

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

REPORT NO. 2 OF 1992

22 April 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

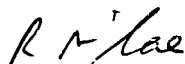
Please find enclosed a copy of Report No. 2 of 1992 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No. 2 of 1992.

Yours sincerely



Ellnor Grassby, MLA
Presiding Member

April 1992



Approved
Roberta McRae, OAM, MLA
Speaker

22 April 1992

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Mrs E Grassby, MLA (Presiding Member)
Mr G Humphries, MLA
Ms H Szuty, MLA

Legal Advisor: Emeritus Professor D Whalan
Secretary: Mr T Duncan
Deputy Secretary: Ms B Irvin

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;
- (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;
- (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 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.

BILLS

(1) Bills upon which no Comment is Offered

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

A. C. T. Institute of Technical and Further Education (Amendment) Bill 1992
Electricity and Water (Amendment) Bill (No.2) 1992

These Bills provide for equal opportunity in appointment and promotion based on the merit principle and provide for the establishment of equal opportunity programs.

Bail Bill 1992

This Bill amends and consolidates the law of bail.

Bail (Consequential Amendments) Bill 1992

This Bill makes amendments to a number of Acts consequent upon the passing of the Bail Bill 1992.

Crimes Legislation (Status and Citation) Bill 1992

This Bill provides that the Crimes Act 1900, which the A. C. T inherited from New South Wales, is to be treated and cited as if it had been an Act passed by the Legislative Assembly.

Districts (Amendment) Bill 1992

This Bill inserts a definition of Chief Surveyor and replaces a reference to the Commonwealth Surveyor-General with a reference to the Chief Surveyor.

Real Property (Amendment) Bill 1992

This Bill inserts a definition of Chief Surveyor and replaces a reference to the Surveyor-General for Australia with a reference to the Chief Surveyor.

Surveyors (Amendment) Bill 1992

This Bill provides for the appointment of a Chief Surveyor for the A. C. T. and replaces references to Commonwealth officers with references to the Chief Surveyor.

(2) Bills upon which Comment is Offered

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

Agents (Amendment) Bill 1992

This Bill establishes a Fidelity Guarantee Fund to protect persons dealing with licensed agents.

Other Sexist Language not Removed

Clauses 13 repeals and substitutes section 37(3), clause 21 inserts new section 57C and clause 23(f) inserts section 71(4). They are carefully drafted so as not to include sexist language. However, the opportunity has not been taken to remove other illustrations of sexist language that occur in the principal Act. For instance, although sexist language has been avoided in section 37(3), section 37(1) does still offend.

Canberra Theatre Trust (Amendment) Bill 1992

Cemeteries (Amendment) Bill 1992

Fire Brigade (Administration) (Amendment) Bill 1992

Legal Aid (Amendment) Bill 1992

Long Service Leave (Building and Construction Industry) (Amendment) Bill 1992

Milk Authority (Amendment) Bill 1992

National Exhibition Centre Trust (Amendment) Bill 1992

These Bills provide for equal opportunity in appointment and promotion based on the merit principle and provide for the establishment of equal opportunity programs.

Other Sexist Language not Removed

Although the Bills substitute "Chairperson" for "Chairman" and "Deputy Chairperson" for "Deputy Chairman" where appropriate in the principal Acts, the opportunity has not been taken to remove the many illustrations of sexist language that occur in the principal Acts. Perhaps it would be appropriate to do so, especially as the Bill is dealing with equal opportunity.

If this is not done, some provisions will not read well. For instance, after the present amendments are made, section 7(3) of the Canberra Theatre Trust Act 1965 would be as follows:

"A trustee appointed as the Chairperson or Deputy Chairperson shall hold office as such until the appointment of another trustee as the Chairperson or Deputy Chairperson, as the case may be, until the expiration of the period of his appointment as trustee or until he otherwise ceases to be a trustee, whichever happens first." (Emphasis added.)

An even simpler one from the amended National Exhibition Centre Trust Act 1976 would be section 17(4) as amended, which would read as follows:

"The Chairperson shall preside at all meetings of the Trust at which he is present." (Emphasis added.)

Crimes (Amendment) Bill 1992

This Bill amends the principal Act to create an offence of dishonest appropriation by an officer of a corporation of the corporation's property.

Missing Explanatory Memorandum

No Explanatory Memorandum appears to have been supplied for this Bill. However, the presentation speech in Hansard does give a very full explanation of the Bill's contents.

A Possible Problem of Numbering

Clause 4 of the Bill inserts a new section 156 after section 155 of the Crimes Act 1990.

