

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

REPORT NO 19 of 1990

27 November 1990

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Ms C Maher MLA (Presiding Member)
Mr B Stefaniak MLA
Mr T Connolly 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-viewable 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.

DELEGATED LEGISLATION

- (a) Delegated Legislation upon which no comment is offered.

The Committee has examined the following delegated legislation and offers no comment.

1. ACT Regulations 1990 No. 16 being Taxi and Private Hire Care Regulations (Amendment) make a number of amendments consequential upon the passing of the Motor Traffic (Amendment) Act (No. 7) 1990 which allowed licence holders to enter into leasing arrangements with other persons to operate their vehicles.

- (b) Delegated Legislation upon which comment is offered.

The Committee has examined the following delegated legislation and offers the following comments:

2. ACT Determination No. 73 of 1990 made under s. 4 of the Public Place Names Act 1989 determines the names of a number of public places and revokes the name of one public place.

3. ACT Determination No. 74 of 1990 made under s. 120A of the Agents Act 1968 revokes a previous determination of fees and determines new fees.

Missing Explanatory Statements and possible Errors.

In these two cases the practice that came into effect on 1 June 1990 of supplying Explanatory Statements has not been followed.

In the case of the determination under the Agents Act 1968 it would have been helpful for members of the Assembly to have an Explanatory Statement to indicate the reasons for the changes and the level of the fees that have now been determined as compared with the previous fees.

In the case of the determination under the Public Place Names Act 1989 much of the determination is self-explanatory. However, as there is no Explanatory Statement, there is no indication of the origin of the delegation under which the determination is made. Further, there is no explanation for the revocation of the name Corlette Crescent, which before its legal disappearance, seems to have given access to the newly named Steffanoni Circuit and to Checchi Place.

There appear to be minor errors in Schedule A. First, it is noted that Kenneth Gard was a "Chemist, (who) developed several varieties (sic) of cane sugar". It is noted that Steffanoni Circuit appears to be named after one "Victor Lewis (1901-1974)". The Committee would be interested in the connection, unless perhaps Victor's surname was Steffanoni and has been left out.

Possibly more serious is the fact that the determination purports to "Revoke the names of such places that are Territory land as are described in the attached Schedule 'B' and as indicated on the attached maps". Schedule B is also headed "Revocations".

However, the Committee can find only one revocation, which is the revocation of Corlette Crescent. The Committee wonders whether some revocations have been missed out of the determination.

4. ACT Determination No. 76 of 1990 made for the purposes of ss. 27 and 31 of the Motor Traffic Act 1936 fixes fees for applications to extend the term of the defined right to be granted a taxi licence or to assign a defined right and for a notice to the Registrar of a person having use, control and management of a taxi or private hire car.

Missing Explanatory Statement.

In this case the practice that came into effect on June 1990 of supplying an Explanatory statement has not been followed.

BILLS

(a) Bills upon which no comment is offered.

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

Community Development Fund (Repeal) Bill 1990

This Bill would repeal the Community Development Fund Act 1981 as amended.

Financial Institutions Duty (Amendment) Bill 1990

The Bill would impose duty on the physical receipt of money and make a number of clarifying technical amendments.

Motor Traffic (Amendment) Bill (No. 8) 1990

This Bill would insert a new Australian Design Rule requiring the fitting of devices, the effect of which would be to limit the maximum speed of certain recently manufactured trucks and buses, or those that are manufactured in the future, to 100 k.p.h.

Pool Betting (Amendment) Bill 1990

This Bill would provide that levy revenue from interstate pool betting competitions would be paid into the Consolidated Revenue Fund.

(b) Bills upon which comment is offered.

Gaming Machine (Amendment) Bill (No. 2) 1990

This Bill would provide that levy revenue from gaming machines would be paid into the Consolidated Revenue Fund.

Possible Incorrect Note

There seem to be two possible small errors in the Note at the end of the Bill. There are references in the Note to "Ordinance No. 34, 1987 as amended by Nos. 25 and 26, 1988; Nos. 14, 21 and 38, 1989; No. 31 1990."

In fact, Ordinance No. 14 of 1989 was the Drug Laws (Consequential Amendments) (then) Ordinance 1989. The reference in the Note probably should be to "Act No. 14, 1989" of the Legislative Assembly, which is the Gaming Machine (Amendment) Act 1989. Incidentally, the Note at the end of Act No. 31 of 1990 does get the references correct. As Ordinances are still being made and also duplicate the numbers, perhaps the reference to "No. 31 1990" should also be to "Act No. 31, 1990".

These are small points, but the references could be a little confusing for people trying to check the state of the law.

Liquor (Amendment) Bill 1990

(a) The Onus of Proof

Clause 53(c) (on page 29) of the Bill amends s. 80(2) by providing that it is a defence in proceedings for an offence of selling or supplying liquor to a person under the age of 18 if the defendant

"Proves that -

- (a) the person to whom the liquor was sold or supplied was not less than 16 years of age;
- (b) the defendant took reasonable measures to determine the age of that person; and
- (c) the defendant had reasonable grounds for believing that the person was not less than 18 years of age."

Although the onus of proof is clearly placed on the defendant to prove the three elements, it is to be noted that the provision in paragraphs (a) and (c) are in the existing s. 80(2) and the only new tightening-up provision is that in paragraph (b).

Clause 64 (on page 32) adds new s. 94 which provides as follows:

"94. In proceedings for an offence against this Act, a beverage in a sealed container that purports to contain liquor within the meaning of the relevant offence provision is to be taken to be liquor within the meaning of that provision unless the contrary is established."

