Parliament of New South Wales

Regulation Review Committee

Report

Study Trip to Brisbane, Queensland
22 - 25 August 1999

Casino Control Regulation 1995
and amendments

Retail Leases (Sydney Airport)
Regulation 1999

Report 2/52
September 1999

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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 the Committee 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, following 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 program for the staged repeal of regulations under the Subordinate Legislation Act 1989. Under this legislation all regulations currently in force in NSW are being re-examined, on cost benefit and cost-effectiveness principles, on a chronological basis starting with the oldest regulation.

The staged repeal process involves the automatic repeal of existing regulations (except where exempt) made before 1 September 1990 in a staggered process commencing on 1 September 1991. Regulations made after 1 September 1990 are automatically repealed (unless their repeal is postponed) five years after they are made.

Chairman's Foreword

This report outlines the work undertaken by the Committee in its study trip to Brisbane, Queensland which took place between 22 and 25 August 1999. The prime focus for the trip was an examination of the operation of the respective Acts governing the review of regulations in both States and the additional role of the Queensland Scrutiny of Legislation Committee in scrutinising bills.

A number of Government officers, academics and a prominent journalist were also conferred with in order to obtain their views on the scrutiny of legislation in Queensland, and in particular on the operations of the Scrutiny of Legislation Committee.

The picture that emerges is of a scrutiny committee that is highly regarded by the Queensland Parliament, the public and the media for raising issues of importance in bills before they are debated in the Parliament.

The extension of the Regulation Review Committee's function to include the scrutiny of bills has been recommended by the Committee in several reports and the Committee is currently awaiting the Government's response to Report 18/51 which contains the recommendations of the OECD with respect to this and other issues.

This report also outlines the Committee's action on the Casino Control Regulation 1995 and the Retail Leases (Sydney Airport) Regulation 1999. The Committee recently considered several amendments to the Casino Control Regulation 1995 and undertook a tour of the operations at the Casino to familiarise itself with the issues raised by these amendments and with the provisions of the principal regulation.

The Retail Leases (Sydney Airport) Regulation 1999 creates various exemptions from the *Retail Leases Act 1994* in respect of shops at Sydney's Kingsford Smith Airport to facilitate the redevelopment of the Airport for the 2000 Olympic Games. The Committee visited the Airport and obtained a briefing from Sydney Airport Corporation Limited (SACL), the Department of State and Regional Development and the parties who had made submissions on the Regulatory Impact Statement (RIS) for the regulation.

It emerged in the course of discussions that the regulation may have the unintended effect of continuing the exemptions in leases entered into after the regulation commenced but before it expires, despite the fact that the regulation sunsets on 31 December 2000. The Committee intends to pursue this matter with the Minister.

Peter R. Nagle, MP
Chairman

Study Trip to Queensland 22-25 August 1999

SUNDAY 22 AUGUST 1999

Scrutiny of Legislation Committee of Queensland

Members of the New South Wales Committee, comprising:

the Chairman, Mr Nagle;
Dr Kernohan;
Ms Saliba;
Mr Turner; and
Mr Hogg of the Secretariat,

met with the Deputy Chairman of the Scrutiny of Legislation Committee of Queensland, Mr Tony Elliot, for preliminary discussions on the evening of Sunday 22 August 1999.

The initial focus of the discussion was on the Queensland Committee's role of reviewing Acts and Regulations on the basis of the Fundamental Legislative Principles (FLPs), in particular the FLP requiring legislation to have regard to Aboriginal tradition and island custom.

The major report of the Queensland Committee on the Firearms legislation was also discussed and the difficulties of preserving committee bi-partisanship when such controversial legislation is scrutinised.

The role of the Legal Adviser to the Committee was discussed and the particular difficulties associated with the scrutiny of bills function of the Queensland Committee.

