SEVENTH AUSTRALASIAN AND PACIFIC CONFERENCE ON DELEGATED LEGISLATION

AND

FOURTH AUSTRALASIAN PACIFIC CONFERENCE ON THE SCRUTINY OF BILLS

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At Sydney on Friday 23 July 1999

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The conference convened at 9.30 a.m.

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REPORTS FROM PARTICIPATING PARLIAMENTARY COMMITTEES

Commonwealth Senate

SENATOR COONEY: The report that I am about to read was prepared by James Warmenhoven, our outstanding secretary. I take this opportunity to thank and acknowledge the incredible amount of work that is done by what is called our support staff, which is a most inadequate way of describing those who have done all the work for this conference. Senator Helen Cooney would agree that the sort of work done by the staff or public servants—whatever one likes to call them—is incredible, including the Victorian staff. I had intended to name a few names; instead I make a general acknowledgment of the people who have done the work. Of course, as parliamentarians we bring a keenness of mind to the task but, fundamentally, this report is James Warmenhoven's work.

A number of things have happened since the Adelaide conference, which was held two years ago. First, there was a Federal election, and I well remember that. Second, the Thirty-ninth Parliament commenced on 10 November. As a result, the standing committee farewelled a number of members and welcomed some new ones. In October 1997, Professor Douglas Whalan passed away, and I understand that Harold Hird will say something about that. I acknowledge Jim Davis and Peter Crawford who was the secretary before James Warmenhoven. Peter has retired, and I acknowledge all the great work he did. I wish him well.

It has been a busy couple of years for the committee. In 1997 it examined 275 bills. In 1998, which was an election year, it examined 185 bills. This year, it has examined 178 bills. Over three years it has commented in some way on approximately 40 per cent of the bills. There have also been a number of interesting developments. For example, the committee has noted a growing trend towards wide delegation of powers. It has commented on provisions which delegate significant powers to a person or which authorise someone to appoint persons in a general sense to exercise power under an Act. In one or two instances, Ministers accepted that this was an issue and undertook to amend bills to limit the class of potential delegates.

The Scrutiny of Bills Committee has had a very good relationship with the Ministers. The committee has written to Ministers and they have responded to explain why they will not change a particular piece of legislation or why it has to be changed. I acknowledge the courtesy and co-operation of the ministry.

We live in a time of outsourcing and of the privatisation of functions formerly carried out by government. I believe they are some of the great issues which the committee will have to face in the future. The issues involve considering how to provide proper supervision for bills and regulations and supervision of what is done through contracts. The committee will develop a procedure for that later. Retrospectivity remains by far the issue most often raised in correspondence with Ministers. We have the six months rule which basically means that when a bill is not introduced or made available in draft form within six months of the date of a press release, it should not generally commence retrospectively from the date of the press release. I suppose that all delegates are familiar with the idea of the press release and retrospective legislation. I had intended to comment on the legislative instruments bill but my colleague Senator Coonan described that so brilliantly yesterday that I will not go into it at all.

The committee has corresponded on a number of bills related to the immigration portfolio. For example, the committee recently considered the Migration Amendment Bill (No. 2) 1998. This bill was considered but not passed in the previous Parliament. It deals with circumstances under which immigration detainees are entitled to receive legal advice. My own view is that migration legislation is a real test for the work of the committee. It is constantly necessary to balance considerations between Australia being able to and entitled to maintain the integrity of its borders with issues of compassion and the way in which Australia treats people from other countries throughout the world. Balancing those considerations is difficult, and whether or not the committee always gets it right is a real issue.

So far my comments have related to the normal work of the committee. Over the past two years, the committee has sought to advance the scope of its scrutiny by undertaking more general inquiries into matters within its terms of reference. For example, the committee's eighth report in 1998 dealt with matters specifically referred by the Senate such as the appropriate basis for penalty provisions in Commonwealth legislation—for example, penalties for giving or withholding information to or from a Commonwealth authority. There is legislation dealing with inquiries that can be made of people and if a person does not respond to those inquiries, he or she can go to gaol for six months. The committee asked why there was a penalty in relation to the provision of that type of information, but nobody seemed to know. Earlier in the conference, a delegate gave the example of a leg of pork being put into the oven in a particular way because that was the way a grandmother or a grandfather used to do it. The same reasoning seems to have been adopted. Many regulations have penalties attached to them because it seemed to be the right thing to do. The committee will look into that, and it will be a good report.

Following a report produced on 10 December last year, the Senate referred another matter to the committee on the fairness, purpose, effectiveness and consistency of right of entry and search provisions in Commonwealth legislation. This reference was prompted by particular provisions which authorised the search and entry of residential premises whereas only business premises were intended. The provisions authorised entry by warrant obtained from a justice of the peace rather than from a magistrate. The committee has received a number of submissions for its inquiry and has had a briefing from the Attorney-General's Department and will hold hearings next month. In conclusion I thank Peter Nagle for his hospitality, which was thrust upon him late in the day. I have found out that whilst we were making vicious attacks upon him, he was prostrate in bed. We are happy to come back next year.

SENATOR COONAN: Since the previous conference there has been a Federal election, which resulted in a new Standing Committee on Regulations and Ordinances when the Thirty-ninth Parliament commenced on 10 November last year. Senator O'Chee was re-elected as chairman, and served in that role until he retired, somewhat sadly and prematurely, on 30 June, having been the only senator to fall to One Nation. Senator O'Chee had been a member of the committee for nine years and the chairman for the past three years. It is appropriate to reaffirm the comments that I made yesterday in appreciation of the contribution he made over a number of years. His incisive leadership and legal mind shaped the committee's functioning over the past three years. The committee was saddened by the death, on 10 October 1997, of its legal adviser, Emeritus Professor Douglas Whalan. He was a major presence at all these conferences and his wit, knowledge and contribution to the scrutiny of delegated legislation is sadly missed.

Professor Jim Davis has filled this position since October 1997. I have had the privilege

of working with Professor Davis and look forward to his continued contribution. It is appropriate to acknowledge the professionalism and dedication of the support staff, the secretariat. Without their attention to detail we could not carry on our jobs. David Creed, with his usual modesty, has not mentioned himself in the notes he prepared for me. He certainly deserves a mention. He will move on from the committee and we look forward to welcoming Neil Bessel, with whom I have had the great pleasure of working closely with on the legal and constitutional committee. I am confident that together we will make a reasonable fist of it, although we have big shoes to fill—Bill O'Chee and David Creed. I also commend Janice Paull of the secretariat for her untiring support.

The committee is responsible for the scrutiny of all disallowable instruments of delegated legislation to ensure that they comply with its non-partisan principles of personal rights and parliamentary propriety, as I mentioned yesterday. These principles are set out in the Senate Standing Orders. Since the Adelaide conference the work of the committee has become lengthy and detailed. It has scrutinised 3,559 disallowable instruments of delegated legislation and detected 502 apparent defects and matters worthy of mention, according to its principles. When the committee considered that an apparent defect warranted formal action the chairman wrote to the responsible Minister about its concerns. I am pleased to report that in almost all cases the Minister either agreed to amend the offending instruments or provided the committee with an acceptable explanation or undertaking.

In the past two years the committee has presented three reports and made 18 special statements to the Senate. The committee has had cause to report to the Senate on various matters such as delay in the implementation of ministerial undertakings, national uniform legislative schemes, and instruments which may be more appropriate for inclusion in an Act. In particular, two instruments illustrate the tenacity of the committee in pursuing matters to a satisfactory conclusion—and I mentioned a couple yesterday. I refer to two other matters, firstly, orders made under the Financial Management and Accountability Act 1997, orders made under the enabling Act which provide for the management of public money and public property. The substantive part of the orders, which were six lines along, established Comcover, described as a managed insurance fund to insure or arrange insurance for all Commonwealth insurable losses except for employers' liability; these risks are already covered by Comcare.

The substantive part of the explanatory statement was seven lines long and basically repeated the instrument. The committee wrote to the Minister, who advised that Comcover would be a comprehensive, disciplined, managed fund and that it would collect premiums, accumulate reserves, meet losses out of reserves, be modelled on the best managed funds in Australia and overseas, improve accountability and transparency to the Parliament, deliver a dividend to the Government at least comparable to industry standards, and adopt a business-like approach to the Government's insurance and risk-management arrangements through the provision of services at competitive market rates. In the circumstances the committee considered that the scheme may have been more appropriate for parliamentary debate, passage, scrutiny and public exposure, particularly since a similar agency, Comcare, was established by detailed statutory provisions.

The Committee's scrutiny took nine months, over two Parliaments, including extensive correspondence, a meeting between the Committee and the head of Comcover, and a meeting between the chairman and the Minister. Following that meeting the Minister agreed to amend the orders to clarify that they did not place any express obligation on agencies established by

the Commonwealth Authorities and Companies Act 1997 to insure with Comcover. That was honourably concluded, I am sure delegates would agree. The second matter was the Great Barrier Reef Marine Park Zoning Plans, with which I was involved, along with Senator O'Chee, in its recent stages. The committee's scrutiny of these plans took 2½ years over two Parliaments, including what could only be described as extensive correspondence with the Minister and Attorney-General and a meeting between the chairman and the Minister.

The problem was that the plans appeared to provide for an invalid subdelegation to officials of legislative powers to open or close considerable areas of the Great Barrier Reef to fishing, including recreational fishing and spearfishing, for periods up to five years. Those powers were to be exercised by instruments which were not subject to tabling, much less to possible disallowance. Our lengthy pursuit of this matter resulted in different legal advice as to whether the instruments were legislative in character or administrative and thus valid. The first advice from the Office of Legislative Drafting was that if the powers were legislative certainly they should be provided directly by the Zoning Plans. They would thus be subject to full parliamentary control. However, the office advised that the powers were, in fact, administrative and therefore valid. The committee was a bit startled by this as it appeared to fly in the face of what the committee understood as the distinction between legislative and administrative powers.

The committee wrote again to the Minister, which resulted in further advice from the Office of General Council [OGC] that the powers in question were clearly of a legislative nature. However, the OGC considered that although legislative the plans were likely to survive a court challenge to their validity on the grounds of subdelegation. The committee did not accept this and considered that in any event it was a breach of parliamentary propriety, at the very least, to make legislative instruments which were not subject to tabling and disallowance. The committee actively continued its scrutiny and has achieved a satisfactory outcome. It first wrote to the Attorney-General for more detailed advice on aspects of the legal position with particular emphasis on the implications for the operation of the Legislative Instruments Bill—here it comes again—in order to be sure that if enacted the provisions of that bill would apply to instruments for which the Zoning Plans provided.

After looking at all previous advice the OGC advised that the provision should properly be regarded as legislative but that the subdelegation of legislative power was not invalid. OGC noted, however, that even if invalid there may be quite proper policy issues as to whether it is appropriate in all circumstances to actually confer delegated power. The committee wrote to the Minister again asking that decisions under the Zoning Plans be made subject to disallowance. Almost five months later, despite every effort to resolve the matter, the committee had not received a reply. A couple of months ago the chairman, Senator O'Chee, and I met with the Minister, Senator Hill, in an attempt to bring the matter to a conclusion. The Minister advised that the present round of closures and openings of the reef was complete—it had more or less gone away by effluxion of time.

The Minister said that it was not intended to make any more zonings until the end of the existing experimental period in 2001. However, the Minister agreed that any future determinations after that date would be included in Zoning Plans, which are subject to full parliamentary scrutiny and control. The committee agreed that this was a satisfactory outcome in all the circumstances and reported to the Senate that all future activity in this important and sensitive area, protection of the Great Barrier Reef Marine Park, which is much in the news, will accord with parliamentary propriety.Yesterday I mentioned regulation impact statements.

The Government now requires that a regulatory impact statement [RIS] be prepared for instruments of delegated legislation that substantially affect business.

The statements are now attached to the instruments received by the committee. Yesterday I mentioned also the meeting with the Chairman of the Productivity Commission and of the Office of Regulation Review and that I will have another meeting as soon as possible. It has a central role in achieving implementation of the initiatives in this area. Senator O'Chee had a productive meeting which resulted in a statement to the senate on the committee's position in relation to the scrutiny of such statements.

I should like to say something about scrutiny of national scheme legislation, which is a matter that certainly concerns the conference. Yesterday we talked a little about the reintroduction of the Legislative Instruments Bill in 1996. This had presented us with an opportunity to again raise the scrutiny of national scheme delegated legislation. Although I did not go into it specifically, I am sure you are aware that on 28 August 1997 Senator O'Chee proposed that the Senate act as an agent for the other committees in the scrutiny and possible disallowance of such instruments. It was quite a significant proposal and I wanted to remind delegates of the stage we had reached with it.

The majority of committees gave in-principle support for the proposal, but Queensland, New South Wales and Victoria raised two broad concerns: first, that the State and Territory committees would have no say in the disallowance of a regulation; second, that the other committees might lose any power to scrutinise the legislation within their jurisdictions when their terms of reference are wider than the agreed core terms of reference contained in the position paper on scrutiny of national schemes of legislation. Senator O'Chee responded to these concerns on 3 April 1998. However, the proposal has proved difficult to pursue in any event as the bill, of course, was deadlocked and lapsed at the end of the last Parliament. So, events more or less overtook it.

We understand that negotiations have been taking place to try to resolve the difficulties that existed with the 1996 bill. A new bill possibly will be introduced into the spring sittings. I cannot take it any further than that it is a possibility. I mentioned also, in relation to a comment of Senator Cooney I believe, that there may well be better opportunities to resolve some of the sticking points. Of course, what we can do is keep all committees informed if an opportunity presents again to address the important area of scrutiny of national scheme delegated legislation. Finally, I place on record the appreciation of the Commonwealth for the hospitality of New South Wales in holding this conference. I also express my appreciation for being asked to take part in the conference and for the warm welcome I received from all delegates.

Australian Capital Territory

Mr HARGREAVES: Delegates, ladies and gentlemen, as the deputy chair of the Australian Capital Territory scrutiny committee I am pleased to report on the operations of the committee since the last conference in Adelaide two years ago. Before doing so, I add my congratulations and those of my colleagues to the New South Wales Regulation Review Committee on the organisation of this conference. I assure you that the Australian Capital Territory committee has derived a great deal of benefit from attending this conference. On a more personal level, I was amazed earlier: I thought I knew a fair bit about this game until I came to this conference. I realise that I did not know very much about it at all. I am grateful

to the expert presenters for putting things in such terms that a rock can understand, because certainly this rock has gained an awful lot of benefit out of it.

In the last two years the Committee on the Scrutiny of Bills and Subordinate Legislation in the Australian Capital Territory underwent a name change and an amalgamation with another committee. At the beginning of the fourth Assembly the committee system in the Legislative Assembly underwent a reconstruction to provide for five portfolio standing committees to shadow the five Ministers of the Territory. The functions of the Standing Committee on the Scrutiny of Bills and Subordinate Legislation, which operated as a separate committee in the third Assembly, were integrated with the Standing Committee on Justice and Community Safety. I might add that a decent bunfight ensued over that one. However, we are now faced with a committee that has a dual role: a policy role in looking at various issues relating to the role of the Minister for Justice and Community Safety—for example, the establishment of a prison for the Australian Capital Territory, a victims of crime assistance scheme and various community safety issues—and a scrutiny role which continues to examine all bills and subordinate legislation in accordance with the terms of reference adopted almost 10 years ago when the committee was first established.

