REGULATION REVIEW COMMITTEE

PARLIAMENT OF NEW SOUTH WALES

REPORT UPON REGULATIONS

- Boxing and Wrestling Control Act 1986 Regulation (relating to fees)
- Poultry Meat Industry Act 1986 - Regulation (Poultry Meat Industry Regulation (Poultry Meat Industry Regulation 1995)
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Report No.5/51
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MEMBERS:

Mr D Shedden, MP, (Chairman)
Ms J Hall, MP, (Vice-Chairman)
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Mr B Harrison, MP
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FUNCTIONS OF THE REGULATION REVIEW COMMITTEE

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

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

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

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

CHAIRMAN'S FOREWORD

The regulations dealt with in this report illustrate the depth of investigation that the Committee undertakes in order to ensure that regulations do not trespass unduly on personal rights and liberties or otherwise transgress the Committee's grounds of review.

A satisfying aspect of the Committee's consideration of these regulations is that in most cases the Committee is able to clarify its concerns and bring about positive change where necessary, by correspondence with the relevant Ministers and without the need to recommend disallowance to Parliament.

The Committee believes that its experience in bringing about regulatory reform by this consensus approach can now be put to greater use by extending the Committees functions to include the Scrutiny of Bills. The Committee has made several recommendations in previous reports along this line and it has written to the Premier seeking his agreement to it.

Reform of this kind has already been adopted by the Commonwealth Senate and now by several other states.

Jill Hall MP
Vice-Chairman
Regulation Review Committee

DESCRIPTION	Boxing and Wrestling Control Act 1986 Regulation (relating to fees)
GOVERNMENT GAZETTE REF	11 March, 1994 at page 1096
MINISTER	Minister for Sport and Recreation
OBJECT	The object of this Regulation is to increase fees payable under the Boxing Authority Regulation 1986 for registration as a boxer or as an industry participant, for issue of a duplicate medical record book or medical record card for permission to promote or arrange a boxing contest.
COMMITTEE ACTION	The Committee considered this regulation and wrote to the Minister in the following terms. *"The purpose of this Regulation is to increase fees payable under the Boxing Authority Regulation 1986 for registration as a boxer or as an industry participant, for issue of a duplicate medical record book or medical record card for permission to promote or arrange a boxing contest.* *The Committee noted that the fees set by the regulation represent an increase of 100% over a period when the C.P.I. movement was only 27%. My Committee is accordingly concerned as to whether the increase complies with government policy of cost recovery.* *In the circumstances I would be grateful if you could furnish the Committee with details of the assessment of the regulation under Schedule 1 of the Subordinate Legislation Act 1989 and specific advice on whether government policy of cost recovery was considered."*
MINISTER'S FIRST RESPONSE	*"The Boxing Authority of New South Wales, which is charged with* the responsibility for the control and regulation of the sport, has fully endorsed the fee increases and recognises that the Government policy of cost recovery is not a viable proposition in such a small industry. Even with an increase of 100% on the fees set by the regulation the total expenditure for control of the sport in the 1993/94 Budget was $151,161 with a return to the Crown of only $9,000. However, the Authority also recognised that the administrative functions and therefore costs associated with both the Boxing Authority and my Department of Sport Recreation and Racing in

servicing the industry have increased considerably since the initial fee structures were established in 1980.

After careful consideration of the charges that could be levied on the industry, together with discussions with the industry and examination of other controlling bodies of the sport in other States of Australia, it was considered that the fees as regulated were fair and reasonable and would not unduly penalise the industry while ensuring that a suitable cost for the services would continue."

It appeared to the Committee that despite this large increase, the fees had been set on the basis of the industry's limited ability to pay rather than cost recovery.

The Boxing Authority considered that cost recovery was not a viable proposition in such a small industry notwithstanding that the Government spent $142,000 more than the comparatively insignificant $9,000 it received from the industry.

COMMITTEE'S FURTHER ACTION

The Committee sought further advice from the Minister on whether her administration had any plans to make up the annual shortfall of $142,000. She was asked what steps were being taken to reduce Government expenditure on boxing as an alternative to fee increases.

MINISTER'S SECOND RESPONSE

The Minister for Sport and Recreation, in her reply of 17 November 1995, stated that when the Boxing Authority of New South Wales was established in 1986 an undertaking was given that no unnecessary burden would be placed on such a small industry by the proposed legislation. The Minister further stated that this undertaking had been continued by successive Governments to date in the belief that the funds provided within the Department of Sport and Recreation's annual budget for the establishment of a Boxing Authority and the Department's administrative support had been used efficiently and most effectively to ensure that a legitimate and viable industry was maintained.

The Minister said the Authority also recognises that all costs associated with the industry must be closely monitored and reviewed continuously to ensure that all possible avenues for reduced Government expenditure on boxing are examined. This process of review will be continued and economies realised wherever and whenever possible.

The Committee was satisfied with the Minister's response.

DESCRIPTION	Poultry Meat Industry Act 1986 - Regulation (Poultry Meat Industry Regulation 1995)
GOVERNMENT GAZETTE	26 May 1995 p. 2693
MINISTER	For Agriculture
OBJECT	The Explanatory Note to this regulation states that its object is to repeal and remake, without any major changes in substance, the provisions of the Poultry Meat Industry Regulation 1987 and the Poultry Meat Industry (Committee Members) Regulation 1988. The Regulation deals with the following matters: a) the nomination of certain members of the Poultry Meat Industry Committee who are required to be appointed under section 4 (3) (b) of the Act (Part 2); b) the election of certain members of the Poultry Meat Industry Committee who are required to be elected under section 4 (3) (c) of the Act (Part 3); c) other minor, consequential and ancillary matters (Parts 1 and 4), including the prescription fees under sections 8 and 9 of the Act (clauses 43 and 44). This Regulation is made under the Poultry Meat Industry Act 1986, including section (the general regulation-making power) and sections 4, 8 and 9. The Explanatory Note then states that the Regulation comprises or relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public. This means that no Regulatory Impact Statement is required. The Department of Agriculture advised that prior to amendment, the Regulation provided for a fee of $40 for contract approval and $10 for notification. The contract approval fee has been increased to $100 while the notification fee of $10 has not changed. The fees have not been increased since the operation of the Poultry Meat Industry Regulation 1987 commenced on 13 February 1987. Based on CPI increases since 13 February 1987 to 26 May 1995 (date of commencement of Poultry Meat Industry Regulation 1995) the increase in both fees (having regard to CPI increases only and

not cost recovery) should have been 36.64% or $54.65 contract fee and $13.66 notification fee which would have resulted in a far greater shortfall than presently estimated.

It has been estimated by the Department that the current cost to Government of maintaining the Committee is approximately $48,017 ($30,197 for fees for the new independent chairperson and two new independent specialists and $17,820 annual sitting fees of 12 members plus travel expenses. The annual fees, paid half yearly, have not been varied since 1989). The independent chairperson and two independent specialists were to be appointed following an amendment to the Statute Law (Miscellaneous Provisions) Act No 2 of 1994.

COMMITTEE'S ACTION

The Committee wrote to the Minister for Agriculture drawing his attention to the shortfall in revenue to the Government and requested advice on when the Poultry Meat Industry Committee might be fully funded.

