



CLEARER COMMONWEALTH LAW

GOVERNMENT RESPONSE

**TO
THE REPORT BY**

**THE HOUSE OF REPRESENTATIVES
STANDING COMMITTEE
ON LEGAL AND CONSTITUTIONAL AFFAIRS**

Report tabled: 2 September 1993

**Correspondence regarding Interim Government Response:
20 December 1994**

**Government Response tabled in Justice Statement: 30 May 1995
(Note: response received by Committee - 22 May 1995)**





Attorney-General

The Hon. Michael Lavarch M.P.
Parliament House
Canberra ACT 2600

20 DEC 1994

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Mr Daryl Melham MP
Chairman
House of Representatives Standing Committee
on Legal and Constitutional Affairs
Parliament House
CANBERRA 2600


Dear Mr Melham

I am writing in response to your Committee's report on *Clearer Commonwealth Law*.

The Government is strongly committed to reform of the administration of the Commonwealth justice and legal system by improving the quality of, and access to, Commonwealth law, and rendering the system fairer, more efficient and more effective.

The report of the House of Representatives Standing Committee on Legal and Constitutional Affairs is an important step in achieving these objectives. The Government thanks the Committee for its comprehensive report and very sensible and practical recommendations.

I propose that the Government's response to the individual recommendations of the report will be tabled after the release of the Justice Statement. The full text of the response will, of course, be provided to you before tabling.

In the meantime, I can indicate to you that the Government supports almost all of the recommendations.

Many of the recommendations have been, or are in the process of being, implemented.

For example, several recommendations cover matters dealt with by the Administrative Review Council in its Report *'Rule Making by Commonwealth Agencies'*. The Legislative Instruments Bill 1994, which was introduced in the Senate on 30 June 1994, implements most of these recommendations. As you are aware I have decided

to defer the proposed commencement of the Legislative Instruments Bill until 1 July 1995.

Several of the Committee's recommendations relate to the need for the Department of the Prime Minister and Cabinet to rewrite the Legislation Handbook. The Department of the Prime Minister and Cabinet, which is responsible for the Handbook, has commenced work on the next edition. It will be developed in consultation with the Parliament as well as other Commonwealth Departments and agencies.

A Legislative Instruments Handbook will be developed, following the passage of the Legislative Instruments Bill, by the Office of Legislative Drafting in the Attorney-General's Department to complement and give guidelines on the operation of the Legislative Instruments legislation. As with the Legislation Handbook this latter Handbook will be developed in consultation with the Parliament as well as other Commonwealth Departments and agencies.

These Handbooks, when read in conjunction with the recently revised Cabinet Handbook, will provide a comprehensive guide to the administrative systems and processes underlying the development and passage through the Parliament of Government legislation. It is expected that the revised Legislation Handbook and the proposed Legislative Instruments Handbook will be available in loose leaf A4 format and on CD-ROM.

Yours sincerely

MICHAEL LAVARCH



Attorney-General

The Hon. Michael Lavarch M.P.
Parliament House
Canberra ACT 2600

18 May 1995

RECEIVED
22 MAY 1995

Mr Daryl Melham MP
Chair
House of Representatives Standing Committee
on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

Dear Mr Melham

I refer to my letter dated 20 December 1994 concerning your Committee's report *Clearer Commonwealth Law*.

The Prime Minister will be releasing the Government response today with the launch of the Justice Statement. A copy of the full text of the Government's response is attached. I anticipate that the response will be tabled shortly.

I again thank the Committee for their efforts in this area.

