

Legislative Assembly for the Australian Capital Territory



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**Standing Committee on Justice and
Community Safety**

**(incorporating the duties of a
Scrutiny of Bills and Subordinate
Legislation Committee)**

SCRUTINY REPORT NO. 11 OF 1999

21 September 1999

TERMS OF REFERENCE

- (1) A Standing Committee on Justice and Community Safety be appointed (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee).
- (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) the 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) the explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of four 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 John Hargreaves, MLA (Deputy Chair)
Mr Trevor Kaine, MLA
Mr Harold Hird, MLA

Legal Advisor: Mr Peter Bayne
Secretary: Mr Tom Duncan
Assistant Secretary (Scrutiny of Bills and
Subordinate Legislation): Ms Celia Harsdorf

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 on them.

Children's Services Amendment Bill (No 2) 1999

This Bill would amend the *Children's Services Act 1986* in ways that would enhance the flexibility of the Chief Magistrate in the appointment of a Childrens Court Magistrate.

Drugs of Dependence (Amendment) Bill 1999

This Bill would amend the *Drugs of Dependence Act 1989* by amendment to section 171A of that Act to the effect of precluding the issuing of simple cannabis offence notices in relation to the cultivation, possession and use of cannabis.

Land (Planning and Environment) Amendment Bill (No 3) 1999

This Bill would amend the Land (Planning and Environment) Act 1991 to make amendments to carry into legislative effect certain elements of the government's response to the Rural Policy Task Force Report "Towards a Sustainable Future". The Bill would

- enable a large number of rural lessees to be granted leases for 99 years;
- enable rural lessees to pay out their land rent;
- place certain restrictions on the transfer of rural leases; and
- require rural lessees to have Land Management Agreements.

Law Reform (Miscellaneous Provisions) Bill 1999

This Bill would amend various Acts of the Territory to make a range of technical amendments to those laws in order to maintain the currency of the law, to repeal outdated or unnecessary legislation and to rectify irregularities.

Motor Traffic Amendment Bill (No 3) 1999

This Bill would amend section 180Z of the *Motor Traffic Act 1936* to the effect that where a person's special driving licence is cancelled, the person is to be disqualified from driving for the period of the original disqualification.

Motor Traffic (Alcohol and Drugs) Amendment Bill 1999

This Bill would amend the *Motor Traffic (Alcohol and Drugs) Act 1977* to the effect of removing the discretion of the relevant court to impose periods of disqualification of a driving licence and making provision for mandatory periods of disqualification.

A minor drafting point to note is that the reference to "section" in clause 5(a) should probably be to "subsection".

Bills - Comment

The Committee has examined the following Bills and offers these comments.

Justice and Community Safety Legislation Amendment Bill 1999

This Bill would amend various Acts of the Territory which regulate and make provision for the administration of justice. Most of the amendments proposed relate to the application of fees and charges in various courts and tribunals, and their object is to standardise the way this matter is regulated. A particular aspect of the scheme is provision for the Minister to determine fees and charges by way of a disallowable instrument. Amendments proposed to the *Coroners Act 1997* would enable the Attorney-General or any other person to make an application to the Supreme Court that it quash a decision of a Coroner and order a fresh inquiry. Amendments to other laws would

- enable the Government Solicitor of the Territory to act for Territory owned bodies, public employees and former public employees;
- enable a juror to communicate "protected information" (as defined in subsection 42C(11) of the *Juries Act 1967*) to a legal practitioner to obtain legal advice in relation to an investigation concerning an alleged contempt of court or alleged offence relating to jury deliberations or a juror's identity; and
- enable an appeal from a decision of the President of the Administrative Appeals Tribunal of the Territory to be heard by a single judge of the Supreme Court.

Comments on the Explanatory Memorandum

The description of the proposal to repeal section 12 of the *Supreme Court Act 1933* omits reference to the fact that the President referred to is the President of the Administrative Appeals Tribunal of the Territory.

The explanation of the amendments to the *Juries Act 1967* overstates the effect of the amendment. The amendment refers only to investigations of the kind referred to in paragraph 42C(5)(c) and in paragraph 42C(6)(c). The explanatory memorandum suggests that the amendment would have a wider scope of application.

Lands Acquisition Amendment Bill 1999

This Bill would amend the *Lands Acquisition Act 1994* to clarify the manner in which that Act applies to short term rural leases. In particular, section 50 of the Act would be amended to provide that where the lease was granted for a term less than 21 years, the right to apply for a further lease is not to be considered when assessing compensation.

