

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

REPORT NO 14 of 1990

19 September 1990

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Ms C Maher MLA (Presiding Member)
Mr B Stefaniak MLA
Mr T Connolly 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 Assesmbly 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.

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

APPROPRIATION 1990-91

This Bill provides for the issue and expenditure of public monies of the A.C.T. for services provided in the financial year.

LAKES (AMENDMENT) 1990

This Bill alters the provisions for the carrying of lights by large power boats and provides for the carrying of specified lights by sailing vessels.

GAMING MACHINE (AMENDMENT) BILL 1990

This Bill would redefine "multi-coin machine" and "single coin machine", alter some of the conditions for the issue of licences, vary the prescribed percentages for the distribution of income from gaming machines and correct a minor error in wording.

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

COMMERCIAL ARBITRATION (AMENDMENT) 1990

This Bill involves the repeal or repeal and substitution of a number of provisions consequent upon the repeal of the NSW Arbitration Act 1902 as it applies in the A.C.T. and ensures that the Supreme Court has power to refer matters to arbitration before new Rules of Court are made.

Commencement Provision

The commencement provision in clause 2 does not provide for the "default provision" that the Committee has asked for in other Bills, under which the Act would come into force automatically six months after notification in the Gazette.

However, in this case, there may be justification for this, as the present Bill is one part of the changes that are being effected in co-operation with the Commonwealth and the other parts of the changes are not subject to the ultimate control of the A.C.T.

LANDLORD AND TENANT (RENTAL BOND) BILL 1990

This Bill involves the constitution and operation of a Rental Bond Board.

(a) Commencement Provision

The commencement provision in clause 2 here is an automatic six months commencement clause, which is good to see.

(b) Crown Bound

Clause 4 provides for the Crown to be bound. Not only does this get over the difficulties that led to recent litigation in the High Court, but this would appear to be an appropriate instance for the Crown to be bound.

(c) Retrospectivity

Clause 13(1) provides that the operation of the Act would be retrospective, in that, where there are rental bonds already in existence, those bonds would have to be deposited with the Board within one month of the Act's commencement or such longer period as the Minister may fix under clause 13(6)(a).

This means that arrangements that may have been made even years ago would be affected by the operation of the clause. The retrospectivity means that if, for instance, arrangements had been made between the parties to a lease about the interest on the bond money, the provision could operate prejudicially to the parties as all interest under the Bill is to be paid into the Rental Bond Interest Account.

(d) Approval of Forms by the Minister

Clauses 13(4) and 17(3) provide that forms are to be approved by the Minister. The Committee reiterates the point made in previous reports, namely, that such clauses mean that ultimate control of the form and content of the forms will be lost by the Assembly in these cases.

The Committee will always be very vigilant when such ultimate control is lost to the Assembly. However, having looked at the relevant matters that the forms will cover in these cases the Committee considers that these are administrative in character and do not seriously affect rights to the people using them.

(e) Possible Wrong Reference to a Section

Clause 13(5) provides as follows:

- "(5) If a rental bond-
- (a) exempt or excluded from the operation of subsection (1); or
 - (b) exempt or excluded from the operation of subsection (2);
- pursuant to section 26, subsequently ceases to be exempt or excluded, this section shall in respect of that rental bond, be deemed to be amended ... [in certain specified ways.]"
- (Emphasis added.)

The reference to section 26 should perhaps be a reference to section 32 as that is the section which provides for exclusion from the operation of the Act.

(f) Identification of "Authorised Officer" and self-incrimination

Clause 19 confers very strong powers on an "authorized officer" to seek information, ask questions, inspect and copy documents and a person commits an offence if he or she does not comply with the demands of the authorised officer.

Clause 19(4) does, however, go on to give protection, by providing that any evidence gained can only be used in proceedings in relation to the falsity of the information or answers given. Furthermore clause 19(5) requires the authorised officer to inform a person of his or her obligations to answer before a person is obliged to answer. The Committee feels that the protection against self-incrimination is satisfactory in this instance.

