

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

REPORT NO. 5 OF 1995

9 June 1995



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Standing Committee on Scrutiny of
Bills and Subordinate Legislation

Mr Greg Cornwell, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Cornwell,

Please find enclosed a copy of Report No. 5 of 1995 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. 5 of 1995.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Paul Osborne'.

Paul Osborne, MLA
Chair

9 June 1995

A handwritten signature in black ink, appearing to read 'Greg Cornwell'.

Approved
Greg Cornwell, MLA
Speaker

9 June 1995

Civic Square, London Circuit, Canberra ACT 2601
GPO Box 1020, Canberra ACT 2601

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 Paul Osborne, MLA (Chair)
Mr Andrew Whitecross, MLA (Deputy Chair)
Mr Harold Hird, MLA

Legal Advisor: Emeritus Professor Douglas Whalan, AM
Secretary: Mr Tom Duncan
Deputy Secretary: Ms Beth Irvin

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:

Discrimination (Amendment) Bill 1995

This Bill inserts a provision in the principal Act to provide that a member of the Assembly is taken to be an employer for the purposes of the Act if a person is, or seeks to be, employed under sections 5 or 10 of the *Legislative Assembly (Members' Staff) Act 1989*.

Supply Bill 1995-96

This Bill makes broad appropriations from the Consolidated Revenue Fund on an interim basis until the *Appropriation Act 1995-96* is passed.

Electricity and Water (Corporatisation) (Consequential Provisions) Bill 1995

This Bill enables ACTEW to be converted into a Territory owned corporation under the provisions of the *Territory Owned Corporations Act 1990*.

Electricity and Water (Corporatisation) (Consequential Amendments) Bill 1995

This Bill amends a number of Acts as a consequence of the corporatisation of ACTEW and contains provisions to facilitate the change over.

Payroll Tax (Amendment) Bill 1995

This Bill provides an exemption from payment of payroll tax to employers for two years for new employees who have been unemployed for at least 11 months of the previous 12 months.

Rates and Land Tax (Amendment) Bill 1995

This Bill provides for the 1994 unimproved values to be used in assessing 1995-96 rates and land tax, rates for individual ratepayers for the 1995-96 financial year to increase in line with the forecast CPI of 4%, staggering of assessments and for land tax to be assessed on a quarterly basis and also removes the obligation of the Commissioner for ACT Revenue to redetermine land values as at 1 January 1995.

Stamp Duties and Taxes (Amendment) Bill 1995

This Bill provides a "one off" exemption from ACT stamp duty for vehicles transferring from the Federal Interstate Registration Scheme after 30 June 1995.

Bills - Comment

The Committee has examined the following Bills and offers the following comments:

Auctioneers (Amendment) Bill 1995

This Bill provides for changes in the processing of applications for a licence and in the role of the police in relation to such applications.

Pawnbrokers (Amendment) Bill 1995

This Bill provides for changes in the processing of applications for a licence and in the role of the police in relation to such applications.

Second-hand Dealers and Collectors (Amendment) Bill 1995

This Bill provides for changes in the processing of applications for a second-hand dealer's licence or a collector's licence, removes the power to transfer a second-hand dealer's licence and gives a role for the police in relation to the granting of both types of licence.

Applications for New Licences and Renewals of Licences

In the case of an auctioneer's licence section 5 and Form A of the Second Schedule of the principal Act provide at the present time for initial applications. In addition, section 7 and Form C in the Second Schedule of the Act provide the basis for annual renewals.

The present amendment will add to both processes, particularly in relation to the role of police and the provision of references. Section 7 is retained in an amended form.

The new section 5 provides as follows for the making of new applications:

"5. (1) A person who has attained the age of 18 years may apply to the Court for a licence by lodging with the Registrar -

- (a) an application in accordance with Form A;
- (b) a copy of the application; and
- (c) references as to the applicant's character and suitability for holding a licence given by 3 qualified persons.

(2) In this section -

'elector' has the same meaning as it has in the *Electoral Act 1992*;

'qualified person' means -

- (a) an elector who is a person referred to in the Schedule to the Statutory Declarations Regulations of the Commonwealth; or
- (b) another person approved by the Court.”.

The provisions of the new section 6 to be inserted in the *Pawnbrokers Act 1902* and the new section 2A to be inserted in the *Second-hand Dealers and Collectors Act 1906* are the same as those in section 5 with one exception. In paragraph 6 (1) (a) there is a reference to “an application in accordance with Schedule 1” and, in the case of paragraph 2A (1) (a), there is a reference to “an application in accordance with a form approved by the Registrar”.

In the case of a second-hand dealer’s, collector’s or pawnbroker’s licence there has been no opportunity for any renewal in the past, nor is any added by the present amendments to the respective Acts.

Thus it seems from the amendments that, in the case of these three licences, the full process must be gone through each year, including the requirement in the new paragraph 6 (1) (c) of the *Pawnbroker’s Act 1902* and the new section 2A of the *Second-hand Dealers and Collectors Act 1906* to provide 3 references as to the applicant’s character and suitability for holding a licence.

