



THE CLERK OF THE PARLIAMENT

Report No. 18, August 2001

**Report to Parliament on the Committee's Monitoring of the Operation of the
Explanatory Notes System**

The Committee's Recommendations

Recommendation 1

That section 23 of the Legislative Standards Act 1992 be amended to include an express obligation to declare (where applicable) that a Bill is national scheme legislation, and to provide a brief explanation of the scheme.

The Government supports this recommendation. The Government agrees that the intent to progress a Bill as part of national scheme legislation is significant in considering its policy objectives and authorising its enactment.

As the Committee notes, the provision of information in relation to a Bill's contribution to national scheme legislation is relevant to, and therefore already required under, existing section 23(1)(b) and 23(1)(c), which require information on reasons for policy objectives and the way in which these objectives will be achieved to be included in explanatory notes. However, the Government supports the amendment of the Act to include an express obligation to declare a Bill is part of national scheme legislation, that is, where there is an agreement between Executive Governments to progress complementary Commonwealth/State arrangements or uniform or substantially uniform state/territory legislation, and provide a brief explanation of the scheme (where relevant) as a refinement of current requirements.

Recommendation 2

That, wherever possible, appropriate amendments to Explanatory Notes be prepared and tabled with any amendments to Bills which are proposed by the sponsoring Minister.

The Government supports the preparation of explanatory notes by all Members who intend to move amendments to a Bill, as indicated in its support for the motion passed by the Parliament on 7 November 2001. The Government recognises the importance of providing the Parliament with appropriate explanatory material to inform debate and assist the Committee to perform its monitoring obligations. It therefore encourages the preparation of amendments to explanatory notes with amendments to Government Bills, where appropriate.

The Government considers that any explanatory notes prepared by Members in proposing amendments to Bills should become part of the permanent record of the Parliament and able to be relied upon for the interpretation of the legislation in accordance with the *Acts Interpretation Act 1954*. To this end, the Government will write to the Clerk of the Parliament requesting a minor change in practice in the Committee stage to ensure that this occurs.

It is not intended, however, to interfere with or delay the passage of a Bill because time constraints did not permit an amendment to the explanatory notes to be prepared. Further, where amendments are minor, such as the renumbering of a clause or the omission or inclusion of inconsequential words, corresponding explanatory notes are often not necessary. The Government notes that the Committee recognises the impracticality of updating explanatory notes in some cases.

Recommendation 3

That section 22(2) of the Legislative Standards Act 1992 be amended to require the provision of Explanatory Notes for all subordinate legislation.

The Government does not support this recommendation. To extend the requirement beyond its current application would impose significant additional administrative burden on departments, given the amount of subordinate legislation made every year.

It is considered unreasonable to impose a blanket requirement when the scrutiny and comprehension of some subordinate legislation does not require the provision of explanatory notes, such as that which merely updates terms or clauses or proclaims the commencement of provisions of an Act.

However, the Government supports the work of the Scrutiny of Legislation Committee and encourages departments to provide the Committee with every possible assistance in explaining their subordinate legislation. Providing this flexibility in advice to the Committee is a practical approach which, along with the provision of explanatory notes for all significant subordinate legislation, facilitates an efficient yet effective means of providing information to the Parliament.

Recommendation 4

That a public service-wide system of explanatory material for all subordinate legislation be established administratively in the event that Recommendation 3 is not accepted.

The Government does not support this recommendation. A mandatory administrative requirement would pose no less an administrative burden on agencies than a statutory requirement.

Recommendation 5

That the explanatory material referred to in Recommendation 4 include:

(existing requirements under section 24 of the Legislative Standards Act 1992)

- (i) the provision of the Act under which the subordinate legislation was made;*
- (ii) the objectives of the legislation and the reasons for them;*
- (iii) the way the objectives will be achieved by the legislation, and why that way is reasonable and appropriate;*
- (iv) an explanation of how the subordinate legislation is consistent with the policy objectives of the Act under which it was made;*