MINISTER'S RESPONSE

The Minister, in his letter of 7 December 1995, advised that full cost recovery will not be achieved until 1997. In the meantime, the Minister has stated that a $100 contract fee would apply for 1996.

The Committee was satisfied with the Minister's response.

DESCRIPTION	Medical Practices Act 1992 - Regulation (Relating to infection control standards)
GOVERNMENT GAZETTE	16 June 1995 p.3166 & 5 July 1995 p.3568
MINISTER	Deputy Premier and Minister for Health
OBJECT	The explanatory note to this regulation states that its object is to specify the standards for controlling infection that are required to be followed by medical practitioners in the practice of medicine. The standards are designed to enhance protection against HIV infection and other infectious diseases. The standards to be followed include general requirements (e.g. hand washing before and after direct patient care, wearing gloves while handling blood or other body substances, and proper handling of sharp objects) as well as specific requirements (eg. cleaning of anaesthetic breathing circuit filters after each use). The standards also require the cleaning, disinfection and sterilisation of instruments and equipment.
COMMENT	The explanatory note to the Health Legislation (Miscellaneous Amendments) Bill stated that the amendments enabled regulations to be made concerning the standards for controlling infection which must be followed by dental prosthetists, dentists and medical practitioners in order to enhance protection of patients against HIV infection and other infectious diseases. The Health Department advised the Committee that the standards are expected to be administered and enforced by the New South Wales Medical Board (Board). Failure to adopt the standards would constitute a breach of the Regulation, and the Board would have the power to take action against the registrant concerned for professional misconduct or unsatisfactory professional misconduct or unsatisfactory professional conduct. The penalty for this may range from a fine to suspension or de-registration. In addition to professional sanction, the failure to adopt appropriate infection control standards set out in legislation would leave a registrant exposed to civil liability. A breach of a Regulation may come to the attention of the Board either through a routine inspection (the Board has such powers), or through the existing complaints system. Complaints are generally made to the Health Care Complaints Commission which may conduct an investigation and recommend that the Board take action against the practitioner concerned. Depending on the nature of the breach, the Board may take action by referring the matter to a committee, tribunal or other body for resolution (or to make recommendations to the Board). The Health Care Complaints

Commission advises that of the 140 complaints made over the last eight years relating to care and hygiene, none of these resulted in disciplinary procedures against a registrant.

Although Section 119 of the Medical Practice Act 1992 provides for appointment of authorised persons to inspect premises of registered medical practitioners, the Registrar of the NSW Medical Board advised that this provision has been rarely used. The Schedule 1 Assessment of this regulation under the Subordinate Legislation Act seems to rely on complaints received by the Health Care Complaints Commission or the Board as the avenue for policing infection control.

COMMITTEE'S ACTION

The Chairman wrote to the Deputy Premier and the Minister for Health seeking his advice as to details of any program for enforcing the infection control standards for medical practitioners apart from the Health Care Complaints Commission.

MINISTER'S RESPONSE

The Deputy Premier and Minister for Health, in his letter of 29 January 1996, advised the following:-

"I am advised that the NSW Health Department funded the establishment of an Infection Control Resource Centre which commenced operation in July 1995. The Resource Centre is responsible for the provision of practical advice and information to health care workers on the implementation of the infection control standards and the Department's Infection Control Policy. The Resource Centre is accessible to health care workers in both the public and private sectors.

A pilot program has been introduced in NSW to provide systematic data on identifying high and low risk procedures, and equipment in relation to exposure to blood and body substances in health care settings.

The Department is currently developing infection control educational packages for health care workers. Officers of the Department and the Resource Centre have participated in educational sessions on infection control issues for health care workers in both the private and public health care settings."

COMMITTEE'S FURTHER ACTION

In view of public concern associated with infection control in the medical profession particularly, the Committee asked the Minister or his nominee to address the Committee on infection control issues and the steps being taken to educate medical practitioners in this field.

The Director of the AIDS/Infectious Diseases Branch, NSW

Department of Health, attended the Committee's meeting on 6 June 1996 to brief the Committee.

The Director outlined a brief history of infectious diseases emphasising HIV/AIDS and mentioned a publication entitled "Guidelines USA 1987". He also referred to the problem of blood-borne organisms and the part that they play in infectious diseases generally and said a blood policy was designed and issued by NSW Health in 1988, followed by a further detailed policy in 1992.

The Director said that infection control programs are included in regulations covering dental prosthetists; medical practitioners and nurses and recently in respect of dental technicians, podiatrists, physiotherapists and dentists.

He said that the responsibility for ensuring the infection control programs are implemented will be with the various Area Health Services and that any complaints from employees and visitors to hospitals etc are still to be referred to the Health Care Complaints Commission.

He said that there would be accreditation for hospitals when the infection control programs had been fully implemented.

The Committee was satisfied with the Directors briefing.

DESCRIPTION

Local Government (Water, Sewerage and Drainage) Regulation 1993 (Amendment concerning dual flush toilets and other things)

GOVERNMENT GAZETTE

1 July 1994, p.3279

MINISTER

Local Government

OBJECT

The Explanatory Note to the regulation states:

"The object of this Regulation is to make minor miscellaneous amendments to the Local Government (Water, Sewerage and Drainage) Regulation 1993. However, a new clause will prescribe conditions with which water closet suites will be required to comply. The clause will not apply to water closet suites that are already installed on premises. In particular, the clause will require water closet suites to be installed in certain classes of residential buildings to be of the dual flushing kind. The clause also imposes restrictions as to the capacities of cisterns for new water closet suites.

This Regulation is made under the Local Government Act 1993, including section 748 (the general regulation making power) and section 127."

NEW AMENDMENTS

The amendments the subject of the present regulation partly arose out of the Committee's 25th report to Parliament on the principal regulation. Some amendments merely clarify the wording of provisions in the regulation.

The substantive amendments concern the following matters:

- Fire hydrants—providing for councils to be able to remove unnecessary hydrants and exclude low capacity water mains from the requirement to have hydrants; the former matter was proposed in the RIS and the latter matter was suggested by Guyra Shire Council in its submission on the RIS.

- Stormwater drains—clarifying that "drains" referred to in cl. 36 of the main regulation are "stormwater" drains, as suggested by the Department of Housing in a late submission on the RIS.

- Sewerage systems owned by a water board—restoring a provision of the 1919 Act giving councils the power to order connection to such a system when it is available, such as in Sydney and Hunter Valley areas; this amendment was proposed in the RIS and supported by Shellharbour Council in a submission.

- Substances prohibited from being discharged into council sewers and drains—clarifying wording of the clause as

proposed in the RIS.

- Trade waste - requiring certain details in applications to discharge trade waste into a sewer, allowing councils to specify conditions in approvals to discharge, and giving councils authority to revoke approvals. This amendment was made following a submission by Environmental Management Pty Ltd on the principal regulation. It suggested that clause 43 should be amended to permit partial treatment of wastes on-site to reduce either the strength or volume of wastes entering a sewerage system. The Department said this proposal had merit, and after comment by the Department of Health and Public Works the amendment was made.