Yours sincerely

MICHAEL LAVARCH

GOVERNMENT RESPONSE TO THE REPORT

CLEARER COMMONWEALTH LAW

BY THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Recommendations 1 and 3

The Department of the Prime Minister and Cabinet should re-write the *Legislation Handbook* to state that the government department or agency responsible for a proposal to make primary or subordinate legislation should consult on the proposed legislation unless

- (a) the proposed legislation would only alter fees or benefits in accordance with the Budget; or
- (b) the proposed legislation would contain only minor machinery provisions that would not fundamentally alter existing legislative arrangements; or
- (c) advance notice of the proposed legislation would give a person an advantage that he or she would not otherwise receive. (Recommendation 1, Paragraph 2.61)

The Department of the Prime Minister and Cabinet should re-write the *Cabinet Handbook* to require that Cabinet submissions dealing with proposed legislation include a section stating:

- (a) whether consultation has taken place outside the Commonwealth Government about the proposed legislation;
- (b) if no consultation has taken place outside the Commonwealth Government – the reasons why no consultation has occurred; and
- (c) what consultation on the proposed legislation is recommended if Cabinet approves the proposal for legislation. (Recommendation 3, Paragraph 2.63)

The Government supports the thrust of these recommendations. Consistent with the approach taken in the Legislative Instruments Bill 1994 and best practice in developing legislation, consultation should take place where appropriate with interested parties both within and outside government. The Government notes that the urgency of particular legislation may mitigate against widespread consultation in some cases.

The Government supports the proposal that Cabinet submissions dealing with proposed legislation refer to what consultation has taken place in the development of the proposals. In addition, the Government believes that matters which do not require Cabinet consideration, namely those of a minor nature and handled on the basis of Prime Ministerial approval, should also comply with the intention of recommendation 3 of the Committee's report, where appropriate. These requirements will be included in the revised *Legislation Handbook*.

It is also noted that the fourth edition of the Cabinet Handbook released during 1994 details the requirements for consultations on Cabinet submissions in chapter 5 of that Handbook.

Recommendations 2, 4, 5, 6, 17 and 35

The Department of the Prime Minister and Cabinet should re-write the *Legislation Handbook* and *Cabinet Handbook*:

- (a) to advise government departments and authorities that where a policy for legislation has been developed to the point where it is proposed to seek Ministerial or Cabinet approval, the government agency responsible for the policy should consult the relevant drafting office to ensure that the policy can be expressed simply in legislation; and
- (b) to emphasise the desirability of preparing preliminary drafting instructions at the same time as Cabinet submissions relating to the legislation. (Recommendation 2, Paragraph 2.62)

The Department of the Prime Minister and Cabinet should re-write the *Legislation Handbook* to recommend that departments and agencies use their legal or legislation areas to instruct the Office of Parliamentary Counsel or the Office of Legislative Drafting in the preparation of legislation. (Recommendation 4, Paragraph 3.20)

The Department of the Prime Minister and Cabinet should re-write the *Legislation Handbook* to make it clear that oral instructions given by telephone or in meetings, form an acceptable part of the instructing process once written instructions have been given. (Recommendation 5, Paragraph 3.31)

The Department of the Prime Minister and Cabinet should re-write the *Legislation Handbook* to emphasise the need for instructions to identify clearly:

- (a) the objects of the proposed legislation;
- (b) legislative provisions affected by the proposed legislation;
- (c) other provisions relevant to the proposed legislation; and
- (d) related matters in any other drafting instructions. (Recommendation 6, Paragraph 3.48)

The Department of the Prime Minister and Cabinet should re-write the *Legislation Handbook* to emphasise the need for drafting instructions to identify if there is a target audience for the legislation. (Recommendation 17, Paragraph 6.16)

The Department of the Prime Minister and Cabinet should re-write the *Legislation Handbook* to indicate that compliance with deadlines for giving instructions is important but that provisional instructions should be given to a drafting office if there is likely to be a substantial delay in finalising instructions. (Recommendation 35, Paragraph 10.24)

The Government supports the thrust of these recommendations that focus on improving the efficiency and effectiveness of the legislative drafting process. It is intended that these matters will be addressed in the next edition of the Legislation Handbook and, where appropriate, in the proposed Legislative Instruments Handbook.

The Government agrees that, in accordance with recommendation 4 of the Report, it is essential that someone experienced in developing legislation be consulted at an early stage of policy development and, where appropriate, be involved in instructing the Office of Parliamentary Counsel (OPC) or the Office of Legislative Drafting (OLD) in the preparation of legislation. This will help ensure that drafting will achieve the desired policy outcome.