I was very interested to hear some presenters talking about separating policy from scrutiny. The way we do that is that we consider the policy on day one and considered the scrutiny on day two. The committee reports separately in order to distinguish between the two functions. For example, it names some reports "Scrutiny Report No. XYZ" and it has a distinct secretariat for its scrutiny role. At this point I acknowledge the services of our supporting secretariat, Mr Tom Duncan, our Deputy Clerk, and Ms Celia Harsdorf, who is present. I was blown away when I saw how much work our legal adviser, Mr Peter Bayne, puts in along with the secretariat compared with the amount of effort and time I put in as a member of the committee. Like most other delegates here, I would suggest that without our legal advisers it would be far too much work; forget it, I would go home. I could not do it.

It is incredible just how much we depend upon their advice. When we see a piece of legislation, we might not be expert in its content. Quite frankly, we would not have a clue what we are looking at, but without these people putting up the flags and saying, "Have a look at this", I shudder to think what we would get through. I might add that not having the separate scrutiny committee caused considerable amount of debate and was canvassed just last month in a report to our Assembly on the review of governments in the Territory. Having said that, I believe members would agree that although appearing in a different format, the scrutiny committee has not lost much of its impact in maintaining favourites on matters relevant to its terms of reference.

The workload of the committee continues to fluctuate. There has been a steady increase in the amount of subordinate legislation examined by the committee. In 1990, the year after we kicked off, we considered 88 bills, 84 pieces of subordinate legislation and presented 21 reports. Four years later in 1994 we were up to 110 bills, 237 pieces of subordinate legislation and provided 20 reports. In 1998 we considered 120 bills, 340 pieces of subordinate legislation and presented 15 reports. Obviously, a lot of work is involved for us poor little blokes. On Wednesday we spoke about the need for a new approach to national schemes of legislation. We will consider motions on the subject later. The Australian Capital Territory has taken the matter seriously and examined how the Parliament as opposed to the Executive needs to be involved.

Since the last conference, a recent development within our jurisdiction has been the passage of the Administration Interstate Agreement Act 1997. Firstly, the Act imposes on Ministers a duty to inform and consult with all members of the Legislative Assembly in regard to matters being negotiated with other Australian governments. The Minister must consult also with what is in effect a scrutiny of bills committee and any relevant subject matter committee. Any recommendation by a committee must be taken into account by the Minister in the process of negotiation, which precedes entering into an interstate agreement. Secondly, when a Minister reaches an agreement, he or she must inform each member of the Assembly of its terms within seven days. There are circumstances in which the Minister is not obliged to comply with some obligations.

The scrutiny committee has taken the view that its recommendation should be made with reference only to its terms of reference in so far as they apply to bills and subordinate legislation. In fact, the scrutiny committee therefore does not go into the subject matter per se; it goes into things like infringements of people's rights et cetera. Our committee has been provided with information about only one interstate agreement since the Act commenced. However, given the interest in uniform legislation expressed by previous conferences, I believe this conference would be interested in hearing about the development of this issue. From the committee's perspective it is certainly a step forward in ensuring that governments do not enter into agreements without any consultation with Parliament. Motions before us of national schemes of legislation take the issue to a further stage.

The stage beyond even that will be the scrutiny by States and Territories of international agreements which impact on individual States and Territories and how this scrutiny could be achieved. In conclusion, as a newly appointed member of my committee, I have benefited from learning about how our Commonwealth, State and Territory counterparts operate as well as from discussing matters of mutual interest over the duration of the conference. Again I express our appreciation to the New South Wales Parliament for its hospitality. I express also appreciation on behalf of the pharmacy guild for the increased sales of Panadol, Berocca and all manner of medicines.

Mr HIRD: The Australian Capital Territory's tenth year of self-government has suffered the sad loss of Emeritus Professor Douglas Whalan, a friend of many delegates in this Chamber. When self-government was granted to the Australian Capital Territory it was like a child learning to walk: it needed a hand. That hand was offered by Douglas Whalan. His professionalism and dedication was evident to my colleagues and me. As my colleague John Hargreaves indicated, being a new member and chairman of the committee in this area of scrutiny legislation resulted in an undaunting task being placed on my shoulders, but I had a friend and ally, a man that knew what it was all about. Professor Whalan knew that if you wanted help, he was there to assist. His passing is not only a sad loss to the Australian Capital Territory and the Commonwealth, but I believe also to this conference. We have lost a great man who was eminent in his chosen profession of law. I ask all delegates to join with me and share the bereavement of the family with the loss of a great friend.

New Zealand

Ms YOUNG: I thank Peter Nagle and the Parliament of New South Wales for welcoming us to this conference. It is a pleasure to represent New Zealand, and the Regulation Review Committee particularly, along with its chairperson, the Rt. Hon. Jonathan Hunt, and staff members Deborah Angus and Shelley Banks. Those of you with an historical interest may be entreated to know that Jonathan Hunt entered Parliament many years ago along with my father. So, when people talk about him being the father of the Parliament, it has a wider

intergenerational aspect than people realise. When two of my colleagues, Jill White and Georgina te Heuheu, attended the last conference in Adelaide two years ago, our committee had been meeting for only five months under New Zealand's first mixed member proportional representation [MMP] elected Parliament.

Since that time Georgina has been elevated to Cabinet as Minister for Courts, Minister of Women's Affairs, Associate Minister in Charge of Treaty Negotiations and Associate Minister of Health. Jill White was elected as the Mayor of Palmerston North and left Parliament to take up that position. I am sure that I can relay to them the good wishes of this conference in their jobs as Minister and as mayor. Georgina has done well as a new Minister. I like to think that that is partly because of the training that she got on our committee. Certainly we have had no complaints about any of her regulations.

Since the last conference we have been a busy committee and have completed some significant pieces of work, including 17 reports to the House. We have brought with us some copies of our activities report which are on the table if anyone would like them later. The New Zealand Regulations Review Committee has eight permanent members and, by tradition, has an Opposition chairperson. When committees were established in March 1997, the membership reflected the proportionality of the seats held by the parties in the House. Since the election, a number of members of Parliament [MPs] have resigned from the parties that they were elected to represent in Parliament but they have not resigned from Parliament. Also the original constitution of the committee reflected the Coalition Government, which no longer exists. These changes have affected the proportionality of the membership of all our select committees. Generally, I think on the Regulations Review Committee we have managed to reach a non-partisan conclusion. So I think that in practice these changes to all committees have not affected our committees quite as much.

The Regulations Review Committee has several functions under the standing orders of the House of Representatives. The first is the scrutiny of all regulations, including instruments which are deemed to be regulations by their empowering legislation. Scrutiny of regulations is the core work of our committee. During 1998 we scrutinised 620 regulations and deemed regulations, the largest number made so far in a single year. We examined regulations under a number of grounds listed in our standing orders. Our grounds are similar to the grounds of most Australian committees. Deemed regulations do not necessarily have the same pre-promulgation controls as traditional regulations, such as Cabinet scrutiny, drafting within the Parliamentary Counsel office, and publication in our annual statutory regulations series. On Thursday, our chairperson, Jonathan Hunt, presented to you the findings of our recently reported inquiry into deemed regulations, so I will not go over that again today.

We also scrutinise regulation-making powers contained in bills which are before other select committees and we may report to those select committees when they are considering their bills. While our recommendations are not always followed, we are seen as having considerable expertise in this area. Some useful amendments have been included in bills reported back to the House in the light of our recommendations. An example of this would be the inclusion of the requirement to consult before making regulations which impose charges on particular users in the Rating Valuations Act 1998. Last year we made nine reports to other committees on regulation-making powers in bills. While the majority of our work remains the scrutiny of regulations, we have noticed particular growth in several other areas of our work in the past two years.

We are spending an increasing proportion of our time examining complaints from members of the public. So far in this Parliament we have examined 11 complaints, eight of which were reported to the House. Our complaints jurisdiction provides some of our most interesting and rewarding work. Sitting in the complaints role the committee takes on some of the flavour of an appeal court, with eight MPs sitting as judges. Usually the complainants are represented by counsel. Sometimes the complainants are represented by many counsel and, in those cases, the total costs of the lawyers in the room does not bear thinking about. Lawyers are used to judges being a captive audience, so they are somewhat taken aback to discover that MPs on the committee enter and leave in the middle of their submissions as the dictates of the House call upon them. Unlike a court, counsel cannot rely on the MPs having heard their entire argument. The fact that the committee presents a coherent summary of the evidence is a clear demonstration of the ability of counsel staff to provide a complete record and also to keep MPs on the right track.

Complaints are the most unpredictable of our functions. Acting in this jurisdiction we have examined complaints from Chinese acupuncturists, bee-product manufacturers, window tinters, family lawyers and scampi fishers, to name a few. Our biggest complaints, judged by dollar value, have multimillions of dollars at stake. Most of our complaints have large sums at stake. I understand that our complaints procedure differs from the Australian equivalents, so I will outline our procedure in some detail and then comment on one example of a complaint that we considered. When a person or an organisation that is aggrieved at the operation of any regulation makes a complaint to us, the complaint must be given an initial consideration at our next meeting. Unless we decide, by leave, to proceed no further with the complaint, the person or organisation concerned is given an opportunity to address us on the regulation. In practice, we usually hear from a complainant unless he or she does not identify a particular regulation or the complaint primarily raises policy issues which we think it would be inappropriate for us to examine. I am sure that, as MPs, you all know how inappropriate some of those things can be.

No timing restriction is placed on our complaints procedure. We can investigate a complaint at any time after the regulation is made. In many cases, complaints are made shortly after the regulations have come into force. The complainant may have opposed the measures during consultation on the draft regulations. When it becomes apparent that the regulations have not been amended in line with their submissions, the person or organisation may lodge a complaint with our committee. On other occasions, regulations have been enforceable some time before problems with their operation are brought to our attention. We are not prevented from investigating a complaint even if we have already examined the regulations under our scrutiny function and found no issues of concern on the face of the regulations.

I turn to a typical example which we chose as it has a trans-Tasman flair. The report is available if anybody would like to read it. It refers, in fact, to a window glazing complaint that we received. When we came to this conference we were a little surprised to discover that there were additional delegates from New Zealand. Angela Duncan is the Rules Manager of the Land Transport Safety Authority [LTSA], so the window-glazing regulations are hers. When that complaint was heard the Crown was represented by Grant Liddell from the Crown Law Office, who is also with us today. We hope that they are not here because they were so bruised by their treatment that they thought they should come and keep an eye on us. Grant assures me that he is not here in his capacity as counsel for the LTSA.

The window glazing complaint illustrates our complaints process. The glazing rule sets out requirements that must be met by the motor vehicle glazing industry. The International Window Film Association of Australasia asked us to consider the practical effect of allowing window tinting on the front side windows of motor vehicles, which was banned by the glazing rule—a land transport safety rule made by the Minister of Transport. This is an example of a deemed regulation. The complaint raised issues under four of the grounds under which we can examine regulations. Firstly, the industry claimed that the glazing rule was not in accordance with the general objects and intentions of the Act, because there was insufficient scientific and technical evidence to support the safety concerns addressed by the rule. The Minister disagreed, believing that the evidence he had was sufficient. We did not uphold the complaint on this ground, considering that the Minister had access to information on overseas standards, safety considerations and the costs of implementing the rule. We thought that the Minister was entitled to use this discretion in deciding the weight to be given to competing considerations.

Secondly, the industry argued that the glazing rule trespassed unduly on personal rights and liberties. It argued that the rule adversely affected the right of its members to earn a living, saying that 15 businesses had closed and approximately 40 jobs were lost because of decreased sales since the rule came into force. Industry also submitted that the rule adversely affected consumers' choice—that choice being the right to have tinting on both the front and back side windows. We did not consider that the effect of the rule amounted to an undue trespass on personal rights and liberties. While the rule affected the rights of industry participants, we concluded that those rights had to be weighted against the rights of others, primarily pedestrians and cyclists.

Thirdly, industry argued that the rule did not reflect international standards, therefore, it represented an unusual and unexpected use of the rule-making power in the Act. Industry argued that most Australian States and approximately 40 American States allowed less conservative window glazing restrictions than did New Zealand. The Minister told us that, at the time the rule was made, the limits imposed were consistent with those in Victoria—the Australian State which has road conditions most similar to New Zealand's conditions. Some time after the New Zealand rule was made, Victoria amended its rule in line with other Australian States. We concluded that there was information available to the Minister that safety factors and international practice supported the limits prescribed in the rule. We thought that the Minister was entitled to favour safety considerations over other factors, therefore, the complaint on that ground was unsuccessful.

Lastly, the industry submitted that the form and purport of the glazing rule was unreasonable because it contained a number of exceptions and anomalous applications. We upheld the complaint on this ground, finding that the sections of the rule which prescribed the responsibilities of vehicle operators were drafted in a way that was confusing and ambiguous.

Industry found the rule difficult to interpret, relying on supplementary fact sheets prepared by the department instead of the rule. In our view, this was unsatisfactory. We recommended that the rule be redrafted to clarify operators' responsibilities. We also asked the Minister to review the window-glazing limit in light of changes in international practice, in particular, the changes in Victoria, since the rule came into force.

The Government's response to the recommendations in our report was to agree to review the international changes and to redraft the rule. Following consultation, the Minister agreed to refer the revised draft rule back to us for consideration. I will be intrigued to hear whether Angela and Grant have a view about this process. In a number of cases the effect of the complaint has been to encourage the Minister to consider changing the regulations. This may be because he or she—and, to be frank, it is usually a he—has seen the light. But it is actually more likely that the motivation for the Minister changing something is that he wishes to avoid a reprimand by our committee.

Moving on to draft regulations, if a complaint addresses a regulation that has not yet come into force, we may write to the responsible Minister and invite him or her to refer the draft regulation to us for pre-promulgation scrutiny. The consideration of draft regulations is a separate function of our committee, provided for in our standing orders. Ministers have a discretion as to whether or not to comply with our request. If draft regulations are referred to us, our report is to the Minister and not to the House. This jurisdiction has been exercised more often over the past two years. Since we presented the window glazing report, we have reached a unique arrangement with the Minister of Transport that he will refer all draft civil aviation, maritime transport and land transport rules to us for consideration before they are made. The Minister refers the drafts to us at the white draft stage following public consultation, but before they are finalised.

The Minister wanted to ensure that our consideration of draft rules would not unduly delay his rule-making process. He now indicates a time frame within which he would like us to report and we decide whether or not the time frame is too tight. If it is too tight we may prefer to wait until the regulations are promulgated. Our primary consideration when looking at draft regulations is to ensure that our examination is meaningful. We have pointed out to the Minister that our examination of draft rules does not preclude us from examining rules again under our scrutiny function once they are made, or from considering a complaint about that rule.

