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PARLIAMENT OF TASMANIA

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**SELECT COMMITTEE  
ON THE  
SUBORDINATE LEGISLATION  
(MISCELLANEOUS AMENDMENTS)  
BILL 2010  
REPORT**

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*Brought up by Ms White and ordered by the House of Assembly to be printed*

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MEMBERS OF THE COMMITTEE

Ms White (Chair)  
Ms Archer  
Mr Hidding  
Mr Morris  
Mr Sturges

## Table of Contents

1	Appointment & Conduct of the Inquiry.....	1
2	Subordinate Legislation.....	2
3	Purpose of the Bill.....	2
4	Inquiry .....	5
5	The Bill .....	5
6	Summary of Positions on the Bill .....	13
7	Findings .....	15
8	Recommendations.....	15
9	Dissenting Statement by the Honourable Member for Lyons, Mr Morris .....	16
10	Appendix 'A' .....	1

## 1 APPOINTMENT & CONDUCT OF THE INQUIRY

- 1.1 The Subordinate Legislation (Miscellaneous Amendments) Bill (No. 35 of 2010) (the Bill) was introduced into the Legislative Council by the Honourable Member for Murchison, Ms Forrest, on 31 August 2010 and progressed through its Second and Third Readings on 28 and 29 September 2010 respectively.
- 1.2 The Bill was received by the House of Assembly (the Assembly) from the Legislative Council and read the First time on 29 September 2010.
- 1.3 The Second Reading of the Bill was moved in the Assembly on 18 November 2010 by the Honourable Member for Lyons, Mr Morris. The Assembly resolved on that day to refer the Bill to the Parliamentary Standing Committee on Subordinate Legislation for consultation with Government Agencies and recommendation to the House by way of a report.
- 1.4 The Subordinate Legislation Committee resolved on 8 December 2010 that it was unable to accept such referral as it was, *inter alia*, outside the functions of the Committee as prescribed by section 8 of the *Subordinate Legislation Committee Act 1969*.
- 1.5 Resumption of the debate on the question “That the Bill be now read the Second time” was resumed by the Assembly on 24 November 2011.
- 1.6 An Amendment was proposed to the Question by the Minister for Health, by leaving out all the words after “That” and insert “a House of Assembly Select Committee be appointed with power to send for persons and papers, with leave to sit during any adjournment of either House exceeding 14 days, and with leave to adjourn from place to place, and with leave to report from time to time, to inquire into and report upon the Subordinate Legislation (Miscellaneous Amendments) Bill (No. 35 of 2010):-
  - (a) to consult with all government agencies as to the effect of this Bill, should it be enacted, on the operations of those agencies; and
  - (b) other matters incidental thereto.

That the number of Members to be appointed to serve on the said Committee be five, two nominated by the Leader of the Government Business, two nominated by the Leader of Opposition Business and one nominated by the Leader of Tasmanian Greens, and that the Committee produce a report by 29 March 2012.”

Such amendment was agreed to.

- 1.7 The Committee met on 6 occasions, such meetings being conducted in Hobart.
- 1.8 The Minutes of the proceedings of the Committee are detailed in Appendix 'A'.

## 2 SUBORDINATE LEGISLATION

- 2.1 'Subordinate Legislation' is that body of legislative instruments delegated from the Parliament to the Executive under the authority of various Acts of Parliament. Such authority provides power, limited by the relevant Act, to the Executive to make regulations and other statutory forms.
- 2.2 The principal Acts concerning subordinate legislation in Tasmania which are the subject of this inquiry are the *Acts Interpretation Act 1931*, the *Subordinate Legislation Act 1992* and the *Subordinate Legislation Committee Act 1969*. The second-mentioned statute defines subordinate legislation as:-
  - (a) a regulation, rule or by-law that is –
    - (i) made by the Governor; or
    - (ii) made by a person or body other than the Governor but required by law to be approved, confirmed or consented to by the Governor; or
  - (b) any other instrument of a legislative character that is –
    - (i) made under the authority of an Act; and
    - (ii) declared by the Treasurer under subsection (2) to be subordinate legislation for the purposes of this Act<sup>1</sup>

## 3 PURPOSE OF THE BILL

- 3.1 Ms Forrest summarised<sup>2</sup> the purpose of the Bill as follows:-

*The intent of this bill is to amend the Subordinate Legislation Act, to enable the scrutiny of draft regulations prior to the approval, confirmation or consent of the Governor, much the same way as a bill before the Parliament proceeds.*

*This bill will enable scrutiny or examination of any draft regulations by the Subordinate Legislation Committee prior to gazettal and therefore prior to the regulations becoming operational. This will address the problems experienced when a decision to disallow regulations or rules under legislation currently in force, occurs many months after the regulations have become operational. It is of course undesirable that the impugned regulations are valid until disallowance but void after disallowance.*

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<sup>1</sup> Subordinate Legislation Act (No. 30 of 1992), Section 3

<sup>2</sup> Hansard, Legislative Council, 28 September 2010.

The primary purpose behind this bill is to address this issue that ... was highlighted during the recent debate of a disallowance motion on 26 May last year regarding the Fisheries (Scalefish) Amendment Rules 2008. Members may recall that this disallowance motion was supported and that during the course of the scrutiny and examination of those rules and the subsequent decision to disallow sections of those rules, it became clear that rules, including the sections that were being disallowed, had been in operation for almost 10 months.