However, perhaps a check could be made in relation to the present numbering of sections in this area of the Crimes Act 1900 to ensure that there is no confusion and there are no apparently co-existing sections with the same numbers or that there has been no writing over the top of existing sections with sections with the same numbers.

Section 4 of the Crimes (Amendment) Act (No. 3) 1990 (Act No. 66 of 1990) inserted new sections 152 to 154 after section 151 of the principal Act. They created offences relating to unlawful access to data in computers and damaging data in computers.

Then section 4 of the Crimes (Amendment) Act (No. 2) 1991 (Act No. 78 of 1991) inserted a heading "PART V - ESCAPE PROVISIONS" after section 151. Section 5 then provided that

"Sections 358AA to 358AJ (inclusive) of the Crimes Act are relocated after section 151 of that Act (after the heading inserted by section 4) and renumbered sections 152 to 160 respectively."

Then there is the Crimes (Amendment) (No. 3) Act 1991 (Act No. 90 of 1991), which, because of the timing of its presentation to the Legislative Assembly in 1991, apparently went under the alias of the Crimes (Amendment) Bill (No. 7) 1991 for a time until it was enacted.

Section 4 of the Crimes (Amendment) (No. 3) Act 1991 relocated section 115 of the Crimes Act 1900, which also deals with the dishonest use of computers, to fit in after section 154 as section 155. This may have seemed quite reasonable, for, as we have seen, sections 152 to 154 inserted by the Crimes (Amendment) Act (No. 3) 1990 also dealt with the misuse of computers.

But had the number of section 155 already been taken by the "Escape Provisions" of section 5 of the Crimes (Amendment) Act (No. 2) 1991?

If these provisions are as indicated, there would be very considerable confusion.

One thing that does seem certain is that it would perhaps be wise for the present Bill to avoid this possibly over-crowded area by changing the numbering of its proposed new section to, say, section 161.

The Committee wishes to make a suggestion. Once the present Crimes Legislation (Status and Citation) Bill 1992 is enacted making the Crimes Act 1900 truly an A. C. T. Act and not "the Crimes Act, 1900 of the State of New South Wales in its application in the Territory", might it not be worthwhile for a re-numbering and reprinting exercise to be undertaken?

Criminal Injuries Compensation (Amendment) Bill 1992

This Bill amends the principal Act to clarify the references to Registrars in the Act as, in some cases, the Registrar of the Supreme Court is intended and, in other cases, the Registrar of the Magistrates Court.

Retrospectivity

The amendments are made retrospective to the date of the coming into effect of the changes to the meaning of "Registrar" made by the Magistrates and Coroner's Courts (Registrar) Act 1991. The retrospectivity does not prejudice the rights of any person.

Electricity and Water (Amendment) Bill 1991

This Bill amends the principal Act to permit the Authority to add fluoride to the water supply up to a concentration not exceeding 1.0 milligram per litre without committing an offence.

Missing Explanatory Memorandum

No Explanatory Memorandum appears to have been supplied for this Bill. The presentation speech in Hansard gives an explanation of the Bill's contents.

Freedom of Information (Amendment) Bill 1992

This Bill amends the principal Act to provide that, when a request for access or a request for review of a decision are not accompanied by the relevant fee but accompanied by a request for remission of the fee, the requests are to be regarded as being in order until the requester is notified that the fee is not to be remitted in full.

No Explanatory Memorandum appears to have been supplied for this Bill. However, the presentation speech in Hansard does give a very full explanation of the Bill's contents.

Powers of Attorney (Amendment) Bill 1992

This Bill amends the principal Act to provide for a simple form of general power of attorney, to provide that general powers of attorney or enduring powers of attorney are to be deemed to take effect as deeds, to provide for a medical certificate as to incapacity, to update the form of the enduring power of attorney and to make minor technical amendments.

Retrospectivity

The provision in the new section 3AA as to general powers of attorney is deemed to have come into force on 24 December 1956. Section 11 also ensures that existing powers of attorney are to have effect as if the provisions of the present Bill had been in operation when the power of attorney came into effect.

Prostitution (Consequential Amendments) Bill 1992

This Bill repeals a number of offences consequent upon the passing of the Prostitutes Bill 1992, changes the name of the Venereal Diseases Act 1956 to the Sexually Transmitted Diseases Act 1956 and creates an offence of passing a sexually transmitted disease to another person.

Missing Explanatory Memorandum

No Explanatory Memorandum appears to have been supplied for this Bill. However, the Bill is almost identical to a Bill that was presented to the First Assembly and that Bill did have an Explanatory Memorandum that would be helpful to Members.

Prostitution Bill 1992

This Bill's purpose is to regulate certain aspects of prostitution.