I conclude by referring to the effect of a minority government on our committee, or indeed the effect of our committee on a minority government. In New Zealand the regulations review process gets about two lines in the average four-year law degree. Most lawyers do not know that the committee exists and, therefore, they do not know how effective an appeal to our committee can be. Within Parliament the Regulations Review Committee has traditionally been regarded as a committee for lawyers, a specialist committee writing boffin reports about esoteric aspects of legislation. My staff told me that I was not allowed to refer to committee members as nerds. Minority government has cast a new light on the Regulations Review Committee. This arises from two quite different things. First, a committee dominated by an opposition is more likely to criticise government bills and regulations. In practice, the approach that we have taken has been non-partisan, but the possibility of criticism tends to focus the minds of the Minister and his or her officials.

Second, and more importantly, members of the Regulations Review Committee have a special power to move for the disallowance of any regulation in the House. This right can be exercised by any permanent member of the committee, in respect of any regulation, on any

sitting day. Once the disallowance motion has been moved the House must deal with that motion within 21 sitting days or the regulation is automatically disallowed. In a minority government the Government cannot assume that a disallowance motion will be voted down. This means that Opposition members who are members of the Regulations Review Committee have much greater power when they are in a minority government.

This is an aspect of the committee which I believe the New Zealand Legislature is only now beginning to understand. After all, it is this power of the Regulations Review Committee to move for disallowances which prevents a minority government from sidelining Parliament altogether and ruling by regulations alone. Suddenly our committee is the centre of constitutional protection and not just a resting home for overly erudite lawyers. Mr Chairman, ladies and gentlemen, it is great to be here with like-minded legislators who understand the importance of a seemingly dry subject.

Northern Territory

Mr BALCH: With some humility I must say that it will be difficult for me to attain the standards of the fabulous and fantastic reports provided by Senator Cooney. However, I hope I can emulate those standards. As reported by our Federal colleagues, we also had a general election in the Northern Territory in 1997. My predecessor, Rick Setter, who reported to the previous conference, retired at that election. In fact, I now hold his seat. As a result of that election we had a complete change of membership of the committee. The committee currently comprises five members, of which three are Government members and two are Opposition members. At this point in time ours is a committee of review of delegated legislation and does not have a reference for the scrutiny of bills. It has been interesting for us to hear the comment that has taken place during this conference and to talk to those from some of the other jurisdictions about how we might develop our jurisdiction in the future.

Perhaps for the sake of our visitors I should outline a little about the Northern Territory, so that you can understand where we are coming from. We are the northernmost "State". We occupy 10 per cent of Australia's land mass but, with a population of around 200,000, have only 1 per cent of the population. It is interesting to note that if one drew a four-hour flying time circle around the Northern Territory, we can access five major Asian capitals which have a population of about two billion in the same time that we could fly to Brisbane or Adelaide. Needless to say, the Asian region is very important to the Northern Territory. This has been very much a look-and-learn process for me as a new chairman of the committee and really only having experience with review of delegated legislation to date. Our Parliament consists of 25 members, and as a consequence we all get to serve on many committees. For example, currently I am a member of six parliamentary committees, including this one, which I chair.

At the two previous meetings of this forum my predecessor, Rick Setter, spoke about two problem areas that we were encountering in our jurisdiction, one being staffing and the other being funding. Unfortunately we have a Treasurer who looks very lowly on the committee process. Getting funding out of him is like getting blood out of a stone, and nothing has changed in that regard. However, we have been successful in receiving staffing to assist our committee. I am grateful to my committee secretary, Terry Hanley, who has accompanied me on this trip, for all the work he has done. He is also secretary of our Public Accounts Committee, so he has a fairly full workload in our Parliament.

I turn now to activities since the last report to this forum. In 1997-98 our committee

scrutinised 78 annual reports of departments and statutory authorities to ensure adherence to the legislative requirements. The committee also scrutinised 53 regulations and by-laws, as well as 37 miscellaneous instruments and documents pursuant to Standing Order 21. In 1997-98 the committee scrutinised 78 annual reports and 88 regulations and by-laws, as well as 48 miscellaneous instruments, so it is a fairly constant workload. Unlike the work of my predecessor, the committee work has been fairly routine. We have not had to deal with anything like the euthanasia legislation, which you would all be well aware of and which the previous committee deliberated on extensively. However, the most significant emerging issue for us is in the nature of the native title legislation, which is currently before the committee. We will be looking at it in more detail in our next sittings of Parliament in August.

Interestingly, the Northern Territory is in a fairly unique position in that we are not only dealing with native title but how it fits into the Northern Territory Land Rights Act, which is Federal Parliament legislation which deals only with the Northern Territory because we are a territory and not a State and we have to try to work out how the two will be managed and effectively dovetailed into each other. It is also interesting to note that under the Northern Territory Land Rights Act some 48 per cent of the Northern Territory has already been put under claim, and under the Native Title Act it is anticipated that land claims in the Northern Territory will be increased to 98 per cent. Needless to say, we are very concerned about where that legislation is going and what the final outcome might be.

There has been some discussion and debate in the Territory over the last couple of years about the scrutiny process. It has been very important and significant for us to witness the discussion in this forum and to hear the benefits that flow from that process. I am very grateful to have had the opportunity to speak to some of you and for the help that has been offered to us to review and look at where we might go with this process. As I said, the debate has been going on for some time, and there is some resistance to the scrutiny process. I suppose that is due to a lack of understanding and concern about where it might lead us. But I certainly felt a lot more comfortable with the process after hearing from the various jurisdictions here. This forum has been invaluable in helping us to look at that particular area. In closing I thank Peter Nagle and his committee for the work that they have done in organising this conference. It has been thoroughly enjoyable. We look forward to meeting you again at some time in the future when you have the opportunity to visit the Northern Territory.

Samoa

Mr MULITALO: Mr Chairman and delegates, thank you for giving me the opportunity to speak at this forum. Firstly, I do not know how to thank New Zealand and Australia. Samoa being a baby, I do not know which hand is on Australia and which hand is on New Zealand. But I am very thankful to both countries for helping the Samoan Parliament to get this far. As you are all aware, Samoan politics started in 1962 and only in 1997 we introduced a party system to our standing orders. With that party system we started to discover the importance of committees in our Parliament. Before that time there were only two important committees in the Parliament, that is, the bills committee and the public accounts committee. Before 1997 all the regulations were scrutinised through the Cabinet, and went from the Cabinet to the head of State before becoming law. Those in opposition say that it is very unfortunate that they have no say in regard to the regulations, that they have a say only in relation to the first reading, second reading and third reading of bills. The Executive has the sole role of trying to scrutinise regulations from various departments and quasi-government organisations.

Nowadays, with the introduction of the party system in our politics, there are additional committees in the Parliament. For example, there is the judiciary and justice committee, which I chair, police in prisons, and also the land and titles court. I guess that is why I am here, to learn more and to report back to my Parliament. With that system, Samoa is gradually crawling from its early stages of politics. In this conference I have tried my best to collect as many scripts as possible to take home with me so that my Parliament will benefit from learning more about how to share the democracy of putting through regulations in order to provide the utmost service to our code for the benefit of our people.

I would like to thank the New South Wales Parliament for inviting Samoa to this conference. Thank you Australia, New Zealand and Canada. I believe that Samoa is the only small nation participant in this forum of learned people, and I am glad that I will be able to take back with me memories of this forum that will benefit my Parliament and the people of my nation. I thank each and every one of you. As you are aware, one of my country's Ministers was assassinated, and we do not yet know why. He was a lawyer by profession. His wife is also a lawyer by profession, and she is also a member of Parliament. I share with you the grievances that my people are suffering at present. That is the reason that I have to return to Samoa, in order to be with them at this time of mourning.

Queensland

Ms LAVARCH: On my behalf and on behalf of the Queensland secretariat of the Scrutiny of Legislation Committee, Veronica Rogers and Chris Garvey, I thank the New South Wales Regulation Review Committee for hosting this conference. Peter, I thank you personally for the warmth of your welcome to New South Wales and your hospitality in the past three days. I also thank you and your committee for what I can say has been a very successful conference. Well done!

As chair of the Queensland Scrutiny of Legislation Committee I am delighted to be able to report to the conference my committee's activities since the last scrutiny conference was held in Adelaide in July 1997. Like the Commonwealth and the Northern Territory, Queensland has had an election since that conference. Tony Elliott, who was the chair of the committee at that time, is now deputy chair of the committee. He sends his regrets that he is not able to be here with us at this conference.

In Adelaide the Queensland committee was represented by John Sullivan, who was then the deputy chair. But he also was the chair of the original Scrutiny of Legislation Committee from 1995 when it took on the added role of scrutinising bills. Unfortunately, John lost his seat to One Nation. Those who know John will remember that his fearless approach to the scrutiny of bills is probably what has made our committee the meaningful committee that it is in the Queensland parliamentary system today.

I send the apologies of other members of the Queensland committee. As members may or may not be aware, the numbers in the Queensland Parliament are very tight. Parliament is sitting this week and the three Independent members of the committee do not have access to the pairing system. When deputy chairman John Sullivan reported in 1997 he indicated that the committee was still on a learning curve in relation to the scrutiny of bills. At that time it had been performing its functions for a little over 18 months. I can now report that the last two years have been very fruitful. Committee reports have resulted in a large number of amendments being moved in Committee by sponsoring Ministers. The frequency with which

the committee's reports are quoted during debates also suggests that they are universally regarded by members as authoritative and impartial.

In addition, I have noticed in my discussions with Ministers that they now display a high degree of awareness of the various fundamental legislative principles which the committee applies in scrutinising legislation. The explanatory notes in government bills introduced into the Parliament have a section on fundamental legislative principles. Some of the explanatory notes are very bold: They state, "This bill complies with fundamental legislative principles." Of course, that means that we scrutinise the bill even harder.

Other bills go to great lengths—three or four pages—about compliance, or otherwise, with fundamental legislative principles. A feature recently has been that Ministers have been frank when there is a breach. That is stated in the explanatory note, and an explanation as to why there has been the breach. The committee, in its commentator role, is then led to thank the Minister in its report for being frank. That is a development in the standards of our explanatory notes for legislation in the Queensland Parliament.

While most bills are initially examined by the committee's staff, the committee does make judicious use of legal consultants in relation to bills which deal with specialised subjects such as constitutional law, native title and certain aspects of criminal law. The committee's task has been made considerably easier with the change in standing orders in July 1998. Prior to the change the debate on bills could not resume until the passage of six calendar days. That has now been changed to 13 calendar days. In back-to-back sitting weeks previously bills could be introduced on the Tuesday and debated the following Tuesday. In some cases 12 bills would be introduced on one Tuesday and debated the next, and there was not time for the committee to consider the bills.

Another interesting aspect for the committee has been the change to the standing orders to allow debate on private members' bills. Each Wednesday night of sittings is devoted to debate of private members bills. There are presently about 18 private members' bills on the notice paper. Most have been introduced by One Nation members or Independents, but the Opposition is using private members' bills significantly now as well. An amendment to the weapons bill was No. 1 of private members' bills on the notice paper. We have been in government for 12 months now and that bill was defeated in June, I think. Each Wednesday night 2½ hours would be spent on the gun debate. That is possibly a record for debate on one bill.

For those who are statistically minded, we examined 96 bills during the 1997-98 financial year and 77 bills in the 1998-99 year. We produced 10 "Alert Digests" in 1997, 11 in 1998 and eight so far this year. The three top issues that were commented on in reports were: first, the rights and liberties of individuals; second, clear and precise drafting; and, third, retrospective legislation. In relation to our role of scrutinising subordinate legislation, we scrutinised in the 1997-98 financial year 487 pieces of subordinate legislation and 382 in the 1998-99 financial year.

The committee has found that Ministers have generally responded to queries raised by the committee within the necessary time frame. In many cases Ministers are merely requested to provide further information or justification for particular provisions. In those cases in which the committee has requested a Minister to amend legislation the request has generally been received favourably. In those few cases in which the Minister has declined to amend

subordinate legislation at the request of the committee, the committee has not considered the matter sufficiently serious to warrant moving a motion to disallow. Accordingly, no such motions have been moved by the committee in the last two years.

That is not to say that disallowance motions have not been moved in the Parliament. So far in this Parliament six disallowance motions have been moved. Our committee, like its predecessor committee, reports on disallowance motions with a view to assisting in the debate in Parliament. Three notices of disallowances were brought in on one day and debated the next. That did not give the committee time to report on them. However, we have reported on the others. On another one the matter raised in the regulation did not raise any issues for the committee, so we made a statement to the House to that effect.

Another area of concern for us recently has been what we call in Queensland exempt subordinate legislation. Our committee has experienced similar difficulties to those identified in the address by the Rt Hon. Jonathan Hunt in his address yesterday. These laws are not drafted by the Office of Parliamentary Counsel and the concerns identified by the committee relate to both the quality of the drafting and compliance with fundamental legislative principles. The committee intends to raise these concerns with relevant Ministers.

In relation to regulatory impact statements, the committee prepared a report in April 1998 entitled "The Operation of the RIS Process Under Part 5 of the Statutory Instruments Act". Queensland legislation has required the preparation of a regulatory impact statement for significant subordinate legislation for the last four years. In 1998 RISs were prepared in relation to less than 4 per cent of all subordinate legislation. During the first half of 1999 the figure has been similar. Whilst this has been a considerable improvement on the half of a per cent applicable in 1996-97, the committee considers the preparation rate is still less than ideal. This is a matter which the committee continues to raise with Ministers on a case-by-case basis.

The committee is considering the issue of explanatory notes and what the Government is required to table with bills and significant subordinate legislation. As mentioned earlier, significant subordinate legislation represents less than 4 per cent of all subordinate legislation tabled. The committee is also considering the information which is provided to it in relation to other subordinate legislation to assist it in its scrutiny function. The committee proposes to report on both these issues later this year.

In relation to Henry VIII clauses, the committee continues to encounter a significant number of these clauses and to raise these matters in its reports or, in the case of subordinate legislation, with the sponsoring Minister. Ministers usually respond that the use of such clauses is necessary in respect of their particular legislation. The committee has not considered any such clauses encountered by it to be sufficiently serious as to recommend disallowance. It is the committee's impression that, especially in the last two years since the committee tabled its report on Henry VIII clauses, the use of such clauses in Queensland legislation has to some extent declined. The committee trusts that its report has been instrumental in this regard. However, the committee's success rate in having Henry VIII clauses removed from bills and subordinate legislation once Ministers have made a conscious decision to conclude them remains fairly low.

In conclusion, the committee remains committed to furthering the establishment of a national scheme for scrutiny of national scheme legislation and hopes that this conference will advance that cause in a material way.

