

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

REPORT NO 10 of 1991

6 June 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.

Mr D Prowse
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Prowse

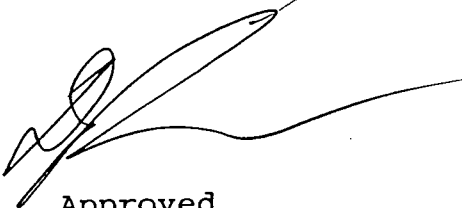
Please find enclosed a copy of Report No 10 of 1991 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under the resolution of appointment, the Committee is empowered to send a Report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No 10 of 1991.

Yours sincerely



Carmel Maher MLA
Presiding Member

6 June 1991



Approved
David Prowse

6 June 1991

SUBORDINATE LEGISLATION

(a) Subordinate Legislation upon which no comment is offered.

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

ACT Regulations 1991 No.9 being the Water Pollution Regulations (Amendment) omit provisions relating to analysis now covered by the Water Pollution Manual, update scientific references and provide for some new definitions.

ACT Regulations 1991 No.10 being the Occupational Health and Safety Regulations provide for the Council to approve training programs which health and safety representatives may attend without loss of pay and for employers to pay training fees and expenses for such attendance.

ACT Regulations 1991 No.11 being the Tobacco Regulations prescribe the form of statement that must be displayed on the front of tobacco vending machines.

Declaration made under s.51(1)(c) of the Interim Planning Act 1990 declares four specified areas of land for which draft Variations of NCDC Policy had been prepared under the ACT Planning and Land Management Act 1988 to be subject to the appropriate provisions of the Interim Planning Act 1990.

Exemption No.14 of 1991 made under sections 10(3) and 12(4) of the Tobacco Act 1927 exempted contracts and agreements made between Gallaher International Limited and the London and South East Division of the English Rugby Football Union from the prohibitions on sponsorship and advertising for the period 22 May to 24 May 1991.

Declaration made under section 51 of the Nature Conservation Act 1980 declares the Stony Creek Nature Reserve.

Declaration made under section 51 of the Nature Conservation Act 1980 declares the Bullen Range Nature Reserve.

Declaration made under section 51 of the Nature Conservation Act 1980 declares the Woodstock Nature Reserve.

Declaration made under section 51 of the Nature Conservation Act 1980 declares the Gingerline Nature Reserve.

Determination No.20 of 1991 made under section 59A of the Public Trustee Act 1985 fixes the management fee for administration of moneys invested in the common fund of the Public Trustee at 1 per cent per annum.

(b) Subordinate Legislation upon which comment is offered:

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

ACT Notice No.12 of 1991 made under section 16 of the Clinical Waste Act 1990 gives notice of the preparation of the Clinical Waste Manual and its date of coming into effect on 1 July 1991.

Possible Different Categories of Instrument

The Committee notes that the previous instrument that was tabled was a Determination and not a Notice or a Declaration and was numbered No.11. It is assumed that the numbering series is simply to run through the year whatever kind of instrument of delegated legislation is involved (other than Regulations which do have their own series), rather than there being a separate series for each kind of instrument.

If this is the intention, this seems quite satisfactory, as the aim of being able to identify a particular instrument by number without any doubt arising will be achieved.

However, it would be helpful to have confirmation that this is the way the system is set up.

ACT Determination No.13 of 1991 made under section 11A of the Public Health Act 1928 amends ACT Determination No.78 of 1990 by providing that the fees specified in Determination No.78 are to apply from 1 January 1991 until 31 December 1991 instead of 1 January 1991 until 31 January 1991 as specified in Column 2 of the Schedule to Determination No.78.

Possible Prejudicial Retrospectivity

Determination No.78 of 1990 fixed the levels of various application, licence, permit and registration fees under the public health regulations relating to the proprietors of barber shops, boarding houses, eating houses, dairies, meat selling shops and piggeries.

As the Determination only fixed the fees from 1 January 1991 until 31 January 1991, it would appear that any fees collected under Determination No.78 after 31 January 1991 until the coming into force of the present Determination may have been collected without legal authority. The Committee asks if this is correct and, if so, whether any fees have been so collected.

