

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

**REPORT NO. 18 OF 1994**

**30 November 1994**



## 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 which is subject to disallowance and/or disapproval by the Assembly (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-reviewable decisions;
  - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; or
  - (e) the explanatory statement accompanying it meets the technical or stylistic standards to which such an instrument or explanatory statement ought, in the opinion of the Committee, to conform;
- (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) makes rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
  - (d) inappropriately delegate legislative powers;
  - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny; or
  - (f) the explanatory memorandum accompanying it meets the technical or stylistic standards to which such a Bill or explanatory memorandum ought, in the opinion of the Committee, to conform;
- (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.

## **MEMBERS OF THE COMMITTEE**

**Mrs E. Grassby, MLA (Chairperson)**  
**Mr G. Humphries, MLA (Deputy Chairperson)**  
**Ms H. Szuty, MLA**

**Legal Advisor: Emeritus Professor D. Whalan, AM**  
**Secretary: Mr T. Duncan**  
**Deputy Secretary: Ms B. Irvin**

## **ROLE OF THE COMMITTEE**

The Committee examines all Bills and subordinate 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 subordinate legislation that comply with the high ideals set out in the terms of reference.

**BILL**Bill - Comment

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

**Smoke-free Areas (Enclosed Public Places) (Amendment) Bill 1994**

This Bill varies the definition of "restaurant", inserts definitions of "determined fee", "equipment" and "public area", amends the provisions relating to equipment, exempted places, certificates of exemption and fees and inserts a provision relating to the responsibility of neighbouring occupiers.

Commencement Clause

Clause 2 of the Bill provides as follows:

"2. This Act commences, or is to be taken to have commenced, on 6 December 1994."

Under subsection 2(2) of the *Smoke-free Areas (Enclosed Public Places) Act 1994*, the Minister has published a *Gazette* notice providing that the remaining provisions of that Act are to commence on 6 December 1994.

Some of the amendments in the present Bill amend provisions of the Principal Act that are to commence on that date. Clause 2 is drafted to ensure that those provisions take effect as amended by the present Bill. Other amendments to the Act and the new provisions also take effect on that date.

Of course, if the passing and notification in the *Gazette* of the present Bill as an Act were to be delayed beyond 6 December 1994, the present Bill would be retrospective in effect.



Ellnor Grassby, MLA  
Chairperson

30 November 1994

