

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

REPORT NO. 8 OF 1994

1 June 1994

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 which is subject to disallowance and/or disapproval by the Assembly (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;
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; or
 - (e) or the explanatory statement accompanying it meets the technical or stylistic standards to which such an instrument or explanatory statement ought, in the opinion of the Committee, to conform;
- (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) makes rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) inappropriately delegate legislative powers;
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny; or
 - (f) or the explanatory memorandum accompanying it meets the technical or stylistic standards to which such a Bill or explanatory memorandum ought, in the opinion of the Committee, to conform;
- (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.

MEMBERS OF THE COMMITTEE

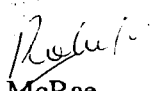
Mrs E. Grassby, MLA (Chairperson)
Mr G. Humphries, MLA (Deputy Chairperson)
Ms H. Szuty, MLA

Legal Advisor: Emeritus Professor D. Whalan, AM
Acting Secretary: Ms M Weeks
Deputy Secretary: Ms B. Irvin

ROLE OF THE COMMITTEE

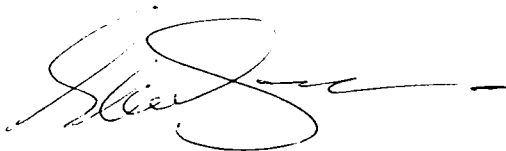
The Committee examines all Bills and subordinate legislation presented to the Legislative Assembly. The Committee does not make any comments on the policy aspects of the legislation. The terms of reference contain the customary principles of scrutiny that enable the Committee to operate in the best traditions 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 subordinate legislation that comply with the high ideals set out in the terms of reference.

Ms Roberta McRae, OAM, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601


Dear Ms McRae,

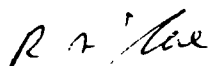
Please find enclosed a copy of Report No. 8 of 1994 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No. 8 of 1994.

Yours sincerely



Ellnor Grassby, MLA
Chairperson

1 June 1994



Approved
Roberta McRae, OAM, MLA
Speaker

2 June 1994

BILLS

Bills Upon Which No Comment is Offered

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

Bookmakers (Amendment) Bill 1994

This Bill amends the Principal Act to provide for the control of telephone betting.

Electricity (Amendment) Bill 1994

This Bill establishes an Electricity Licensing Board to oversee licensing arrangements and for appeals to the AAT against the Board's decisions and amends the provisions relating to the granting of licences and permits.

Gaming and Betting (Amendment) Bill 1994

This Bill will allow a person to place a bet by telephone and allow bookmakers to advertise their telephone betting services.

Stamp Duties and Taxes (Amendment) Bill 1994

This Bill provides for amendments to accommodate the Clearing House Electronic Subregister System developed by the Australian Stock Exchange.

State Bank of South Australia (Transfer of Undertaking) Bill 1994

This Bill is complementary to the South Australian Act under which the State Bank of South Australia is to be restructured and sold.

Substitute Parent Agreements Bill 1994

This Bill restricts the making of substitute parent agreements.

Substitute Parent Agreements (Consequential Amendments) Bill 1994

This Bill makes amendments to the *Children's Services Act 1986* and the Public Health (Private Hospital) Regulations consequential upon the passing of the Substitute Parent Agreements Bill.

Bill Upon Which Comment is Offered

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

Noise Control Manual Amendment Bill 1994

This Bill amends the Noise Control Manual to put in place a procedure for the measurement of noise made by participants in motor sport.

An Error and Possible Conformity Changes

First, there is an error in the long title to the Bill. It contains a duplication, as it reads "A Bill for A Bill for an Act to add to the Noise Control Manual, made under the Noise Control Act 1988 and for related purposes".

Secondly, the heading and the short title to the Bill read as "Noise Control Manual Amendment Bill 1994". The convention adopted for amendments to legislation would read as "Noise Control Manual (Amendment) Bill 1994".

Thirdly, clause 2 provides as follows:

"This Act, and the amendment to the Noise Control Manual, commences on the day on which this Act is notified in the *Gazette*."

As both the Act and the amendment are mentioned, it might be more appropriate to use the plural "commence".

Is Availability Ensured?

Section 20 of the Noise Control Act provides that the Noise Control Manual is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*, which applies section 6 of the *Subordinate Laws Act 1989* as well as another specified provision of that Act.

Subclause 4(3) of the Bill aims to exclude the provisions of section 6. This negates the provisions for gazettal, tabling in the Assembly and disallowance by the Assembly, which the Explanatory Memorandum seems to suggest is the major aim of subclause 4(3).

However, subsections 6(2) to (5) provide for the availability to the public of copies of subordinate laws and these provisions are also negated in relation to the present amendment by subclause 4(3). So the amendment is not required to be made available to the public under those provisions.

There is separate provision for publication of the Manual and amendments by the Minister in section 19 of the *Noise Control Act 1988* itself. It provides as follows:

"The Minister shall cause the Manual and each amendment of the Manual to be published within 14 days after the date of publication of the notice of approval of the Manual or amendment [by the Minister under section 18], as the case requires."