In addition, if fees have been so collected, the Committee asks a further question. The present Determination amends Determination No.78 to cover the whole period from 1 January 1991 to 31 December 1991. This seems to cover retrospectively the

period from 1 February 1991 until the coming into force of the present Determination as well as January and the period from its coming into force up until 31 December 1991. This appears to operate prejudicially to impose liabilities on persons other than the Territory or a Territory authority for the period from 1 February 1991 until the coming into force of the present amendment. The Committee seeks a comment on the effect of this apparently prejudicial retrospectively relating to fees collected during that period.

BUILDING (AMENDMENT) BILL 1991 - GOVERNMENT RESPONSE

The Committee reported on the above mentioned Bill in its Report No.8 of 1991 dated 29 April 1991. The Committee has since received a response from the Attorney-General, which is attached.

The Committee thanks the Attorney for his very positive response.

LANDLORD AND TENANT (AMENDMENT) BILL 1991 - GOVERNMENT RESPONSE

The Committee reported on the abovementioned Bill in its Report No.9 of 1991, dated 10 May 1991. The Committee has since received a response from the Attorney-General, dated 27 May 1991, which is attached.

The Committee thanks the Attorney for his positive response.



Carmel Maher, MLA
Presiding Member

6 June 1991



Australian Capital Territory

Deputy Chief Minister

1 Constitution Ave
Canberra ACT 2601

Ms Carmel Maher ~~MLA~~ *28/5*
Presiding Member
Standing Committee on Scrutiny of Bills
and Subordinate Legislation
ACT Legislation Assembly
1 Constitution Avenue
CANBERRA ACT 2601

Dear Ms Maher

Carmel.

In its Report No. 9 of 1991 the Committee expressed some concerns with the Explanatory Memorandum for the Landlord and Tenant (Amendment) Bill 1991.

Specifically the Committee queried whether there was an error in the Explanatory Memorandum in the explanation for clauses 9 and 10. The Committee suggested that several references to proposed section 62AD in those clauses of the Memorandum should in fact be references to section 62AE.

The Committee's suggestion is correct and I attach a copy of a Supplementary Explanatory Memorandum that I will present to the Assembly to rectify this.

I trust that the foregoing information is of assistance to the Committee.

Yours sincerely

Bernard Collaery
Bernard Collaery
Attorney-General

27 MAY 1991



Australian Capital Territory
DEPUTY CHIEF MINISTER

1 Constitution Ave
Canberra ACT 2601

Ms Carmel Maher MLA
Presiding Member
Standing Committee on Scrutiny of Bills
and Subordinate Legislation
ACT Legislation Assembly
1 Constitution Avenue
CANBERRA ACT 2601

Dear Ms Maher

In its Report No. 8 of 1991 the Committee expressed some concerns with the Building (Amendment) Bill 1991.

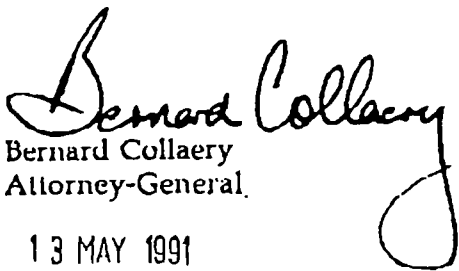
The first concern of the committee was that building inspectors are required to carry identity cards bearing a photograph of the inspector under subsection 9A(3) but no equivalent requirements appeared in the new inspection provisions of sections 9B and 9C which were to be inserted by the Building (Amendment) Bill 1991.

As you will no doubt be aware, my colleague Mr Duby, the Minister for Finance and Urban Services, moved an amendment on behalf of the Government to rectify this anomaly during the debate on the Bill on 2 May 1991. The amendment clarified the requirements of existing section 9A and inserted provisions into the proposed sections 9B and 9C to make those sections consistent with section 9A.

The other comment of the Committee concerned the review of decisions made under section 51L to shut down a building where a building contains unacceptable levels of *Legionella* bacteria. The Committee is correct in its view that section 51M, in allowing an appeal to the AAT against a refusal to issue a full or partial clearance certificate, would have the effect of entitling an owner to appeal what she or he may consider to be a questionable shutdown decision.

I trust the foregoing information is of assistance to the Committee.

Yours sincerely


Bernard Collaery
Attorney-General

13 MAY 1991