South Australia

Mr REDFORD: Peter Nagle, my parliamentary colleagues, convention delegates, distinguished guests, ladies and gentlemen: The South Australia Legislative Review Committee is established pursuant to the Parliamentary Committees Act 1991. However, its predecessor had been in existence since 1938 and had a long and proud history. The committee in South Australia has responsibilities pursuant to the provisions of the Parliamentary Committees Act, the Subordinate Legislation Act and the standing orders of the South Australian Parliament. It is a joint committee. Its responsibilities can be summarised as: to inquire into, consider and report on any matter concerned with legal, constitutional or parliamentary reform or with the administration of justice, any Act or subordinate legislation or part of any Act or subordinate legislation in respect of which provision has been made for its expiration at some time in the future, or any matter concerned with intergovernmental relations; to inquire into, consider and report on subordinate legislation referred to it under the Subordinate Legislation Act, and such other functions as are imposed on the committee under the Parliamentary Committees Act or by resolution of both Houses.

The Subordinate Legislation Act imposes a number of responsibilities on the committee, including consideration of all regulations laid before Parliament. The committee must consider those regulations prior to the time for disallowance of regulations, and provide reports to Parliament on regulations. Further, the committee by unanimous resolution has adopted a set of principles in its examination of regulations. These principles were discussed in some detail yesterday by Professor Margaret Allars in her excellent paper entitled "A Critique of Criteria and Cases: Parliamentary Scrutiny of Acts, Regulations and Codes". I do not believe it is necessary to repeat what has already been stated at this conference.

When one looks at our responsibilities one could easily be forgiven for thinking that the South Australian Legislative Review Committee is playing and has played an important role in the provision of advice to the Parliament on a wide range of issues, including intergovernmental relations, the administration of justice, law reform and other important issues. Unfortunately, or perhaps fortunately if you are a member of the Executive, our resources are such that the bulk of the committee's work is confined to our important responsibility of reviewing and reporting on subordinate legislation.

It has been my policy and the policy of my predecessors to give this role our greatest priority, as there is no overlap or no-one else to undertake the important responsibility if the committee should fall down in that task. Indeed, I look with a great deal of envy at the resources made available to scrutiny committees, particularly the Commonwealth—I suppose we all look at them with envy—the Victorians, the West Australians and the New South Welshmen. Executive governments of each of these jurisdictions are to be congratulated on recognising the important role played by our respective committees in delivering good government to their communities.

I live in hope, perhaps forlornly, that other governments, including the South Australian Government, will come to the same conclusion. For the record, the Executive provides us with a secretary, a research officer, two officers and some equipment to house them. My committee is made up of three House of Assembly members and three Legislative Council members. I, as chair, have both a deliberative and a casting vote. Prior to our 1997 election there were three Government and three Opposition members; since the election we have three

Government, two Opposition members and one Australian Democrat member. With rare exception we have operated on a tripartisan basis, and the relationship between the members upholds the true tradition of scrutiny committees.

Since the conference in Adelaide in July 1997, which was an outstanding success, the committee has dealt with a number of issues that I will traverse briefly. Following the last election, my predecessor, the Hon. Robert Lawson, QC, was appointed Minister for Ageing, Disability Services and Information Technology. I have no doubt that everyone here would wish him well in his new endeavours. However, I am yet to deal with any of his regulations. In brief summary, the committee has dealt with the following since the Adelaide conference: a myriad and a substantial volume of regulations which, when closely examined, have drawn little attention or comment from the committee. We have dealt with 367 sets of regulations, and we have moved 22 notices of motions of disallowance.

We have dealt with issues relating to national schemes of legislation, and a paper to encourage discussion on that issue was tabled in Parliament. We have dealt with regulatory impact statements. The view of the South Australian Government on regulatory impact statements is divided: the Premier's office is fully supportive and the Attorney General remains sceptical. There is some misunderstanding about the overlap between explanatory statements and regulatory impact statements, and whether they are one in the same thing.

Speaking personally, if we are to go down that path we need clear definition of what is a regulatory impact statement and what should be in it. We need to ensure that we do not impose a real or unnecessary burden on the Executive. We have also reviewed and established a policy for the examination of regulations. We have looked at codes of conduct for members. In that regard we fall into two categories: one group of members believes that a code of conduct will simply be used by the media to continuously bash us around the ears and another group, perhaps inexperienced, thinks it will change our conduct and make us much more accountable and much better members.

We dealt with the Expiation of Offences Act. We had regulations in which it was suggested that it was beyond the capabilities of the person or police officer handing out an expiation notice which said: you will work out the date for payment yourself, to write in the correct date. We are still battling that one and will deal with it next week. We provided a detailed report on the requirement for smoke alarms. We also dealt extensively with small passenger vehicle regulations and the Water Resources Act regulations, which we touched on yesterday. We are in the middle of a process of reviewing our Freedom of Information Act. We hope to be able to provide that report, particularly in relation to open government, later this year.

We also dealt with West Beach trust regulations, a similar issue to that raised yesterday by Murray Thompson from Victoria, in which regulations were designed to ensure that local demonstrations against the development were conducted in such a way that the safety of both workers and demonstrators could be assured. We dealt with materials charges in relation to the Education Act and regulations. We spent some time discussing the practice of the Government, having had a set of regulations disallowed—and bear in mind the Government does not hold the numbers in either House of Parliament—immediately upon the getting up of Parliament, repromulgating those regulations.

In some jurisdictions there is some legislative prohibition on the Executive to do that. However, we have no such legislative prohibition. Indeed, we reported that it is a matter for

the Parliament and that the committee would not make any comment. We also provided a report on redundant legislation. In our 160 or 170 years quite a number of Acts of Parliament have been passed that have never been proclaimed. We listed those and requested that ministers bring in legislation to repeal such legislation. We dealt extensively with TAFE regulations, 269 of which were perfectly acceptable, but one regulation indicated that students' lockers, and we are talking about adult students, could be searched without any cause or any explanation by staff members.

In a classic case of the will of the Legislative Review Committee meeting the will of the Minister the question was who was going to budge first. I am pleased to say that it was the Minister who budged. We also dealt with child care regulations, which provided an interesting experience. The child care regulations were very prescriptive. Although we expressed concern about them and although none of us liked them we felt that the Government, in its infinite wisdom, probably had the right to provide prescriptive regulations. I was told by the Minister that when it comes to food and kids you have to be prescriptive. In some respects I can understand that.

The other interesting report we are currently engaged in is the role of the Ombudsmen. This was a reference dealing with outsourced government business enterprises or, in some cases in South Australia, where we have outsourced the management of public hospitals, whether they ought to be the subject of the jurisdiction of the Ombudsmen. We are due to report on that in the next few months. We have dealt with and are still dealing with some interesting issues. Yesterday I referred to the national scheme set of regulations by the various harness racing authorities around Australia. When we dealt with them perhaps I should have communicated with my interstate colleagues to ascertain what they were doing with their respective harness racing rules and whether they considered them at all.

Another issue we have had to grapple with, and are still in the process of grappling with, is parliamentary privilege. We have a whistleblowers' group in South Australia, and I suspect they exist in other jurisdictions. They have rather a siege and persecution mentality. Members of the group gave some evidence and we explained that what they had said was the subject of parliamentary privilege. During the course of a rather lengthy address to the committee the group tabled a paper. At the end of evidence one member of the group moved that it be accepted. No-one had looked at it. It turned out that the paper was highly defamatory. Within an hour of that evidence, the highly defamatory paper was put on the Internet and there has been subsequent litigation.

We have been accused by the whistleblowers of not protecting them in relation to Parliament privilege. We are in the process of seeking legal advice as to exactly what we should or should not do with the document, particularly in view of the fact that it is likely that a court could seek its production from the committee. We have also grappled with what we should do when dealing with Ministers who have substantial volumes of regulations and we point out that a clause might offend against our principles. We are still grappling with whether we should accept undertakings from Ministers that they will behave in a certain way to lessen or soften the impact of the offending regulation, or accept their undertaking that they will amend subsequently the regulations to accord with our principles.

We have also dealt with and discussed in committee the parliamentary process of dealing with regulations. One of the Opposition members has indicated that regulations are the function of the Executive and that they are promulgated by the Executive. In the South Australian Parliament we deal with disallowance motions and matters pertaining to regulations

in private members' business. It has been suggested that we ought to amend standing orders to enable regulations to be dealt with in Government business. That is an attractive argument, and I would be interested in hearing from other jurisdictions as to when they deal with regulations, either in Government business or private members' business.

We have also dealt with, discussed and tabled reports in relation to template legislation and national schemes. I had the privilege of attending the Treaties Conference held in Canberra, in which Senator Cooney played a major role. My view is that treaties, perhaps indicate a failure on the part of State Parliament to grapple with some of these issues. It is clear that our respective Executive arms of government are grappling with those issues, but there is a lack of communication on behalf of State Parliaments. The challenge should be laid fairly and squarely at the feet of State Parliaments.

It is clear that the Commonwealth Parliament has addressed the issue by establishing the Treaties Committee. We need to seriously consider as Parliaments, as opposed to Executive arms of government, how we are to make all of our members of our respective Parliaments better informed about developments in treaties. Some of the positives concerning the committee have been higher level of participation. We have introduced an alert digest, and improved our agendas and the way in which we deal with regulations. We have seen a slight improvement in liaison with other parliamentary scrutiny committees. In that regard the Commonwealth should take full credit. The notes provided to me by my research officer state that the committee now has an improved status. I am not sure why that was said but as it is in the notes it would be unfair if I did not mention it.

Earlier John Hargreaves said that the Australian Capital Territory passed legislation titled the "Administration (Interstate Agreements) Act. Until this morning, I was not aware of the existence of that Act. I had intended to make comments in the absence of any knowledge of that Act, but it seems that many of the problems related to national scheme legislation and template legislation arise from the way in which ministerial councils operate. From the point of view of the average member of Parliament, ministerial councils have all the mystery of the Ku Klux Klan; that is, we do not know when they meet, we do not know what is on the agenda and the only time we ever hear anything from ministerial councils is when presented with a fait accompli in the form of a national scheme legislation. Although I think some of the motions that we will be discussing later today have merit, we need to look at more fundamental issues, in particular how ministerial councils operate.

Ministerial councils are certainly not open and are certainly not subject to media scrutiny. It is hard to ask questions without knowledge, and unless a member of Parliament has knowledge, the questioning or anything of that nature which is normally experienced on a day-to-day basis in our respective Parliaments does not take place. I hope that for our next conference someone will take this matter on board and that we will spend some time dealing with the role of ministerial councils with a view to opening them up and removing some of the mystery associated with their activities.

I have no doubt that there would be less criticism of national scheme legislation and template legislation if more parliamentarians were involved at an earlier stage of development. A good example is the set of national road rules with which the South Australia Parliament is presently dealing. I am sure all parliaments are dealing with similar legislation and that there will be a huge number of regulations as a result. The South Australia Minister presented the bill and it has been passed. However, only 12 short months ago the road safety committee

was established and was constituted by parliamentarians. It was based upon the practice in other jurisdictions because it was believed that it was not the bureaucrats but rather members of Parliament who had showed common sense in regard to dealing with road rules. Yet not 12 months later, the bureaucrats, in company with their ministers, have presented to respective parliaments legislation and rules that have not been discussed in any detail or have received no involvement at all from ordinary members of Parliament. In conclusion, I thank David Pegram and Ben Calcraft.

Tasmania

Mr LOONE: I present a brief report on the activities undertaken by the Tasmanian subordinate legislation committee since the last conference was held in Adelaide in 1997. The committee held a meeting with the former Attorney General and discussed some of the problems that have been experienced with ministers not adhering to procedures set down in the subordinate legislation Act. Ministers were not getting to the committee within the prescribed period of seven days after gazettal the documentation required under the Act and regulations were not being tabled within 10 sitting days. These matters were discussed at length.

The Minister brought the committee's comments to the attention of his colleagues. Procedures were put in place which improved the situation greatly. Since then, there has been a change of government in Tasmania. With the appointment of new staff, gradually the times prescribed by the Act were adhered to. At the last election in September 1998, the structure of the Tasmanian Parliament took on a new face. Previously there were 54 members, with 35 members in the lower house and 19 in the Legislative Council. Following the election, the numbers of representatives was reduced to 40, with 25 members in the lower house and 15 members in the Legislative Council. The effect of the reduction to 15 members in the Legislative Council took effect as recently as 1 July this year. We are yet to know the changes that will be made in the workings of the Parliament as a result of the number of representatives being reduced to 40. However, it is anticipated that the workload of the committees within the Parliament will be greatly increased. Only time will tell how the reduced number of representatives will work out.

The problem of fee increases becoming law before the committee commenced its examination was also discussed and proved to be a sticking point. However, the incidence of these occurrences may be reduced with the introduction of fee units which are able to be changed annually by regulation to reflect the cost of living. The regulations listing the changed units will be gazetted each July. Therefore the committee's investigation will be mainly restricted to major increases or changes, or there may be new fees with which the committee sees a problem.

At the last conference in Adelaide, the Tasmanian delegate mentioned a project that was being undertaken by arrangement with the Law School of Tasmania whereby the university would provide research to the committee on a regulation-by-regulation basis. The project was unsuccessful. The students' grasp of what was required by the committee was a problem and the time taken by the students to return their comments made the project unmanageable.

The committee found that each time a regulation was handed to the university, most of the time was spent by the students checking with our secretary. She was actually doing most of the research which proved not to be practical. However, the committee is now engaged in obtaining funds to access independent legal advice and believes that this scheme will be much more manageable.

During the last 12 months, the committee has had certain codes and management plans referred to it for scrutiny and the most significant of those was one relating to the Tasmanian electricity code. Section 49D of the electricity code states that the Tasmanian electricity regulator must provide a copy of the code and any amendments to the committee within 14 days after issuing the code or amendment. The section also provides that the committee may recommend to the regulator that the code be amended. However, it does not give the committee any power to insist on amendment if the regulator refuses the committee's recommendation; nor does the Act state any particular aspects of the code, which is a highly technical document, which the committee should scrutinise. This suggests that the committee should use its own charter as a guideline. In an opinion provided by the solicitor general, it is suggested that even if section 49D does not expressly say so, it is necessarily implicit that it confers on the committee the power to consider whatever is provided to it by the regulator.

Another concern of the committee is that it will be reporting directly to the regulator. There is no requirement for the committee to report back to the Parliament. This procedure was put in place by the previous government. Following requests from the committee, the present government has agreed to amend the section to provide for the committee to report to the parliament if it wishes to recommend an amendment to the code. The parliament will either approve or disapprove of the proposed amendment and then recommend to the regulator. Over the next few months, the committee will closely monitor its role in the scrutiny of amendments to the code. While the committee is cognisant of the need for transparency in the code and its amendment methodology, it will assess continuing needs and perform the parliamentary scrutiny that is prescribed in section 49D of the Electricity (Supply Industry) Amendment Act 1998.

