowing the Regulation to lapse. Such a comparison is of little value and does not adequately comply with the requirements of Schedule 2 1(d).

The Committee advised the Minister of Health that there had been a failure to comply with the requirements of the Subordinate Legislation Act in two major respects:

1. there has been a failure to comply with the requirements of section 6(1) (a) in not providing the relevant certificate; and

2. there has been a failure to comply with the requirements of Schedule 2 1 (b) in not identifying a range of alternative options by which the objectives of the proposed Regulation could be achieved.

The Committee met with officers of the Minister's Department in order to ensure that these errors were not repeated and proceedures were put in place to ensure compliance with the Act.

DESCRIPTION: **Nurses (Elections) Regulation (No 2) 1997**

GAZETTE 12 September 1997 at page 7871

MINISTER: Health

The Regulation repeals and remakes the provisions of the Nurses (Election) Regulation 1992. The Regulation is stated to comprise or relate to matters of a machinery nature and, therefore, does not require a Regulatory Impact Statement (cf Schedule 3 (1) Subordinate Legislation Act 1989).

BACKGROUND

The Committee was advised by the Department of Health, that the Nurses (Elections) Regulation 1997 had been drafted by Parliamentary Counsel and published on 29 August 1997. The Regulation was subsequently found to contain errors and omissions which departed from the Department's intended Regulation. As a consequence, the current Regulation was made to correct these errors.

This advice raises a number of important questions concerning the preparation of Regulations in the Department of Health. The Parliamentary Counsel's draft should have been checked by the Department - this is made clear in the Parliamentary Counsel's "Manual for the Preparation of Legislation" para 6.20... "one or more drafts will be provided to the agency for comment". How such a major error could have occurred has not been explained. Moreover, this raises the question of which instrument was assessed under Schedule 1 of the Subordinate Legislation Act before the intended Regulation was published.

This was a further matter the Committee discussed with the relevant officers of the Department of Health.

D. General Issues

Codes Adopted in Regulations

In its 10th report of 1991 the Committee expressed its concern that Parliament does not in most cases have an opportunity to review any publications applied, adopted or incorporated pursuant to section 42(1) of the Interpretation Act 1987. These publications, often clearly intended for statewide adoption in regulations, are generally drawn up and completed without any significant input or review by the Parliamentary Counsel. They are rarely printed in the body of the regulation and never tabled with the regulation. In its report to Parliament, the Committee recommended that the following action be taken:

1. Consideration should be given to amending section 42 of the Interpretation Act 1987 so as to require a copy of the incorporated material

   i) to be laid before Parliament at the same time as the tabling of the regulation;
   ii) to be kept available for inspection at the responsible department.

2. Consideration should be given to amending section 41 of the Interpretation Act 1987 so as to provide for the disallowance in whole or in part of any publication that has been applied, adopted or incorporated by a statutory rule.

3. Consideration should be given to a requirement that the advice of the legislative draftsperson be obtained when codes are being prepared which are ultimately intended for adoption in New South Wales.

In response, the Attorney-General, who then administered the Act, advised that with one minor qualification he concurred with these recommendations. That qualification was that the recommendation in 3 above for Parliamentary Counsel input apply "so far as is practicable". The Committee formally advised Parliament of this outcome on 26th February 1991.

From that time to the present no substantive action had been taken on the Committee's report.

After much correspondence and further mention in reports to Parliament on 5 January, 1997 the Premier agreed to make administrative arrangements to implement the Committees recommendations. The Committee, however, noted that administrative arrangements are less effective over time than legislative provisions. The Regulation Review and Subordinate Legislation Acts were themselves a response to the failure of earlier administrative schemes of regulation review.

Similar legislative provisions to those recommended by the Committee have been adopted elsewhere in Australia. In 1990 the Parliament of Victoria amended the Interpretation of Legislation Act 1984 for this purpose.

The Committee wrote to the Premier as follows:

"Thank you for your advice of 5 January, 1997 concerning the administrative arrangements made to implement the Committees recommendations concerning regulations applying or adopting codes or other publications.

The Committee has however noted that in the field of regulation review administrative arrangements are invariably less effective over time than legislative provisions . The Regulation Review and Subordinate Legislation Acts were themselves a response to the failure of earlier administrative schemes of regulation review.

While my Committee notes your concern with respect to disallowance of codes, in 1990 the Parliament of Victoria amended the Interpretation of Legislation Act 1984 to require the tabling of codes in the Parliament.