Missing Explanatory Memorandum

There appears to be no Explanatory Memorandum with this Bill. As with the Prostitution (Consequential Amendments) Bill 1992, there was a very helpful Explanatory Memorandum presented with the Prostitution Bill that was presented to the First Assembly. However, unlike that for the Prostitution (Consequential Amendments) Bill 1992, the previous Explanatory Memorandum in this case will not be quite as useful, as the present Bill is different in a number of respects from that presented last year.

A Possible need for Consistency and Two or Three Possible small Errors

First, a possible inconsistency.

Clause 14 (use of prophylactics) (on page 5) contains three subsections each of which creates an offence and each of which provides for a penalty at the end of the subsection.

In the case of clause 14(3) the penalty provision provides thus:

"Penalty (for an offence against subsection (3)): \$5,000."

No doubt the words in brackets make the intention of the provision very clear.

However, it is noted that clause 6 (soliciting) (on page 3) has two subsections, two offences and two penalties, but does not have the above words in brackets.

For consistency, perhaps the words in brackets should be removed from clause 14(3).

Another possible small error arises because of the dropping of the provisions for licences. Clause 12 (infected persons) properly provides in clause 12(2) for "a belief on reasonable grounds" defence, but still refers to "the licensee".

Other matters relating to the Bill have been referred to Parliamentary Counsel for comment in accordance with standing order 191.

Teaching Service (Amendment) Bill 1992

This Bill provides for equal opportunity in appointment and promotion based on the merit principle and provides for the establishment of equal opportunity programs.

Other Sexist Language not Removed

This Bill is careful to avoid using sexist language in the amendments that it contains. However, there appear to be other sexist provisions still in the principal Act.

Possibly Incorrect NOTE

The NOTE to the Bill sets out the statutory steps by which the Commonwealth Teaching Service Act 1972 was transformed into the A.C.T. Teaching Service Act 1972. There may be a mistake in the NOTE. There is a reference to "section 8 of the Commonwealth Act No. 109, 1989". That Act is the Corporations Act 1989 and section 8 is an interpretation section. Perhaps section 8 of Commonwealth Act 109 of 1988 is intended as that Act is the Australian Capital Territory Self-Government (Consequential Provisions) Act 1988.

Traffic (Amendment) Act 1992

This Bill amends the principal Act to provide for the compulsory wearing of bicycle helmets for cyclists and their passengers on public roads and public places.

Other Sexist Language not Removed

As with a number of other Bills in this report this one, too, is careful to avoid using sexist language in the amendments that it contains. However, there appear to be a number of sexist provisions still in the principal Act.

DELEGATED LEGISLATION

(3) Delegated Legislation upon which no Comment is Offered

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

ACT Regulations 1992 No. 4 being the Interim Planning (Remuneration and Allowances) Regulations set the remuneration and allowances payable to the Chief Planner.

ACT Determination No. 42 of 1992 made under section 217A of the Motor Traffic Act 1936 revokes previous determinations of fees and determines new fees for ordinary and special number plates.

ACT Determination No. 43 of 1992 made under section 120A of the Agents Act 1968 revokes the existing determination of fees and determines fees for the issue and renewal of licence and registration fees for agents.

Approval of Variation to the Territory Plan made under section 26 of the Land (Planning and Environment) Act 1991 dealing with City Section 65 Blocks 6 and 13.

(4) Delegated Legislation upon which Comment is Offered

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

ACT Determination No. 2 of 1992 made under section 99 of the Taxation (Administration) Act 1987 determines the percentage and the amounts of tax to be paid under the Liquor Tax Act 1991.

Instrument of Approval under section 87 of the Occupational Health and Safety Act 1989 approves the National Health and Safety Commission's National Standard for Synthetic Mineral Fibres and National Code of Practice for the Safe Use of Synthetic Mineral Fibres.

Missing Explanatory Statements and Numbering

First, there appear to be no Explanatory Statements for either of these instruments. Particularly in the case of the Determination under the Taxation (Administration) Act 1987, it would perhaps be helpful for Members to have an Explanatory Statement, as this is the first time that these fees have been made under the new regime introduced by the Liquor Tax Act 1991.

Second, the Determination under s 87 of the Occupational Health and Safety Act 1989 has not been numbered. Numbering systems for instruments are proving very helpful in identifying those instruments and it would be appropriate for any future determination under the Occupational Health and Safety Act 1989 to carry an identifying number.

A handwritten signature in black ink, appearing to read 'Ellnor Grassby', followed by a long horizontal line.

Ellnor Grassby, MLA
Presiding Member

April 1992

