

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

REPORT NO. 14 OF 1993

24 August 1993

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 (Presiding Member)
Mr G. Humphries, MLA (Deputy Presiding Member)
Ms H. Szuty, MLA

Legal Advisor: Emeritus Professor D. Whalan
Secretary: Mr T. Duncan
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.

BILLS

Bills Upon Which No Comment is Offered

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

Appropriation (ACT Forests Trust Account) Bill 1993

This Bill authorises the closure of the Australian Capital Territory Forestry Trust Account and the transfer of the funds in it to a new account called the ACT Forests Trust Account.

Police Offences (Amendment) Bill 1993

This Bill removes a "sunset section" which limited the life of the move-on power in the Principal Act to four years from its commencement and would continue the move-on power indefinitely.

Ozone Protection (Amendment) Bill 1993

This Bill amends the Principal Act to permit the issue of licences that will continue indefinitely or until cancelled to persons who service articles that contain an ozone depleting substance.

SUBORDINATE LEGISLATION

Subordinate Legislation Upon Which no Comment is Offered

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

Determination No. 109 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of a number of streets in the Division of Ngunnawal.

Approval of Variation to the Territory Plan made under paragraph 26(1)(a) of the *Land (Planning and Environment Act 1991* dealing with Holt, section 98, block 1 (Belconnen Golf Course).

Approval of Variation to the Territory Plan made under paragraph 26(1)(a) of the *Land (Planning and Environment Act 1991* amends the Territory Plan to remove a number of formal errors.

Subordinate Legislation Upon Which Comment is Offered

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

No Numbering or Explanatory Statement

Instrument of Appointment made under sections 11 and 13 of the *Betting (Totalizator Administration) Act 1964* appoints four members to the Australian Capital Territory Totalizator Administration Board and appoints a Chairperson and Deputy Chairperson of that Board.

Under subsection 11(6) of the *Betting (Totalizator Administration) Act 1964* (as renumbered by section 21 of the *Betting (Totalizator Administration) (Amendment) Act 1993*), this instrument is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*. Unfortunately, the instrument is not numbered for easy identification, nor is there an explanatory statement for it.

Making of Regulation Before Commencement of Act

Subordinate Law No. 31 of 1993 made under the *Adoption Act 1993* being the *Adoption Regulations* makes regulations relating to the adoption list, consents to adoption, access to information, adoption records, private adoption agencies and registration of adoptions.

The main provisions of the *Adoption Act 1993* commenced on 31 July 1993. As regulation 2(1) states:

"Regulation 1 and this regulation commence on the day on which these Regulations are notified in the *Gazette*".

The regulations were gazetted on 30 July 1993. Thus regulations 1 and 2 commenced on that date. However regulation 2(2) provides that:

"The remaining regulations [ie all regulations except regulations 1 and 2] commence on 31 July 1993".

In certain circumstances section 5 of the *Subordinate Laws Act 1989* permits a subordinate law to be made between the gazettal of an Act which confers the power to make such subordinate law and that Act's commencement. That subordinate law can then "lie in wait" and come into force when the Act commences.

It perhaps needs to be confirmed whether Subordinate Law No. 31 of 1993 falls within section 5.



Gary Humphries, MLA
Deputy Chairperson

24 August 1993

