

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

REPORT NO. 7 OF 1996

4 June 1996

TERMS OF REFERENCE

- (1) A Standing Committee for scrutiny of bills and subordinate legislation be appointed.
- (2) The Committee will consider whether:
 - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
 - (i) meet the objectives of the Act under which it is made;
 - (ii) unduly trespass on rights previously established by law;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
 - (b) its explanatory statement meets the technical or stylistic standards expected by the Committee.
 - (c) clauses of bills introduced in the Assembly:
 - (i) do not unduly trespass on personal rights and liberties;
 - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
 - (d) its explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of three members.
- (4) 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.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) 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

Ms Rosemary Follett, MLA (Chair)
Mr Harold Hird, MLA (Deputy Chair)
Mr Paul Osborne, MLA

Legal Advisor: Emeritus Professor Douglas Whalan, AM
Secretary: Mr Tom Duncan

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON SCRUTINY OF
BILLS AND SUBORDINATE LEGISLATION

Telephone: (06) 2050171
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Mr Greg Cornwell, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Cornwell,

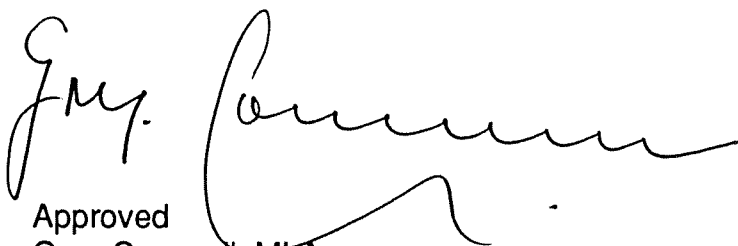
Please find enclosed a copy of Report No. 7 of 1996 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. I seek your approval to print and circulate Report No. 7 of 1996.

Yours sincerely,



Rosemary Follett, MLA
Chair

3 June
May 1996



Approved
Greg Cornwell, MLA

4 June
May 1996

BILLS

Bills - No Comment

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

Betting (Corporatisation) (Consequential Provisions) Bill 1996

This Bill, as the first part of a package of two Bills to convert the Australian Capital Territory Totalizator Administration Board into a Territory owned corporation, transfers rights and liabilities, details the terms and conditions of employment of transferred and new employees and covers other transitional matters.

Betting (Corporatisation) (Consequential Amendments) Bill 1996

This Bill, as the second part of a package of two Bills to convert the Australian Capital Territory Totalizator Administration Board into a Territory owned corporation, makes consequential amendments to a number of Acts and to the Ombudsman Regulations and covers other transitional matters.

Financial Management and Audit (Consequential and Transitional Provisions) Bill 1996

This Bill repeals the audit legislation, amends a number of Acts consequent upon the repeal of the *Audit Act 1989* and the passing of the *Financial Management Act 1996* and the *Auditor-General Act 1996* and covers a number of transitional matters.

Housing (Amendment) Bill 1996

This Bill makes amendments to the principal Act consequent upon the Territory entering into arrangements under the new Commonwealth State Housing Agreement.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Determination No. 54 of 1996 made under section 10 of the *Canberra Theatre Trust Act 1965* revokes the appointment of a specified person as a member and Chair of the Canberra Theatre Trust.

Determination No. 55 of 1996 made under sections 6 and 7 of the *Canberra Theatre Trust Act 1965* appoints a specified person as a member and Chair of the Canberra Theatre Trust for the period 1 January 1996 to 31 October 1999.

Determination No. 56 of 1996 made under section 6 of the *Canberra Theatre Trust Act 1965* appoints three specified persons as members of the Canberra Theatre Trust for the period 1 September 1995 to 30 June 1996.

Determination No. 57 of 1996 made under section 67 of the *Vocational Education and Training Act 1995* determines fees for accreditation of diploma and certificate courses and processing and application fees for skill recognition.

Determination No. 58 of 1996 made under section 118 of the *Adoption Act 1993* revokes Determination No. 149 of 1995 and fixes fees relating to applications for information under section 62 of the Act.

Determination No. 60 of 1996 made under subsection 10(1) of the *Health Promotion Act 1995* appoints a named person as Chairperson of the Health Promotion Board.

Determination No. 62 of 1996 made under subsection 10(1) of the *Health Promotion Act 1995* appoints a named person as a member of the Health Promotion Board.

Determination No. 63 of 1996 made under subsection 10(1) of the *Health Promotion Act 1995* appoints a named person as a member of the Health Promotion Board.

Determination No. 64 of 1996 made under subsection 10(1) of the *Health Promotion Act 1995* appoints a named person as a member of the Health Promotion Board.

Determination No. 65 of 1996 made under subsection 10(1) of the *Health Promotion Act 1995* appoints a named person as a member of the Health Promotion Board.

