

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

REPORT NO. 4 OF 1993

23 March 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; or
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
 - (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; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
 - (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 (Presiding Member)
Mr G. Humphries, MLA (Deputy Presiding Member)
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.

SUBORDINATE LEGISLATION

Subordinate Legislation upon which no Comment is Offered

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

Determination No. 12 of 1993 made under section 4 of the *Public Place Names Act 1989* corrects the details of the name, origin and significance of Scarlett Street in the Division of Melba.

Determination No. 13 of 1993 made under section 110 of the *Animal Welfare Act 1992* determines fees for licences for research and teaching and the fee for a circus permit.

Determination No. 16 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of two streets in the Division of Gordon.

Subordinate Law No. 5 of 1993 made under the *Land (Planning and Environment) Act 1991* being the *Land (Planning and Environment) Regulations (Amendment)* provides that a remission rate of 50 percent be applied to the betterment to be charged where leases issued to the Commissioner for Housing for a term that commenced on or before 16 December 1987.

Subordinate Law No. 6 of 1993 made under the *Crown Proceedings Act 1992* being the *Crown Proceedings Regulations* declares the *Crown Proceedings Act 1992* of South Australia to be a corresponding law.

Subordinate Law No. 7 of 1993 being the *Public Health (Meat) Regulations (Amendment)* made under section 12 of the *Public Health Act 1928* amends the Principal Regulations as a consequence of the passing of the *Food Act 1992* by defining terms to be the same as those under the *Food Act 1992* and removing matters already defined in the other legislation.

Subordinate Law No. 8 of 1993 being the *Public Health (Dairy) Regulations (Amendment)* made under section 12 of the *Public Health Act 1928* amends the Principal Regulations as a consequence of the passing of the *Food Act 1992* by removing definitions to ensure that there is consistency with the new provisions, simplifies wording relating to sampling and also removes sexist language from the Regulations.

Subordinate Law No. 9 of 1993 being the *Public Health (Sale of Food and Drugs) Regulations (Amendment)* made under section 12 of the *Public Health Act 1928* amends the Principal Regulations as a consequence of the passing of the *Food Act 1992* by removing provisions to ensure that there is consistency with the new provisions and also removes sexist language from the Regulations.

Subordinate Legislation upon which Comment is Offered

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

Determination No. 14 of 1993 made under section 4 of the *Public Place Names Act 1989* "determine[s] the names [sic] of the public places [sic] that are Territory Land described in the attached Schedule 'A' and as indicated on the attached map".

A Missing Revocation and Plural Places

The Determination does determine the name of Shea Street in the Division of Phillip as included in Schedule 'A' and as indicated on the map, but two comments are made.

First, although the determination refers to "names" and "public places", there is only one public place under consideration and the plurals are thus inaccurate. The references in Schedules 'A' and 'B' are in the singular and are correct.

Secondly, and more significantly, the Explanatory Statement indicates that there was an intention to revoke the determination of Shea Street in Schedule 'B'.

Schedule 'B' is, in fact, attached to the instrument, but the Determination itself does not effect a revocation or refer to Schedule 'B'. It does not, for example, follow the effective formula for determining and revoking the name of the William Herbert Place in the same instrument that was followed in Determination No. 160 of 1992 dated 26 October 1992 and which was published in *Gazette* No. 44 of 4 November 1992.

The Determination needs to be reconsidered.

Determination No. 15 of 1993 states "Under section 4 of the *Public Place Names Act 1989*, the determination of the names [sic] of the public places [sic] that are Territory Land are described in the attached Schedule 'A' and as are described on the attached map".

A Missing Verb and Plural Places

Two comments are made.

First, although there are references to "names" and "public places" (and the incorrect plurals are repeated on pages 1 and 2 of Schedule 'A'), there appears to be only one public place under consideration. The Explanatory Statement also states that the determination "details the names origins and significance of the new street names". The one public place under consideration is Conner Close.

Secondly, there is no actual determination made by the instrument. Usually such instruments state "I determine", but, in the present instance, there is no verb under which a determination is made.

Although the instrument appears to be both inaccurate and deficient, it is possible that an indulgent Court may perhaps overlook the mistakes in interpreting it. However, advice should be sought about this.

Determination No. 17 of 1993 made under section 4 of the *Public Place Names Act 1989* "determine[s] the names [sic] of the public places [sic] that are Territory Land described in the attached Schedule 'A' and as indicated on the attached map".

Wrong Plurals in Some Places

Although Determination No. 17 of 1993 refers to "names" and "public places" both in the determination and in Schedule 'A', the only public place being considered is Arabanoo Crescent. The Explanatory Statement correctly indicates that only one public place is being considered.

Almost certainly a Court would overlook the inaccuracies in this instance.

Determination No. 18 of 1993 made under section 257 of the *Magistrates Court Act 1930* fixes fees under sections 26 and 147 for the laying of an information and the issue of a warrant of execution respectively.

The Committee noted that the explanatory statement accompanying this determination was of a very high standard.

A handwritten signature in black ink, appearing to read 'Ellnor Grassby', with a long horizontal flourish extending to the right.

Ellnor Grassby, MLA
Presiding Member

23 March 1993

