

Appendix 2 History of the Parliamentary Counsel's Committee (Article by Dennis Murphy, former Parliamentary Counsel NSW, for inaugural edition of PC News and Views newsletter)

Introduction

The Parliamentary Counsel's Committee provides an important forum for legislative drafters in Australia and New Zealand. It is appropriate in this inaugural edition of the newsletter to record some information about its origins, membership and role.

Origins

The heads of legislative drafting offices in Australasia were of course in contact with each other before the establishment of the Committee. There were a number of exercises involving uniform or complementary legislation (including for example companies and hire purchase legislation), and it was inevitable that there would be many occasions when legislative counsel would communicate or confer.

The earliest record of the work of the Committee is a report by a conference of drafters held on 20-25 February 1970 in accordance with a direction given by Attorneys-General at a meeting in December 1969. The conference was attended by drafters from the Commonwealth and most States, and resulted in the establishment of the Committee.

Drafters again met on 8 July 1970, and it was reported to Ministers at their meeting in that month that drafters discussed in particular systems for the programming of legislation.

When Ministers met in Sydney in March 1972, they adopted recommendations that where uniform legislation is to be prepared, the matter be referred to the Committee and that the source of further instructions for the draftsman be identified.

During the 1970s, legislation was prepared by the Committee on a variety of subjects, including the interchange of powers between the Commonwealth and the States; domicile; family law (invalidity of orders by *Russell v Russell*); recognition of foreign adoptions; reciprocal enforcement of probation and parole orders; consumer credit; and carriers' liability.

It is interesting that the question of a uniform Food Act was on the agenda by May 1979. How history repeats itself!

Membership of the Committee

The Committee originally consisted of the heads of the Offices of Parliamentary Counsel for the Commonwealth, the States, the Australian Capital Territory, and the Northern Territory. The head of the New Zealand Parliamentary Counsel Office and the head of the Office of Legislative Drafting for the Commonwealth later became members. Secretariat functions are provided by New South Wales.

Role of the Committee

The Committee provides a forum for the preparation of uniform or complementary legislation, the promotion of consistent styles of legislation in Australia and New Zealand and the exchange of ideas.

The Committee receives its work in two principal ways, and it is convenient to classify its work according to these.

The first class of the work of the Committee consists of projects specifically referred to it from time to time by the Standing Committee of Attorneys-General. The relationship with the Attorney-Generals no doubt arises from the historical and on-going relationship between individual Parliamentary Counsel's Offices and the Attorney-General in each jurisdiction. In earlier times Parliamentary Counsel often formed part of or was a branch within the Attorney-General's Department or its equivalent and in modern times have generally been answerable to the Attorney-General. However, in recent years ministerial responsibility in a number of jurisdictions has shifted to other portfolios. For example, in New South Wales it presently lies with the Premier.

The second class of work consists of matters brought to the Committee by one or more of its members. This happens when Parliamentary Counsel, individually or collectively, are assigned a project which warrants or would benefit from collective consideration and discussion. This is the way the Committee sometimes receives work from Heads of Government and other ministerial councils or from other governmental authorities seeking the enactment of uniform or model legislation. There has been a tendency in recent years for much of the work of the Committee to be referred to us by persons or bodies other than the Standing Committee of Attorneys-General, though such work is sometimes formally referred through the Standing Committee or its officers.

Any member of the Committee is at liberty to put an item on the Committee's agenda. Such an item may be for information only or to exchange ideas, or it may result in a co-operative drafting project involving most if not all members of the Committee.

There has been a suggestion that the second class of work is not part of the work of the Committee as such, but is rather a class of work being considered and dealt with by Parliamentary Counsel collectively outside the formal operations of the Committee. This distinction has not led to any practical consequences, but would be relevant in instances where responsibility for the policy of a particular project of the Committee will lie with Heads of Government or other authorities and their officers, and not the Standing Committee and its officers.

Some drafting projects involve all or most jurisdictions, while others involve fewer jurisdictions. The role of lead drafters is normally assigned by the Committee. Volunteers are called for. Co-location of the lead instructing officer is sometimes a relevant consideration in assigning responsibility for drafting.

Some at least of our work also involves model legislation that may not necessarily be adopted either in whole or in part by all jurisdictions. This means that for some members some projects may be of little or no concern.

To maintain its reputation, the Committee needs to produce work of a high quality and as quickly as possible. The contingencies of parliamentary programs inevitably mean that at some

times of year individual members are forced by pressure of work to “delegate to other members”.

The differential timing of peak work periods makes it very difficult to schedule meetings at all, let alone on a regular basis. Perhaps this does not really matter as quite a large percentage of Committee work is now fairly efficiently carried out on paper. Nevertheless, the Committee does aim to meet 3 or 4 times a year.

The Committee has established and supported drafters’ conferences and the Information Technology Forum, which has developed into a valuable resource for all members of drafting offices.

Value of the Committee

The Committee has prepared a very considerable amount of draft uniform or complementary legislation. Recent projects include cross vesting; crimes at sea; forensic procedures; cross-border workers compensation; and (again) food law.

Experience has shown that the collective discussion of draft legislation in this forum has been most useful. Members of the Committee are well-known to each other, and legislative matters are discussed in a friendly and frank way, with the application of the highest drafting principles. There can be no doubt that the work of the Committee has made a major contribution to Australian legislation.

The success of conferences such as the Information Technology Forum, and the Drafting Forum in New Zealand in February 2000, suggests that members of the Committee would continue to support future similar conferences and other means by which members of Australasian drafting offices can stay in contact and develop and share their professional skills.

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