

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

REPORT NO. 15 OF 1995

21 November 1995

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 Paul Osborne, MLA (Chair)
Mr Andrew Whitecross, MLA (Deputy Chair)
Mr Harold Hird, MLA

Legal Advisor: Emeritus Professor Douglas Whalan, AM
Secretary: Mr Tom Duncan
Deputy Secretary: Ms Beth Irvin

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 - Comment

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

Sale of Motor Vehicles (Amendment) Bill 1995

This Bill makes changes to the licensing, warranty, consumer protection, enforcement and penalty provisions of the Principal Act.

A possibly Inaccurate Reference to a Section

Section 24 of the present Bill inserts sections 23, 24 and 25 among other provisions.

New section 23 deals with the obligation of a dealer to repair defects in a motor vehicle, new section 24 deals with situations where defects can be excluded from the operation of section 23 and new section 25 deals with defects that are excepted from the operation of section 23.

Sections 24 and 25 both have requirements for notices to be attached to the motor vehicles involved and the sizes of the lettering are prescribed by the sections. Subsection 25 (8) prescribes a different size to that in section 24 and then provides that the notice :

“shall in all other respects comply with the requirements of subsection 24 (7) as if it were a notice attached to a motor vehicle in accordance with subsection 24 (2).”

There does not appear to be a subsection 24 (7), but the appropriate requirements seem to be provided for by subsection 24 (6).

Perhaps a check should be made.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Subordinate Law No. 38 of 1995 being the Boxing Control Regulations (Amendment) exempts two specified events from the application of the *Boxing Control Act 1993*.

Subordinate Law No. 40 of 1995 being the Motor Traffic Regulations (Amendment) made under section 218 of the *Motor Traffic Act 1936* provides for the traffic infringement notice procedure to be used for dangerous left turns at traffic lights (following on changes made by the *Motor Traffic (Amendment) Act 1995*) and also for the procedure to be used where a person who is not a learner or a provisional licence holder drives a car displaying an "L" or "P" plate and so obviates the need for persons under these provisions having to be dealt with by summons or appearing in court.

Subordinate Law No. 41 of 1995 being the Administrative Appeals Tribunal Regulations (Amendment) made under the *Administrative Appeals Tribunal Act 1989* repeals and substitutes the form of summons to appear before the Tribunal.

Determination No. 151 of 1995 made under subsection 22 (3) of the *Rates and Land Tax Act 1926* revokes from 16 November 1995 Determination No. 126 of 1993 that set the interest rate on unpaid rates and land tax for the purposes of subsection 22 (4) of the Act and determines the rate of interest to be paid from that date.

Determination No. 154 of 1995 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 42 of 1995 and determines fees that are to be paid under the Act and those to be paid under the *Road Transport Charges (Australian Capital Territory) Act 1993* (Commonwealth).

Determination No. 156 of 1995 made under subsection 39B (1) of the *Bookmakers Act 1985* determines a further location to be a location for the sports betting venue.

Determination No. 157 of 1995 made under subsection 39B (2) of the *Bookmakers Act 1985* revokes Determination No. 136 of 1995 and determines the directions for the operation of the sports betting venue at the Canberra Racecourse.

Subordinate Legislation - Comment

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

Subordinate Law No. 39 of 1995 being the National Crime Authority (Territory Provisions) Regulations made under section 31 of the *National Crime Authority (Territory Provisions) Act 1991* prescribes the manner in which a summons may be served under subsections 18 (1) or 18 (2) of the Act.

Do Registered Post and Certified Mail still exist for use in Australia?

In regulation 4 (1) (a) (ii), 4 (1) (b) (ii) and 4 (2) (b) there are references to services by "registered post or certified mail".

A fairly recent Australia Post Lodgement Document that the Committee has seen does not refer to either "registered post" or "certified mail". The only similar protected post that the Lodgement Form refers to under the heading for post "Within Australia" is "Security Post". Under the heading of "Overseas" there is a reference to "Registered Post".

Presumably the regulations are intended to apply to posting within Australia (and, perhaps, overseas as well, in which case "Registered Post" seems still to be accurate). However, unless Australia Post has reverted very recently to the old practice of having "Registered Post" and "Certified Mail" for posting within Australia, perhaps a check should be made.

Determination No. 149 of 1995 made under section 118 of the *Adoption Act 1993* revokes Determination No. 56 of 1995 and determines fees under the *Adoption Act 1993*.

Possible Reference to a Non-existing Act in Explanatory Statement

The Explanatory Statement states as follows:

"The Adoption Information Act 1993, commenced operation on 1 July 1993."

There appears to be no such Act. However, adoption information can be sought under Part V of the *Adoption Act 1993* and perhaps that is what is intended.

Determination No. 153 of 1995 made under section 14 of the *Buildings (Design and Siting) Act 1964* revokes Determination No. 91 of 1995 and determines fees for the purposes of the Act.

Undertaking Fulfilled

In its Report No. 8 of 1995 the Committee drew attention to the fact that Determination No. 91 of 1995 appeared to have been made under the wrong section in the Act.

In his helpful reply of 17 October 1995 the Attorney-General, Mr Humphries, agreed with the Committee and said that a new determination was being made.

The present determination corrects the error and the Explanatory Statement generously mentions the Committee's role in the matter.

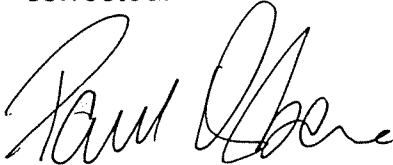
Determination No. 158 of 1995 made under subsection 39C (1) of the *Bookmakers Act 1985* revokes Determination No. 137 of 1995 and determines the rules for sports betting.

Possible Error Appears to have been Corrected

In its Report No. 13 of 1995 the Committee drew attention to the fact that, in section B of Determination No. 137 of 1995, the reference in paragraph 2.1 to Regulation 5B of the Bookmakers Regulations should perhaps have been a reference to Regulation 5A.

There has not yet been time for the Committee to have received a reply to the query. However, section B, paragraph 2.1 of the present determination has dropped the reference to a regulation and refers only to paragraph 41A (a) of the Act. The Committee stated in Report No. 13 that the reference to the section in the Act appeared to be correct.

Thus it seems that the error to which the Committee drew attention has been corrected.



Paul Osborne, MLA
Chair

21 November 1995