

STANDING COMMITTEE ON

SCRUTINY OF BILLS AND

SUBORDINATE LEGISLATION

REPORT NO. 9 of 1991

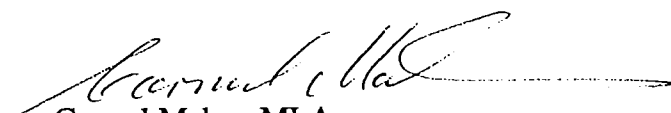
10 May 1991

Mr D Prowse, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Prowse,

Please find enclosed a copy of Report No. 9 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. 9 of 1991.

Yours sincerely,



Carmel Maher, MLA
Presiding Member

10 May 1991



Approved

David Prowse

10 May 1991

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Ms C Maher MLA (Presiding Member)
Mr T Connolly MLA
Mr B Stefaniak MLA

Acting Secretary: Ms B. Young
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.

BILLS

(a) No comment offered.

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

Commercial Arbitration (Amendment) Bill 1991

This Bill amends the principal Act to bring the ACT law into line with a uniform Australia-wide approach to commercial arbitration.

Film Classification (Amendment) Bill 1991

This Bill will re-establish the pre-self-government system of exemptions of certain films by authorising the Attorney-General (or the Chief Censor if the Attorney-General delegates his or her power) to grant exemption where exemption has already been granted under the relevant New South Wales law.

Legal Practitioners (Amendment) Bill 1991

This Bill amends the qualifications for admission as a barrister and solicitor, provides for the Attorney-General to determine a fee to be paid by a practitioner appointed as Queen's Counsel and provides that a client is entitled to receive an itemised account from his or her solicitor.

Magistrates Court (Amendment) Bill 1991

This Bill will provide for a plea by post in relation to an offence under the *Motor Vehicles (Dimensions and Mass) Act 1990* where the penalty does not exceed \$1,000.00.

Magistrates and Coroner's Courts (Registrar) Bill 1991

This Bill will change the title of the Clerk and Deputy Clerk of the Magistrates and Coroner's Courts to Registrar and Deputy Registrar and will consequently replace the title Clerk with Registrar in specified Acts, Regulations and Rules.

Small Claims (Amendment) Bill 1991

This Bill makes a change consequential to the amendment of the Landlord and Tenant Act 1949, by authorising the Court to direct monies payable under a judgment or order to be paid otherwise than to the Clerk. Thus bond monies could be ordered to be paid direct to the person held to be entitled rather than going to the Clerk and then to the person entitled.

Supply Bill 1991

This Bill makes interim provision for the appropriation of money out of the Consolidated Revenue Fund for the year ended 30 June 1992.

(b) Bill upon which comment is offered.

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

Landlord and Tenant (Amendment) Bill 1991

This Bill provides for a rental bond protection scheme for the Australian Capital Territory.

No comment is made on the provisions of the draft Bill. However, there may be slight errors in an otherwise very helpful Explanatory Memorandum. The explanation for clause 9 refers to the "new subsections 62AD(1) and (2) of the Act". There are no such provisions in the Bill, but a reference to subsections 62AE(1) and (2) may perhaps be appropriate. Also, the explanation for clause 10 refers to "new subsections 62AD(4) and 62AL". Perhaps a reference to new subsection 62AE(4) and new section 62AL may be meant.

SUBORDINATE LEGISLATION

(c) Delegated Legislation upon which no comment is offered.

The Committee has no comments on the following delegated legislation:

ACT Regulations 1991 No. 8 being the Taxi and Private Hire Car Regulations (Amendment) amend the principal Regulations consequent upon the passing of the *Motor Traffic (Amendment) Act (No. 5) 1990* which enabled the level of fares to be set by ministerial determination rather than by Regulation.

ACT Determination No. 10 of 1991 made under section 36(1) of the *Motor Traffic Act 1936* increases taxi fares by almost the exact amount of the increase in the CPI.

EXPLANATORY STATEMENT RECEIVED

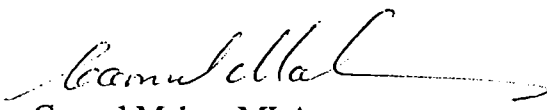
In Report No. 2 of 1991 the Committee reported that Explanatory Statements were missing for, among other instruments, Determination No. 78 of 1990 made under section 11A of the *Public Health Act 1928*, and Determinations Nos. 88 and 89 of 1990, both of which were made under section 7A(6)(a) of the *Motor Traffic Act 1936*.

Explanatory Statements for all three have now been received and they appear to be quite adequate.

EXPLANATION FOR ERRORS RECEIVED

In Report No. 5 of 1991 the Committee discovered a number of errors in Determination No. 3 of 1991 made under section 4 of the *Place Names Act 1989*.

A helpful explanation has now been received apologizing for the errors. Although the errors did not affect validity, a promise has been made that an amending Determination, with an Explanatory Statement, will be tabled correcting the errors.



Carmel Maher, MLA
Presiding Member

10 May 1991