Section 32 of the Interpretation of Legislation Act 1984 of Victoria was amended on the recommendation of the Scrutiny of Acts and Regulations Committee of Victoria in 1994 to require the Minister administering the Act under which the statutory rule was made to:

- *lodge with the Clerk of the Parliaments a copy of the incorporated documents as soon as practicable after the statutory rule is tabled,*
- *give notice in the Government Gazette, identifying all the documents, as soon as practicable after the statutory rule is tabled, that the incorporated material has been lodged, and*
- *table a copy of the Government Gazette notice as soon as practicable after its publication;*

For amendments to incorporated material: the Minister must:

- *lodge with the Clerk of the Parliaments a copy of the amended material as soon as practicable after the amendment is made,*
- *give notice in the Government Gazette, identifying all the documents, as soon as practicable after the amendment has been made, that the amended material has been lodged, and*

- *table a copy of the Government Gazette notice as soon as practicable after its publication.*

My Committee accordingly requests that you include similar provisions in the New South Wales Interpretation Act 1987."

In his response of 19 August 1997, the Premier advised that he preferred the administrative arrangements, at least on a trial basis, and that if necessary an amendment would be made at a later date.

The administrative arrangements are in the Premier's Memorandum No 97-18 requiring copies of codes to be kept available for public inspection and to be lodged with the Parliamentary Library at the time of the making of the rule and to be kept up to date.

The Committee resolved to monitor compliance with these procedures and seek the assistance of the Parliamentary Library in doing so.

The Parliamentary Librarian has advised that his staff will keep him informed of the instruments lodged pursuant to the memorandum and that he will in turn inform the Committee of any problems in this area.

Recently the Committee considered the Prevention of Cruelty to Animals (General) Amendment (Performing Animals) Regulation 1997 which was published in the Gazette of 26 September, 1997 at page 8201.

This Regulation updates the reference to the relevant code of practice for the use of animals in films and theatrical performances.

Clause 7(3) has been amended by this Regulation to delete the reference to the 1989 code and state instead that in this clause:
"relevant Code of Practice" means the document entitled Code of Practice for the Welfare of Animals in Films and Theatrical Performances, as approved on 3 February 1997 by the Animal Welfare Advisory Council, copies of which are available from the Department of Agriculture.

The Committee contacted the Parliamentary Library and was informed that the code under this regulation hasn't been lodged. On further checking with the Department it appears that the code is still being printed and people who request it are being put on a mailing list. This not only departs from the Memorandum but the very words of the clause itself where it states "copies of which are available from the Department of Agriculture".

Notification of Bills Amending the Subordinate Legislation Act 1989

When the Committee considered a Regulation under the Dog Act 1966 which requiried American Pit Bull Terriers to be muzzled, which was published in the Gazette of 15 March 1996 at page 1085, the Committee noted that the Regulation had been saved by an amendment to Section 39(2A) of the Interpretation Act 1987 in 1995.

This section provided that neither the whole nor any part of a statutory rule is invalid merely because (without statutory authority) the statutory rule is published in the Gazette after the day on which one or more of its provisions is or are expressed to take effect.

The Committee believed that this provision created a problem as it did not require the relevant administration to inform the public that the Regulation, although expressed to commence at an earlier time, commenced in fact on gazettal.

The Committee said that had the proposed amendment been referred to the Committee in 1995 before it was made, the Committee would have had an opportunity to make such a recommendation. However, as this amendment was to a principal Act and not a regulation, no such referral was required.

The Committee wrote to the Premier, who administers the Interpretation Act 1997, in the following terms:
"The above section provides that a statutory rule is saved from invalidity if it is published in the Gazette after the day on which one or more of its provisions are expressed to take affect. In that case the provisions take affect from the date it is published and not from the earlier day."

The Committee recently considered a regulation which was saved from invalidity under the above section. The Committee notes, however, that while the Regulation is itself valid, the section does not require the responsible Minister to draw the later commencement to the attention of the public.

This section was inserted by a Statute Law Miscellaneous Provisions Bill in 1995. Had that amendment been referred to the Committee for its advice or information, the Committee would have had the opportunity to make such a recommendation. The Committee would welcome the referral of any such amendments which affect the publication, validity or disallowance of statutory rules in future.

