

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

REPORT NO. 21 of 1991

4 December 1991

**STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION**

MEMBERS OF THE COMMITTEE

**Mrs E Grassby, MLA (Presiding Member)
Mr B. Collaery, MLA
Mr B Stefaniak, MLA**

**Secretary: Mr T Duncan
Legal Advisor: Emeritus Professor D Whalan**

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 (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; and
 - (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) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make 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.

ROLE OF THE COMMITTEE

The Committee examines all Bills and delegated 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 delegated legislation that comply with the high ideals set out in the Terms of Reference.

SUBORDINATE LEGISLATION

(a) No comment offered

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

ACT Exemption No. 100 of 1991 made under section 10(3) of the Tobacco Act 1927 exempted the advertising of certain tobacco products displayed on a formula One Lotus motor vehicle during the running of the National Capital Sprint on 23 and 24 November 1991.

ACT Determination No. 101 of 1991 made under section 27 of the Interpretation Act 1967, under which Determination No. 35 of 1991 is revoked, and under section 4 of the Motor Omnibus Services Act 1955 determines charges.

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with Downer Section 61 Blocks 2, 4, 5, 6, 8, 11-15 and Section 73 Blocks 1 and 2 (Part).

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with Kambah Section 277 Block 1.

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with Phillip Section 79 Block 4.

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with the Gungahlin Suburbs of Amaroo, Casey, Harrison, Ngunawal and Nicholls.

(b) Subordinate Legislation - Comment Offered

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with Theodore Section 609 Block 17.

(i) Is there a Possible Inconsistency in the Papers?

In the Submission of the Draft Plan to the ACT Executive for Approval document in the second paragraph on Background, the statement is made that "22 submissions were received by the Authority and of these, 19 supported the draft Variation".

However, on looking at the Report to the ACT Executive on Public Consultation Concerning the Draft Plan it is said in paragraph 4. Summary of Comments that there "were 25 responses received commenting on the draft variation to the Territory Plan. [The names of the respondents are then set out and then the summary continues] Twenty-four respondents did not support the draft Variation."

Is there some inconsistency here between the Submission for Approval and the Report?

An Instrument made under section 24(2) of the Building Act 1972 adopts all of the provisions of the Building Code of Australia as amended and in force from 26 August 1991.

(ii) No Numbering or Explanatory Statement

This Instrument is not numbered, nor is there an Explanatory Statement for it.

BILLS

(a) No Comment Offered

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

A. C. T. Institute of Technical and Further Education (Amendment) Bill 1991, and Electricity and Water (Amendment) Bill (No.3) 1991

These Bills provide for equal opportunity in appointment and promotion based on the merit principle and provide for the establishment of equal opportunity programs.

Audit (Amendment) Bill 1991

This Bill amends the principal Act to provide that the Auditor-General is not subject to direction of the Executive or a Minister.

Interpretation (Amendment) Bill 1991

This Bill amends the provisions relating to the use of extrinsic material to interpret an Act to include all speeches made in the Legislative Assembly during the passage of the Bill and not just the presentation speech.

Ozone Protection Bill 1991

This Bill regulates activities relating to the emission of ozone depleting substances.

Motor Traffic (Amendment) Bill (No. 2) 1991

This Bill removes the provision relating to traffic infringement notices (which are to be inserted in the regulations) and increases the maximum penalty for a general offence.

Territory Owned Corporations (Amendment) Bill 1991

This Bill amends the principal Act to include Totalcare Industries Limited within its operation.

(b) Bills upon which Comment is Offered

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

Bail Bill 1991

This Bill amends and consolidates the law of bail.

(i) Two Minor Suggestions

The Committee makes two very tiny comments on the Bill.

First, where "clerk" is defined in clause 3(1) it will be noted that it begins with a lower case "c". This is followed in the Bill (for example in clauses 31(1)(c)(ii) and 31(2)(c)(ii)), but appears to have been departed from in clause 30(4) where there is an upper case "C".