Although this is a new section, the principle is not new, as s. 94 states in general terms what the existing s. 84A (which would be repealed) states with reference to specific sections in the Act.

(b) Possible Retrospective Prejudice

Clause 70 (on page 37) contains transitional provisions.

The principle of the provisions is that the amendments made by this Bill are to apply to unfinished business and "to circumstances arising before or after the commencement of this Act."

While the Committee sees that several aspects of these provisions will be beneficial, the Committee believes that the retrospectivity may operate prejudicially in some instances.

At present s. 46 of the Act gives the Authority certain powers to give directions to a licensee and, if needs be, suspend a licence. One of the existing provisions (s. 41(1)(c) where the Authority can act is where

"a licensee has permitted his (sic) licensed premises to be so used as to cause undue disturbance or inconvenience to persons residing in the neighbourhood of the premises".

Clause 30(e) (on page 16) of the present Bill omits this paragraph and inserts the following paragraph:

"a licensee has permitted the licensed premises to be used so as to cause disturbance or inconvenience to persons occupying premises in the neighbourhood".

Admittedly, there is an ameliorating provision that would also be inserted that provides that action can be taken where "the Authority is satisfied on reasonable grounds" (clause 30(a) on page 15) that there has been an infringement.

However, the new clause contains at least two substantial changes in addition to the good change of deleting the sexist language. First, the word "undue" has been removed and, secondly, the new provision applies to all persons occupying premises in the neighbourhood and is not restricted to persons residing in the neighbourhood. Both of these appear to make the responsibilities of licensees more onerous.

If a licensee were at present being investigated for alleged conduct that has already occurred, or, it seems, if a hearing "had not been concluded" (clause 70(6) on page 38), then the transitional provisions appear to provide that the investigation or hearing could be continued under the new and, in some

respects, more onerous provisions. Thus conduct which occurred under a more lenient law could be punished under a new law that did not exist at the time of the conduct.

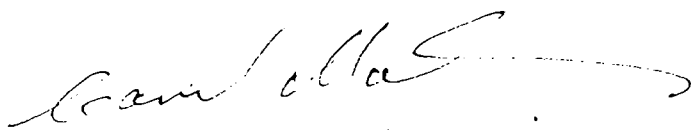
The Committee feels that it may be appropriate for some provisions to be included to ensure that, for events occurring prior to gazettal of this Amendment, the existing provisions should apply rather than the new provisions.

However, although the Committee has drawn attention to this possible prejudicial retrospectivity, it considers that it is important that the beneficial effects of the retrospectivity of the transitional provisions should remain.

MOTOR TRAFFIC (AMENDMENT) BILLS (NO. 3) TO (NO. 6) - GOVERNMENT RESPONSE.

The Committee reported on the above mentioned Bills in Report No. 15 which was tabled out of session on 3 October 1990. The Committee has since received a response from the Attorney-General which is attached.

The Committee thanks the Attorney-General for his response.



Carmel Maher MLA
Presiding Member

27 November 1990



Australian Capital Territory

Deputy Chief Minister

1 Constitution Ave
Canberra ACT 2601

Carmel Maher MLA
Presiding Member
Standing Committee on Scrutiny of Bills
and Subordinate Legislation.
Legislative Assembly for the Australian Capital Territory
1 Constitution Avenue
Canberra ACT 2601

Dear Ms Maher

In its Report No.15 of 1990 the Committee asked whether consideration was given to having just one Motor Traffic (Amendment) Bill drafted to cover the content of Bills (No.3) to (No.6).

Consideration is always given to combining various amendments to the same Principal Act where it is convenient to do so. However, in many situations that is not possible because it often cannot be established with certainty that the various discrete components will be completed and be available for introduction into the Legislative Assembly at the same time.

In such circumstances the preferred approach is to introduce each amendment in a separate Bill so as not to unduly disrupt the order of business of the Assembly or to adversely affect the Government's legislation program. To do otherwise could have the effect of delaying the introduction into the Assembly of often urgent legislation because a complication has developed with another part of the legislation with which it has been combined.

Another practical difficulty is that various amendments of the same Principal Act are frequently worked on by different officers and are at a different development stage at any given point in time. For example, in relation to the four Bills referred to by the Committee, the first approval by the Government for the preparation of a Bill was given in March 1990 and the last in July 1990, instructions were issued by three different officers in two Agencies and drafting was undertaken by two drafters.

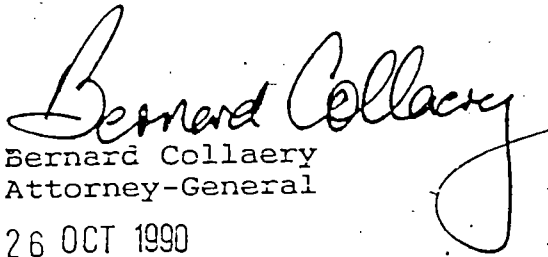
The Committee will therefore appreciate, I believe, that it is difficult to co-ordinate a single Bill in such circumstances. In the event it was merely coincidental that the four Bills were introduced into the Assembly at the same time.

On a related matter the Government Law Office is developing a computerised system for the regular reprinting of Acts. At this stage it is anticipated that legislation reprinted under the new system will become available progressively from the beginning of 1991. Acts in need of reprinting have been prioritised with a view to ensuring that those Acts which are most frequently amended and in greater general use are dealt with first.

Although, at this time, I can give no assurance as to when the Motor Traffic Act will be reprinted it will certainly be given high priority.

I trust the foregoing information is of assistance to the Committee.

Yours sincerely


Bernard Collaery
Attorney-General
26 OCT 1990