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

Section 50 of the Act qualifies the operation of paragraph 45(2)(d). This latter provision requires that, where the interest is limited as to time or may be terminated by another person, regard is to be had in assessing compensation to the likelihood of the continuation or renewal of the interest and the likely terms and conditions on which any continuation or renewal would be granted. Paragraph 45(2)(d) is, in turn, a qualification on the general principle stated in subsection 45(1) that: "The amount of compensation to which a person is entitled under this Part in respect of the acquisition of an interest in land is such amount as, having regard to all relevant matters, will justly compensate the person for the acquisition".

The amendment proposed might be viewed as a qualification to the right to compensation for deprivation of property. The Committee considers, however, that the amendment is justified in terms of preventing what might otherwise be windfall gains by the holders of short term rural leases.

Subordinate Legislation - No Comment

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

Determination No. 203 of 1999 made under section 24 of the *Water Resources Act 1998* is an approval of the Water Resources Management Plan, dated 16 August 1999.

Subordinate Legislation - Comments

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

Subordinate Law No. 15 of 1999 made under section 16 of the *Health Regulation (Maternal Health Information) Act 1998* being the Maternal Health Information Regulations 1999 provides for the preparation of a comprehensive and accessible pamphlet of information for women who are contemplating an abortion.

Does this instrument contain matter which should properly be dealt with in an Act of the Legislative Assembly? (Term of reference 2(a)(iv)).

On the basis that this regulation might be beyond the scope of (or *ultra vires*) the power in section 16 of the Act, it could be argued that this instrument contains matter which should properly be dealt with in an Act. If the subject matter were in the Act, there would of course, on this ground, be no basis for comment in terms of term of reference 2(a)(iv).

Even if there is substance in an argument that these regulations are invalid, it does not follow that paragraph 2(a)(iv) of the terms of reference permits this Committee to make any comment. If a comment under this term of reference was justified on the ground that the regulations might be invalid, then the Committee would be obliged in respect of every such instrument to make a review of its legality. The Committee does not consider that this is an appropriate role for it to play. Moreover, the term of reference in paragraph 2(a)(iv) is open to the more natural reading that it requires the Committee to assess only whether the *subject matter or topic* dealt with by the instrument is one which should properly be dealt with in an Act.

In relation to the Maternal Health Information Regulations 1999, the subject matter is the content of a pamphlet providing information to women who seek an abortion. It is a matter of opinion whether this is a topic which should more properly be dealt with in an Act rather than in an instrument such as a regulation.

The Committee draws this matter to the attention of the Assembly.

Determination No. 165 of 1999 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 Chair and members of the ACT Sport and Recreation Council.

The Committee draws attention to inconsistencies in relation to gazettals made under paragraph 10 (1) (w) of the Remuneration Act and has had a closer look at Instrument No. 165. The Committee has also noted a similar instrument published in *Gazette* No. 32, dated 11 August 1999 which was not cited as a disallowable instrument and therefore not laid before the Assembly in accordance with paragraph 6 (1) (c) of the *Subordinate Laws Act 1989*. The Committee queries whether these directions are in fact disallowable instruments.

INTERSTATE AGREEMENTS

The Committee has not received any relevant notification.

GOVERNMENT RESPONSES

The Committee has received responses in relation to comments made concerning:

- Determinations Nos 80 and 81 of 1999 made under the *Land (Planning and Environment) Act 1991* (Report No. 6 of 1999).
- Land (Planning and Environment) (Amendment) Bill 1999 (Report No.7 of 1999).
- Motor Traffic (Amendment) Bill (No 2) 1999 (Report No. 7 of 1999).
- Liquor (Amendment) Bill 1999 (Report No. 8 of 1999).
- Subordinate Laws (Amendment) Bill 1999 (Report No. 8 of 1999).
- Determination No. 119 made under the *Electricity Supply Act 1997* (Report No. 8 of 1999).
- Determination No. 129 of 1999 made under the *Environment Protection Act 1997* (Report No. 8 of 1999).
- Land (Planning and Environment) (Amendment) Bill (No. 2) 1999 (Report No. 8 of 1999).
- Tobacco (Amendment) Bill 1999 (Report No. 10 of 1999).

Copies of the responses are attached.

The Committee thanks the Minister for Health and Community Care, The Minister for Urban Services and the Attorney-General for their helpful responses.

Paul Osborne, MLA
Chair

September 1999