In accordance with recommendation 17 of the Report, the next edition of the Legislation Handbook and the proposed Legislative Instruments Handbook will advise Departments on the general methods to identify target audiences for certain types of legislation so as to assist OPC or OLD in drafting such legislation.

The Government strongly supports, as part of the legislative process, the need for instructions to identify clearly those matters set out in recommendation 6. This will be emphasised in the next edition of the Legislation Handbook and the proposed Legislative Instruments Handbook. Some Departments already give instructions in a standard form and the instruction skills of departmental officers are being developed through the Legislation Process training program conducted by OPC in conjunction with the Department of the Prime Minister and Cabinet.

The Government supports the need to express policy as simply as possible in legislation, as advocated in recommendation 2. It also acknowledges that there are advantages in preparing preliminary drafting instructions at the same time as Cabinet submissions or requests for Prime Ministerial approval of minor policy matters are sought relating to legislation. The present OPC system of client advisers linked to Departments should facilitate these preliminary communications in relation to Bills. In relation to delegated legislation, OLD encourages similar communication, either with the Principal Legislative Counsel or with the head of the unit responsible for the legislation of the relevant agency.

It is intended that the Legislation Handbook will stress the importance of meeting deadlines for the issuing of instructions and the circumstances where preliminary instructions should be issued, as noted by the Committee in recommendation 35. The Government recognises that, wherever possible, final instructions should be ready to meet the relevant deadline for legislation to maintain its position in the program.

The Government notes that, as suggested by the Committee in recommendation 5, oral instructions by telephone or at a meeting are an acceptable part of the instruction process once written instructions have been given, provided those oral instructions are confirmed in writing where it would be appropriate to do so. It should also be noted that, in the main, instructing departmental officers currently function in this way. The revised Legislation Handbook and the proposed Legislative Instruments Handbook will detail the circumstances where oral instructions might be appropriate.

Recommendation 7

Drafting and instructing agencies should co-operate to develop more, regular

training programs for officers who will be giving instructions to drafters.
(Paragraph 3.61)

The Government supports this recommendation. A Legislation Process training program has been developed by OPC in conjunction with the Department of the Prime Minister and Cabinet which addresses issues relating to giving drafting instructions. OLD has provided some training both in instructing and in legislative drafting, and will be enhancing this program in fulfilling its role in relation to the standards of legislative instruments under the Legislative Instruments Bill 1994 currently before the Parliament.

Recommendation 8

The Department of the Prime Minister and Cabinet, in consultation with the Office of Parliamentary Counsel, the Office of Legislative Drafting and agencies which give instructions, should re-write the *Legislation Handbook* to deal comprehensively with the preparation of instructions for Bills and subordinate legislation. (Paragraph 3.6.6)

The Government supports this recommendation. The revised Legislation Handbook and proposed Legislative Instruments Handbook will address this issue and ensure that there is comprehensive coverage including appropriate co-ordination of legislation and subordinate legislation.

Recommendation 9

The Government should implement the following recommendations made by the Administrative Review Council in its report *Rule Making by Commonwealth Agencies*:

- (a) **recommendation 4 to give the Office of Legislative Drafting responsibility for ensuring that subordinate legislation is prepared to an appropriate standard; and**
- (b) **recommendation 5 to require that all subordinate legislation instruments be drafted by, or under arrangements approved by, the Office of Legislative Drafting.** (Paragraph 4.109)

The Government supports this recommendation. The Legislative Instruments Bill 1994 currently before the Parliament provides the Principal Legislative Counsel of the Attorney-General's Department with a statutory responsibility for ensuring that all legislative instruments are of a high standard. In addition to undertaking or supervising the drafting of legislative instruments, the Bill envisages that the steps the Principal Legislative Counsel may take to fulfil this responsibility include providing advice concerning drafting, providing training in drafting to officers of other Departments and agencies, arranging temporary secondments of OLD officers to other Departments or agencies and providing drafting precedents to other Departments and agencies.

