



# **REGULATION REVIEW COMMITTEE**

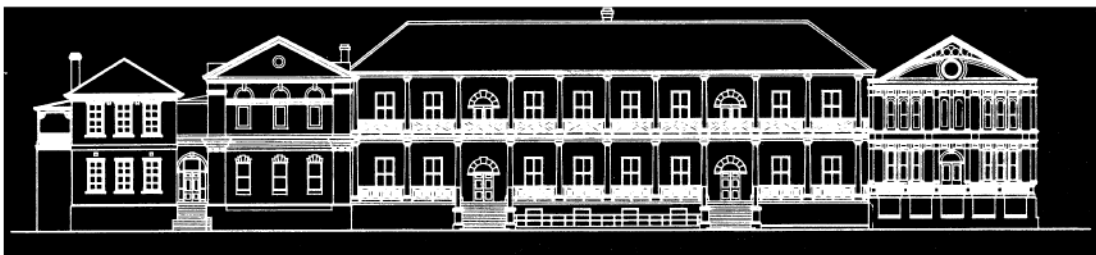
**PROCEEDINGS OF THE**

**Seventh Australasian and Pacific Conference  
on Delegated Legislation and  
Fourth Australasian and Pacific Conference  
on the Scrutiny of Bills**

**21, 22 and 23 July 1999**

**Parliament House, Sydney, New South Wales, Australia**

**Regulation Review Committee  
Report No. 1 of the Fifty-Second Parliament**



**September 1999**

## **New South Wales Regulation Review Committee**

### **Members:**

Mr P. R. Nagle, MP, Chairman  
Dr E. A. Kernohan, MP  
Ms C. A. Burton MP  
Hon J. A. Saffin, MLC, Vice Chairman  
Hon D. T. Harwin, MLC  
Ms M. F. Saliba, MP  
Mr R. W. Turner, MP

### **Secretariat:**

Mr J. Jefferis, Director  
Mr G. Hogg, Project Officer  
Mr D. Beattie, Acting Committee Clerk  
Mr J. Imrich, Committee Officer  
Ms S. Dale, Assistant Committee Officer

## CHAIRMAN'S FOREWORD

I am delighted to present the full transcript of the conference on delegated legislation and scrutiny of bills, organised by the Regulation Review Committee of the New South Wales Parliament from 21 to 23 July 1999.

I thank His Honour the Chief Justice of the High Court of Australia, the Hon. Murray Gleeson AC, for opening this conference. His remarks on the benefits to be obtained from more productive co-operation between the arms of government are very relevant to the work of all scrutiny committees.

The Hon. John Murray MP, Speaker, made the Legislative Assembly Chamber available and this contributed significantly to the favourable atmosphere which prevailed throughout the three days of the conference.

I am grateful for the helpful participation displayed by all delegates and for the time many of them spent in developing papers for this conference. I mentioned this more fully in my introductory remarks at the conference. The secretariats of various State and Commonwealth committees put in many hours of supportive research for their delegates and this should get a special mention.

I believe we are in the midst of an interesting period of regulatory reform. In New South Wales there is a likelihood of major changes going forward as a result of the OECD report on our regulatory controls. In other States changes may also be considered as a consequence of reviews just conducted.

The re-emergence of the Legislative Instruments Bill on the Commonwealth agenda is another likely development.

The conference came at an excellent time. It has provided useful support and guidance for these reform initiatives and for committees to renew their efforts towards greater excellence in legislative review.

The next conference will be in Tasmania in 2001, hosted by that State Parliament.

Peter R. Nagle MP  
Chairman  
Regulation Review Committee  
Parliament of New South Wales