- Dual flush toilets — requiring these to be installed in houses, small hostels and home units, with restrictions on flushing capacities; this amendment was proposed in the RIS and supported by Shoalhaven City Council in its submission.

- Inspections and testing—clarifying that the Minister for Public Works is the minister responsible for authorising councils to approve licensed contractors to inspect and test water, sewerage and drainage works, as proposed in the RIS.

- Council maps of water, sewerage and drainage works—requiring councils to record information relating to the works that could affect construction work as proposed in the RIS.

- Flood retarding basins—removing an unnecessary approval, in accordance with a submission by Holroyd City Council.

The Committee contacted the Local Government and Shires Associations, and was told that to their knowledge no concerns or problems had been experienced by councils with these amendments.

Unlike the main regulation, most of the issues in the amendment were well canvassed and have received general support from the industry.

PRINCIPAL REGULATION

In its 25th Report to Parliament on the principal regulation which this one amends the Committee said:

(1) The RIS fails to properly assess the costs and benefits of the regulation and its alternatives.

(2) In particular that the standards adopted in the regulation and the administrative provisions have not been compared with other options in terms of their costs and benefits.

(3) The assessment of alternatives that has been conducted is not specific to the provisos and has not been quantified.

(4) It is unclear whether any of the amendments proposed in the RIS will be made.

(5) An RIS should be carried out by the Department within 4 months of the handing down of the Report of the Joint Select Committee on the Water Board. This will enable the Department to have regard to the recommendations in that report as well as to the recommendations arising out of the consultation program. That RIS should fully assess the regulation and relevant alternatives in terms of their quantified costs and benefits.

MINISTER'S FIRST RESPONSE

On 31st August 1994 the Minister for Energy and Minister for Local Government and Co-operatives responded to the Committees report in the following terms:

"I refer to Report No. 25 of the Regulation Review Committee concerning the Regulatory Impact Statement (RIS) published in relation to the Local Government (Water, Sewerage and Drainage) Regulation 1993 which was tabled earlier this year.

The report has been carefully reviewed. A detailed response prepared by the Department of Local Government and Co-operatives is attached.

At this stage, I do not think that a Supplementary Regulatory Impact Statement is required. Nevertheless, I have asked the Department of Local Government and Co-operatives to review the regulation in early 1995.

I would appreciate any comments the Committee might wish to make about the terms of reference and strategic directions which might be addressed in that review.

I have also taken the opportunity to bring the Committee's report to the attention of the Deputy Premier and Minister for Public Works and Minister for Ports, and the Chief Executive, Standards Australia, who will have a particular interest in the matters raised by the Committee."

The major concern in the detailed response attached to the Minister's letter was that a cost benefit assessment for each standard would raise major cost implications for Government administration and would duplicate effort and policy responsibilities within Government. The Minister nevertheless undertook to review the Regulation early in 1995.

MINISTER'S SECOND RESPONSE

The Minister for Energy and Minister for Local Government & Co-operatives, wrote again to the Committee on 18 October 1994. He said "I refer to my letter dated 31 August 1994 responding to Report No. 25 of the Regulation Review Committee in respect of the Local Government (Water Sewerage and Drainage) Regulation 1993.

You will recall that I indicated I would bring the Committee's report to the attention of the Deputy Premier and Minister for Public Works, and the Chief Executive, Standards Australia. My colleague the Minister for Public Works has indicated the matter is being carefully examined, but I am pleased to furnish for the Committee's information the preliminary comments of Standards Australia on this matter."

The Letter from Standards Australia dated 16 September 1994 said as follows: "Thank you for your letter dated 31 August 1994 seeking Standards Australia's views on the report of the NSW Government's Regulation Review Committee concerning the Local Government (Water, Sewerage and Drainage) Regulation 1993.

The issue of the conduct of cost/benefit analysis of the introduction of Australian Standards is an issue of considerable debate both within and outside of Standards Australia at this point of time. This issue is valid for Standards prepared for voluntary application but is more relevant for cases where standards are referenced in regulations.

As there is no easy response Standards Australia can make at this time, I will ask our senior people involved with plumbing installations Standards to investigate this issue in conjunction with our Legal Officer. This investigation may then be broadened to a wider debate on the need for Standards Australia to be involved in the process of the impact of referencing Australian Standards in regulations. I will keep you informed of developments in our investigations."

DISCUSSIONS WITH STANDARDS AUSTRALIA

The committee subsequently discussed this issue and other matters concerning standards with the Chief Executive of Standards Australia on 17 August 1995. With regard to the Committee's primary concern, the Chief Executive indicated that a limited cost-benefit analysis on the need for each standard was conducted in-house by Standards Australia but that this mainly concentrated on the costs to the organisation itself.

The Chairman indicated that in the past the Committee has recommended in its reports to Parliament that the NSW Parliamentary Counsel be involved in the drafting of standards. He asked what Standards Australia's view would be on the involvement of that office in the preparation of standards.

The Chief Executive replied that generally the Association welcomes any assistance from Government that is available in the preparation of standards. He said that the Association does have legal expertise available but that special drafting assistance is not usually provided to each of the committees which draft standards.

The members indicated that the Committee was aware of the recommendations of the Kean Inquiry into Australian standards and conformance infrastructure.[1] Among other things the report recommended that if standards are to be incorporated in legislation they should be the subject of a full cost benefit analysis and be written for that purpose, not taken off the shelf from amongst voluntary standards, as had occurred in the past.

The Chief Executive was asked to address the Kean Committee's recommendation on the need for all stakeholders including industry, the community and interest groups to be involved in the preparation of standards.

He said that Standards Australia was confused by this recommendation as it believed that it incorporated a broad spectrum of interest in committees, however, a major problem, as with the cost-benefit analysis, was funding. He said that the only criticism he had heard on this aspect was that consumer groups were not adequately represented. He also said that his organisation was prepared to seek supplementation of funding from the Australian Federation of Consumer Organisations (AFCO) if it was necessary to include consumer group's representatives on committees.

The Chief Executive was also asked whether a full-time economist would be required to be employed by Standards Australia to comply with the Kean Committee's recommendation for full cost-benefit analysis of standards. He replied that at least one and possibly two would be required and that provision may be able to be made within the budget of Standards Australia for this purpose if government favoured assessment of codes.

On the issues of concern to the Committee with respect to assessment of standards, Standards Australia were in full agreement subject to the Government giving appropriate directions in this area.

The Committee is pleased to note that all standards incorporated in national scheme legislation must be assessed in accordance with

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1 "Linking Industry Globally" Report of the committee of Inquiry on Australian Standards and Conformance Infrastructure. Mr Bruce Kean AM, Chairman. Canberra 1995.

Principles and Guidelines adopted by the Council of Australian Governments in April 1995.

These Principles and Guidelines require the preparation of a Regulatory Impact Assessment statement on national scheme Acts, Regulations and Standards, before they can be approved by the relevant Ministerial Council.

The Committee believes that standards intended for adoption in NSW legislation but which are not part of a national scheme, should be similarly assessed before they are approved for incorporation in legislation.

DISALLOWANCE OF STANDARDS

The Committee resolved to proceed with its second line of inquiry arising from its 10th report to Parliament on Codes and Standards incorporated in regulations. In that report the committee recommended, among other things, that parliament should have power to disallow the whole or part of a standard incorporated by reference in legislation.