MONDAY 23 AUGUST 1999

Scrutiny of Legislation Committee of Queensland

On the morning of Monday 23 August 1999 the Members attended the Queensland Parliament and were greeted by Ms Linda Lavarch, Chairman of the Scrutiny of Legislation Committee of Queensland. Members were provided with a tour of the Parliament House and then attended a meeting of the full Queensland Committee at 11 am. The members and secretariat of the Queensland Committee comprise the following persons:

Chairman: Mrs Linda Lavarch MLA, Member for Kurwongbah
Deputy Chairman: Mr Tony Elliott MLA, Member for Cunningham
Mrs Liz Cunningham MLA, Member for Gladstone
The Hon. Jim Fouras MLA, Member for Ashgrove
Dr John Kingston MLA, Member for Maryborough
Mr Peter Wellington MLA, Member for Nicklen

Committee Staff:

Mr Christopher Garvey, Research Director
Ms Veronica Rogers, Senior Research Officer

The Committee also seeks advice from its legal advisers from time to time but these were not present at the meeting. These advisers are:

Principal Legal Adviser to the Committee: Professor Charles Sampford
Associate Professor Gerard Carney
Associate Professor Bryan Horrigan
Mr Robert Sibley
Dr Max Spry.

The Scrutiny of Legislation Committee was established on 15 September 1995 under s. 4 of the *Parliamentary Committees Act 1995.* Its terms of reference under s.22 of that Act are to consider:

(a) the application of fundamental legislative principles to particular Bills and particular subordinate legislation; and
(b) the lawfulness of particular subordinate legislation;

by examining all Bills and subordinate legislation

The Committee's area of responsibility includes monitoring generally the operation of provisions of the Legislative Standards Act 1992 including s.4 (meaning of "fundamental legislative principles"), part 4 (explanatory notes); and the following provisions of the Statutory Instruments Act 1992–

- section 9 (meaning of "subordinate legislation")
- part 5 (guidelines for regulatory impact statements)
- part 6 (procedures after making of subordinate legislation)
- part 7 (staged automatic expiry of subordinate legislation)
- part 8 (forms)
- part 10 (transitional).

"Fundamental legislative principles" are defined in s.4 of *The Legislative Standards Act 1992.* They are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.

The principles require that legislation has sufficient regard to–

(a) rights and liberties of individuals; and
(b) the institution of Parliament.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation–

(a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
(b) is consistent with the principles of natural justice; and
(c) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
(d) does not reverse the onus of proof in criminal proceedings without adequate justification; and

(e) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
(f) provides appropriate protection against self-incrimination; and
(g) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
(h) does not confer immunity from proceeding or prosecution without adequate justification; and
(i) provides for the compulsory acquisition of property only with fair compensation; and
(j) has sufficient regard to Aboriginal tradition and Island custom; and
(k) is unambiguous and drafted in a sufficiently clear and precise way.

Whether a bill has sufficient regard to the institution of Parliament depends on whether, for example, the bill–

(a) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
(b) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
(c) authorises the amendment of an Act only by another Act.

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation–

(a) is within the power that, under an Act or subordinate legislation (the "authorising law"), allows the subordinate legislation to be made; and
(b) is consistent with the policy objectives of the authorising law; and
(c) contains only matter appropriate to subordinate legislation; and
(d) amends statutory instruments only; and
(e) allows the subdelegation of a power delegated by an Act only–

(i) in appropriate cases and to appropriate persons; and
(ii) if authorised by an Act.

The Queensland Committee considered the first draft of its Alert Digest on two bills which were to be debated on Tuesday in the House: the *Interactive Gambling (Player Protection) Amendment Bill 1999* and the *Tab Queensland Limited Privatisation Bill 1999*.

The Queensland Committee considered the application of the following FLPs to these bills:

- whether the legislation had sufficient regard to the rights and liberties of individuals;
- whether it conferred immunity from proceeding or prosecution without adequate justification;
- whether it allowed the delegation of legislative power in appropriate cases and to appropriate persons; and
- whether the legislation is consistent with the principles of natural justice.

In the second part of its meeting the Queensland Committee considered two pieces of Subordinate Legislation. The New South Wales Committee noted that regulatory impact statements (RISs) prepared for subordinate legislation in Queensland were required to be tabled in Parliament.