## TABLE OF CONTENTS

<b>Conference Program</b> .....	<b>1</b>
<b>List of Delegates</b> .....	<b>11</b>
<b>Transcript of Proceedings:</b>	
<b>21 July 1999</b> .....	<b>17</b>
<i>Welcome</i> .....	19
<i>Official Opening</i> .....	21
<i>Mr Jacobs</i> .....	25
<i>Mr Deighton-Smith</i> .....	40
<i>Mr Minson</i> .....	55
<i>Mr Ryan</i> .....	64
<i>Mr Nagle</i> .....	72
<i>Notices of Motions</i> .....	80
<b>22 July 1999</b> .....	<b>81</b>
<i>Professor Pearce</i> .....	82
<i>Dr Tobin</i> .....	95
<i>Professor Allars</i> .....	104
<i>Mr Hunt</i> .....	115
<i>Senator Cooney</i> .....	124
<i>Senator Coonan</i> .....	133
<b>23 July 1999</b> .....	<b>145</b>
<i>Senator Cooney</i> .....	146
<i>Senator Coonan</i> .....	147
<i>Mr Hargreaves</i> .....	150
<i>Ms Young</i> .....	153
<i>Mr Balch</i> .....	157
<i>Mr Mulitalo</i> .....	158
<i>Ms Lavarch</i> .....	159
<i>Mr Redford</i> .....	162
<i>Mr Loone</i> .....	166
<i>Mr Ryan</i> .....	168
<i>Mr Thompson</i> .....	169
<i>Mr Wiese</i> .....	171
<i>Mr Minson</i> .....	173
<i>Mr Nagle</i> .....	174
<i>Mr Argument</i> .....	177
<i>Resolutions of Conference</i> .....	184
<i>Venue of Next Conference</i> .....	190
<i>Commonwealth of Nations Conference on</i> <i>Delegated Legislation</i> .....	191
<i>Conclusion</i> .....	191
<b>Conference Resolutions</b> .....	<b>193</b>
<b>Conference Papers</b> .....	<b>195</b>

**Seventh Australasian and Pacific Conference  
on Delegated Legislation and  
Fourth Australasian and Pacific Conference  
on the Scrutiny of Bills**

**PROGRAM**

---

All sessions to be held in the Legislative Assembly Chamber, Level 7, Parliament House  
Macquarie Street, Sydney

**DAY ONE - WEDNESDAY 21 JULY 1999**

**8:00am - 9:00am**

**Registration**

Greenway Room, Level 7, Parliament House  
Proceed through Legislative Assembly entrance  
(coffee and tea available in Jubilee Room opposite)

**Morning Session 1**

**9:00 - 9:15am**

**Welcome**

Mr Peter Nagle MP, Chairman  
Regulation Review Committee, New South Wales

**9:15 - 9:30am**

**Official Opening of Conference**

The Hon. Murray Gleeson AC  
Chief Justice of the High Court of Australia

**9:30 - 10:30am**

**Future Challenges in Regulatory Reforms  
for OECD Countries**

Mr Scott Jacobs  
Head of Program on Regulatory Reform  
Public Management Service, OECD

**Chaired by**

Mr Victor Perton MP, Chairman  
Law Reform Committee, Victoria

**10:30 - 11:00am**      **Morning Tea** (Jubilee Room)

### **Morning Session 2**

**11:00 - 12:00 noon**      **Assuring Regulatory Quality - a Systematic Approach**  
Mr Rex Deighton-Smith, Administrator  
Public Management Service, OECD

**Commentators:**

Professor Margaret Allars, Faculty of Law  
University of Sydney;

Mr Jim Booth, Policy Manager  
The Cabinet Office, NSW Premier's Department.

**Chaired by**

Mr Luigi Carbone, Adviser to the Minister  
Director, Regulatory Reform Unit  
Ministry of Administrative Reform, Rome, Italy

**12:00 - 12:30pm**      **Official Photograph**      (Parliament House steps)

**12:30 - 2:00pm**      **LUNCH**      (STRANGER'S DINING ROOM, LEVEL 7)

### **Afternoon Session 1**

**2:00 - 2:45pm**      **Competition Policy**  
The Hon. Kevin Minson MP, Chairman  
Standing Committee on Uniform Legislation and  
Intergovernmental Agreements, Western Australia

**Chaired by**

The Hon John Loone MLC Chairman  
Standing Committee on Subordinate Legislation, Tasmania

## **Afternoon Session 2**

**2:45 - 3:30pm**

### **A Proposal for Scrutiny of National Schemes of Legislation**

Mr Peter Ryan MLA, Chair  
Scrutiny of Acts and Regulations Committee, Victoria

#### **Chaired by**

Senator Marise Payne, Member  
Senate Standing Committee on Regulations and Ordinances  
Canberra ACT

**3:30 - 4:00pm**

**Afternoon Tea** (Jubilee Room)

## **Afternoon Session 3**

**4:00 - 4:30pm**

### **Scrutiny: when?**

Mr Peter Nagle MP, Chairman  
Regulation Review Committee, New South Wales

#### **Chaired by**

Ms Linda Lavarch MLA, Chair  
Scrutiny of Legislation Committee, Queensland

## **Notices of Motions by Delegates**

**4:30 - 5:00pm**

### **Chaired by**

Ms Cherie Burton MP, Member  
Regulation Review Committee, New South Wales

**5.15pm - 6:30pm**

### **OPENING RECEPTION**

(Adjoining Stranger's Dining Room  
Level 7, Parliament House)

