

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

REPORT NO 2 of 1991

13 February 1991

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Ms C Maher MLA (Presiding Member)
Mr T Connolly MLA
Mr B Stefaniak 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.

SUBORDINATE LEGISLATION - NO COMMENT OFFERED

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

1. ACT Regulations 1990 No. 17 being Financial Institutions Duty Regulations provide for clearing or settlement accounts operated on behalf of building societies and credit unions to be exempt from duty and thus avoid the double payment of duty.

2. ACT Regulations 1990 No. 18 being Vocational Training Regulations (Amendment) update the descriptions of prescribed vocations brought about by award restructuring and the development of the Australian Traineeship System.

3. ACT Regulations 1990 No. 20 being Magistrates Court (Civil Jurisdiction) (Solicitors' Costs) Regulations (Amendment) prescribe a new scale of costs for the Magistrates Court that applies from 1 January 1991.

4. ACT Determination No. 77 of 1990 being Financial Institutions Duty Determination No. 2 of 1990 made under section 99 of the Taxation (Administration) Act 1987 increases the rate of duty for the value of each receipt from 0.06 to 0.08 to a maximum of \$1200 for all receipts exceeding \$1,500,000.

5. ACT Determination No. 80 of 1990 made under section 99 of the Taxation (Administration) Act 1987 provides for stamp duty concessions to eligible first home buyers.

6. ACT Determination No. 87 of 1990 made under section 99 of the Taxation (Administration) Act 1987 increases the rates for child, student and concession fares on ACTION buses.

SUBORDINATE LEGISLATION - COMMENT OFFERED.

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

7. ACT Regulations 1990 No. 19 being Gaming Machine Regulations (Amendment) make changes consequent upon recent amendments made to the Gaming Machine Act 1975 and provide that the Commissioner may delegate authority to conduct ballots.

8. ACT Regulations 1991 No. 1 being Magistrates Court (Civil Jurisdiction) Regulations (Amendment) vary certain interest rates.

9. ACT Determination No. 78 of 1990 made under section 11A of the Public Health Act 1928 sets the fees to be paid under a number of Public Health Regulations for the period 1 January 1991 to 31 January 1991.

10. ACT Determination No. 79 of 1990 made under section 105A of the Liquor Act 1975 revokes the existing determinations of fees and determines new fees for the purposes of a number of provisions of the Act.

11. ACT Determination No. 81 of 1990 made under section 57(1) of the Motor Vehicles (Dimensions and Mass) Act 1990 determines the fees to be paid under section 29(C) of the Act.
12. ACT Determination No. 82 of 1990 made under section 57(2) of the Motor Vehicles (Dimensions and Mass) Act 1990 determines the mass under section 25(1) of the Act.
13. ACT Determination No. 83 of 1990 made under section 57(2) of the Motor Vehicles (Dimensions and Mass) Act 1990 determines the mass under section 25(2) of the Act.
14. ACT Determination No. 84 of 1990 made under section 57(2) of the Motor Vehicles (Dimensions and Mass) Act 1990 determines the mass under section 25(3) of the Act.
15. ACT Determination No. 85 of 1990 made under section 57(2) of the Motor Vehicles (Dimensions and Mass) Act 1990 determines the gross mass in tonnes under section 24(1) (c) of the Act.
16. ACT Determination No. 86 of 1990 made under section 57(2) of the Motor Vehicles (Dimensions and Mass) Act 1990 determines the gross mass in tonnes under section 24(2) (c) of the Act.
17. ACT Determination No. 88 of 1990 made under section 7A(6) (a) of the Motor Traffic Act 1936 exempts specified classes of vehicles from compliance with Australian Design Rule 65/00 for the period 1 January 1991 to 31 March 1991.
18. ACT Determination No. 89 of 1990 made under section 7A(6) (a) of the Motor Traffic Act 1936 exempts specified classes of heavy goods vehicles from compliance with Australian Design Rule 65/00.

(a) Missing Explanatory Statements

In these cases the practice that came into effect on 1 June 1990 of supplying an Explanatory Statement for each instrument of delegated legislation has not been followed.

19. ACT Determination No. 2 of 1991 made under section 8 of the Ambulance Levy Act 1990 (sic in the determination) purports to prescribe the rate of the ambulance levy at 52 cents.

(b) Possible incorrect citation of Act and information lacking in explanatory statement)

The Committee makes two comments in relation to this determination.

Firstly, the determination is said to have been made under s.8 of the Ambulance Levy Act 1990. The Committee can find no reference to this Act, and considers that it should probably be the Ambulance Service Levy Act 1990 which was passed by the Legislative Assembly on 24 March 1990 and gazetted on 9 May 1990. Perhaps an amendment has been made to the latter Act including changing its short title, but the Committee can find no evidence that this has occurred. If the name of the Act has not been

amended, then the determination would appear to have been made under a non-existent Act, and may therefore be invalid.

Secondly, there is an Explanatory Statement that is helpful as far as it goes. However, perhaps it could have been a little more helpful. Unless it, too, has been amended by an amendment Act that the Committee has been unable to find, s 8(4) of the Act provides as follows:

"8(4) Where, in accordance with clause 5 of Schedule 2 to the Health Insurance Levies Act 1982 of the State of New South Wales, a notice is published of the prescribed rate within the meaning of that Act as adjusted in accordance with that Schedule, the Minister for Finance and Urban Services shall, by notice in the Gazette, fix an amount that properly reflects that prescribed rate as so adjusted".

It would have been helpful to Members of the Assembly if the Explanatory Statement had indicated that the obligation of the Minister had arisen and given details of publication of the adjustment that has apparently been made under the New South Wales Act.

(c) Explanatory Statements Received

In its Report No. 19 the Committee drew attention to the fact that there was no Explanatory Statement with Determination No. 76 of 1990. That Determination set fees under the Motor Traffic Act 1936 as amended by the Motor Traffic (Amendment) Act (No. 7) 1990 which dealt with auctioning and leasing of taxi plates.

Also in Report No. 19 the Committee drew attention to the fact that there was no Explanatory Statement with Determination No. 73 of 1990. That Determination provides for the naming of divisions and public places under the Public Places Names Act 1989.

Explanatory statements for both the determinations have been received by the Committee, and both are considered to be satisfactory.



Carmel Maher, MLA
Presiding Member

13 February 1991

