

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

REPORT NO. 21 OF 1992

15 December 1992

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; or
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
 - (e) or 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; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
 - (f) or 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.

BILLS

Bills upon which no comment is offered

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

Bail (Amendment) Bill (No. 3) 1992

This Bill provides that a person charged under section 27 of the *Domestic Violence Act 1992* with a breach of a protection order or interim protection order is not entitled to bail before appearing before a court for that offence.

Crimes (Amendment) Bill (No. 3) 1992

This Bill makes it an offence to fight with another person in a public place.

Epidemiological Studies (Confidentiality) (Amendment) Bill 1992

This Bill repeals the existing definition of "Canberra Drug Users Study" and inserts a new definition of a study known as Canberra Drug Users, Their Networks and HIV: Establishing Risks and Harm Minimisation Strategies.

HIV Notification (Liability of Medical Practitioners) Bill 1992

This Bill exempts a medical practitioner from action for breach of confidentiality for informing a partner of a HIV sufferer or the Medical Officer of Health of the HIV sufferer's condition in specified circumstances.

Traffic (Amendment) Bill (No. 2) 1992

This Bill creates an offence of riding a bicycle (other than on a public street) or a skateboard or using roller skates or roller blades within 10 metres of a bus interchange or retail premises while they are open for business unless in a place set aside for those activities.

Bills upon which Comment is Offered

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

Ambulance Service Levy (Amendment) Bill 1992

This Bill adopts a new formula for the calculation of the ambulance service levy and validates earlier collection of the levy.

Retrospective Validation of the Collection of the Levy

In its Report No. 1 of 1992 (at page 9) the Committee said that Determination No. 14 of 1992 was:

"made by the 'Chief Minister and Treasurer', whereas section 8(4) and (6) of the *Ambulance Services Levy Act 1990* require the "Minister for Finance and Urban Services" to be the person involved. Perhaps a check should be made to ensure that the Determination is valid."

"against any other law in force in the Territory - the maximum penalty ... [for which] is a fine not exceeding \$1,000".

This would enable the "pleas by post" scheme to operate, for example, in relation to offences under Commonwealth laws for which the maximum penalty is a fine not exceeding \$1,000. The clause also expressly includes offences under the Australian National University traffic statute for which the maximum penalty is a fine not exceeding \$1,000. It is suggested later that this provision may now cover the position for the *Traffic Act 1937* as well as other areas.

The clause also extends the procedure to offences under the *Motor Vehicles (Dimension and Mass) Act 1990* for which the maximum penalty is a fine not exceeding \$2,000.

The existing provisions of section 116A(1) of the *Magistrates Court Act 1930* permitted the use of the "pleas by post" scheme to operate for:

"an offence against the *Motor Traffic Act 1936* or the *Traffic Act 1937*, being an offence for which a penalty of a fine not exceeding \$500, whether with or without any other penalty, may be imposed."

The present Bill would change this in relation to the *Motor Traffic Act 1936* by providing for the maximum penalty to be that under the "general penalty" provision in section 192(2) of the Act, which was increased from \$500 to \$2,000 by section 4 of the *Motor Traffic (Amendment) Act (No. 2) 1991* as from 20 December 1991.

The "pleas by post" provisions have apparently been administered in relation to offences for which the maximum penalty was this increased sum of \$2,000, despite the fact that the *Magistrates Court Act 1930* still provided for an unchanged maximum penalty of \$500 for pleas by post. Clause 31 of the present Bill retrospectively validates any action that has been taken under the *Motor Traffic Act 1936* in contravention of the \$500 maximum penalty provision.

The present Bill may make little, if any, change to the "pleas by post" procedure in relation to the *Traffic Act 1937* as it is presently in force.

The new general provision in clause 10 cited above concerning an offence "the maximum penalty ... [for which] is a fine not exceeding \$1,000" would presumably apply to offences under the *Traffic Act 1937*, in place of the old specific provisions of section 116A(1) (also cited above) that are disappearing. The increase from \$500 to \$1,000 would, in fact, appear to have little, if any, present effect, as a search of the *Traffic Act 1937* suggests that all present penalties, with one exception, appear to be no greater than \$500 in any event.

However, given the apparently mistaken administration of the provisions of the *Motor Traffic Act 1936* now being rectified retrospectively, perhaps a check should be made in relation to the recent administration of this one penalty in the *Traffic Act 1937* greater than \$500. Section 7(1) of the *Traffic Act 1937* provides as follows:

"Any person who, upon a public street, drives or rides any vehicle or animal or is charge of any such vehicle or animal while he is under the influence of intoxicating liquor shall be guilty of an offence.