In the present case I would request that you amend the provision to require the publication of notices informing the public of the later commencement of the Regulation."

On 7 January 1997, the Acting Premier advised that cases of the above kind are rare and in any event administrative procedures are in place to require publication of notices of the correct commencement date in the Legislation data bases and other tables and publications issued by the Parliamentary Counsel. Some examples were provided of recent cases of such publications.

The Acting Premier was reluctant to amend the Act to require the publication of notices

informing the public of the later commencement as the time by which the notice would be required to be published and the consequences of failure to publish would have to be determined.

As the Acting Premier had not responded to the Committee's request for the referral of any amendments to Acts which affect the publication, validity or disallowance of statutory rules, the Premier was reminded of this request.

On 16 June 1997, the Premier advised that he saw no difficulty with informal consultation with the Committee before bills which change procedures on regulations are introduced and said he would ask officers within his administration to do this, where practicable.

FISHERIES MANAGEMENT AMENDMENT BILL

The first Bill referred under the new arrangements is the Fisheries Management Amendment Bill 1997. Clause 7.5 of schedule 7 of that Bill includes management plans for share management and commercial managed fisheries in schedule 3 of the Subordinate Legislation Act. This means that these plans will be exempt from the requirement for an RIS.

The Minister for Fisheries in his letter of 30 October 1997 which supports this exemption states that these plans are subject to community review and in his view this meets the sense of the Subordinate Legislation Act.

However the Committee noted that the Fisheries Management Act already includes significant exemptions from the Subordinate Legislation Act. Section 60.states that a management plan for a fishery (including any amendment or new plan) is to be made by a regulation and that any such regulation is not repealed by the operation of Part 3 of the Subordinate Legislation Act 1989.

In other words the regulations making the plans have been excluded from the Staged Repeal Programme and unlike all other regulations they are not automatically repealed at the end of 5 years.

The requirements for making plans are as follows :

Division 5, section 56 of the Fisheries Management Act states that the Minister is to arrange for the preparation of a draft management plan for a share management fishery as soon as practicable after the fishery becomes a limited access fishery. It also provides:

"*The management plan for a share management fishery may make provision for or with respect to the following:*

- *(a) the objectives of the plan;*
- *(b) the classes of shares in the fishery and the provisions of the plan applicable to each such class;*
- *(c) the rights of shareholders to take fish or nominate others to take fish in the fishery;*
- *(d) the fish that may be taken in the fishery;*
- *(e) the area for taking fish in the fishery;*

(f) the times or periods for taking fish in the fishery;
(g) the use of boats and fishing gear in the fishery;
(h) the conduct of fishery reviews for the purposes of the preparation of a new plan;
(i) the species or group of species of fish taken in the fishery that are to be subject to a total allowable catch for the commercial fishing sector;
(j) the protection of the habitats of the species of fish that may be taken in the fishery (including habitats at all stages of the life history of any such species);
(k) the taking of bait for use in the fishery;
(l) the matters expressly authorised by this Act to be included in the plan;
(m) any other matters relating to the management of the fishery that are consistent with this Act and its objects.

(2) A management plan must:
(a) include performance indicators to monitor whether the objectives of the plan and ecologically sustainable development are being attained; and
(b) specify at what point a review of the management plan is required when a performance indicator is not being satisfied."

Section 58(1) states that the Minister is required to give the public an opportunity to make submissions on any proposed management plan for a fishery (or proposed new plan) and to take any submission that is duly made into account.

Under Subsecion (2) the Minister is required to consult the Management Advisory Committee for a fishery, and any other relevant commercial or recreational fishing industry bodies, about any proposed management plan for a fishery (or proposed new plan).

The difficulty with these provisions is that the consultation is not done on the basis of an objective assessment of alternative options as in the case of an RIS.

While the plan itself has performance indicators to monitor whether the objectives of the plan and ecologically sustainable development are being attained, there is no assessment in the first place to determine whether the objectives of the plan could be achieved by a more cost effective alternative.

If the Committee were to agree to the proposed exemption it could set a precedent that could justify the exclusion of many regulations in the future.

The Committee wrote to the Minister indicating that it finds this amendment objectionable as the Act already excludes these regulations from the sunset provisions and as such they will run on indefinitely. The Committee said that it is important that each plan be preceded by an objective assessment in the form of an RIS in the first place to determine whether the objectives of the plan could be achieved by a more cost effective alternative.