

STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

REPORT NO 3 of 1991

19 February 1991

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Ms C Maher MLA (Presiding Member)
Mr T Connolly 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-viewable 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.

BILLS

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

1. Publications Control (Amendment) Bill 1991

This Bill adds "an X film" to the definition of "objectionable publication" and thus would control distribution of such films.

2. Water Supply (Chemical Treatment) (Amendment) Bill 1991

This Bill amends the principal Act by extending the period of suspension of the operation of Part VIIIA of the Electricity and Water Act 1988 until 31 August 1991. This effectively means that fluoride can continue to be added to the water supply until that date.

3. Weapons (Consequential Amendments) Bill 1991

This Bill would make amendments to the Crimes Act 1900 of New South Wales as it applies to the ACT, the Domestic Violence Act 1986 and the Magistrates Court Act 1930 consequent upon the passing of the Weapons Bill 1991.

In relation to the following Bills, the Committee offers the following comments:

4. Subordinate Laws (Amendment) Bill 1991

This Bill would ensure that if a notice of motion to disallow a subordinate law is given, then, if the notice of motion is not disposed of, the subordinate law is deemed to have been disallowed at the expiration of 15 sitting days.

The Committee offers two comments:

First, the principal Act is referred to in both the heading and clause 3 of the Bill as the Subordinate Laws Act 1984 instead of an Act of 1989. It is noted that these typographical errors were picked up by Mr Connolly in his presentation speech and that Mr Connolly will seek correction of these.

Secondly, as is acknowledged by Mr Connolly, the substantive provision of the present Bill is based on the Commonwealth provision, which is s.48(5) of the Acts Interpretation Act 1901. In line 4 of clause 4 of the present Bill the phrase appears "had been laid before ...". The Commonwealth provision uses the phrase "has been laid before ..." and perhaps the Commonwealth wording fits in with the context of the provision.

5. Weapons Bill 1991

This Bill would enact comprehensive provisions regulating the possession and use of weapons in the ACT.

The Assembly will recall that it raised a number of issues in its Report No 2 of 1990 concerning the Weapons Bill 1990 which is the

predecessor to the present Bill. The Attorney-General, Mr Collaery, responded at length to the Committee on 24 April 1990 and the Committee said this of the response its Report No 6 of 1990:

"The Committee thanks the Attorney-General for his positive response to the Committee's report, and considers that all the major points contained in the report have been adequately addressed."

The present Bill is still basically similar to the Weapons Bill 1990, although there is a considerable number of amendments. Many of these amendments are made in fulfilment of the Attorney-General's undertakings to the Committee in his response. All of the undertakings given to the Committee by the Attorney-General have been fulfilled very adequately in the Committee's opinion.

SUBORDINATE LEGISLATION

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

1. ACT Regulations 1991 No 2 being Liquor Regulations (Amendment) make a number of amendments to the principal regulations consequent upon the passing of the Liquor (Amendment) Act 1990 and the Liquor (Amendment) Act (No 2) 1990. The main changes that are made are, first, to include references to the new "special" licence category and, secondly, to remove references to the abolished ACT Gaming and Liquor Authority.

2. ACT Regulations 1991 No 3 being Freedom of Information Regulations provide that ACTTAB Limited is a prescribed authority to which the Freedom of Information Act 1989 is to apply, but exempts it in relation to documents in respect of its competitive commercial activities.

3. ACT Regulations 1991 No 4 being Ombudsman Regulations (Amendment) amend the principal regulations so that the Ombudsman Act 1989 is referred to as "the Act" and declare ACTTAB Limited to be a prescribed authority for the purposes of that Act.

REVOCATION OF FEES - HOUSING LOAN SCHEMES - GOVERNMENT RESPONSE

The Committee reported on determinations Nos. 68, 69 and 70 in Report No. 16, and the Attorney-General provided a response on 5 February 1991, which is attached.

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


Carmel Maher, MLA
Presiding Member



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Deputy Chief Minister

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Standing Committee for the Scrutiny
of Bills and Subordinate Legislation
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Dear Ms Maher

I refer to your Committee Reports, Numbers 12 of 14 August 1990 and 16 of 17 October 1990, concerning a variation to a housing assistance program and the revocation of a fee under various housing loan schemes. I apologise for the delay in responding.

In relation to the variation to the public rental housing assistance program (Determination No. 6 of 1990), referred to in Report No. 12, I now provide the necessary Explanatory Statement which was previously inadvertently omitted. I apologise for the omission.

Turning to the revocation of the fees referred to in Report No. 16, might I explain, by way of background, that there are currently three housing loan schemes operating under the Housing Assistance Act 1987. These are as follows.

1986 SCHEME. This scheme was notified in the Gazette on 21 January 1986 as the "Scheme for Providing or Assisting in Providing Dwelling Houses".

1983 SCHEME. This scheme was notified in the Gazette on 30 September 1983 as the "Scheme for Providing Concessional Home Loans".

1930 SCHEME. This scheme was notified in the Gazette on 31 July 1930 as the "Scheme for Providing and Assisting in Providing Dwelling Houses".

Each of the three schemes makes provision for the Commissioner for Housing to set fees from time to time by making a determination and publishing this in the Gazette. None of the schemes provides for the tabling of such determinations in the Legislative Assembly; nor are the determinations caught by the Subordinate Laws Act 1989. Such determinations, therefore, are not disallowable instruments relating to subordinate legislation, and are technically not subject to the scrutiny of your Committee.

Nevertheless I am happy to clarify the issues you have raised. The following are the answers to your specific questions.

ALL THREE DETERMINATIONS

Each of these determinations relates to a different scheme. The correct titles of the schemes are as shown above.

DETERMINATION NO. 70

As indicated above, the correct title of this scheme is the "Scheme for Providing or Assisting in Providing Dwelling Houses". The instrument is thus incorrectly headed, although I do not believe that this would invalidate the determination because, as the title and other references to the scheme in the body of the instrument are correct, it is clear which scheme is being referred to. To avoid confusion to the public, however, I have asked the Commissioner to prepare and gazette an amendment to the determination to correct the inaccurate reference.

RATIONALE FOR REVOCATION OF FEE

There were two basic reasons for the withdrawal of the fee for mortgage variations:

1. streamlining the administrative process had substantially reduced the administrative effort on which the fee was based;
2. the fee was seen as an undesirable disincentive to mortgagors increasing their repayments or making additional lump sum payments.

Returning to the issue of the determinations in question not being caught by the Subordinate Law Act 1989, I am of the view that the nature of determinations of fees under the various housing loan schemes is such that they should be subject to Assembly scrutiny. Accordingly, I have agreed that the Housing Assistance Act 1987 be amended to bring the determinations within the scope of the Subordinate Laws Act 1989.

I trust that the explanations I have provided satisfactorily address the issues you have raised.

Yours sincerely


Bernard Collaery
Attorney-General
-5 FEB 1991