**END OF DAY 1**

## DAY TWO - THURSDAY 22 JULY 1999

### Morning Session 1

**9:00 - 10.00am**

**Policy or Politics ?**

Dennis Pearce, Emeritus Professor of Law  
Centre for International and Public Law  
The Australian National University, Canberra

**Chaired by**

The Hon Bob Wiese MP Chairman  
Joint Standing Committee on Delegated Legislation  
Western Australia

**10:00 - 10:30am**

**Morning Tea** (Jubilee Room)

### Morning Session 2

**10:30 - 11.30am**

**Ethics and Law: A Case Study of confusion in the  
relationship between the two**

Dr Bernadette Tobin, Director  
Plunkett Centre for Ethics, Sydney

**Chaired by**

Ms Monica Holmes MP, Member  
Standing Committee on Uniform Legislation and  
Intergovernmental Agreements, Western Australia

### Morning Session 3

**11:30 - 12:30pm**

**A Critique of Criteria and Cases: Parliamentary Scrutiny  
of Acts, Regulations and Codes**

Professor Margaret Allars, Faculty of Law  
University of Sydney

**Chaired by**

The Hon Janelle Saffin MLC, Vice-Chairman  
Regulation Review Committee, New South Wales

**12:30 - 2.00pm**

**LUNCH** (STRANGER'S DINING ROOM, LEVEL 7)



## **Afternoon Session 1**

**2:00 - 3:00pm**     **Rounding up the Regulators:  
Getting Delegated Legislation under Control**  
The Right Hon. Jonathan Hunt MP, Chairperson  
Regulations Review Committee, New Zealand

**Chaired by**  
The Hon Angus J Redford MLC, Presiding Member  
Legislative Review Committee, South Australia

**3:00 - 3:30pm**     **Afternoon Tea** (Jubilee Room)

## **Afternoon Session 2**

**3:30 - 4:30pm**     **Against what Values is Legislation Scrutinised ?**  
Senator Barney Cooney, Chair  
Senate Standing Committee on the Scrutiny of Bills

Australian Senate, Canberra ACT

**Chaired by**  
Mr Steve Balch MLA, Chairman  
Subordinate Legislation and Tabled Papers Committee  
Northern Territory

## **Afternoon Session 3**

**4:30 - 5:15pm**     **Explanatory material for legislative instruments - the  
Commonwealth experience**  
Senator Helen Coonan, Member  
Senate Standing Committee on Regulations and Ordinances  
Australian Senate, Canberra ACT

**Chaired by**  
Senator Céline Hervieux-Payette, Co-chair  
Standing Joint Committee for the Scrutiny of Regulations, Canada

**Notices of Motions by Delegates**

**5:15 - 5:30pm**    **Chaired by**  
Ms Marianne Saliba MP, Member  
Regulation Review Committee, New South Wales

**7:00 - 11:00pm**    **CONFERENCE DINNER**  
Henry Lawson Room, Renaissance Sydney Hotel  
30 Pitt Street Sydney

**END OF DAY 2**

## **DAY THREE - FRIDAY 23 JULY 1999**

### **Morning Session 1**

**9:00 am to 12:30 pm**

*(Morning Tea, Jubilee Room, 10.00am - 10.30 am)*

#### **Reports from participating Parliamentary Committees:**

1. **Commonwealth Senate -**  
*Senator Barney Cooney, Chairman*  
*Standing Committee for the Scrutiny of Bills*
2. **Commonwealth Senate -**  
*Senator Helen Coonan, Member*  
*Standing Committee on Regulations and Ordinances*
3. **Australian Capital Territory -**  
*Mr John Hargraves MLA, Deputy Chair*  
*Standing Committee on Justice and Community Safety*
4. **New Zealand -**  
*Ms Annabel Young MP, Member*  
*Regulations Review Committee*
5. **Northern Territory -**  
*Mr Stephen Balch MLA Chairman*  
*Subordinate Legislation and Tabled Papers Committee*
6. **Queensland -**  
*Mrs Linda Lavarch MLA, Chair*  
*Scrutiny of Legislation Committee*
7. **South Australia -**  
*The Hon. Angus J. Redford MLC, Presiding Member*  
*Legislative Review Committee*
8. **Tasmania -**  
*Mr John Loone MLC, Chairman*  
*Standing Committee on Subordinate Legislation*