Penalty: \$1,000 or imprisonment for 6 months, or both."

Under the old provisions of section 116A(1) this offence could not have been dealt with by the "pleas by post" procedure, as the maximum penalty is greater than \$500.

No explanation for the non-removal is given in the explanatory memorandum or presentation speech for the Evidence (Amendment) Bill. Perhaps the fact that the principal Act needed to be validated after its coming across from Commonwealth jurisdiction to ACT jurisdiction on 1 July 1992 meant that there was a sense of urgency.

Statute Law Revision (Miscellaneous Provisions) Bill (No. 2) 1992

This Bill removes sexist language from a number of Acts, corrects typographical mistakes, updates language and cross references to Acts, repeals redundant provisions, repeals a number of Acts that are redundant and generally tidies up to modernise the statutes that are being amended.

Removal of Sexist Language

The Committee was pleased to note that the opportunity has been taken to remove the sexist language from a number of Acts.

Possibly Premature Repeals and Substitutions

Clause 2 and Schedule 1 of the Bill make many of the amendments to the various Acts affected. There are amendments to subsection 4(3) of the *Artificial Conception Act 1985* (at page 25), subsection 4(2) of the *Birth (Equality of Status) Act 1988* (at page 29) and subsection 3(2) of the *Testamentary Guardianship Act 1984* (at page 48) which all provide as follows:

"Omit 'sections 9, 33, 42 and 43 of the *Adoption of Children Act 1965*',
substitute 'sections 8, 43, 54 and 55 of the *Adoption Act 1992*'".

In addition, at page 32, there is an amendment of the definition of "adopting parent" in subsection 4(1) of the *Children's Services Act 1986* which substitutes "*Adoption Act 1992*" for "*Adoption of Children Act 1965*".

The Adoption Bill is not yet law and its clause 2 follows the common formula. The short title and section 2 commence on the day the Act is notified in the *Gazette* and the substantive provisions of the Act commence on a day or days fixed by the Minister by *Gazette* notice. If the substantive provisions have not commenced within 6 months of the notification of the Act in the *Gazette*, they commence on the first day after the end of that 6 months period.

The present Bill does not contain any commencement clause. Thus, if the Bill is passed in its present form, the Act would commence on the day of notification in the *Gazette* (section 25(2) of the *Australian Capital Territory (Self-Government) Act 1988* (Commonwealth)).

Care will need to be taken to ensure that the amendments proposed in the present Bill do not take effect prematurely.

Is there a Mistake in the Explanatory Memorandum?

At page 10 of the explanatory memorandum there is a reference to the repeal of the *Interim Planning (Amendment) Act (No. 3) 1991*. The Bill does not refer to this Act in Schedule 2 of the Bill, nor can the Committee discover the Act. Perhaps a check should be made.

There does not appear to have been a Gazette No. 108 published on 1 July 1992, but there is a relevant determination, Determination No. 108 of 1992, published in *Gazette* No. S105 on 1 July 1992. That this was the determination that the present determination was intended to revoke is confirmed by the explanatory statement.

The explanatory statement indicates that the fees that are payable are set out in an attached schedule. Unfortunately, there does not appear to be a schedule attached. Thus Members are unable to make a quick check as to the level of the increase that has occurred.

Determination No. 166 of 1992 made under section 27(1) of the *Building Act 1972* exempts the Public Works and Services Group from complying with specified provisions of the Building Code of Australia in relation to the building of the Tuggeranong Indoor Swimming Centre.

Determination No. 165 of 1992 made under section 27(1) of the *Building Act 1972* exempts the Public Works and Services Group from complying with specified provisions of the Building Code of Australia in relation to part of the Public Hospitals Redevelopment, Building 1, Woden Valley Hospital.

The Committee makes three comments on these two Determinations.

First, there appears to be an inconsistency between Determination No. 166 of 1992 and its explanatory statement.

The explanatory statement for Determination No. 166 of 1992 lists the requirements of the Building Code of Australia from which the Tuggeranong Indoor Swimming Centre works are to be exempted.

Item 5 in the Explanatory Statement provides as follows:

"To permit the deletion of the requirement for testing of slip resistance of paving in public areas;

Exemption from the requirements of the following;
Clause ACT D2. 103."

Determination No. 166 of 1992 itself does not appear to contain this Exemption. Perhaps a check should be made to see whether there has been an omission or whether it was decided not to include this Exemption in the final Determination.

