

Minutes of the Meeting of the Committee of Subordinate Legislation held at 12 noon on Tuesday 16 July 1991 in Room 9.13 of the Parliamentary Annexe.

Present:

Mr R D Barber, MLA (Chairman)
Mr G B Fenlon, MLA
Mr L W Stephan, MLA
Mrs J M Sheldon, MLA

Ms S Munro (Legal Counsel)
Ms M Cook (Secretary)

Apologies:

Mr R K Hollis, MLA
Mr J H Sullivan, MLA
Mr A A FitzGerald

Business arising from Minutes:

No. 1/91 Friendly Societies (Duties and Functions of Registrar) Regulations 1991.

No reply has been received from the Minister.

Secretary reported that when she attempted to obtain a copy of the Cabinet Decision regarding legal advice given initially by the Crown Solicitor's Office she was informed that this Decision of the previous government was no longer valid. Peter Young, Secretary to the Parliamentary Business & Legislation Committee suggested that the Committee write to Mr Mackenroth requesting consideration be given to preparing a similar Cabinet Decision.

Resolved: That the Committee write to Mr Mackenroth suggesting that consideration be given to a new Cabinet Decision regarding all Departments receiving advice initially from the Crown Solicitor's Office, and further, that the Committee should receive a fully copy of any advice given.

Perth conference

Letter of thanks to the Perth Committee in accordance with resolution of previous meeting endorsed.

No. 9/90 By-laws Performing Arts Trust Act

Letter to the Premier in accordance with resolution of previous meeting endorsed.

Letter from the Law Society of New South Wales

Letter to the Law Society in accordance with resolution of previous meeting endorsed.

Other Business:

No. 17/88 Nuclear Powered Ship Regulations.

The meeting noted the Minister's reply to the Committee's letter of 21 March 1991 and the repeal of the regulations on 6 July 1991.

No. 27 Statutory Bodies Financial Arrangements Act.

The Committee discussed the Treasurer's reply of 4 June 1991 and noted that he is looking to introduce amending legislation at an early date.

No. 15/86 By-laws Local Government Act.

The meeting noted the Deputy Premier's reply to the Committee's letter of 1 May 1991 indicating that this matter is being dealt with by the Electoral and Administrative Review Commission's Review of the Parliamentary Counsel's Office. The Deputy Premier is awaiting the Report of the Parliamentary Committee on

Electoral and Administrative Review on this subject prior to giving further consideration to the matter.

Resolved: That the Committee await the Report of the Parliamentary Committee on Electoral and Administrative Review.

Counsel's Reports:

No. 2/91 Department of Transport
(Variation of Fees) Regulations 1991

Counsel reported that these regulations were gazetted in a new format, whereby the Act pursuant to which they were made did not appear before the regulation amended.

On examination, it was found that the regulations were not set out in an order corresponding to the list of Acts appearing in the preamble to the regulations.

The meeting discussed the possible difficulties encountered by users of the regulations and resolved to write to the Minister of Transport stating that in its present form the amendments to the regulations, without stating the pertinent Act, could be confusing and unclear to potential users.

No. 3/91 Traffic Amendment Regulations
1991 (No. 4) - Traffic Act 1949.

Counsel reported that an error was made in regulation 14 of the amending regulations which instructed that regulation 108B (Automatic cancellation of a driver's licence) be inserted after regulation 108B. It should have inserted 108B after 108A.

It was resolved to write to the Minister of Transport and bring this error to his attention.

No. 4/91 Superannuation (State Public Sector) Act 1990 - Order in Council gazetted 29 June 1991, p.1152.

Counsel reported that the Order in Council purports to revoke an Order in Council made under the Act on 21 June 1991, when in fact it was an Order in Council made on 21 June 1990 that should have been revoked.

It was resolved to write to the Treasurer and inform him accordingly so that confusion is avoided as to what in fact was intended to be achieved.

No. 5/91 Notifications - Fire Service Act 1990

Counsel reported that two notifications gazetted on 8 June 1991 at p.641 are purported to be made pursuant to section 71(1)(a) of the Fire Service Act 1990. These notifications amend previously made notifications and are therefore made pursuant to section 71(1)(e) of the Act. Counsel further reported that Courts have tended towards the view that it is not necessary to refer to an empowering provision pursuant to which delegated legislation is made. However, if an empowering section is mentioned in delegated legislation and it cannot support the instrument, the Courts have held that the specific reference to a power will preclude reference being made to another provision in the Act which might support the validity of the delegated legislation.

It was resolved to write to the Minister for Police and Emergency Services asking that the persons responsible for preparing these notifications should be advised accordingly.

General Business:

The Committee discussed the question of the Secretary monitoring and keeping a register of all subordinate legislation that is subject to tabling and disallowance.

It was resolved that the Secretary now keep a register of all regulations, Orders in Council, Proclamations, Rules and By-laws that are subject to tabling and disallowance by the Parliament.

It was further resolved to write to the Clerk of the Parliament informing him of this decision and requesting that the necessary resources be given to the Secretary to facilitate this work.

Next meeting:

The next meeting of the Committee will be on Tuesday 20 August 1991 at 12 noon in Room 9.13 of the Parliamentary Annexe.

There being no further business the Chairman declared the meeting closed at 12.55 pm.

Dated this 20th day of

August

1991.

Bill
Chairman