

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

**(INCORPORATING THE DUTIES OF A
SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)**

SCRUTINY REPORT NO. 1 OF 2001

13 FEBRUARY 2001

TERMS OF REFERENCE

- (1) A Standing Committee on Justice and Community Safety be appointed (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee).
- (2) The Committee will consider whether:
 - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
 - (i) meet the objectives of the Act under which it is made;
 - (ii) unduly trespass on rights previously established by law;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
 - (b) the explanatory statement meets the technical or stylistic standards expected by the Committee.
 - (c) clauses of bills introduced in the Assembly:
 - (i) do not unduly trespass on personal rights and liberties;
 - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
 - (d) the explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of four members.
- (4) 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.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) 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

MR PAUL OSBORNE, MLA (CHAIR)
MR JOHN HARGREAVES, MLA (DEPUTY CHAIR)
MR TREVOR KAINE, MLA
MR HAROLD HIRD, MLA

LEGAL ADVISER: MR PETER BAYNE
ACTING SECRETARY: MR MARK MCRAE
(SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)
ASSISTANT SECRETARY: MS CELIA HARSDORF
(SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

BILLS

Bills - No Comment

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

Agents Amendment Bill 2000

This Bill would amend the *Agents Act 1968* by the omission of Part 8A as it stands, and the insertion of a new Part 8A. Under this new Part, the Minister may approve a code of practice for any agents generally, or for a particular kind of agent. A code is an instrument disallowable by the Legislative Assembly. In addition, the Minister must approve a code of practice about the use of information about sales of land used for residential purposes, and such code must provide that a real estate agent cannot, in defined circumstances, advertise the price at which a piece of such land was sold.

Gaming Machine Amendment Bill 2000 (No 2)

This Bill would amend the *Gaming Machine Act 1987* to the effect that gaming machine operations may be conducted on licensed premises at only those times that liquor may be sold on the premises.

Justice and Community Safety Amendment Bill 2000 (No 2)

This is a Bill for an Act to make some substantive as well as several technical amendments to a number of the laws within the justice and community safety portfolio.

Sales of Motor Vehicles Amendment Bill 2000

This Bill would amend the *Sales of Motor Vehicles Act 1977* by the insertion in the Act of a new Part 4A to deal with the registration of interests in motor vehicles. The *Registration of Interests in Goods Act 1990* would in consequence be repealed.

Bills - Comment

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

Crimes Amendment Bill 2000 (No 3)

This Bill would amend the *Crimes Act 1900* to create offences relating to sexual servitude and deceptive recruiting for sexual services, and to make some minor amendments to the Act. It is based on the provisions of a model law on the subject prepared by the Model Criminal Code Officers' Committee. The provisions would form part of a package of complementary Commonwealth, State and Territory laws on the subject. In the main, the provisions would create offences in relation to (i) causing a person to enter into sexual servitude, by which is meant the condition of providing sexual services while not free to cease so doing (proposed new section

92ZB(1)); and (ii) inducing a person to enter into an arrangement to provide sexual services by deception as to the nature of the arrangement in that respect (proposed new section 92ZC).

Para 2(c)(i) – undue trespass on rights and liberties

A person may commit the offence of causing a person to enter into sexual servitude if that person “intends to cause, or is reckless about causing, someone else to enter into or remain in sexual servitude”. To some extent, this provision may diminish the fundamental principle that a person is not criminally liable unless he or she intends to engage in the conduct that is made criminal.

The Committee draws this to the attention of the Assembly. It is noted that the Explanatory Memorandum does not explain why it is desirable to provide that the mental element in this crime may be constituted by reckless conduct. (This same comment applies to proposed new sections 92ZB(2), and 92ZD(3)).

Electoral Amendment Bill 2000 (No 3)

This Bill would amend the *Electoral Act 1992* to the effect of standardising the annual reporting requirements under the Act between independent MLAs and MLAs who represent political parties. The Bill would also insert new provisions in the Act that would require MLAs to submit in annual returns to the Electoral Commissioner information concerning income, electoral expenditure and financial interests of themselves, their spouses and their dependent children. This information may be disclosed by the Commissioner to any person who seeks it, upon proof of their identity. The name of this person must then be provided to the relevant MLA.

