

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

REPORT NO 18 of 1990

2 November 1990

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Ms C Maher MLA (Presiding Member)

Mr B Stefaniak MLA

Mr T Connolly MLA

Secretary: Mr T Duncan

Legal Advisor: Emeritus Professor D Whalan

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 (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-viewable decisions; and
 - (d) contains matter which in the opinion of the committee should properly be dealt with in an Act of the Legislative Assembly;
- (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) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make 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;
- (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.

ROLE OF THE COMMITTEE

The Committee examines all Bills and delegated 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 delegated 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

1 Constitution Avenue
CANBERRA A.C.T.2601
GPO Box 1020
Telephone: (06) 275 8570
Fax: (06) 275 8108

Mr D Prowse MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Prowse

Please find enclosed a copy of report No 18 of 1990 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under the 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 18 of 1990.

Yours sincerely

Bill Stefaniak, MLA
Acting Presiding Member

1 November 1990

Approved
David Prowse, MLA

2 November 1990

The Committee has examined the following Bill:

Careless Use of Fire (Amendment) Bill 1990

This Bill, which would bind the Crown, would set up a Rural Firefighting Service, provide legal protection for firefighters and extend the powers of inspectors to enter property and give notices to owners to minimize fire hazards.

Clause 5 of the Bill would amend s. 5 of the Act to require an inspector to have a proper identity card issued to him or her. This is a good development given the powers of an inspector under the Act. It is particularly important now, as new s. 5AA, inserted by clause 6, confers on an inspector a right of entry on land outside a built-up area after having given the landowner at least 24 hours written notice stating the time and purpose of entry. The inspector cannot remain on the land if the inspector does not show the identity card.

Clause 6 would also insert new s. 5AC which provides that an inspector may give written directions to a landowner in relation to fire protection. Section 5AC(5) provides that the period for compliance with a direction is to be not less than 14 days, unless it is given during a period when s. 7A(1) applies; this means that there is no required minimum period during "Days of acute fire danger", to quote the side-note to s. 7A. However, it is noted that, in all cases, a decision to give directions is subject to review by the Administrative Appeals Tribunal (new s. 5AD).

Clause 12 would insert a new s. 5KA providing for the production of a Fire Control Manual. It is noted that the Manual and any variations thereof would be disallowable instruments and thus subject to the control of the Assembly.

In the Committee's opinion, each of these provisions appears to accord with the principles set out in the Committee's Terms of Reference for the protection of rights and ensuring that discretionary decisions are subject to independent review.

Subordinate Legislation - Missing Explanatory Statements - Government Response.

The Committee commented in Report No 14 dated 19 September 1990 that a number of subordinate legislation tabled did not have explanatory statements. On October 1990 the Acting General Manager of the Engineering and Building Services Section provided the Secretary of the Committee explanatory statements to Determination Nos 58 and 59 of 1990. The Committee is grateful for the positive response given.



Bill Stefaniak, MLA
Acting Presiding Member

/ November 1990