

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

REPORT NO. 13 OF 1994

2 September 1994



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Standing Committee on Scrutiny of
Bills and Subordinate Legislation

Ms Roberta McRae, OAM, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Ms McRae,

Please find enclosed a copy of Report No. 13 of 1994 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. 13 of 1994.

Yours sincerely,

Ellnor Grassby, MLA
Chairperson

2 September 1994

Approved
Roberta McRae, OAM, MLA
Speaker

2 September 1994 Civic Square, London Circuit, Canberra ACT 2601
GPO Box 1020, Canberra ACT 2601
Telephone: (06) 20 50173 Facsimile: (06) 20 50442

TERMS OF REFERENCE

- (1) a Standing Committee for scrutiny of bills and subordinate legislation shall be appointed;
- (2) the Committee shall with respect to any instrument of a legislative nature which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act consider whether the instrument -
 - (a) is in accord with the general objects of the Act under which it is made;
 - (b) unduly trespasses on rights previously established by law;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; or
 - (e) the explanatory statement accompanying it meets the technical or stylistic standards to which such an instrument or explanatory statement ought, in the opinion of the Committee, to conform;
- (3) the Committee shall with respect to the clauses of Bills introduced into the Legislative Assembly consider whether such Bills -
 - (a) unduly trespass on personal rights and liberties;
 - (b) makes rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) inappropriately delegate legislative powers;
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny; or
 - (f) the explanatory memorandum accompanying it meets the technical or stylistic standards to which such a Bill or explanatory memorandum ought, in the opinion of the Committee, to conform;
- (4) the Committee shall consist of three members;
- (5) 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;
- (6) the majority of members constitutes a quorum of the Committee;
- (7) the Committee be provided with the necessary additional staff, facilities and resources; and
- (8) 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

Mrs E. Grassby, MLA (Chairperson)
Mr G. Humphries, MLA (Deputy Chairperson)
Ms H. Szuty, MLA

Legal Advisor: Emeritus Professor D. Whalan, AM
Secretary: Mr T. Duncan
Deputy Secretary: Ms B. Irvin

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Legislative Assembly. The Committee does not make any comments on the policy aspects of the legislation. The terms of reference contain the customary principles of scrutiny that enable the Committee to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation that have been adopted, without exception, by all scrutiny committees in Australia. Such non-partisan, non-policy scrutiny allows the Committee to assist the Assembly passing into law Acts and subordinate legislation that comply with the high ideals set out in the terms of reference.

BILLS

Bills - No Comment

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

Animal Welfare (Amendment) Bill 1994

This Bill removes restrictions placed on circuses from having specified animals in the circus.

Bookmakers (Amendment) Bill (No. 2) 1994

This Bill provides for the introduction and control of sports betting in the ACT.

Crimes (Amendment) Bill (No. 2) 1994

This Bill repeals those provisions of the *Crimes Act 1900* that render abortion illegal and abrogate any common law rule to that effect.

Gaming and Betting (Amendment) Bill (No. 2) 1994

This Bill makes amendments to the Principal Act consequent upon the introduction of sports betting in the ACT by the Bookmakers (Amendment) Bill (No. 2) 1994.

Games Wagers and Betting-houses (Amendment) Bill 1994

This Bill makes amendments to the Principal Act consequent upon the introduction of sports betting in the ACT by the Bookmakers (Amendment) Bill (No. 2) 1994.

Health Complaints (Amendment) Bill 1994

This Bill provides that the provider of a health service must ensure that a notice is displayed at the premises indicating the street address, postal address and telephone number of the Health Complaints Unit.

Magistrates Court (Civil Jurisdiction) (Amendment) Bill (No. 2) 1994

This Bill takes away the jurisdiction of the Magistrates Court in respect of disputes covered by the Commercial and Tenancy Tribunal Bill.

Publications Control (Amendment) Bill 1994

This Bill amends the Principal Act to recognise the Commonwealth's new computer games classification, to provide for the control of the display, hire, sale and demonstration of computer games and to increase penalties.

Workers' Compensation (Amendment) Bill 1994

This Bill provides for injured workers to be provided with occupational rehabilitation by their employer, introduces time limits for employers to commence weekly compensation payments to injured workers and provides a mechanism for employers to terminate benefits to a worker when the employer's insurer considers that the worker is no longer entitled to weekly payments.

Bills - Comment

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

Community Referendum Bill 1994

This Bill provides for electors to initiate changes to the law through the referendum process.

Appeals From The Exercise Of Discretions

It is noted that Part X of the Bill provides for review by the Administrative Appeals Tribunal of a number of decisions made by the Electoral Commissioner.