Para 2(c)(i) – undue trespass on rights and liberties

The effect of the amendments will be to permit personal information of a sensitive kind concerning an MLA, and her or his spouse and dependent children, to be made available to any member of the public upon a condition that will easily be met. It is now recognised in laws such as the *Privacy Act 1988 (Commonwealth)* - which applies in the Territory - that personal information concerning a person held by an agency of government should be collected, stored, used and disclosed under conditions that protect as far as feasible and desirable the person’s interest in the privacy of this information. One recognised limitation is that such information should be collected only for a purpose relevant to a function of the collecting agency, and the use and disclosure of that information should serve that purpose.

From this perspective, it is noted that the Explanatory Memorandum does not seek to address the privacy interests of an MLA, of her or his spouse, and of dependent children. Of course, the Committee recognises that these interests will probably have been taken into account and addressed in earlier debates on the current provisions of the Act. In this context, an aspect of the scheme that the committee feels require some particular justification and discussion is the collection and then provision for widespread disclosure of information concerning the spouse and dependent children of an MLA.

Olympic Events Security Amendment Bill 2000

This Bill would amend the *Olympic Events Security Act 2000*. The title to that Act would be changed to Major Events Security Act 2000, and the provisions of the Act, as further amended by this Bill, would operate upon a declaration by the Minister of an event to be a major event. The Minister may do so only if satisfied that its making is reasonable and necessary for the safety of the people attending the event, and for the avoidance of disruptions to the event. A declaration is disallowable by the Legislative Assembly. The provisions of the Bill amend the existing provisions of the Act to the effect that the latter is adapted to an application to any kind of event. One matter of substance is that the powers under the Act are exercisable only by a police officer, and not by an 'authorised person'.

Para 2(c)(i) – undue trespass on rights and liberties

In Report No 4 of 1999, the committee commented on aspects of the Olympic Events Security Bill 1999. These comments apply to this Bill, except so far as concerns comments on the problems associated with vesting powers in 'authorised persons' and not simply in police officers.

Road Transport (Safety and Traffic Management) Amendment Bill 2000

This Bill would amend the *Road Transport (Safety and Traffic Management) Act 1999* to provide that the police and the courts may impound vehicles used in road rage offences. First, the Bill would insert a new section 10AA to the effect that if a police officer believes on reasonable grounds that a person has committed an offence against section 8, (concerning menacing driving), the officer may apply to the Magistrates Court for an order to impound the motor vehicle used by the person. Where the court is satisfied on the balance of probabilities that the person committed an offence under section 8, the court must order the vehicle to be impounded for 3 months (or such shorter period as it, in defined circumstances, may specify). Such an order may be sought whether or not the person has been charged with an offence, but this section will not apply once the person is convicted of an offence under section 8. Secondly, the Bill amends section 10A of the Act, concerning the impounding or forfeiture of vehicles upon the conviction of a person of certain offences to include an offence under section 8. Thirdly, the Bill amends section 10B of the Act, to permit a police officer who has witnessed a person drive a vehicle, and believes on reasonable grounds that the person committed an offence under section 8, to seize the vehicle within 10 days of the witnessing of the events.

Para 2(c)(i) – undue trespass on rights and liberties

The first and third aspects of the Bill noted above raise the issue of whether a person's use of their property – a motor vehicle – may be restricted to the extent that they cannot make any use of it prior to their having been found to have committed the offence of menacing driving under section 8. It is legitimate to see that such a restriction impinges on the right to property. In this connection, the Committee draws 2 particular issues to the attention of the Legislative Assembly for its consideration in debate on the Bill:

- whether a police officer should be empowered to seize the vehicle, and if so, whether that power should be limited in time to the period immediately after the officer witnessed the relevant events, or for some period less than 10 days; and
- whether the determination of the Magistrates Court should be based on a finding of the relevant facts on the balance of probabilities, or on the higher criminal standard of beyond reasonable doubt.

