

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

REPORT NO. 19 OF 1996

24 December 1996

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Civic Square, London Circuit
CANBERRA ACT 2601
GPO Box 1020

STANDING COMMITTEE ON SCRUTINY OF
BILLS AND SUBORDINATE LEGISLATION

Telephone: (06) 2050171
Facsimile: (06) 2053109

Mr Greg Cornwell, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Cornwell,

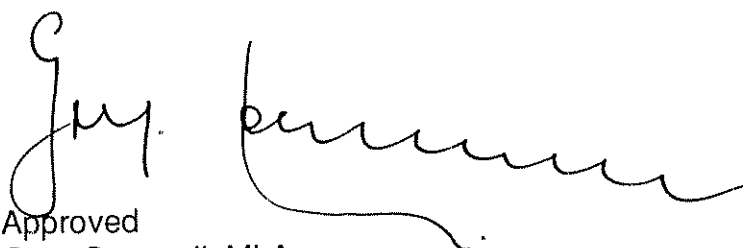
Please find enclosed a copy of Report No. 19 of 1996 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. I seek your approval to print and circulate Report No. 19 of 1996.

Yours sincerely,



Harold Hird, MLA
Chair

24th December 1996



Approved
Greg Cornwell, MLA

24 December 1996

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 Harold Hird, MLA (Chair)
Mr Paul Osborne, MLA (Deputy Chair)

Legal Advisor: Emeritus Professor Douglas Whalan, AM
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:

Education (Amendment) Bill 1996

This Bill prohibits the use of corporal punishment in a school conducted or maintained on behalf of the Territory or a school registered or provisionally registered under the principal Act.

Gaming Machine (Amendment) Bill 1996

This Bill makes provisions relating to placing warning notices to give information about the risks associated with gambling and the provision of support services for gambling addiction in gaming areas and outlaws the provision of cash or lending or credit facilities in gaming areas.

Schools Authority (Amendment) Bill 1996

This Bill provides that one of the functions of the Authority and school boards is to ensure that any disciplinary policy at a school precludes corporal punishment.

Bill - Comments

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

Canberra Tourism and Events Corporation Bill 1996

This Bill establishes the Canberra Tourism and Events Corporation.

Is this Cross-reference Accurate?

Clause 10 and the Schedule to the Bill set out details of the appointment, remuneration, resignation and termination of appointment of members and acting members of the Canberra Tourism and Events Corporation.

Clause 5(2) of the Schedule sets out a number of circumstances in which the Minister must terminate the appointment of a member. Clause 5(2)(b) provides that one of those circumstances is where an appointed member

"is, absent, except on leave granted under clause 4, for 3 consecutive meetings."

Clause 4 of the Schedule deals only with resignation of a member and does not deal with the granting of leave. Indeed, there does not appear to be a provision elsewhere in the Bill or the Schedule relating to the matter of granting of leave.

Perhaps a check should be made.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

The Committee has examined the following subordinate legislation and offers no comment:

Determination No. 264 of 1996 made under paragraph 10(1)(w) of the *Remuneration Tribunal Act 1995* provides that the Remuneration Tribunal is to determine the fees and allowances to be paid to the Chairperson and Members of the ACT Health Promotion Board.

Determination No. 278 of 1996 made under subsection 14(1) of the *Remuneration Tribunal Act 1995* makes an interim determination of fees for the Chairperson and Members of ACT Health Promotion Board.

Determination No. 279 of 1996 made under section 87 of the *Occupational Health and Safety Act 1989* corrects the citation in Determination No. 30 of 1995 that approved the National Standard - Safe Working in a Confined Space by substituting the correct citation of AS2865-1995 for AS2865-1985.

Determination No. 282 of 1996 made under section 6 of the *Trading Hours Act 1996* provides that from the commencement of business on 16 December 1996 to the close of business on 31 December 1996 large supermarkets may be open from 7.00 am to 10 pm on Monday to Friday and from 7.00 am to 8 pm on Saturday and Sunday.

Determination No. 283 of 1996 made under section 282C of the *Land (Planning and Environment) Act 1991* appoints a specified person to be Chairperson of the Land and Planning Appeals Board for the period 6 December 1996 to 31 January 1997, appoints a specified person to be Deputy Chairperson of the Land and Planning Appeals Board for the period 6 December 1996 to 31 January 1997 and appoints 5 named persons as Members of the Land and Planning Appeals Board for the period 6 December 1996 to 31 January 1997.

