

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

**REPORT NO. 13 OF 1997**

**18 September 1997**

# LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Civic Square, London Circuit  
CANBERRA ACT 2601  
GPO Box 1020

STANDING COMMITTEE ON SCRUTINY OF  
BILLS AND SUBORDINATE LEGISLATION

Telephone: (06) 2050171  
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Mr Greg Cornwell, MLA  
Speaker  
Legislative Assembly  
CANBERRA ACT 2601

Dear Mr <sup>Greg</sup> Cornwell

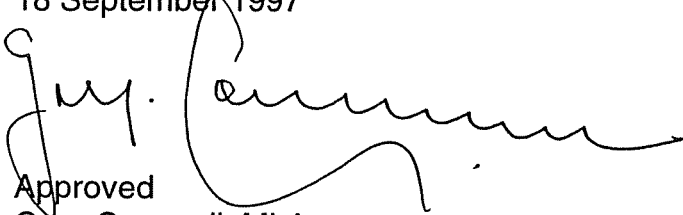
Please find enclosed a copy of Report No. 13 of 1997 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. I seek your approval to print and circulate Report No. 13 of 1997.

Yours sincerely



Bill Wood, MLA  
Chair

18 September 1997



Approved  
Greg Cornwell, MLA

18 September 1997

## TERMS OF REFERENCE

- (1) A Standing Committee for scrutiny of bills and subordinate legislation be appointed.
- (2) The Committee will consider whether:
  - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
    - (i) meet the objectives of the Act under which it is made;
    - (ii) unduly trespass on rights previously established by law;
    - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
    - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
  - (b) its explanatory statement meets the technical or stylistic standards expected by the Committee.
  - (c) clauses of bills introduced in the Assembly:
    - (i) do not unduly trespass on personal rights and liberties;
    - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
    - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
    - (iv) inappropriately delegate legislative powers; or
    - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
  - (d) its explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of three members.
- (4) 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.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) 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**

**Mr Bill Wood, MLA (Chair)**  
**Mr Paul Osborne, MLA (Deputy Chair)**  
**Mr Harold Hird, MLA**

**Legal Advisor: Emeritus Professor Douglas Whalan, AM**  
**Secretary: Mr Tom Duncan**

## **ROLE OF THE COMMITTEE**

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

## **BILLS**

### Bills - No Comment

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

#### **Crimes (Amendment) Bill (No. 3) 1997**

This Bill introduces a system of "on-the spot" fines for a number of street offences.

#### **Electricity (National Scheme) (Consequential Amendments) Bill 1997**

This Bill amends the *Freedom of Information Act 1989*, the *Ombudsman Act 1989* and the *Public Interest Disclosure Act 1994* to ensure that the regimes established under those Acts do not extend to cover the scheme set up under the National Electricity Law.

#### **Magistrates Court (Civil Jurisdiction) (Amendment) Bill 1997**

This Bill repeals the exiting legislation dealing with small claims and introduces new provisions setting up the Small Claims Court within the Magistrates Court legislation.

#### **Workers' Compensation (Amendment) Bill (No. 2) 1997**

This Bill makes changes relating to incapacity, medical treatment, CPI indexation and insurance and introduces a system of "on-the-spot" fines.

### Bills - Comment

The Committee has examined the following Bills and offers the following comments:

#### **Annual Leave (Amendment) Bill 1997**

This Bill amends the Principal Act in minor and technical ways to streamline the operation of the Act and to overcome some ambiguities.

#### **Long Service Leave (Amendment) Bill 1997**

This Bill also amends the Principal Act in minor and technical ways to streamline the operation of the Act and to overcome some ambiguities.

#### Review of Decisions

The Committee deals with both of these Bills together, as they appear to have possible inaccuracies in the same area.

