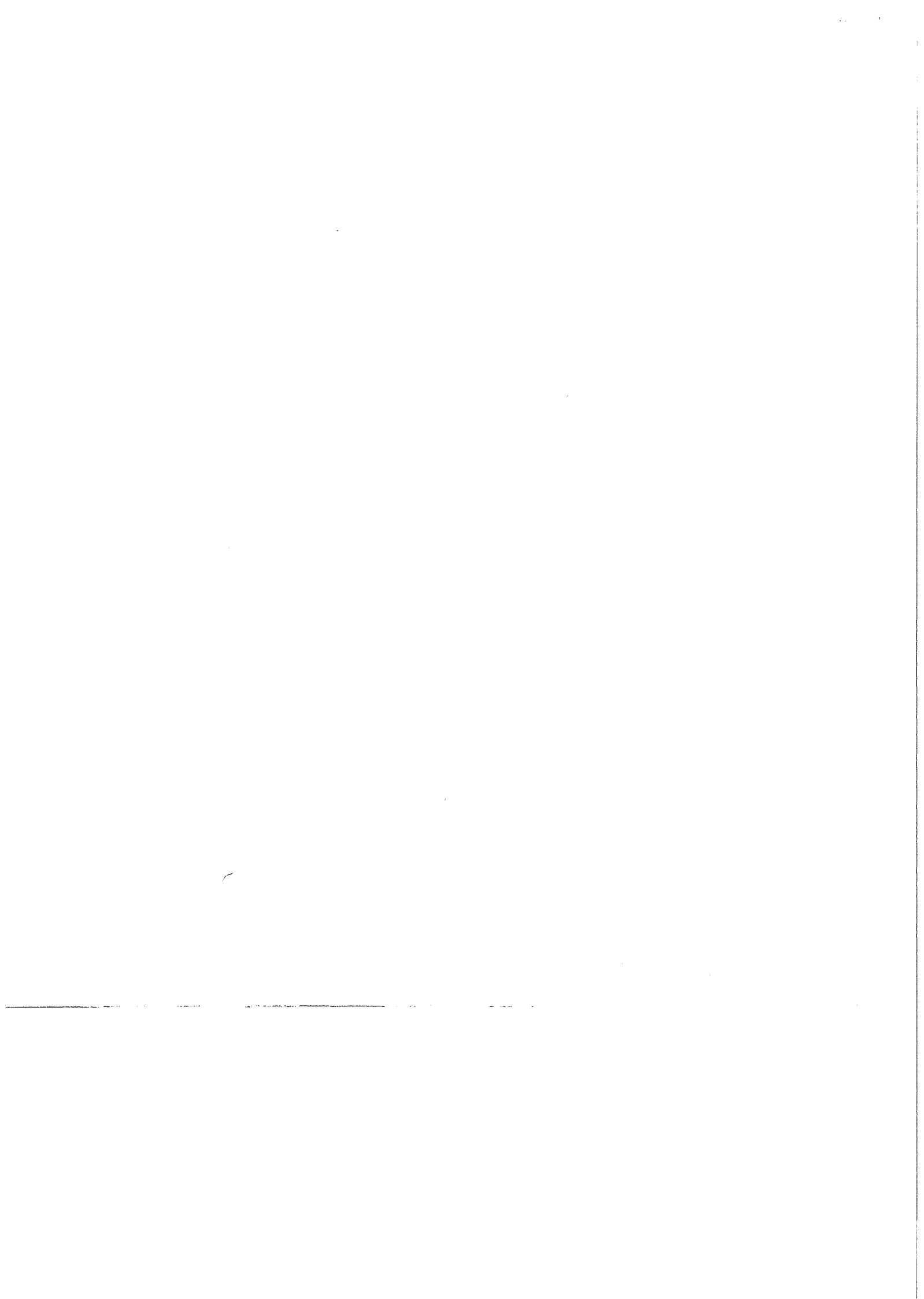


**STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION**

REPORT NO. 5 OF 1997

13 May 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: Emeritus Professor Douglas Whalan, AM
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.

