

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

REPORT NO. 15 OF 1996

26 September 1996

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

Ms Rosemary Follett, MLA (Chair)
Mr Harold Hird, MLA (Deputy Chair)
Mr Paul Osborne, 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.

BILLS

Bill - No Comment

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

Electoral (Application) Bill 1996

This Bill provides that, for the year that ended on 30 June 1996, the reporting agent of a party or an independent MLA is to give a return to the Electoral Commissioner in the approved form not later than 17 December 1996 instead of 17 November 1996 as the present provisions would require.

Bill - Comments

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

Stamp Duties and Taxes (Amendment) Bill (No. 2) 1996

This Bill amends paragraph (a) of Schedule 1 to the principal Act to provide that a sub-lease of a Crown lease to the Territory or the Commonwealth will attract the determined amount of stamp duty payable under section 17 of the Act and not duty of \$20, which the present provisions of paragraph (a) may suggest.

Retrospectivity

Subclause 4 (2) of the amendment makes the provision retrospective to 5 October 1991. As the Presentation Statement says, the effect of an earlier change to the principal Act

"was to bring within the stamp duty net buildings leased to the Commonwealth and Territory Governments.

The amendments operated effectively for several years with stamp duty being collected at full ad valorem rates.

However, ... [recent advice suggested] that conveyances of subleases to the Commonwealth and Territory could, in fact, be only liable to prescribed stamp duty of twenty dollars. ...

This Bill corrects the anomaly."

There is no explanation in either the Presentation Speech or the Explanatory Memorandum as to why the date of 5 October 1991 was chosen for the retrospectivity.

The following dates and information connected with the earlier amendment have been found.

The Presentation Speech for the *Stamp Duties and Taxes (Amendment) Bill 1991*, which effected the earlier change, stated that

"those lessors who completed negotiations with Government agencies prior to [the then Chief Minister's announcement] on 17 September 1991 but have not executed the lease agreements before the commencement of the proposed Bill will not be disadvantaged."

This protection was effected by section 8 of the amendment Act, which gave the transitional protection back to 17 September 1991.

There was also a beneficial retrospective provision in section 5 of the Act that goes back to 1 October 1991. That section is not relevant to the present matter, as it dealt with the abolition of stamp duty on residential tenancy agreements.

The previous amendment Bill was introduced into the Assembly on 12 December 1991, passed on 17 December 1991 and notified in the *Gazette* on 10 January 1992. On 10 January 1992 the machinery provisions came into effect. The remaining provisions came into effect by *Gazette* notice on 23 January 1992, including the beneficial retrospectivity provisions of section 5 (to 1 October 1991 for abolition of duty on residential tenancy agreements) and section 8 (relating to leasing arrangements negotiated before 17 September 1991).

The reason for the choice of retrospectivity to 5 October 1991 in the present Bill does not fit in with any of these dates and the Committee found no reason for that choice in the short time available.

Perhaps a reason could be sought for the choice of 5 October 1991.



Rosemary Follett, MLA
Chair

26 September 1996