

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

REPORT NO. 22 OF 1993

3 December 1993

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) or 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) or 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
Secretary: Mr T. Duncan
Deputy Secretary: Ms B. Irvin

ROLE OF THE COMMITTEE

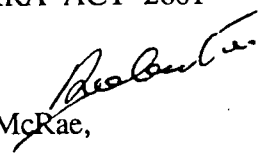
The Committee examines all Bills and subordinate legislation presented to the Legislative Assembly. The Committee does not make any comments on the policy aspects of the legislation. The terms of reference contain the customary principles of scrutiny that enable the Committee to operate in the best traditions 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.

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

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


Dear Ms McRae,

Please find enclosed a copy of Report No. 22 of 1993 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. Accordingly, I seek your approval to print and circulate Report No. 22 of 1993.

Yours sincerely



Elnor Grassby, MLA
Chairperson

3 December 1993



Approved
Roberta McRae, OAM, MLA
Speaker

3 December 1993

BILLS

Bills Upon Which No Comment is Offered

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

Air Pollution (Amendment) Bill 1993

This Bill brings all solid fuel heating and cooking appliances in residential premises within the scope of the Act, introduces a particulate emission standard and associated controls for new domestic solid fuel appliances and fixes the maximum lead content of leaded petrol at the level fixed in New South Wales.

Community Law Reform Committee Bill 1993

This Bill constitutes a body corporate called "The Community Law Reform Committee of the Australian Capital Territory".

Health Complaints Bill 1993

This Bill provides for the appointment of a Commissioner for Health Complaints to investigate complaints, for the establishment of a Health Rights Advisory Council and for the development of a Code of Health Rights and Responsibilities for users and providers of health services.

Ombudsman (Amendment) Bill (No. 2) 1993

This Bill makes amendments to the principal Act complementary to the passing of the Health Complaints Bill by providing that the Ombudsman has no jurisdiction over the health complaints area and integrating the referral of complaints between the two offices.

Tobacco (Amendment) Bill 1993

This Bill reduces the time during which illegal advertisements must be removed, permits the Minister to set conditions on exempted advertising and sponsorship and permits the Minister to appoint authorised officers to enforce the removal of tobacco advertisements.

Bills Upon Which Comment is Offered

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

Legal Practitioners (Amendment) Bill 1993

This Bill amends and widens the disciplinary powers exercised over solicitors, provides for conciliation of complaints, enables an investigator to be appointed to pursue complaints, enables the appointment of a manager to a solicitor's practice and makes a number of other amendments to the Act including removing sexist language.

Removal of Sexist Language

The Committee is pleased to note that, as has become the practice when major amendments are made to an Act, the opportunity has been taken to remove gender specific language.

Renumbering and Reprint

Clause 44 of the present Bill provides for renumbering of the Principal Act as amended. This is a very helpful move.

The Attorney-General indicated in the Presentation Speech that there were further amendments to come later, which will change the principal Act in a number of ways, but that it was important to make the present amendments now. However, given the hundreds of small as well as many large amendments that are being made by the present Bill, it would be helpful if a reprint could be produced promptly, so that both the amendments and the renumbering become clear to those who have to use the Act. Otherwise, even lawyers using the Act that governs the conduct of their profession, could be forgiven for occasionally getting a little lost in the details!

National Crime Authority (Territory Provisions) (Amendment) Bill 1993

This Bill provides that, in certain circumstances, a notation may be made on a summons to a witness or a notice requiring a person to produce evidence prohibiting disclosure of those facts and makes it an offence to do so, adds to the grounds for the issue of a warrant and makes other minor amendments.

One or Two Possible Mistakes

Clause 5(c) of the Bill aims to add to the grounds provided for in section 19 of the principal Act for the issuing of a warrant for the arrest of a witness. Clause 5(c) provides as follows:

"Section 19 of the Act is amended - ...

(c) by inserting after paragraph (1)(b) the following paragraph:

'(c) that a person has committed an offence under subsection 19(1) or is likely to do so,' "

The provisions of subsection 19(1) will read as follows, if the amendment provided for by clause 5(c) is inserted:

"19. (1) Where, on application by or on behalf of the Authority, a Judge of the Federal Court sitting in chambers is satisfied by evidence on oath that there are reasonable grounds to believe that a person -

- (a) who has been ordered, under section 14, to deliver his or her passport to the Authority, whether or not the person has complied with the order, is nevertheless likely to leave Australia for the purpose of avoiding giving evidence before the Authority;
- (b) in relation to whom a summons has been issued under subsection 16(1) -
 - (i) has absconded or is likely to abscond; or
 - (ii) is otherwise attempting, or is likely to attempt, to evade service of the summons; or

- (c) that a person has committed an offence under subsection 19(1) or is likely to do so:

the Judge may issue a warrant for the apprehension of the person." (Emphasis added.)

