

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

REPORT NO. 4 OF 1992

20 MAY 1992

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Mrs E Grassby, MLA (Presiding Member)
Mr G Humphries, MLA
Ms H Szuty, MLA

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

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;
- (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;
- (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.

Bill upon which Comment is Offered

The Committee has examined the following Bill and makes the following comments.

Statute Law Revision (Miscellaneous Provisions) Bill 1992

This Bill makes a number of corrections to existing Acts, relocates sections in a particular Act to provide that the Act does not have several sections with the numbers being duplicated, removes sexist language and redundant provisions, provides for the appointment of acting members of instrumentalities, simplifies the expression of some laws and does some general tidying up.

Unusual Explanatory Memorandum

The Committee makes a general comment on the Explanatory Memorandum. Unlike the usual Explanatory Memorandum it does not purport to explain the effect of all of the provisions in a complete or ordered way, but gives illustrations of the kinds of amendments that are being made. The examples are helpful, but it does mean that, if a Member during the passage of the Bill, or a Court in the future, wishes to discover the background to a particular amendment, the Explanatory Memorandum may not be helpful and the background will have to be searched out. Especially in the case of some of the old legislation that is being amended this is quite difficult, because of the relative scarcity of some of the older material.

The Committee is pleased to note that the Bill corrects a number of errors which the Committee had discovered and reported on to the Assembly at different times.

Comments on some Specific Provisions

(a) Crimes Act 1900

The changes that are perhaps the most urgent of all those to be effected by the Bill do not appear to be referred to in the Explanatory Memorandum. These are the amendments to be made to the Crimes Act 1900 (to be found on pages 14-15 of the Bill). Members will recall that the Committee discovered the potential

purpose of such a law, to section 115 of the Crimes Act shall be read as a reference to that section as renumbered by this section."

If this provision was deemed to be necessary then, should a similar provision be inserted to cover the present relocation of ss. 152-155, which have all been in force for some time? Should it also cover the relocation of the relocation of poor old s. 115, 155, 135L? If this were done, then there would be no need to hope for common sense to prevail.

The Committee is tempted to wish ss. 135H, 135J, 135K and 135L all the very best of luck and hope that they will live happily ever after under their new names and in their new locations. However, given the constant confusion that seems to pervade the area, the Committee wishes to re-new its suggestion in its Report No. 2 of 1992 that

"Once the present Crimes Legislation (Status and Citation) Bill 1992 is enacted making the Crimes Act 1900 truly an A. C. T. Act and not 'the Crimes Act, 1900 of the State of New South Wales in its application in the Territory', might it not be worthwhile for a re-numbering and reprinting exercise to be undertaken?"

(b) Architects Act 1959

Part of the proposed amendment to subsection 24(2) of the Architects Act 1959 (at the top of page 9) states as follows:

"(a) Inset 'her' after 'him'."

It is suggested that it perhaps should state "or her" so that the provision would read thus:

"(2) A person shall not fail to comply with a notice served on him or her under subsection (1)."

(c) Canberra Theatre Trust Act 1965

Among other things, the present Bill eliminates three instances of sexist language. The reprint of the Canberra Theatre Trust Act 1965 of 30 June 1991 is one of the many very helpful reprints that are making the A. C. T law more easily accessible. Relying on this reprint and also taking into account the amendments made this week by the Canberra Theatre Trust

(f) Legal Aid Act 1977

Here, too, an amendment is being suggested (at page 16) and the Committee mentioned in its Report No. 2 of 1992 that sexist provisions needed to dealt with.

(g) Milk Authority Act 1971

The Committee makes two comments here.

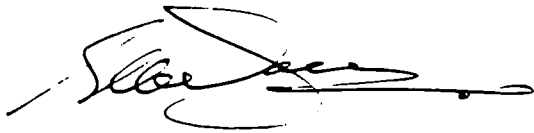
First, it is noted that the proposed amendment to subsection 20(5) (about the middle of page 18), which states as follows:

"(b) Omit 'of this section' (wherever occurring)"

Again, relying on the helpful reprint of the Milk Authority Act 1971 of 31 May 1991, the Committee has been unable to locate any reference to "of this section" in s. 20(5).

Perhaps this matter should be checked.

Secondly, in several of the provisions of the Milk Authority Act 1971, including s. 20(5), the phrase "the last preceding subsection" is replaced by the modern form of "subsection (4)". However, the change is not being made in s. 20(10A), where the same phrase "the last preceding subsection" appears. Should the same change be made here? Further, was a change considered to the phrase "subject to the next succeeding subsection" in s. 20(10) for the similarly straightforward form of "subject to subsection (10A)"?



Ellnor Grassby
Presiding Member

21 May 1992