The Committee has been awaiting this action for some time. The production by the Parliamentary Counsel of a comprehensive list of codes incorporated by reference in regulations was said to be a necessary precursor to any such amendments. The position was stated as follows in a letter dated 9 June 1992 by the Parliamentary Counsel:

"I refer to your letter of 6 March 1992 (your reference 1460) to the Attorney General about the preparation of a comprehensive list of all codes and other publications that have been applied, adopted or incorporated in statutory rules, and the question of possible amendments to the Interpretation Act.

Copies of your letter and his reply to you have been sent to me.

As you recall, Mr Dowd wrote to you indicating that I would prepare a list of such publications, after which the question of the amendment of the Interpretation Act could be considered. The preparation of a comprehensive list has not proved an easy matter, and progress was delayed by the pressure of work arising from the parliamentary program. It may be that the list will have to be developed over a longer time frame, and that interim lists can be prepared which would be indicative of the use of such publications. Perhaps the need for the purpose of a full list could be the subject of discussion between the Committee's officers and myself.

For your information, I enclose a copy of the list in its current form. It is incomplete and has not been fully checked.

A report on this matter will be finalised as soon as possible, and I will keep you appropriately informed of progress in anticipation of a more formal reply."

As no further action had been advised, the Committee, in its letter of 29 October 1993, requested that the Parliamentary Counsel proceed with the amendments to the Interpretation Act without finalising the list. The Committee wrote again on 29 June 1995 seeking discussions on the standards.

Finally, the matter was raised with the Premier on 23 October 1995.

The Committee's letter said:

"Dear Premier

Disallowance of Standards Adopted in Regulations

In 1990 my Committee tabled its tenth report which concerned the incorporation by reference of codes and standards in regulations. One of my Committee's recommendations was that Parliament should have the power to disallow in whole or in part, a standard or code incorporated by reference in legislation. (copy of report attached)

From that time to the present the Committee has been awaiting the finalisation of a list of codes incorporated by reference which was seen by the Parliamentary Counsel as a necessary precursor to the amendment of the Interpretation Act to enable whole or partial disallowance of a code.

I understand that the Standards Association has, for some time, prepared a list of all the standards incorporated in State and Commonwealth legislation. This should expedite the Parliamentary Counsel's task considerably.

My Committee previously requested, in 1993, that action to amend the Interpretation Act proceed in advance of the conclusion of the list being prepared by the Parliamentary Counsel. I would accordingly request that you give early consideration to amending the Interpretation Act to enable standards to be disallowed in whole or in part by the Parliament.

Yours faithfully

Doug Shedden MP
Chairman
Regulation Review Committee"

On 20th June 1996 the Legal Officer of The Cabinet Office advised as follows:

"I refer to your fax yesterday following up a letter from the Committee dated 23 October 1995.

I apologise for the delay in response. Consideration is currently being given to the suggested amendments and in particular whether they should be included with another proposal to clarify the operation of the Interpretation Act, which is currently under consideration for next session. I will be in contact with you shortly to provide more formal advice."

RECOMMENDATION

The Committee's 25th report was vindicated by the response of Standards Australia which sees cost benefit analysis as valid for standard referenced in regulations.

The Committee calls on the Government to provide appropriate advice to Standards Australia on the preparation and assessment of standards intended for adoption in NSW legislation.

The Committee calls on the Premier to introduce the amendments to the Interpretation Act with respect to the disallowance of standards as recommended in its 10th report.

DESCRIPTION	Dairy Industry Act 1979 - Regulation (Dairy Industry Conference Regulation 1994)
GOVERNMENT GAZETTE	16 August, 1994 at page 4671
MINISTER	Minister for Agriculture
OBJECT	The explanatory note to the Regulation states that the object of this Regulation is to: *"repeal and remake, with minor modifications, the provisions of the New South Wales Dairy Industry Conference Regulation 1986. The Regulation makes provision in respect of the following matters:* *(a) the appointment or election and the terms of office of the members, Chairperson and Deputy Chairperson of the New South Wales Dairy Industry Conference (Part 2);* *(b) the procedure for the calling and holding of meetings of the Conference (Part 3);* *(c) the appointment and the terms of office of members of the Executive Committee of the Conference (Part 4);* *(d) the procedure for the calling and holding of meetings of the Executive Committee (Part 5);* *(e) other matters of a formal nature (Parts 1 and 6)."* The Regulatory Impact Statement (RIS) says that the objectives of the proposed Regulation are: • to make provision for the election or appointment and the terms of office of the members, Chairperson and Deputy Chairperson of the New South Wales Dairy Industry Conference and its Executive Committee. • to make provision for the procedure for the calling and holding of meetings of the Conference and its Executive Committee. The background to the remaking of the Regulation is set out in the RIS: *"The New South Wales Dairy Industry Conference is a statutory body constituted under the Dairy Industry Act 1979 and is representative of all sectors of the New South Wales dairy industry, including consumers. The Act provides that the regulations may make provisions relating to the constitution and procedure of the*

Conference and its Executive Committee.

The existing Regulation, the New South Wales Dairy Industry Conference Regulation 1986, was based on proposals submitted by the conference itself. Those proposals were progressively refined at successive meetings of the Conference and its Executive Committee and the resulting Regulation was prepared with close consultation between the Conference and the New South Wales Corporation."

COMMITTEE'S RESPONSE

After considering the regulation, the Committee wrote to the Minister for Agriculture in the following terms:

"Dairy Industry Act 1979 - Regulation (Dairy Industry Conference Regulation 1994)

Schedule 2 of the Subordinate Legislation Act prescribes that a Regulatory Impact Statement must include an assessment of the costs and benefits of the proposed statutory rule and the alternative options. This assessment is to take into account social costs and benefits, both direct and indirect. If possible quantification should be attempted of the costs and benefits. However, where this is not feasible, the anticipated impacts of the proposed regulation and each of the alternatives should be stated and presented in a way that permits a comparison of the costs and benefits.

The RIS in this case does not fulfil the requirements of the Subordinate Legislation Act. Firstly, to state that the do nothing option is "not considered an appropriate or necessary option" falls short of the requirement to prepare an assessment of its costs and benefits. An analysis of the costs and benefits must include a consideration of the economic and social costs and benefits, both indirect and direct. In this case the RIS does not give any proper consideration to the option of not proceeding with any action.

Secondly, other than remaking the regulation and continuing with the existing procedures the RIS mentions the alternative option of devising different procedures. However, rather than assessing the relative costs and benefits of this option a statement is simply made that, "the alternatives of continuing with the existing procedures or devising different ones are cost neutral in that they have not been identified as imposing any cost on the industry or Government." This cost examination should have appeared in the RIS itself.

The statement in the RIS that there is no difference in costs between the two options, does not preclude an assessment of which option involves the greater benefit to the community.

Although there may be no difference in the costs of each option, one

of the options may be of greater benefit to the community.