The Committee asks two questions.

First, is the emphasised phrase "that a person" superfluous in the circumstances?

Secondly, is the reference to "subsection 19(1)" correct? Subsection 19(1) does not appear to create an offence. The headings to sections 16, 17 and 18 of the principal Act refer to "Power to obtain documents" and "Failure of witnesses to attend and answer questions" respectively. But neither subsection 17(1) nor subsection 18(1) creates offences, although both sections 17 and 18 contain provisions that do create offences. For instance, subsection 18(13) provides that:

"A person who contravenes subsection (1), (2) or (3) is guilty of an offence."

This seems to complement subsection 18(1) which, among other things, refers to failing "without reasonable excuse ... to attend as required by the summons".

Perhaps a check should be made to see if the reference to "subsection 19(1)" is, in fact, correct, or whether there should be a reference to one of the other provisions instead.

Stamp Duties and Taxes (Amendment) Bill (No. 4) 1993

This Bill extends the dutiable period relating to a lease including options to renew from 15 to 30 years and varies the provisions relating to refunds of duties to remove the requirement that the Commissioner can only extend the period for a refund of stamp duty if the agreement that falls through concerns the principal place of residence of the transferee.

Retrospectivity

The provisions of the Bill are expressed to commence retrospectively back to 15 September 1993. This retrospectivity is beneficial to individuals.

SUBORDINATE LEGISLATION

Subordinate Legislation Upon Which no Comment is Offered

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

Subordinate Law No. 44 of 1993 being the *Liquor Regulations (Amendment)* made under section 106 of the *Liquor Act 1975* for the purposes of section 84 of the Act prescribes specified places and areas in the vicinity of the Exhibition Park in Canberra to be places where it will be an offence to consume liquor from noon on 26 December 1993 until noon on 31 December 1993.

Subordinate Law No. 45 of 1993 being the *Electricity and Water Regulations (Amendment)* made under section 82 of the *Electricity and Water Act 1988* lowers the rate of interest on unpaid electricity, sewerage and water charges from 20% to 17%.

Subordinate Legislation Upon Which Comment is Offered

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

Subordinate Law No. 43 of 1993 being the *Buildings (Design and Siting) Regulations (Amendment)* made under section 14 of the *Buildings (Design and Siting) Act 1964* provides that public works authorised before 1 January 1994 will not be subject to public notification and third party appeals, eliminates the need for newspaper advertisement of single house design and siting applications, exempts buildings and signs from external design and siting approval provided that they meet applicable requirements of the Territory Plan, similarly exempts works carried out by, or for, the Territory on defined land and defines 'defined land' and 'works' for the purposes of these exemptions.

A Possible Small Omission

New Subregulation 9(3) (inserted by regulation 5(b)) gives a definition of 'defined land' as follows:

" 'defined land' means land identified in the Plan for the purposes of Subdivision D of Division 3 of the Land Act."

It appears that probably Subdivision D of Division 3 of Part II of the Land Act (the *Land (Planning and Environment Act 1991)*) was intended.

Determination No. 150 of 1993 made under section 40A of the *Dog Control Act 1975* revokes Determination No. 134 of 1993 and determines fees payable under the Act.

Correction of Mistakes Mentioned by the Committee

Although the usual reference to the Committee's role is not mentioned in the Explanatory Statement, the present determination appears to be a response to the Committee's comments made in its Report No. 10 of 1992 and repeated in its Report No. 17 of 1993 about Determination No. 134 of 1993 and its predecessor Determination No. 82 of 1992.

The present determination seems to have corrected most of the errors identified by the Committee in those reports. Two issues appear to remain. No doubt they are still under consideration and will be covered when the formal reply to the Committee is made.

First, as the Committee stated in its Report No. 17 of 1993:

"a final check needs to be made - to decide whether the fees and charges were legally collected."

This comment will now apply to the fees collected under Determination No. 134 of 1993 as well as to those collected under Determination No. 82 of 1992.

Secondly the fees set for the return of an impounded dog seized by an inspector appear to be the same in the present determination as they were in Determination No. 134 of 1993. Fees are set for various periods up to 120 hours. But, as was said in Report No. 17 of 1993, "it does not seem clear what the fee is, if the period is in excess of 120 hours". There are fees of \$25.00 for each 24 hours or part thereof where a dog is held at a keeper's request and where an impounded dog is destroyed by order of the court. But these fees do not appear to cover all cases of seized dogs, which are returned to owners later than 120 hours after seizure.

