

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

REPORT NO 20 of 1990

5 December 1990

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

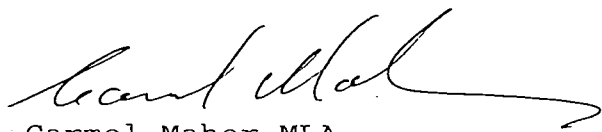
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Mr D Prowse
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Prowse

Please find enclosed a copy of report No. 20 of 1990 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. 20 of 1990.

Yours sincerely



Carmel Maher MLA
Presiding Member

6 December 1990



Approved
David Prowse MLA

7 December 1990

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.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

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

BILLS UPON WHICH NO COMMENT IS OFFERED.

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

Australian Capital Territory Gaming and Liquor Authority (Repeal) Bill 1990

This Bill abolishes the ACT Gaming and Liquor Authority.

Crimes (Amendment) Bill (No. 3) 1990

This Bill creates two offences relating to computer access; the first prohibits unlawful access to data and the second makes it an offence to damage data in a computer.

Electricity and Water (Amendment) Bill 1990

This Bill increases the number of members of the Authority and consequentially increases the quorum.

Gaming Machine (Amendment) Bill (No. 3) 1990

This Bill transfers the powers of the Gaming and Liquor Authority under the Gaming Machine Act 1987 to the Commissioner for Revenue.

Health Services (Consequential Provisions) Bill 1990

This Bill repeals the Community and Health Services Act 1985 and makes amendments consequential upon the passing of the Health Services Act 1990.

Interim Planning (Consequential Amendments) Bill 1990

This Bill makes changes to a number of Acts consequent upon the passing of the Interim Planning Act 1990.

Liquor (Amendment) Bill (No. 2) 1990

This Bill establishes the Liquor Licensing Board to replace the Gaming and Liquor Authority and makes other changes consistent with that change.

Sexually Transmitted Diseases (Amendment) Bill 1990

The Bill amends the long title of the Venereal Diseases Act 1956 by replacing the phrase "Venereal diseases" with the phrase "sexually transmitted diseases" and makes a number of consequential amendments substituting "sexually transmitted disease" for "venereal disease".

BILLS UPON WHICH COMMENT IS OFFERED.

Publications Control (Amendment) Bill (No. 2) 1990

This Bill adds "an 'X' film" to the definition of "objectionable publication" and thus would control distribution of such films. In relation to the Publications Control (Amendment) Bill (No. 2) 1990, the Committee noted that, pursuant to standing orders 136 and 170, the Assembly resolved on Thursday 29 November 1990 to withdraw the Bill. Therefore, the Committee offers no comment on this Bill.

Betting (Totalizator Administration) (Amendment) Bill 1990

This Bill makes amendments to the Betting (Totalizator Agency) Act 1964 consequential upon the establishment of the TAB as a Territory Owned Corporation.

Powers of Disallowance

The Bill deals with the making of a number of financial decisions by the Minister. These cover such matters as the percentage of payments to the Territory and to the Racecourse Development Fund and declarations of race clubs and payments out of funds. It is pleasing to note that these determinations and declarations are made disallowable instruments and are thus directly subject to oversight and control by the Assembly.

Health Services Bill 1990

This Bill establishes a Board of Health to administer the health services.

(a) Powers of Disallowance

Under this Bill, too, determinations are subject to tabling and disallowance and thus to the Assembly's control.

Clause 52 provides that

"The Minister may, by notice published in the Gazette, determine fees and charges for the purposes of this Act."

Although the clause does not specifically provide that such a determination is a disallowable instrument, the provisions of s. 6(12)(b) of the Subordinate Laws Act 1989 ensure that such determinations of fees and charges are disallowable instruments.

Clause 53 then goes on to provide for the payment of fees, charges and interest thereon. Clause 53(2) provides that

"Where an amount for a fee or charge remains unpaid after the due date, in addition to that amount, interest calculated on the aggregate amount at the rate determined in writing by the Minister is payable to the Board in respect of every month that the aggregate amount remains unpaid."

Clause 53(4) specifically provides that the interest rate determination made by the Minister under clause 53(2) is a disallowable instrument as such a determination would not be covered by s. 6(12)(b).

(b) Review of Decisions

Several clauses provide that the Board may make decisions about individuals such as varying, suspending or terminating the engagement or clinical privileges of consultants (clauses 43 and 44) and refusing to refund or remit a fee, charge or interest (clause 54).

Appropriate independent review powers are given to the ACT Administration Appeals Tribunal by clauses 55 and 56. Indeed, the only thing wrong is the tiny typo in clause 55(b) where "privileges" is incorrectly spelt.

(c) Identification on Entry to Premises

Clause 58 provides that

"The Minister or a person authorised in writing by the Minister may, at any reasonable time, enter and inspect any premises occupied or used by the Board."

To prevent entry by imposters into what could be very sensitive areas, perhaps the clause should provide that any person authorised by the Minister should have an identity card or other formal identification issued to him or her. Perhaps it should also provide that entry may be refused if the identity card or other formal identification is not produced.

(d) Possible wrong numbering in the explanatory memorandum.