I am satisfied that over the last two years since the previous conference the committee has performed well and much of the credit for that must be attributed in no small way to the efficiency of the committee's long-serving secretary, Wendy Peddle. Many delegates would be aware of her capabilities. In two years time, I am sure delegates will know a lot more about her capability and management skills. In conclusion, on behalf of the Tasmanian committee of subordinate legislation, I thank the conference chairman and his committee for the excellent program and for the way in which the Tasmanian delegation has been welcomed at the conference. The committee has learned a great deal and has had a wonderful time. We will leave the conference being much better informed than we were when we arrived. I thank the conference chairman and committee most sincerely for their efforts in preparing this conference.

Victoria

Mr RYAN: I begin by acknowledging the wonderful work done by the conference chairman and the conference committee. I have thoroughly enjoyed the conference. I reiterate something I mentioned in my opening remarks a couple of days ago—that the New South Wales Parliament complex is a tribute to those who have put in time and effort into making this magnificent chamber. I speak from the perspective of someone from Victoria where we are still grappling with a way to marry the new age with a historic building and make the complex functional when I say that the Victorian committee admires the functionality of this building as something the like of which we would love to have in Victoria.

I acknowledge the work done by the staff of my committee, including Andrew Homer

and Tanya Coleman. They are marvellous in the performance of their ongoing work and in the preparations that have been made for this conference. I also recognise the efforts of those who are not part of the delegation and acknowledge that the committee is very well served by those members of staff. I am conscious of the time because I am sharing this segment with my colleague Murray Thompson who chairs the subordinate legislation committee. In 1997 the subordinate legislation committee considered 110 bills. In 1998, the committee considered 105 bills. Interestingly, the number of regulations in force in Victoria decreased from more than 1,200 in 1986 to less than 600 in 1996. In 1992, 352 new regulations were made and that has decreased in 1998 to 171. Those statistics indicate a welcome trend that I am sure all conference delegates would applaud.

An issue that has been addressed in a number of submissions in the course of this conference relates to the legislative impact upon the right of a citizen to access the courts. In Victoria there is a system which may be of interest to delegates whereby that right is enshrined in section 85 of Victoria's Constitution Act. There are a number of ways to deal with legislation which may impede, impair or otherwise alter the right of a citizen to access the courts. Notice must be given to the Parliament at a series of benchmarks. First, even within the coalition room the chair of the particular ministerial bills committee must report any section 85 provision matters, as they are termed, to all members of the government. For my many sins as chairman of the Victorian gaming committee, on behalf of the gaming Minister I must include in the course of any legislative report to the members in the coalition room anything that refers to a section 85 provision that might impair access to the courts.

Second, the second reading speech of the minister must incorporate a section 85 statement. The minister must tell the Parliament in the second reading speech of any possible impairment so that public notice is given. Third, we are required by our terms of reference to report on any section 85 statement to the Parliament. Certainly in the Victorian jurisdiction, gone are the days where the notion of death by stealth of that type of fundamental right can be achieved by anybody. The fact of the matter is that the procedure is open very much to public scrutiny. I make that comment in the context of some of the comments that have been made over the last three days of this conference.

Among things that have been done since we last met in Adelaide is a very interesting exercise. We undertook a review of the right to silence. This was a reference that the committee received from the Attorney General. It was interesting in a number of respects because what we do is not broadly understood by the public or by our parliamentary colleagues. I do not know whether other delegates have had the experience I have often had of trying to explain to constituents my function with committee work. I explain that I need to set aside some time to be able to do it in a meaningful fashion. We gave the review we undertook on behalf of the committee a public face and enabled that important work to be seen in the public arena more than might otherwise be the case. We consulted widely and received between 80 and 100 submissions. Over two days of public hearings we considered 30 submissions. Importantly, and I say this in all seriousness, we spent a week in London and three days in Dublin. In 10 days we met 30 individuals from organisations which have a point of view on various aspects of this important issue.

Formerly I worked in litigation and found that it was necessary to see where an event occurred and to talk to the people involved. When we left Australia I ventured to suggest that our point of view regarding this prospective legislation was of a certain ilk. It certainly was in my case. We talked to those who have lived with the criminal justice and public order Act

in the United Kingdom, and versions of it in Ireland. It gave us all a different perspective. That is also important, firstly, in relation to the merit of a matter. As Senator Cooney said recently, it is wise, when given the task of having to decide on a matter, to speak with the people who are engaged in the relevant process. It is important, secondly, in relation to the general conduct of committee work. We are criticised for travelling, and have to take appropriate measures about that. I wonder how the prospective system in South Australia will deal with that. If that travelling is exercised in an appropriate fashion, it is constructive, and this committee needed to travel internationally. In that sense I recognise also our friends from Canada, New Zealand and Samoa.

My final point is that it is to the credit of everyone involved in this intrinsically difficult exercise in the parliamentary system that there has been a cultural change in the way in which, ministerially and by way of Executive Government, a lot of the issues that one would have been taken for granted have altered hue. The section 85 statements, the notion of interference in a citizen's right to be able to access courts, which was generally used in 1992 in Victoria, culturally has changed radically. It is worth pointing out that in the past three years the flow of those clauses has remained constant. In conclusion, I thank Peter Nagle and those working with him for hosting the conference. We have all enjoyed this constructive session.

Mr THOMPSON: During the excellent contributions this morning I was pondering whether the topic of delegated legislation focuses the minds of members of Parliament more than the issue of party preselection. I was also reminded of a comment by a parliamentary colleague, Bill Hartigan, one of the brightest men in the Victorian Parliament, who, at age 64, was asked by another colleague whether he would run again. Bill replied "Yes". This adventurous colleague remarked, "At your age you should retire." Bill responded, "Alas, stupidity does not preclude people from standing for Parliament, nor should, I think, old age in my case." He further said, "In addition, should I happen to go ga-ga over the next eight years, I am of the view that I may come back only to the intellectual level of some of my colleagues that I have served with."

In the area of delegated legislation, we are immensely grateful to the support staff of our committee for their erudition, diligence and high intellect. I mention Tanya Coleman; her assistant, Simon Dinsberg, who works specifically with our committee; and Andrew Homer, who supported some work of the delegated legislation committee. I am reminded of a great friend, teacher and mentor of this forum, Douglas Whalan, who was referred to earlier. At the Adelaide conference he spoke about aviation and aviation safety and the euphemistic expressions used. In one case the civil aviation orders and aviation directives alluded to acts caused by migration of fuel into the engine area. On another occasion an accident had been attributed to the liberation of a propeller from the plane. In another case, instead of saying that the tail had fallen off, the report suggested that there had been instances of tail cone departure. In another instance the brakes had been unable to absorb the required energy on landing and as a result there had been a few runway excursions.

Such sage remarks and comments by Professor Whalan, nevertheless, did not deter the intrepid Victorian delegation legislation committee from undertaking a number of overseas excursions last year. We had the good fortune to travel to Canada, France, Belgium and England. There were a number of highlights, which are referred to in our annual report. Specifically in this forum I allude to an excellent paper by a Canadian academic, Dr Margaret Hill, who summarised regulatory trends in Canada and, by example, in the western world over a 20-year period. She spoke about the thrust towards deregulation, regulatory reform and, recently, the tools of regulatory management. Her outstanding paper has been summarised by

our executive officer, Tanya Coleman, in the annual report of our committee, which I commend to staffers who are interested in ascertaining more in those realms.

Peter Ryan referred to the work of the committee and the reduced number of regulations that we are examining: 352 in 1993 to 171 in 1998. We have a new style of report which illustrates the types of issues we deal with. Last year we dealt with the young and the elderly; those who buy houses and those who rent houses; those who visit the zoo and those who visit the grand prix; plumbers, shooters, fishermen and members of incorporated associations; public servants and those who go to optometrists, dentists and the casino. In addition, the committee used a range of processes as they embarked upon their inquiries. There had been an interactive approach with departments and Ministers. For example, we received an RIS with 30 questions and we furiously corresponded with government departments. We have the able pen of Sir Humphrey in mind as we write our letters and seek constructive responses to work towards constructive outcomes.

Two issues related to children's services regulations and education and prescribed age regulations. I will comment briefly on the children's services regulations. I was interested in the comments by Angus Redford, because we wrestled long and hard with regulations which were highly prescriptive and the compliance costs were significant. We doubted whether there were benefits to be gained by institutions which require an early childhood qualification for a person to supervise children at kindergarten level. The enrichment programs that rocketed some education institutions and brought in a primary or secondary physical education, art, drama or music teacher into the early learning centre, were to be precluded as a consequence of the more stringent requirements. State examiners in a particular field of expertise, and trained teachers, were to embark upon an early childhood qualification.

To a degree we remain unconvinced that the regulations in that area are the best balance and outcome, but they were governed by the counterbalancing view of the best interests of the child. Angus Redford's deliberations were somewhat salutary and instructive on that. Finally, we are embarking upon an inquiry into alternatives to regulations in the RIS process, perhaps in the next Parliament. Some work has been done in shaping the terms of reference for an inquiry and no doubt will be a topic of conversation at a future conference by the successor to the Victorian committee.

Western Australia

Mr WIESE: Thank you for the opportunity to report on the activities of the Western Australian committee since the Adelaide conference. I thank the chairman, Peter Nagle, and his staff, for bringing us together in this venue and for the opportunity to find out what has happened with other committees around Australia as well as Canada, New Zealand and Samoa. In reporting on the past two years, we proposed to introduce a subsidiary legislation Act, but that has been unsuccessful. We will keep pushing down that road. We have not had the opportunity to look at the full range of subsidiary legislation that includes instruments such as notices and codes of practice. Also we do not have a regime under which we could look at impact statements, nor do we have a system of an ongoing review and sunsetting of regulations. We have not moved a great deal since the previous conference. However, like other committees, Western Australia has a full workload in looking at the range of regulations, which never seems to decrease from year to year as the bureaucrats continued to churn them out.

Western Australia has the role of scrutinising all local government by-laws, which were renamed local laws under changes to the local government Act two or three years ago. Since the introduction of local government laws we have had a substantial increase in the number of laws that the committee has investigated. Some councils rewrote their by-laws and adopted new local laws and there has been an increase in their ability to infringe upon the right of individuals, the ratepayers and the citizens. As a result, several inquiries have looked into new local laws. Several motions of disallowance have been moved in Parliament and, as a result, some local laws have been disallowed. This process is ongoing; we hope it will settle down. At present we are holding an inquiry and next week we begin another inquiry into local laws for introducing signs, and like regulations, into a couple of communities in Western Australia.

Perhaps the most significant change in Western Australia since the Adelaide conference has been to our ability to look at fees and charges. There has been some mention and discussion of fees and charges during this conference. In the past Western Australia certainly had the ability and undertook strong activity in looking at fees and charges introduced by regulation. Perhaps we did the job a little too well. We looked at a series of fees and regulations which I believe were all in relation to the transport department and were introduced by the Minister. These regulations were increasing fees and charges with a view to raising revenue to introduce new technology and to embark on substantial upgrades of equipment and technology mostly in the area of computers.

New fees were introduced and were clearly identified in the explanatory memorandum as imposing new technology on the community. One was to install equipment that imposed fees on drivers' licences and recorded fees that are part of our licensing system. Those fee increases were to generate something like $3 million or $4 million per year in extra revenue. Fees were introduced to install, in one case, new digital imaging equipment to enable digital recording of photographs on licences and to introduce security features such as holograms. Clearly, in the committee's view it was a charge and tax based on all the advice it could get.

The committee moved disallowance in the Parliament and the regulations were duly disallowed. Another fee we objected to was an increase of about 15 per cent in recording fees. That was to fund Western Australia's participation in the National Exchange of Drivers Information Systems [NEDIS], which is being introduced throughout Australia. That particular fee was intended to raise $12.5 million over five years and was to go straight into the Consolidated Fund to pay for the introduction of the scheme. The committee was concerned in each case, and particularly in this case, that the technology was not in place and that drivers were not getting any benefit. This happened in 1997 and both services, the changes to the drivers' licences and the move into NEDIS, still have not taken place. Clearly, they were taxes.

As a result of us successfully moving to disallow those fees, the government of the day reacted quickly and took us out of the picture. What has happened now in Western Australia is that the Government has introduced amendments to the Interpretation Act by introducing a new section 45A, which effectively allows all future Western Australian governments and Ministers to prescribe or impose a fee to allow recovery of any and all costs involved in the introduction or imposition of any new scheme or technology, and to do so even though the proposed expenditure has not yet occurred and in fact may not occur until some time in the future or, as in these two cases, may never be imposed.

In our opinion that is a retrograde step and perhaps I could sound a warning to other

committees to be wary that sometimes your success may rebound as it certainly has in Western Australia. The delegated legislation committee no longer has any ability to examine the question of fees and taxes. I guess the only way any regulation introducing those charges can now be dealt with is by individual members of Parliament moving motions of disallowance. They would experience great difficulty because of the new changes in section 45.

I would love the opportunity to speak to other members about the question of fees and charges. We have prepared a report, which I do not propose to read as it is too long. My fellow committee members believe I will take longer in my presentation by not reading it, but I assure you I will not. I would be happy to provide a copy of the report to any member as it may be helpful in relation to scrutiny of fees and charges in particular jurisdictions. The question of fees and charges is still very much alive in Western Australia. I recently read a report of the Auditor-General that was tabled in the Western Australian Parliament following his review of the operations of the Ministry of Fair Trading. That ministry has the responsibility in Western Australia of looking at the registration of business names and in fact runs the entire scheme.

Western Australia has approximately 30,000 new business names registered each year. In addition, every business is required to renew its business name registration every three years. The Auditor-General commented in his report that the scheme had generated and was generating an annual surplus of $5 million for the Consolidated Revenue Fund. Quite clearly that is an imposition of an extra $5 million on every business in Western Australia by way of regulation and is a tax. I hope some day somebody will deal more effectively with the question of fees and charges than we have been able to do in Western Australia. It makes it more critical that in Western Australia we have gone down the route of looking at impact statements and undertaking the sort of scrutiny other jurisdictions are able to do. In closing, I congratulate you, Mr Chairman, and your staff, on an excellent conference. We in Western Australia look forward to joining all delegates at the next conference in two years.

Mr MINSON: A couple of delegates have asked why Western Australia has two committees that tend to cross over in their functions. The committee I chair has its genesis in legislation that was introduced into the Western Australian Parliament. It was really Queensland legislation because we were told that it did all we needed to do. Therefore, the bill contained only a few lines and said that we would adopt Queensland legislation. Unfortunately, the Queensland legislation did not accompany the bill and it proceeded sight unseen. We found, to our great embarrassment, that as a Parliament we had passed legislation in such a form that if we wanted it changed we had to talk to Queensland and ask how to do it. Also, as an unintended side effect, if Queensland decided to change its law, it changed ours but did not have to tell us.