Secondly, the Committee raises questions about two entries in the Schedule to Determination No. 166 of 1992.

The Committee has been unable to find Table E2.3 in the Building Code of Australia tabled in the Assembly on 19 November 1991, in Instrument No 12 of 1992 or in Determination No. 125 of 1992 (both of which revoked, adopted and modified the Building Code of Australia) or in the copy of the Code lent to the Committee.

The Schedule refers to "E1.7". However, both of the copies of the Building Code of Australia and Instrument No. 12 of 1992 published in *Gazette* No. S24 state as follows:

"Delete E1.7 and insert ACT E1.7 as follows".

GOVERNMENT RESPONSES

The Committee has received responses to comments made concerning the following subordinate legislation:

- . Public Health (Infectious and Notifiable Diseases) Regulations (Report No. 18 of 1992);
- . Supreme Court Rules (Amendment) (Report No. 17 of 1992); and
- . Determination No. 149 of 1992 made under the Public Place Names Act (Report No. 14 of 1992).

The Committee thanks the Attorney-General and the Supreme Court for their positive responses.

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

Ellnor Grassby, MLA
Presiding Member

15 December 1992



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

ATTORNEY GENERAL

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Mrs Ellnor Grassby MLA
Presiding Member
Standing Committee on Scrutiny of Bills
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ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2601


Dear Mrs Grassby

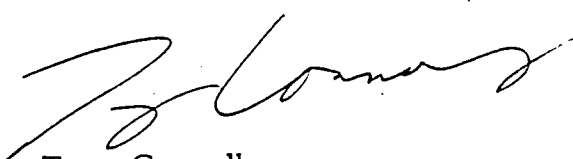
In its Report No.18 of 1992, the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented about the NOTES to the Public Health (Infectious and Notifiable Diseases) Regulations (Amendment), being Subordinate Law No.27 of 1992.

I am advised that the omission occurred because of the preparation at the same time of a second amendment of the Public Health (Infectious and Notifiable Diseases) Regulations, which became Subordinate Law No.22 of 1992, and it was unclear for a time which would be made first.

The Parliamentary Counsel's Office has rectified the omission internally and it will be rectified in the annual published volume of legislation.

I trust the foregoing information is of assistance to the Committee.

Yours sincerely


Terry Connolly

- 7 DEC 1992

AUSTRALIAN CAPITAL TERRITORY

SUPREME COURT OFFICE

Address all communications to THE REGISTRAR

In reply please quote

Your reference

Law Courts of the Australian Capital Territory
Knowles Place, Canberra City, A.C.T.

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Telegraphic Address: CARO Canberra

3 December 1992

Mr Tom Duncan
Secretary
Standing Committee on Scrutiny
of Bills and Subordinate Legislation
ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2601

Dear Mr Duncan,

I refer to Report No. 17 of 1992 of the ACT Legislative Assembly Standing Committee on Scrutiny of Bills and Subordinate Legislation.

The Committee has referred in its Report to a possible error or omission contained in Subordinate Law No. 21 of 1992 being the Supreme Court Rules (Amendment).

The Committee correctly points out that there is no Order 34A Rule 9 as referred to in Order 34A Rule 2(C). Unfortunately this reference was incorrectly carried through from earlier drafts of the Order and was inadvertently included in the final version of the Rules.

There is no need for Order 34A of the Supreme Court Rules to include a rule along the lines of Order 15A Rule 8 of the Federal Court Rules (Discovery from non-party) as Order 39 Rule 6A of the Supreme Court Rules already makes adequate provision for this situation.

The error identified by the Committee is being corrected by omitting Rule 2(C) of Order 34A altogether.

The Rules Committee thanks the Committee for identifying the error and bringing it to attention.

Yours sincerely,



(ALAN TOWILL)
Registrar



A.C.T. GOVERNMENT

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Ellnor
Dear Mrs Grassby

The Standing Committee on Scrutiny of Bills and Subordinate Legislation, in its Report No. 14 of 1992, raised some concerns about Determination No.149 of 1992.

The Committee commented that Determination No. 149 of 1992 did not correct an error in Determination No. 140 of 1992 which was identified by the Committee because of the inadvertent revocation of Determination No.138 of 1992 in lieu of Determination No.140. I am advised that the Committee's comments are correct.

A further determination is being prepared which revokes Determination Nos.149 and 140 and specifies the street names in Gordon and Banks as was originally intended by Determination Nos.138 and 140.

I trust this advice is of assistance to the Committee.

Yours sincerely

Terry Connolly
Terry Connolly

11 DEC 1992