The Queensland Committee advised that it would meet again at 4 pm to finalise its draft Alert Digest. This was subsequently published on Tuesday morning as Alert Digest No. 10 of 1999.

Over a working lunch the two Committees discussed their respective operations and the desirability of developing a common computer data base among all Australian Scrutiny of Legislation Committees. The Committees were to be joined by Professor Sampford the principal legal adviser to the Queensland Committee, but due to his extensive commitments Professor Sampford was unable to attend.

It emerged in the course of discussions that in Queensland there is no equivalent provision to that which is now common to all New South Wales statutes which requires Ministers to review them after five years to determine whether the policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives.

Office of the Parliamentary Counsel of Queensland
Mr Peter Drew and Mr David Connolly

At 2:30 pm the members met with Mr Peter Drew, the Parliamentary Counsel of Queensland and Mr David Connolly, Deputy Parliamentary Counsel.

Under s.7 of the *Legislative Standards Act* 1992, a function of the Office of the Queensland Parliamentary Counsel is to advise on the application of fundamental legislative principles to proposed legislation. Mr Drew indicated that until a recent review of his office the Parliamentary Counsel also co-ordinated the the impact of regulatory impact statements for subordinate legislation. As a consequence of that review the responsibility has fallen on the individual Ministers proposing legislation.

The Parliamentary Counsel maintains comprehensive lists of regulations and bills under review and publishes relevant information on his Office's internet home page. In his role of monitoring the implementation of FLPs Mr Drew sees himself as acting as a preliminary filter for those matters which the Committee would otherwise find objectionable in its scrutiny of legislation. Mr Drew considers that the Scrutiny of Legislation Committee has a profound effect on the bureaucracy, perhaps more so than it realises, but if he had a suggestion for improving the process of preparing legislation in Queensland it would be that a central agency should be established in government to oversee the preparation of RISs.

Regulation Reform Unit, Department of State Development
Mr John Woods, Manager

At 3:15 pm the Committee met with Mr John Woods, Manager, Regulation Reform Unit, Department of State Development of Queensland. Mr Woods advised that his unit mainly reviewed RISs which impacted on business. He encounters similar problems to the NSW Committee in reviewing RISs, as often there is no quantification of the costs and benefits of regulations.

Mr Woods indicated that his office has issued a software package on the preparation of regulatory impact statements which is in a user-friendly format. He advised that only 16 RISs had been prepared in the last financial year and that he was concerned that significant exemptions had been obtained from the requirement to obtain an RIS. He considered that a regulatory plan was needed for Queensland which would give agencies a structure for the review of regulations. Mr Woods also believed it would be desirable to introduce RISs for bills.

TUESDAY 24 AUGUST 1999

Associate Professor Gerard Carney and Associate Professor Bryan Horrigan

(Interrupted at 10.20 am when the Committee attended question time and was acknowleged by Mr Speaker.)

At 10.00 am the members met with Associate Professor Gerard Carney of Bond University and Associate Professor Bryan Horrigan of Queensland University of Technology, who are legal advisers to the Queensland Committee.

Professor Carney indicated that Professor Sampford, who was unable to meet the Committee, provides regular and general advice to the Committee while the other advisers do so on specific issues. Professor Carney specialises in constitutional issues and Professor Horrigan in native title matters. The two further advisers to the Committee, Mr Robert Sibley and Dr Max Spry specialise in criminal law and industrial law matters respectively. The legal advisers had been appointed on the basis of a tender process and receive modest fees for their advice.

In analysing legislation referred by the Committee the legal advisers use the fundamental legislative principles as a check list for issues that they consider the Committee may wish to raise. However a number of other issues have been raised by them in their advice such as the issue of equality and whether a bill might be invalid on the grounds that it conflicts with the Commonwealth constitution. They believe that the scrutiny of legislation committee has brought about a significant improvement in the quality of legislation but they consider that the FLPs could be expanded to cover some issues such as the constitutional validity of legislation.