As a result, we formed the committee of which I am chairman. It started as a select committee inquiring into that particular situation and recommended that a standing committee of the Legislative Assembly be formed to look at intergovernment agreements and uniform legislation. Having been chair of that committee now for 2½ years it has become obvious that the global shrinkage about which I spoke earlier in this conference will result in increasing work for this committee. In federations of States around the world and not just in Australia there will be a need to address uniformity. The United States of America has largely broken down its barriers. The EEC is a federation of States, whether or not it likes it. Although particularly the French and the English hate to think of it as a federation of States, that is exactly what it is. That federation it will become stronger and will need to address the question

of uniformity. We will have to determine how it will be done: whether by template legislation when we all pass the same legislation in our jurisdictions or by national legislation as we sometimes do in Australia when the national Parliament passes a law that covers everything, or whether we harmonise our legislation so that it does not conflict with other jurisdictions.

The advantages of harmonised and template legislation is that to a certain extent we can bring down delegated legislation, regulations and so on that give some local flavour and can cure some of our problems from time to time. The work we have been doing of late has been with co-operatives and we have recommended that we adopt legislation that sees that co-operatives that operate in other States can operate also in Western Australia without reforming. We looked at the Bank Mergers Bill and the Financial Services Bill. Interestingly, Ministers have requested on a couple of occasions that we look at legislation and bring down a report before the legislation is tabled in the Parliament.

Ministers will wake up in time, particularly if they operate in a jurisdiction where the two Houses of Parliament are not controlled by the Government, that it is a useful tool to have a committee of the Parliament, which comprises representatives from all parties, to bring down a unanimous report that either recommends some changes or endorses them. So, as the Minister tables it and gives his second reading speech he can include the words that this has been reviewed by a committee of the Parliament and has been given the tick of approval. It tends to cut some hours off debate and ease the wheels of legislation. I hope our Ministers continue to use my committee because it will be to their advantage.

The twenty-fourth report we brought down was on competition policy, about which I spoke yesterday. It was precisely because of the amount of uniform legislation et cetera that results from competition policy in Australia that we reported on the question of gas lines, electricity, road, rail and so on, which are issues about which we have all talked. Our committee has one surprise in store for it. I also chair the select committee that reviewed our Human Reproductive Technology Act. As chairman I have written to myself requesting that we look at recommending national legislation!

Australia confronts a difficult situation in that we have a number of jurisdictions that have conflicting laws regarding human reproductive technology, its use, experimentation or research, and even surrogacy, which is allowed in the Australian Capital Territory but not in other jurisdictions. I believe for $399 you can fly from Adelaide to Perth and vice versa; for $499 between the east and west coasts and for $1,500 you can be in Los Angeles and arrange by Internet to have your reproductive material taken or buy it and arrange a surrogate parent and roll up nine months later and pick up your surrogate child. Of course, when we deal globally like that, we must come to grips with the question of at least harmonising our legislation.

That is a brief report of what we are up to. I thank New South Wales for hosting this conference. It has been professionally presented. I thank my staff: Melina Newman, who is our research officer and constitutional lawyer and has operated in this area for some six or seven years with this committee and would probably be an authority in Australia on the subject. I thank also Peter Frantom, who, from time to time, cannot get us together as a committee. I have nicknamed him Frantic Frantom because that is how he gets when he cannot get us together. Finally, I welcome our international guests, New Zealand, and particularly from Canada, whose representatives have travelled a long way. I must talk with you later because I understand that you arrived on Monday and are leaving tomorrow. I can tell you that there are a few ways to get at least one weekend in your trip.

New South Wales

Mr NAGLE: Since the time that this committee last reported a general election was held on 27 March 1999. The rest is history. Delegates have also met and/or heard from some of our committee members—Marianne Saliba, Cherie Burton, the Hon. Don Harwin, Russell Turner, MP, Dr Liz Kernohan, MP, the Hon. Janelle Saffin, who is now in the Chair, and me. Four committee members are from the Australian Labor Party, three committee members are from the Opposition and one Independent member is yet to be appointed by the upper House. However, I, as chairman of the committee, have the casting vote. I trust that the committee will operate in the spirit of consensus and conciliation.

On 18 July 1997 the Sixth Australasian and Pacific Conference on Delegated Legislation passed a resolution that the Commonwealth and each State and Territory be invited to participate in a joint appraisal of the strengths and weaknesses of employing cost benefit and sunset requirements to scrutinise Acts and regulations. Consistent with that resolution it had been hoped that the Organisation for Economic Co-operation and Development [OECD] would be able to examine regulatory impact analysis controls Australiawide, but this was found to be impractical. Subsequently, New South Wales commissioned the OECD to report on regulatory impact assessment in this State. The report, No. 18/51 of my Committee, contains a wealth of useful data and reflects on many aspects of the New South Wales regulatory scheme which are common to other parts of Australia.

The report will, therefore, be of use in the regulatory scrutiny of other States and Territories, in particular, in regard to reviews recently conducted by Queensland and Western Australia, and now being contemplated by Victoria. It is relevant to the emerging Australian interest, reported by the OECD, in the possible introduction of regulatory budgeting in various parliamentary jurisdictions. Over the next 10 years I predict that regulatory budgeting may become strong buzz words for these types of conferences, in particular, in relation to fees, charges and the cost of regulations.

I turn now to the continuing benefits of the staged repeal program for regulations. The New South Wales repeal process involves the automatic repeal of existing regulations, unless their appeal is postponed, five years after they are made. New regulations must be justified on cost-benefit and cost-effectiveness principles. The success of this program can be demonstrated from the cumulative totals provided by Parliamentary Counsel, which show a 45.4 per cent reduction in the number of regulations since the staged repeal began on 1 July 1990. The program continues to eliminate any regulations which cannot be demonstrated to be of greater benefit than cost to the community. I refer to a table which shows cumulative totals. The total number of rules was 976 on 1 July 1990 and 537 on 1 May 1999 and the total number of pages was 15,075 on 1 July 1990 and 8,771 on 1 May 1999.

Following a request by the Regulation Review Committee, and to assist members of Parliament in understanding the background or substance of a new statutory rule, the New South Wales Premier approved of a requirement whereby Ministers have to table a copy of a regulatory impact statement in the same sitting week as Parliament is given notice of the making of a new regulation, or as soon as possible thereafter. This initiative may also lead to a better standard of regulatory impact statements from each department concerned. The committee continues to maintain a good record for the methodical and careful appraisal of regulations. The committee's continuing task has been to see that government departments

make only necessary regulations. The committee's examination of regulations is supported by detailed working papers provided by its secretariat. An up-to-date list is kept of all regulations—several thousand in total—that have been examined by the committee, and its reports and supporting papers are always available for examination.

The committee has made 51 reports to Parliament—19 of these in the last Parliament—on various regulations and proposals examined by it. The committee is aided in its task by Lotus Notes, a computer database, which permits easy access to the applicable law and contains a comprehensive cross-indexed record of committee papers. It also has a good working staff headed by Jim Jefferis. Later today I will say something more about the New South Wales staff. As I said earlier, our committee has six new members. Only the Hon. Janelle Saffin and Liz Kernohan, MP, remain from the previous committee. In the coming months we are keen to visit several of the scrutiny committees to discuss in detail with them their review policies and the scope of their work. The next Commonwealth conference on delegated legislation will also provide an avenue for more of us to develop our knowledge and understanding of the regulatory process.

I was interested in what Bob Wiese from Western Australia said earlier about charges. We will examine that matter when we visit Western Australia in the future. I hope over the next year that the chairs and deputy chairs will be able to meet on a more frequent basis as this conference has convinced me that we have a number of common challenges which we could effectively examine in the scrutiny of regulations and/or bills. I hope that our committee will work well together and get things done. After four years we hope to be able to achieve the desired end for regulation scrutiny, that is, the protection of our citizens that we, as members of Parliament, represent.

CHAIR (Ms Saffin): It was interesting to hear those reports from other States. They will make good reading because we always like to know what other committees are doing so that we can decide, based on our colleagues' experience, whether we can make improvements. I thank everyone for their reports. I bid farewell to the Deputy- Speaker from the Samoan Parliament, who has to leave at lunchtime. I thank him for attending. I am sure all delegates extend to him and to his parliamentary colleagues their condolences on the unfortunate death of one of his colleagues. I hope our relationship will continue to build and strengthen after this three-day conference. I am sure everyone will assist him in whatever way they can. In the future we may be invited to the Samoan Parliament by his committee when that committee is established.

RELATIVE PERFORMANCE OF COMMITTEES

CHAIR (Mr Cooney): Our next speaker, Stephen Argument, is reluctant in the sense that I do not think he is particularly keen on delivering public speeches. He is listed as a speaker because of his ability, which is considerable. Much has been said this morning about the people who assist us as politicians to write our speeches so that we at least sound sane. I pay tribute to those people. During the period I have been a member of Parliament I have come to know lots of very good people, but there is certainly none better than Stephen Argument, whom I will now embarrass. I do not have a curriculum vitae for him, so it will come off the top of my head. I see from his book that he is a barrister and solicitor of the Supreme Court of the Australian Capital Territory and the High Court, and a solicitor of the Supreme Court of New South Wales.

Stephen first started to guide me when the legal and constitutional committee was called the constitutional and legal committee. He then went on to assist me with regard to the scrutiny of bills. The only great disadvantage he had was that he was a St Kilda supporter, as he is today. Over those years Stephen prepared material for me, told me where I had gone wrong, made my letters sound as though I was literate, and assisted me in getting out to the Ministers those great points that I made. However, I pay a special tribute to Stephen and, through Stephen, to the staff, for their visceral or gut belief in the fact that what we as members of Parliament do is of fundamental importance to the way our society operates. I believe that if it were not for the proper process and members of Parliament considering the sorts of issues that we consider, we would live in a pretty poor society. I know that Stephen and many of his colleagues believe deeply in that philosophy and act accordingly, and I pay tribute to them for that.

Mr ARGUMENT (Department of Veterans Affairs): You know that people really have it in for you when you speak on the last day of a conference, the day after the dinner, it is after lunch, and they give you a topic that you not only do not choose but one that anyone with half a brain would not choose. And then, to top it all off, you have Senator Cooney as the chairman! I have written a paper on this topic, of which you have copies. Initially I did not propose to read the paper, but after I saw the hammering that you gave that poor man from the OECD on Wednesday morning when he galloped through his delivery and then was subject to 40 minutes of questions, I was tempted to read the paper as slowly as possible so that you could not ask me any questions. However, I will pick out some things from the paper to talk about. I will also say some things that I was not game to say in the paper, and then I want to say a couple of things about the book which are mainly just thank-yous. I imagine there will then be some time left for you to ask nasty questions.

My starting point in writing this paper was that I was not going to answer the question about the purpose of comparing the relativities of committees. My proposition is that one cannot successfully compare committee work in a relative sense because the committees are so different. I think that has emerged from a lot of the papers that have been presented over the course of the last few days. I believe that all committees have particular features about the way they operate that are good and that make them better. The exercise I have gone through is to identify the features that I think make committees operate as effectively as they might.

It is a little like a shopping list that one could use for committees that are thinking about developing different things, as the delegate from the Northern Territory committee said this morning. You can identify these factors and pick out the ones that you really like. I will seek

to do this by the use of an overhead. I have prepared a scorecard, which I will work through as I go through the features. I say at the outset that the factors that I have picked out very much reflect my own prejudices about committee work. I say also that I am not trying to judge any of the committees by the fact that they do not get many crosses on my scorecard; it is just like getting a tick.

The first factor I have identified is the existence of a scrutiny of bills function in the jurisdiction. As Senator Cooney said, I am a former secretary of the scrutiny of bills committee, so it is not unusual that I take such a view. I think Peter Ryan said on Monday that he thought that the scrutiny of delegated legislation function was very much assisted by the fact that there was a scrutiny of bills committees as well. My view about scrutiny of bills committees in terms of their role in relation to delegated legislation is that they can do a lot to stop some of the nasty stuff from getting to the delegated legislation committees in the first place.

The problem with that view is that my master thesis is about the proliferation of delegated legislation outside of the category of regulations, and my thesis deals with that in the Commonwealth sense. The fact is that there has been a proliferation in the Commonwealth, despite the fact of the scrutiny of bills committees. In the paper I also talk about committees that perform the dual function of scrutiny of bills and scrutiny of delegated legislation. I believe that there are advantages in committees doing both.

The second factor I am giving ticks on is whether or not the committee has access to an independent legal adviser. In the original version of Dennis Pearce's book the New South Wales committee in particular was criticised because it did not have an independent legal adviser. The suggestion was that its work was very much suffering because of this. In the current edition of the book I have said that I do not think that is right, because committees such as the ones in New South Wales and Victoria, and most of the others, over a period, have developed an internal expertise that means that they do not necessarily suffer from not having an independent legal adviser.

Having said that, my personal view is that it is an extra resource. It is not only an extra body; it is an extra body that is not or should not be diverted by other things. It is someone who can really be dedicated to the scrutiny work without having to, say, run errands for the Clerk or whatever. It is somebody outside the building, which is an advantage. My view is also very much influenced by the fact that I worked with two legal advisers in my time on the scrutiny of bills, and they were both very good. I am happy to say that since Jim Davis is not here. I would not want him to think that I was going to compliment him.

You will see on the overhead that I have given Tasmania a question mark. Mr Loone gave me the answer to my question this morning. Tasmania is at an in between stage, I think. The next thing that I think is an advantage is the capacity to make regulatory impact assessments. There has been a lot of talk about that today. Those who have been to previous conferences would be aware that I have reluctantly come around to the view that regulatory impact statements make a difference. I started out as very much a doubter but partly through being converted by the Victorians and partly through being converted by the people from New South Wales I am pretty much one of the converted.

One of the reasons I think regulatory impact statements are useful is that government departments left to their own devices—it is not that they cannot be trusted, but the more

scrutiny, input and thought that can be put into legislation the better it will be. Regulatory impact assessment is one way of doing that. In the paper I refer to the position in the Commonwealth and I do not propose to go through that. In my prepared speech I was going to say some things but there is somebody here from the Office of Regulation Review and I do not want to get my department into trouble.

It is all very well for the Commonwealth to have a system based on an administrative mechanism but departments which have to comply with administrative mechanisms—I am not saying that we do this—have ways of getting around them. If you can get somebody important enough such as the Minister to write to the Minister who is responsible for the Office of Regulation Review you can get around this sort of stuff. If you work in a jurisdiction, as I now do, where there is a lobby group that has a lot of pull with the Minister and you can get that group behind you it can get around administrative mechanisms.

One of the answers to that is that even in those jurisdictions where there are statutory mechanisms requiring impact assessment there are ways around them too. There are Premiers certificates, exemptions, extensions of time and all this sort of stuff. But it requires a different level of commitment to get around a statutory mechanism compared with an administrative mechanism. This is very much a lawyer's point but I also took some support from what Margaret Allars said on Monday. She said, "The point I want to make here is that statutory duties to consult interest groups are a mechanism for legitimising the discretionary power of delegated law makers. This form of accountability has its foundation in theories views of participatory democracy." So Margaret was saying that in addition to my bureaucratic point about how we can get around things it is important from a democratic point of view.

