

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

REPORT NO. 7 OF 1997

24 June 1997

TERMS OF REFERENCE

- (1) A Standing Committee for scrutiny of bills and subordinate legislation be appointed.
- (2) The Committee will consider whether:
 - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
 - (i) meet the objectives of the Act under which it is made;
 - (ii) unduly trespass on rights previously established by law;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
 - (b) its explanatory statement meets the technical or stylistic standards expected by the Committee.
 - (c) clauses of bills introduced in the Assembly:
 - (i) do not unduly trespass on personal rights and liberties;
 - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
 - (d) its explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of three members.
- (4) 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.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) 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

Mr Bill Wood, MLA (Chair)
Mr Paul Osborne, MLA (Deputy Chair)
Mr Harold Hird, MLA

Legal Advisor: Emeritus Professor Douglas Whalan, AM
Secretary: Mr Tom Duncan

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

BILLS

Bills - No Comment

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

Financial Management (Amendment) Bill 1997

This Bill imposes additional responsibilities relating to Territory Budgets, departmental budgets and public trading enterprise budgets and requires the preparation and tabling in the Assembly of monthly financial statements of the Territory and quarterly departmental performance statements.

Gaming Machine (Amendment) Bill (No. 2) 1997

This Bill requires gaming machine licensees to maintain records of community contributions, to provide the Commissioner of ACT Revenue with a copy of their records of community contributions and to provide an annual report of such contributions for the Minister to table in the Assembly.

Legislative Assembly (Broadcasting of Proceedings) Bill 1997

This Bill authorises the broadcasting of proceedings of the Legislative Assembly or a committee of the Assembly to Government offices or to the public.

Liquor (Amendment) Bill (No. 2) 1997

This Bill provides that regulations may be made to impose trading hour restrictions on licensed premises.

Motor Traffic (Amendment) Bill (No. 4) 1997

This Bill amends the parking provisions relating to parking in loading zones and for the disabled and volunteers.

Occupational Health and Safety (Amendment) Bill 1997

This Bill repeals the *Machinery Act 1949* and the *Scaffolding and Lifts Act 1957*, provides for the fixing of determined fees and amends the regulation-making powers in the Act.

Unclaimed Moneys (Amendment) Bill 1997

This Bill provides for the payment into a trust fund of unclaimed moneys held by an approved deposit fund or a regulated superannuation fund.

Bills - Comment

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

Euthanasia Referendum Bill 1997

This Bill provides for a referendum on questions relating to voluntary active euthanasia to be held concurrently with the next general election in the Territory.

Placing of the Note in the Schedule

Paragraph 5 (2) (b) provides as follows:

"5 (2) A referendum ballot paper shall - ...

(b) include the note set out at the end of the Schedule."

In fact, the Note is set out at the beginning of the Schedule. Perhaps there should be a correction.

Motor Traffic (Amendment) Bill (No. 3) 1997

This Bill provides for the introduction of inspection of motor vehicles by the private sector.

Manual Not a Disallowable Instrument

Clause 5 of the Bill inserts new sections 6E-6K which provide for the preparation and amendment of the Vehicle Inspection Manual and for the provision of copies, inspection and interpretation of, and the giving of evidence about, the Manual.

Unlike Manuals and Codes under many other Acts, the Manual is not a disallowable instrument. The Explanatory Memorandum gives the following explanation for this:

"Due to the technical nature of the Manual, it has not been made a disallowable instrument. Making the Vehicle Inspection Manual an instrument rather than a disallowable instrument ensures that the ACT remains consistent with other States and Territories with vehicle standards issues."

It is noted that new section 26AU provides that the Manual and any amendments and documents that may be incorporated in them are to be kept on authorised premises under the Act. Section 26AU(1)(a) specifically provides as follows:

"(1) The proprietor of authorised premises shall keep at the premises an up-to-date copy of -

(a) the Manual and each Australian Design Rule comprising a part of the Manual." (Emphasis added.)

Despite the fact that the Australian Design Rules are also very technical in nature, they are disallowable instruments under sections 7-9 of the *Commonwealth Motor Vehicle Standards Act 1989*.

Indeed, not only are the technical orders relating to the determination of national standards for vehicle standards and components disallowable (section 7), but so are the procedures for testing vehicles and components made disallowable (section 9).

As paragraph 26AU (1) (a) makes clear, at least some Australian Design Rules will form part of ACT Vehicle Inspection Manual. It seems odd that part of the Manual should be disallowable under Commonwealth law, but that the remainder of the instrument is to be excluded from disallowance.

Motor Traffic (Alcohol and Drugs) (Amendment) Bill (No. 2) 1997

This Bill provides for the compulsory body sample testing of a driver who attends hospital after an accident.