Recommendation 10

The agency responsible for a subordinate legislative instrument must prepare a memorandum, to be tabled with the instrument, stating:

- (a) whether the instrument was drafted by the Office of Legislative Drafting; or
- (b) whether the instrument was drafted by the agency and settled by the Office of Legislative Drafting; or
- (c) whether the instrument was drafted by the agency under other arrangements approved by the Office of Legislative Drafting and, if it was, what the arrangements were. (Paragraph 4.i10)

The Government supports this recommendation, noting that the Legislative Instruments Bill 1994 requires the tabling of an explanatory statement with every legislative instrument. The proposed Legislative Instruments Handbook will indicate drafting arrangements as a matter which will ordinarily be included in that explanatory statement.

Recommendation 11

The Office of Legislative Drafting should review annually for three years the operation of the system envisaged by the Administrative Review Council in its report *Rule Making by Commonwealth Agencies* for preparation of subordinate legislation to assess the effectiveness of quality controls on drafting. (Paragraph 4.111)

The Government supports this recommendation. In addition to regular evaluation by the Office of Legislative Drafting of measures in relation to drafting standards, the Government notes that full evaluation of the operation of the Legislative Instruments Act will take place three years after the scheme is introduced, by the Administrative Review Council on terms of reference specified by the Attorney-General following consultation with the Minister of Finance.

Recommendations 12 and 13

The Office of Legislative Drafting should provide more training for drafters of subordinate legislation in other agencies. (Recommendation 12, Paragraph 5.32)

The Office of Legislative Drafting should develop and implement a program of placements for training officers from the Office of Legislative Drafting and drafters of subordinate legislation from other agencies. (Recommendation 13, Paragraph 5.43)

The Government supports these recommendations. The Government notes that providing training for drafters in other agencies and the secondment of drafters are included in the means by which it is envisaged the Principal Legislative Counsel will fulfil her statutory responsibility for the standard of legislative instruments under the Legislative Instruments Act.

Recommendation 14

The Office of Parliamentary Counsel should strengthen its current program of placements for its officers in private law firms or Commonwealth policy agencies. (Paragraph 5.44)

The Government supports this recommendation. It notes that there is a cost to the Office of Parliamentary Counsel in the loss of the services of trained officers which is a factor which the First Parliamentary Counsel must take into account in determining the program of placements.

Recommendations 15 and 16

A team including a person with legislative drafting experience and a human resource management expert should review the staffing of the Office of Legislative Drafting and the Office of Parliamentary Counsel to determine appropriate numbers and levels of drafting staff in each agency. (Recommendation 15, Paragraph 5.59)

The Office of Legislative Drafting and the Office of Parliamentary Counsel should be allocated the extra resources they need to implement the recommendations of this report. (Recommendation 16, Paragraph 5.68)

The Government supports these recommendations, noting that staffing of both drafting offices has been under active consideration since this Report was issued. Additional funds have been allocated to both drafting offices in the 1994-95 Budget. The Government also notes that the staffing of drafting offices is related to the availability of trained drafters, as well as to the allocation of resources. Both offices are actively focussing on improved training measures for drafters recruited at base level to address staffing issues.

Recommendations 18 and 19

The Office of Parliamentary Counsel and the Office of Legislative Drafting should engage consultants to carry out, in consultation with agencies responsible for administering the relevant legislation, a program of testing several Bills and several pieces of subordinate legislation each year. (Recommendation 18, Paragraph 6.42)

The cost of programs of testing legislation should be shared between the agencies responsible for administering the pieces of legislation tested, and the drafting agency involved. (Recommendation 19, Paragraph 6.44)

The Government accepts the thrust of these recommendations. Document readability testing is currently being carried out in relation to the Corporations Law Simplification Project, and the Tax Laws Improvement Project. The testing of Bills and legislative instruments may best be done in the context of law revision projects, and its use in such projects is being investigated. As announced in the White Paper *Working Nation*, law revision priorities will be considered by the Structural Adjustment and Trade Committee of Cabinet on an annual basis. Funding has been allocated in the 1994-95 Budget to each drafting office to establish a Law Revision Unit. The apportionment of costs between the drafting offices and sponsoring agencies in particular cases will be considered in this context.

