

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

REPORT NO. 9 OF 1993

10 June 1993

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. 9 of 1993 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. 9 of 1993.

Yours sincerely



Ellnor Grassby, MLA
Presiding Member

10 June 1993



Approved
Roberta McRae, OAM, MLA
Speaker

10 June 1993

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; or
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
 - (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; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
 - (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 (Presiding Member)
Mr G. Humphries, MLA (Deputy Presiding Member)
Ms H. Szuty, MLA

Legal Advisor: Emeritus Professor D. Whalan
Acting Secretary: Ms M. Weeks
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:

Casino Control (Amendment) Bill 1993

This Bill provides that the financial year shall be a calendar year instead of the year 1 July to the following 30 June and makes transitional provisions for the year ended 31 December 1992.

Long Service Leave (Building and Construction Industry) (Amendment) Bill 1993

This Bill removes the requirement for the payment of levy for apprentices (but service as an apprentice will count for leave purposes), ensures that contributions count under the Commonwealth *Training Guarantee (Administration) Act 1990*, extends the scheme to part-time employees, changes the method of calculation of payments for credits and removes sexist language.

Supply Bill 1993-94

This Bill makes interim provision for the appropriation of money out of the Consolidated Revenue Fund for the year ended 30 June 1994.

Bill Upon Which Comment is Offered

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

Betting (Totalizator Administration) (Amendment) Bill 1993

This Bill provides that the totalizator business presently conducted by the Territory owned corporation, ACTAB Limited, will be converted into a statutory authority called the Australian Capital Territory Totalizator Administration Board.

It is noted that new section 5H provides that the Minister may appoint a member of the Board for a period not exceeding 5 years and that that person may be reappointed. However, new section 5P provides that the Minister may appoint a person to be an acting member, but that there is no restriction on the length of time for which an acting member may be appointed.

It is noted that the customary form of providing that "a person appointed to act during a vacancy shall not continue so to act for more than 12 months" is followed in new section 5Y in relation to the appointment by the Minister of an acting Chief Executive Officer.

There are many illustrations of such a restriction relating to Board membership, but we need not go further than the provisions of another Act that is being amended by another Bill considered in this Report. Section 9 of the *Long Service Leave (Building and Construction Industry) Act 1981* provides in identical terms to the new section 5Y that acting members may be appointed to the Building and Construction Industry Long Service Leave Board (which will become the Construction Industry Long Service Leave Board if clause 5 of the Long Service Leave (Building and Construction Industry) (Amendment) Bill 1993 is passed), but that "a person appointed to act during a vacancy shall not continue so to act for more than 12 months".

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. 21 of 1993 being the *Supreme Court (Fees) Regulations (Amendment)* amends the principal regulations made under section 37 of the *Supreme Court Act 1933* by repealing a number of fees imposed by those Regulations.

Subordinate Law No. 22 of 1993 being the *Supreme Court Rules (Amendment)* made under section 36 of the *Supreme Court Act 1933* repeals a provision made redundant by an amendment to the *Supreme Court (Fees) Regulations* made by Subordinate Law No. 21 of 1993 which deals with fees for the opening of the offices of the Court outside normal office hours.

Determination No. 43 of 1993 made under section 217A of the *Motor Traffic Act 1936* revokes a determination of a fee made in Determination No. 121 of 1992 in relation to section 26M(2)(c) and fixes another fee in relation to that provision.

Determination No. 44 of 1993 made under section 22 of the *Animal Welfare Act 1992* approves as a Code of Practice the *Australian Code of Practice for the Care and Use of Animals for Scientific Purposes* except section 2 of that Code.

Determination No. 45 of 1993 made under section 22 of the *Animal Welfare Act 1992* approves as a Code of Practice the *Australian Model Code of Practice for the Welfare of Animals - Domestic Poultry 2nd Edition 1992*.

Determination No. 46 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of streets in the Division of Ngannawall.