The process of consultation undertaken by the Dairy Corporation involved contact with industry associations. A notice was published in the Government Gazette, the Sydney Morning Herald and a number of industry publications. Submissions were received from the New South Wales Dairy Farmers' Association; The Retail Traders' Association of New South Wales; the New South Wales Dairy Industry Conference; the Amalgamated Milk Vendors Association Inc; and the New South Wales Milk and Dairy Products Association. Concerns raised in those submissions were taken into account and the proposed Regulation was amended accordingly.

Although the RIS as prepared cannot be considered satisfactory the Committee is satisfied that all major concerns raised in the submissions were addressed by the New South Wales Dairy Corporation. The Committee accordingly draws your attention to the defects in the RIS and requests that you direct your officers in future cases to adhere to the requirements of the Subordinate Legislation Act."

MINISTER'S RESPONSE

The Minister responded as follows:

"I refer to your letter of 16 August, 1995 concerning the Dairy Industry Act 1979 - Regulation (Dairy Industry Conference Regulations 1994).

I note that although the Regulatory Impact Statement prepared was not considered satisfactory, your Committee was satisfied that all major concerns raised were addressed by the NSW Dairy Corporation.

I will ensure that the Corporation is aware of the defects in the Regulatory Impact Statement and that the requirements of the Subordinate Legislation Act are adhered to in future cases."

The Committee decided that no further action was necessary.

DESCRIPTION	Water Board (Corporatisation) Act 1994 - Sydney Water Corporation Limited (Catchment Management) Regulation 1995
GOVERNMENT GAZETTE	25 August 1995 p.4858
MINISTER	for Urban Affairs and Planning
OBJECT	This regulation was the subject of the Committee's 32nd Report to Parliament of November 1995. It detailed eight recommendations as follows: 1) The Committee recommends that Sydney Water Corporation Limited should develop arrangements to ensure adequate consultation takes place with relevant interest groups on future regulatory proposals. 2) The Committee recommends that a formal cost/benefit assessment of the Sydney Water Corporation Limited (Catchment Management) Regulation 1995 be carried out by Sydney Water Corporation Limited and that this be conducted in conjunction with the preparation of the management plan for the special areas covered by the regulation. 3) The Committee recommends that clause 8 of the regulation be referred to the Parliamentary Counsel for review because of its lack of procedural fairness. 4) The Committee recommends that the existing controls on access to Schedule 1 Special Areas should not be materially relaxed unless it is demonstrated, after an appropriate impact study, that it is practicable to do so without compromising the obligations of Sydney Water Corporation Limited to protect the quality of stored water. 5) The Committee recommends that Clauses 16, 19, 20 and 21 be amended to properly reflect the permissible recreational activities that Sydney Water Corporation Limited agreed, during the course of the inquiry, could be carried on in Schedule 2 areas. 6) The Committee recommends that a provision be included in the National Parks & Wildlife (Land Management) Regulation 1995 to alert the public to the need to read its provisions as being subject to the Sydney Water Corporation Limited (Catchment Management) Regulation 1995. 7) The Committee recommends that the joint sponsors prepare a detailed strategy to promote compliance with the Sydney Water

Corporation Limited (Catchment Management) Regulation 1995 if this has not already been done. This should be carried out in conjunction with a review of the regulations and development of the management plan.

8) The Committee recommends that Sydney Water Corporation Limited carry out an examination of the impact on stored waters of activities conducted on private lands within Schedule 1 and 2 special areas and an appraisal of the effectiveness of existing planning controls in regulating, where necessary, those activities.

SUBSEQUENT ACTION

Recommendation (3) and (5) have been satisfied in that the Regulation was amended effective from 8 December, 1995.

The amendments recast Regulations 6, 7 (1), 8 (1), 9 (1), 23, 24 and 25 (3) so that the various activities under the regulations concerned are not offences when the Corporation's consent has been obtained and any conditions of such consent have been complied with.

Similarly, in repealing and remaking Regulations 13 - 21 inclusive, the clauses have been amended to allow for entry on Corporation land covered by Schedules 1 and 2, and includes other activities (opening gates, camping and lighting of fires on both Schedule 1 and Schedule 2 lands) subject to approval of Sydney Water Corporation and any conditions of such approval. Fishing on Schedule 1 land is prohibited.

Certain other activities, including driving a vehicle or riding an animal; bringing on to or having in possession any plant or any animal that is not native to the "special area" concerned is prohibited unless the consent of the Corporation is obtained and subject to any conditions of such consent.

Regulation 26 (A) has been included to explain the various ways the consent of the Corporation may be obtained, viz written statement; signs or notices displayed on the land, or a licence, permit, approval or other form of authorisation.

COMMITTEE'S DECISION

The Chairman wrote to the Minister for Urban Affairs and Planning thanking him for his co-operation in achieving the result obtained and attaching a copy of the letter received from Mr Muir raising the issue of community input into the management plans. Included in the letter was a request for advice as to the position in respect of the other recommendations in the Report of Inquiry.

MINISTER'S RESPONSE

In a letter received 28 June 1996 the Minister responded as follows:

"Thank you for your letter of 18 April 1996 concerning progress towards implementing the recommendations of the Regulation Review Committee into the Sydney Water Corporation Limited (Catchment Management) Regulation 1995 (Report No 32 of November 1995).

With regard to the recommendations, Sydney Water has advised as follows:

1. *Sydney Water Corporation is concerned that adequate consultation take place with relevant interest groups on future regulatory proposals and will consult with officers supporting the Regulation Review Committee to ensure that this occurs. With regard to catchment management, Sydney Water has prepared a detailed consultation plan for the Joint Plans of Management process, and will consult with, among others, the community stakeholders involved in the Committee's deliberations on the 1995 regulation.*

2. *The Corporation is preparing to undertake a formal cost-benefit assessment of its catchment management regulation. The scope of such an undertaking is considerable, however, and officers of the Corporation are of the view that such an assessment may require input from international experts and may need to be undertaken over a longer time frame than the preparation of the Joint Plans allows. Sydney Water will advise on the full scope of this project shortly.*

3. *Clause 8 of the regulation was referred to Parliamentary Counsel, as recommended by your Committee, and was amended.*

4. *The Corporation is investigating the scope of the impact assessment required to comply with this recommendation and will release details of its proposals to undertake this assessment shortly.*

5. *Clauses 16, 19, 20 and 21 were amended, as recommended by your Committee.*

6 & 7 *The Corporation is reviewing its compliance strategy for the regulation. The efficacy of an amendment to the National Parks and Wildlife (Land Management) Regulation 1995 and other mechanisms are part of this review, and recommendations for effective information and compliance mechanisms for catchment users will be developed.*

8. *Sydney Water has a broad understanding of the impact on stored waters of activities on private lands and facilitates several programs to address these impacts, such as Landcare and soil conservation catchment protection schemes. The information held will be utilised in the Joint Plans preparation process, which will examine the effectiveness of existing management practices and make recommendations for improvements. Sydney Water is currently negotiating with the Department of Urban Affairs and Planning for a Section 117 directive. Sydney Water supports planning guidelines to enhance catchment protection and ensure consistency in catchment planning.*

I trust that this information is satisfactory to the Committee and I will keep you informed of the progress of the preparation of the management plan, which will encompass the activities recommended by the Committee, throughout the coming months."

The Committee was satisfied with the Minister's response and it will await further advice on the Management Plan.