Recommendation 20

The Government should implement recommendation 2 from the Administrative Review Council's Report *Rule Making by Commonwealth Agencies* by revising the *Legislation Handbook* to set out matters that should be dealt with only by Acts. (Paragraph 7.21)

The Government recognises the need to more clearly define the division of material between Acts and subordinate legislation. Clearer guidelines to achieve this will be developed by the Department of the Prime Minister and Cabinet in consultation with the Attorney-General's Department during the revision of the *Legislation Handbook* and the development of the proposed *Legislative Instruments Handbook*. It is the Government's view, however, that there are dangers in attempting to be too prescriptive in this matter. While it should be possible to enunciate clearer general principles, their application in particular cases may well be influenced by the nature of the subject-matter and a variety of other factors. OPC is best placed to advise in these situations.

Recommendation 21

Drafters in the Office of Parliamentary Counsel, the Office of Legislative Drafting and other Commonwealth agencies should make greater use of schedules to deal with discrete topics, such as procedural matters, constitution of authorities etc., that do not go to the essence of the scheme administered by the legislation. (Paragraph 7.26)

The Government supports this recommendation. Drafters in both drafting Offices and in other Commonwealth agencies are continually seeking improved means of conveying ideas or presenting information. The use of Schedules, and of tables (whether or not in Schedules), are means by which improvements may be made in appropriate cases.

Recommendation 22

The Attorney-General's Department and the Office of Parliamentary Counsel should publicly review and re-write the *Acts Interpretation Act 1901*. (Paragraph 8.18)

The Government supports this recommendation. The Parliamentary Counsels' Committee of the Standing Committee of Attorneys-General is currently involved in a review of Commonwealth, State and Territories' Acts interpretation legislation to seek uniformity across jurisdictions. The Government notes that re-writing legislation is resource-intensive, and therefore the priority for review of this Act will be considered in the context of law revision priorities.

Recommendation 23

The Department of the Prime Minister and Cabinet should re-write the *Legislation Handbook* to draw the attention of instructing officers to section 15AC of the *Acts Interpretation Act 1901* (or its equivalent in re-written interpretation legislation) and to point out that amending legislation need not

follow all the linguistic conventions of the legislation being amended. (Paragraph 8.22)

The Government agrees with this recommendation, noting that both drafting offices currently draw these matters to the attention of instructing officers where they are relevant to legislation being drafted.

Recommendation 24

Commonwealth interpretation legislation should provide that in all principal legislation made after 1 January 1994, words of masculine or feminine gender include the neuter gender, but words of masculine gender do not include the feminine gender and words of feminine gender do not include the masculine gender. (Paragraph 8.31)

The Government supports the thrust of this recommendation. Drafting officers currently use gender-specific wording as recommended. However, the Government notes that the *Acts Interpretation Act 1901* currently provides for “words importing a gender” to include every other gender. This includes the neuter gender and ensures that provisions do not have a discriminatory application unless specifically expressed to do so. The suggested amendment of the *Acts Interpretation Act 1901* would open the way for provisions to operate in a discriminatory way through an inadvertent omission of a gender-specific pronoun. As well, the adoption of such a rule for amending legislation could cause confusion and extra effort for readers of legislation.

Recommendation 25

When a piece of legislation is being amended for other reasons, drafters should also amend it to use words of the feminine gender where appropriate. (Paragraph 8.32)

The Government supports this recommendation. Both OPC and OLD currently make such amendments when possible. There are occasions when an urgent amendment is needed, and time does not permit amendment of the whole of the legislation as recommended. OPC has recently reviewed Commonwealth Acts to identify those which still use only masculine pronouns, and a renewed effort is being made to update these Acts.