Determination No. 47 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the name, origin and significance of a street in the Division of Phillip.

Determination No. 48 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of streets in the Division of Nicholls.

Determination No. 49 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the name, origin and significance of a street in the Division of O'Malley.

Subordinate Legislation Upon Which Comment is Offered

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

Determination No. 42 of 1993 made under subsection 70(3) of the *Gas Act 1992* amends the Gas Manual prepared under subsection 70(1) of the *Gas Act 1992* in relation to Standards.

The Committee commented in its Report No. 23 of 1992 about the incorporation of specified instruments that were to be complied with as they were "in force from time to time" and about the subdelegation of the making of certain Rules. The Committee asked that checks be made, as it felt that those provisions may be invalid.

The Committee received a very helpful letter of 30 March 1993 from the Attorney-General, Mr Connolly (the letter was attached to the Committee's Report No. 8 of 1993) confirming that the Committee's concerns were accurate and indicating that amendments were being made.

The present determination makes those amendments and, in the Committee's view, the changes eliminate the problems.

Determination No. 50 of 1993 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 41 of 1993 and determines the concession rates of duties that are payable by eligible home buyers.

In its Report No. 8 of 1993 the Committee drew attention to the fact that Determination No. 41 of 1993 had been made retrospective to 16 February 1993. Changes in the basis for the charging of duty were made in that determination compared with the position in Determination No. 69 of 1992 that was revoked.

The Committee was concerned that, because of those changes, an individual might:

"be in a less advantageous position under the new Determination than that person would have been under Determination No. 69 of 1992 as a result of the present Determination being made retrospective to 16 February 1993."

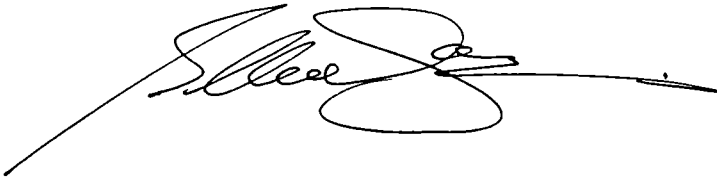
There has not yet been time for the Committee to have been given a formal response to its concerns, nor is there a mention in the explanatory statement that prejudicial retrospectivity is being dealt with.

However, it seems possible that the Committee's concerns were well-founded, as the present determination appears to address its concerns.

GOVERNMENT RESPONSE

The Committee has received a response to comments concerning Regulation 27 of the Animal Welfare Regulations (Report No. 7 of 1993). A copy of the response is attached.

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

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

Ellnor Grassby, MLA
Presiding Member

10 June 1993



A.C.T. GOVERNMENT

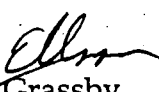
TERRY CONNOLLY MLA

ATTORNEY GENERAL

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Phone (06) 20 50011

Mrs Ellnor Grassby MLA
Presiding Member
Standing Committee on Scrutiny of Bills
and Subordinate Legislation
ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2601


Dear Mrs Grassby

The Standing Committee on Scrutiny of Bills and Subordinate Legislation ('the Committee'), in its Report No. 7 of 1993, commented on regulation 27 of the Animal Welfare Regulations ('the Regulations').

Subregulation 27(1) imposes an obligation on a licensee or an authorised person to maintain certain records. Subregulation 27(2) empowers the Ethics Committee to demand production of these records for inspection, and subregulation 27(3) creates an offence by specifying that a licensee or authorised person shall not contravene a request by the Ethics Committee to produce such records for inspection.

The Committee has correctly pointed out that subregulation 27(3) does not contain the usual 'without reasonable excuse' formula. While this omission of itself does not create a strict liability offence, I agree that it would be advisable to include the formula.

I am advised that the amendments to the Regulations are being contemplated and that, when these amendments are drafted, subregulation 27(3) will be amended to include the 'without reasonable excuse' formula.

I trust that this information is of assistance to the Committee.

Yours sincerely


Terry Connolly

- 1 JUN 1993

