

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

REPORT NO. 12 OF 1992

9 September 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.

MEMBERS OF THE COMMITTEE

Mrs E Grassby, MLA (Presiding Member)
Mr G Humphries, MLA (Deputy Presiding Member)
Ms H Szuty, MLA

Legal Advisor: Emeritus Professor D Whalan
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.

The extension to three valuation periods appears to be a substantial extension of such retrospectivity. The retrospective reassessment of rates and land tax may affect proprietors prejudicially in some cases. However, it could have particularly significant effects where property has changed hands and an innocent purchaser becomes involved with rates and taxes relating to a period before the purchaser owned the property.

Possible Changes

Clause 12 inserts section 28B to provide for the payment of interest where there is a refund of overpaid rates or land tax.

This subsection very properly provides that:

"A notice under subsection (1) is a disallowable instrument for the purposes of the Subordinate Laws Act 1989."

Subsection 28B(1) does mention a notice in section 28B(1)(a). Almost certainly the disallowance provision would be interpreted to apply only to instruments that refer to the interest rate "determined by the Minister for notice in the Gazette" referred to in section 28B(1)(a).

However, would it be neater to refer specifically to section 28B(1)(a), as this would then totally eliminate the possibility of an individual owner's refund assessment being interpreted as a disallowable instrument?

SUBORDINATE LEGISLATION

Subordinate legislation upon which no comment is offered

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

Determination No. 126 of 1992 made under section 87 of the Occupational Health and Safety Act 1989 approves the adoption of the National Occupational Health and Safety Commission's Exposure Standards for Atmospheric Contaminants in the Occupational Environment: 2nd Edition (1991) with a slight amendment as a code of practice.

Determination No. 135 of 1992 made under section 47 of the Ozone Protection Act 1991 determines licence renewal fees for the purposes of section 18.

Determination No. 136 of 1992 made under section 47 of the Ozone Protection Act 1991 determines zero fees for an application for a licence under section 13 to manufacture, use, deal with, or service an article that contains an ozone depleting substance, where the applicant already holds a licence under a corresponding law of another State or Territory.

Determination No. 137 of 1992 made under section 47 of the Ozone Protection Act 1991 determines the fees for an application for a licence under section 13 to manufacture, use, deal with, or service an article that contains an ozone depleting substance.

Determination No. 141 of 1992 made under section 132 of the Casino Control Act 1988 determines licence fees for employees.

