

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

REPORT NO 11 of 1991

27 June 1991

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Mrs E Grassby MLA (Presiding Member)
Mr B Stefaniak MLA
Mr B Collaery 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 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.

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.

Mr D Prowse
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Prowse

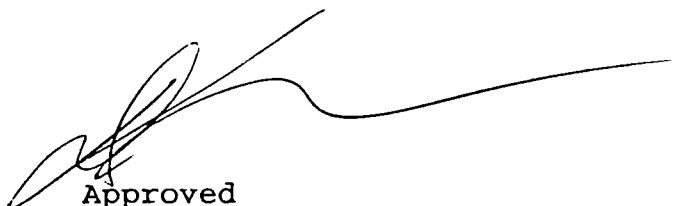
Please find enclosed a copy of Report No 11 of 1991 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under the resolution of appointment, the Committee is empowered to send a Report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No 11 of 1991.

Yours sincerely



Ellnor Grassby MLA
Presiding Member

27 June 1991



Approved
David Prowse

27 June 1991

SUBORDINATE LEGISLATION

(a) Subordinate Legislation upon which no comment is offered.

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

ACT Determination No.15 of 1991 made under section 8 of the Ambulance Service Levy Act 1990 prescribes the rate of the ambulance levy to be 52 cents.

ACT Determination No.17 of 1991 made under section 4 of the Place Names Act 1989 determines the names of a number of public places in the ACT, revokes the names of others and varies the location of another.

ACT Determination No.18 of 1991 made under section 44A of the Business Franchise (Tobacco and Petroleum Products) Act 1984 determines fees for petroleum product wholesalers and retailers and for tobacco wholesalers and retailers.

ACT Regulations 1991 No.12 being Motor Traffic (Alcohol and Drugs) Regulations (Amendment) provide for the particulars to be included in the written statement when a breath analysis is carried out using a specified instrument.

(b) Subordinate Legislation upon which comment is offered:

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

ACT Determination No.16 of 1991 made under section 48 of the Health Services Act 1990 cancels ACT Determination of Fees and Charges No.63 of 1990 and determines hospital, nursing home and various other charges to take effect on 3 June 1991.

Still No Reply and Some Further Questions

In its Reports Nos.11,12 and 16 of 1990 and Report No.7 of 1991 the Committee sought answers to questions about the predecessors of the present Determination. Almost a year has gone by since the Committee first raised matters about such a Determination in its Report No.11 of 1990 and no formal response appears to have been received. The questions raised range from possible errors to possible invalidity and the effect of possible retrospectivity affecting the legality of the collection of fees.

The simple verbal errors and sexist language of the previous Determinations have been repeated again in the present Determination.

There are additional questions that the Committee raises relating to the present Determination.

It is noted that the present Determination cancels Determination No.63 of 1990, which took effect on 27 September 1990, and fixes new fees to take effect on 3 June 1991. The new fees appear to be very similar to, or perhaps even identical with, those set out in Determination No.8 of 1991. The Explanatory Statement states that the "Determination also replaces No.8 of 1991", but the Determination itself does not appear to make any reference to Determination No.8 of 1991.

The following questions seem relevant. If Determination No.8 is valid, why is there no reference to its cancellation in the present Determination? If Determination No.8 is valid, why was it necessary to cancel Determination No.63 of 1990, as Determination No.8 did so? Or is Determination No.8 of 1991 believed to be ineffective or invalid in some way? If so, could an explanation be given, as none appears to have been given in the Explanatory Statement? If Determination No.8 is believed to be invalid, have any of the increased charges been imposed or collected since its purported coming into effect on 28 March 1991?

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

Mrs E Grassby, MLA
Presiding Member

27 June 1991

