

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

**REPORT NO. 16 OF 1995**

**29 November 1995**



## 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 Paul Osborne, MLA (Chair)**  
**Mr Andrew Whitecross, MLA (Deputy Chair)**  
**Mr Harold Hird, MLA**

**Legal Advisor: Emeritus Professor Douglas Whalan, AM**  
**Secretary: Mr Tom Duncan**  
**Deputy Secretary: Ms Beth Irvin**

## **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.



## LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Standing Committee on Scrutiny of  
Bills and Subordinate Legislation

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CANBERRA A.C.T. 2601

Mr Greg Cornwell, MLA  
Speaker  
Legislative Assembly  
CANBERRA ACT 2601

Dear Mr Cornwell,

Please find enclosed a copy of Report No. 16 of 1995 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its 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. I seek your approval to print and circulate Report No. 16 of 1995.

Yours sincerely,

Andrew Whitecross, MLA  
Deputy Chair

29 November 1995

Approved  
Greg Cornwell, MLA  
Speaker

29 November 1995



## **BILLS**

### Bills - No comment

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

#### **Air Pollution (Amendment) Bill 1995**

This Bill makes it an offence to operate a domestic solid fuel burning appliance in residential premises in a manner which causes unacceptable smoke emissions into the atmosphere.

#### **Land Titles (Consequential Amendments) Bill 1995**

This Bill make minor changes of names in a number of Acts and regulations consequent upon the passing of the Land Titles (Amendment) Bill 1995.

#### **Ozone Protection (Amendment) Bill 1995**

This Bill introduces provisions to phase out the use of halons and CFCs.

#### **Remuneration Tribunal Bill 1995**

This Bill establishes a remuneration tribunal for the Territory.

#### **Remuneration Tribunal (Consequential and Transitional Provisions) Bill 1995**

This Bill makes transitional arrangements and amends other Acts consequent upon the passing of the Remuneration Tribunal Bill 1995.

#### **Statute Law Revision Bill 1995**

This Bill repeals some redundant Acts and amends a number of Acts making technical corrections and bringing legislation into accord with current drafting practice.

#### **Workers' Compensation (Amendment) Bill (No. 3) 1995**

This Bill removes the requirement for employers to take out workers' compensation insurance to cover professional sporting activities and remove entitlement to workers' compensation for injuries resulting from engagement in professional sporting activity.

### Bills - Comment

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

Commencement Clause, and a Possible check on some Provisions

**Classification (Publications, Films and Computer Games)  
(Enforcement) Bill 1995**

This Bill provides for controls on the sale or exhibition of films, the sale of certain publications, the sale of computer games and controls the way in which films, publications and computer games may be advertised.

*Commencement Clause*

Clause 2 provides as follows:

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- (2) the remaining provisions commence -
  - (a) on the day fixed under subsection 2(2) of the Commonwealth Act, or
  - (b) if the provisions referred to in that subsection do not commence under that subsection within the period of 12 months beginning on the day on which the Commonwealth Act receives the Royal Assent - on the first day after the end of that period.

Normally, our ACT Acts have a 6 month period after which they will commence if the provisions have not been commenced under other provisions. This ensures that there is no legislation sitting on the statute books that has not commenced.

In the present case, there should be no concern about undue delay. Subsections 2(2) and (3) of the Commonwealth Act provide for its major provisions to commence either on Proclamation or within 12 months of the receipt of Royal Assent. The Act received Royal Assent on 15 March 1995. Thus, at the latest, the remaining provisions of the Commonwealth Act and the present Bill will commence well within 6 months after the passing of the present Bill. Indeed, as the Commonwealth Act has already received the Royal Assent, would it be more accurate to say "received the Royal Assent" rather than "receives the Royal Assent".

*Checks on Provisions*

- (i) Clause 27 - Category 2 restricted publications

Clause 27 creates offences of displaying, delivering or publishing Category 2 publications and provides for a defence of "reasonable excuse".