Determination No. 66 of 1996 made under subsection 10(1) of the *Health Promotion Act 1995* appoints a named person as a member of the Health Promotion Board.

Determination No. 67 of 1996 made under subsection 10(1) of the *Health Promotion Act 1995* appoints a named person as a member of the Health Promotion Board.

Determination No. 70 of 1996 made under section 120A of the *Agents Act 1968* revokes Determination No. 34 of 1995 and fixes new fees payable for the issue and renewal of licence fees payable by real estate agents, stock and station and business agents and travel agents and fixes new fees payable for a copy of a transcript or part of a proceeding and for inspecting a register and taking an extract.

Subordinate Legislation - Comments

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

Determination No. 61 of 1996 made under subsection 10(1) of the *Health Promotion Act 1995* appoints a named person as Deputy Chairperson of the Health Promotion Board.

Appointment Appears to have been made under the wrong Provision

Subsection 10(1) of the *Health Promotion Act 1995* provides as follows:

"10(1) The Minister shall appoint the members of the Board by instrument as part-time members for a period of three years."

The present instrument does not appoint the named person as a member, but purports to appoint that person as Deputy Chairperson.

Subsection 8(1) of the Act provides for the appointment of 9 members consisting of a Chairperson and 8 other members with specified qualifications. Then subsection 8(2) provides as follows:

"8(2) The Minister shall, by instrument, appoint a Deputy Chairperson from among the members of the Board."

This quite specific provision of the Act has not been complied with in the present instrument.

Perhaps the validity of the person's appointment both as a member of the Board and as Deputy Chairperson should be considered.

Determination No. 68 of 1996 made under subsection 8(2) of the *Radiation Act 1983* appoints a named person as a member of the Radiation Council.

Determination No. 69 of 1996 made under subsection 8(2) of the *Radiation Act 1983* appoints a named person as a member of the Radiation Council.

Were these Appointments made for a Period Exceeding three years?

Section 8 of the *Radiation Act 1983* provides for the appointment of members of the Radiation Council set up by section 7 of the Act. Relevant parts of section 8 provide as follows:

"8(2) The members of the Council shall be appointed by the Minister.

(3) Subject to this Act, a member of the Council appointed under subsection (2) holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment and is eligible for re-appointment." (Emphasis added.)

Both of the present determinations provide that the appointments are made

"for a period of three years, from and including 20 May 1996 up to and including 20 May 1999."

There may be an inconsistency in the instruments.

On the one hand they state that the appointments are made "for a period of three years", which would be consistent with the provisions of subsection 8(3) of the Act that an appointment can be made for a period "not exceeding 3 years".

On the other hand, the instruments then define the period of the appointments quite precisely when they say that the appointments are "from and including 20 May 1996 up to and including 20 May 1999". On this basis, the period of appointment appears to be for three years and one day. Such an appointment is not permitted by subsection 8(3) of the Act, as it forbids appointments "exceeding 3 years".

Can the cavalry of the *Interpretation Act 1967* come charging over the hill and save the situation?

As the heading of section 36 of the *Interpretation Act 1967* states, that section assists in the "Reckoning of time" in an Act. Subsection 36(1) provides as follows:

"36(1) Where, in an Act, a period of time, dating from a given day, act or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of that day or of the day of that act or event." (Emphasis added.)

Section 9 of the *Subordinate Laws Act 1989* provides that most of the provisions in the *Interpretation Act 1967* (including section 36) apply to subordinate laws.

In many instruments subsection 36(1) operates to exclude the day of the commencement from the period. That is, it would exclude 20 May 1996 and thus bring the total period down to exactly 3 years.

However, the present instruments are drawn to make sure that the period in both appointments is to include 20 May 1996 and also to include 20 May 1999. This is effected by providing that the period is to be "from and including 20 May 1996 up to and including 20 May 1999". The use of the phrase can be argued to be a "contrary intention" as envisaged by subsection 36(1), so that subsection cannot exclude 20 May 1996 from the calculation of the period.

So, on this argument, the section 36 cavalry arrives too late - a day too late.

The Committee puts it in practical terms. Under the wording, it would appear that the appointees would be able to exercise their functions as members of the Radiation Council on 20 May 1996 and also on 20 May 1999. That is, they could exercise their functions for 3 years and a day.

The Radiation Council has very significant powers and functions. They include granting exemptions, granting and canceling licences in relation to possession and use of radioactive materials, granting and canceling registration of irradiating apparatus, arrangements relating to transportation, storage and disposal of radioactive materials and requiring someone to undergo a medical examination.

Perhaps the validity of the appointments should be checked.



Rosemary Follett, MLA
Chair

3 June
May 1996

