

MINUTES OF THE MEETING OF THE COMMITTEE OF SUBORDINATE LEGISLATION
HELD AT 12.40 PM ON THURSDAY, 2 AUGUST 1990,
IN ROOM 5.04 PARLIAMENTARY ANNEXE

PRESENT:

Mr R.D. Barber, MLA (Chairman)
Mr A.A. FitzGerald, MLA
Mr R.J. Quinn, MLA
Mr L. W. Stephan, MLA
Mr J. H. Sullivan, MLA
Mr R Loewe (Legal Counsel)
Miss J Dingwell (Secretary)

APOLOGIES:

Mr G.B. Fenlon, MLA
Mr R.K. Hollis, MLA

MINUTES OF PREVIOUS
MEETING:

The minutes of the previous meeting, having been circulated to members, were taken as read and confirmed on the motion of Mr FitzGerald, seconded by Mr Quinn.

CARRIED

SERVICES OF LEGAL
COUNSEL:

Mr Loewe advised that he had been transferred to other duties and Ms Sally Munro of the Crown Solicitor's Office would now be acting as Legal Counsel to the Committee. The Chairman welcomed Ms Munro and thanked Mr Loewe for his assistance.

BUSINESS ARISING
FROM MINUTES:

No.6/88 By-laws - Queensland Art Gallery Act

The meeting considered letters of 6.6.1990 and 13.7.1990 from the Director-General, Premier's Department, and enclosed copy of by-laws approved by the Governor in Council on 12.7.1990 amending by-laws 8, 11 and 12 as suggested by the Committee. Secretary advised that the by-laws had not yet been gazetted.

After further consideration it was resolved to write to the Premier suggesting that the by-laws be gazetted and tabled.

No.7/89 Regulations - Queensland Treasury Corporation Act

Counsel reported that his examination of the Act had not disclosed any provisions empowering the registrar to sub-delegate his powers. He pointed out, however, that in this instance there was no substantial delegation only an administrative arrangement allowing interstate agents to collect fees etc.

Counsel advised that the statement in the Treasurer's letter of 5.6.1990 that regulation 6(2) empowers the registrar to sub-delegate his powers is incorrect. Any power of sub-delegation must be granted by the Act, not subordinate legislation.

After discussion it was resolved that this point be drawn to the attention of the Treasurer but no action regarding the regulations be requested.

No.19/89 Proclamations, Order in Council - Rental Bond Act

The meeting (1) endorsed letter of 13.6.1990 to the Minister in accordance with resolution of previous meeting; (2) considered the Minister's letter received on 2.7.1990 advising that the need for validating legislation was being discussed with Parliamentary Counsel.

Resolved: That the matter be brought up for further consideration at next meeting.

No.21A/89 Order in Council - State Housing Act

The meeting (1) endorsed letter of 13.6.1990 to the Minister in accordance with resolution of previous meeting; (2) considered the Minister's letter of 21.6.1990 advising that urgent action was being taken to rectify the situation as recommended by the Committee.

Resolved: That the Minister be requested to advise the present position in the matter.

No.21B/89 Regulations - Public Service Management and Employment Act

The meeting (1) endorsed letter of 13.6.1990 to the Premier in accordance with resolution of previous meeting; (2) considered letter of 21.6.1990 from the Premier's Department advising that (a) the regulations would be resubmitted to the Governor in Council for approval and regazetted; (b) the Government Printer had been requested to withdraw the void regulations from sale.

As the fresh regulations had not been gazetted it was resolved to request the Premier to advise when that action would be taken, whether the void regulations would be repealed and whether validating legislation had been considered.

No.14/90 Heritage Buildings Protection Bill

Counsel referred to the Committee's enquiry as to whether the schedules to the Bill could be added to by subordinate legislation. He reported that the Bill did not appear to provide any mechanism whereby buildings might be added to the list contained in the schedules. Amendment of the schedules could only be effected by an amending Act.

It was noted that as a result a building not yet protected by the legislation could be demolished before the Act could be amended by Parliament.

Counsel mentioned that further legislation was intended and that the above point might be addressed in that legislation.

After discussion it was resolved to await introduction of the new legislation.

New South Wales Committee enquiry

Letter of 13.6.1990 to the Committee Chairman, in accordance with resolution of previous meeting, endorsed.