Perhaps consideration needs to be given to the question whether the provisions of subclauses 4(2) and (3) of the Bill also impliedly render the provisions of section 19 of the *Noise Control Act 1988* inapplicable.

Of course, these amendments to the Noise Control Manual would be available for purchase by the public as part of this Act.

SUBORDINATE LEGISLATION

Subordinate Legislation Upon Which No Comment is Offered

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

Subordinate Law No. 16 of 1994 being the *Electoral Regulations (Amendment)* amends the provisions relating to the salary and allowances of the members of the Electoral Commission and removes references to the Australian Public Service.

Determination No. 20 of 1994 made under section 99 of the *Taxation (Administration) Act 1987* being the Financial Institutions Duty Determination 1994 sets the rate of short term dealing duty.

Instrument No. 21 of 1994 made under section 11 of the *Electoral Act 1992* appoints named individuals as Chairperson and a member of the Australian Capital Territory Electoral Commission.

Determination No. 22 of 1994 made under subsection 161(5) of the *Land (Planning and Environment) Act 1991* determines criteria for the direct grant of a Crown lease of land to an Eligible Independent for use as a service station.

Determination No. 23 of 1994 made under subsection 161(5) of the *Land (Planning and Environment) Act 1991* revokes Determination No. 48 of 1992 and determines criteria for the direct sale of land for rural purposes.

GOVERNMENT RESPONSES

The Committee has received a response to comments made concerning the Public Sector Management Bill 1994 (Report No. 6 of 1994). A copy of the response is attached.

The Committee thanks the Attorney-General for his positive response.

A handwritten signature in black ink, appearing to read 'Ellnor Grassby', with a long horizontal flourish extending to the right.

Ellnor Grassby, MLA
Chairperson

1 June 1994



Government of the
Australian Capital
Territory

Terry Connolly MLA

ATTORNEY GENERAL

GPO Box 1020
Canberra ACT 2601

☎ (06) 2050011
Fax (06) 2050495

Mrs Ellnor Grassby MLA
Presiding Member
Standing Committee on Scrutiny of Bills
and Subordinate Legislation
ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2601


Dear Mrs Grassby

In its Report No. 6 of 1994 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on the Public Sector Management Bill 1994.

In relation to the instances of inconsistency and minor error raised by the Committee I am advised that Government amendments to the Bill will be introduced into the Assembly which will attend to certain of these matters. It is proposed that other minor matters will, where appropriate, be dealt with under Standing Order 191.

I now turn to the more substantive issues contained in the Report.

Clause 22 Contrasted with Clause 249 and Schedule 4 - Modifications of the Provisions of the *Occupational Health and Safety Act 1989* in its application to public employees - Self-incrimination.

It is agreed that appropriate provisions to protect public employees against self-incrimination should be included in Part 1VA to be inserted in the Occupational Health and Safety Act 1989 and these will be included in Government amendments.

Clause 63 - Is the Meaning Clear?

I am advised that it is not intended that subclauses 63(4) and 91(1) interact to provide that a promotion or transfer lapses if the effect would be to breach the management standards. What is intended is that the management standards referred to in section 91 will set out the rules under which a transfer or promotion takes effect. In the light of the Committee's comments clause 63 will be reviewed so as to ensure that it adequately gives effect to the Government's intention.

Clauses 135, 143 and 144 - Mental Incapacity and Consent

It is agreed that the Committee's comments on the mental capacity of a retiree to give consent have substance. However I am informed that the issue requires further consideration before a suitable amendment can be finalised and when this has been done an amending Bill will be introduced into the Assembly.

Clause 136 and 146 - Declaration effective on Day of Making Rather than Day of Receipt By Officer

The Committee has suggested that the provision to require a copy of the instrument of declaration to be given to the officer "as soon as possible" could be unfair to the officer if there was a delay in giving him or her a copy.

These provisions are very complex and also require further consideration. In addition, because of the industrial sensitivity of the redeployment and retirement provisions of the Bill, any amendments will need to be discussed with relevant unions. The comments of the Committee will be taken into account when formulating future amendments to these provisions of the Bill.

Clause 249 and Schedule 4 - Modifications of the Provisions of the Occupational Health and Safety Act 1989 in its application to Public Employees - Are There Some Mistakes?

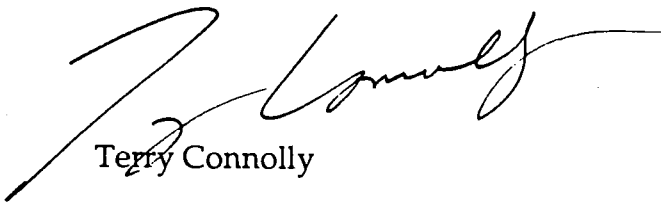
The Committee is correct in its observations about the definition of "designated work group". As a consequence the Schedule of modifications will also be amended by the Government amendments as follows -

: at paragraph (a) by omitting the words "or by the Registrar under 38(1) or (2)" because section 38 is omitted by the modifications; and

: at paragraph (b) by omitting the reference to "subsection 37(4)" and inserting "subsection 37(4B)" which will be the correct reference.

I trust this information is of assistance to the Committee.

Yours sincerely



Terry Connolly

16 MAY 1994