Secondly, clause 3 of the Bill defines "Crimes Act" to mean "the Crimes Act, 1900 of the State of New South Wales in its application in the Territory".

This is presently a perfectly proper description of the Crimes Act. However, if the Crimes Legislation (Status and Citation) Bill 1991 is passed before the present Bill, it would then be sufficient to cite the Act as the Crimes Act 1900.

Bail (Consequential Amendments) Bill 1991

This Bill makes amendments to a number of Acts consequential upon the passing of the Bail Bill 1991.

(ii) A Possible Later Amendment

A similar comment can be made here as was made above about the Bail Bill 1991. Clauses 3(a) and 4 and the heading "Part 11 - ..." of the present Bill refer to "the Crimes Act, 1900 of the State of New South Wales in its application in the Territory".

As suggested above, this is presently a proper description of the principal Act. However, if the Crimes Legislation (Status and Citation) Bill 1991 is passed before the present Bill, it would then be sufficient to cite the principal Act as the Crimes Act 1900.

Buildings (Design and Siting) (Amendment) Bill 1991

This Bill amends the principal Act to empower the Interim Territory Planning Authority to vary or revoke an approval granted under the Act

(iii) Reference to the Authority

Clause 3 adds to section 6 of the Act by providing as follows:

"(4) The Territory Planning Authority may vary or revoke an approval granted under this section."

Section 3 defines "Interim Authority" to mean "the Interim Territory Planning Authority" and the phrase is used throughout the Act, including in section 6. The phrase "Territory Planning Authority" appears to be inconsistent with this and it is suggested that it would be appropriate to substitute the phrase "Interim Authority".

Crimes (Amendment) Bill (No. 6) 1991

This Bill amends the principal Act to add a Part creating offences by government officials.

(iv) A Possible Later Amendment

The same comment can be made here as was made above about the Bail Bill 1991 and the Bail (Consequential Amendments) Bill 1991. Clause 2 of the present Bill defines "Crimes Act" to mean "the Crimes Act, 1900 of the State of New South Wales in its application in the Territory".

As suggested above, this is presently a proper description of the principal Act. However, if the Crimes Legislation (Status and Citation) Bill 1991 is passed before the present Bill, it would then be sufficient to cite the principal Act as the Crimes Act 1900.

Criminal Injuries Compensation (Amendment) Bill (No. 2) 1991

This Bill amends the principal Act to clarify the references to Registrars in the Act as, in some cases, the Registrar of the Supreme Court is intended and, in other cases, the Registrar of the Magistrates Court.

(v) Retrospectivity

The amendments are made retrospective to the date of the coming into effect of the changes to the meaning of "Registrar" made by the Magistrates and Coroner's Courts (Registrar) Act 1991. The retrospectivity does not prejudice the rights of any person.

Canberra Theatre Trust (Amendment) Bill 1991, Cemeteries (Amendment) Bill (No. 2) 1991, Milk Authority (Amendment) Bill 1991, Legal Aid (Amendment) Bill 1991, National Exhibition Centre Trust (Amendment) Bill 1991, Long Service Leave (Building and Construction Industry) (Amendment) Bill 1991 and the Teaching Service (Amendment) Bill 1991.

These Bills provide for equal opportunity in appointment and promotion based on the merit principle and provide for the establishment of equal opportunity programs.

(vi) Other Sexist Language not Removed

Although the Bills substitute "Chairperson" for "Chairman" and "Deputy Chairperson" for "Deputy Chairman" where appropriate in the principal Acts, the opportunity has not been taken to remove the many illustrations of sexist language that occur in the principal Acts. Perhaps it would be appropriate to do so, especially as the Bill is dealing with equal opportunity.

If this is not done, some provisions will not read well. For instance, after the present amendments are made, section 7(3) of the Canberra Theatre Trust Act 1965 would be, as follows:

"A trustee appointed as the Chairperson or Deputy Chairperson shall hold office as such until the appointment of another trustee as the Chairperson or Deputy Chairperson, as the case may be, until the expiration of the period of his appointment as trustee or until he otherwise ceases to be a trustee, whichever happens first." (Emphasis added.)

