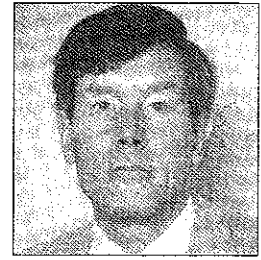


Canberra Rules: Still Talking of a Legislative Instruments Register



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The *Legislative Instruments Bill 1994* was introduced on 30 June 1994. An electronic Federal Register of Legislative Instruments was to become the principal method of registering and publishing all Commonwealth legislative instruments by 1 January 1995.

My last report on the development of the Federal Legislative Instruments Register was in the February *ALL*. When that article was being written, in January 1995, the *Legislative Instruments Bill 1994* was still before the Senate, which had conducted such an apparently-unsatisfactory committee inquiry that the House of Representatives was busily conducting its own inquiry.

Now, as I write in mid-November, I note that the House of Representatives Legal and Constitutional Affairs Committee reported on the Bill on 9 February and the Government responded to that report on 27 September, but the Bill is still before the Senate. It has yet to be passed by the Senate, then introduced into and passed through the House, before it can become law.

At present, the legislation is Number 30 on the Senate's Government Business - Orders of the Day, with over 20 Bills on the Government's list as essential for passage. There are only nine more sitting days to Christmas and there will be an election early in 1996. Draw your own conclusions.

Access

In its response to the House Committee's report, the Government accepted the Committee's recommendation (number 29) that the largest number of public access locations across Australia should be provided to the Register and SCALE. In a statement on 13 October, announcing the letting of a contract to develop the Federal Register of Legislative Instruments system, the Attorney-General introduced a wild card by dropping the suggestion that public access would rely on direct dial-up SCALE access and stating that public access would now be via the ubiquitous Internet. Apparently, he was working on the assumption that SCALE would soon be available on the Internet.

Instead, it seems that it is intended to provide SCALE access to the Register via the Internet only when the current, separate, project to upgrade the SCALE front-end software has been finished and SCALE itself is more user-friendly. The SCALE improvement project seems unlikely to be finished by 1 January 1996, when the

Federal Register of Legislative Instruments is supposed to go online. It therefore seems almost inevitable that, for at least a few months, public access to legislative instruments for anyone who is not a registered SCALE user will be very seriously degraded, as there will be no publication of legislative instruments in the Gazette, on which many now rely

A further problem for the Government is, or should be, that the public simply do not have ready access to either SCALE or the Internet, if you ignore the computer nerds and special librarians. Not all public or even legal libraries have that access

Another, more general, problem is that governments are, increasingly, just dumping information onto various Web sites and expecting the law-using public to come and find it. Could ignorance of the law, under those circumstances, be a valid defence? Will everyone need to become expert in computer searching? Will that mean that we need more or fewer law librarians?

One wonders what the Senate will make of the frequent changes to the Department's plans and assurances to provide public access to the Register. Departmental witnesses before the Senate Standing Committee on Regulations and Ordinances, just 12 months ago, seemed to imply that an agreement had been reached that terminals to permit public access to the Register would be available in (all?) public libraries, equating their electronic access to their present access to the paper Gazettes. It now seems that public libraries are on their own, to fund their own electronic access arrangements

Index

In its response to the House Committee's report, the Government promised to provide a good index, in both paper and electronic form, although it rejected the Committee's recommendation that the index should be published in the Gazette. The paper-based version of the Legislative Instruments Register index is, apparently, to be available on subscription via the AGPS.

The Index will not be published in the Gazette, presumably because, firstly, that would be too sensible and, secondly, the Attorney-General's Department seems quite determined to have nothing to do with the Government Notices Gazette. How often the stand-alone paper index will be published is not entirely clear. The electronic version of the index will be updated at least once and possibly twice daily, if required. Hence, whether the two versions of the Index will always match is also, as we say in Canberra, not entirely clear. (Readers should note that instruments will normally come into force at midnight following their registration, an immense improvement on the present situation, where they are often effective on, i.e. at the start of, the day of promulgation, even if they are not promulgated until late afternoon.)

Nowhere has the Attorney-General's Department explained why it is seeking to eliminate the Government Notices Gazette as a vehicle for publishing anything to do with legislative instruments. One might have thought it useful, if only as a bridging measure until the adequacy of the new publication system has been proven.

Consultation

A Bill which requires all government departments to consult about the development of legislative instruments which affect business was itself developed and slipped into the Parliament with no apparent consultation with its main public users. A Register which will affect many legal activities throughout the land is supposed to be up and running in about 40 days' time, yet the access arrangements have not yet been widely publicised.

On the plus side, staff of the Office of Legislative Drafting, in the Attorney-General's Department, have said that they would welcome any opportunity to speak on the new system. Conference organisers take note, but also note that you may be asked to help with the travel costs - the Department does not appear to have budgetted for a widespread public consultation process!

Problems

Although the Bill to establish the Register has not yet been amended to reflect the Government's response to the House committee's report, the Attorney-General's Department has already let a contract to develop the necessary software. Forget waiting for Royal Assent! The Department, quite reasonably, points out that it is rushing to meet a deadline and can, in any case, use the computer equipment for other purposes. Nevertheless, an inquiry by the Auditor-General seems possible.

With hindsight, the root cause of many of the problems seems to have been the Department's muddling two quite separate aims from inception.

- One aim was to have an authoritative, public Federal Register of Legislative Instruments. Only an arch-bureaucrat, intent on preserving power, would question that.
- The other aim was to define, in an Act of Parliament, the new medium by which that Register and those instruments are to be made available to the public. Noting the Government's problems with technological changes in its attempted regulation of Pay TV, one would have thought that a searing lesson had been learned. Various forms of electronic publication could have been used (tried?) to disseminate the Register until a suitable replacement for the paper Gazette had been established and gained public acceptance. Instead, the public, i.e. the current users of the Gazette and the potential users of the electronic Register, do not seem to have been consulted on this fundamental aspect of the project.

Conclusion

One would have felt much more confident, facing a 1 January 1996 start-up, if a back-up system of publication and dissemination was in place.

Then again, with luck, the Bill may not be passed this side of the election, which would give us at least six months and, possibly, another year to watch, wait and prepare, before the Federal Legislative Instruments Register is up and running. Maybe all the problems will be solved by then.

[Postscript: The legislation was neither discussed nor passed on Friday 1 December 1995, the last day of the Parliamentary sitting for the year]

Running a Library IS Hard!

‘What seems to elude everyone is that running a library with books is actually a very hard thing to do well. Budgeting, acquisition, preparation, display, processing, recovery, creating a collection to satisfy and also stimulate a regional clientele, coming to know the requirements of regular visitors, evolving ways to assist when available resources are insufficient - it is a very rare library that can do all this well.’

(Extracted from an article by Gideon Haigh ‘Libraries: see under Cafeteria’ in *The Australian* Monday, November 27 1995, p 11)