

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

REPORT NO. 14 OF 1997

25 September 1997

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 Bill Wood, MLA (Chair)
Mr Paul Osborne, MLA (Deputy Chair)
Mr Harold Hird, MLA

Legal Advisor: Mr Peter Bayne
Secretary: Mr Tom Duncan

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

Bill - No Comment

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

Liquor (Amendment) Bill (No. 3) 1997

This Bill enables the restriction of trading hours by means of regulations and provides that any such regulation is an instrument disallowable by the Assembly.

Bill - Comment

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

Public Health (Miscellaneous Provisions) Bill 1997

The clauses of this Bill are for the most part consequential upon the enactment of the *Public Health Act 1997*. Its major features are:

- provisions of various Acts are in effect transferred to the *Public Health Act 1997*.
- some of these Acts are repealed.
- provisions of various Acts and regulations are amended to insert terms used in the *Public Health Act 1997*.
- a new offence of “placing a person in danger of contracting a serious disease” is created by means of an amendment to the *Crimes Act 1900*.

Comments concerning whether the Bill would unduly trespass on personal rights and liberties - subparagraph (2) (c) (i) of the Committee’s terms of reference

The creation of a new criminal offence restricts the “personal rights and liberties” of all persons. Where the punishment might be severe, the cause for concern is greater.

In this regard, the Committee expresses some concern about the scope of the new criminal offence of “placing a person in danger of contracting a serious disease”. This offence would be created by clause 20 of the Bill, which would have the effect of inserting a new section 28A in the *Crimes Act 1900*. This is a serious offence, for a person found guilty according to its terms is liable to be punished by imprisonment for 10 years.

The Committee is concerned that this offence could have a wide scope of operation in that:

- the term “serious disease” includes within its scope a disease of such a nature as would be “likely to cause permanent injury to health”. The term disease is not however defined, and in other legislative contexts (such as in worker’s compensation law) the term includes “psychiatric” diseases such as various kinds of stress induced illnesses. The Committee notes that the presentation speech refers to “blood borne diseases”, but it seems apparent that the definition in the proposed subsection 28A (3) is not so limited. The explanatory memorandum does not attempt any explanation of what diseases are meant to be covered. The word “contracting” in the proposed subsection 28A (1) might

limit the range of diseases which fall within this provision, but this is not at all clear;

- a person may place another person in danger of contracting a serious disease intending to do so or by "being reckless as to whether or not the other person contracts the disease";
- the proposed subsection 28A (2) provides that "A person places another person in danger of contracting a serious disease if the person causes the other person to be exposed to an appreciable risk of contracting the disease, even if the risk is low". It is difficult to understand just what this means. On one view, it means that a person places another person in danger of contracting a serious disease if the person causes the other person to be exposed to a low risk of contracting the disease.

When these provisions are taken together, the proposed section 28A could have the effect that a person who recklessly exposes another person to a low risk of contracting a stress induced illness would be guilty of an offence under the proposed section 28A of the *Crimes Act 1900*.

It is not only that persons might be prosecuted under the proposed section 28A, it may be that the threat to prosecute could be used oppressively in the context of a fall-out in inter-person relations.

The Committee makes the comment that it would appear that insufficient explanation has been given of just what is seen to be the scope of the proposed section 28A of the *Crimes Act 1900*.

Comment concerning whether the Bill makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions - subparagraph (2) (c) (iii) of the Committee's terms of reference

In Report No. 6 of 1997, the Committee reported on the Public Health Bill 1997, and noted there that in some respects the Bill made no provision for the review of decisions which might be made by a Minister to suspend or cancel certain kinds of licences.

This same comment is also made in respect of certain clauses in the Public Health (Miscellaneous Provisions) Bill 1997. These clauses are:

- subclause 17 (3) - Revocation by the Minister of an exemption granted under the *Building Act 1972*.
- subclause 18 (4) - Non-renewal by the Minister of an activity licence.
- subparagraph 18 (5) (b) - Refusal by the Minister to revoke a suspension.
- subparagraph 19 (4) (c) - Suspension by the Minister of an activity licence.
- subclause 37 (3) - Non-renewal by the Minister of an activity licence.

In none of these instances does the explanatory memorandum or the presentation speech indicate why there is no provision for the review of an exercise of these powers.