9. **Victoria -**  
*Mr Peter Ryan MP, Chairman  
Scrutiny of Acts and Regulations Committee  
Mr Murray Thompson MP, Chairman  
Subordinate Legislation Sub-Committee*
10. **Western Australia -**  
*The Hon Bob Wiese MLA, Chairman  
Joint Standing Committee on Delegated Legislation*
11. **Canada -**  
*Senator Céline Hervieux-Payette, Co-Chair  
Standing Joint Committee for the Scrutiny of Regulations*
12. **Zimbabwe -**  
*The Hon Abdul Kassim, Chairman  
Parliamentary Legal Committee*
13. **New South Wales -**  
*Mr Peter Nagle MP, Chairman  
Regulation Review Committee*

**Chaired by Mr Peter Nagle MP**  
Chairman, Regulation Review Committee

**12:30 - 2:00pm LUNCH** (STRANGER'S DINING ROOM, LEVEL 7)

### **Afternoon Session 1**

**2:00 - 3:00pm Relative Performance of Committees**  
Mr Stephen Argument, Director  
Projects and Legal Instruments,  
Department of Veterans Affairs.

**Chaired by**  
Senator Barney Cooney, Chair  
Senate Standing Committee on the Scrutiny of Bills  
Australian Senate, Canberra ACT

**3:00 - 3:30 pm Afternoon Tea** (Jubilee Room)

## **Concluding Session**

**3:30 - 4:30pm Resolutions of Conference**

**Chaired by**

Mr Peter Nagle MP Chairman

Regulation Review Committee, New South Wales

**4:30 pm**

**END OF CONFERENCE**

---

**Seventh Australasian & Pacific Conference on Delegated Legislation and  
Fourth Australasian & Pacific Conference on the Scrutiny of Bills**

---

**DELEGATES**

## DELEGATES

21, 22 and 23 July 1999

Title	First Name	Last Name	Position	Organisation	Jurisdiction
Sen	Helen	Coonan	Chair Designate	Senate Standing Committee on Regulations and Ordinances	Commonwealth Parliament
Sen	Marise	Payne	Member		
Mr	Neil	Bessel	Secretary		
Mr	David	Creed	former Secretary		
Ms	Janice	Paull	Research Officer		
Sen	Barney	Cooney	Chairman	Standing Committee for Scrutiny of Bills	Commonwealth Parliament
Mr	James	Warmenhoven	Secretary		
Prof	James	Davis	Legal Adviser		
Mr	John	Hargreaves MLA	Deputy Chair	Standing Committee on Justice and Community Safety	Legislative Assembly Australian Capital Territory
Mr	Harold	Hird MLA	Member		
Mr	Peter	Bayne	Legal Adviser		
Ms	Celia	Harsdorf	Assistant Secretary		
Mr	Steve	Balch MLA	Chairman	Subordinate Legislation and Publications Committee	Legislative Assembly Northern Territory
Mr	Terry	Hanley	Secretary		
Mr	Peter	Nagle MP	Chairman	Regulation Review Committee	Parliament of New South Wales
Ms	Cherie	Burton MP	Member		
Hon	Don	Harwin MLC	Member		
Dr	Liz	Kernohan MP	Member		
Ms	Marianne	Sal ba MP	Member		
Hon	Janelle	Saffin MLC	Deputy-Chairman		
Mr	Russell	Turner MP	Member		
Mr	Jim	Jefferis	Director		
Mr	Greg	Hogg	Project Officer		
Mr	Jozef	Imrich	Research Assistant		
Mr	Don	Beattie	Clerk		
Ms	Susannah	Dale	Assistant Committee Officer		
Ms	Linda	Foley	Electorate Officer		
Mrs	Linda	Lavarch MLA	Chair	Scrutiny of Legislation Committee	Parliament of Queensland
Mr	Christopher	Garvey	Research Director		
Ms	Veronica	Rogers	Research Officer		
Hon	Angus	Redford	Chairman	Legislative Review Committee	Parliament of South Australia
Hon	John	Loone MLC	Chairman	Standing Committee on Subordinate Legislation	Parliament of Tasmania
Hon	Geoff	Squ bb MLC	Vice-Chairman		
Mr	Ken	Bacon MHA	Member		