However, clause 14 gives the Attorney-General a very important power to give or refuse a certificate to a sponsoring committee that has prepared a proposed law as to whether that proposed law gives effect to the registered legislative proposal and is in a form suitable for presentation to the Legislative Assembly.

Again, clause 18 provides that the Electoral Commissioner is not to submit a proposed law to a referendum, if the Attorney-General advises the Commissioner that the Assembly has enacted a law that gives effect to the objects of the proposed law.

Finally, paragraph 86(3)(b) gives the Chief Minister discretions related to proposed laws being inconsistent with each other.

There appears to be no independent review of these significant aspects of the referendum process.

Clause 17 - Amendments

Clause 17 is headed "Amendment" and the clause does deal with amendments. However, subclause 17(3) provides as follows:

"(3) On written applications made by a sponsoring committee through its contact officer, the Attorney-General may make available to the committee the services of a public servant in order to enable the committee to prepare a proposed law."

At first glance this appears to provide for the possibility that the Attorney-General can be asked to supply the services of a public servant to help with the preparation of any aspect of the proposed law at any point in the process and not merely in relation to an amendment.

But subclause 17(1) provides as follows:

"(1) A reference in this section to a proposed law shall be read as a reference to a proposed law a copy of which has been laid before the Legislative Assembly under subsection 15(2)."

This appears to limit the application of subclause 17(3).

Perhaps it should be made clear whether the possible help is limited to the amendment process, or whether it was intended to be wider than this. If it was intended to be wider, perhaps the heading to the clause should be amended.

Is There A Tiny Mistake?

Clause 16 provides as follows:

"Where a copy of a proposed law that gives effect to the objects of a registered legislative proposal is not laid before the Legislative Assembly under subsection 15(2) before the holding of the general election of members of the Assembly that next occurs after the publication of the notice under subsection 11(1) that relates to the proposal, the registration of the proposal is, by force of this subsection, cancelled." (Emphasis added).

Should this be "by force of this section"?

Conclusive Certificate

Clause 110(1) provides for an offence relating to graffiti on a defined place or object and subclause 110(2) provides that the Territory or a Territory authority is not to give consent to the marking of referendum matter on a defined place or object.

Subclause 110(3) provides that:

"In a prosecution for an offence under subsection (1) in relation to a defined place or object leased, occupied, owned or possessed by the Territory or a Territory authority, it is to be conclusively presumed that the Territory or a Territory authority, as the case requires, did not consent to any marking of referendum matter on the place or object." (Emphasis added.)

The Committee notes that the provision is the same as section 293 of the *Electoral (Amendment) Act 1994*. Nevertheless, the Committee questions why is it necessary to have a conclusive certificate rather than the normal "presumed in the absence of proof to the contrary" provision?

Magistrates Court (Enforcement of Judgments) Bill 1994

This Bill makes for new enforcement procedures available to judgment creditors.

Helpful Index To Bill And Explanatory Memorandum

The amendments made by this Bill to several Acts and sets of regulations are complex and wide-ranging.

However, the Explanatory Memorandum is very helpful. It contains an index of the changes that are being made, which indicates where the provisions of the Bill are to be found and the location of the explanation for any provision in the Explanatory Memorandum. There is also a comparison of the Bill's provisions with the existing provisions as well as the usual explanation of changes that are being made.

Availability of Forms

Up to the present time Forms for use under the *Magistrates Court (Civil Jurisdiction) Act 1982* have been included in the Act itself. Clause 22 (on page 52) provides that, in future, Forms may be approved by the Minister by notice in the *Gazette* and that where new Forms are substituted for those already in the Schedule to the Act that will, in effect, act as a repeal of the old Form. However, the *Gazette* notice of any new Form is to be a disallowable instrument, so the Forms still remain subject to scrutiny by the Assembly.

The present Bill refers to many new Forms, but, of course they are not set out in the Bill. Thus it was not possible to scrutinise them in relation to the provisions in the Bill providing for their use. No doubt, a *Gazette* notice of the approval of the new Forms will be tabled as a disallowable instrument in due course.

Reprint Of Renumbered Act And Regulations Needed

Clause 29 (on pages 54 and 55) provides for the renumbering of the *Magistrates Court (Civil Jurisdiction) Act 1982*. This is an opportune time to undertake the renumbering process, as it would tidy up the hundreds of changes that have been made in the past or will be made by the present Bill. The Committee hopes that there will be a very prompt reprint effected, so that confusion can be avoided.

At the same time, it may be useful to reprint the regulations that are being amended by the Bill, so that the confusion of having some regulations in the ordinary regulations collection and some in an Act can be avoided.