BILLSBills - No Comment

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

Appropriation Bill 1997-98

This Bill provides for the appropriation of public monies of the ACT for the financial year 1997-98.

Canberra Cultural Authority Bill 1997

This Bill establishes the Canberra Cultural Authority.

Domestic Violence (Amendment) Bill (No. 2) 1997

This Bill establishes the Domestic Violence Prevention Council.

Firearms (Amendment) Bill 1997

This Bill extends the period of amnesty for surrender of prohibited firearms from 17 May 1997 until 30 September 1997 and fixes the amounts of compensation payable for surrendered firearms.

Smoke-free Areas (Enclosed Public Places) (Amendment) Bill 1997

This Bill introduces transitional arrangements for the implementation of the smoke-free provisions in certain parts of licensed premises and removes an inconsistency in the present provisions affecting multi-unit residential facilities.

Bills - Comment

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

Gaming Machine (Amendment) (No. 2) 1997

This Bill provides that where an influential person is convicted of a specified offence the Commissioner may refuse to grant a licence or may suspend or cancel a licence.

Care Needed in Numbering of an Act in this Bill

Clause 8 amends section 24 of the principal Act to provide for the possibility of suspension or cancellation of a licence where an influential person is convicted of a specified offence.

New subsection 24 (1A) provides that the new provisions of the Act are to apply where the conviction occurs after the

"commencement of the *Gaming Machine (Amendment) Act No. 3) 1997.*"
(Emphasis added.)

At present there is no "No. 3" Bill before the Assembly. As the changes appear to be related to the contents of the present Bill, then, if the Bill passes as "No. (2)" as presently numbered, there will need to be a consequential amendment made to the new subsection 24 (1A).

The drafting which numbered the new provision as "No. (3)" possibly occurred because there are presently before the Assembly a "Gaming Machine (Amendment) Bill 1996" and a "Gaming Machine (Amendment) Bill 1997". The drafter may have been anticipating that these two Bills would be passed before the present Bill and be numbered "No. (1)" and "No. (2)" of 1997, thus making the present Bill Act "No. (3)".

Depending upon what order the three Bills presently before the Assembly are passed, a watch needs to be kept to see whether or not an amendment needs to be made to the reference in the new subsection 24(1A).

Taxation (Administration) (Amendment) Bill 1997

This Bill makes changes to the provisions relating to the limitations on refunds of revenue amounts and the recovery of revenue amounts.

Retrospectivity

Clause 8 of the Bill inserts new section 95F which provides as follows:

"95F. For the avoidance of doubt it is declared that this Part applies to revenue amounts paid, and proceedings for the recovery of revenue amounts commenced, before or after the commencement of this Part."

The Committee notes that the provisions operate retrospectively as well as prospectively.

Trans-Tasman Mutual Recognition Bill 1997

This Bill enables the enactment of a proposed Commonwealth Bill to implement the Australian component of a co-operative scheme operating between New Zealand, the Commonwealth, the Australian States, the Australian Capital Territory and the Northern Territory for the recognition of regulatory standards regarding goods and occupations.

Legislative Assembly Confers Power to Amend Legislation without Reference to the Assembly

Once this Bill and the Commonwealth Bill set out in the Schedule come into force, there can be changes made to the law as it would operate in the Australian Capital Territory without any reference to the Legislative Assembly.

There appear to be two ways in which this can occur.

The first aspect could occur through the operation of subclause 5 (2) of the Bill, which provides as follows:

"5 (2) The Legislative Assembly requests the Parliament of the Commonwealth to amend the Commonwealth Act (other than the Schedules) but only in terms that are approved by the designated person for each of the then participating jurisdictions."

Subclause 5 (4) provides that "For the purposes of this section, the designated person for the Territory is the Chief Minister ...".

The only requirement for approval by the Chief Minister is contained in clause 6 which provides as follows:

"For the purposes of subsection 5 (2), the Chief Minister may, by notice in the *Gazette*, approve the terms of amendments of the Commonwealth Act."