However, because there is a separate renewal process for an auctioneer’s licence in section 7 of the *Auctioneers Act 1959*, it would seem that the requirement to provide 3 references on any annual renewal of an auctioneer’s licence will not apply, although many aspects of the new provisions will apply.

If this is so, then the provisions for all four kinds of licence will be similar (including the new provisions for police involvement), except that, in this one respect relating to references, there will be a difference.

Was this difference intended?

A Form not Approved by the Assembly

In looking at the new provisions for applications, the Committee notes another difference between the Acts.

In the case of the *Auctioneers Act 1959* and the *Pawnbrokers Act 1902* the requirement for Forms to be in the Act is retained.

The Committee notes that in the case of the *Second-hand Dealers and Collectors Act 1906* a Form is not inserted in the Act, but is to be approved by the Registrar.

We note there was a form in the 5th Schedule to the Second-hand Dealers and Collectors Act for collectors and that schedule has been repealed and not replaced. There was no form in the Act for second-hand dealers. As the new form for both second-hand dealers and collectors is to be approved by the registrar this means that the Form will not be approved by the Assembly.

There appears to be an inconsistency between this Act and the other two Acts. Is there a reason for this inconsistency? If not, would it be appropriate for a form or forms to be inserted in the Second-hand Dealers and Collectors Act. This would then ensure the Assembly would approve forms for all three Acts and any changes to the forms.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Subordinate Law No. 15 of 1995 being the *Supreme Court Rules (Amendment)* made under section 36 of the *Supreme Court Act 1933* makes rules that conform to the provisions of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters by making provision for the service of foreign process in Australia and the service of Australian process in Convention countries and by providing for the entry of judgement by default and the setting aside of such judgements.

Subordinate Law No. 16 of 1995 being the *Weapons Regulations (Amendment)* gives Australian Defence Industries Ltd, its officers and employees in the course of duties a general exemption from the *Weapons Act 1991* so that they may possess and transport weapons and military ordnance otherwise prohibited in the ACT.

Subordinate Law No. 17 of 1995 being the *Boxing Control Regulations (Amendment)* exempted an amateur boxing tournament to be held by the ACT Police and Citizens Youth Club on 13 May 1995.

Determination No. 30 of 1995 made under section 87 of the *Occupational Health and Safety Act 1989* approves the National Standard - Safe Working in a Confined Space AS 2865 - 1995 [NOHSC:1009(1994)].

Determination No. 31 of 1995 made under section 87 of the *Occupational Health and Safety Act 1989* approves standards for the Control of Workplace Hazardous Substances under the National Model Regulations [NOHSC:1005(1994)] and the National Code of Practice [NOHSC:2007(1994)], the National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011(1994)] and the National Code of Practice for the Labelling of Workplace Substances [NOHSC:2012(1994)].

Determination No. 32 of 1995 made under section 80 of the *Water Rates Act 1959* revokes Determination No. 28 of 1994 and fixes fees for reading a water meter, testing a meter and giving a certificate showing the amount of rates payable.

Determination No. 33 of 1995 made under section 80 of the *Electricity and Water Act 1988* revokes Determination No. 27 of 1994 and fixes fees for permits, plans and inspections relating to plumbing, drainage and water.

Determination No. 34 of 1995 made under section 120A of the *Agents Act 1968* revokes Determination No. 30 of 1994 and fixes new fees payable for the issue and renewal of licence and registration fees payable by real estate agents, stock and station agents and travel agents.

Instrument of Approval No. 36 of 1995 made under section 16 of the *Heritage Objects Act 1991* approves the interim Heritage Objects Register.

Determination No. 37 of 1995 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of a number of streets in the Division of Ngunnawal.

Determination No. 39 of 1995 made under section 44A of the *Business Franchise (Tobacco and Petroleum Products) Act 1984* revokes Determination No. 137 of 1994 and determines licence fees for new and renewed licences for petroleum product wholesalers and retailers and for tobacco wholesalers and retailers.

Approval of Variation No. 23 to the Territory Plan made under section 26 of the *Land (Planning and Environment) Act 1991* approves a variation relating to the Yowani golf course being Lyneham, section 67, block 1 (part).

Subordinate Legislation - Comment


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

Determination No. 35 of 1995 made under subsection 9 (2) of the *Heritage Objects Act 1991* revokes Determination No. 9 of 1993 and determines the criteria for the assessment of the heritage significance of an object.

A Small Error in the Explanatory Statement

The Explanatory Statement erroneously states that the previous criteria were determined by Determination No. 9 of 1992.

In fact, Determination No. 35 of 1995 itself correctly states that it is revoking Determination No. 9 of 1993, which was published in *Gazette* No. 6 of 10 February 1993 and was reported on without comment by the Committee in its Report No. 3 of 1993.



Paul Osborne, MLA
Chair

9 June 1995