

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

REPORT NO. 3 OF 1994

9 March 1994

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) or 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) or 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 Upon Which No Comment Is Offered

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

Landlord and Tenant (Amendment) Bill 1994

This Bill provides that where rental bond assistance has been given by the Commissioner for Housing then, when the bond money is repaid, after payment of any monies due to the lessor, the Commissioner for Housing is to be repaid before any payment is made to the lessee.

Subordinate Laws (Amendment) Bill 1994

This Bill sets out the ambit of regulation-making powers of the Executive under an Act, provides that notification in the *Gazette* of the making of determinations of fees and charges and disallowable instruments (in addition to regulations, rules and by-laws) and advice as to purchase points for instruments is sufficient publication and provides that, where a subordinate law is amended by an Act, that subordinate law can be later amended or repealed by a further subordinate law.

Bills Upon Which Comment Is Offered

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

Canberra Institute of Technology (Amendment) Bill 1994

This Bill establishes the Australian International Hotel School to develop and deliver educational programs on a full cost recovery basis as a complementary activity to those of the existing Canberra Institute of Technology.

References in the New Definitions of "Chairperson" and Deputy Chairperson"

Among other things, clause 5 of the Bill amends section 3 of the Act by repealing and substituting the meanings of "Chairperson" and "Deputy Chairperson" to cover the Chairpersons and Deputy Chairpersons of the Council of the Institute of Technology and of the new Management Advisory Board and the new Academic Board of the Australian International Hotel School.

Paragraphs (b) and (c) of both new definitions refer to "Division 1 of Part IIIB" and "Division 2 of Part IIIB".

Although the reference in paragraph (a) to "Part IIIB" appears to be an accurate reference in relation to the Council of the Institute of Technology, perhaps a check should be made of the references in paragraphs (b) and (c). For it is Part IIIC (inserted by clause 20 of the Bill) that deals with the creation of the Management Advisory Board and the Academic Board.

Should the Reference be to "institutions" and not "Institutions"?

Under the new provisions there are to be two Institutions - the Institute and the Hotel School and the new Part II of the Bill sets up each one as a separate "Institution" and also sets out the powers and limitations of the Institutions in considerable detail.

New paragraph 7C(1)(p) provides as follows:

"7C (1) An Institution has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and, in particular, may -

- (p) establish and conduct residential facilities for its staff or students or those of the other Institution, either by itself or in association with other Institutions or other bodies.". (Emphasis added.)

As there are in fact only the two Institutions covered by the Act, it seems possible that it was intended that a power was being conferred to join either with the other Institution or with it and such other institutions as the local universities, for instance.

Perhaps the use of the capital "I" should be checked.

Should a Further Substitution of "Institution" For "Institute" Have Occurred?

Clause 22 amends section 19A of the Act, which deals with personnel management. The Explanatory Memorandum states that:

"Clause 22 amends section 19A relating to personnel management by substituting references to the 'Institute' with references to 'an Institution'. This serves to make this section apply to either the Institute or the Hotel School."

These substitutions have been effected in a number of provisions, but have not been effected in subsection 19A(2) in two places. It may have been intentional not to do so in these places, but perhaps a check should be made.

Electors Initiative and Referendum Bill 1994

This Bill enables electors to introduce, amend or repeal laws by referendum.

Clause 15

Clause 15 deals with the obligations of Electors Bill representatives. Subclauses 15(2) and (3) provide as follows:

"(2) Before a person signs an Electors Bill, the bill representative shall give the person an opportunity to read the title and description of an Electors Bill or shall read the title and description to the person.

(3) A bill representative shall give a copy of the title and description of an Electors Bill to any person who requests a copy."

These provisions allow a person who is asked to sign an Electors Bill an opportunity to read and have a copy of the title and description of the Electors Bill. However, should there be an obligation on the Electors' Bill Representative to give the person an opportunity to read the Electors Bill itself and all of its associated material?

Clause 26

This clause, among other things, deals with the approval of a proposed law at a referendum, including the means by which preferences are determined.

Subclauses (1) and (7) provide as follows:

- "(1) A proposed law is approved by the electors at a referendum: if
- (a) a majority of the electors casting valid votes at the referendum with respect to the proposed law, approve the proposed law; and
 - (b) the electors who approve the proposed law constitute a majority of the electors, who cast valid votes in approval of the proposed law, in each of a majority of electoral divisions.