Subclause 27(3) also provides for a let-out provision where there is reclassification under section 39 of the Commonwealth Act. There is a reference in subclause 27(3) to "paragraph (1)(d)". Neither section 39 of the



Commonwealth Act nor clause 27 of the present Bill contains a paragraph (1)(d).

Perhaps a check should be made.

(ii) Clause 40 - Keeping unclassified or RC computer games with other computer games

Clause 40 provides as follows:

- “40. (1) If a person keeps or possesses an unclassified computer game or a computer game classified RC on any premises where classified computer games are sold or demonstrated, the person and the occupier of the premises are each guilty of an offence punishable, on conviction, by a fine not exceeding 100 penalty points or imprisonment for 12 months, or both.
- (2) it is a defence to a prosecution for an offence against subsection (1) to prove that -
- (a) the defendant did not know, and could not reasonably have known, that the computer game was on the premises; or
- (b) the computer game was an unclassified computer game or a computer game classified RC.”  
(Emphasis added)

Perhaps this provision should be checked. As it is at present, the offence appears to be committed if there is an unclassified computer game or a computer game classified RC on any premises where classified computer games are sold or demonstrated. Yet, subclause (2)(b) seems to suggest that it is a defence merely to prove that the computer game in question was an unclassified computer game or a computer game classified RC. This possible defence seems to make it easy to negate the purpose of the offence.

It is not entirely clear what defence is entitled to be allowed in paragraph 40(2)(b). However, if the defence is intended to go to knowledge then perhaps the provision would achieve its purpose better if subsection (2) read something like this:

- “(2) it is a defence to a prosecution for an offence against subsection (1) to prove that the defendant did not know, and could not reasonably have known, -
- (a) that the computer game was on the premises; or
- (b) that the computer game was an unclassified computer game or a computer game classified RC.”

Approved forms, Appeals from the Exercise of Discretions and "Without Reasonable Cause"

**Community Referendum Bill 1995**

This Bill provides for electors to initiate changes to the law through the referendum process.

*Approved Forms*

Subclause 5(2) provides that a sponsoring committee comes into existence when the Commissioner accepts "a notice in the approved form" containing specified information.

There is no definition of "approved form" in the definition clause, clause 3, nor does the Schedule contain an appropriate form.

Who is to approve forms and what process is there for approval of forms?

*Appeals from the Exercise of Discretions*

Clause 35 provides for review by the Administrative Appeals Tribunal of a number of decisions made by the Electoral Commissioner.

However, clause 14 gives the Attorney-General a very important power to give or refuse a certificate to a sponsoring committee that has prepared a proposed law as to whether that proposed law gives effect to the registered legislative proposal and is in a form suitable for presentation to the Legislative Assembly.

Sub-clause 17(4) applies the same process to an amendment prepared by a sponsoring committee.

Sub-clause 18(2) provides that the Electoral Commissioner is not to submit a proposed law to a referendum, if the Attorney-General advises the Commissioner that the Assembly has enacted a law that gives effect to the objects of the proposed law.

Sub-clause 18(5) provides in similar terms to clause 18(2).

Finally, clause 31 gives the Chief Minister very detailed discretions relating to proposed laws being inconsistent with each other.

There appears to be no independent review of these significant aspects of the referendum process.

*Each Member of a Sponsoring Committee Commits an Offence*

Clause 40 deals with vacancies in the office of contact officer of a sponsoring committee.

Subclause 40(3) provides that if a vacancy occurs in the office of contact officer the sponsoring committee must fill the vacancy within 14 days.

Then subclause 40(4) provides as follows:

“If a sponsoring committee fails, without reasonable cause, to comply with subsection (3), each member of the committee is guilty of an offence, on conviction, by a fine not exceeding 2 penalty points.”

It is the sponsoring committee as an entity that has the right to prove “reasonable cause” for not having complied with the requirement to fill the office. Yet each individual member of the sponsoring committee is guilty of the offence.

