

**STANDING COMMITTEE ON  
SCRUTINY OF BILLS AND  
SUBORDINATE LEGISLATION**

**REPORT NO. 18 OF 1997**

**9 December 1997**

## TERMS OF REFERENCE

- (1) A Standing Committee for scrutiny of bills and subordinate legislation be appointed.
- (2) The Committee will consider whether:
  - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
    - (i) meet the objectives of the Act under which it is made;
    - (ii) unduly trespass on rights previously established by law;
    - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
    - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
  - (b) its explanatory statement meets the technical or stylistic standards expected by the Committee.
  - (c) clauses of bills introduced in the Assembly:
    - (i) do not unduly trespass on personal rights and liberties;
    - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
    - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
    - (iv) inappropriately delegate legislative powers; or
    - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
  - (d) its explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of three members.
- (4) If the Assembly is not sitting when the Committee is ready to report on Bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing and circulation.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) The foregoing provisions of the resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

## **MEMBERS OF THE COMMITTEE**

**Mr Bill Wood, MLA (Chair)**  
**Mr Paul Osborne, MLA (Deputy Chair)**  
**Mr Harold Hird, MLA**

**Legal Advisor: Mr Peter Bayne**  
**Secretary: Mr Tom Duncan**

## **ROLE OF THE COMMITTEE**

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

## BILLS

### Bills - No Comment

The Committee has examined the following Bills and offers no comments:

#### **Annual Reports (Government Agencies) (Amendment) Bill 1997**

This Bill, in conjunction with the Territory Owned Corporations (Amendment) Bill (No. 4) 1997, is designed to bring Territory owned corporations into line with other government agencies so far as concerns annual reports of their affairs.

#### **Dental Technicians and Dental Prosthetists Registration (Amendment) Bill (No. 2) 1997**

This Bill would amend the *Dental Technicians and Dental Prosthetists Registration Act 1988* to provide that a member of the Dental Technicians and Dental Prosthetists Registration Board is entitled to receive remuneration for time spent sitting on the Board for the hearing of a disciplinary inquiry.

#### **Health Professions Boards (Procedures) (Amendment) Bill (No. 2) 1997**

This Bill would amend the *Health Professions Boards (Procedures) Act 1981* to provide that a member of a health profession board is entitled to receive remuneration for time spent sitting on the Board for the hearing of a disciplinary inquiry. The amendments made by the Bill would also allow that a member of a Board who is a legal practitioner may preside at such an inquiry in the absence of the Chairperson.

#### **Nature Conservation (Amendment) Bill 1997**

This Bill would amend the *Nature Conservation Act 1980* to introduce two new kinds of licence: (i) an "ecological community licence" - which would permit a person to engage in a threatening process in relation to an ecological community having special protection status, and (ii) a "standing native timber licence" - which would permit a person to fell or damage standing native timber on leased land in or outside the built-up area. For the main part, the other clauses of the Bill support these schemes of regulation.

#### **Territory Owned Corporations (Amendment) Bill (No. 4) 1997**

This Bill, in conjunction with the Annual Reports (Government Agencies) (Amendment) Bill 1997, is designed to bring Territory owned corporations into line with other government agencies so far as concerns annual reports of their affairs.

### Bills - Comment

The Committee has examined the following Bills and offers the following comments:

#### **Medical Practitioners (Amendment) Bill 1997**

This Bill would amend the *Medical Practitioners Act 1930* to expand the membership of the Medical Board of the ACT by two persons. The effect of the proposed amendments would be (i) that both of these additional persons must not be entitled to be registered by a Board under the *Health Professions Boards (Procedures) Act 1981* or by the Dental Technicians and Dental Prosthetists Board; (ii) that one of these additional

persons must be a legal practitioner, and (iii) each of the remaining three members of the Board must be a registered medical practitioner.

*Comments on the Explanatory Memorandum*

The Explanatory Memorandum (and the Presentation Speech) say that a purpose of the Bill is to enable a “community representative” to be appointed to the Medical Board of the ACT. The amendments would not however require that the other of the non-medical practitioner members be a “community representative”.

**Motor Traffic (Amendment) Bill (No. 6) 1997**

This Bill would amend the *Motor Traffic Act 1936* to omit subsection 26AD (3) and paragraph 26AG (3) (b). The effect would be that a licensed vehicle dealer and their premises might be appointed as, respectively, authorised examiners and authorised premises for the purpose of carrying out inspections or tests of motor vehicles and/or trailers of a particular class or classes.

*Comments on the Explanatory Memorandum*

The reference to the commencement of the *Motor Traffic (Amendment) Act (No. 6) 1997* should be to the *Motor Traffic (Amendment) Act (No. 3) 1997*.

