

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

**REPORT NO. 14 OF 1996**

**12 September 1996**

## 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**

**Ms Rosemary Follett, MLA (Chair)**  
**Mr Harold Hird, MLA (Deputy Chair)**  
**Mr Paul Osborne, 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 Bill and offers no comment:

#### **Land (Planning and Environment) (Amendment) Bill (No. 2) 1996**

This Bill removes the reference to market value in paragraph 184 (b) of the Act and amends that provision and regulation 13 in relation to the determination of betterment.

### Bills - Comments

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

#### **Electoral (Amendment) Bill (No. 2) 1996**

This Bill amends the principal Act to provide for four year terms for members of the Legislative Assembly in place of the present three year terms.

The Committee makes two comments.

#### Usual "6 Months Commencement Date" does not Apply

Subclause 2 (2) provides that the substantive provisions of the Act do not commence until 1 May 1998. This provision is not in accord with the usual provision that, if an Act has not commenced within 6 months of its notification in the *Gazette*, it automatically commences at that time. The present provision was included to ensure that the changes provided for by the present Bill will not affect the present term of the Assembly and will phase in the projected move to a four year term.

#### Are there any Practical Difficulties with Subsection 48 (4) of the *Australian Capital Territory (Self-Government) Act 1988*?

The provisions of the Bill provide that the first general election under the amendments made by the Bill will be held on 20 October 2001 and subsequent general elections will be held at intervals of four years thereafter.

Subsection 48 (2) of the *Australian Capital Territory (Self-Government) Act 1988* provides for a general election for the resolution of an impasse where the Assembly passes a resolution of no confidence in the Chief Minister and no replacement Chief Minister is elected.

Subsection 48 (4) of the Act then provides as follows:

"An election shall not be held under subsection (2) if the election would be required to be held on any day after the third Saturday in August in a pre-election year and before the third Saturday in February in the next calendar year."

As the Bill is shifting elections to October perhaps the possible impact of the subsection 48 (4) on that change should be considered.

### **Long Service Leave (Building and Construction Industry) (Amendment) Bill (No. 2) 1996**

This Bill increases the proportion of employer long service leave contributions which are to be transferred to the Construction Industry Training Fund from 10% to 40% as from 1 January 1996 and abolishes that Fund from 31 December 1997.

#### Retrospectivity of one Provision and Delayed Commencement of Another

The Committee makes two comments.

First, subclause 2 (2) provides that the provision in clause 5 of the Bill relating to the increase in the proportion of employer long service leave contributions from 10% to 40% is made retrospective to 1 January 1996.

Secondly, clause 2 (3) provides that the provisions in clauses 4 and 6 of the Bill abolishing the Construction Industry Training Fund and transferring its then funds to the Construction Industry Long Service Leave Board is to commence on 31 December 1997.

The Presentation Speech gives full explanations for both of these matters.

### **SUBORDINATE LEGISLATION**

#### Subordinate Legislation - No Comment

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

**Determination No. 193 of 1996 made under section 77 of the *Radiation Act 1983* revokes Determination No. 130 of 1995 and determines fees payable under the Act.**

**Determination No. 194 of 1996 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 80 of 1995 and determines fees and the periods of time covered by those fees for parking in specified locations under section 153C of the Act.**

**Determination No. 195 of 1996 made under paragraph 1 of the Schedule to the Energy and Water (Regulation of Charges) Regulations 1996 appoints a specified person as Energy and Water Charges Commissioner until 1 July 1997.**

**Determination No. 196 of 1996 made under regulations 10 and 12 of the Energy and Water (Regulation of Charges) Regulations 1996 specifies the requirements in relation to the conduct of an investigation and report by the Energy and Water Charges Commission.**

Approval of Variation No. 56 to the Territory Plan made under section 26 of the *Land (Planning and Environment) Act 1991* approves the Heritage Places Register.

A handwritten signature in cursive script, reading "Rosemary Follett".

Rosemary Follett, MLA  
Chair

1 ✓ September 1996