Traffic (Amendment) Bill 1997

This Bill provides for the compulsory body sample testing of pedestrians, cyclists and riders or drivers of animals who attend hospital after an accident.

Compulsion for drivers, other persons involved in Accidents and Doctors and Nurses

These two Bills involve compulsory body sample testing of drivers, pedestrians, cyclists and riders or drivers of animals who attend a hospital after an accident. There are two aspects to this compulsion.

First, the Bills impose an obligation on those involved in the accident to take part in the compulsory taking and testing of the samples.

Secondly, both doctors and nurses are compelled to take the body samples within 2 hours, if requested to do so by a police officer. If the doctor or nurse does not comply, he or she commits an offence and is liable to a substantial penalty.

These provisions impose compulsion on professional carers, and whether such provisions could impact on the rights or ethics of such professionals will presumably have been considered. In this connection we note that the present provisions impose a positive duty actively to intrude on the body of their patient. This would appear to be somewhat different from passive requirements such as compulsory reporting of the incidence of notifiable diseases that they have discovered in the course of their professional duties.

New subsection 17 (2) of the Motor Traffic (Alcohol and Drugs) (Amendment) Bill (No. 2) 1997 (which also applies to the *Traffic Act 1937*) sets out limited circumstances in which the doctor or nurse involved is not required to carry out the procedures and new subsection 17 (3) sets out possible defences to a prosecution of a doctor or nurse for a breach of the compulsory requirements.

The Committee draws attention of the Assembly to these provisions under its term of reference 2 (c) (i), namely, that the Committee should

"consider whether ... clauses of bills introduced in the Assembly ... do not unduly trespass on personal rights and liberties."

Does new section 16 apply?

The Traffic (Amendment) Bill 1997 inserts new section 36 in the *Traffic Act 1937* and applies most of the amendments made by the Motor Traffic (Alcohol and Drugs) (Amendment) Bill (No. 2) 1997 to the *Traffic Act 1937*.

Section 16 of the *Motor Traffic (Alcohol and Drugs) Act 1977* deals with medical examinations in certain circumstances and requires the taking of body samples. It is noted that the provisions of section 16 of the *Motor Traffic (Alcohol and Drugs) Act 1977*, as amended by the Motor Traffic (Alcohol and Drugs) (Amendment) Bill (No. 2) 1997, are applied to the *Traffic Act 1937*, under the provisions of section 36 of the Traffic (Amendment) Bill 1997. However, the provisions of new section 16A of the *Motor Traffic (Alcohol and Drugs) Act 1977*, which deals with the analysis of such body samples, is not incorporated by section 36.

This appears to contrast with the position relating to the analysis provisions in section 15A of the *Motor Traffic (Alcohol and Drugs) Act 1977*, which provide for the analysis of blood samples taken under sections 15 and 15AA. Section 15A is specifically applied to the *Traffic Act 1937* by the new section 36.

Perhaps a check should be made.

Rates and Land Tax (Amendment) Bill 1997

This Bill introduces a new rating system for the ACT.

Retrospectivity

Clause 2 of the Bill provides as follows:

"2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette* .

(2) The remaining provisions commence, or shall be taken to have commenced, on 1 July 1997."

Subclause 2 (2) provides for the commencement of the substantive provisions of the Act.

If the Bill is not passed before 1 July 1997, the provisions of the Bill will have retrospective effect.

Territory Owned Corporations (Amendment) Bill 1997

This Bill sets up a new administrative regimen for the payment by territory owned corporations to the Territory of income tax and wholesale tax on the same basis that such taxes would have been payable under the relevant Commonwealth Acts.

Retrospectivity

Clause 2 of the Bill provides as follows:

"2. This Act commences, or shall be taken to have commenced, on 1 July 1997."

If the Bill is not passed before 1 July 1997, the provisions of this Bill, too, will have retrospective effect. However, in this case, this should have only a modest effect, as income tax and sales tax equivalents are already payable under the principal Act.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Determination No. 59 of 1997 made under subsection 8 (2) of the *Radiation Act 1983* appoints a specified person as a member of the Radiation Council for a period of three years from 12 April 1997.

Determination No. 60 of 1997 made under subsection 8 (2) of the *Radiation Act 1983* appoints a specified person as a member of the Radiation Council for a period of three years from 12 April 1997.

Determination No. 61 of 1997 made under subsection 9 (1) of the *Radiation Act 1983* appoints a specified person as Chairperson of the Radiation Council for a period of three years from 12 April 1997.