The professors advised that Statute Law Bills are passed in Queensland to deal with minor revision of Acts and some bills originate from law reform proposals but there is no general revision program for Acts. The Chairman asked whether the professors considered there was a need to review the specific powers in Acts enabling regulations to be made and a need for scrutiny of large amendments moved in committee. The professors advised that enabling provisions were reviewed by the Scrutiny of Legislation Committee but that the Committee was not referred amendments moved in committee during the debate of bills.

The professors advised that early in its operations, the Queensland Committee had, with the assistance of Professor Charles Sampford, prepared a manual setting out the procedures to be followed by departments in preparing RISs. This manual had not however been adopted by the Committee.

Professor Carney indicated that in addition to his work for the Committee he was finalising a book on the law relating to the dismissal of Members of Parliament and that it would shortly be published.

The professors indicated that the Committee had been active in commenting on Henry VIII clauses in bills and other provisions which give Ministers power to exempt persons from compliance with Acts.

Mr David Solomon
Journalist and former Chairman
Electoral and Administrative Review Commission

At 4.30 pm the Committee met with Mr David Solomon, a journalist and political commentator for the Brisbane Courier Mail and Former Chairman of the Electoral and Administrative Review Commission. Mr Solomon considered that the Scrutiny of Legislation Committee had a huge job in reviewing both Acts and Regulations and it needed significant resources to do so. He believed the current resources of two permanent officers are insufficient and suggested that an ideal would be three or four staff with five or six independent advisers.

He said that the Committee educates five classes of people through its Alert Digest: Members of Parliament who are informed of salient issues in each bill; the media, who can publicise important issues; the Government; public servants who must inform their Minister of any issues likely to be raised ; and the Office of Parliamentary Counsel who filters out any obvious problems. He suggested that if only for its educative value New South Wales needs a Scrutiny of Legislation Committee which reviews both Acts and Regulations.

He thought that the Queensland Committee and its Alert Digest gave parliamentarians a better background understanding of bills and put Departments on notice of the need to ensure a reasonable standard for legislation as their Minister would be accountable for any departures from the FLPs.

WEDNESDAY 25 AUGUST 1999

The Queensland Criminal Justice Commission

The Committee was unable to meet with Justice Bruce McPherson of the Supreme Court as intended because of the Judge's commitments in the Court at that time. The Committee accordingly proceeded to the offices of the Criminal Justice Commission, and at 11.00 am it met Mr Brendan Butler, SC, Chairperson, Dr David Brereton, Director, Research and Prevention, and Mr David Bevan, Director, Official Misconduct.

Mr Butler indicated that the role of the CJC was far broader than the ICAC of New South Wales as it embraced the Ombudsman's Office and the scrutiny of police functions. The CJC is unique in Australia, as it combines the activities of intelligence gathering and analysis, law reform research, official misconduct and organised crime investigations, oversight of police reforms, complaint resolution, corruption prevention and witness protection.

It also has a role in reviewing the criminal law. The CJC receives about 3,000 complaints a year of which it investigates approximately 400.

While the CJC has no direct contact with the Scrutiny of Legislation Committee, Mr Butler indicated that, in his view, an indirect benefit of the Committee was that it puts backbone into the bureaucrats to inform the Minister of issues which are likely to be challenged when the matter comes before the Committee and, ultimately, Parliament. With respect to the CJC's role in reviewing the law, it rarely involves itself in the black letter law but was more concerned with the policy of the criminal law legislation.

The CJC has to report to a Parliamentary committee, the Parliamentary Criminal Justice Committee (PCJC) which has the principal functions of monitoring and reviewing the discharge of the functions of the CJC, and reporting to Parliament on the CJC's performance.

The PCJC holds regular meetings with the CJC, both in public so that the public can observe the process, and in private, so that the PCJC can closely scrutinise the CJC's confidential activities. The PCJC also has the function of reporting near the expiry of its three year term on the activities of the CJC during those three years.

The Committee concluded its meeting with the CJC at 1.00 pm and proceeded on its return to Sydney.