However, there are no provisions requiring an "authorised person" to have and to produce any identification. There are now many precedents in our A.C.T. Acts, for example, ss.62(2) (requiring production), 723 (requiring issue) and 73 (requiring return on ceasing to hold office) of the Occupational Health and Safety Act 1989.

(g) "Reasonable excuse" provisions

Clause 16(1) provides that where a lessee is required to provide a rental bond, the lessor must provide two copies of a report concerning the repair and general condition of the residential premises not later than the date the lessee is to go into occupation.

In addition, Clause 16(3) requires the lessor to provide the Board with a copy of that report and any response to it within 5 days of the making of that report, or the receipt of a response from the lessee.

Failure to supply the copies to the lessee and the Board incur penalties. These provisions provide for very strict time limits, and the Committee notes that no reasonable excuse defence has been provided for.

Clause 22 also provides for a general penalty provision, and the Committee notes that no reasonable excuse defence exists there.

(h) Annual Report

Clause 36 provides, very appropriately, for an annual report to the Minister, which is to be laid before the Assembly.

HUMAN RIGHTS BILL 1990

This Bill involves the establishment of a Commissioner for Human Rights and a Human Rights Tribunal.

Several good aspects

There is a number of features in the Bill that accord with the principles that the Committee has been espousing. These include clauses 2 ("default provision" for commencement within 6 months of notification in the Gazette), 4 (the Crown is bound in a situation where it is proper so to bind the Crown), 11 (Commissioner's Annual Report to the Minister to be tabled in the Assembly within 5 sitting days of receipt), and 22(3) and 107(4) (no self-incrimination).

SUBORDINATE LEGISLATION

The Committee has examined the following delegated legislation:

1. ACT Determination No. 58 of 1990 made under s. 39B of the Architects Act 1959 fixes the fees for registration and for a practising certificate.
2. ACT Determination No. 59 of 1990 made under s. 45A of the Plumbers Drainers and Gasfitters Board Act 1982 fixes the fees for the various licences issued under the Act.
3. ACT Determination No. 60 of 1990 made under s. 2A of the Associations Incorporation Act 1953 fixes the filing, application, certificate and search fees payable under the Act.
4. ACT Determination No. 61 of 1990 made under s. 4A of the Business Names Act 1963 fixes the lodgement, search, certificate, registration and subpoena fees payable under the Act.
5. ACT Determination No. 57 of 1990 made under s. 44A of the Business Franchise (Tobacco and Petroleum) Products Act 1984 fixes the wholesale and retail tobacconists' licence fees.
6. ACT Regulations 1990 No. 12 being Building Regulations (Amendment) provide that all licensed builders, and not only holders of a Class D Builder's Licence, will be able to remove certain asbestos cement sheeting that is in a stable condition.
7. ACT Regulations 1990 No. 13 being Electricity and Water Regulations provide for the payment of interest on overdue water and sewerage rates.
8. ACT regulations 1990 No. 14 being Electricity Regulations (Amendment) fix the licence fees for electrical contractors and electricians.
9. ACT determination No. 47 of 1990 made under s. 33A of the Water Rates Act 1959 fixes the fees payable for reading or testing a water meter or for a certificate of the amount of rates payable.
10. ACT Determination No. 48 of 1990 made under s. 80 of the Electricity and Water Act 1988 fixes the fees payable for a range of permits and services such as inspection and approval of plans.

Missing Explanatory Statements

In relation to Determinations Nos 58 to 61 of 1990, the Committee again draws attention to the fact that explanatory statements have not been provided.

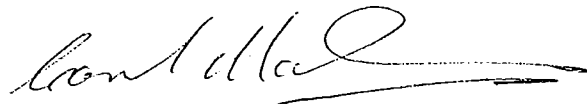
Good Explanatory Statements

In relation to Determination No 57 of 1990 and Regulations Nos 12 to 14 of 1990, the Committee notes the very helpful explanatory statements that have been provided.

ADMINISTRATIVE APPEALS TRIBUNAL REGULATIONS (AMENDMENT) -
GOVERNMENT RESPONSE

The Committee reported on the abovementioned regulation in Report Nos 11 and 12. The committee has since received a response from the Attorney-General which is attached.

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



Carmel Maher
Presiding Member

19 September 1990