Determination No. 284 of 1996 made under section 39B of the *Bookmakers Act 1985* determined the location of two sports betting venues at Manuka Oval on 10 December 1996.

Determination No. 285 of 1996 made under section 39B of the *Bookmakers Act 1985* determined the directions for the operation of the two sports betting venues at Manuka Oval on 10 December 1996.

Determination No. 286 of 1996 made under section 39C of the *Bookmakers Act 1985* determined the rules for sports betting at Manuka Oval on 10 December 1996.

Determination No. 287 of 1996 made under section 36 of the *Motor Traffic Act 1936* repeals Determination No. 192 of 1996 and determines new maximum taxi fares.

Determination No. 288 of 1996 made under section 217A of the *Motor Traffic Act 1936* repeals Determination of Fees No. 119 of 1996 and determines fees for registration of motor vehicles both under the Act and under the *Road Transport Charges (Australian Capital Territory) Act 1993*.

Subordinate Law No. 27 of 1996 being the Supreme Court Rules (Amendment) made under section 36 of the *Supreme Court Act 1933* makes Rules in relation to specified evidentiary matters arising under the *Evidence Act 1995* (Cth) which applies in ACT Courts.

Subordinate Law No. 28 of 1996 being the Gaming Machine Regulations (Amendment) made under the *Gaming Machine Act 1987* provides supporting regulations specifying the financial and operational arrangements an applicant must satisfy to obtain an inter or intra linked jackpot permit.

Subordinate Legislation - Comments

The Committee has examined the following subordinate legislation and offers the following comments:

Determination No. 280 of 1996 made under paragraph 6(1)(c) of the *Lotteries Act 1964* determines the amount of \$500 as the exempt amount for lotteries conducted for charitable purposes.

Is the Explanatory Statement Correct?

Subparagraph 6(1)(c)(i) of the *Lotteries Act 1964* (as amended by the *Lotteries (Amendment) Act 1996*) provides as follows:

"6. (1) For the purposes of this Act, an exempt lottery is -

(c) a lottery in respect of which -

(i) the total value of the prizes does not exceed the amount determined by the Minister by notice in the *Gazette* for the purposes of this subparagraph."

The present determination fixes the amount at \$500. The Explanatory Statement states as follows:

"Subparagraph 6(1)(c)(i) of the Act empowers the Minister to set the minimum total prize value for exempt lotteries by determination." (Emphasis added.)

In fact, subparagraph 6(1)(c)(i) appears to permit the Minister to set the maximum level of prize value that will qualify for the exemption. Under the present determination this means that, provided that the total prize money does not exceed \$500, a lottery is exempted from the full provisions of the *Lotteries Act 1964*. However, once the total prize level for a lottery exceeds \$500, the full provisions of the *Lotteries Act 1964* would have to be complied with.

Determination No. 281 of 1996 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 194 of 1996 and determines fees and periods of time covered by those fees for parking in specified locations under section 163C of the Act.

What is the Effect of the Period from the Determination's taking Effect until its Gazettal?

Determination No. 281 of 1996 was signed on 25 November 1996, did not appear in the *Gazette* until 3 December 1996, but states that it "commences on 25 November 1996".

The effect of the period between its commencement on 25 November 1996 and its notification in the *Gazette* on 3 December 1996 needs to be considered.

Because of the provisions of subsection 6(19) of the *Subordinate Laws Act 1989* the present determination is a subordinate law, as it is a determination of fees and charges made by a Minister under a provision of an Act. Hence the other provisions of the *Subordinate Laws Act 1989* apply to it.

The possible effect of section 7 of the *Subordinate Laws Act 1989* appears to be of particular relevance. It provides as follows:

"7. A subordinate law shall not be expressed to take effect from a date before the date of its notification in the *Gazette* where, if the law so took effect -

(a) the rights of a person (other than the Territory or a Territory authority) existing at the date of notification would be affected in a manner prejudicial to that person; or

(b) liabilities would be imposed on a person (other than the Territory or a Territory authority) in respect of any act or omission before the date of notification;

and where any subordinate law contains a provision in contravention of this subsection, that provision is void and of no effect."

Determination No 281 of 1996 appears to impose liabilities on persons other than the Territory or a Territory authority in relation to the payment of parking fees from 25 November 1996. As it was not notified in the *Gazette* until 3 December 1996, the effect of section 7 needs to be considered in relation to the payment of those fees.

A handwritten signature in dark ink, appearing to read 'Harold Hird', written over a horizontal line.

Harold Hird, MLA
Chair

24th, December 1996