Casino Control Regulation 1995
Casino Control Amendment (Casino Precinct) Regulation 1998
Casino Control Amendment (Remuneration Disclosure) Regulation 1998

The Casino Control Regulation 1995 is due for staged repeal under the *Subordinate Legislation Act 1989* on 1 September 2001. The Committee recently considered several amendments to this principal regulation and decided to inspect the operations at the Casino to familiarise itself with the issues raised by these amendments and with the provisions of the principal regulation.

At 9.30 am on Monday, 6 September, 1999, Committee members proceeded to the Casino and were given a brief tour of the premises and operations by Ms Virginia Baker and Mr Peter Grimshaw, members of the Casino staff. The following members and staff of the Committee attended: Mr Peter Nagle MP Chairman, Hon Janelle Saffin MLC Vice Chairman, Hon Don Harwin MLC , Ms Marianne Saliba MP, Mr Russell Turner MP, Mr Jim Jefferis Director, Mr Greg Hogg Project Officer, and Mr Don Beattie, Clerk to the Committee.

The Committee was subsequently joined by Mr Jim Hoggett, General Manager, Corporate, Star City Casino for an informal discussion. The Chairman informed Mr Hoggett that the Committee has the task of periodically reviewing the main Casino Control Regulation and all amending regulations when they are made. The Chairman said the Committee is currently looking at the following two regulations which deal with casino precincts and the disclosure of employees' remuneration.

Casino Control Amendment (Casino Precinct) Regulation 1998

Section 81 of the *Casino Control Act 1992* states that the Commissioner of Police may direct a casino operator in writing to exclude a person from a casino and that the regulations may declare that the whole or a specified part of premises form part of a casino for this purpose. Such a declaration is to apply only to premises that form part of or are in the immediate vicinity of the building or complex of which the Casino forms part, and are under the control or management of the Casino operator. The Casino Control Amendment (Casino Precinct) Regulation 1998 provides that the "Lightning Ridge Bar", "the Star Lounge", and "Lifesavers" are declared to form part of Star City Casino for the purposes of section 81.

Casino Control Amendment (Remuneration Disclosure) Regulation 1998

This regulation increases the threshold for payments to Casino employees which are notifiable to the Casino Control Authority by Casino operators. This threshold was $100,000 per annum but has been increased to $150,000 per annum. The Casino Control Authority had earlier advised the Committee that Star City Casino had requested the increase as the normal salary for Pit Bosses at the casino now averaged around $100,000.

The Authority advised that the requirement for notification was originally included to enable it to detect highly paid persons in jobs such as Pit Bosses at the Casino which would normally attract a lower salary. These may, for example, be persons who are themselves disqualified from holding a Casino licence but who have been improperly given a special salary by the Casino for acting in their operations. The increase in the threshold for disclosure was therefore considered reasonable by the Authority.

General Discussion

The Chairman said the Committee would welcome any suggestions or observations Mr Hoggett might wish to make for improving the regulatory controls.

Mr Hoggett said that a concern the Casino had was that the "Casino Community Benefit Fund" was to have its name changed to the "Community Benefit Fund" in certain proposed legislative changes, despite the fact that the Casino exclusively provided that fund. A further concern arose with respect to the proposed legislation governing responsible gambling.

The Committee members indicated that they could only review the regulations and that these concerns appeared to arise chiefly from proposed changes to the Act (The Casino community benefit levy and fund is established under section 115 of the Act). Mr Hoggett said he also had some concerns with respect to the regulations and would make a submission to the Committee when they are under review.

Retail Leases (Sydney Airport) Regulation 1999

The object of this Regulation is to create various exemptions from the *Retail Leases Act 1994* in respect of shops at Sydney's Kingsford Smith Airport. These exemptions are said to be necessary to avoid construction delays in the redevelopment of the airport for the 2000 Olympics, and temporarily remove the lessees' rights to notice and compensation under the Act.

Specifically the regulation:

(a) exempts from the operation of the Act premises at the Airport that are not used for retail businesses (and so would not be covered by the Act were they not within a retail shopping centre complex), and

(b) exempts from the operation of the Act premises within a "master concession" that has a total lettable area greater than 1,000 square metres. (A master concession consists of a number of separate premises at the Airport that are all leased to the same lessee), and

(c) confers exemptions from various provisions of the Act in their application to shops at the Airport.

