

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

REPORT NO. 3 OF 1997

5 March 1997

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Civic Square, London Circuit
CANBERRA ACT 2601
GPO Box 1020

STANDING COMMITTEE ON SCRUTINY OF
BILLS AND SUBORDINATE LEGISLATION

Telephone: (06) 2050171
Facsimile: (06) 2053109

Mr Greg Cornwell, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr *Greg* Cornwell,

Please find enclosed a copy of Report No. 3 of 1997 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its 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. I seek your approval to print and circulate Report No. 3 of 1997.

Yours sincerely,

Bill Wood

Bill Wood, MLA
Chair

4 March 1997

Greg Cornwell

Approved
Greg Cornwell, MLA

5 March 1997

TERMS OF REFERENCE

- (1) A Standing Committee for scrutiny of bills and subordinate legislation be appointed.
- (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) its 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) its explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of three 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 Bill Wood, MLA (Chair)
Mr Paul Osborne, MLA (Deputy Chair)
Mr Harold Hird, MLA

Legal Advisor: Emeritus Professor Douglas Whalan, AM
Secretary: Mr Tom Duncan

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 comments:

Landlord and Tenant (Amendment) Bill 1997

This Bill removes the provision excluding the Principal Act's application to the Crown and applies the Act's provisions to all tenancies covered by the Act.

Territory Plan Variation Bill 1997

This Bill removes the Area B1 Three Storey Development status of specified blocks and sections in Braddon, Dickson, Lyneham, O'Connor and Turner.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Determination No. 41 of 1997 made under section 65 of the *Building Act 1972* revokes Determination No. 134 of 1996 and determines fees payable under the Act.

Determination No. 42 of 1997 made under section 287 of the *Land (Planning and Environment) Act 1991* revokes Determination No. 131 of 1996 and determines fees payable under the Act.

Determination No. 43 of 1997 made under section 14 of the *Buildings (Design and Siting) Act 1964* revokes Determination No. 153 of 1996 and determines fees payable under the Act.

Determination No. 44 of 1997 made under section 80 of the *Energy and Water Act 1988* revokes Determination No. 130 of 1996 and determines fees payable under the Act.

Determination No. 45 of 1997 made under section 104 of the *Electricity Act 1971* revokes Determination No. 129 of 1996 and determines fees payable under the Act.

Subordinate Law No. 1 of 1997 being the Bookmakers Regulations made under the *Bookmakers Act 1985* reduces the minimum bet level applying to telephone betting by licensed on-course bookmakers and removes the restriction on the provision of information to punters.

Subordinate Law No. 2 of 1997 being the Roads and Public Places Regulations made under the *Roads and Public Places Act 1937* repeals a redundant regulation and sets fees for the grant or renewal of a permit to place an object in, on or across a public place.

Subordinate Legislation - Comments

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

Determination No. 40 of 1997 made under the *Motor Traffic Act 1936* revokes Determination No. 290 of 1996 and determines the road rescue fee under section 14AA of the Act.

Road Rescue fees now Validly Determined

As the Committee mentioned in its Report No. 1 of 1997, Determination No. 290 of 1996 determined the levels of the road rescue fees and purported to commence the payment of the fee on 1 January 1996.

The imposition of road rescue fees was authorised by amendments made to the *Motor Traffic Act 1936* by the *Motor Traffic (Amendment) Act (No. 2) 1996*.

The Committee was unable to find a commencement announcement for the *Motor Traffic (Amendment) Act (No. 2) 1996* before 1 January 1997 and suggested that the matter should be checked for,

"if there was no such commencement, then any road rescue fees collected under Determination No. 290 of 1996 prior to the commencement of the statutory provisions, which authorised the collection of such fees, appear to have been collected without legal authority. If so, a retrospective amending Act correcting the matter would appear to be appropriate."

The substantive provisions of the *Motor Traffic (Amendment) Act (No. 2) 1996* were commenced from 21 February 1997 and the present Determination No. 40 of 1997 corrects the problem as from that date. The question of the validity of the collection of road rescue fees before 21 February 1997 remains to be considered.



Bill Wood, MLA
Chair

4 March 1997

