

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

REPORT NO. 17 OF 1995

12 December 1995

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

Mr Paul Osborne, MLA (Chair)
Mr Andrew Whitecross, MLA (Deputy Chair)
Mr Harold Hird, MLA

Legal Advisor: Emeritus Professor Douglas Whalan, AM
Secretary: Mr Tom Duncan
Deputy Secretary: Ms Beth Irvin

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.

BILLS

Bills - No comment

The Committee has examined the following Bills and offers no comments.

Law Reform (Abolitions and Repeals) Bill 1995

This Bill abolishes estates pur autre vie, the common law misdemeanours of criminal libel, blasphemous libel, seditious libel and obscene libel and the right to levy or make distress for rent and repeals a number of Acts and provisions of Acts.

Weapons (Amendment) Bill 1995

This Bill introduces a category of licence for inoperable weapons, prohibits the sale or transfer of semi-automatic weapons, adds a number of items to the list of prohibited weapons, brings veterinarians within the licensing regime, permits the licensing of silencers in some circumstances, permits the security personnel of visiting dignitaries to carry weapons, restricts the circumstances in which compensation will be payable for weapons surrendered to the Registrar and makes a number of minor amendments.

Bill - Comment

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

Legal Practitioners (Amendment) Bill (No. 2) 1995

Retrospectivity

This Bill repeals and substitutes the definition of "controlled moneys" and adds a definition of "third party payment", provides for acknowledgements to be given by a solicitor of the terms of control of a client's money, provides for quarterly statements to be given by a solicitor where the solicitor has control of a client's funds and reinstates certain provisions relating to valuable securities and controlled moneys.

The *Legal Practitioners (Amendment) Act 1994*, which commenced on 23 November 1994, provided that the audit requirements in Part XI of the principal Act were to apply to "valuable securities" held by a solicitor under the new definition of "controlled moneys" inserted by the amendment Act.

The presentation speech noted that the 1994 provisions required:

"a solicitor to record the funds of a client over which the solicitor has control. The definition of these 'controlled funds' includes 'valuable securities', that is, documents such as title deeds and share scrip. [The Law Society made submissions] that the requirement imposes an unduly onerous administrative task on a practitioner."

The speech also mentions that the Law Society had submitted that there had been no known fraudulent dealings with such documents and, in some cases (for example, where a solicitor holds a sealed package for a client), a solicitor could not comply with the requirements of the 1994 amendment.

Clause 12 of the present amendment reinstates the position that existed before the amendment that commenced on 23 November 1994. Further, clause 12 is deemed to have commenced on 23 November 1994. As the explanatory memorandum states:

“The intention is that the requirements of the 1994 amending Act in respect of ‘valuable securities’ are to be taken to have had no effect.”.

Thus there is retrospectivity going back to the date of the commencement of the 1994 amendment.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Public Sector Management Standard 11/1995 made under section 251 of the *Public Sector Management Act 1994* by the Acting Commissioner for Public Administration with the approval of the Chief Minister amends Public Sector Management Standard 1/1994 by providing for the payment of disability allowance for communications staff at Woden Valley Hospital.

Public Sector Management Standard 12/1995 made under section 251 of the *Public Sector Management Act 1994* by the Acting Commissioner for Public Administration with the approval of the Chief Minister amends Public Sector Management Standard 1/1994 by providing for the payment of disability allowance for dental services staff in the ACT Health Building.

Determination No. 152 of 1995 made under section 15H of the *Nature Conservation Act 1980* revokes Instrument No. 10 of 1995 and determines remuneration and allowances for members of the Flora and Fauna Committee.

Determination No. 159 of 1995 made under section 19A of the *Smoke-free Areas (Enclosed Public Places) Act 1994* determines fees for the making of applications for the issue of a certificate of exemption and for renewals of such certificates.

Determination No. 160 of 1995 made under section 8 of the *Electoral Act 1992* determines the rate for the purchase of electronic electoral roll extracts under section 62 of the *Electoral Act 1992*.

Determination No. 161 of 1995 made under section 8 of the *Electoral Act 1992* determines the rate for the purchase of printed electoral roll extracts under section 61 of the *Electoral Act 1992*.

Approval of Variation No. 42 to the Territory Plan made under section 26 of the *Land (Planning and Environment) Act 1991* approves a variation relating to Territory Plan minor corrections and residential land use policies.

Approval of Variation No. 48 to the Territory Plan made under section 26 of the *Land (Planning and Environment) Act 1991* approves a variation relating to section 20, block 1 in the Division of Monash.

Approval of Variation No. 53 to the Territory Plan made under section 26 of the *Land (Planning and Environment) Act 1991* approves a variation relating to Gungahlin Town Centre and Central Area.

A handwritten signature in black ink, appearing to read 'Paul Osborne', written in a cursive style.

Paul Osborne, MLA
Chair

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