

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

REPORT NO. 18 of 1991

1 November 1991

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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Mr D. Prowse
Speaker
ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2601

Dear Mr Prowse,

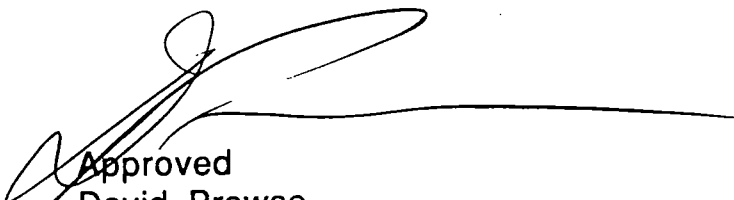
Please find enclosed a copy of Report No. 18 of 1991 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under the resolution of appointment, the Committee is empowered to send a Report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No. 18 of 1991.

Yours sincerely,



Ellnor Grassby MLA
Presiding Member

21 November 1991



Approved
David Prowse
Speaker

21 November 1991

**STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION**

MEMBERS OF THE COMMITTEE

**Mrs E Grassby, MLA (Presiding Member)
Mr B. Collaery, MLA
Mr B Stefaniak, MLA**

**Secretary: Mr T Duncan
Legal Advisor: Emeritus Professor D Whalan**

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 (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; and
 - (d) contains matter which in the opinion of the committee, should properly be dealt with in an Act of the Legislative Assembly;
- (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) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) inappropriately delegate legislative powers; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
- (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.

ROLE OF THE COMMITTEE

The Committee examines all Bills and delegated 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 delegated legislation that comply with the high ideals set out in the Terms of Reference.

SUBORDINATE LEGISLATION

(a) Subordinate Legislation - No Comment Offered.

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

ACT Determination No. 97 of 1991 made under section 65 of the Building Act 1972 sets fees for applications, renewals and transfers of special systems licences.

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with Forrest Section 12 Block 1.

(b) Subordinate Legislation - Comment Offered.

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

ACT Determination No. 96 of 1991 made under section 5 [sic] of the Public Place Names Act 1989 determines the names of a number of divisions in the town of Gungahlin.

(i) Possible invalidity and minor errors

The Committee noted that the Determination is made under s. 5 of the Public Place Names Act 1989. The section under which Determinations can be made is s. 4. Previous Determinations that the Committee has considered have been made under the correct section, s. 4. Perhaps the question of validity should be considered.

The Committee also noted that the fact that Sir Douglas Nicholls was knighted is mentioned, but the title "Sir" is not placed before his name. This is inconsistent with the next entry where "Sir" is placed before the name of Richard Gardiner Casey.

Unfortunately, in the case of Richard Gardiner Casey, to call him "Sir Richard Gardiner Casey" is incomplete as Lord Casey was created a Life Peer in 1960 as Baron Casey of Berwick, Victoria and of the City of Westminster. In addition it is noted that Lord Casey is described as a "British Minister of State" and that he was "Governor of Bengal".

As these Determinations are published in the Gazette and form something of an historical record, it is important to make them as accurate as possible.

BILLS

(a) Bill - No Comment Offered.

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

Children's Services (Amendment) Bill (No. 3) 1991

This Bill would make it an offence for a person to involve a child under the age of 8 years in fundraising activities.

(b) Bill - Comment Offered.

Interim Planning (Amendment) Bill (No. 2) 1991

This Bill deletes references to defined land, provides for additional reports, requires the Executive to refer a draft Plan, background papers and reports to the Legislative Assembly and to consider Assembly Committee recommendations and provides for deemed disallowance if a disallowance motion is not brought on for debate.

(i) Possible Confusion

Clause 8 amends s. 19 by inserting the following provision:

"(1A) Before exercising its powers under subsection (1) [to approve a draft Plan or return the draft Plan for further consideration], the Executive shall have regard to any recommendations of a Committee of the Legislative Assembly in relation to the draft Plan, background papers and reports submitted to it under subsection 18(1)." (Emphasis added.)

It is unclear whether the "it" in the final line is intended to refer to the Executive or to the Legislative Assembly Committee. If "it" refers to the Executive, then the subsection is correct as it stands. However, if it is intended to refer to the Assembly Committee, then the clause is not correct, because the draft Plan, background papers and reports are referred to the Committee under the new subsection (2) to s. 18 inserted by clause 7(b) of the Bill and not subsection 18(1). It is noted that it is this latter incorrect

provision that the Explanatory Statement says is intended when it states:

"[Clause 8] requires the Executive to take note of any recommendations by a Legislative Assembly Committee in relation to any draft plan, background papers and reports submitted to the Committee in accordance with subsection 18(1)." (Emphasis added.)

If this is the intention, then, to make it clear, perhaps "it" should be replaced with "a Committee" and "subsection 18(1)" replaced with "subsection (2)". If the other alternative is intended it would be sufficient to replace "it" with "the Executive".

(ii) Retrospectivity

The Committee noted that the amendments as to disallowance and commencement of a Plan made by clause 12 of the Bill are intended to have a retrospective effect in the sense that variations before the Legislative Assembly at the time the amendments come into force are subject to their effect.



Elinor Grassby
Presiding Member

/ November 1990