DESCRIPTION	Search Warrants Act 1985 - Regulation (Search Warrants Regulation 1994)
GOVERNMENT GAZETTE	26 August, 1994 at page 5116
MINISTER	Attorney-General
OBJECT	The Explanatory Note to this regulation states that its object is to repeal and remake, without any changes in substance, the provisions of the Search Warrants Regulation 1986 under the Search Warrants Act 1985. The new Regulation deals with the following matters: (a) the forms for applications for search warrants, search warrants, occupiers' notices and reports to justices under sections 11, 14, 15 and 21 of the Act (clauses 4, 5, 6 and 8); (b) the giving of receipts for things seized while a search warrant is being executed (clause 7); (c) the keeping of documents relating to search warrants and their inspection by interested persons (clause 9); (d) the prohibition of disclosure of certain documents whose disclosure could jeopardise the safety of any person (clause 10); (e) other formal maters (clauses 1, 2, 3 and 11). This Regulation is made under the Search Warrants Act 1985, including section 26 (the general regulation making power) and sections 11, 13, 14, 15 and 21. This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989. This is a principal Statutory Rule which required the preparation of a Regulatory Impact Statement and public advertisement before it could be made. The Committee noted that the proposal for the regulation was published in the Gazette and a newspaper but that no submissions were received. The RIS does not contain any proposed consultation programme. This is a breach of schedule 2 and section 5 of the Subordinate Legislation Act. The Minister's covering letter merely states that a notice was published in the Gazette and

newspaper inviting comments but no submissions were received. The Minister's responsibility is to ensure that all persons and groups likely to be affected by the regulation are appropriately consulted.

The Committee resolved to write to the Minister indicating that the Law Society, the Privacy Committee and the Privacy Foundation would be affected by the regulation and should have been consulted before it was made. It recommended that this consultation should now be undertaken.

MINISTER'S FIRST RESPONSE

The Parliamentary Secretary to the Attorney General and Minister for Industrial Relations responded as follows:

"In the absence of the Attorney General overseas I have been asked to reply to your letter dated 8 June 1995 concerning the Search Warrants Regulation 1994.

I advise that consultation is now underway in respect of the Regulation with the Law Society, the Privacy Committee and the Privacy Foundation and that you will be advised in due course of any matter arising out of that consultation."

MINISTER'S SECOND RESPONSE

The Committee received further advice from the Minister in the following terms:

"I refer to your letter dated 4 January, 1996 concerning the Search Warrants Regulation 1994.

I advise that consultation was undertaken with the NSW Law Society, the NSW Privacy Committee and the Privacy Foundation. Responses were received from the NSW Law Society and the NSW Privacy Committee and copies of those submissions are attached.

Neither body had objections to the substance of the Search Warrants Regulation 1994. Each body did make suggestions for minor changes. I do not presently agree that these changes are warranted but the suggestions will be examined in the context of a general review of Search Warrants legislation this year."

The President of The Law Society, wrote to the Director of the Criminal Law Division in the following terms:

"Re: Search Warrants Regulation 1994

I refer to your letter of 12 July 1995 in which you conveyed the

Regulation Review Committee's request that the Law Society be invited to comment on the provisions of the Search Warrants Regulation 1994.

The Society's Criminal Law Committee has now had the opportunity to consider the Search Warrants Regulation 1994.

The Committee draws your attention to clause 7 of the Regulation (Receipts for things seized) and notes that, at one time, there was a penalty attached to a failure to provide the occupier of premises with a receipt for items seized.

The Committee submits that the penalty for failing to provide a receipt should be reinstated, in an amount relevant to current circumstances.

Thank you for the opportunity to comment."

The Privacy Committee wrote to the Director of the Criminal Law Review Division in the following terms:

"I refer to your letter of 12th July, 1995 regarding the Search Warrants Regulation, 1994.

The Committee welcomes the addition of Clause 10 to the Regulation and the provision for authorised justices to certify certain records. However, in order to achieve consistency between this regulation and similar provisions elsewhere (eg. Freedom of Information Act 1989 Section 25 (4)), the following sub-clause could be added to clause 10:

"Access to an entire document shall not be refused where it is practicable to give access to a copy of the document from which certified matter has been deleted."

Please contact us if we can be of any further assistance."

The Committee was satisfied with the Minister's response.

DESCRIPTION	Seeds Act 1982 - Regulation (Seeds Regulation 1994)
GOVERNMENT GAZETTE	26 August, 1994 at pages 5136-5143
MINISTER	Minister for Agriculture
OBJECT	The object of the Regulation was to repeal and remake, with some minor changes, the provisions of the Seeds Regulation 1983. The regulation was made in connection with the staged repeal of regulations under the *Subordinate Legislation Act 1989*. The objective of the Regulation is to ensure the availability of quality seed and reduce the spread of prohibited and declared weeds. The Committee found that, with the Seeds Act itself, which has provisions for a certified seed program, the objective of quality seeds had been achieved. A 1994 primary producer survey confirmed that there was no critical shortage of seed for sowing in the 1995 season. The spread of weeds is more difficult to measure because NSW Agriculture has prepared weed profiles or maps for some weeds but not others. This Regulation, apart from providing the definitions and details necessary to implement the Act, attempts to meet its objectives by regulating the labelling requirements of seed parcels and maintaining a trace back mechanism to identify sources of poor quality seed. These instruments can be quite ineffective for controlling the spread of weeds when viewed in the broader context of rural life. For instance the current drought has seen movements of stock fodder, both within and across the State's borders, which are not controlled for their potential to distribute weed seeds. The effectiveness of the Regulation is also hampered by its lack of enforcement. Since 1982 there have been no successful prosecutions under the Act. This may be a function of the legislation as it has quite open exemptions and low penalties. However, the resources used for inspection, sampling, testing and administration of the Regulation over the whole state are calculated at only 30 man days per year.
CONSULTATION	During the consultation process the responses indicated some confusion concerning the application of the regulations to seeds of a flowering or grass type. Indeed there seems to be some confusion concerning the application of the act generally to the commercial seeds industry and also the application of the regulations to seeds other than pastoral seeds. A confusing situation arises over the matter of non-pastoral seeds. At least at germination point it appears that these seeds are covered

by the *Horticultural Stock and Nurseries Act 1969*. The *Seeds Act* though does not exempt such seeds from its application.

The extent of the application and enforcement of the Seeds Act to small seeds packets, merchant to merchant transfers and low volume seed sales directly between growers is not clarified by the regulation nor in the RIS.

COMMITTEE ACTION

The Committee requested clarification from the Minister as to following issues:

* Any overlap between the *Seeds Act 1982* and the *Horticultural Stock and Nurseries Act 1969*.

* Whether the effectiveness of the regulation is being hampered by its lack of enforcement.

* The degree to which the regulation has assisted in reducing the spread of prohibited and declared weeds.

* The Department's attitude to the Queensland, South Australian and Victoria governments' proposals relating to new seeds legislation.