OTHER BUSINESS:

No.47A/87 Regulation - Fire Safety Act

The meeting considered the Minister's advice of 19.7.1990 that validating legislation was being drafted by Parliamentary Counsel and resolved that the matter be brought up for further consideration at next meeting.

No.23/88 By-laws - National Trust of Queensland Act

Consideration was given to the Minister's letter of 17.7.1990 advising that he had written to the Crown Solicitor on the matter and it was resolved to await the Minister's further advices.

No.34/88 Regulations - Tobacco Products (Licensing) Act

The meeting (1) considered the Treasurer's letter of 19.6.1990 enclosing draft amending regulations for perusal and comment by 29.6.1990; (2) ratified the Chairman's reply of 25.6.1990 advising that the Committee would not be meeting before 29.6.1990 and requesting a copy of the advice received by the Treasurer from the Crown Solicitor's Office; (3) noted a departmental officer's advice of 6.7.1990 that the matter was being investigated.

Following discussion it was resolved to await the Treasurer's further advices in the matter.

No.5A/89 Regulations - Corrective Services Act

The meeting noted that the Corrective Services (Validation of Regulations) Bill was passed on 1 August 1990 and that during the debate of the Bill Mr Stephan had taken the opportunity to give an outline of the Committee's work. Members commended Mr Stephan for the competent manner in which he carried out this task.

No.6/89 By-laws - Education (Teacher Registration) Act

Consideration was given to the Minister's letter of 11.7.1990 advising that the matter had been forwarded to the department for investigation and it was resolved to await the Minister's further advices.

No.12/89 Regulations - Local Government Act

The Secretary drew attention to regulations gazetted on 30.6.1990 which referred to the Local Government Town Planners Board Regulations 1981. Their correct title, however, as cited in the principal regulations, is the Local Government Town Planners Regulations 1981. A similar error occurred in 1984 and 1989 and the relevant Ministers were requested to correct it.

As this had not happened and as it appeared that it was intended to include "Board" in the title, the meeting considered that the matter should be rectified without further delay.

Resolved: That the Minister be requested to amend the regulations now so that the correct title will be cited in future.

No.18/89 Regulation - Rural Fires Act

The meeting discussed the Minister's letter of 17.7.1990 advising that the above Act and regulations had been repealed by the Fire Service Act 1990 and that the matter relating to the election of officers was being addressed under the Codes of Practice being prepared under the new Act.

In view of the Minister's advice, the meeting resolved to take no further action in the matter.

At 1.00 pm Mr FitzGerald left to attend another commitment and Mr Sullivan joined the meeting.

No.18B/89 Regulations - Libraries and Archives Act

Consideration was given to the Director-General's advice of 6.6.1990 and subsequent advice of 14.6.1990 from the Acting Director-General, Premier's Department, that new regulations would be made and tabled. Secretary reported that the Libraries and Archives Regulations 1990 were gazetted on 16.6.1990 but that the void regulations had not been repealed. The meeting also noted that the question of validating legislation had not been addressed, nor advice received that the Government Printer had been requested to withdraw the void regulations from sale.

Following further discussion it was resolved that these matters be brought to the Premier's attention.

No.21/89 Regulations - Local Government (Chinatown Mall) Act; Local Government (Queen Street Mall) Act

The meeting discussed (1) letter of 8.6.1990 from a departmental officer stating inter alia that advice was being sought from Brisbane City Council as to whether any \$50.00 penalty notices were issued prior to 23.12.1989; (2) letter of 9.7.1990 from the Minister advising that the first \$50.00 infringement notice was issued on 9.1.1990 and that he did not consider any further action was necessary.

In view of the Minister's advice, the meeting resolved that no further action be taken in the matter.

No.1A/90 Regulations - Motor Vehicles Insurance Act

Consideration was given to the Treasurer's letter of 19.6.1990 advising in part that the regulations had not been tabled "thus rendering them void". The meeting noted, however, that its advice in previous matters of this nature had been to the effect that the regulations were valid despite non-tabling, as the Act did not provide that regulations would be void if not tabled.

It was resolved to bring this point to the Treasurer's attention and suggest he seek advice from the Crown Solicitor's Office.