This situation created another dilemma for the committee and made it difficult to fully consider all options for disallowance in light of the flow-on impacts to another group of fishermen as disallowance of the entire rules had then been determined by the committee to be the most appropriate decision. It would have disadvantaged a number of other fishermen who had invested in their businesses as a result of the introduction and many months of operation of these rules.

It is important to note that regulations or rules become operational on gazettal. The rules in question were gazetted on 30 July 2008 and parts 1 and 2 commenced on 1 August 2008. Part 3 commenced on 1 October 2008 and these rules were then tabled in Parliament on 2 October 2008, after all the parts had commenced. The Subordinate Legislation Committee does not currently scrutinise the regulations until after these processes have occurred and in this case the rules had been operational for between seven and 10 months.

... due to the delay in tabling these particular rules following gazettal, ... this period of time for the rules to be operational prior to scrutiny by the Subordinate Legislation Committee was longer than it should have been.

... if this were to occur in some other jurisdictions, it would result in those rules no longer being valid because they had not been tabled in a timely manner. That is not the case in Tasmania, and there is no penalty if this occurs.

If this bill is supported and the regulations have been fully scrutinised by the committee and the Governor, there should be no delay following gazettal to table the regulations to ensure all members of parliament are kept fully informed in this area.

In view of this issue and the fact that there is currently no penalty for late tabling of regulations, the amendments to section 47 of the Acts Interpretation Act will address this issue such that if regulations are not tabled in each House of Parliament within the prescribed period they will cease to have any effect after that period. This should ensure that all honourable members have the opportunity to peruse promptly all subordinate legislation.

... This bill seeks to redress the issue of regulations becoming operational for an extended time before scrutiny of the Subordinate Legislation Committee by altering the time when the subordinate legislation is examined by the committee and also to provide a process to ensure that any delegated legislation will comply with the requirements of the Subordinate Legislation Act 1992, before it becomes operational.

Effectively, the bill will enable input and scrutiny at the front end of the process, rather than after regulations have been made and are operational. It will also enable the Subordinate Legislation Committee to consult with key stakeholders that may believe the draft regulations will adversely impact on them, prior to these regulations becoming operational. These amendments will overcome the potential adverse impact of a subsequent disallowance of regulations that could have been operating for several months under the current legislation.

The Subordinate Legislation Committee will examine draft regulations after the relevant department has carried out the usual processes for the preparation of regulations. Under the current provisions of the act, if the Subordinate Legislation Committee considers after examining any of the draft regulation that it does comply with the guidelines, and thus the provisions of the act, a report will be provided to the responsible minister who will subsequently submit the regulations to the Governor for approval, confirmation or consent, under the requirements of proposed section 9A of the bill. If the Subordinate Legislation Committee considers after examining any draft regulation that it does not comply with the guidelines, and thus the provisions of the act, a report will be tabled in both Houses of Parliament and provided to the responsible minister. The department will then be required to reconsider the regulations and resubmit draft regulations for examination by the Subordinate Legislation Committee. The committee at that time will again determine whether the regulation complies with the guidelines and thus the provisions of the act. The same process I have described will apply at this point.

... I believe that the number of times this will occur will be minimal, as is the case with the current process where scrutiny occurs after the event with the potential problems I have raised. I would expect that by far the majority of draft regulations would be found to comply with the provisions of the bill, and reported as such. Only a very small number are likely to be found non-compliant and reported as such to the responsible minister.

Proposed section 9A of the bill provides for the Treasurer, in a case where the public interest so requires, to override the decision of the Subordinate Legislation Committee. This means that if the draft regulations, containing substantially similar provisions, have been examined twice by the committee over a period of three months and have been found to not conform with the guidelines contained in the act and if the Solicitor-General certifies that the third draft contains substantially similar provisions to the previous drafts, the Treasurer, if satisfied that the public interest requires that the subordinate legislation be made without delay, may certify accordingly. The regulations can then be made and the new section 9 of the bill will not apply.

If this were to occur, a disallowance motion could be put to the Parliament. Prior to this, two reports from the Subordinate Legislation Committee would have been previously tabled providing details of the non-compliance of the regulations when scrutinised by the committee. Honourable members will then be aware of the perceived deficiencies in the regulations in a timely manner.

Madam President, it is important to note that this bill does not alter the scope of the Subordinate Legislation Committee's examination from that contained in the existing act with the exception of the removal of provisions of section 9(1) of the current act that enables the Treasurer, by notice published in the Gazette, to declare an instrument of a legislative character that is made under the authority of the act to be subordinate legislation for the purposes of the current act.

This subsection has been removed because in a case where the Treasurer has been issued a notice under section 3 of the current act having the effect that the instrument is deemed to be subordinate legislation, the consequential effect should be that the instrument should be subject to the scrutiny of the committee.

The amendments will, however, enable scrutiny of all subordinate legislation prior to the approval of the Governor and thus prior to gazettal and the regulations becoming operational.

