

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

REPORT NO 21 of 1990

12 December 1990

**STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION**

MEMBERS OF THE COMMITTEE

Ms C Maher MLA (Presiding Member)
Mr B Stefaniak MLA
Mr T Connolly 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.

BILL UPON WHICH NO COMMENT IS OFFERED

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

Magistrates Court (Amendment) Bill 1990

This Bill would repeal the existing Part X of the principal Act and insert a new Part X providing for the making of restraining orders and interim restraining orders.

BILL UPON WHICH COMMENT IS OFFERED

Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1990

This Bill amends the principal Act to reduce the prescribed level of alcohol required for an offence to be committed from .08 grams of alcohol per 100 millilitres of blood to .02 in some circumstances and to .05 in other circumstances.

(a) No need to Define "Public Motor Vehicle"

Clause 4 amends s. 4 of the Principal Act by amending the definition of "prescribed concentration" and also inserts a number of definitions because of the changes made in the definition of "prescribed concentration".

Among other definitions there are definitions of "dangerous goods vehicle" and "heavy motor vehicle", which are used in paragraph (b) of the definition of "prescribed concentration". There is no need to define "public motor vehicle", which is also used in that paragraph (b). "Public motor vehicle" is defined in s. 4(1) of the Motor Traffic Act 1936 and s. 3 Motor Traffic Act 1936 is incorporated, and shall be read as one, with this Act." Incidentally, "public motor vehicle" is defined to mean "a motor vehicle plying or standing in a public street for hire, and includes a motor omnibus and a taxi".

(b) Possible error

Clause 8 inserts a definition of "traffic infringes" in s. 25(1) of the Act and paragraph (a) of that definition refers to "paragraph 26A(e)". In clause 9, new section 26A is inserted, and no reference is made to a penalty in paragraph 26A(e). It would appear that the reference in clause 8 would need to be changed to "paragraph 26A (f)".

SUBORDINATE LEGISLATION

The Committee has examined the following subordinate legislation:

1. ACT Determination No. 71 of 1990 made under s.6B of the Scaffolding and Lifts Act 1957 revokes the existing determination of fees and determines fees for the purposes of the Act set out in s. 6A.

2. ACT Determination No. 72 of 1990 made under s.4A of the Machinery Act 1949 revokes the existing determination of fees and determines fees for the purposes of the Act.

Missing Explanatory Statements

In these cases the practice that came into effect on 1 June 1990 of supplying an Explanatory statement for each instrument of delegated legislation has not been followed.

Consumer Affairs (Amendment) Bill 1990 - Government Response

The Committee reported on the above mentioned Bill in Report No. 17 which was tabled on 23 October 1990. The Committee has since received a response which is attached.

The Committee thanks the Attorney-General for his response.



Bill Stefaniak
Acting Presiding Member

12 December 1990



Australian Capital Territory

Deputy Chief Minister

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Ms Carmel Maher MLA
Presiding Member
Standing Committee on Scrutiny of Bills
and Subordinate Legislation

Dear Ms Maher

I write in response to the Committee's Report No 17 of 23 October 1990, conveyed to me by acting Presiding Member Mr Stephaniak, in which the Committee requested information on some matters in the *Consumer Affairs (Amendment) Bill 1990*.

That Bill was debated and passed by the Assembly and notified in *Special Gazette* No 75 of 8 November 1990. The Bill thus became the *Consumer Affairs (Amendment) Act*, number 44 of 1990.

The Committee asks why consumer product safety orders made under Part IIIA of the Act are appealable to the AAT by virtue of section 15FK, while consumer product safety standards, which are made by regulation by virtue of section 18, are reviewable by the Assembly and subject to disallowance under the *Subordinate Laws Act*.

I should perhaps begin by observing that this difference was not created by the *Amendment Act* but also existed under the legislation before it was amended. The reasons for the difference relate both to the nature of the process of Assembly scrutiny under the *Subordinate Laws Act* and to considerations of commercial necessity arising from the differing nature of the two kinds of instruments involved.

As you know the *Subordinate Laws Act* provides for the tabling of subordinate instruments within 15 sitting days of notification in the *Gazette* and their disallowance by resolution of the Assembly within a further 15 sitting days. The Act also provides that such instruments may be in force until they are disallowed. Fifteen sitting days may be quite a long time, sometimes many months.

Consumer product safety orders are instruments which may need to be made quite quickly as a result of the importation of a dangerous product into the A.C.T. These orders are specific to a particular good or class of

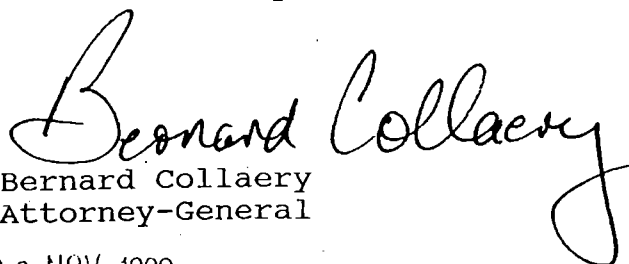
goods. The provision enabling *interim* orders is a reflection of the sometimes urgent nature of the matters needing to be dealt with by one of these instruments. That is, in the interests of public safety it may be necessary to ban the sale of an article as a matter of urgency even though the relevant government agency, the Consumer Affairs Bureau, has not yet had time to fully assess the article and give comprehensive advice to the Minister. Furthermore, orders may be of a temporary nature. Interim orders last for 28 days only and are renewable for 28 days only. "Permanent" orders may specify a time of expiry. These periods may not be consistent with the time-span of Assembly scrutiny.

Traders and importers also need for commercial reasons to be able to promptly resolve any problems they may have with such an order by way of appeal on the merits to the AAT. The time-span involved in disallowance of an instrument under the *Subordinate Laws Act* is inappropriate to the considerations involved in this type of order. It is not commercially practicable for orders to commence in force for this length of time and then be subject to disallowance.

A product safety order, therefore, is essentially administrative in character. For that reason and the associated commercial considerations it is not an appropriate subject for Assembly scrutiny and disallowance.

On the other hand, product safety *standards* are legislative in nature and this is reflected in the fact that they are subject to Assembly scrutiny and disallowance. Product safety standards are instruments of a more comprehensive kind and are intended to be of a more permanent and general application. Standards are directed to future goods and seek to set standards on manufacturers, rather than dealing with the problem of defects in existing goods. A product safety standard might deal quite exhaustively with the design and construction of a product or type of product and involve a range of technical specifications. The process of development of such standards usually involves a long period of consultation with appropriate authorities and industry. Once a standard is made it is also appropriate that industry and interested groups have an extended period in which to make representations to members of the Assembly.

Yours sincerely


Bernard Collaery
Attorney-General

29 NOV 1990