In this latter respect, the Committee does see that it may create a difficulty if one Magistrate were to make an order on this higher standard in relation to seizure of the vehicle, and another Magistrate were to later find the person not guilty of an offence under section 8.

Subordinate Legislation - No Comment

The Committee has examined the following items of subordinate legislation and offers no comment on them.

Subordinate Law 2000 No 47 being the Occupational Health and Safety Legislation Regulations Amendment made under the *Machinery Act 1949*, the *Scaffolding and Lifts Act 1912* and the *Scaffolding and Lifts Act 1957* amends the *Boilers and Pressure Vessels Regulations* to remove references to the certification of boiler attendants. A further objective is to amend the *Scaffolding and Lifts Regulations 1950* to remove references to the certification of power crane or power hoist drivers, riggers, dogmen, scaffolders, crane chasers or authorised attendants.

Subordinate Law 2000 No 48 being the Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 2000 made under the *Occupational Health and Safety Act 1989* makes regulations to establish a requirement for the users and operators of potentially hazardous plant to hold certificates as a means of ensuring, as far as possible, that there is a minimum standard for its safe use and operation. These regulations establish a system for the licensing of persons using and operating plant, a requirement to meet competency standards in order to gain certification and a system of accreditation for assessors of competency.

Determination No. 343 of 2000 made under paragraph 87 (1) (a) of the *Occupational Health and Safety Act 1989* revokes Determination No. 55 of 1993 (notified in Gazette S117, dated 24 June 1993) entitled “ACT Demolition Code of Practice (Second Revised Edition)” and approves the Code of Practice entitled “ACT Safe Demolition Work Code of Practice”.

Determination No. 344 of 2000 made under section 4 of the *Public Place Names Act 1989* amends a notice published in the Commonwealth Gazette No. P25 of 31 August 1988 by omitting from Schedule A of that notice eight street names in the Division of Conder.

Determination No. 345 of 2000 made under section 82 of the *Food Act 1992* revokes Determination of fees No. 10 of 1994 (notified in Gazette S25, dated 22

February 1994) and determines fees payable for the purposes of the Act in accordance with the Schedule.

Determination No. 347 of 2000 made under section 137 of the *Public Health Act 1997* determines fees payable for the purposes of the Act as set out in the schedule for the licensing of public health risk activities in relation to the operation of a private hospital.

Subordinate Legislation - Comment

The Committee has examined the following item of subordinate legislation and offers this comment on it.

Determination No. 346 of 2000 made under section 18 of the *Public Health Act 1997* declares the operation of a Private Hospital to be a public health risk activity and further declares the operation of a Private Hospital to be a licensable public health risk activity for the purposes of the Act.

Possible typographical error

There appears to be a typographical error in this Determination in relation to part (ii) which reads “declare the operation of Private to be a licensable public health risk activity....”. Perhaps it should read “declare the operation of a Private Hospital to be a licensable public health risk activity....”?

INTERSTATE AGREEMENTS

The Committee has received a response from the Acting Chief Minister, on behalf of the Chief Minister, in relation to the Committee’s comments made concerning negotiations in relation to a proposed intergovernmental agreement for a national regulatory framework to provide a safe food supply to all Australians.

The Committee thanks the Acting Chief Minister for his response.

A copy of the response is attached.

The Committee has received a letter from the Attorney-General advising of proposed legislation in relation to choice of laws.

The Committee thanks the Attorney-General for his letter. It appreciates that the issues dealt with in the proposed bills to create a uniform law on the subject of choice of law in tort may not raise significant issues for this Committee, given its terms of reference. It may also be the case that the proposed bills are based on recommendations of the Australian Law Reform Commission. The Committee looks forward to examining the Bill when it is presented to the Assembly.

A copy of the response is attached.

Paul Osborne, MLA
Chair

February 2001