Clause 14E of the Annual Leave (Amendment) Bill 1997 provides for an authorised officer to deal with complaints made to the Registrar and referred to that authorised officer for action. Clause 14F provides that, if the complaint is sustained, the authorised officer gives a written notice to the employer to comply with the Act.

Subclause 14G (1) provides that an employer may apply to the Registrar for review of a requirement required by an authorised officer under section 14F. Subclause 14G (4) provides that the Registrar must give notice of his or her decision to the applicant.

Clause 14H provides for review by the Administrative Appeals Tribunal of decisions made under the Act, including "a decision of the Registrar under section 14F."

In fact, the Registrar's decision appears to be made under clause 14G. Perhaps a check could be made.

This possible error is followed up in subclause 14H (2), which refers to "A notice under section 14F". Perhaps the reference should be to "subsection 14G (4)", for, as the Committee noted above, it is subclause 14G (4) that requires the Registrar to give an applicant notice of his or her decision. Perhaps, on checking, it could be noted that this would be consistent with the provisions on this matter in subclause 13G (2) of the Long Service Leave (Amendment) Bill 1997.

The Committee now moves to the Long Service Leave (Amendment) Bill 1997. This Bill contains similar provisions in this area to those in the Annual Leave (Amendment) Bill 1997 (although with different numbering), so the Committee will not set their content out in detail. Clause 13D deals with complaints, clause 13E with requirement notices by authorised officers, clause 13F with review by the Registrar and clause 13G with review of the Registrar's decisions by the AAT.

There is only one cross-reference that needs to be checked here. Clause 13G provides that an application may be made to the AAT "for review of a decision of the Registrar under section 13E". In fact, as we noted in the previous paragraph, the Registrar makes decisions under "section 13F".

### **Electricity (National Scheme) Bill 1997**

This Bill provides the mechanism for the application of the National Electricity Law to the ACT.

#### Possible Delayed Commencement of the Act

Subclause 2 (2) of the Bill provides for the substantive provisions of the Act to commence on a day fixed by the Minister by notice in the *Gazette*, instead of the usual default commencement date of 6 months from notification in the *Gazette*.

However, the Explanatory Memorandum explains that the ACT will proclaim the legislation when the South Australian legislation is proclaimed. Although this is expected to be early in 1998 (which would be within the 6 months period), "the Agreement requires each jurisdiction to apply the Law by June 1998", unless jurisdictions otherwise agree.

So it would be possible for commencement to occur outside the 6 months period.

#### Regulations or the Code could be made or amended without the knowledge of the Assembly

The relevant South Australian legislation and, indeed, an Explanatory Note for that legislation have been tabled in the Assembly. These documents have been very helpful to the Committee.

The legislation takes the now fairly common form for uniform legislation for one jurisdiction to pass the relevant laws and the other jurisdictions simply to apply that legislation by a simple Act. The relevant regulations are also made in the original jurisdiction.

This method can be very useful, but one disadvantage is that amendments can be made to the legislation or regulations or amendments to regulations can be made without the Parliaments of the other jurisdictions being involved in, or even being apprised of, the changes to their laws.

In the present South Australian Act section 6 provides that a Code of conduct can be approved in writing signed by each of the Ministers of the participating jurisdictions. Amendments to the Code can be made in the same way. Section 7 also provides that certain "protected provisions" in the Code may be changed with the unanimous approval of all Ministers.

Section 11 of the South Australian Act provides that regulations are made or amended by the South Australian Governor. However, such regulations "may be made only on the unanimous recommendation of the Ministers of the participating jurisdictions" (subsection 12 (2)).

This means that the relevant ACT Minister becomes the sole lawmaker for the ACT and the Assembly need not know anything about the regulations.

Subsection 11 (3) goes even further by providing that, in relation to certain special provisions under section 12, a regulation "may be made on a recommendation of a majority of the Ministers of the participating jurisdictions". So, in this case, even the ACT's Minister has no control over the changes to our law.

Perhaps this matter needs consideration.