- (v) *any alternative option to the subordinate legislation that was considered before the subordinate legislation was made (including the option of taking no action), and why alternatives were not adopted;*
- (vi) *an assessment of the financial and social costs and benefits of making the subordinate legislation, including an assessment of how the subordinate legislation in this regard compares to any reasonable alternative option;*
- (vii) *an assessment of the subordinate legislation's consistency with fundamental legislative principles, and the reason for any departure; the provision of the Act under which the subordinate legislation was made;*
- (viii) *a statement of the way any consultation in relation to subordinate legislation was carried out, the results and any changes made to the legislation*

(proposed additional information required)

- (ix) *if a regulatory impact statement has not been prepared, the reasons for non-preparation;*
- (x) *the purpose and intent of each clause of the subordinate legislation;*
- (xi) *whether the legislation forms part of national scheme legislation;*
- (xii) *details about whether the Office of the Queensland Parliamentary Counsel has certified the subordinate legislation, as provided for by the Cabinet Handbook; and*
- (xiii) *the name and contact details of an appropriate contact officer.*

While the Government does not support Recommendation 4, it has considered separately whether the additional matters identified by the Committee should be included in the content requirements of explanatory notes for significant subordinate legislation.

The information recommended in (ix) is not relevant, as under the current and supported legislative framework, explanatory notes are only provided if a regulatory impact statement is prepared.

The Government does not support a mandatory requirement for clause by clause explanation as recommended in (x), as it may not be warranted in some cases and, as noted by the Committee, would have significant resource implications. However, departments are encouraged to provide the Committee with every possible assistance in explaining their subordinate legislation, and should consider whether an explanation of all or significant clauses is warranted on a case by case basis.

The Government notes that the provision of information about whether legislation forms part of a national scheme as recommended in (xi), may not be relevant in certain circumstances. Pursuant to the *Statutory Instruments Act 1992*, proposed subordinate legislation which forms part of national scheme legislation may not require preparation of a regulatory impact statement and, therefore, explanatory notes.

The Government does not support the inclusion of information regarding certification by the Office of the Queensland Parliamentary Counsel as recommended in (xii) as this advice is provided to the Executive Government to aid in its decision-making.

The Government does not support the inclusion of the name and contact details of a departmental officer as recommended in (xiii) as, once the subordinate legislation is notified, the explanatory notes become public documents. Any queries regarding legislation are more appropriately directed to the relevant Chief Executive Officer.

Recommendation 6

That the explanatory material referred to in Recommendation 4 be tabled in Parliament.

The Government does not support recommendation 4.

Recommendation 7

The committee expresses its willingness to discuss all issues (including resourcing) related to possible schemes for the provision of explanatory material for all subordinate legislation with the Honourable the Premier or his representatives.

The Government appreciates the willingness of the Committee to liaise on topical issues and officers of the Department of the Premier and Cabinet have taken the opportunity to meet with Committee staff in considering these recommendations.

Recommendation 8

That section 22(1) of the Legislative Standards Act 1992 be amended to require the production of Explanatory Notes for all Bills.

The Government is supportive of activities that strengthen the democratic process and considers that this recommendation has merit, particularly in light of the amendment to the Sessional Orders, originally approved in the 49th Parliament, that ensures that all Private Members' Bills introduced are debated. It also notes its relevance and consistency with the recent motion passed by the Parliament, encouraging all Members to circulate proposed amendments to a Bill and, where appropriate, explanatory notes.

The Government recognises that a mandatory obligation to provide explanatory notes for all Bills imposes an additional requirement on individual Members.

Recommendation 9

That explanatory notes produced for subordinate legislation, and the relevant regulatory impact statement (RIS), be included in the materials accessible through the Office of the Queensland Parliamentary Counsel's Internet Homepage.

The Government notes that this material is already provided through the Office of the Queensland Parliamentary Counsel website. If a regulatory impact statement or explanatory notes are available, this is indicated in the index of subordinate legislation as made.

Advice as to the existence of regulatory impact statements and explanatory notes for subordinate legislation is also provided in the publication *Queensland Legislation*

Annotations. In addition, the Office of the Queensland Parliamentary Counsel will now include advice of the existence of regulatory impact statements and explanatory notes in the endnotes of the reprints of subordinate legislation.