

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

REPORT NO. 16 OF 1994

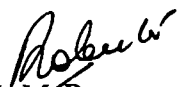
21 October 1994



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Standing Committee on Scrutiny of
Bills and Subordinate Legislation

Ms Roberta McRae, OAM, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601


Dear Ms McRae,

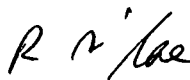
Please find enclosed a copy of Report No. 16 of 1994 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. I seek your approval to print and circulate Report No. 16 of 1994.

Yours sincerely,



Ellnor Grassby, MLA
Chairperson

21 October 1994



Approved
Roberta McRae, OAM, MLA
Speaker

21 October 1994

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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 which is subject to disallowance and/or disapproval by the Assembly (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;
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; or
 - (e) the explanatory statement accompanying it meets the technical or stylistic standards to which such an instrument or explanatory statement ought, in the opinion of the Committee, to conform;
- (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) makes rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) inappropriately delegate legislative powers;
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny; or
 - (f) the explanatory memorandum accompanying it meets the technical or stylistic standards to which such a Bill or explanatory memorandum ought, in the opinion of the Committee, to conform;
- (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.

MEMBERS OF THE COMMITTEE

Mrs E. Grassby, MLA (Chairperson)
Mr G. Humphries, MLA (Deputy Chairperson)
Ms H. Szuty, MLA

Legal Advisor: Emeritus Professor D. Whalan, AM
Secretary: Mr T. Duncan
A/g Deputy Secretary: Mrs S. Platt

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate 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 subordinate legislation that comply with the high ideals set out in the terms of reference.

BILLS

Bills - No Comment

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

Podiatrists Bill 1994

This Bill provides for the registration of podiatrists and for the control of the practice of podiatry.

Water Pollution (Amendment) Bill 1994

This Bill extends the maximum period for which a licence may be granted from 1 year to 3 years, makes it clear that specified conditions are attached to the licence and are part of the licence process, makes it clear that the Pollution Control Authority is to ensure that, in licensing, pollution is to be reduced to the lowest practical level and removes sexist language from the principal Act.

Bills - Comment

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

Crimes (Amendment) Bill (No. 3) 1994

This Bill makes extensive changes relating to search warrants and powers of arrest.

A Tiny Misprint

New section 349P provides that an occupier is entitled to be present during a search. There is a cross-reference to restrictions provided for in "Part 1C of the Commonwealth Crimes Act". This tiny misprint needs to be corrected.

Education Services for Overseas Students (Registration and Regulation of Providers) Bill 1994

This Bill regulates providers of education services for overseas students.

Departure from Usual Commencement Clause is Explained

The usual form of commencement clause that is now used provides that, if the Minister has not fixed a commencement date for all provisions within 6 months of the notification of an Act in the *Gazette*, the remaining provisions then commence. This ensures that there are no "dead letter" Acts on the statute book.

In the present case there has been a deviation from this provision, as subclause 2(3) of the commencement clause excludes section 5 from the automatic 6 months rule.

However, the reason for the possible delay in the commencement of section 5 is explained at page 3 of the Explanatory Memorandum. Section 5 creates offences by providers who have not been approved and the intention is to allow providers a period of grace of 3 months to become approved providers once the Act comes into operation. The timing of commencement may be such that the 6 months period may be exceeded and this present exception allows for this possibility in giving the period of grace.

Legal Practitioners (Amendment) Bill 1994

This Bill makes amendments relating to the issuing of practising certificates, varies requirements relating to costs and statements of account, makes changes relating to the Fidelity Fund and reinstates the power of the Supreme Court to reprimand a barrister.

Is there Prejudicial Retrospectivity?

Clause 9 amends section 67 of the principal Act to reinstate the power of the Supreme Court to reprimand a person practising solely as a barrister. The power previously existed, but disappeared when the *Law Practitioners (Amendment) Act 1993* commenced on 24 December 1993. Clause 29 provides that the power is deemed to have been restored on and from 24 December 1993.

This retrospectively restores a power, which, if exercised, is prejudicial to the person against whom it is exercised. The Committee queries whether anyone has supposedly been reprimanded since 24 December 1993, when the power ceased to exist.

Noise Control (Amendment) Bill 1994

This Bill varies the provisions for measuring motor sport noise levels.

A Tiny Misprint

The Schedule to the Bill adds section 12 to the Noise Control Manual and section 12.3.3 provides that only the observer reading the meter and one other person may be within 15 metres of the microphone. The provision states that one other "personal" shall be directly behind the observer". Perhaps "person" should be substituted.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Subordinate Law No. 30 of 1994 being the *Public Health (Cervical Cytology) Regulations* provides for the setting up, operation and management of a cervical cytology register.

Determination No. 135 of 1994 made under s. 4 of the *Public Place Names Act 1989* amends Determination No. 3 of 1991 by changing the name of Ferrier Street to Ferrier Place.

Determination No. 136 of 1994 made under s. 22(1) of the *Electoral Act 1992* appoints a specified person as the Electoral Commissioner of the Australian Capital Territory Electoral Commission.

Determination No. 137 of 1994 made under s. 44A of the *Business Franchise (Tobacco and Petroleum Products) Act 1984* revokes Determination No. 122 of 1993 and determines licence fees for new and renewed licences for petroleum product wholesalers and retailers and for tobacco wholesalers and retailers.

Determination No. 138 of 1994 made under s. 99(1) of the *Taxation (Administration) Act 1987* revokes Determination No. 64 of 1990 and determines the wages threshold below which no employer is required to lodge returns and pay payroll tax.

Determination No. 139 of 1994 made under s. 41 of the *Physiotherapists Act 1977* determines fees payable under the Act.

GOVERNMENT RESPONSES

The Committee has received responses to comments made concerning:

- Determinations No. 52, 53 and 54 of 1994 made under the *Motor Traffic Act 1936* (Report No. 12 of 1994);
- Determination No. 76 of 1994 made under the *Registration of Deeds Act 1957* (Report No. 12 of 1994);
- Determination No. 77 of 1994 made under Regulation 31 of the Adoption Regulations (Report No. 12 of 1994);
- Determination No. 99 of 1994 made under the *Buildings (Design and Siting) Act 1964* (Report No. 12 of 1994);
- Determination No. 107 of 1994 made under the *Adoption Act 1993* (Report No. 12 of 1994);
- Public Sector Management Standards No. 1 of 1994 made under the *Public Sector Management Act 1994* (Report No. 13 of 1994);
- Bail (Amendment) Bill 1994 (Report No. 14 of 1994);
- Reprint of *Magistrates Court (Civil Jurisdiction) Act 1982* (Report No. 13 of 1994).

The Committee thanks the Attorney-General for his positive responses.



Ellnor Grassby, MLA
Chairperson

21 October 1994