(7) Where a proposed law has been approved by a majority of the electors voting, but who are less than a majority of the electors who received ballot papers at the referendum poll or election poll (if the referendum is held at the same time at an election), the Chief Minister or another person authorised by enactment to do so, shall not notify the approved law in the *Gazette* unless the Legislative Assembly recommends that the approved law be so notified.". (Emphasis added.)

First, perhaps the relationship between these provisions needs to be reconsidered. Subclause (7) appears to fit in the provisions of paragraph (1)(a), but perhaps the relationship between subclause (7) and the more complicated paragraph (1)(b) could be spelled out more clearly.

Secondly, there may be a tiny literal mistake, as the emphasised word "at" should perhaps be "as".

Clause 27

This clause excludes certain matters from referendums and paragraph 27(d), among other things, excludes a referendum that:

"proposes the disallowance of the Appropriation Bill.". (Emphasis added.)

Perhaps another word could be substituted for "disallowance", as it is usually reserved for the process of dealing with subordinate legislation.

Clause 30

The heading for clause 30 is "Supreme Court to deal with matters". Thus it is clear that references to the "court" in subclauses (2) and (4) (rather than to the "Supreme Court" as in subclauses (1) and (3)) are intended to refer to the Supreme Court.

However, for consistency, perhaps the references should be to the "Supreme Court" in all subsections. This suggestion gains greater significance when it is noted that the several references to the "court" in clause 32 (dealing with offences) do not refer to the Supreme Court but to the Magistrates Court which is given jurisdiction to deal with offences by the terms of clause 35.

SUBORDINATE LEGISLATION

Subordinate Legislation Upon Which No Comment Is Offered

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

Subordinate Law No. 2 of 1994 being the *Supreme Court Rules (Amendment)* amends Order 36A to require a Statement of Particulars to be filed in personal injury matters and service of expert's reports to take place at the time of filing of the Certificate of Readiness.

Subordinate Law No. 3 of 1994 being the *Casino Control Regulations (Amendment)* amends the principal regulations to permit the casino licensee to accept a cheque drawn in favour of the person presenting the cheque as well as a cheque drawn in favour of the casino licensee as at present.

Subordinate legislation Upon Which Comment Is Offered

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

Instrument No. 14 of 1994 being an *Exemption* made under subsections 10(3) and 10(4) of the *Tobacco Act 1927*, subject to the conditions set out in the instrument, exempts the existing contract between the New South Wales Rugby League Limited and Rothmans of Pall Mall Limited and the existing contract between the Canberra Raiders and Rothmans of Pall Mall Limited during the conduct of all rugby league matches played at Bruce Stadium as part of the Winfield Cup competition until 31 December 1994.

The Committee noted that the explanatory statement for the Exemption was not available when the Exemption was tabled in the Legislative Assembly. The Committee has since been provided with a copy of the statement and has been assured that copies will be available for the public and Members.

GOVERNMENT RESPONSE

The Committee has received a response to comments made concerning the Food (Amendment) Bill (No. 2) 1993 (Report No. 22 of 1993). A copy of the response is attached.

The Committee thanks the Attorney-General for his positive response.



Elnor Grassby, MLA
Chairperson

9 March 1994

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

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

Dear Ms McRae,

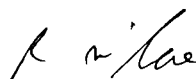
Please find enclosed a copy of Report No. 3 of 1994 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No. 3 of 1994.

Yours sincerely



Ellnor Grassby, MLA
Chairperson

9 March 1994



Approved
Roberta McRae, OAM, MLA
Speaker

9 March 1994



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

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Mrs Elnor Grassby MLA
Presiding Member
Standing Committee on Scrutiny of Bills and
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Dear Mrs *Elnor* Grassby

In its Report No. 22 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on a response to comments it had made in Report No. 19, in relation to the Food (Amendment) Bill (No.2) 1993.

In particular, the Committee indicated its interest in the timing of a review of the self incrimination aspects of ACT legislation.

The review is underway and it is intended that it be concluded in time to enable its consideration by the Government during the Autumn sittings of the Legislative Assembly.

I trust this information is of assistance to the Committee.

Yours sincerely

Terry Connolly
Terry Connolly

- 2 MAR 1994