MINISTER'S RESPONSE

In a letter of 4 October, 1995 the Minister for Agriculture advised:

"I refer to your letter of 2 June, 1995 concerning the Seeds Act 1982 - Regulation (Seeds Regulation 1994) and provide the following comments to the matters you have raised:

New South Wales Agriculture is currently reviewing all its legislation. The basis for this review include compliance with the Mutual Recognition Act, New South Wales Government Guide to Best Practice Regulation, compliance with Competition Policy and the need to ensure our legislation meets international risk management standards established under the GATT negotiations. Both the Seeds Act 1982 and Horticultural Stock and Nurseries Act 1969 are part of the review, and I would expect that in 1996, depending on conformity with the above policy directions, both Acts may be repealed or rationalised. The Seeds Act and the Horticultural Stock and Nurseries Act do contravene sections of the Mutual Recognition Act, and the Department is examining their compliance with Competition Policy.

In relation to your specific questions I provide the following information.

1 The Seeds Act 1982 and the Horticulture Stock and Nurseries Act 1969 relate to plant propagation material that includes

both seeds and vegetative planting material. The two Act do overlap in that they provide for regulation of sale, propagation and distribution of plant propagation material. The key reasons for controlling the sale of this material has been to provide information to buyers, facilitate pest disease and weed control and ensure trueness to type. The Acts operate in two distinct ways in the Nursery and Seed industry.

2. *Despite lack of active enforcement, the Seeds Act has been relatively effective in New South Wales. NSW Agriculture is generally reluctant to achieve compliance through active enforcement of the provisions of the Regulation, as it has proved difficult over time to get a conviction under this Act (this is similar to other states). NSW Agriculture has preferred to gain compliance through promotion and education and believes it has proved to be an effective deterrent to wrongful action in the sale of seed. NSW Agriculture, through its network of inspectors across the state, acts quickly on complaints. As indicated above NSW Agriculture intends reviewing the Seeds Act and to this end, there have been extensive discussions with Victoria and South Australia in trying to achieve a uniform approach to seeds legislation across Australia. This matter is currently under active discussion with the Australian Seeds Committee.*

3. *It is difficult to be quantitative about how effective the Seeds Act has been in reducing the spread of certain weeds, but it is having some effect. Less than 2% of certified seed fails certification each year because of prohibited seed contaminants. Most growers and purchasers of seed buy according to the label and are discerning when it comes to certain declared weeds e.g. docks in lucerne.*

   All merchants of seed buy exclusively on label and seed test certificate results, and are very discerning in their purchases. Merchants would handle at least 75% of all pasture seed sales and up to 10% of all cereal sales in New South Wales each year.

4. *NSW Agriculture supports uniformity of legislation in Australia. NSW Agriculture chairs the Australian Seeds Committee (ASC), (a sub committee of Plant Industries Committee) and is working with all states to develop policies to streamline seeds legislation across Australia. At the recent ASC meeting a working group was nominated to progress this issue further.*

   NSW Agriculture has always supported the adoption of uniform agricultural legislation in Australia. However, with the

impact that competition policy, mutual recognition, and the review as outlined above will have, it could eventually result in either all or major portions of the Seeds Act being repealed or parts incorporated in other Acts."

The Committee was satisfied with the Minister's response.

DESCRIPTION	Racing Appeals Tribunal Act 1983 - Regulation (Racing Appeals Tribunal Regulation 1994)
GOVERNMENT GAZETTE	26 August 1994 at page 5104
MINISTER	Minister for Gaming and Racing
OBJECT	The Explanatory Note to this regulation states that its object is to repeal the Racing Appeals Tribunal Regulation 1984 and to replace it with this Regulation which is in substantially the same terms as the Regulation to be repealed. This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989. The regulatory impact statement (RIS) prepared for the regulation sets out its objectives as follows: *"The proposed statutory regulation will provide for an appeals mechanism for the thoroughbred racing industry.* *The objectives of the proposed regulation are:* *a) to make provision for appeals to the Racing Appeals Tribunal in respect of certain decisions;* *b) to specify the classes of cases in which such appeals may be made;* *c) to prescribe the procedures to be followed at or in connection with such appeals;* *d) to provide for the payment of fees and costs in respect of such appeals; and* *e) to make provision for all matters incidental to or connected with such appeals."*
OPTIONS	Only two options were considered in the RIS, the preferred option of making the regulation as drafted or no regulations. This is an unduly constrained examination of available options. There is a wide discretion as to procedures, fees, suspension, and also the class of matters in which an appeal may not be made. Simply providing the option of making the regulation as drafted or not is no compliance with the Subordinate Legislation Act. The impact assessment section in the RIS does not contain the required cost benefit analysis of the regulation. At item 5.1 it says *"there will be no additional costs to the Australian Jockey Club as result of the new regulation because the regulation merely continues the former one with some amendments"* This is not the cost benefit

analysis as required under the Subordinate Legislation Act, as the costs of the regulation itself are required to be assessed, not merely incremental costs arising from any amendments to the old regulation.

CONSULTATION

In the consultation process, the Australian Jockey Club made several recommendations which have been implemented in the regulation. A major recommendation was made by the NSW Racehorse Owners Associations Ltd for the inclusion of owners of race horses in the appeal mechanism. The Association suggests that if a horse is disqualified and or the owners of that race horse are denied prize money, an appeal should lie from such a decision. No response to this letter is referred to either in the covering letter or in the papers attached to the RIS. Clearly, the limitation of appeals was one of the matters that were to be assessed in the RIS.

COMMITTEE'S ACTION

The Committee wrote to the Minister informing him of the above defects in the RIS and seeking his advice on what consideration he gave to the submissions, specifically the representations made by the NSW Racehorse Owners Association Ltd.

MINISTER'S SECOND RESPONSE

The Hon J R Face, MP, Minister for Gaming and Racing advised as follows on 2 January, 1996:

"I refer to your recent letter (reference 2146A) concerning the promulgation of the Racing Appeals Tribunal Regulation 1994.

I would advise that subsequent to your correspondence of 16 August 1995, I understand that the Australian Jockey Club has resolved to introduce a right of appeal to the Committee by owners of a disqualified racehorse, within its Local Rules of Racing.

In addition, you may be aware that Mr Ian Temby, QC has recently completed a Review of Thoroughbred Racing in New South Wales and in his final report he recommends owners a right of appeal against a decision to disqualify a horse from a race or from racing, provided the disqualification is for a period of three months or more, or results in loss of prize money of $2,000 or more.

Consequently, I have requested that officers of my Department taker immediate action so that I may give proper consideration to the recommendation."

The Minister wrote to the Committee again on 9 September 1996 as follows:

"I refer to your recent letter concerning a proposal to provide a right of appeal to the Racing Appeals Tribunal in respect of a decision to disqualify a horse.

I would advise that after close consultation between officers of my Department, the Australian Jockey Club and the Racing Appeals Tribunal, His Honour Justice Perrignon, I have recently approved of the Parliamentary Counsel being instructed to prepare a draft amendment to the Racing Appeals Tribunal Regulation 1994. The amendment is designed to allow a person aggrieved by a decision of the AJC Committee in respect of an appeal against an order imposing a disability on a horse in which that person has an interest, to appeal to the Racing Appeals Tribunal against that decision, provided such disqualification is imposed in conjunction with a penalty imposed upon a person and provided that such right of appeal does not extend to a decision of the Stewards in connection with:-

- *any protest or objection against placed horses arising out of an incident or*
- *incidents occurring during the running of the race; or*
- *a disability imposed on a horse which provides that such horse shall pass a specified trial or test or examination; or*
- *the eligibility of any horse to run in any race; or*
- *a declaration under Rule 1 34A of the Rules of Racing; or*
- *any dispute relating to bets.*

I have also approved of the Parliamentary Counsel being instructed to draft an amendment to the Regulation to permit persons that may be affected by the successful outcome of such an appeal (eg the connections of horses which have had their placings elevated as a result of the disqualification) to, with the leave of the Tribunal, appear before and make submissions to the Tribunal in respect of the appeal."