Taxation (Administration) (Amendment) Bill 1994

Reversal Of Onus Of Proof

This Bill provides that the Commissioner may vary the frequency and time for lodgment of returns, extends the time during which the Commissioner may amend assessments, permits the Commissioner to recover debts, provides that the taxpayer carries the onus of proof that an assessment is excessive and updates references to the Corporations Law.

Clause 10 inserts new section 95A to provide that the burden of proving, on the balance of probabilities, that an assessment is excessive lies on the person objecting to the assessment.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Instrument of Approval No. 115 of 1994 made under subsection 87(1) of the *Occupational Health and Safety Act 1989* approves the National Code of Practice for the Prevention of Occupational Overuse Syndrome [NOHSC:2013(1994)] for application in the ACT.

Instrument of Exemption No. 116 of 1994 made under subsection 27(1) of the *Building Act 1972* exempts the Public Works and Services Group from the application of specified provisions of the Building Code in relation to building works at the Woden Valley Hospital known as the Northern and Southern Pedestrian Links.

Approval of Plan of Management No. 117 of 1994 made under paragraph 204(a) of the *Land (Planning and Environment) Act 1991* approves the Plan of Management for the Jerrabomberra Wetlands Nature Reserve.

Subordinate Legislation - Comment

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

Instrument No. 118 of 1994 made under subsection 8(1) of the *Health Complaints Act 1993* appoints a specified person as Commissioner for Health Complaints and determines the terms and conditions applicable to the appointment.

Is There A Problem With Invalidity?

This appointment has been made by the Minister alone.

Subsection 8(1) of the *Health Complaints Act 1993* provides as follows:

"8(1) The Executive may, by instrument, appoint a person to be Commissioner for Health Complaints."

This provision is unusual, but not unique, in providing that it is the Executive that is to make the appointment and not the Minister.

Section 3 of the *Subordinate Laws Act 1989* provides as follows:

"3. Where an Act empowers the Executive to make regulations under the Act, it shall be sufficient if the regulations are signed by any 2 Ministers who are members of the Executive."

This provision thus provides an amelioration in relation to regulations.

Is there an amelioration applicable to appointments such as the present appointment, which permits one Minister alone to make an appointment that the Act states is to be made by the Executive? If not, is there a possible problem with invalidity?

Public Sector Management Standards No. 1 of 1994 are made and approved under section 251 of the *Public Sector Management Act 1994*.

Tiny Points In A Large Document

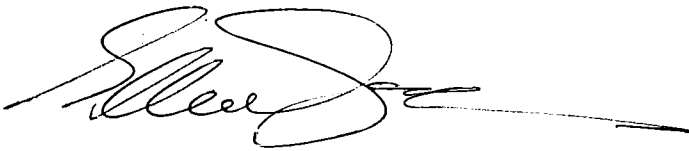
These Management Standards were made in time for the commencement of the *Public Sector Management Act 1994* on 1 July 1994 and the Committee mentions three small points.

First, sections to the *Public Sector Management Act 1994* are usually referred to in the Standards themselves as "Section" or "sub-Section", but, occasionally, this becomes "section" (see, for example paragraph 1.2 on page 7). In the Explanatory Statement the form "section" appears to be used throughout. In a re-make perhaps a few initial capitals could be strewn about, if that is the preferred option.

Secondly, (in the paragraph on Motor vehicles on page 10) there are references to Fleet Guidelines. The Committee could have overlooked them in the course of speedy scrutiny of the 1,051 pages of the Standards. But the Committee has been unable to find them and have not considered these incorporated instruments in their scrutiny.

If the Fleet Guidelines are not in the Standards, but are merely incorporated in the Standards by this reference, then, unless there is a special provision covering this, it may be that it is the Fleet Guidelines as they exist at the time of making of the Standards that apply (section 8 of the *Subordinate Laws Act 1989*). If they are amended and it is wished to apply them as part of the Standards, then, unless the Fleet Guidelines are themselves a subordinate law or disallowable instrument (paragraph 8(1)(a) of the *Subordinate Laws Act 1989*) it may be necessary to amend the Standards.

Thirdly, in Schedule 10: Salaries of Medical Staff (on page 695), a Junior Resident Medical Officer (Intern) may be delighted to see himself or herself away up the salary list between Deputy Medical Superintendent Level 1 and Medical Superintendent Level IV, but this delight would be short-lived, as a glance to the right would show that there is no salary payable at all. Perhaps a check would be in order!

A handwritten signature in black ink, appearing to read 'Ellnor Grassby', with a long horizontal line extending to the right.

Ellnor Grassby, MLA
Chairperson

2 September 1994