An even simpler one from the amended National Exhibition Centre Trust Act 1976 would be section 17(4) as amended, which would read as follows:

"The Chairperson shall preside at all meetings of the Trust at which he is present." (Emphasis added.)

Fire Brigade (Administration) (Amendment) Bill 1991

This Bill provides for equal opportunity in appointment and promotion based on the merit principle and provides for the establishment of an equal opportunity program.

The Committee makes two points about the Bill.

(vii) Other Sexist Language not Removed

Although the Bill substitutes "firefighter" for "fireman" in the principal Act, the opportunity has not been taken to remove the many illustrations of sexist language that occur in the principal Act. Perhaps it would be appropriate to do so in this Bill also.

(viii) A Check on a Possible Error

Clause 18(1)(b) provides transitional arrangements for existing provisional promotions. The clause refers to "Division 5 of the Principal Act". Was "Division 5 of Part III of the Principal Act" possibly intended, as it deals with Appeals against Promotions?

Public Corruption Bill 1991

This Bill establishes a Committee to receive information relating to allegations of corruption of public officials and public authorities, to refer that information to investigative agencies and to monitor the process of investigation.

(ix) Reversal of Onus of Proof

Clause 40(3) as follows:

"If all the elements of an offence against subsection (2) [which creates offences for dismissing, prejudicing or threatening to dismiss or prejudice an employee for 'whistleblowing'] other than the reason for the person's action are proved, the onus of proving that the dismissal or prejudice was not because the employee gave, or proposed to give, information is on the person."

This is clearly a reversal of the onus of proof. However, perhaps it can be argued that the onus relates to proving matters that are peculiarly within the knowledge of the person who is required by the clause to prove them.

Workers' Compensation (Amendment) Bill 1991

This Bill changes the name of the Workmen's Compensation Act 1951 and makes a number of changes relating to workers' compensation.

The Committee makes two comments about the Bill.

(xi) Two Minor Changes that may be Required

First, clause 6(c) inserts several new definitions into section 6(1) of the principal Act and "defined offence" refers to the "the Crimes Act, 1900 of the State of New South Wales in its application in the Territory". The same comments apply here as are made above about the Bail Bill and also other Bills.

Secondly, clause 7 inserts new section 6B. There is a reference in the new section 6B to determinations of categories of workers under section 23G(1)(b)(i). There does not appear to be such a provision, but perhaps section 23F(1)(b)(i) was intended.

(xii) Sexist Language Removed

It is noted with approval that considerable care has been taken to remove sexist language not only from the title of the Act, but also from sections throughout the principal Act.

**Workers' Compensation (Consequential Amendments)
Bill 1991**

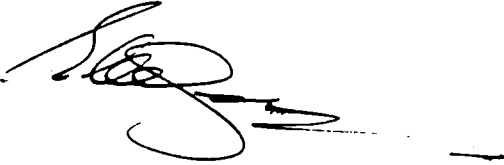
This Bill makes amendments to other Acts consequential upon the passing of the Workers' Compensation (Amendment) Bill 1991.

(xiii) A Consequential Amendment that may have been
Missed

Among the many amendments that are made by the Bill, there are two amendments made to the definition of "employer's policy" in section 2 of the Workmen's Compensation Supplementation Fund Act 1980. Perhaps the reference to "section 18" in that definition should also have been changed to "section 17B".

Section 18 in the unamended Workmen's Compensation Act 1951 was the provision requiring compulsory insurance. The existing section 18 is repealed and substituted with a provision requiring the provision of information to insurers. The provision in the new amendments requiring compulsory insurance appears to be section 17B.

Possible confirmation of this is given by the fact that a reference to section 18(2) (the old "exemption from compulsory insurance" provision) in section 23(1) and (2) of the Workmen's Compensation Supplementation Fund Act 1980 is replaced in the present Bill with a reference to the exemption provision in the amended (now) Worker's Compensation Act 1951, which is section 17C.

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

4 December 1991

