

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

REPORT NO 8 of 1991

29 April 1991

**STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION**

MEMBERS OF THE COMMITTEE

**Ms C Maher MLA (Presiding Member)
Mr T Connolly MLA
Mr B Stefaniak MLA**

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

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 (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; and
 - (d) contains matter which in the opinion of the committee should properly be dealt with in an Act of the Legislative Assembly;
- (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) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make 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;
- (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.

ROLE OF THE COMMITTEE

The Committee examines all Bills and delegated 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 delegated legislation that comply with the high ideals set out in the Terms of Reference.

Mr D Prowse MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Prowse

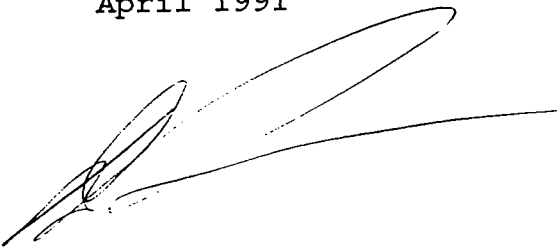
Please find enclosed a copy of report No 8 of 1991 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under the resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No 8 of 1991.

Yours sincerely



Carmel Maher, MLA
Presiding Member

April 1991



Approved
David Prowse, MLA

29 April 1991

BILLS

(a) No Comment Offered

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

Administration (Amendment) Bill 1991

This Bill provides for the powers of the Executive under Australian Capital Territory legislation to be exercised by any two Ministers.

Crimes (Amendment) Bill 1991

This Bill alters the law to ensure that, if a person lays an information for a criminal offence, the person may still pursue a civil remedy. Conversely, if a civil remedy is pursued, an information may still be laid.

Law Reform (Miscellaneous Provisions) (Amendment) Bill 1991

This Bill removes a possible uncertainty in the law by abolishing the rule in Cavalier v. Pope under which a landlord is immune from occupiers liability even although the landlord may be responsible for the state of the premises.

Public Trustee (Amendment) Bill 1991

This Bill authorises the Public Trustee to charge a management fee for administering moneys in the Public Trustee's Common Fund.

Administration and Probate (Amendment) Bill 1991

This Bill increases the monetary values of small estates for which a grant of administration may be made by the Registrar and also increases the value of estates for which the Public Trustee may seek administration.

(b) Bills Upon Which Comment is Offered

The Committee has examined the following Bills and offers these comments.

Building (Amendment) Bill 1991

This Bill adds provisions to the Principal Act to regulate standards for the building, alteration and occupancy of buildings relating to the inspection and control of buildings that contain, or are suspected of containing, Legionella bacteria.

(i) Entry into Building for Inspection

Proposed new section 9B (inserted by clause 7 and appearing on page 5) provides that a building inspector may enter a building with the consent of the occupier. The clause contains the excellent protective provisions in relation to the giving and proof of consent that have now become standard in ACT drafting.

Proposed new section 9C (also inserted by clause 7 and appearing on pages 5-6) provides that the Building Controller may, on notification in writing by the Medical Officer of Health of an outbreak, or suspected outbreak, of Legionnaires' disease, authorise a building inspector to enter a building without consent. These provisions are, in a sense, equivalent to a search warrant. Given the emergency aspects of the entry and the protections that are built into the clause, the Committee considers that the provisions are reasonable.

(ii) Liability of the Territory

One of the protective provisions that is built into proposed section 9C, and which also covers proposed sections 9A and 9B, is a liability provision in proposed new section 51P (inserted by clause 17 and appearing on page 19).

This provides that, if unacceptable Legionella levels are found, the owner of the building must bear the costs of any damage caused to the building by the inspection. However, if unacceptable levels are not found, the Territory must bear the costs of damage. This would appear to provide for a sanction to ensure that the powers are exercised in a reasonable manner.

(iii) Identity Cards

Section 9A(3) (as it will be if the amendments in clause 6(f) (on page 4) are enacted) will provide, in part, that:

"A building inspector shall not inspect a building to determine whether it contains loose asbestos unless-

(a) the Building Controller has caused the occupier of the building to be given a notice...that states-...

(iv) that the building inspector who is to perform the inspection will be carrying an identity card which bears a photograph of the building inspector;..."(Emphasis added).