Determination No. 63 of 1997 made under section 50 of the *Nature Conservation Act 1980* determines the criteria for the giving of a direction under section 47 of the Act to the occupier of land.

Determination No. 64 of 1997 made under section 50 of the *Nature Conservation Act 1980* determines the criteria for the giving of a direction under section 49 of the Act to the occupier of land.

Determination No. 65 of 1997 made under section 131 of the *Drugs of Dependence Act 1989* appoints a specified person as a member of the Treatment Assessment Panels for a period of 12 months from 26 March 1997.

Determination No. 70 of 1997 made under section 119 of the *Mental Health (Treatment and Care) Act 1994* revokes the appointment of a specified person as Mental Health Officer.

Determination No. 73 of 1997 made and approved under section 12 of the *Housing and Assistance Act 1987* varies HomeBuyer Housing Assistance Program No. 7 of 1991 as previously amended.

Determination No. 74 of 1997 made and approved under section 12 of the *Housing and Assistance Act 1987* varies the Rent Relief Program published in ACT Gazette No. 26 of 1989 as previously amended.

Determination No. 76 of 1997 made under section 39B of the *Bookmakers Act 1985* varied Determination No. 48 of 1997 determining the directions for the operation of the sports betting venue by adding a specified event to the determination.

Determination No. 78 of 1997 made under section 6 of the *Consumer Credit (Administration) Act 1996* exempts a specified credit union from the operation of section 16 of the Act, which requires the payment of an annual fee.

Determination No. 80 of 1997 made under the *Building Act 1972* adopts the Building Code of Australia as modified by the Schedule to the instrument adopting the Code and an ACT Appendix to the Building Code of Australia.

Determination No. 81 of 1997 made under section 24 of the *Building Act 1972* revokes the instrument of adoption and modification, being Determination No 118 of 1995, and adopts all of the provisions of the Building Code of Australia as modified by the Schedule.

Determination No. 82 of 1997 made under the *Building Act 1972* prepares and publishes an ACT Appendix to the Building Code of Australia.

Determination No. 83 of 1997 made under section 10 of the *Remuneration Tribunal Act 1995* specifies that the offices of Chair and member of the ACT Health and Community Care Service Board are offices for which the Remuneration Tribunal shall determine the remuneration and allowances.

Determination No. 89 of 1997 made under section 21 of the *Nature Conservation Act 1980* revokes Determination No. 1 of 1997 and declares specified species to be vulnerable species or endangered species and two specified communities to be endangered communities.

Subordinate Legislation - Comments

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

Determination No. 77 of 1997 made under the *Prostitution Act 1992* revokes Determination No. 66 of 1992 and determines the fees payable under the Act.

Determination not made under the Correct Section

The provisions of this determination provide as follows:

"Under section 7 of the *Prostitution Act 1992*, I revoke Determination No. 66 of 1994, ... and determine that the fees payable for the purposes of the Act are as set out in the Schedule."

Although section 7 of the Act does require that the relevant notices to be given under section 7 are to "be accompanied by the determined fee", section 7 is not the section under which determinations of fees are to be made. The "determining" section of the Act is section 21.

As the terms of the Act have not been applied, perhaps a check should be made as to the validity of the determination.

Determination No. 84 of 1997 made under section 14 of the *Remuneration Tribunal Act 1995* determines fees for the Chair and members of the ACT Health and Community Care Service Board.

Retrospectivity

As the Explanatory Statement mentions, this interim determination of fees for the Chair and Members of the ACT Health and Community Care Service Board is made retrospective to 13 January 1997.

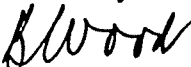
As it is beneficial to the Chair and members, it does not breach the laws against the making of retrospective delegated legislation.

GOVERNMENT RESPONSE

The Committee has received a response in relation to comments made concerning:

- Public Health Bill 1997 (Report No. 6 of 1997).

A copy of the response is attached. The Committee thanks the Minister for Health and Community Care for her helpful response.


Bill Wood, MLA
Chair

24 June 1997



Kate Carnell MLA

Chief Minister

Treasurer
Minister for Health and
Community Care

Member for Molonglo
Australian Capital Territory

Mr Bill Wood *BW* → *chee*
Chair
Standing Committee on Scrutiny of Bills and
Subordinate Legislation
ACT Legislative Assembly

Bill
Dear Mr Wood

Thank you for your letter of 21 May 1997 concerning the numbering errors in the Explanatory Memorandum to the Public Health Bill 1997.

It is intended that a revised Explanatory Memorandum will be circulated to MLA's next week. Again, thank you for bringing this to my attention.

Yours sincerely

Kate Carnell MLA
Minister for Health and Community Care
23 MAY 1997

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