The regulation ceases to operate at the end of 31 December 2000. It is made under the *Retail Leases Act 1994*, including sections 5 (e), 6 (e), 82 and 85. The other exemptions are as follows:

A lease of premises at the Airport is exempt from the operation of section 16 (minimum five year term) of the Act if the term for which the lease is entered into, together with any further term or terms provided for by any agreement or option for the acquisition by the lessee of a further term as an extension or renewal of the lease, is not less than three years.

A lessor under a lease of premises at the Airport is exempt from the requirement to give notice to the lessee of the lessor's intentions at end of lease under section 44 of the Act but only if not less than two months and not more than 12 months before the expiry of the lease the lessor by written notification to the lessee either:

(a) offers the lessee a renewal or extension of the lease on terms specified in the notification (including terms as to rent) and does not revoke that offer for at least one month after it is made, or

(b) informs the lessee that the lessor does not propose to offer the lessee a renewal or extension of the lease.

Total exemptions are made in respect of the following provisions:

- section 11 (lessee to be given disclosure statement);
- section 17 (payment of rent when lessor's fitout not completed);
- section 18 (restrictions on adjustment of base rent);
- section 19 (reviews to current market rent);
- section 27 (estimates and expenditure statement of outgoings to be provided by lessor);
- section 31 (determination of current market rent under options to renew);
- section 32 (opportunity for lessee to have current market rent determined early);
- section 33 (lessee to be given notice of alterations and refurbishment);
- section 34 (lessee to be compensated for disturbance);
- section 35 (demolition);
- section 39 (grounds on which consent to assignment can be withheld);
- section 41 (procedure for obtaining consent to assignment);
- section 50 (confidentiality of turnover information).
- Part 7 (Additional requirements for retail shopping centres), except:
- section 57 (f) (relating to payment of the lessee's reasonable costs of relocation); and
- section 58 (termination for inadequate sales prohibited).

Regulatory Impact Statement

An RIS under the *Subordinate Legislation Act 1989* was carried out after the regulation was made because the regulation received a "fast track" public interest exemption under section 6(1)(b) of the Act.

The RIS indicates that in 1998 the Federal Government established a company, Sydney Airports Corporation Limited, in order to corporatise the four Sydney Airports: Sydney, Bankstown, Hoxton Park, and Camden. As such the Federal Airports Corporation Act of the Commonwealth ceased to apply to the airports and instead New South Wales law applied, in particular the Retail Leases Act 1994 in respect of the retail shop leases at the Airport.

The RIS states there are some 35 retailers located at Sydney Airport alone employing 1,000 people. A problem arose with the change in the applicable law because at the time of the change a major redevelopment and extension of the Sydney Airport terminal had commenced and development of the other airports was proposed, chiefly for the purposes of the Sydney 2000 Olympic Games. The corporation was concerned that the demolition and relocation provisions of the *Retail Leases Act 1994*, which require notice and compensation for tenants, were not envisaged when this work was commissioned.

A regulation was therefore proposed in order to prevent unnecessary construction delays before the Olympics.

Six options were considered in the cost /benefit analysis ranging from a permanent total exemption from the Act for all four airports to no exemptions at all.

The preferred option was for a temporary partial exemption from the Act by way of a regulation which only exempted leases at Sydney Airport and had a sunset clause by which the exemptions will cease on 31 December 2000.

While the costs of the respective options to the lessees were acknowledged in the assessment, there was no quantification or comparison of those costs as required by the *Subordinate Legislation Act 1989.*

The three submissions received in the consultation program on the RIS, from the Property Council of Australia, the Australian Retailers Association and the Law Society, did not support the exemptions but said if they had to be made they should not extend beyond 31 December 2000.

Significantly the Department commented that certain of the concerns raised will be considered in further consultation on how the Act should apply to Sydney Airport after 31 December 2000.