Recommendation 26

The Department of the Prime Minister and Cabinet should re-write the *Legislation Handbook* to require departments and instructing officers to have legislation drafted in general principles where appropriate, while recognising the need to use ‘black-letter law’ in many circumstances. (Paragraph 8.57)

The Government agrees that the *Legislation Handbook* should be amended to take this recommendation into account. The revised *Legislation Handbook* will address the issue of when general principles drafting may be appropriate. It is noted that the current use of purpose clauses in Bills and the provision of notes to individual clauses in Bills are designed to assist readers to understand the general principles underlying the proposals in a Bill.

Recommendation 27

The Attorney-General should develop a sunset program to promote regular re-writing of all subordinate legislation and introduce a Bill to provide a legislative basis for the program. (Paragraph 8.82)

The Government does not accept this recommendation. The Legislative Instruments Bill 1994 provides for the back capturing of existing delegated legislative instruments rather than the sunseting proposed by the Administrative Review Council in its report Rule Making by Commonwealth Agencies. The Government adopted this approach because sunseting is a resource intensive approach and it was not established that sunseting provided benefits outweighing the resources burden. The Legislative Instruments regime is to be evaluated after 3 years of operation and that evaluation will include a proper analysis of the theory and practical benefits of sunseting. This recommendation will be reconsidered following that evaluation.

Recommendations 28, 29 and 30

The Office of Legislative Drafting, in co-operation with agencies administering subordinate legislation, should develop a program to identify and re-write subordinate legislation that:

- (a) is heavily used or affects many people;
- (b) is difficult to use; and
- (c) is not due to expire under the proposed sunset system in the short or medium term. (Recommendation 28, Paragraph 8.83)

The Department of the Prime Minister and Cabinet and the Office of Parliamentary Counsel, in consultation with all departments, should develop for the consideration of the Parliamentary Business Committee of Cabinet a program for re-writing Acts based on the following criteria:

- (a) the number of people using, or being affected by, each Act; and
- (b) the difficulty in use of the Act attributable to its drafting or structure. (Recommendation 29, Paragraph 8.86)

A law revision unit should be established in the Office of Legislative Drafting to undertake the proposed program of re-writing subordinate legislation. (Recommendation 30, Paragraph 8.91)

These matters have been addressed in the Government's White Paper *Working Nation* which announced a requirement for portfolio Ministers to bring forward for consideration by the Structural Adjustment and Trade Committee of Cabinet programs of review of existing business regulation. These programs will include both primary and subordinate legislation. To this end law revision units are currently being established in both OPC and OLD. Other legislation is currently reviewed as the need arises and is revised as and when circumstances and resources permit. It is expected that the process of providing existing legislative instruments for registration under the Legislative Instruments Bill 1994, currently before the Parliament, will assist in identifying subordinate legislation in need of review and revision. The need for

regular review will be reflected in the revised Legislation Handbook and the proposed Legislative Instruments Handbook.

Recommendation 31

The proposed law revision unit of the Office of Legislative Drafting should investigate changing the presentation of amendments of subordinate legislation to group amendments of an instrument with similar effects under a heading outlining the purpose of the amendments. (Paragraph 9.17)

The Government supports this recommendation, noting that such a grouping may not always be practicable, depending upon the nature of the instrument to be amended. Where grouping of amendments is not possible the use of a purpose clause may fulfil the same function. OLD will address this recommendation in its consideration of improvements in drafting practices in relation to the Principal Legislative Counsel's responsibility to ensure that all legislative instruments are of a high standard under the Legislative Instruments Bill 1994 currently before the Parliament.

Recommendation 32

The Office of Parliamentary Counsel, the Office of Legislative Drafting and the Australian Government Publishing Service should acquire software that will enable the automatic insertion of informative running heads on each page of original legislation, and, as far as possible, on each page of amending legislation. (Paragraph 9.29)

The Government supports this recommendation, noting that there are many relevant considerations relating to the choice of software for legislative drafting purposes. Both drafting offices are continually investigating emerging technology, to enable advantage to be taken of facilities as they become available, and this ability is a facet of functionality which will be taken into account in the acquisition of software.