**Classification (Publications, Films and Computer Games) (Enforcement) (Amendment) Bill 1997**

This Bill would amend the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*. The amendments are directed principally to the X film industry. For the most part the provisions of the Bill would introduce a scheme which would have effect in relation to a film which has been seized under section 54W of the Act by an inspector who believes the film to be associated with an offence under the Act. A person from whom such a film is seized who desires its return must satisfy the Registrar of X films that the film has been classified X, R, MA, M, PG or G. (Classification is made by the Office of Film and Literature Classification.) Subject to some exception, the Registrar must destroy a seized film which has not been shown to be classified to the satisfaction of the Registrar. The Bill would also make some other amendments to the Act.

*Paragraph 2 (c) (i) - undue trespass on personal rights and liberties*

The Committee notes that proposed subclause 54Z (2) of the Bill may be seen as a provision which reverses the onus of proof in that a person from whom such a film is seized who desires its return must satisfy the Registrar of X films that the film has been classified X, R, MA, M, PG or G. The Committee notes however that a justification for such reversal is made in the Presentation Speech.

The effect of proposed clause 54ZB is that a seized film must be destroyed although no prosecution in relation to it has been undertaken, or, if it was, that no offence was found to have been proved in relation to the film. In these circumstances, destruction will occur if the person from whom the film was seized fails to satisfy the Registrar of X films that the film has been classified X, R, MA, M, PG or G. The Committee notes that the Presentation Speech argues that destruction is nevertheless justified to prevent the possibility that such films will be sold in the ACT or shipped interstate. The Committee points out however that there is no provision for compensation to be paid to the person from whom the film was seized.

The Committee notes that the effect of proposed clause 54ZB when read with proposed subclause 54R (1) will be that while a person will be notified on a decision to destroy a

film, the person will have no prior notice of an intention by the Registrar to take that action. The Committee notes however that by reason of the operation of proposed subclause 54Z (3), a person will be on notice that destruction will follow if he or she does not satisfy the Registrar that the film is classified.

*Drafting comment*

The Committee notes that under proposed subclause 54Y (3) the Registrar “may by instrument” approve an extension of the defined period within which a person may seek to satisfy the Registrar of X films that the film has been classified X, R, MA, M, PG or G. A decision to extend is administrative in nature and the Committee queries whether it is desirable to require that it be made “by instrument”. It might suffice to say that the decision be “in writing”.

*Comments on the Explanatory Memorandum*

The third paragraph under the heading “Destruction of seized films” says that proposed clause 54ZB “permits the Registrar to destroy a seized film ...”. It would be more accurate to say that the clause “requires the Registrar to destroy a seized film ...”.

The last paragraph under the heading “Destruction of seized films” appears to state that the scope of subclause 54ZB (4) - which says that the Registrar “may retain a seized film for the purposes of the administration of the Act ...” will operate only in the circumstances stated in the Explanatory Memorandum. The Presentation Speech also conveys this impression, although its statement of those circumstances is slightly different to that in the Explanatory Memorandum. The Committee suggests that the Explanatory Memorandum should be reworded to make it clear that these circumstances are illustrative only of the scope of proposed subclause 54ZB (4).

**Energy Efficiency Ratings (Sale of Premises) Bill 1997**

This Bill is designed to facilitate the disclosure of energy efficiency ratings in relation to the sale of premises. It would create an offence and impose penalties on persons who advertise the sale of premises unless the advertisement contained a statement of the energy efficiency rating of the habitable part of the premises. It would also impose obligations on both the vendor and purchaser of premises in relation to the provision of an energy efficiency rating statement.

*Paragraph 2 (c) (iv) - inappropriate delegation of legislative power*

The concept of an “energy efficiency rating statement” is defined in clause 3, but the definition also provides for such a statement to be prescribed in regulations which may be made under clause 7. Given the significance of this concept, and that this law would affect a great many people in the Territory, it is suggested that the concept be fully defined in the Act.

(In this connection, the Committee notes that the definition in clause 3 refers only to a statement which is “prescribed”, and presumes that this refers to prescription by regulation. If this provision is retained, the Committee suggests that the words “by regulations” be added to bring it into line with paragraph 4 (g) (if that provision is retained).

The concept of “premises” is very widely defined in clause 3, but by clause 4 does not apply to certain defined structures. By paragraph 4 (g) these are “premises prescribed by the regulations”. Again, given the significance of the concept of “premises”, and that this law would affect a great many people in the Territory, it is suggested that the concept be fully defined in the Act.

**Residential Tenancies (Amendment) Bill 1997**

This Bill would amend the *Residential Tenancies Act 1997* and is designed to facilitate the disclosure of energy efficiency ratings in relation to the lease of premises. It is a companion to the Energy Efficiency Ratings (Sale of Premises) Bill 1997.

*Paragraph 2 (c) (iv) - inappropriate delegation of legislative power*

The concept of an “energy efficiency rating statement” is defined in clause 3, but the definition also provides for such a statement to be prescribed in regulations which may be made under the Principal Act. Given the significance of this concept, and that this law would affect a great many people in the Territory, it is suggested that the concept be fully defined in the Act.

Bill Wood, MLA  
Chair

A handwritten signature in cursive script, appearing to read 'B Wood', written in black ink.

9 December 1997

