

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

REPORT NO. 5 OF 1993

30 March 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; or
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
 - (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; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
 - (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

Administrative Decisions (Judicial Review) (Amendment) Bill 1993

This Bill amends the Principal Act to provide that any person who considers that conduct in the making of a decision, a decision or failure to make a decision is contrary to law under the *Buildings (Design and Siting) Act 1964* has standing to challenge that conduct, decision or failure to make a decision.

Audit (Amendment) Bill 1993

This Bill permits the use of financial derivatives in the investment of moneys standing to the credit of the Territory Public Account or belonging to specified Territory Trust Accounts.

Birth (Equality of Status) (Amendment) Bill 1993

This Bill changes the classes of people before whom a person may make an acknowledgement of paternity under section 10 of the Principal Act.

Crimes (Amendment) Bill (No. 2) 1993

This Bill provides a legislative framework for the sentencing of criminal offenders.

Discrimination (Amendment) Bill 1993

This Bill applies the provisions of the Principal Act to discrimination on the ground of membership or non- membership of an association of employers or employees.

Evidence (Amendment) Bill (No. 2) 1993

This Bill amends the Principal Act in consequence of its conversion from a Commonwealth Ordinance to a Territory enactment, repeals redundant provisions, eliminates sexist language and updates drafting.

Film Classification (Amendment) Bill 1993

This Bill amends the Principal Act to recognise the Commonwealth's new "MA" classification of films and videos for mature audiences (ie 15 years and over), and to provide for the control of their exhibition by cinemas.

Instruments (Amendment) Bill 1993

This Bill permits the Registrar to destroy instruments when they are no longer effective or binding on the parties, brings preferable wool liens into line with other liens and removes sexist language and outdated drafting.

Publications Control (Amendment) Bill 1993

This Bill amends the Principal Act to recognise the Commonwealth's new "MA" classification of films and videos for mature audiences (ie 15 years and over), and to provide for the control of their display, hire or sale.

Territory Owned Corporations (Amendment) Bill 1993

This Bill allows the Treasurer to lend Territory money to Territory owned corporations without the need for the funds to be appropriated by the Legislative Assembly.

Bills Upon Which Comment is Offered

Adoption (Consequential Amendments) Bill 1993

This Bill makes changes to a number of Acts consequent upon the repeal of the *Adoption of Children Act 1965* and the passing of the *Adoption Act 1993* to insert cross references to sections of the new Act.

Commencement Clause

Clause 2(2) provides that the substantive provisions of this Bill "commence on the day on which the *Adoption Act 1993* commences".

The *Adoption Act 1993* has already been passed and, if the *Adoption Act 1993* commences before this present Bill is passed, it may be appropriate to amend the provisions of clause 2(2) to reflect that fact.

It is agreed that it would be proper for the two Acts to commence on the same day, as this would avoid an hiatus. Thus, it is suggested that any possible retrospective commencement of this present Bill as an Act to coincide with the commencement date of the *Adoption Act 1993* would also seem to be appropriate.

Boxing Control Bill 1993

This Bill provides for controls over amateur and professional boxing and prohibits kick boxing.

Possible Errors

The Committee draws attention to two possible errors.

First, the definition of "determined fee" in clause 3 refers to "the fee determined under section 22". The reference probably should be to section 21, as it is clause 21 of the Bill that provides that the Minister may determine fees for the purposes of the Act.

Secondly, clause 8(2)(c) requires the Minister to refuse an application for approval of a boxing contest if the Minister is satisfied that "the applicant is not, or will not, be able to meet any contractual obligations". To make grammatical sense, perhaps the comma should be shifted so that the phrase reads thus: "the applicant is not, or will not be, able to meet any contractual obligations".

Education Services for Overseas Students (Registration and Regulation of Providers) Bill 1993

This Bill regulates providers of education services for overseas students.

Departure from Usual Commencement Clause is Explained

One form of commencement clause that is now used provides that, if the Minister has not fixed a commencement date for all provisions within 6 months of the notification of an Act in the *Gazette*, the remaining provisions then commence. This ensures that there are no "dead letter" Acts on the statute book.

In the present case there has been a deviation from this provision as subclause 3(3) of the commencement clause excludes section 6 from the automatic 6 months rule.

However, the reason for the possible delay in the commencement of section 6 is explained at page 3 of the explanatory memorandum. Section 6 creates offences by providers who have not been approved and the intention is to allow providers a period of grace of 3 months to become approved providers once the Act comes into operation. The timing of commencement may be such that the 6 months period may be exceeded and this present exception allows for this possibility in giving the period of grace.

Possible Minor Errors

The Committee draws attention to two possible minor errors.

First, clause 8(3)(a) refers to an application including particulars of the "applicants' business address". This could be accurate, but the other provisions of clause 8(3) refer to matters in the singular. Clause 8(3)(b) refers to the "applicant's educational objectives" and clause 8(3)(e) refers to "details of the applicant's financial position". Perhaps the provisions should be consistent.

Secondly, there is a missing semi-colon at the end of clause 31(1)(a).

SUBORDINATE LEGISLATION

Subordinate Legislation Upon Which no Comment is Offered

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

Determination No. 19 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the names and significance of a number of streets in the Division of Bonython.

Determination No. 20 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the names and significance of a number of streets in a number of Divisions and revokes the names of those streets so that they may be used in different locations later.

Determination No. 25 of 1993 being a *Notice of Approval of Forms* made under section 256 of the *Magistrates Court Act 1930* approves the Notice to Defendant, Plea of Guilty and Notice of Intention to Defend forms.

Determination No. 22 of 1993 made under section 99 of the *Taxation (Administration) Act 1987* determines differential rates of fees for different types of liquor determined under section 23 of the *Business Franchise (Liquor) Act 1993* and payable under sections 9 and 17(1) of that Act.

Determination No. 23 of 1993 made under section 23 of the *Business Franchise (Liquor) Act 1993* determines the types of liquor applicable to the calculation of franchise fees.

Determination No. 24 of 1993 made under section 99 of the *Taxation (Administration) Act 1987* determines the minimum fees payable under sections 9(1)(a) and (b) and 17(1) of the *Business Franchise (Liquor) Act 1993*.

Subordinate Law No. 10 of 1993 being the *Self-Government (Transitional Provisions) Regulations (Amendment)* modifies section 37 of the *Supreme Court Act 1933* by substituting the Executive for the Governor-General, so that it is now the Executive that makes regulations under section 37.

Subordinate Legislation upon which Comment is Offered

Determination No. 26 of 1993 made under section 105A of the *Liquor Act 1975* revokes the existing determination of fees, Determination No. 87 of 1992, and determines the fees for the issue or transfer of licences and the fee payable on lodgement of an application for the issue of a liquor permit.

Explanatory Statement

There is an accompanying explanatory statement, which indicates the fees that are payable. However, it would have been helpful to Members for the explanatory statement to have indicated that the fees remain the same except for those relating to the fee payable on lodgement of an application for the issue of a liquor permit.

A handwritten signature in dark ink, appearing to read 'Ellnor', with a large, stylized flourish extending from the end of the signature.

Ellnor Grassby, MLA
Presiding Member

30 March 1993

