

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

REPORT NO. 20 OF 1994

16 December 1994



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Standing Committee on Scrutiny of
Bills and Subordinate Legislation

Ms Roberta McRae, OAM, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Ms McRae,

Please find enclosed a copy of Report No. 20 of 1994 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. I seek your approval to print and circulate Report No. 20 of 1994.

Yours sincerely,

Ellnor Grassby, MLA
Chairperson

16 December 1994

Approved
Roberta McRae, OAM, MLA
Speaker

16 December 1994

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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;
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; or
 - (e) the explanatory statement accompanying it meets the technical or stylistic standards to which such an instrument or explanatory statement ought, in the opinion of the Committee, to conform;
- (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;
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny; or
 - (f) the explanatory memorandum accompanying it meets the technical or stylistic standards to which such a Bill or explanatory memorandum ought, in the opinion of the Committee, to conform;
- (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.

MEMBERS OF THE COMMITTEE

Mrs E. Grassby, MLA (Chairperson)
Mr G. Humphries, MLA (Deputy Chairperson)
Ms H. Szuty, MLA

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

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate 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 subordinate legislation that comply with the high ideals set out in the terms of reference.

BILLS

Bill - No Comment

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

Inquiries (Amendment) Bill 1994

This Bill ensures that, if the Chief Minister makes public all or part of a report of an inquiry, the report or part attracts the same privileges and immunities as it if had been laid before the Legislative Assembly.

Bill - Comment

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

Consumer Credit Bill 1994

This Bill is the ACT part of a legislative scheme to put uniform consumer credit laws in place in all Australian jurisdictions.

Commencement Clause

Subclause 2 (3) provides that if provisions of the Act have not commenced within 12 months of the notification of the Act in the *Gazette* then they automatically commence at that time. This varies from the usual provision for automatic commencement of 6 months.

Presumably this longer period was inserted because of the complexities of getting Australia-wide legislation in place.

Consent To Entry Provisions Weaker Than Usual ACT Provisions

The presentation speech for the present Bill states that:

"amending legislation may not be introduced into the Queensland Parliament unless there has been a resolution of the Ministerial Council, passed by a majority of at least two-thirds who are present and who vote approving amending legislation. Once approved, the amending legislation is introduced into the Queensland Parliament and, if passed, is then applied by the other States and Territories."

Part 4 of the *Consumer Credit (Queensland) Act 1994* confers power to make regulations under the Consumer Credit Code which is an Appendix to the Act and clause 5 of the present Bill provides such regulations apply in the ACT. Section 10 of the Queensland Act provides, in part, as follows:

- "(1) The Governor in Council may make regulations under the Code.
- (2) A regulation under this Part may be made only on the recommendation of the Ministerial Council."

It is not clear from the presentation speech or the explanatory memorandum whether the "two thirds rule" also applies to a decision of the Ministerial Council to recommend a regulation under subsection 10(2) as well as to Parliamentary amendments.

Whether there needs to be a simple majority, a two thirds majority or unanimity in relation to recommendations for the making of regulations could possibly impact on provisions relating to entry into residential property.

Section 91 of the Code provides as follows:

"(1) A credit provider, or an agent of a credit provider, must not enter any part of the premises used for residential purposes for the purpose of taking possession of mortgaged goods under a mortgage unless -

- (a) the Court [ACT Credit Tribunal - see paragraph 7(a) of the present Bill] has authorised the entry; or
- (b) the occupier of the premises has, after being informed in writing of the provisions of this section, consented in writing to the entry.

(2) The regulations may provide for procedures for the obtaining and giving of consent for the purposes of this section and may set out the circumstances in which consent is or is not taken to have been given."

It is suggested that the provisions in relation to consent to enter in section 91 of the Code do not appear to be as protective as those that are now standard in the ACT. In the ACT consent to enter provisions now provide protection in a form such as the following:

"(1) An entry by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

(2) Where such consent is obtained, the person consenting must be asked to sign a written acknowledgement—

- (a) of the fact that the person has been informed that he or she may refuse to give consent;
- (b) of the fact that the person has voluntarily given consent; and
- (c) of the day on which, and the time at which, consent was given.

(3) Where it is material, in any proceedings, for a court to be satisfied of the voluntary consent of a person an acknowledgement, in accordance with subsection (2), signed by the person is not produced in evidence, the court shall assume, unless the contrary is proved, that the person did not voluntarily give such a consent."

Furthermore, regulations can be made under subsection 91(2) to "provide for procedures for the obtaining and giving of consent". If less than a unanimous vote is required at Ministerial Council under subsection 10(2) of the *Consumer Credit (Queensland) Act 1994*, it could be that the protective provisions could be further eroded by the exercise of the regulation-making powers under subsection 91(2) of the Code. This would be possible despite any opposition of the ACT Minister to such erosion.

Retrospectivity in Regulations

Regulations made under Part 4 of the *Consumer Credit (Queensland) Act 1994* can be retrospective in effect.

However, subclause 5(3) of the present Bill ensures that regulations cannot be made retrospective to prejudice existing rights of, or impose liabilities on, "any person (other than the Territory or an authority of the Territory)".

Availability of Queensland Act and Code of Practice

The Committee noted that the Queensland Act, which was passed on 2 September 1994 (to which the Code of Practice is an appendix), was not presented to the Assembly with this Bill.

As a result Members of the Assembly and those purchasing copies of the Bill may have difficulty in seeing what changes are to be made to the ACT credit laws.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Subordinate Law No. 40 of 1994 being the *Liquor Regulations (Amendment)* amends the principal regulations to vary the dates and extend the area where it will be an offence to consume liquor during Summernats 1994.

Subordinate Law No. 41 of 1994 being the *Land (Planning and Environment) Regulations (Amendment)* amends the principal regulations to exempt applications relating to certain aspects of leases with rural purpose clauses from the operation of subsection 229(1) (giving notice) and 276 (third party objections) of the *Land (Planning and Environment) Act 1991*.

Determination No. 154 of 1994 made under subsection 161(5) of the *Land (Planning and Environment) Act 1991* specifies criteria for the direct grant of a lease under paragraph 161(1)(d) over block 11, section 40, division of Yarralumla.

Subordinate Legislation - Comment

The Committee has examined the following Subordinate Legislation and offers the following comment:

Determination No. 155 of 1994 made under section 4 of the *Public Place Names Act 1989* revokes Determination No. 26 of 1994 and determines the names, origins and significance of public places that are Territory Land in the Division of Nicholls.

Undertaking to Correct Errors Fulfilled But Committee Role Not Acknowledged

In its Report No. 9 of 1994 the Committee suggested that there may be a number of factual errors about the people who had streets named after them in Determination No. 26 of 1994.

The Committee received a very helpful reply of 11 July 1994 from the Attorney-General, Mr Connolly, acknowledging that there were mistakes and said that they would be corrected.

The present Determination carries out that undertaking, but the explanatory statement does not give the customary acknowledgement of the Committee's role in the matter.

A handwritten signature in black ink, appearing to read 'Ellnor Grassby', with a long horizontal flourish extending to the right.

Ellnor Grassby, MLA
Chairperson

16 December 1994