*The bill also contains a number of other amendments to the Subordinate Legislation Committee Act 1969. This act has aged over time and is gender specific. It refers to the chair of the committee as male, likewise in the case of the committee secretary. I am sure most members would be aware that for many years we have had both a female chair and a female Secretary of the Subordinate Legislation Committee. It is time this legislation was contemporised and made relevant to today. All references to specific gender have been removed.*

## **4 INQUIRY**

- 4.1 According to Order, on 8 March 2012 the Committee invited each Head of Agency to provide a submission specifically detailing the effect, if any, on the operations of each of their respective Departments, should the Bill be enacted, together with any other information relevant to the Terms of Reference which they believed the Committee should consider.
- 4.2 On 15 June 2012, the Committee received a submission from the Secretary, Department of Premier and Cabinet, Rhys Edwards, which he advised “incorporates views from government agencies and the Chief Parliamentary Counsel” (the government submission)<sup>3</sup>. The Committee accepted such submission as a ‘whole of Government’ response and it was received and taken into evidence on 22 August 2012. A copy of such submission is tabled with this report.
- 4.3 On 22 August 2012, the Committee resolved to provide Ms Forrest with the government submission and invite a written response from her to it. Such response, dated 27 October 2012 was subsequently provided and is tabled with this report.
- 4.4 Leave having been granted by the Legislative Council, on 18 September last, the Honourable Member for Murchison, Ms Forrest appeared before the Committee and was examined in public. A copy of the transcript of such evidence is tabled with this report.

## **5 THE BILL**

### **Amendments to the Acts Interpretation Act 1931**

#### ***Clause 4 – Section 47 amended (Regulations)***

#### ***Clause 5 – Schedule 1 amended (Savings and transitional provisions)***

- 5.1 Clause 4 amends section 47 (Regulations) of the Acts Interpretation Act 1931 to provide that any regulations not laid before each House of Parliament within the 10 sitting days of the House will expire on the expiration of that period. However under new subsection (3C) the expiration of regulations under (3B) will not affect the validity of

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<sup>3</sup> Submission to the Inquiry of the Select Committee on the Subordinate Legislation (Miscellaneous Amendments) Bill 2010, Department of Premier and Cabinet, 2012.

anything done under those regulations during that period under 47(3)(c).<sup>4</sup>

- 5.2 Clause 5 amends Schedule 1 (Savings and transitional provisions) of the Acts Interpretation Act 1931 to make it clear that the proposed amendments will apply only to regulations made after this Bill becomes law whether the Act under which they are made was passed before or after that commencement. The existing section 47 will continue to apply to regulations made before that commencement.<sup>5</sup>
- 5.3 The government submission drew the attention of the Committee to the few examples of regulations not being tabled within the prescribed period. Further, the government submission referenced a similar provision that had already been trialed in an amendment made in 1981 to the Acts Interpretation Act. Such amendment necessitated the retrospective validation of many number of pieces of subordinate legislation due late tabling and the provision was eventually repealed in 1985.<sup>6</sup>
- 5.4 The government submission stated that “Any benefit that such peremptory revocation may be thought to provide may be far outweighed by the work required to retrospectively validate an administrative oversight and to deal with the inconvenience and uncertainty arising from the application of regulations before their revocation.”<sup>7</sup>
- 5.5 The government submission further stated that automatic disallowance may:-
- Remove provisions relating to the regulation of behaviour and/or raise revenue to resource the activity involved; and
  - Lead to ‘gaps in the law’.<sup>8</sup>
- 5.6 The government submission suggested an alternative approach by way of administrative solution, such as a reminder system, that could be included in guidelines.<sup>9</sup>

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<sup>4</sup> “Clause Notes for the Subordinate Legislation (Miscellaneous Amendments) Bill 2009”, [http://www.parliament.tas.gov.au/bills/Bills2010/pdf/notes/35\\_of\\_2010-Clause%20Notes.pdf](http://www.parliament.tas.gov.au/bills/Bills2010/pdf/notes/35_of_2010-Clause%20Notes.pdf), p. 3.

<sup>5</sup> ‘Clause Notes’, p. 3.

<sup>6</sup> Government Submission, p. 6.

<sup>7</sup> Ibid., p. 6-7.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.



## **Amendments to the Subordinate Legislation Act 1992**

### ***Clause 7 – Section 3 amended (Interpretation)***

5.7 Clause 7 amends section 3 (Interpretation) of the Subordinate Legislation Act 1992 by adding 3 new definitions:

"Committee" is defined as the Parliamentary Standing Committee on Subordinate Legislation established by the Subordinate Legislation Committee Act 1969;

"guidelines" is defined as the guidelines issued under section 3A or, as the case may be, having effect under section 19 because, until the Treasurer makes new guidelines under section 3A, the guidelines set out in Schedule 1 will be effective.

"relevant Act" is defined as an Act under which it is intended to make subordinate legislation;

This definition already exists in the Subordinate Legislation Act 1992 but is transferred to section 3 so that it will have general application to all provisions of that Act.<sup>10</sup>

5.8 The government submission suggested that the current definition of Subordinate Legislation Committee was desirable as it makes clear when reading the Act which Committee is being referred to. It was further submitted that the definition of 'relevant Act' is not required in this section and remain in section 7 of the Principal Act as that is the only section where it is referred to in accordance with usual drafting policy.<sup>11</sup>

### ***Clause 8 – Section 3A amended (Guidelines)***

5.9 Clause 8 amends section 3A(2) of the Subordinate Legislation Act 1992 to remove the awkward double negative "not inconsistent" in subparagraph (iii) of paragraph (a). The new paragraph (ab) states that there should not be any inconsistency between those objectives of the proposed regulations and the objectives of other Acts, subordinate legislation or government policies. The term "inconsistency" will indicate that the check is to be for inconsistencies rather than consistencies. Regulations will often be on completely different subjects and inconsistencies, if any, will be more apparent than consistencies.<sup>12</sup>

5.10 The government submission preferred the retention of the current wording as it accords with drafting style.<sup>13</sup>

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<sup>10</sup> 'Clause Notes', pp. 3-4.