### **Mediation Bill 1997 [No.2]**

This Bill provides for the registration of mediators, confidentiality of matters said during mediation and for immunity for registered mediators.

#### Delayed Commencement of Act

Subclause 2 (2) of the Bill provides for the substantive provisions of the Act to commence on 1 July 1998, instead of the usual default commencement date of 6 months from notification in the *Gazette*.

However, the Minister explains in the Presentation Speech that this delay is provided for to allow agencies time to develop appropriate mechanisms to deal with complaints under the new Act.

### **SUBORDINATE LEGISLATION**

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

**Determination No. 113 of 1997 made under section 41 of the *Overseas Students (Registration and Regulation of Providers) Act 1994* fixed recognition service fees.**

The Committee examined this piece of subordinate legislation previously and, in its Report No. 11 of 1997, offered no comment. It has since come to the Committee's attention that there is no such Act as the *Overseas Students (Registration and Regulation of Providers) Act 1994* under which the determination is purportedly made.

There is a similar titled Act called the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994*. Section 41 of that Act provides for the Minister to determine fees.

Perhaps this matter could be checked.

## GOVERNMENT RESPONSE

The Committee has received a response in relation to comments made concerning:

- Determinations Nos 141 to 146 of 1997 (inclusive) made under the *Canberra Tourism and Events Corporation Act 1997* (Report No. 11 of 1997).

A copy of the response is attached. The Committee thanks the Minister for Tourism for his helpful response.

Bill Wood, MLA  
Chair

September 1997







Trevor T Kaine MLA

Minister Assisting the Treasurer  
Minister for Industrial Relations  
Minister for Urban Services  
Minister for Tourism  
Minister for Regulatory Reform

Member for Brindabella  
Australian Capital Territory

Mr Bill Wood  →   
Chair  
Standing Committee on Scrutiny of Bills and Subordinate Legislation  
ACT Legislative Assembly  
London Circuit  
CANBERRA ACT 2601

  
Dear Mr Wood

I refer to your Committee's Report No. 11 of 1997, dated 2 September 1997.

On page 6 of that Report, reference is made to five Determinations concerning appointments to the Canberra Tourism and Events Corporation (CTEC). Your Committee notes that none of the Explanatory Statements for these Determinations indicates that there has been consultation about the appointments with the Legislative Assembly, as required by the *Statutory Appointments Act 1994* (the Act).

In accordance with the Act, I wrote to Mr Harold Hird MLA, Chairman of the Standing Committee on Economic Development and Tourism on 27 May 1997, consulting on the matter of CTEC appointments. For the information of your Committee, and in response to the abovementioned Report, I now enclose a copy of Mr Hird's reply, dated 12 June 1997. You will note that Mr Hird's Committee had no objections to the appointments as proposed.

I apologise for any oversight in not providing this information earlier. I trust that there is no further action required in this matter.

Yours sincerely

  
Trevor T Kaine MLA  
Minister for Tourism

09 SEP 1997



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**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON ECONOMIC DEVELOPMENT & TOURISM**

Mr Harold Hird MLA (Chairman), Mr Simon Corbell, MLA, Mr Paul Osborne MLA

**COPY**

Mr Trevor Kaine, MLA  
Minister for Tourism  
ACT Legislative Assembly  
London Circuit  
CANBERRA ACT 2601

Dear Mr Kaine,

**APPOINTMENTS TO THE CANBERRA TOURISM AND EVENTS  
CORPORATION BOARD**

Thank you for your letter dated 27 May 1997 asking the Committee to consider the proposed appointments of Mr James Service as Chairperson; and Ms Betty Churcher, AO, Mr Gerard Brennan, Mr Ian Knopp and Mr Don Beaumont as Members of the Canberra Tourism and Events Corporation Board.

The Committee has considered the matter and has no objections to the appointments.

Yours sincerely,

Harold Hird, MLA  
Chairman

12 June 1997