

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

REPORT NO. 11 OF 1995

21 September 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.

BILLS

Bill - Comment

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

Fair Trade (Petroleum Retail Marketing) Bill 1995

This Bill prevents the making of new multi-site franchise agreements in the ACT retail petrol market.

Retrospectivity Provisions

Three clauses in the Bill provide for retrospectivity.

First, clause 2 provides the whole Bill is to be "taken to have commenced on 17 August 1995".

Secondly, clause 4 makes any franchise agreement relating to petrol marketing premises entered into on or after 17 August 1995 illegal if there is another franchise agreement relating to other petrol marketing premises already existing between the parties.

Finally, clause 8 provides that, if a franchise agreement is illegal by virtue of clause 4 and is entered into in the period between 17 August 1995 and immediately before gazettal day of the Bill, then the parties to such an agreement

"are entitled to put back, as far as is practicable and reasonable, in the positions in which they were in relation to each other before they entered the agreement."

These clauses are retrospective in effect, but it is noted that the Presentation Speech states that the Minister

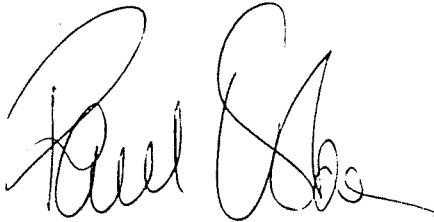
"announced on 17 August 1995 that from that day there would be a moratorium on multi-site franchise agreements between oil companies and petrol retailers."

Minister's Power to Obtain Information

Clause 10 gives the Minister power to require a person, who supplies motor fuel in the Territory or is a party to any agreement covered by the Bill and whom the Minister believes on reasonable grounds can give the Minister information, to supply such information.

There are penalties if a person or corporation fails *without reasonable excuse* to comply with the Minister's request or *knowingly* gives information that is false or misleading in a material particular.

In addition to the emphasised protective provisions, clause 11 provides that there is a penalty if information furnished to the Minister is used (again, without reasonable excuse) "otherwise than in connection with the operation of this" Bill.

A handwritten signature in black ink, appearing to read 'Paul Os', with a long horizontal flourish extending to the right.

Paul Osborne, MLA
Chair

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