The next category I have on the overhead refers to the staged repeal of delegated legislation. Again, this is a feature of the failed Commonwealth Legislative Instruments Bill that already operates in half of the Australian jurisdictions. I am surprised to be doing this but in support of what I am about to say I can refer to Scott Jacobs and his paper on Wednesday morning. I recall his saying that the expansion of different forms of delegated legislation was actually a threat to the rule of law. I have to agree with that, but the more practical point is that there is a whole lot of stuff on the statute book that is just not being used. And if it is not being used why have it there? Staged repeal is a good way of cutting it down. We have had figures from New South Wales and, this morning, from Victoria. The New South Wales figures are quite stunning not only in terms of numbers but the volume of pages and so on. Regulations have been reduced by 45 per cent in eight or nine years. That is remarkable.

One of the key points in my paper relates to why I do not think you can compare the work of committees, the notion of workload. I started by thinking that I could compare the numbers of instruments scrutinised, the number of reports, the number of disallowance motions and all that sort of thing. I was really stymied by the fact that I could not get figures for the same year. But I also came to the view that it was a bit of a waste of time. This sort of thing cannot be judged by pure numbers. On Wednesday morning I felt better about this when the Chief Justice said something of the same thing. In this sort of area we should not be doing a quantitative assessment but a qualitative assessment. Doing things on the basis of numbers just does not work.

Having said that, the book has figures on those sorts of things which you can read if you wish. I was then led me to the point about considering how well committees are resourced. It is hardly fair to compare the work of the Tasmanian committee with that of the Victorian committee purely on the basis of numbers. The Tasmanian committee has a secretariat of one

and the Victorian committee has a secretariat of five. The Northern Territory also has a secretariat of one. Terry Hanley, as Mr Balch said this morning, is also secretary to the Public Accounts Committee. The Northern Territory committee also has a function in relation to annual reports. You simply cannot judge it on the numbers.

Another thing I was glad to pick up from what the Chief Justice said on Wednesday morning was that it is all very well when we say that these committees all do very good work but one of the problems is that no one knows you are doing very good work. You need to increase awareness in the public of the work that you are doing. If you do not, there is a strong chance that not only will the valuable work that the committees do go unnoticed; you will also miss an opportunity to educate the bureaucrats, the people you are dealing with.

One of the ways to get information across is with increased and better reporting. On the overhead I have given committees a tick on whether they do regular reports, an extra tick if they do annual reports, and an extra tick if their reports are accessible through the Internet. The ones that have two crosses have a web site or web access and the reports of the committee are available through the Internet. Over lunch I think I said that the Queensland committee has all of its material available on the Internet—all its reports and "Alert Digests". If there is a best practice on web sites, I think you will find that its is best.

If committees can find the time to produce annual reports, that is a really wonderful way to get information out. I commend the most recent annual report of the Victorian Committee on Subordinate Legislation. For somebody like me, who is interested in this stuff, it has all the information I want. It is well written and well presented. It is something people should copy. Resourcing is very important. When I was secretary to a committee I had so much other work to do that finding time to produce an annual report was very low on my list of priorities. In fact, I ended up doing it at the last minute at the end of a session. But if you can stretch resources that far it really is worth the time, because it is a good way of getting information out to the people.

The overhead now on the screen has a special features column. In my paper I covered some other factors that are special, but I should add a couple of points to what is already there. After Peter Nagle presented his paper on Wednesday, when he talked about regulations coming into effect after a certain time, I had a rethink and I might now be more inclined to give another tick to the South Australian jurisdiction because of the way its procedure operates. I also had to reconsider whether I should remove one of the two crosses against Western Australia. Yesterday Mr Minson almost caused me to have a heart attack when he said that Western Australia did not have the power to amend. That was one of the things Western Australia got the tick for. But I think they are conceding that I am right.

I would like to make some concluding comments about what Dennis Pearce said to the 1989 conference at which he was asked to give an assessment of the work of committees. I was a little unkind to him to suggest in my paper that his comment was a bit glib. Of course I did not really mean that. The message I wanted to get across in my paper was that accessibility of information to the public is very important. Regular annual reporting is important in that regard, but I appreciate the constraints under which you operate. As I have said, it is all very well to do great work with limited resources, but unless the work is known about and recognised it is of little significance and you really are wasting your time.

In relation to the book, I would like to thank a number of people. Obviously, the person

I have to thank the most is Dennis Pearce, to whom this book was very dear. He allowed me to have half of it. You have no idea how big a decision that was for him, or how much I appreciated it. For those of you who do not know Dennis Pearce, I can safely say that he is one of the most eminent public lawyers in Australia. He is also an eminent public lawyer who has been writing about this sort of material for 25 years. He maintains an interest, and it is very good for me to be working with him. I would like to thank two other people have attended this conference: one is Victor Perton, who has been a great supporter of my work for a long time.

I have said before that Victor has breathed fresh air into this whole subject matter by his enthusiasm and his a get-up-and-go attitude, which is infectious. Dennis and I were particularly pleased that Victor agreed to launch the book in April. I am sorry that he is not here at the moment. The other person I should mention is my former chairman and sometimes tennis partner, Senator Cooney. He has also been a great believer in legislative scrutiny, as well as a generous supporter of my work. I would like to thank him for that. He said some very embarrassing things about me, so I am going to try to get back at him. When Scott Jacobs gave his talk on Wednesday morning I was sitting next to Senator Cooney, trying to calm him down.

One of the things that Senator Cooney said in a comment to Scott Jacobs dealt with matters of the heart and matters of the soul. When Senator Cooney says things like that you know that he actually means it: he knows what a heart is and he knows what a soul is. I am very grateful for his kind words to me—it is a pity that he has such a lousy serve! The fourth person I should mention, who, sadly, is not here today and who had a pivotal role in my working on the book, is Professor Douglas Whalan. I really should tell a story about Douglas and his involvement in the book. When I was working on scrutiny about seven or eight years ago I was working closely with Douglas, who was genuinely concerned about the previous edition of the book because it was his view, and I think most people would agree, that the blue book was tediously and dangerously out of date.

Douglas was trying to get Dennis Pearce to write a new edition, but Dennis kept saying that he did not have time. Douglas convinced me to ask Dennis if he would like me to help him write a new edition. One night, after Dennis and I had been at a meeting and I had had a few drinks and was feeling brave, I said, "Dennis, you should write a new edition of the book. How would you like me to help you?" Dennis said very politely, but very firmly, "No, thank you. I am sick of writing books and giving half of them to someone else."

This book was very dear to Dennis' heart because it was the book for which he got his doctorate. It was Douglas' fault that I had made a fool of myself with Dennis, and I felt very sorry about that. Two years later Dennis Pearce came back to me and said, "Stephen, Butterworths have really come after me about writing this book." And he did not say, "Will you help me? " He said, "Will you co-write the book with me?" It was Douglas' idea, and I am very grateful to him for it. Butterworths have a policy of no dedications in books, and it is for that reason that there is no dedication.

If I were able to dedicate my part of the book to anyone it would be to Douglas. Yesterday Senator Cooney said that Douglas' spirit lives on. I am sure that he is listening to all this. Thank you! I would like to thank everybody here who helped with the writing of the book. As I said in the preface, about 10 lines before the first typo, I could not have written this book if all of the secretariats and committees had not been so diligent in providing me

with information. It was not just the information: I have received a lot of encouragement from the sort of people who are in this room, and I am very grateful for that.

Mr HUNT (New Zealand): The first edition of your book referred to "Australia and New Zealand". The second only to "Australia". I understand that Butterworths have imposed all sorts of unreasonable and unfair restrictive trade practices against New Zealand. As we have not produced our own publication relating to regulation in New Zealand, why not have something in the book about New Zealand, as there are many similar practices?

Mr ARGUMENT: I can honestly say that that decision was imposed on us by Butterworths.

Mr HUNT: Shame!

MR ARGUMENT: I would not disagree with you. In a sense it was good for me because it meant that was another jurisdiction I did not have to keep up with and write about, but I really cannot answer the question other than to say it was Butterworths' decision. I am sure that Debbie Angus is quite capable of writing your own book, if she wishes to, and she is quite welcome to use any of our material.

Mr MINSON (Western Australia): The fact of the matter is that you can write annual reports until you are blue in the face, but delegated legislation, uniform legislation, et cetera, is not very sensitive. I do not think it will sell a lot of copies. Perhaps it should be up to committee chairman to raise the media profile. If there is a part in there somewhere that criticises the Government you will definitely get the media to report it. But reporters will not read it. You will have to tell them about it. Perhaps our research officers or the Clerks will need to be multiskilled and write a couple of press releases as well.

Mr ARGUMENT: I would never suggest that merely by writing annual reports and so on the work of committees would suddenly become of interest to journalists. The more information there is out there, the better it must be. One of the great things that happened at this conference was that Margaret Allars took part. But she has come into this area relatively recently. From talking to her, I think she has had a great deal of difficulty, as I had in trying to write the book, in finding all this information. If the information is not available there is no chance of it getting into the media. I agree with you that there are probably more sophisticated strategies to get it reported, but if you are at least able to produce an annual report in which all the information is available, that is a step in the right direction.

Mr WIESE (Western Australia): Because I am a little short sighted I had great difficulty seeing the overhead it as it was revealed, but we went past the second layer, the third layer and the fourth layer until we got to the fifth layer when I could actually see some sort of a mark in the Western Australia's little squares. Will you please provide me with a copy of that so that I can take it back to my Attorney General to see if I can use it by way of argument?

Mr ARGUMENT: I would be happy to.

Mr LIDDELL (New Zealand): Steve's remarks about Professor Whalan reminded me that perhaps we should regard him in the spirit of closer constitutional and intellectual relations between our two countries. As many of you may know, he is from the south island of New

Zealand and we went to school together. But that is somewhat by the way. He was the first graduate from the Law School at the University of Otago, where I used to teach. The subject of committees and their Parliaments was so close to his heart that when he was invited to give the third annual Frank Guest Memorial Lecture at the University of Otago, a prestigious address that has been given by local judges and others, his subject was the role of committees and parliaments. It is very fitting that Stephen and others have made much mention of Professor Whalan.

RESOLUTIONS OF CONFERENCE

Motion by Mr Nagle, seconded by Mr Cunningham, agreed to:

That this conference resolves that a report be presented at future conferences of Australian scrutiny committees on the approaches of the Commonwealth, States and Territories in respect of regulatory impact assessment, as compared with international best practice.

Mr NAGLE: It will be necessary for me to speak to the next motion because the motion of which notice was given has been amended. I move:

(1) That this conference establishes a national committee comprised of the chairs of the Australian scrutiny of primary and delegated legislation committees for the purposes of reviewing all aspects of proposed national schemes of legislation, including that proposed at this conference by Peter Ryan of Victoria.

(2) That the national committee inquire and report within its first year of operation.

Mr PLOWMAN: I second the motion.

Mr NAGLE: Our position paper on the scrutiny of national schemes of legislation which was published in October 1996 grew out of our concerted action in the series of chairmen's conferences held during the preceding two years. I think the time has come for another concerted effort, this time in establishing a national committee on an administrative basis only to enhance our original proposals. At present these proposals are dead in the water and will remain so unless we have a national body with a definite timetable for action. That can be achieved by extending the current role of the chairmen's conferences with the object of producing within the next year a report on the issue. I believe that the services of the secretariats of the Standing Committee on Uniform Legislation and Intergovernmental Agreement of Western Australia and the Scrutiny of Acts and Regulations Committee under the chairmanship of Peter Ryan and the New South Wales Regulation Review Committee should propose that report and circulate it to other delegations for approval.

Mr PLOWMAN: I would like to move an amendment, but I will not do so because I have not foreshadowed it. That amendment would have been that the second part of the motion suggest a further move, that is, that the national committee should ensure that the committee is implemented before the next biennial conference.

Mr COONEY: That was attempted before, and I am not sure what happened.

Ms SWAN: I recall the history. My understanding is that it met its fate at the Standing Committee of Attorneys-General [SCAG]. I am speaking from the position of having obtained later knowledge of the background to this. My understanding from a recent conversation is that it was attempted, but the Attorneys would not entertain the idea because there was a problem of relinquishing jurisdiction. They were unwilling to do that, thus it met its fate. Some other delegate may be able to correct me on that assumption.

Mr ARGUMENT: I looked into this when I was writing my book. My understanding of the position is as Ms Swan has related it. It has stalled somewhere either in SCAG or in the Commonwealth Attorney General's Department. I think members of this committee were waiting to receive something back from me but they have not received it yet.

Mr COONEY: Delegates should talk to their predecessors. In effect we are asking that

national or template legislation should be subject to examination by parliamentarians, which would really be a bit of a shock. Ministers comes to agreements, get them through the various parliaments and we might disturb those.

Mr PLOWMAN: I have changed my mind. I will move the amendment, although I have not foreshadowed it. I move:

That the motion be amended by the addition of the following paragraph:

(3) That the chairs of the Australian scrutiny of primary and delegated legislation committees implement this motion with a view to having the committee not only in place but reporting prior to the next biennial conference.

Mr COONEY: I second the amendment.

Mr NAGLE: I have no problem with that amendment.

CHAIR: I take it that the intent of that motion as amended is that a committee be formed of all chairmen, and that the committee meet and report to the next conference. Is that correct?

Mr PLOWMAN: Yes.

Mr BALCH: I wish to make a comment from my knowledge of how the system works. I have listened to the comments about how this was attempted previously. It would be appropriate that this motion, perhaps with supporting material, be taken up by the various chairmen of committees, to be taken to their jurisdictions and forwarded to the responsible Ministers, or, even better, the leaders. In that way it will not run off the rails. If we have support at that level, and they know that it is coming and the reason for it, it is less likely that some ministerial council will derail it. It needs to be sold to our own jurisdictions so we have support for it. Otherwise, if someone does not like it, we could be meeting time and again and it will run off the rails.

Mr WIESE: We can put it in place and make it work. It has the potential to be extremely helpful, but there will be problems. I speak from ministerial experience. At worst, if you could get the co-operation of every State, the latest notice you would get is when the bill is introduced into Parliament and there is a one-week or two-week gap for debate. That group of chairmen could operate within a very short time span and under considerable pressure to carry out a review. The regulations could be a little harder and, again, you would have notice of when they are to be in place, and the mechanisms may be a little hard. There is nothing to lose by trying; if it can be successfully done it would be of great benefit to all of us.

Mr PLOWMAN: I support what Bob Wiese said. We certainly will not be worse off and we may be a little better off. I accept that there may be time constraints but that is usually the case in any event. There is no good reason to not go ahead with it. I agree with the gentleman from the Northern Territory, but I do not think that that necessarily is contrary to the motion or the intent of the motion. It is part of what has to occur if it is to succeed. If it is unsuccessful we will be wiser next time.