Recommendation 33

The Office of Parliamentary Counsel, the Office of Legislative Drafting and the Office of Legal Information and Publishing should ensure that tables of provisions are prepared for all new legislation and reprints of Acts and Statutory Rules. (Paragraph 9.37)

Both OPC and OLD are currently in the process of implementing this recommendation, which is supported by the Government.

Recommendation 34

The Australian Government Publishing Service should prepare, in consultation with the drafter and instructing officer, an index for each long piece of principal legislation or reprint. (Paragraph 9.44)

The preparation of indexes for long pieces of legislation is supported. However, these may more appropriately be prepared by the drafting offices. The Government notes that indexing is one method of improving the accessibility of legislation, which is particularly appropriate for hard copy consolidations. The increasing availability of computer access to legislation, both on-line and through the provision of computer

terminals in AGPS bookshops, together with advances in text searching software, may obviate the need for indexes in some cases.

Recommendation 36

The Government should discontinue the practice of grouping amendments of legislation administered by one department in a portfolio Bill and instead group amendments of legislation dealing with a single subject into a single Bill. (Paragraph 10.36)

The Government does not accept this recommendation. The Government has, where appropriate, grouped amendments dealing with a single subject into a single piece of legislation, for example, *Banking (State Bank of South Australia and Other Matters) Act 1994*. The Government supports the use of this practice in appropriate cases. The Government, however, considers that the retention of portfolio omnibus Bills which contain minor non-controversial amendments is necessary in order to avoid a multiplicity of small, non-controversial amending Bills. Portfolio Bills continue to provide the most efficient means for Parliament to consider many necessary but minor amendments that arise with the passage of time and change of circumstance. To deal with these minor amendments in separate Bills would detract from the Parliament's capacity to give proper consideration to Bills of a more substantial policy content.

Recommendation 37

To improve the scrutiny of primary legislation, a minimum of ten days should elapse between the introduction and second reading of a Bill. (Paragraph 10.42)

The Government supports the thrust of this recommendation. In August 1993, the Government adopted the policy that, wherever possible, Bills should be introduced in one sitting for passage in the next sitting. Under this policy, many Bills introduced in the 1994 Autumn sittings were available for consideration by members for at least six weeks before coming on for second reading debate, and many introduced in the 1994 Winter sittings were available for at least eight weeks.

Where, however, it is necessary for reasons of urgency or the nature of the proposed legislation that a Bill needs to be passed in the same sittings in which it is introduced, it is the practice of the Government, wherever possible, not to debate the Bill until the sitting week following introduction. Moreover, prior to introduction of urgent Bills, the Government makes available to members a statement of reasons outlining the need for urgent passage containing:

- a brief description of the purpose of the proposed Bill or amendments;
- a description of the reasons for seeking introduction and passage in the same sittings; and
- (if appropriate) why the need for the amendments was not foreseen.

Recommendation 38

The Government should prepare every six months, and propose for inclusion in Sessional Orders of the House and Senate, an indicative calendar of activities for the Parliament. The calendar could indicate the proposed legislative timetable

and allow set times for the consideration of particular Bills. (Paragraph 10.57)

The Government is sympathetic to the principle underlying this recommendation. A list of bills for proposed introduction in a sittings and a separate forward program of bills for debate for each House in that sittings are released by the Leader of the House and Manager of Government Business in the Senate shortly after the conclusion of the previous sittings.

Recommendation 39

Ministers should refer any exposure drafts of legislation to the parliamentary committees responsible for the matters covered by the legislation. (Paragraph 10.58)

The Government is sympathetic to the principle underlying the recommendation which is based on maximising the opportunity for Parliament to consider legislation before it comes on for debate. The recent adoption of the policy that bills be introduced in one sitting for passage in the next reflects acceptance by the Government of the importance of the principle. In fact, the number of bills referred to committees, particularly in the House of Representatives, has increased since the adoption of that policy. The Government does not believe that in those circumstances there is a need for an additional measure of the kind in the recommendation. That is not to say, however, that the Government would not refer an exposure draft to a committee were it appropriate to do so in a particular case.

