

Premier and Cabinet Circular

PC 034 – REFERRAL OF SUBORDINATE LEGISLATION TO THE LEGISLATIVE REVIEW COMMITTEE



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Introduction

This circular sets out the requirements for the referral of subordinate legislation to the Legislative Review Committee (“the LRC”), in particular the procedures to be adopted by agencies in preparing submissions to the Committee.

Functions of the Committee

Section 12 of the *Parliamentary Committees Act 1991* provides that the functions of the Legislative Review Committee are:

1. To inquire into, consider and report on such of the following matters as are referred to it under this Act:
 - a) any matter concerned with legal, constitutional or parliamentary reform or with the administration of justice but excluding any matter concerned with joint standing orders of Parliament or the standing orders or rules of practice of either House
 - b) any Act or subordinate legislation, or part of any Act or subordinate legislation, in respect of which provision has been made for its expiry at some future time and whether it should be allowed to expire or continue in force with or without modification or be replaced by new provisions
 - c) any matter concerned with inter-governmental relations.
2. To inquire into, consider and report on subordinate legislation referred to it by the *Subordinate Legislation Act 1978*.
3. To perform such other functions as are imposed on the Committee under this or any other Act, or by resolution of both Houses.

Committee Review

Every regulation that is required to be laid before Parliament is referred to the Committee under section 10A(1) of the *Subordinate Legislation Act 1978*.

Section 10A(2) of the *Subordinate Legislation Act 1978* requires the Committee to inquire into and consider all regulations referred to it.

Consultation and Scrutiny of Subordinate Legislation

The Committee has adopted the following scrutiny principles to guide its inquiry and consideration of regulations:

1. Whether the regulations are in accord with the general objects of the enabling legislation.
2. Whether the regulations:

- a) unduly trespass on rights previously established by law
 - b) are inconsistent with the principles of natural justice
 - c) make rights, liberties or obligations dependent on non-reviewable decisions.
3. Whether the regulations contain matter which, in the opinion of the Committee, should properly be dealt with in an Act of Parliament.
 4. Whether the regulations are in accord with the intent of the legislation under which they are made and do not have unforeseen consequences.
 5. Whether the regulations are unambiguous and drafted in a sufficiently clear and precise way.
 6. Whether the objective of the regulations could have been achieved by alternative and more effective means.
 7. Whether the regulator has assessed if the regulations are likely to result in costs which outweigh the likely benefits sought to be achieved.

Subordinate Legislation Reports

General information

A supporting report to a regulation should include the following:

- The name of the regulation.
- The purpose of the regulation, including the legislative context within which the regulation was made.
- The name, position, telephone number and email address of a contact officer familiar with the regulation.

Committee's scrutiny principles

The supporting report should also include a statement that addresses the Committee's scrutiny principles in relation to the regulation. The statement is an opportunity to demonstrate to the Committee that an appropriate review of the Committee's scrutiny principles has occurred.

Effect of provisions of regulations

A brief explanation of the effect of the provisions of the regulation. The explanation may group together provisions that achieve the same or similar substantive effect.

Early commencement

If the Minister, who is responsible for the administration of the Act under which a regulation is made, specified an early commencement for the regulation under section 10AA(2) of the *Subordinate Legislation Act 1978*, the supporting report should include the reason or reasons for the early commencement of the regulation.

The Committee includes information about the reasons for early commencement of regulations in its annual report.

Statutory requirement

If the Act under which the regulation is made includes a requirement that must be complied with before the making of the regulation, the supporting report should specify the requirement and whether the requirement was complied with.

Consultation

The Committee seeks to ensure that those affected by a regulation have an opportunity to voice any concerns they may have in relation to the regulation.

The supporting report should include a list of any concerns raised in relation to the regulation by a person or organisation that was consulted before the regulation was made using the following table, including:

- who was consulted
- the concerns raised in relation to the regulation
- the action taken in response to the concerns.

Item	Person (de-identified) or organisation consulted	Concerns	Action taken in response to concerns

To assist the Committee to appreciate the outcome of the consultation as a whole, the supporting report should also include a list of the persons or organisations consulted that support the making of the regulation using the following table:

Item	Person (de-identified) or organisation consulted	Reasons for supporting the making of the regulation

If any of the following apply, the supporting report for a regulation need only include a statement to indicate which of the following applies to the regulation:

- the regulation, in a year, only increases fees or charges, or both, in a regulation in accordance with that year's State Budget indexation rate fee or charge increase
- the regulation amends or remakes a regulation with no substantive effect.

Fees and charges

The Committee's inquiry and consideration of regulations takes into account the appropriateness of any changes in the fees or charges, or both, in a regulation.

To assist the Committee, the supporting report to a regulation should specify an increase or decrease in a fee or charge, or both, in the regulation using the following table:

Item	Provision in new or amended regulation	Old fee or charge	New fee or charge	Percentage increase (or decrease)	Reason for increase (or decrease) in fee or charge (e.g. movement in the Consumer Price index or cost recovery)

If the regulation, in a year, only increases fees or charges, or both, in a regulation in accordance with that year's State Budget indexation rate fee or charge increase, the supporting report for the regulation need only include a statement to this effect.

Consideration of regulations by Committee

The Committee considers and reports to Parliament on a regulation before the expiry of 14 sitting days after the tabling of the regulation in the Parliament. The Committee may decide to:

- Take no action in relation to a regulation.
- Defer a regulation.
- Recommend that Parliament disallow a regulation.

Decision to take no action on regulation

If the Committee decides to take no action in relation to a regulation, the Committee reports to Parliament that it has resolved to take no action in relation to the regulation.

Decision to defer regulation

If the Committee decides to defer a regulation, the Committee defers the regulation until its next meeting.

However, if the Committee's consideration of the regulation may extend beyond 14 sitting days after the tabling of the regulation in the Parliament, the Committee's representative in each House of Parliament must give a notice of motion to disallow the regulation before the expiry of 14 sitting days. The motion is effectively a holding motion because it enables the Committee to complete its deliberations on the regulation while retaining its ability to recommend disallowance of the regulation.

Decision to recommend disallowance of regulation

If the Committee decides to recommend that Parliament disallow a regulation, the Committee's representative in each House of Parliament reports that opinion and the Committee's grounds for that opinion, to each House of Parliament.

If a Member of Parliament gives a notice of motion to disallow a regulation in a House of Parliament, there is no time constraint for the moving of the notice of motion.

If the Parliament is prorogued and the motion has not been dealt with, the motion lapses. However, if the regulation has not been tabled for 14 sitting days, any member of either House may give another fresh notice of motion for disallowance of the regulation in the new session of Parliament.

Consultation and Scrutiny of Subordinate Legislation

The Committee has adopted the following scrutiny principles to guide its inquiry and consideration of regulations:

Document Control

Review number:
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For more information

For queries regarding the Committee should be directed to:

The Secretary, Legislative Review Committee E: seclec@parliament.sa.gov.au
T: 8237 9583

For queries regarding the processing of subordinate legislation through Cabinet and Executive and it being tabled in Parliament should be directed to:

Cabinet Coordination, Cabinet Office E: DPCcabinetoffice@sa.gov.au
T: 8429 5132 or 8429 5114 W: dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars