

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

REPORT NO. 20 OF 1995

22 December 1995

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

Legal Advisor: Emeritus Professor Douglas Whalan, AM
Secretary: Mr Tom Duncan
Deputy Secretary: Ms Beth Irvin

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.

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

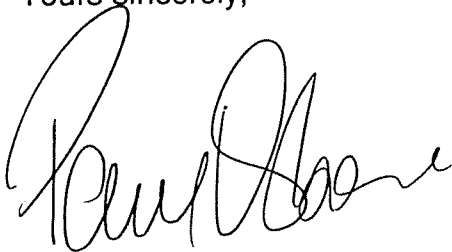
Telephone: (06) 2050171
Facsimile: (06) 2053109

Mr Greg Cornwell, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Cornwell,

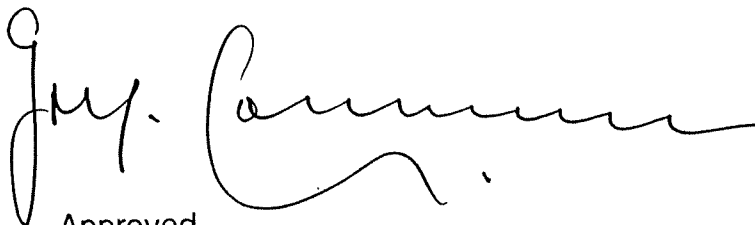
Please find enclosed a copy of Report No. 20 of 1995 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. I seek your approval to print and circulate Report No. 20 of 1995.

Yours sincerely,



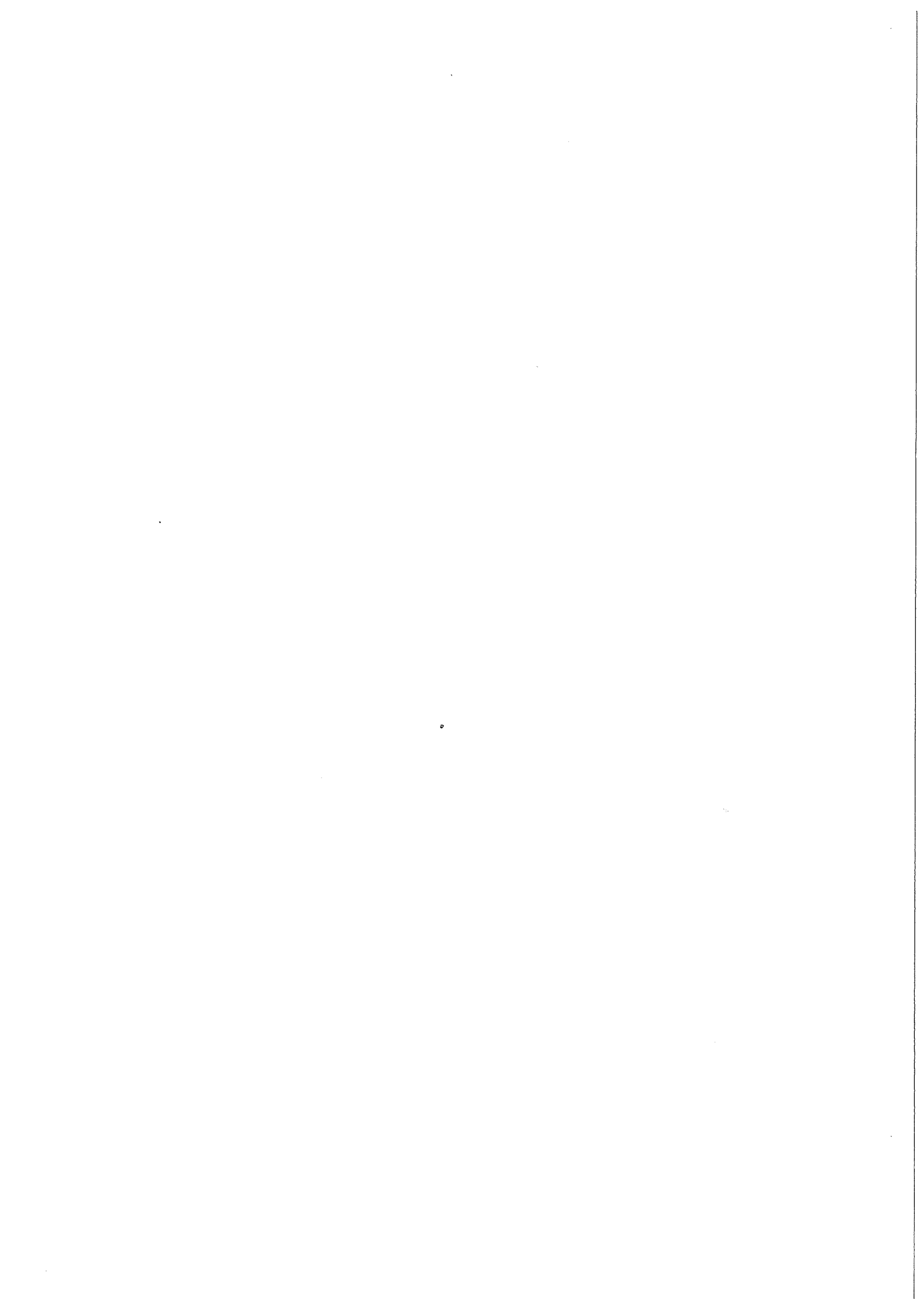
Paul Osborne, MLA
Chair

22 December 1995



Approved
Greg Cornwell, MLA

28 December 1995



BILLS

Bills - No Comment

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

Boxing Control (Amendment) Bill 1995

This Bill provides for the Minister to approve a single code of practice to cover all approved contests and authorises the Minister to approve organisations to sanction amateur kick boxing events in place of the one organisation that may sanction such contests at present.

Community Referendum Laws Entrenchment Bill 1995

This Bill entrenches aspects of the community initiated referendum process through the entrenchment provisions of the *Australian Capital Territory (Self-Government) Act 1988* (Commonwealth).

Motor Traffic (Consequential Provisions) Bill 1995

This Bill makes amendments consequential upon amendments made by the *Motor Vehicles (Dimensions and Mass) (Amendment) Bill 1995* to ensure consistency between definitions contained in the *Motor Traffic Act 1936* and the *Motor Vehicles (Dimensions and Mass) Act 1990*.

Motor Vehicles (Dimensions and Mass) (Amendment) Bill 1995

This Bill implements national standards for the regulation of dimensions and mass of heavy vehicles.

University of Canberra (Transfer) Bill 1995

This Bill establishes transitional arrangements to take effect on the transfer of the University of Canberra from the Commonwealth to the Territory.

Bills - Comment

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

Domestic Violence (Amendment) Bill 1995

This Bill aims to resolve the problem of inconsistencies between contact orders made under the *Family Law Act 1975* (Commonwealth) and protection orders made under State and Territory legislation.

A Possible Tiny Amendment To A NOTE

The explanatory memorandum states that:

“Divisions 10 and 11 of Part 7 of that Act [the *Family Law Act 1975*] deal with the relationship between protection orders and Division 11 contact orders.”. (Emphasis added.)

However, the very helpful NOTE: RELATIONSHIP WITH FAMILY LAW ACT at the end of the present Bill, which is to be inserted after section 8A inserted in the *Domestic Violence Act 1986* by the present Bill, states that:

“Divisions 10 and 11 of Part 7 of the *Family Law Act* of the Commonwealth deals with the relationship between protection orders and contact orders within the meaning of that Part.”. (Emphasis added.)

Perhaps “deals” should be changed to “deal” in the actual NOTE itself.

Magistrates Court (Amendment) Bill (No. 2) 1995

This Bill provides a new procedure for bringing a witness to court, revises the requirements relating to the employment of a Magistrate other than the duties of that office and makes a number of amendments to revise, update and correct provisions in the Principal Act.

This Provision May Not Do As The Explanatory Memorandum Suggests and Retrospectivity

Section 12 of the Act presently provides as follows:

“12. (1) Any Magistrate out of court or a Registrar may receive an information and grant a summons or warrant thereon and may issue his or her summons or warrant to compel the attendance of a witness and do all other necessary acts and matters preliminary to the hearing. (Emphasis added.)

(2) Without affecting the generality of the last preceding subsection, where it is provided in any law in force in the Territory that an information or complaint may be laid or made before, or a summons or warrant issued by, a Court, a Justice of the Peace or a Registrar of Petty Sessions, the information or complaint may be laid or made, and the summons or warrant may be issued by, a Magistrate or the Registrar.

Does the Amendment Do What The Explanatory Memorandum Suggests That It Does?

Clause 7 of the present Bill does two things.

First, paragraph 7(a) replaces the emphasised words “a Registrar” with the words “the Registrar”. This seems to be an appropriate amendment given the definition of “Registrar” in subsection 5 (1) of the Principal Act, which provides that “Registrar” means the Registrar of the Court, and includes a Deputy Registrar of the Court.

Secondly, paragraph 7 (b) states that section 12:

“is amended -

- (b) by inserting in subsection (2) ‘, a Clerk of Petty Sessions’ after ‘Peace’.”.

As amended subsection (2) would then read as follows:

“(2) Without affecting the generality of the last preceding subsection, where it is provided in any law in force in the Territory that an information or complaint may be laid or made before, or a summons or warrant issued by, a Court, a Justice of the Peace, a Clerk of Petty Sessions or a Registrar of Petty Sessions, the information or complaint may be laid or made, and the summons or warrant may be issued by, a Magistrate or the Registrar.”. (Emphasis added.)

However, the explanatory memorandum states that clause 7:

“amends section 12 of the Principal Act to delete references to the ‘Registrar of Petty Sessions’ and to substitute references to the ‘Clerk of Petty Sessions’ to ensure that acts which may be done under legislation providing for a ‘Clerk of Petty Sessions’ and which were done by a Magistrate or the Registrar under section 12 from the time of the commencement [of the] the *Magistrates and Coroner’s Courts (Registrar) Act 1991* [25 September 1991] which amended the *Magistrates Court Act 1930* and the *Coroners Act 1956* to delete references to the ‘clerk’ [sic] of each of those Courts and to substitute references to the ‘Registrar’ of the Court subsequent to the change in the title of that officer.”.

If the intention was, in fact, “to delete the phrase ‘Registrar of Petty Sessions’ and substitute references to the ‘Clerk of Petty Sessions’ “, this does not appear to have been done by the amendment made by clause 7 (b) as there is no deletion provision in paragraph 7 (b).

On looking at the context, it appears more likely that what really was needed was to do what is actually done by paragraph 7 (b). That is, it seems that it might be appropriate simply to add references to the Clerk of Petty Sessions without deleting the references to the Registrar of Petty Sessions.

However, perhaps a check should be made either to confirm this or to amend it to comply with the intention expressed in the explanatory memorandum.

Retrospectivity

As the passage cited above from the explanatory memorandum states, the provisions are intended to ensure actions taken since the coming into force of the name changes are valid.

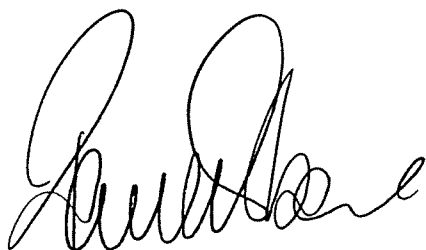
In fact, it is not all of the changes made by clause 7 that are retrospective. Subclause 2 (2) of the present Bill provides that:

“Paragraph 7 (b) [which inserts the reference to a Clerk of Petty Sessions] shall be taken to have commenced on 25 September 1991”, the date of commencement of the *Magistrates and Coroner's Courts (Registrar) Act 1991*.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

Determination No. 162 of 1995 made under section 22 of the *Animal Welfare Act 1992* revokes Determination No. 45 of 1993 and approves the Code of Practice for the Welfare of Animals: Domestic Poultry (3rd Edition) as a Code of Practice.



Paul Osborne, MLA
Chair

22 December 1995