These provisions ensure that the Legislative Assembly has no part in the changes to ACT law that could occur under the operation of these provisions. Indeed, there is no requirement on the Chief Minister even to inform the Legislative Assembly of any changes which the Chief Minister approves under subclause 5 (2) and notifies under subclause 5 (4).

The second aspect of possible change occurs through changes to the Schedules to the Commonwealth Act. It will be noted that subclause 5 (2) of the present Bill only covers changes to the Commonwealth Act "other than the Schedules".

Changes to the Schedules are made formally by the Governor-General. Regulations may be made by the Governor-General relating to exclusions (subsection 44 (2) of the Commonwealth Act), permanent exemptions (subsection 45 (3) of that Act), continuation of temporary exemptions (subsection 47 (4) of that Act), special exemptions (subsection 48 (4) of that Act) and exemptions relating to occupations (subsection 49 (2) of that Act).

Except for two minor exceptions in subsections 45 (5) and 48 (6), subsections 44 (3), 45 (4), 48 (5) and 49 (3) require the endorsement of the regulation by all of "the then participating jurisdictions".

Subsection 43 (1) provides that the endorsement of a regulation is to be effected by the publication of

"a notice in the official gazette of the jurisdiction setting out and endorsing the terms of the regulation before it is made."

There is no requirement that the Legislative Assembly be involved in, or informed about, any changes.

In the case of a regulation made under section 47 even the Chief Minister of the Territory does not need to concur, as subsection 47 (7) provides that endorsement by two-thirds of the participating jurisdictions is all that is required. Thus, the ACT law could be changed despite any ACT objections.

Ultimate control over ACT participation in the mutual co-operation scheme is maintained, however, because clause 3 of the present Bill provides that the present Bill (once it becomes an Act) can be terminated 12 months after the giving of notice in the *Gazette*. However, such notice is given by the Chief Minister. So here, too, the Assembly has no direct input or control.

The Assembly may wish to consider whether the Bill should require the designated person to inform the Assembly about requested amendments, endorsement of regulations or the decision to give notice fixing a day to effect the expiry of the Act.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Determination No. 58 of 1997 made under section 62 of the *Registration of Births, Deaths and Marriages Act 1963* revokes Determination of Fees No. 234 of 1996 and fixes fees payable under the Act.

Determination No. 72 of 1997 made under section 55 of the *Optometrists Act 1956* revokes Determination No. 6 of 1996 and determines the fees payable under the Act.

Subordinate Law No. 5 of 1997 being the Electoral Regulations (Amendment) made under the *Electoral Act 1992* prescribes a specified organisation as one for which the ACT Electoral Commission may conduct ballots and repeals two provisions made redundant by other legislation.

Subordinate Law No. 6 of 1997 being the Magistrates Court (Civil Jurisdiction) Regulations (Amendment) made under the *Magistrates Court (Civil Jurisdiction) Act 1982* lowers the rate of pre-judgment interest from 1 April 1997 from 10.75% to 9.55% per annum.

Subordinate Law No. 7 of 1997 being the Land (Planning and Environment) Regulations (Amendment) made under the *Land (Planning and Environment) Act 1991* repeals and substitutes the remission or increase of change of use charges.

Subordinate Law No. 8 of 1997 being the Supreme Court Rules (Amendment) made under section 36 of the *Supreme Court Act 1933* updates the procedures for the commencement of proceedings other than criminal or appellate proceedings and provides for case management procedures.

Subordinate Law No. 9 of 1997 being the Supreme Court Rules (Amendment) made under section 36 of the *Supreme Court Act 1933* repeals and substitutes rule 3 of Order 26 to enable the payment out of monies held in Court with the consent of all parties or in pursuance of an order of the Court at any time.

Subordinate Law No. 10 of 1997 being the Liquor Regulations (Amendment) made under the *Liquor Act 1975* granted an extension of the trading hours for the sale of liquor on Anzac Day 1997.



Bill Wood, MLA
Chair

13 May 1997