<sup>11</sup> Government Submission, p. 8.

<sup>12</sup> 'Clause Notes', p. 4.

<sup>13</sup> Government Submission, p. 8.

***Clause 9 – Section 4 amended (Compliance with Guidelines)***

- 5.11 Clause 9 amends section 4 (Compliance with guidelines) of the Subordinate Legislation Act 1992 by omitting “issued under section 3A” as these words are now unnecessary.<sup>14</sup>
- 5.12 The government submission preferred the retention of the words “issued under section 3A” in order to identify and define the guidelines.<sup>15</sup>

***Clause 10 – Section 6 amended (Regulatory impact statements not necessary in certain cases)***

- 5.13 Clause 10 amends section 6 (Regulatory impact statements not necessary in certain cases) of the Subordinate Legislation Act 1992 omits “his or her” from paragraph (b) and substitutes “the Treasurer’s” in view of the modern impersonal, non-gender specific drafting practice.<sup>16</sup>
- 5.14 The government submission stated that the change was unnecessary.<sup>17</sup>

***Clause 11 – Section 7 amended (Examination of draft subordinate legislation by Chief Parliamentary Counsel)***

- 5.15 Clause 11 amends section 7 (Examination of draft subordinate legislation by Chief Parliamentary Counsel) of the Subordinate Legislation Act 1992:-
- (a) by omitting subsection (1) as the definition of “relevant Act” will be transferred to section 3;
  - (b) by changing “Proposed” in subsection (2) to read “A draft of”. This term is considered appropriate as the Committee will have before it a draft and will not be proposing any change to the law.<sup>18</sup>
- 5.16 The government submission preferred the retention of the definition of ‘Relevant Act’ in section 7 as it is not required elsewhere. The retention of ‘proposed’ was also strongly preferred as it properly expresses the intention of a Minister to regulate a particular matter. The use of the term ‘draft of’ could imply that agencies have drafted their own legislative instrument which is not generally the case as it is

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<sup>14</sup> ‘Clause Notes’, p. 4.

<sup>15</sup> Government Submission, p. 8.

<sup>16</sup> ‘Clause Notes’, p. 4.

<sup>17</sup> Government Submission, p. 8.

<sup>18</sup> ‘Clause Notes’, p. 4.

drafted by counsel. ‘Draft’ also may imply that the subordinate legislation is only a draft and not finalised in any sense, which status may not be acceptable to His Excellency the Governor.<sup>19</sup>

**Clause 12 – Sections 8 and 9 substituted**

- 5.17 Clause 12 will repeal sections 8 and 9 of the Subordinate Legislation Act 1992 and will substitute sections 8, 9, 9A and 9B.
- 5.18 The new section 8 (Certain documents to be sent to Committee) follows the existing subsection (1A) of section 9, the existing subsection (2) being inappropriate in view of the proposed functions of the Committee. However the new section 8(b) will require production of a copy of the certificate of the responsible Minister certifying that, in the opinion of the Minister, the proposed subordinate legislation conforms with the guidelines. Subsection (1) of the existing section 9, which excludes certain subordinate legislation, is not replicated and therefore the new section will require all subordinate legislation to be sent to the Committee.
- 5.19 The new section 9 (Examination of draft subordinate legislation by the Committee) which follows existing section 8 is a key provision providing for the Committee to report to the responsible Minister if it is of opinion that any draft subordinate legislation conforms with the guidelines. If not of that opinion, the Committee must report to both Houses of Parliament and to the responsible Minister. However this new section will not apply in a case where the Treasurer has granted a certificate under the new section 9A(1).
- 5.20 The new section 9A (Successive drafts of similar subordinate legislation) deals with a case where - (a) the Committee has, within a period of 3 months, twice reported that, in its opinion, a draft of subordinate legislation containing substantially similar provisions does not conform with the guidelines; and (b) a third draft of the subordinate legislation is submitted to the Committee. If the Solicitor-General certifies in writing that the third draft contains substantially similar provisions to the previous drafts, the Treasurer, if satisfied that the public interest requires that the proposed subordinate legislation should be made without complying with the new section 9, will be empowered to certify in writing accordingly. Under the new subsection (2) the certificate by the Treasurer will have effect according to its tenor which means that the proposed subordinate legislation can then be made without further delay.

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<sup>19</sup> Government Submission, p. 8.