Mr HARGREAVES: I recognise that all members of Parliament are entitled to be aware of the commitments that ministerial people make on our behalf within the national forum. Our interstate agreements Act obliges the Minister to let us know what is happening in the contemplative stage. In many jurisdictions Parliaments are not aware of the contemplative

stage. The national schemes of legislation are a good thing, but I am disturbed when I hear of Ministers passing legislation because people are waiting for it. That is a load of rot and is not acceptable. We need to look at legislation and determine how it impacts on various jurisdictions. I support this initiative; I regard it as the second stage. We have obliged our Ministers to tell Parliament and I would like all jurisdictions to come together and consider this. Of course, the next stage would be to look at any international agreements which may impact on our jurisdictions. I support the motion.

Mr NAGLE: The second paragraph of my motion is now redundant and should be deleted. The proposal to have chairmen and deputy chairmen is not hard and fast; an informal meeting of chairmen and deputy chairmen of all committees could look into this. It is not designed to usurp the power of government or Ministers; it is there to protect the Parliament from legislation that could have an adverse affect on a particular State.

Amendment by Mr Nagle, seconded by Mr Hargreaves, agreed to:

That paragraph (2) of the motion be deleted.

Motion as amended agreed to.

Mr NAGLE: I move:

That this conference resolves that Australian scrutiny committees report to the next conference on the desirability of a review model which provides that regulations come into force at the expiry of a specified number of days after tabling, unless the Parliament resolves otherwise.

The motion is self-explanatory.

Mr CUNNINGHAM: I second the motion.

Motion agreed to.

Mr NAGLE: I move:

That the question of funding of future conferences be referred to the next conference of Presiding Officers for consideration.

Mr LOONE: I second the motion.

Mr NAGLE: This is an important and practical motion in these times of greater funding accountability. I have moved this motion after having discussed at length via telephone hook-up the problems we face in New South Wales. Thankfully, we were able to resolve them. There must be hard and fast guidelines so that all hosts of this conference throughout Australia know the funding arrangements involved and that people wishing to attend will know whether they have to pay fees and what are their responsibilities.

Mr MINSON: I assume a draft letter will be forwarded officially from this conference making it clear that it is not a matter just of our particular area but of all conferences. The issue is far-reaching because a number of parliaments now are obtaining physical additions, which means that conferences can be held in-house without the need to hire outside conference halls, and catering will be provided internally. It raises all sorts of difficulties if some

parliaments charge and some do not. I express the wish that the letter ask the Presiding Officers to address the whole question of charging each other for conferences and to what extent we should charge each other. Obviously, the host should not be out of pocket, but at the same time it should not make a profit from using what is a public building for the purpose of a parliamentary meeting.

Mr PLOWMAN: My response is more in the form of a question. If this proposal is to go to the next conference of Presiding Officers, should we not give directions about what we want rather than merely leave it to them to decide? If we feel strongly about this, we should give an indication of what funding we would like the Presiding Officers to determine rather than to tell them that we want it resolved. If we ask them to resolve it, should we not give them an indication of what we want?

Mr COONEY: The matter raises an issue as to whether we want some control of our own affairs. The motion asks the next conference of Presiding Officers to decide. I would hate the situation to arise where we are charged when Presiding Officers entertain each other. This motion leads us to the point where we will surrender any ownership over our affairs. We are supposed to be parliamentarians examining what the Executive or the Presiding Officers do. Why should we surrender? In New South Wales this is our House, as it is in Western Australia, Queensland and everywhere else. I am not sure we should send this for consideration by the Presiding Officers.

Mr NAGLE: There is a reason for that: They are the ones who sign that cheque. The most important point that has been raised is: do we formulate a policy now to state that this is the policy for future conferences? If that is to be done, will someone propose a motion to test the water as to whether we agree with that policy, or whether we should ask the Presiding Officers what they think the policy is and ask them to report to us so that we can deal with their comments. I am happy to move an amendment that each Parliament pay for its conferences.

Mr MARLBOROUGH: Part of your comments lack the view that I support and that, I suggest, the Western Australian delegation would support. Surely the contents of that particular motion contain what the parliamentary process suffers from, that is, certain ministerial levels understanding the role of such committees. Part of the Parliament's understanding is to recognise that such a committee is an integral part of what we have to do, but it is the cost of democracy to pay. If certain States have internal wranglings and problems and find it difficult to pay, I would have thought that would be best left to those States to sort out, but on the basis that the States pick up the tab for no other reason than that it is part of the parliamentary process of recognising the importance of the committees. It is not a matter of costing more or less here or there.

If you are not looking to pay for democracy, it is some measure of what you think of the process. If the Speakers in this instance have concerns, it may well be that they do not quite have an understanding of the role of these committees. But if they do understand, they do not support them. It is not only a matter of cost; it involves parliaments around Australia, New Zealand and Canada. Are they willing to recognise the important role of such committees? If so, costs are not the issue as they are built into the democratic process and become part of the running of governments.

This is my first conference, but it is fairly obvious from debates during the past week and

from national and international input that people take the role of these committees seriously and that this body has an important role to play at a national level. Officers and members of Parliament put in a lot of time over and above that normally attributed to the work of the Parliament to make sure these committees work properly to give good advice to Ministers. The small shackles that must be paid for such a meeting ought to be part of the democratic process of good government.

Mr PLOWMAN: I move the following amendment:

That the motion be amended by the deletion of all words after the word "That" and that the following words be inserted in lieu thereof:

this conference resolves that the question of funding for future conferences be referred to the first meeting of the Chairs of Australian scrutiny of primary and delegated legislation committees.

Rather than debating the matter now, we should leave it to the first meeting of the national committee, which comprises the Chairs of the Australian scrutiny of primary and delegated legislation committees to come up with a proposition to put to the next conference of Presiding Officers, subsequent to the first meeting of the national committee.

Mr MINSON: I speak against the amendment. The Chairs are all here. The issue is simple and is urgent. Meetings are held every week and every month. Some parliaments are trying to charge each other. I do not mind if we all do the same, but the issue must be resolved. If we cannot resolve the issue, the Presiding Officers must be asked to resolve it. They know about the problem. I have spoken to our Speaker. The officers of the Parliament truly understand what happens on these occasions. We should now resolve to write to the Presiding Officers, which is what I thought we were going to do, bringing the matter to their attention and asking them to bring down a ruling and then we will deal with the ruling.

Mr WIESE: Before voting on the amendment, I foreshadow that I shall move an amendment that may deal with what we are trying to achieve. My foreshadowed amendment will add, after the word "consideration", "and further, that this conference notes that each jurisdiction will in its turn host a biennial conference, and resolves that the host State will meet the costs associated with hosting that conference". I believe that is getting to the guts of what we are trying to achieve. It makes it clear to the Presiding Officers that this is what this conference has resolved and we should deal with it like that.

Mr PLOWMAN: I withdraw my amendment.

Mr WIESE: I move:

That the motion be amended by the addition, after the word "consideration" of the following words:

And further, that this conference notes that each jurisdiction will in its turn host a biennial conference, and resolves that the host State will meet the costs associated with hosting that conference.

Mr REDFORD: I second the amendment. I would be interested to know what happens with other committees. I know regular meetings of Public Accounts Committees or their equivalents are held around the country. I would like to know the attitude towards the costs of holding those meetings. I know far more costs are associated with those meetings and the executive arm of government is more inclined to be friendly in funding those meetings because they are inclined to be more politically embarrassing than we are, at least at this stage. From

a political perspective it would be best for us to piggyback on whatever system the public accounts committees have because they are likely to achieve a better result from the Executive, which in turn controls the purse strings.

Until we know what is going on, we should continue the status quo, which is what this amendment proposes. From South Australia's perspective, Treasury can only be described as very mean in relation to expenditure associated with Parliament. From the President's and Speaker's point of view, and they administer our Parliament, their abilities to deal with financial matters, in my experience, could be described as archaic. I am fresh from the experience of having written 11 letters and waiting seven weeks to get my mobile phone repaired at a cost of $260. Actually, it was resolved because I demonstrated through a document roughly half an inch thick that I have been asked questions about every single mobile phone issued to every Minister and/or departmental officer. There was a sudden focusing of minds on that issue.

I do not know whether others have experienced it, but in South Australia this is a line of expenditure and it cannot happen. I would be in a much better position to extract from a President, or even from a Treasurer, funding to host everybody because it is a matter of status in South Australia than I would be to extract funding to get myself or other members of my committee to various conferences around the country. While we support this motion, from the South Australian perspective it is pragmatic and it gives me better leverage than the proposal from New South Wales.

Mr HARGREAVES: I support what Angus Redford said about the opportunity to attend such a conference, rather than merely giving us an opportunity to flog the status angle. It occurred to me when we were considering problems in the Australian Capital Territory that we are talking about one-off expenditure as opposed to recurrent expenditure. I would not like to have to try to work out recurrent expenditure for these sorts of conferences. Another thing of concern to me is that if we start doing that we provide an opportunity for priority setting. As Angus quite rightly pointed out, executives are a bit more afraid of PICs than they are of conferences like this. They are more likely to say, "Attend that conference rather than this one. We do not have enough money to send you to this conference." Another matter also concerns me. I mentioned earlier the value of having legal advisers and members of secretariats attending functions such as this. I would be somewhat annoyed if I was willing to attend a conference only to be told that the Parliament could not afford to send my support staff. I would like to more emphasis placed on what these conferences produce, rather than how much they cost. We run a risk of taking these matters out of their proper environment and putting them into a financial environment. I support the motion moved by Western Australia.

Motion as amended agreed to.

Mr NAGLE: I move:

That this conference resolve that, at future conferences of Australian scrutiny committees, a report be presented on the relative performance of committees.

Mr CUNNINGHAM: I second the motion.

Mr NAGLE: I believe that a comparison of committees' performance is desirable for a number of reasons. That is one of the reasons why we are holding this conference—to learn from each other new ways of approaching our scrutiny role. We can always use it to advantage in arguing for improvements in our terms of reference in our individual legislatures. If delegates want to vote against this motion, that is fine.

Mr MINSON: All committee chairmen presented reports. That debate was recorded in *Hansard*, the *Hansard* will be sent to us and we will, therefore, have a record. Is that the sort of feedback you are talking about?

Mr NAGLE: I was referring to the model that Stephen Argument referred to earlier. We should be able to work out what are the performances of our committees in the scrutiny of bills and regulations so that we can argue for the additional scrutiny of bills by our own committees. As Angus correctly pointed out, we have to establish how we measure that performance. Delegates might want to defer this motion to another time.

Mr GRIFFITHS: I speak against the motion. I do not like the idea of some unknown body or person sitting in judgment of members of Parliament. The scrutiny committees or delegated legislation committees are the watchers. We do not want anybody else watching us.

Motion negatived.

VENUE OF NEXT CONFERENCE

Mr LOONE: I move:

That Hobart, Tasmania, be the venue for the next conference.

After much consultation and discussion I am pleased, on behalf of my committee, to offer Tasmania as the venue for the next conference in 2001. We realise that we have a hard act to follow. I have been to four or five of these conferences and each one seems to get a bit better. We know that we have big shoes to fill but we are a little State with a lot of punch. I am sure we will be able to provide for the needs of the conference. We would also like delegates to forget the misconception that it rains most of the time in Tasmania, and that when it is not raining it is snowing. That is not true. I assure delegates that, when we hold the conference, we will host a good conference and provide good weather. We know that delegates will want to visit Tasmania afterwards for a holiday.

Mr CUNNINGHAM: I second the motion.

Motion agreed to.

COMMONWEALTH OF NATIONS CONFERENCE ON DELEGATED LEGISLATION

CHAIR: I remind members that the Commonwealth of Nations Conference on Delegated Legislation was due to be held next year in Africa. I invite the Rt. Hon. Jonathan Hunt, Chairperson of the New Zealand Regulations Review Committee and chairman of the working party on the conference, to inform us of the current arrangements for that conference.

Mr HUNT: Today we received a fax from Zimbabwe to the effect that it was prepared to host the conference. Because Zimbabwe has been a little less than certain about some of its arrangements we have had to press it to finalise these arrangements. It has given us a firm answer but, if it does not give us a firm date within a certain number of weeks—I suggest a period of two or three weeks—we should proceed to plan B, which is to invite Canada to host the conference. The conference really has to be held in about a year's time.

Motion by Mr Hunt, seconded by Mr Minson, agreed to:

That the conference accepts Zimbabwe's offer to host the conference but that it receives final confirmation of the date as soon as possible.

CHAIR: I looked forward to this conference. I now have the added pleasure of looking back on it with satisfaction. I thank all delegates for the strong support that they have given the conference. I can rarely remember a gathering where participants brought such a helpful combination of knowledge, good humour and attentiveness to the deliberations. I hope that the papers given at this conference will contain the seeds of future advances in regulatory reform and practice. I believe that the OECD paper provided a useful balance by introducing broader themes for us to consider in conjunction with a case-by-case, regulation-by-regulation, or legislation-by-legislation approach, which arises from our ordinary duties.

I thank delegates sincerely for their participation. I thank also the staff of my committee who had to make the supporting arrangements for this conference. This was not easy, as much of the planning had to be done at a time when New South Wales was preparing for a State election, no formal committee had been appointed, and there was no chairman. I particularly thank Jim Jefferis, Greg Hogg, Don Beattie, Jozef Imrich and Susannah Dale for their excellent work in the preparation of this conference. In particular, I point out that Don Beattie did most of the preparation work. I thank David Draper and his catering staff for the quality of our lunches and for the prompt service of his staff in supplying that fine parliamentary red and white wine. I also thank the parliamentary attendants for their work. The Hansard staff have been kind enough to report these proceedings. I thank them very much for that. A published volume of all papers and transcripts of our discussions will soon be available for each delegate.

The Speaker of the Parliament, the Hon. John Murray, agreed to let us use this Chamber for our deliberations. I thank him for that. I invited John to join us but, unfortunately, he had other commitments at a Presiding Officers conference. I place on the record the contribution made by my predecessor, the former Chairman of the Regulation Review Committee, Mr Doug Shedden, who has now retired. I thank him for his work on the committee over the past few years. His careful and conscientious approach to many difficult issues facing the committee resulted in the adoption by Ministers of many of the committee's recommendations. All delegates will agree that one of the most difficult aspects of committee work is to achieve

the implementation of our recommendations so as to prevent them from being defeated by departmental inertia.

I was pleased to hear Professor Pearce mention Adrian Cruickshank, a former Chairman of the committee, as providing a challenging view on the scrutiny of policy matters. Adrian has now retired. Adrian earned our respect for taking a tough line with Ministers and their bureaucrats. It was a sight to behold Adrian and I on the same committee. Adrian did a good job over those years. I conclude by drawing attention to what Jonathan Hunt had to say about the next Commonwealth conference. I also thank Tasmania for being the host for the next conference. I am looking forward to that conference. March is a beautiful time in Hobart. I thank all delegates for their participation and for everything they have done at this conference. I look forward to seeing them and to being in contact with them in the near future.

The conference adjourned at 4.00 p.m.