What if one member of a 10 member sponsoring committee happened to be ill in hospital or overseas for 14 days or so and a vacancy occurred which that member could not have known about? That person will have committed an offence and appears to have no “reasonable cause” defence, unless the sponsoring committee as a whole has such a defence.

Would it perhaps be more appropriate for each individual member to be able to demonstrate that he or she had “reasonable cause” for not complying with subclause 40(3) relating to the non-compliance, rather than the sponsoring committee as an entity being able to do so?

### Commencement Clause

#### **Crimes (Amendment) Bill (No. 3) 1995**

This Bill makes female genital mutilation a criminal offence.

Clause 2 does not contain the usual provision that, if the provisions of an Act has not been commenced within 6 months after first notification in the *Gazette* of the Act’s making, then the remaining provisions automatically commence on the first day after the end of that period of 6 months.

Both the Presentation Speech and the Explanatory Memorandum explain that the Act will be commenced after an education and awareness campaign has started.

### Is there an Incorrect Reference to a Section

#### **Land Titles (Amendment) Bill 1995**

This Bill renames the *Real Property Act 1925*, implements a number of the recommendations of the “Report on the Law Relating to Conveyancing” of The Law Reform Commission of the Australian Capital Territory (1976), adopts some reforms introduced in Queensland and New South Wales and removes archaic drafting forms and sexist language.

Sections 126 and 127 of the *Real Property Act 1925* contained provisions for the entry of the words “no survivorship” on a title. The provisions, which inhibited certain dealings by trustees without the intervention of the court,

have been rarely used in recent years and, following the lead of several other jurisdictions, the provisions are being repealed by the present Bill.

Very properly, clause 68 of the present Bill provides for a saving provision relating to any "no survivorship" provisions that may still exist. Clause 68 refers to "section 53 of this Act". However, clause 53 deals with circumstances where no fees are payable for registering certain specified instruments. Clause 54 is the clause that repeals sections 126 and 127.

Perhaps a check should be made.

## **SUBORDINATE LEGISLATION**

### Subordinate Legislation - No Comment

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

**Subordinate Law No. 42 of 1995 being the *Discrimination (Remuneration and Allowances) Regulations (Amendment)* amends the remuneration rate of the Discrimination Commissioner.**

### Subordinate Legislation - Comment

The Committee has examined the following subordinate legislation and offers the following comment.

**Subordinate Law No. 43 of 1995 being the *Liquor Regulations (Amendment)* amends the principal regulations to make it an offence to consume liquor in prescribed areas during the 1995 Summernats and the Booze Less Be your Best Sleepout on 1-2 December 1995.**

The Committee notes that the Regulation covers the Archbishops residence and the Regatta Point cafe during the period of the sleepout. No doubt the effect on these locations has been considered.

## **GOVERNMENT RESPONSE**

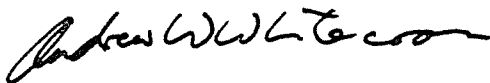
The Committee has received a response to comments made concerning:

- Determination No. 44 of 1995 made under clause 4 of the HomeBuyer Housing Assistance Program made under section 12 of the *Housing Assistance Act 1987* (Report No. 8 of 1995);
- Determination No. 80 of 1995 made under the *Motor Traffic Act 1936* (Report No. 8 of 1995);

- Determination No. 85 of 1995 made under the *Gas Act 1992* (Report No. 8 of 1995);
- Determination No. 135 of 1995 made under subsection 39B(1) of the *Bookmakers Act 1985* (Report No. 13 of 1995);
- Determination No. 147 of 1995 made under section 4 of the *Public Place Names Act 1989* (Report No. 13 of 1995)

A copy of the response is attached.

The Committee thanks the Attorney-General for his helpful response.



Andrew Whitecross, MLA  
Deputy Chair

29 November 1995