- 5.21 The new section 9B (Requirements before making subordinate legislation) follows existing section 8 and provides for the documents to be submitted to the Governor before the proposed subordinate legislation can be made. Again the certificate by the responsible Minister must state that, in the Minister's opinion, the guidelines have been complied with so far as is reasonably practicable.<sup>20</sup>
- 5.22 The government submission stated a preference for the retention of the existing prescriptions for the following reasons:-
- Under the proposed amendments, the Committee would be given the role of examining whether 'draft' subordinate legislation complies with the guidelines set out in the Subordinate Legislation Act. Such role may involve the Committee undertaking economic and policy analysis which is currently undertaken by the Department of Treasury and Finance (DOTAF). Such duplication would be costly in both time and resourcing and of negligible additional benefit.
  - No evidence that the existing scrutiny by DOTAF is unsatisfactory.
  - Ms Forrest in her second reading speech indicated that the amendments will enable "input and scrutiny at the front end", such statement implies a form of policy scrutiny. This extension to the current role of the Committee may delay or prevent subordinate legislation progressing based on the grounds that it is not satisfied that the guidelines have been met or that the relevant stakeholders have not been properly consulted or their views taken into account.
  - The proposed amendments do not appear to take into account the existing consultation process and increase the potential for an individual or organisation with a particular perspective, to disproportionately influence the inquiry process.
  - In the small number of cases where there have been successful motions to disallow, the Subordinate Legislation Committee has not supported the policy content rather than due to the subordinate legislation not meeting the guidelines.
  - Apart from 'as soon as practicable', there are no timeframes in the Bill within which the Committee is obliged to consider subordinate legislation.
  - The proposal is a significant departure from the practice in other jurisdictions.

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<sup>20</sup> 'Clause Notes', pp. 4-6.

- The amendments may encourage the inclusion of provisions normally made in regulations to be included in the principal Act, making them overly detailed.
- The value of the additional level of scrutiny provided by the Solicitor-General is questionable. The Solicitor-General is the legal counsel for the Government not the Parliament, the amendments may cause some conflict between the duty of confidence to the Crown and the proposed statutory duty to the Parliament.<sup>21</sup>

***Clause 13 – Section 13 amended (Procedure when Committee not in office)***

- 5.23 Clause 13 amends section 13 (Procedure when Committee not in office) to remove an unnecessary reference to “Subordinate Legislation” and to make an amendment consequential on the new order of provisions.<sup>22</sup>
- 5.24 The government submission states that such amendments are unnecessary.<sup>23</sup>

***Clause 14 – Section 14 amended (Regulations and orders)***

- 5.25 Clause 14 amends section 14 (Regulations and orders) by omitting subsection (2) which is now of historical interest only.<sup>24</sup>
- 5.26 The government submission stated that this provision provides for the repeal of the Governor’s power were limited insofar as they were not exercisable after 31 December 1995.<sup>25</sup>

***Clause 15 – Schedule 1 amended (Guidelines for the Preparation of Subordinate Legislation)***

- 5.27 Clause 15 amends Schedule 1 (Guidelines for the preparation of Subordinate Legislation). It removes the awkward double negative “not inconsistent” in subparagraph (iii) of paragraph (b). The new paragraph (ba) states that there should not be any inconsistency between those objectives of the proposed regulations and the objectives of other Acts, subordinate legislation or government policies. The term “inconsistency” will indicate that the check is to be

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<sup>21</sup> Government Submission, pp. 9-13.

<sup>22</sup> ‘Clause Notes’, p. 6.

<sup>23</sup> Government Submission, p. 13.

<sup>24</sup> ‘Clause Notes’, p. 6.

<sup>25</sup> Government Submission, p. 13

for inconsistencies rather than consistencies. Regulations will often be on completely different subjects and inconsistencies, if any, will be more apparent than consistencies.<sup>26</sup>

5.28 The government submission prefers the current prescription.<sup>27</sup>

## **Amendments to the Subordinate Legislation Committee Act 1969**

### ***Clause 17 – Section 2 amended (Interpretation)***

5.29 Clause 17 amends section 2 (Interpretation) by adding 2 new definitions:

“chair” means the member elected as such under section 5(2);

“deputy chair” means the member elected as such under section 5(2).<sup>28</sup>

### ***Clause 18 – Section 3 amended (Constitution of Committee)***

5.30 Clause 18 amends section 3 (Constitution of Committee) to reflect modern impersonal, non-gender specific drafting practice.<sup>29</sup>

### ***Clause 19 – Section 4 amended (Vacancies)***

5.31 Clause 19 amends section 4 (Vacancies) to reflect modern impersonal, non-gender specific drafting practice. It also substitutes “section 3(2)” for the out dated wording “subsection (2) of section three”.<sup>30</sup>

### ***Clause 20 – Section 5 amended (Quorum and procedure at meetings of the Committee)***

5.32 Clause 20 amends Section 5 (Quorum and procedure at meetings of the Committee) by revising subsections (2) to (5) inclusive to refer to the impersonal, non-gender specific terms “chair” and “deputy chair”.<sup>31</sup>

### ***Clause 21 – Section 7 amended (Secretary of Committee)***

5.33 Clause 21 amends section 7 (Secretary of Committee) to reflect modern impersonal, non-gender specific drafting practice. It also deletes the outmoded term “Notwithstanding”. Subsection (4) is deleted as, in view of the proposed functions of the Committee, it will be pointless for the secretary of the Committee to obtain from the Government Printer copies of all regulations as soon as they are notified.<sup>32</sup>

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<sup>26</sup> ‘Clause Notes’, p. 6.