There does not appear to be an identity card provision applying to the new provisions relating to inspections for the possible presence of Legionella bacteria, and the Committee considers that it may be preferable to have such a provision.

(d) Review of Decisions

Clause 19 (which appears at page 20) proposes amendments to section 60 which deals with independent review of decisions. The only decisions under the new provisions that are not subject to review are

- . a preliminary suspension of a specialised system licence under proposed new section 42K (on page 14), pending consideration "as soon as practicable" under the suspension provisions in the proposed new section 42J (on pages 13-14) (a decision under proposed section 42J is reviewable); and
- . a shutdown notice under proposed new section 51L (on pages 17-18) where unacceptable Legionella levels are found and the Medical Officer of Health advises the shutdown of the specialised systems or evacuation of the building.

As to the preliminary suspension, it may well be reasonable in the circumstances for the decision not to be reviewable as it occurs in an emergency situation and the ultimate suspension decision made "as soon as practicable" under proposed section 42J is reviewable.

As to the shutdown provisions of proposed section 51J, the Presentation Speech (on pages 4-5) draws attention to the lack of review and the Minister states:

"No appeal will be allowed against this order, again due to the potential tragedy that could result from the outbreak".

The Committee wondered what might happen in a situation where the owner of a building that has been ordered to shutdown has reason to question the decision. It is noted that section 51M allows the owner of a building to apply for a full clearance or a partial clearance certificate. The Committee seeks confirmation as to whether the provision of section 51M could be used to allow an owner an option to appeal what he or she may consider to be a questionable shutdown decision.

Rates and Land Rent (Relief) (Amendment) Bill 1991

This Bill changes the name of the present Land Rent and Rates (Deferment and Remission) Act 1970, revises the definition of "pensioner" to accord with the description of those in receipt of pensions under the Social Security Act 1947 and the Veterans' Entitlements Act 1986, provides for part-of-the-year rebates and

removes the need for eligible persons to apply every year for rebates.

The Bill as presently drafted is perfectly accurate. However, it does give specific references to Parts and a section of the Commonwealth Social Security Act 1947. There is currently before the Commonwealth Parliament a total re-write of the Social Security Act, clause 2 of which states that it is to commence on 1 July 1991. Depending on the timing of the passing of the present Bill and that of the Commonwealth legislation, either up-to-date references will need to be inserted in the present Bill, or an early amendment would be appropriate in due course if the present Bill is passed and comes into operation before the Commonwealth legislation.

TRADE MEASUREMENT BILL 1990 - FURTHER GOVERNMENT RESPONSE

The Committee reported on the above-mentioned Bill in Report No 1 of 1991, and then commented on the Attorney-General's initial response in Report No 4 of 1991 which was presented out of session on 4 March 1991. The Committee has since received a further response, which is attached, and thanks the Attorney-General for his positive response.



Carmel Maher, MLA
Presiding Member

29 April 1991



Australian Capital Territory
DEPUTY CHIEF MINISTER

1 Constitution Ave
Canberra ACT 2601

Ms Carmel Maher
Presiding Member
Standing Committee on Scrutiny of Bills
and Subordinate Legislation
ACT Legislative Assembly
1 Constitution Avenue
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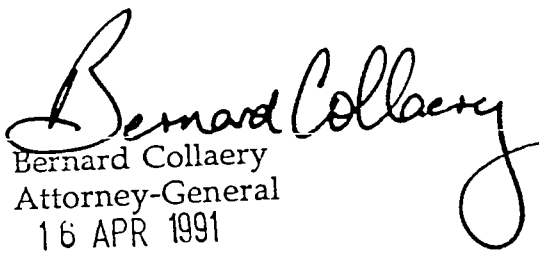
Dear Ms Maher

In its report No 4 of 1991 the Committee, in commenting upon my response to its Report No 1 of 1991 with regard to the Trade Measurement Bill 1990, expressed the view that it may be beneficial to Members if the debate on the Bill and the proposed Trade Measurement Administration Bill 1991 could be undertaken as a package.

I agree with the Committee that this is desirable and will ensure that the Trade Measurement Bill 1990 will not be debated until the proposed Trade Measurement Administration Bill 1991 is introduced into the Assembly to allow Members to consider the two Bills together.

I trust the foregoing is of assistance to the Committee.

Yours sincerely


Bernard Collaery
Attorney-General
16 APR 1991