Comment concerning whether the Bill inappropriately delegates legislative powers or insufficiently subjects the exercise of legislative power to parliamentary scrutiny - subparagraphs (2) (c) (iv) and (v) of the Committee's terms of reference

The Committee notes that clause 7 of the Bill vests a legislative power in the Minister. It notes that this power to act by instrument is subject to review by this Assembly and the Committee commends this provision.

Comments on the explanatory memorandum - paragraph (2) (d) of the Committee's terms of reference

The Committee appreciates that the degree of technicality of this Bill made it difficult to explain its terms, but it must draw attention to several aspects of the explanatory memorandum which may or does give an inaccurate description of various clauses of the Bill. In so doing, the Committee is mindful that an explanatory memorandum may be referred to in order to assist in the interpretation of an Act.

These comments relate to the paragraph numbers of the explanatory memorandum.

Para 2.3 - does not fully explain the effect of the repeal and replacement of the existing subsection 6A (2) of the *Building Act 1972*. It appears the first subparagraph should read:

In part, subsection 6A (2) of the Building Act binds the Crown in matters relating to the control of legionella. Clause 6 of this Bill repeals the existing subsection 6A (2) and inserts a new subsection 6A (2) in its stead. One effect of this change is that legionella control will be covered in the new Public Health Act and this Act binds the Territory Crown. Other changes brought about by this change are consequential upon other amendments to the Building Act made by this Bill.

Para 2.15 - in its first subparagraph a reference is made to para 2.13. The reference should be to 2.14. In the third sub-paragraph, the words "subclause (1) of this Bill" should read "subclause 18 (1) of this Bill".

Para 6.2 - does not contain any explanation of why these Acts are repealed. It appears that the reason is that their provisions are now covered in the *Public Health Act 1997*.

Para 6.3 - attempts to explain clause 30, but does so in a way which does not state its effect. (This comment is also made about what is contained in paras 6.4 (concerning clause 31) and 8.3 (concerning clause 42) of the Bill.)

Para 6.3 would be better stated in these terms:

Where a sexually transmitted disease is a transmissible notifiable condition under the new Public Health Act, and before section 3 of that Act came into operation a medical practitioner had given a notice in relation to a person who the practitioner has reasonable grounds for believing to have that sexually transmitted disease, the practitioner is to be taken to have complied with the requirements of section 102 of the Public Health Act in relation to the notification of the transmissible notifiable condition.

Para 6.4 would be better stated in these terms:

Where a sexually transmitted disease is a transmissible notifiable condition under the new Public Health Act, and before section 3 of that Act came into operation a pathologist had given a notice in relation to a positive test for that disease, the pathologist and various other persons connected with the pathologist are to be taken to have complied with the requirements of section 103 of the Public Health Act in relation to the notification of the transmissible notifiable condition.

Para 8.3 would be better stated in these terms:

Where tuberculosis is a transmissible notifiable condition under the new Public Health Act, and before section 3 of that Act came into operation a medical practitioner had given a notice in relation to a person who the practitioner has reasonable grounds for believing to have tuberculosis, the practitioner is to be taken to have complied with the requirements of section 102 of the Public Health Act in relation to the notification of the transmissible notifiable condition.

Paras 7.1 to 7.8 - misstate the effect of clause 32 of the Bill. What that provides is that in the Bill "Skin Penetration Act" means the *Skin Penetration Procedures Act 1994*. Thus all references in paras 7.1 to 7.8 to the Skin Penetration Procedures Act with the exception of para 7.2 should be read as a reference to the Skin Penetration Act.

Para 7.6 - in its sixth subparagraph omits a negative. Instead of "but decision" it should read "but no decision". The word "therefore" should also be omitted.

Para 7.7 - in its fourth subparagraph omits a negative. Instead of "but decision" it should read "but no decision". The word "therefore" should also be omitted.

Para 7.8 - misstates the effect of clause 39. The words "as if the any application made, notice given, decision made, or actions taken under or for the purposes of the new Public Health Act that mostly closely corresponds to that provision" should read:

"as if the application had been made, the notice had been given, the decision had been made, or the actions had been taken under or for the purposes of the new Public Health Act that most closely correspond to the provision".

Bill Wood, MLA
Chair



25 September 1997