<sup>27</sup> Government Submission, p.13.

<sup>28</sup> ‘Clause Notes’, p. 7.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

**Clause 22 – Section 8 amended (Functions of Committee)**

- 5.34 Clause 22 amends section 8 (Functions of Committee) by substituting “draft regulation” for “regulation”, where appropriate, because the subordinate legislation would only be in draft form when considered by the Committee. Subsection (2) is omitted as it is now of historical interest only.<sup>33</sup>

**Clause 23 – Section 9 repealed**

- 5.35 Clause 23 repeals section 9 (Report when Parliament not sitting) as it will be inappropriate, in view of the proposed functions of the Committee, for it to examine subordinate legislation after it is made.<sup>34</sup>

**Clause 24 – Section 12 amended (Witnesses’ expenses)**

- 5.36 Clause 24 amends section 12 (Witnesses’ expenses) to substitute the impersonal terms “chair” and “deputy chair” for the terms “chairman” and “vice-chairman”.<sup>35</sup>
- 5.37 The government submission proposed that the abovementioned proposed amendments to the Subordinate Legislation Committee Act by inserting gender neutral terminology and amending some operational aspects of the Committee “may have merit”.<sup>36</sup>

## **6 SUMMARY OF POSITIONS ON THE BILL**

- 6.1 On Wednesday, 18 September last, leave having been granted by the Legislative Council, the Honourable Member for Murchison, Ms Forrest, appeared before the Committee. Ms Forrest responded to the conclusions of the government submission as follows:-

*The department is suggesting this changes the process around how subordinate legislation is scrutinised. It does not do that.... What this bill seeks to achieve is the scrutiny of the committee in exactly the same format it does now before the regulations are made.*

*I will go the dot points from the submission from the department.*

*They say that -*

- *The amendments have the potential to significantly prolong and complicate the subordinate legislation making process, without any guarantee of improved governance.*

*I would disagree with that. They do not have to do any more work. They just have to present it in a different order rather than to getting it a tick from the minister and*

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<sup>33</sup> Ibid.

<sup>34</sup> ‘Clause Notes’, p. 8.

<sup>35</sup> ‘Clause Notes’, p. 8.

<sup>36</sup> Government Submission, p. 13.

then going straight to the Governor after that. Once that is all done it will come to the committee. It is only where there is a problem that we see it. Members who have sat on the committee would know that is a very rare occurrence that there is a need to hold things up, that there would be any delay at all.

- The public interest may not necessarily be served with additional scrutiny, delays and uncertainty.

That is a matter of opinion. If it is really an issue - and we are looking at the mandatory alcohol interlock at the moment. There are some genuine concerns in the community about this and I think it can be addressed and it will be addressed. Currently it is in force, not such a big issue potentially. However, I instance the case of where potentially [inaudible] change speed limits. If that had been done through regulation, which it would have been, we would have seen all the signs go up all around the state and then a committee may have determined that it should be disallowed.

I could have been supported in the parliament and then it would have to all go down and be removed and replaced again. How much cost is that to the public purse? Rather than have all that expenditure and then have to rewind it, if you scrutinise it at the beginning as an ACSAR, you go through process, it is debated, it is considered and the parliament decides, but all the subordinate legislation that is not contentious or it does not fall outside the remit as the committee would see it as an appropriate regulation, it just goes through and so there is no delay and no hold up.

The committee can meet at any time; it can even meet during prorogation of parliament. I mentioned in my response that I am happy to have other emergency powers put in if necessary. That was one thing I did discuss with the former treasurer back in 2009. That would be quite appropriate, if necessary, because there can be emergency powers but the committee can meet at short notice by phone, we only need a quorum of four, and all that sort of thing.

- The amendments may create further administrative burden both in terms of delays in making subordinate legislation and in the level of resources required to service the new process both in Government and the Parliament.

I have explained that and, in my view, that is not the case because they have to have the same amount of work anyway. It does not require any additional resources. It just requires them to be doing it in a timely manner.

- The Bill effectively extends the role of the Subordinate Legislation Committee role to include policy review and consultative functions, which is inappropriate as power would then reside with a select few Parliamentarians rather than each House of Parliament.

That is clearly not true. It does not allow us to do policy review. The consultative functions already exist that we can call in witnesses as we are doing with the alcohol interlock regulations. The power does not reside with a few parliamentarians. We can make a committee decision that it has to be referred to parliament and report to the parliament. Under this process we would probably report more often, potentially, because if we decided that they do need more work we could report this to the parliament as an interim report as opposed to a disallowance motion being tabled.



- *The costs of introducing these amendments across the Executive and Parliament would be significant and it is unclear if there would be any additional benefit to the quality of subordinate legislation.*

*I cannot think how that would be the case. They have not explained how that cost would increase. The process is the same. It is just the timing that is different. There would be a lot more cost under the current process with examples such as the road speed limits - the cost to government there would be huge, which could be avoided if the scrutiny was done at the front.*

*The last point they make is -*

- *Ultimately these amendments may be a disincentive to making regulation due to time delays, perceived interference, over-consultation and potential for policy paralysis.*

*I am not sure where that comes from but they might like to refer some people to that one.*

## **7 FINDINGS**

- 7.1 Despite the proposed changes encompassed within the Subordinate Legislation (Miscellaneous Amendments) Bill appearing reasonable, given that the existing processes of dealing with subordinate legislation in this Parliament, and many others, have been in place for so many years, only an overwhelming case for change should be considered.
- 7.2 Despite concerns about some examples of untimeliness of the current process, no overwhelming case was made for change.
- 7.3 Further, concerns were expressed over the proposed new system providing that the whole structure would be exposed to a prolonged period of absence of Members of Parliament to serve on the Committee each electoral cycle.