Hon	Denise	Swan MHA	Member		
Ms	Wendy	Peddle	Secretary		
Mr	Peter	Ryan MLA	Chairman	Scrutiny of Acts and Regulations Committee	Parliament of Victoria
Mr	Murray	Thompson MP	Deputy Chairman		
Mr	Bob	Cameron MP	Member		
Mr	Carlo	Carli MP	Member		
Ms	Mary	Gillett MP	Member		
Hon	Peter	Katsambanis MLC	Member		
Hon	Maree	Luckins MLC	Member		
Hon	Don	Nardella MLC	Member		
Mr	Tony	Plowman MP	Member		
Mr	Andrew	Homer	Senior Legal Adviser		
Ms	Tanya	Coleman	Legal Adviser		
Ms	Nadia	Krivetz	Legal Adviser		
Mr	Victor	Perton MP	Chairman		
Mr	Neil	Cole MP	Deputy Chairman		
Ms	Padma	Raman	Director		
Ms	Jenny	Baker	Research Officer		
Hon	Kevin	Minson MLA	Chairman	Standing Committee on Uniform Legislation and Intergovernmental Agreements	Parliament of Western Australia
Ms	Monica	Holmes MLA	Member		
Mr	Ted	Cunningham MLA	Member		
Mr	William	McNee MLA	Member		
Mr	Peter	Frantom	Executive Officer		
Ms	Melina	Newnan	Legal Research Officer		
Hon	Robert	Wiese MLA	Chairman	Joint Standing Committee on Delegated Legislation	Parliament of Western Australia
Hon	Nicholas	Griffiths MLC	Deputy Chairman		
Hon	Raymond	Halligan MLC	Member		
Mr	Norm	Marlborough MLA	Member		
Mr	William	Thomas MLA	Member		
Mr	Nigel	Pratt	Advisory Research Officer		
Ms	Jan	Paniperis	Committee Clerk		



Title	First Name	Last Name	Position	Organisation	Jurisdiction
Rt Hon	Jonathan	Hunt MP	Chairperson	Regulations Review Committee	Parliament of New Zealand
Ms	Annabel	Young MP	Member		
Ms	Debbie	Angus	Legal Adviser		
Mrs	Shelley	Banks	Clerk of the Committee		
Senator	Céline	Hervieux-Payette	Co-Chair from the Senate	Standing Joint Committee for the Scrutiny of Regulations	Parliament of Canada
Mr	Gurmant	Grewal, MP	Co-Chair from the House of Commons		
Mr	Derek	Lee, MP	Vice-Chair from the House of Commons		
Senator	Normand	Grimard QC	former Co-Chair		
Mr	Tom	Wappel, MP	former Co-Chair		
Mrs	Pierrette	Venne, MP	Députée, Règlementation		
Mr	Jacques	Rousseau	Counsel to the Committee		
Mr	Tônu	Onu	Clerk to the Committee		
Mr	Luigi	Carbone	Director		
Hon	Siafausa	Mulitalo	Deputy Speaker		Parliament of Samoa

Title	First Name	Last Name	Position	Organisation	Jurisdiction
Mr	Stephen	Argument	Director, Projects and Legal Instruments	Department of Veterans Affairs	Canberra
Prof	Dennis	Pearce	Professor	Faculty of Law	Australian National University
Mr	Paul	Bek	Deputy Head	Office of Regulation Review	Commonwealth
Mr	Leigh	Schneider	Senior Legislative Counsel	Office of Legislative Drafting	Commonwealth Attorney-Generals Department
Ms	Margaret	Lawrence	Principal Legal Officer		
Mr	Manuel	Macasaet	Principal Legal Officer		
Ms	Fiona	Pine	Legal Officer		
Mrs	Lani	Blackman	Legal Policy Officer	Australian Law Reform Commission	New South Wales Government
Mr	Jim	Booth	Policy Manager	The Cabinet Office	
Mr	Dennis	Murphy QC	Parliamentary Counsel	Parliamentary Counsel's Office	
Mr	Don	Colagiuri	Deputy Parliamentary Counsel		
Ms	Angela	Duncan	Manager, Rules	Land Transport Safety Authority	Wellington New Zealand
Mr	Grant	Liddell	Crown Counsel	Crown Law Office	Wellington New Zealand
Dr	Bernadette	Tobin	Director	Plunkett Centre for Ethics	St Vincents Hospital
Prof	Margaret	Allars	Professor	Faculty of Law	University of Sydney
Ms	Nicola	Franklin	Senior Lecturer		
Dr	Kathryn	McMahon	Senior Lecturer		
Mr	Martin	Oakley	Director	Office of Regulation Reform	Victoria
Mr	Greg	Bounds	Senior Policy Officer		
Mr	Scott	Jacobs	Principal Administrator	Public Management Service	Organisation for Economic Co-operation and Development
Mr	Rex	Deighton-Smith	Administrator		