The Committee noted that the numbering of the clauses set out in the explanatory memorandum did not match up with the clause numbers contained in the Bill.

Interim Planning Bill 1990

This Bill provides for the establishment of the ACT Planning Authority.

A Possible Minor Error

Clause 30 provides that the Executive may give the Planning Authority policy directions. The first four sub-clauses provide as follows:

"30. (1) The Executive may give the Authority general directions in writing about the policies and objectives it should pursue in the performance of its functions.

(2) The Executive may give the Authority general directions in writing to review the Plan, or any specified parts of the Plan.

(3) The Minister shall cause particulars of any directions to be published in the Gazette within 14 days.

(4) Directions not published in accordance with subsection (2) cease to have effect from the expiration of the 14th day after they are given." (Underlining added.)

The Committee points out that the underlined part of sub-clause 30(4) should probably be "subsection (3)" and not "subsection (2)".

Territory Owned Corporations Bill 1990

This Bill sets up the machinery by which enterprises can become Territory Owned Corporations.

"Henry VIII" Clause

A "Henry VIII" clause can be described shortly as a provision in a piece of legislation (in this case an Act of the Assembly), which can be changed without coming back to the legislature that made it (that is, the Assembly in this case).

Clause 6(1) provides that a company specified in Schedule 1 is a territory owned corporation. In the first instance, Schedule 1 includes only ACTAB Limited. However, clause 6(2) provides that

"The Regulations may amend Schedule 1 to reflect a change in the name of a company."

Although this is a "Henry VIII" clause, it is suggested that it is a rather benign example, because changes can only be made by Regulations and, of course, Regulations must be laid before the Assembly and may be disallowed. Thus any changes made remain directly subject to the control of the Assembly.

Liquor (Amendment) Bill 1990 - Government Response

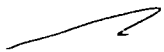
The Committee reported on the above-mentioned Bill in Report No. 19 which was tabled on 27 November 1990. The Committee has since received a response from the Attorney-General which is attached.

The Committee thanks the Attorney-General for his written response, and for the assurances given during the detail consideration of the Bill in the Assembly on Wednesday 28 November 1990.

A handwritten signature in cursive script, appearing to read 'Carmel Maher', with a long horizontal flourish extending to the right.

Carmel Maher MLA
Presiding Member

6 December 1990

A small, stylized handwritten flourish or mark, possibly a checkmark or a decorative stroke.



Australian Capital Territory

Deputy Chief Minister

1 Constitution Ave
Canberra ACT 2601

Turn for your info
Leah

Carmel Maher MLA
Presiding Member
Standing Committee on Scrutiny of Bills
and Subordinate Legislation
Legislative Assembly for the ACT
1 Constitution Avenue
CANBERRA ACT 2601

Dear Ms Maher

In its Report No 19 of 1990 the Committee raised a number of issues in relation to the Liquor (Amendment) Bill 1990. I propose to address each of these issues.

(a) The Onus of Proof

As outlined by your Committee, Clause 53(c) of the Bill provides for a new tightening-up provision in paragraph (b) of section 80(2). This provision is designed to require licensees to take reasonable measures to determine the age of a customer where they suspect that person is under the age of 18 years of age. I believe this is a positive and important amendment aimed at reducing the incidence of underage drinking in the ACT.

As noted by your Committee, the new section 94 states in general terms what the existing section 84A states. In effect it provides that in proceedings for an offence against the Act, a beverage in a sealed container that purports to contain liquor is to be taken to be liquor within the meaning of the relevant offence provision unless the contrary is established.

(b) Possible Retrospective Prejudice

I have noted the Committee's concerns re Clause 30(e) of the present Bill which omits the existing provisions (s 41(1)(c)) and inserts the following paragraph:

"a licensee has permitted the licensed premises to be used so as to cause disturbance or inconvenience to persons occupying premises in the neighbourhood".

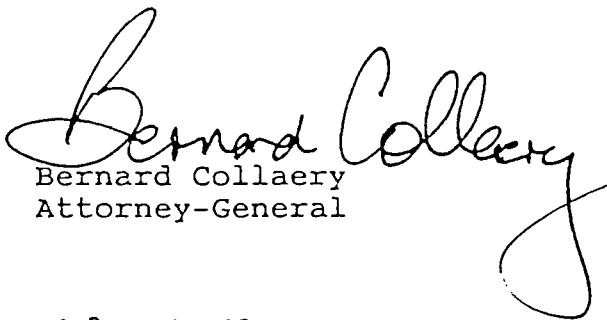
I have decided after consideration of the Committee's report to reinstate the word "undue" before "disturbance or inconvenience" in a supplementary amendment to the Bill. This amendment will

address the concern raised by the Committee and prevent possible retrospective prejudice.

In regard to the second point raised by your Committee, the provision is designed to apply to all persons occupying premises in the neighbourhood and not be restricted to persons residing in the neighbourhood. This is intended so as to ensure that businesses operating as well as residents presiding in the vicinity of a licensed premises are protected under this provision. I do not believe that there will be any prejudicial retrospectivity as a result of this amendment.

I trust the foregoing information and proposed amendment will satisfy your Committee's concerns.

Yours sincerely


Bernard Collaery
Attorney-General

28 NOV 1990