## **8 RECOMMENDATIONS**

- 8.1 The Committee recommends that the current structure of dealing with subordinate legislation in Tasmanian not be altered as proposed by the Subordinate Legislation (Miscellaneous Amendments) Bill.
- 8.2 The Committee recommends that the House calls upon the Premier to issue instructions to the Secretary of the Department of Premier and Cabinet that the expedient passage of subordinate legislation is necessary in all cases.

- 8.3 The Committee recommends that where it is obvious that there will be an impact on the community from the regulatory instrument, that a Regulatory Impact Statement be provided every time.
- 8.4 The Committee notes the alternative approach provided in the government submission to the perceived issues relating to tabling of subordinate legislation and accordingly recommends that an administrative solution, such as a reminder system, be adopted for inclusion in guidelines produced for the preparation of subordinate legislation.

Parliament House  
HOBART  
17 October 2013

Rebecca White M.P.  
CHAIR

## **9 DISSENTING STATEMENT BY THE HONOURABLE MEMBER FOR LYONS, MR MORRIS**

- 9.1 The Honourable Member for Lyons, Mr Morris, voted against the inclusion of the Findings and Recommendations abovementioned.
- 9.2 Mr Morris provided the following Dissenting Statement:-

The evidence given by the originator of the Subordinate Legislation (Miscellaneous Amendments) Bill 2010, and Member for Murchison, Hon. Ruth Forrest MLC is accepted. The main provision of the Bill does not increase the powers of the Subordinate Legislation Committee; it only brings forward the point in the process of the scrutiny of sub-legislation from after gazettal to before gazettal.

The main purpose of the Bill is to avoid the need for the Parliament to potentially disallow a set of regulations after they have come into force and thus cause disadvantage (including financial) to those who have been relying on the regulations since they were gazetted.

The submission to this committee by DPAC and Treasury makes assertions that are clearly untrue when they suggest that Clause 12 of the Bill provides any capacity for the Subordinate Legislation Committee to become involved in matters of policy.

An example of the inaccuracies in the submission is on page 9 (paragraph 1) that suggests that a regulation would be sent to the Governor with the word “draft” in its title. Clearly this shows that the

author was intending to mislead this committee or was incapable of understanding the consequences of the Bill.

The changes provided by the Bill would improve the scrutiny process of subordinate legislation by allowing changes (if the committee recommends it and the department agrees) to be made prior to the sub-legislation coming into force rather than after it has come into operation.

It is on relatively rare occasions that the Subordinate Legislation Committee finds that sub-legislation does not comply with its guidelines; this will not change if the Committee recommends that provisions of the Bill would have a positive benefit as the guidelines are not altered.

It is recommended that the House of Assembly resumes debate on the Subordinate Legislation (Miscellaneous Amendments) Bill 2010.

**Parliament House  
HOBART  
17 October 2013**

**Tim Morris M.P.**

## 10 APPENDIX 'A'

### THURSDAY, 8 MARCH 2012

The Committee met in Committee Room 2, Parliament House, Hobart at 1:15 p.m.

#### MEMBERS PRESENT:

Ms Archer  
Mr Hidding  
Mr Morris  
Mr Sturges  
Ms White

#### ORDER OF THE HOUSES READ

The Secretary took the Chair and read the Order of the House of Assembly appointing the Committee.

#### ELECTION OF CHAIR

The Secretary called for nominations, Mr Sturges nominated Ms White, who consented to the nomination.

There being no other candidates nominated, the Secretary declared Ms White elected as Chair.

Ms White took the Chair.

#### ELECTION OF DEPUTY CHAIR

The Chair called for nominations, Mr Hidding nominated Mr Morris, who consented to the nomination.

There being no other candidates nominated, the Chair declared Mr Morris elected as Deputy Chair.

#### PARLIAMENTARY RESEARCH OFFICER

Resolved, That unless otherwise ordered Officers of the Parliamentary Research Service be admitted to the proceedings of the Committee whether in public or private session. (Mr Hidding)

#### CHAIR TO BE THE SPOKESPERSON

Resolved, That the Chair be the spokesperson in relation to the operations of the Committee. (Ms White)

#### NOMENCLATURE

The Committee discussed the nomenclature of the Committee.

Resolved, That the Committee be known as the "Select Committee on the Subordinate legislation (Miscellaneous Amendments) Bill 2010". (Ms Archer)

#### REPORTING DATE

Resolved, That the Committee seek an extension of the reporting date for the report of the Committee until Tuesday, 28 October next. (Ms White)

#### ADVERTISEMENT

The draft advertisement having been previously circulated by the Secretary was taken into consideration by the Committee.

The Committee deliberated.