The Committee was satisfied with the Minister's response.

DESCRIPTION	Poisons Act 1966 - Regulation (Poisons Regulation 1994)
GOVERNMENT GAZETTE	26 August, 1994 at page 5039
MINISTER	Minister for Health
OBJECT	This Regulation repeals and remakes, without any major changes in substance, the Poisons Regulation as part of the staged repeal of regulations under the Subordinate Legislation Act 1989. It is made under the Poisons Act 1966, including s.45C(the general regulation making power) and ss.4,9,16,17,18A,19,24,28 and 29. The Poisons Act regulates, controls and prohibits the availability of poisonous substances, including pharmaceutical drugs and domestic, agricultural and industrial chemicals. The Act is written so that much of the control is achieved through regulation, rather than the Act itself. Regulation-making powers are extensive and may cover such matters as supply, manufacture, packaging and labelling, possession, prescription requirements and administration of poisonous substances. While the Committee considered the RIS and the consultation process associated with it had been satisfactorily completed the Committee requested the Minister to advise of on any action that might be taken aimed at improving data collection strategies designed to quantify the extent of the poisons and drug misuse/abuse problem. In his response the Minister for Health advised: *"I refer to your recent letter regarding comments made by the NSW Nurses Association in regard to data collection strategies and the Regulatory Impact Statement (RIS) for the Poisons Regulation 1994.* *The RIS indicated there was, and still is, a problem in quantifying the incidence of drug misuse and abuse and poisoning. The Nurses' Association has rightly suggested that improved data collection by the Department of Health should be a priority. I am able to inform your Committee that the NSW Health Department is taking steps to address this issue.* *One of the initiatives taken is the development of the emergency department information system (EDIS). This is designed to collect data on every emergency department encounter including presentations for accidental and intentional poisoning. The system will eventually capture most, if not all such presentations, although at present it is not running in all emergency departments. The EDIS*

DESCRIPTION	Darling Harbour Authority Act 1984 - Regulation (Darling Harbour Authority (General) Regulation 1994)
GOVERNMENT GAZETTE	31 August, 1994 at page 5337
MINISTER	Minister for Planning
OBJECT	The explanatory note to the Regulation states that the object of this Regulation is to: "repeal and remake without any major changes in substance, the provisions of the Darling Harbour Authority Regulation 1984. The new Regulation deals with the following matters: (a) the form and content of development plans (Part 2) (b) matters relating to the making of applications for permits (Part 3) (c) matters relating to permits (Part 4) (d) development on land the subject of *"existing use"* rights (Part 5) (e) the application of legislation to and in respect of land within the Development Area (Part 6) (f) other matters of a formal nature (Part 1 and 7)." The new Regulation basically remakes the 1984 Regulation with one new provision and a small number of changes.
OPTIONS	A Regulatory Impact Statement (RIS) was required to be prepared for this regulation. Schedule 2 of the *Subordinate Legislation Act* prescribes that a RIS must include an assessment of the costs and benefits of the proposed statutory rule and the alternative options. This assessment is to take into account social costs and benefits, both direct and indirect. If possible quantification should be attempted of the costs and benefits. However, where this is not feasible, the anticipated impacts of the proposed Regulation and each of the alternatives should be stated and presented in a way that permits a comparison of the costs and benefits. The RIS in question makes only a cursory assessment of the costs and benefits of the proposed regulation and the alternative option. The Subordinate Legislation Act and the *Regulation Review Act* were passed by Parliament with the clear intent of improving the level of accountability in the making of government regulations. This accountability takes the principal form of requiring government departments to consult with the public on its regulatory proposals

system aims to collect only core information on most encounters but has the built-in capacity to enable clinicians or researchers to capture greater information on specific problems such as poisoning.

The Department's Centre for Clinical Policy and Practice is also planning a specific project to look at medication-related admissions to hospital and adverse events in hospital related to prescribing, dispensing or administration errors.

In addition, I am advised that the National Goals and Targets project on injuries has identified the need for better information on poisoning and as part of its 1995-96 activities will be investigating this issue further.

However, it should be noted that problems with data collection are not restricted to NSW, and some can only be adequately addressed at a national level. For example, to quantify the impact of drug misuse on hospital admissions it is necessary to identify those which were due to drug misuse or poisoning. With the current system for admissions it is not easy to disentangle admissions due to poisoning, deliberate overdoses and medical misadventure. The codes used to define hospital admissions are agreed to nationally and so improvements in this indirectly related to drugs, for example accidents associated with drugs other than alcohol, this can only be quantified if the use or presence of the drug is actually recorded as a contributing factor.

I hope that this information is of assistance to you. Should you require any further information, please contact Dr Andrew Wilson, Director of the Department's Clinical Policy and Practice Branch, on 391 9182."

The Committee was satisfied with the response.

and objectively substantiate through cost/benefit appraisal the need for each new regulation.

The main shortfalls with the RIS in question are:

- Individuals which will be affected by the Regulation are not clearly identified. It is unsatisfactory to make an anticipatory statement such as *"support for this option is expected from individuals and organisations wishing to carry out development on land with the Darling Harbour Development Area or land ancillary to the Development Area."*

- Past effectiveness of the Regulation does not exempt the remaking of that Regulation from proper cost benefit analysis.

- Interest groups that have been identified for consultation should be named in the RIS.

As noted above, the nature and extent of the consultation program needs to be specified in greater detail.

Two submissions were received on the RIS, one from the Department of Planning endorsing the regulation, the other from the Ultimo Precinct Committee raising concerns over the omission of any consultation with residents and property owners adjacent to the Darling Harbour Development Area when there is a proposed development.

COMMITTEE'S ACTION

The Chairman wrote to the Minister advising him of the above and that the Committee expects his administration to pay careful attention to the requirements of the *Subordinate Legislation Act* when the Authority came to prepare future Regulatory Impact Statements.

MINISTER'S RESPONSE

In a letter dated 22 December 1995 the Minister for Public Works and Services advised the following:

"I refer to your recent correspondence regarding shortfalls with the regulatory impact statement prepared with respect to the Darling Harbour Authority (General) Regulation 1994.

The Darling Harbour Authority advises me it has been contacted direct by officers servicing your Committee regarding this matter and has been provided with valuable advice to ensure any future regulatory impact statements do not suffer from similar shortfalls. Their assistance was most appreciated.

You have my assurance that future regulatory impact statements prepared by the Authority will fully assess the relevant objectives

and alternatives.

Thank you for bringing the matter to my attention."

The Committee was satisfied with the Minister's response.

Jill Hall MP
Vice-Chairman
Regulation Review Committee