

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

REPORT NO. 15 OF 1993

7 September 1993

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) or 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) or 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 (Presiding Member)
Mr G. Humphries, MLA (Deputy Presiding Member)
Ms H. Szuty, MLA

Legal Advisor: Emeritus Professor D. Whalan
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.

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

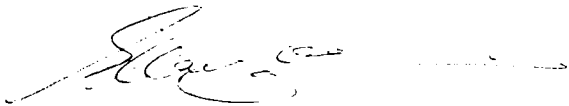
1 Constitution Avenue
CANBERRA ACT 2601
GPO Box 1020
Telephone: (06) 275 8570
Fax: (06) 275 8108

Mr Greg Cornwell, MLA
Deputy Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Cornwell,

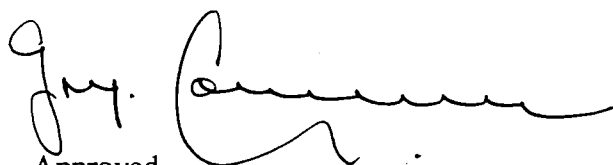
Please find enclosed a copy of Report No. 15 of 1993 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No. 15 of 1993.

Yours sincerely



Elnor Grassby, MLA
Chairperson

7 September 1993



Approved
Greg Cornwell MLA
Deputy Speaker

7 September 1993

BILLS

Bills Upon Which No Comment is Offered

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

Boxing Control (Amendment) Bill 1993

This Bill provides for the sanctioning of amateur kick boxing events by the World Kickboxing Association, Australasian Region and clarifies provisions relating to the approval of boxing contests.

Land (Planning and Environment) (Amendment) Bill (No. 2) 1993

This Bill provides that the Executive shall not execute a variation of a lease of Territory land unless a payment equal to the betterment is paid.

Bills Upon Which Comment is Offered

The Committee has examined the following Bills and offers the following comment.

Criminal Injuries Compensation (Amendment) Bill 1993

This Bill provides that compensation cannot be awarded unless the Court is satisfied that it would be just and equitable to do so, confers a discretion to the Court to award or not award compensation for an injury resulting from an offence having regard to whether or not an official prosecution has been instituted and removes the Court's discretion to award compensation for categories of injuries specified in the regulations in the absence of an official prosecution.

Retrospectivity

The provisions of the Bill appear to restrict the ambit of claims that may be made under the Principal Act. If this is so, the Bill's provisions may possibly operate to prejudice existing rights. If there is already an existing set of facts where a successful claim could be made under the present law, then any tightening up could possibly affect or negate rights that presently exist.

Possible effects may not be limited to this instance, but it seems possible that clause 17 of the Bill indicates that this may be so. It provides as follows:

"17. The Principal Act as amended by this Act applies in relation to an application which, immediately before the commencement of this Act, had been lodged but not determined."

So, if the new law in this Bill does tighten up the provisions, then even any claims that are presently in the process of determination could be prejudicially affected. That there is at least one such claim is very frankly acknowledged in the presentation speech. Are there any other claims?

Dentists Registration (Amendment) Bill 1993

This Bill reinserts a provision into the Principal Act to permit a dental therapist to practise under the direction and control of a registered dentist.

Retrospectivity

This amendment permitting dental therapists to practise under the direction and control of a registered dentist is made retrospective to 1 March 1993.

Following the changes made by the *Health Act 1993*, section 5 and Schedule 1 of the *Health (Consequential Provisions) Act 1993* made consequential changes to a number of other Acts.

Section 34(1B) of the *Dentists Registration Act 1931* provided that public servants designated by the Board of Health as dental therapists and dental therapists performing duties of positions under the *Health Services Act 1990* were not guilty of an offence of practising dentistry if their duties were performed under the direction and control of a registered dentist.

The Board of Health disappeared with the repeal of the *Health Services Act 1990* by section 4 of the *Health (Consequential Provisions) Act 1993*. Hundreds of references to the Board were repealed or repealed and substituted in other Acts by section 5 and Schedule 1 of the *Health (Consequential Provisions) Act 1993*. Among these repeals was section 34(1B) of the *Dentists Registration Act 1931* and, with its repeal, went the protection from prosecution of dental therapists.

Re-instating a subsection similar to the repealed section 34(1B) and making it retrospective to 1 March 1993, ensures that dental therapists performing duties under the direction and control of a registered dentist since 1 March 1993 (and in the future) cannot be prosecuted for practising dentistry. Has there been any prosecutions?

The retrospectivity thus appears to operate beneficially to individual dental therapists.



Ellnor Grassby, MLA
Chairperson

7 September 1993