Resolved, That advertisements not be placed. (Mr Hidding)

#### INVITATIONS TO PROVIDE A SUBMISSION

Ordered, That the Secretary correspond with Heads of State Agencies in accordance with paragraph (a) of the Resolution. (Ms White)

#### RESEARCH

Ordered, That the Parliamentary Research Service provide a comparative analysis of the relevant statutory arrangements in place for Australian jurisdictions and New Zealand. (Mr Hidding)

#### EXTENSION OF REPORTING DATE

Ordered, That the Chair move that the House approve an extension of the reporting date until 30 June next. (Mr Hidding)

#### COMMITTEE SPOKESPERSON

Resolved, That the Chair be the spokesperson in relation to the operations of the Committee. (Mr Sturges)

At 1:32 p.m. the Committee adjourned until a date to be fixed.

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### WEDNESDAY, 22 AUGUST 2012

The Committee met in Committee Room 3, Parliament House, Hobart at 1:10 p.m.

#### MEMBERS PRESENT

Ms Archer  
Mr Hidding  
Mr Morris  
Mr Sturges  
Ms White

#### CONFIRMATION OF MINUTES

The Minutes of the meeting held on Thursday, 8 March last were read and agreed to as an accurate record.

#### SUBMISSION

The following submission was received and taken into evidence:-

"Submission to the inquiry Select Committee on the Subordinate Legislation (Miscellaneous Amendments) Bill 2010", Department of Premier and Cabinet, 15 June 2012. (Mr Morris)

#### INQUIRY

The Committee deliberated.

Resolved, That:-

- (a) the abovementioned submission be published; and

- (b) the Honourable Member for Murchison, Ms Forrest be invited to provide:-
- (i) a written response to the written submission abovementioned; and
  - (ii) any 'Clause Notes' and explanatory memoranda that may have prepared for the debate on the Bill. (Mr Hidding)

At 1:39 p.m. the Committee adjourned until a date to be fixed.

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**TUESDAY, 23 OCTOBER 2012**

The Committee met in Committee Room 2, Parliament House, Hobart at 1:03 p.m.

Mr Morris took the Chair.

**APOLOGY**

An apology was received from Ms White.

**INQUIRY**

The Committee deliberated.

Resolved, That:-

- (a) the Committee seek an extension of the reporting date until Friday, 29 March next; and
- (b) Thursday, 28 February next be the deadline for receipt of the response if any, of the Honourable Member for Murchison, Ms Forrest, to the invitation of the Committee (per Resolution of 22 August last). (Mr Morris)

At 1:06 p.m. the Committee adjourned until a date to be fixed.

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**WEDNESDAY, 18 SEPTEMBER 2013**

The Committee met in Committee Room 2, Parliament House, Hobart at 1:15 p.m.

**MEMBERS PRESENT**

Ms White (Chair)  
Ms Archer  
Mr Morris  
Mr Sturges

**APOLOGY**

An apology was received from Mr Hidding.

The following witness appeared and was examined by the Committee in public:-

Hon. Ruth Forrest MLC, Member for Murchison.

The witness withdrew.

The Committee deliberated.

At 1:56 p.m. the Committee adjourned until 1:10 p.m. Tuesday 24 September next.

**TUESDAY, 24 SEPTEMBER 2013**

The Committee met in Committee Room 2, Parliament House, Hobart at 1:15 p.m.

**MEMBERS PRESENT**

Ms White (Chair)  
Ms Archer  
Mr Hidding  
Mr Morris  
Mr Sturges

**DIRECTIONS FOR DRAFT REPORT**

The Committee deliberated on the evidence received.

The Committee, with the exception of Mr Morris, was of the view that the Bill not be supported and that a form of words suggested by Mr Hidding as to the tenor of the Findings and Recommendations to that effect be included in the Report.

Mr Morris indicated that he would dissent from such Findings and Recommendations and provided an alternative form of words.

Resolved, That Messrs Hidding and Morris formalise their respective Findings and Recommendations and provide them to the Secretary for inclusion in a draft report. (Ms White)

At 1:30 p.m. the Committee adjourned until a date to be fixed.

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**THURSDAY, 17 OCTOBER 2013**

The Committee met in the Long Room, Parliament House, Hobart at 9:30 a.m.

**MEMBERS PRESENT**

Ms Archer  
Mr Hidding  
Mr Morris  
Mr Sturges

Mr Morris took the Chair.

**APOLOGY**

An apology was received from Ms White.

**DRAFT REPORT**

The Acting Chairperson brought up a draft report which immediately taken into consideration.

**CONFIRMATION OF MINUTES**

The Minutes of the meeting held on 23 October, 22 August, 18 and 24 September last were read and agreed to as an accurate record.

Paragraphs 1.1 to 6.1 read and agreed to.

Paragraphs 7.1 to 8.4 (Findings and Recommendations) read.

Question put – That the paragraphs as read stand part of the Report.

The Committee divided.

AYES 3

NOES 1

*Ms Archer*

*Mr Morris*

*Mr Hidding*

*Mr Sturges*

It was resolved in the Affirmative.

And the Dissenting Statement of *Mr Morris* having been previously circulated, the same was added to the Report in accordance with the Dissenting Statements – Guidelines.

Question put – That the draft report be the Report of the Committee.

It was resolved in the Affirmative.

At 9:34 a.m. the Committee adjourned *sine die*.

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