

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

REPORT NO. 11 OF 1992

26 AUGUST 1992

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

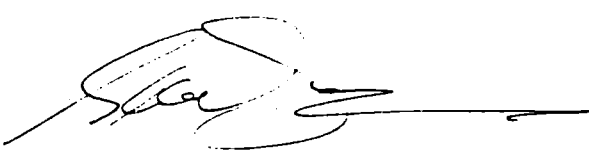
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Ms Roberta McRae, OAM, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601


Dear Ms McRae

Please find enclosed a copy of Report No. 11 of 1992 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. Accordingly, I seek your approval to print and circulate Report No. 11 of 1992.

Yours sincerely


Ellnor Grassby, MLA
Presiding Member

25 August 1992



Approved
Roberta McRae, OAM, MLA
Speaker

25 August 1992

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.

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.

Clause 14 of the Bill provides for exemptions from the Act's provisions to be granted by regulations.

Usually regulations come into effect on the date of notification in the Gazette or on a date set by the regulations (Subordinate Laws Act 1989 s. 6(1)(b)).

However, clause 14(2) negates the operation of s. 6(1)(b) and provides that an exemption regulation only takes effect

"on the expiration of the period of 15 sitting days after it is laid before the Legislative Assembly ... or on such later date as is prescribed by the regulation."

The other provisions of the Subordinate Laws Act 1989, including those for disallowance, still apply to a regulation. Instead of the usual position where the Assembly can merely act retrospectively to disallow a regulation that is already in operation, in the present instance the exemption regulation does not take effect until 15 sitting days after the regulation has been laid before the Assembly.

Thus the provisions in clause 14 ensure that the Legislative Assembly has more direct control over the granting of exemptions under the Act than is customary with the exercise of regulation-making power.

In principle giving this positive control to the Legislative Assembly is to be commended. The Committee notes, however, that there may be possible problems posed if there is a gap between the enacting of the legislation and the gazettal of the subsequent regulations.

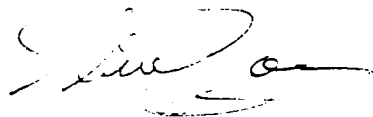
The intention of the Determination is stated in the following terms in the Explanatory Statement:

"Schedule 'A' of the Determination, together with the accompanying maps, details the name origins and significance of new street names for the Division of Gordon.

Schedule 'B' of the Determination revokes the existing street names.

Schedule 'C' varies the location of the streets in the Division of Gordon."

The Determination does have Schedules A, B and C attached to it. Further, the Determination does determine the new street names of the streets listed in Schedule A. It also revokes the determinations of the names of the streets in Schedule B. However, Schedule C is not mentioned in the body of the Determination and thus the intention indicated by the Explanatory Statement may not have been effected.



Ellnor Grassby, MLA
Presiding Member