Determination No. 151 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the name of a public place that is Territory Land in the Division of Ngunnawal to be Gula Place.

A Tiny Error

The map in the Schedule to the determination states that Gula Place is in the "Division of Nugunnawal". The correct name of the Division as entered on the Territory Plan is "Ngunnawal". The heading in the Schedule and the entry under the significance of the name as well as the Explanatory Statement give the spelling "Ngunnawal".

It is unlikely that the incorrect spelling renders the determination invalid.

Determination No. 152 of 1993 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 149 of 1993 and remakes the stamp duties provisions set out in Determination No. 149 of 1993, but provides that the conveyance rates of stamp duties will be levied on leases where the term of the lease is more than 25 years or the aggregate term of the lease, with options to renew, amounts to more than 25 years, instead of 15 years in these cases as was provided for in Determination No. 149 of 1993.

Retrospectivity

The increase from 15 to 25 years is made retrospective to 15 September 1993. This retrospectivity is beneficial to individuals.

GOVERNMENT RESPONSE

The Committee has received a response to comments made concerning the Food (Amendment) Bill (No. 2) 1993 (Report No. 19 of 1993). A copy of the response is attached.

The Committee thanks the Attorney-General's for his response to their comments.

The Committee notes that in relation to the self incrimination issue contained in paragraph 3 of the response that technically the Attorney-General's response is correct. However, the Committee feels that in the stressful situation that people find themselves in, they could put themselves at risk.

Subclause 47(3) of the Health Complaints Bill provides some protection against self incrimination. Other Acts provide even greater protection, for example, sections 237 and 239 of the *Credit Act 1985*.

The Committee welcomes the commitment by the Attorney-General to conduct a review of self incrimination aspects of all provisions in ACT legislation to require the disclosure of information. The Committee would be interested to know the time frame in which this review will take place.

A handwritten signature in black ink, appearing to read 'Ellnor Grassby', with a stylized flourish at the end.

Ellnor Grassby, MLA
Chairperson

3 December 1993



A.C.T. GOVERNMENT

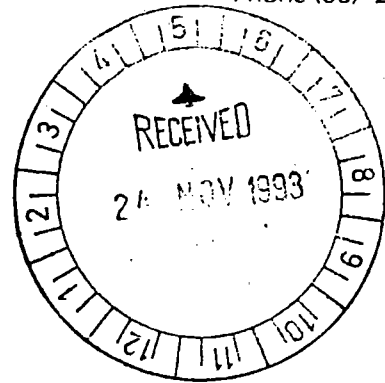
TERRY CONNOLLY MLA

ATTORNEY GENERAL

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Phone (06) 20 50011

Mrs Ellnor Grassby MLA
Presiding Member
Standing Committee on Scrutiny of Bills and
Subordinate Legislation
ACT Legislative Assembly
1 Constitution Ave
CANBERRA ACT 2601



Ellnor
Dear Mrs Grassby

In its Report No. 19 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation made a number of comments on the Food (Amendment) Bill (No.2) 1993 ("the Bill").

The first matter which the Committee raised related to the adequacy of protection from self incrimination where a person is required to answer a question under new paragraph 19YD(j). I am advised that the Bill as drafted does contain adequate protection in relation to self incrimination as the Bill does not expressly or impliedly abrogate the privilege against self incrimination.

Under new paragraph 19YD(j) a person may be required to answer questions. However, the Bill provides that the person is guilty of an offence of refusing to answer a question only if he or she does so "without reasonable excuse". Therefore an amendment to the Bill is unnecessary as a person would not be convicted of an offence of refusing to answer a question under section 19YZ if the person's reason for refusing to answer is that the answer may incriminate him or her. In addition, the Bill does not provide that any answers given may be used as evidence in later proceedings against the person.

My Department will be conducting a review of the self incrimination aspects of all provisions in ACT legislation empowering officials to require the disclosure of information. In the course of that review further consideration will be given to the question whether provisions like that in this Bill should include an express statement of the privilege against self incrimination.

The second matter raised by the Committee was the accuracy of a reference to subsection 19ZC(2) in new subsection 19YG(2). The correct reference, as the Committee suggested, is to subsection 19YZC(2). It is intended that this error be rectified by way of a Clerk's amendment under Standing Order 191 of the Legislative Assembly.

Finally, the Committee suggested that it would be helpful if a reprint of the *Food Act 1992* ("the Act") could be made available promptly. It is intended that once the provisions of this Bill, and those provisions of the *Food (Amendment) Act 1993* which have not yet commenced, are commenced a reprint of the Act will be prepared.

I trust this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'T. Connolly', with a long, sweeping horizontal line extending to the right.

Terry Connolly

23 NOV 1993