In view of the immediate impact of this temporary measure, which had not been quantified, and in view of the potential for similar exemptions to be put in place after 31 December 2000, the Committee decided to hold a meeting with the relevant parties at Sydney Airport in order to determine whether the regulation trespasses unduly on lessees' rights.

Meeting at Sydney Airport

On Monday, 6 September, 1999 at 11:50 am the Committee attended Sydney International Airport and met Ms Coralie Kelly, Director, Marketing and Commercial, Sydney Airports Corporation Limited (SACL), Mr Robert McFadyen, Head of Retail, SACL, Mr Chris Glastras, Manager, Retail Leasing, SACL and Mr David Rohr, of Mallesons Stephen Jaques, SACL's legal adviser.

The members and staff of the Regulation Review Committee attending were the Chairman, Mr Peter Nagle MP, Hon Janelle Saffin MLC Vice-Chairman, Hon Don Harwin MLC, Ms Marianne Saliba MP, Dr Liz Kernohan MP, Mr Jim Jefferis, Director, Mr Greg Hogg, Project Officer, and Mr Don Beattie, Clerk to the Committee.

The other persons attending the meeting and the organisations they represented were as follows:

Mr Ken Carslund, Registrar, Retail Tenancy Unit, Department of State and Regional Development.;

Ms Lexia Wilson, representing the Property Council of Australia;

Mr Bill Healey, Executive Director, Australian Retailers Association;

Ms Pamela Suttor, L Rundle & Co., representing the Law Society of NSW;

Mr Duncan Fairweather, representing the Shopping Centre Council.

The Chairman invited Mr McFadyen to provide a brief summary of the situation at both the International and Domestic Terminals. Mr McFayden indicated that SACL's relationship with airport retailers was a unique partnership which had to proceed on the basis of flexibility to serve the demands of the airport's primary business of aviation. Mr Rohr then outlined the reasons for the exemptions. He said that the regulation was a short term measure and that an issues paper will be prepared and released on how the Act will apply to Sydney Airport after 31 December 2000. A number of options are being considered, such as an amendment of the Act to continue the exemptions.

The Committee recommended that the proposed issues paper should comply with the requirements of the *Subordinate Legislation Act* for Regulatory Impact Statements, particularly with respect to consultation.

The representatives of the Property Council of Australia, The Australian Retailers Association, the Shopping Centre Council and the Law Society were then invited by the Chairman to give their view. They reiterated their submissions on the regulation and said they did not support the exemptions but that if they had to be made they should not extend beyond 31 December 2000.

Mr Healey said that SACL's relationship with airport retailers was not unique and was not much different from that in a normal shopping centre. He could see no reason for the departure from the Act, particularly in the light of moves toward national uniform legislation on retail leasing.

Mr McFadyen indicated that most of the redevelopment of retail areas at the airport was "airside", that is where outgoing passengers wait for their flights after having completed their formal departure through customs and the separate area where incoming passengers may purchase duty free goods before going through customs and immigration. For this reason he felt that the retail leases at the airport were sufficiently distinct from an ordinary shopping centre development in order to justify the exemptions.

Ms Wilson asked about the position of leases entered into after the regulation commenced but before it expires. Mr Rohr said that SACL had obtained the advice of Counsel that the exemptions continue in the conditions of such leases for their full term after the regulation sunsets on 31 December 2000.

Mr Ken Carslund said that this was not his Department's understanding of the operation of the regulation. He believed the full Act would apply to the leases after 31 December 2000. He agreed there would be a need for some form of transitional regulation to clarify and deal with this unintended consequence of the regulation.

Mr McFadyen agreed to provide a copy of the legal advising to the Committee.

At the conclusion of the meeting the Chairman thanked SACL for their hospitality and thanked the other parties for their contributions.

The Committee was then given a brief tour of the airport redevelopment, and it noted in particular the large increase in retailing space. The Committee proceeded on its return to Parliament at 3:30 pm.

After the Committee obtains a copy of the legal advice the Committee intends to clarify the matter with the Minister, in particular the need for transitional legislation and the preparation of an RIS on the proposals governing leasing at the Airport after 31 December 2000.

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