No.1B/90 Regulations - Valuation of Land Act

Consideration was given to the Minister's letter of 7.6.1990 advising in part that the regulations were void as a result of their non-tabling. The meeting again noted previous advice that regulations were valid despite non-tabling unless the Act provided otherwise.

It was resolved to suggest to the Minister that he seek advice on this point from the Crown Solicitor's Office.

No.3/90 Regulations - Mental Health Services Act

The meeting considered the Minister's letter of 19.6.1990 stating that advice was being sought from the Crown Solicitor's Office and resolved that the Minister be requested to advise the present position.

No.6/90 Order in Council - Funeral Benefit Business Act

Consideration was given to the Minister's letter of 19.6.1990 advising that the matter outlined by the Committee was being investigated and the meeting resolved to seek the Minister's further advices.

Statute Law (Miscellaneous Provisions) legislation

The meeting (1) considered the Education Minister's letter of 11.7.1990 advising that the Committee's concerns were being investigated and resolved that a reminder letter be forwarded; (2) noted that a reply was still outstanding from the Minister for Employment, Training and Industrial Relations and resolved that a reminder letter be forwarded; (3) discussed the Deputy Premier's letter of 11.7.1990 advising that the suggested amendment to section 42 would be included in the next amendment of the City of Brisbane Act and resolved to await the introduction of that legislation.

COUNSEL'S REPORTS:

No.10/90 Regulations - Builders' Registration and Home-Owners' Protection Act

Counsel reported that the regulations substitute form 17 of the principal regulations which contains conditions that are deemed to be incorporated in every house-purchaser's agreement. It appears from clause 4 of the form, which deals with the liability of the Builders' Registration Board for certain loss or damage, that the Board is responsible for damage due to earthquake.

If it is intended that earthquakes be exempted, clause 4 should be redrafted.

Discussed and resolved that the matter be brought to the Minister's attention for consideration and advice.

No.11/90 Regulations - Private Employment Agencies Act; Employment, Vocational Education and Training Act

Counsel reported that judging by the style in which the regulations have been drafted, they were not submitted to the Parliamentary Counsel as required by Part III of the Cabinet Handbook. Secretary pointed out that this problem had occurred before and had been raised with the then Minister.

After discussion it was resolved to write to the Minister suggesting that the department be reminded of Cabinet requirements for drafting subordinate legislation.

No.12/90 Regulations - Explosives Act; Gas Act; Petroleum Act; Mining (Fossicking) Act

Counsel reported that (1) it appeared that the regulations had not been submitted to the Parliamentary Counsel as required by Part III of the Cabinet Handbook; (2) the purported substitution of a schedule to the Mining (Fossicking) Regulations 1985 is ineffective as those regulations were repealed in 1989.

Counsel advised he had mentioned the error to the department and it had been corrected.

Following discussion it was resolved to write to the Minister suggesting that the department be reminded of Cabinet requirements for drafting subordinate legislation.

No.13/90 Orders in Council - Sewerage and Water Supply Act

Counsel reported that the Orders in Council amend the First and Second Schedules to the Act. Although the Act permits this, it is a further example of an Act of Parliament being amended by subordinate legislation. When a similar matter arose in 1988, the Minister advised that the Act would be replaced by updated legislation in 1989 and account would be taken of the Committee's comments.

Discussed and resolved that the Minister be requested to advise whether the new legislation will proceed and if so, whether the amendments suggested by the Committee will be included.

No.15/90 Rules - Golden Casket Art Union Act

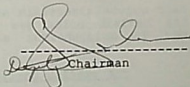
Counsel reported that in his view that part of rule 2.10 relating to loss sustained by a subscriber by reason of any neglect on the part of an agent is ultra vires in that it attempts to oust the jurisdiction of the courts. A similar comment applies to rule 2.9 to the extent that it attempts to make the Office the sole arbiter in respect of "any interpretation of these rules". If it is necessary that subscribers be subject to these constraints an amendment to the Act would appear to be appropriate.

After discussion it was resolved that the matter be referred to the Minister for consideration and advice.

NEXT MEETING:

The next meeting of the Committee will be held at 12.30 pm on Thursday, 23 August 1990, in Room 5.04, Parliamentary Annexe.
There being no further business the Chairman declared the meeting closed at 1.30 pm.

CONFIRMED this 23rd day of August 1990.



Chairman