Recommendation 40

The Government should consult the Opposition with a view to amending Standing Orders of the House of Representatives to facilitate more effective forms of scrutiny of primary and subordinate legislation. (Paragraph 10.66)

The Government recognises that effective parliamentary scrutiny improves the quality of legislation. As previously noted, the Government has adopted the policy that, wherever possible, Bills should be introduced in one sitting for passage in the next sitting. In addition the Government has supported the recommendations of the House of Representatives Procedure Committee report *About Time* which has led to the establishment of the Main Committee to provide another forum for the scrutiny of primary legislation by the House of Representatives. The Legislative Instruments Bill 1994 currently before the Parliament extends the mechanisms available for effective parliamentary scrutiny of all subordinate legislative instruments. Under the present provisions of the *Acts Interpretation Act*, where the Parliament is loath to disallow a particular instrument but has a concern, it often accepts undertakings to further amend the instrument to remove the concerns. The new provisions, by allowing Parliament to defer consideration of a motion of disallowance for up to 6 months, replaces this practice and will facilitate consideration by the Executive of Parliament's concerns.

Recommendations 41 and 42

The Office of Legislative Drafting should establish and maintain an electronic register of images and text of all subordinate legislative instruments made after the establishment of the register. (Recommendation 41, Paragraph 11.58)

The Office of Legislative Drafting should be responsible for publishing in the *Commonwealth Government Gazette* the title and date of entry of a subordinate legislative instrument in the proposed electronic register as soon as practicable after the instrument has been entered in the register (Recommendation 42, Paragraph 11.59)

The Government supports recommendation 41, but rejects recommendation 42. The Legislative Instruments Bill 1994 currently before the Parliament establishes a Federal Register of Legislative Instruments. This Register will be an image-based electronic Register and will contain all legislative instruments made after the commencement of the legislation. In addition, images of all existing legislative instruments which are to remain in force will be entered into the Register in accordance with a legislative time frame over a two year period. The Bill also provides for a text-based data base of all legislative instruments made after the establishment of the Register.

The Government supports the principle of notification of the making of legislative instruments. The Bill provides for a text based Index to all instruments contained in the Register, which will be available electronically and in hard copy. This will provide a faster and more widely accessible means of such notification than publication in the *Gazette* and, the Register will replace the *Gazette* for the purposes of notification.

Recommendation 43

The Attorney-General's Department, in conjunction with public and private sector partners as appropriate, should by 30 June 1994:

- (a) **consolidate, in electronic form and as the official consolidation, all Commonwealth primary and subordinate legislation;**
- (b) **publish, in printed form, a complete consolidation of all Commonwealth primary and subordinate legislation; and**
- (c) **put in place means of ensuring ready public access to the complete consolidation in electronic form. (Paragraph 11.66)**

The Government strongly supports this recommendation, which has been substantially implemented. Consolidations of all Commonwealth primary legislation and of all Statutory Rules have been completed in electronic form, and have been publicly available in electronic form through the provision of computer terminals in all Australian Government Publishing Service bookshops since 1 July 1994. In addition, the consolidations are available on-line through the Attorney-General's Department's SCALE computer system, with measures to upgrade this system currently under investigation. The Government does not consider that the cost of publishing all consolidations in printed form is justified, given that prints of all consolidations may be taken from the computer system. It notes that printed versions of the consolidations are very quickly out of date, and would, in many cases, require supplementation from the electronically available consolidation.

Most subordinate legislation other than Statutory Rules has not previously been published by the Australian Government Publishing Service. Copies of many subordinate legislative instruments have not been generally available, and have had to be obtained through the sponsoring agency. The inclusion of all subordinate legislative instruments on the Register and associated text data base under the

