

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

REPORT NO. 3 OF 1996

3 April 1996

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

Ms Rosemary Follett, MLA (Chair)
Mr Harold Hird, MLA (Deputy Chair)
Mr Paul Osborne, 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.

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Civic Square, London Circuit
CANBERRA ACT 2601
GPO Box 1020

STANDING COMMITTEE ON SCRUTINY OF
BILLS AND SUBORDINATE LEGISLATION

Telephone: (06) 2050171
Facsimile: (06) 2053109

Mr Greg Cornwell, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Cornwell,

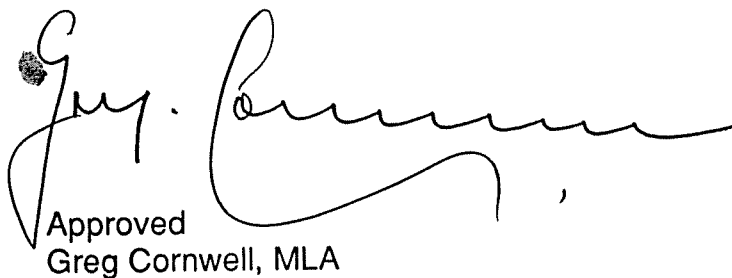
Please find enclosed a copy of Report No. 3 of 1996 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. I seek your approval to print and circulate Report No. 3 of 1996.

Yours sincerely,



Rosemary Follett, MLA
Chair

4
2 April 1996



Approved
Greg Cornwell, MLA

4 April 1996

BILLS

Bills - No Comment

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

Administration and Probate (Amendment) Bill 1996

This Bill enables an eligible partner as well as a legal spouse to inherit upon intestacy, increases the statutory legacy from \$100,000 to \$150,000 and makes a number of technical amendments and removes sexist language.

Crimes (Amendment) Bill 1996

This Bill outlaws stalking and performing an intimidatory act against another person.

Domestic Violence (Amendment) Bill 1996

This Bill repeals the present provision for a maximum term of imprisonment for a breach of a protection order or interim protection order and substitutes a maximum term of imprisonment of 2 years for a first offence and a maximum term of 5 years in any other case.

Ombudsman (Amendment) Bill 1996

This Bill gives the Ombudsman jurisdiction to investigate complaints about Territory owned corporations and their subsidiaries, removes the jurisdiction to investigate complaints against the Master of the Supreme Court and the Registrar and Deputy Registrars of the Supreme Court or Magistrates Court when performing a judicial function and gives the Ombudsman power to decide not to investigate, or to cease to investigate, a complaint but instead to refer it to an appropriate statutory office holder.

Remand Centres (Amendment) Bill 1996

This Bill provides that a person who is convicted by an ACT court and sentenced to a term of imprisonment, who has not been granted bail or liable to be detained for any other cause, who has appealed against conviction and in respect of whom a court has made an order or issued a warrant for committal to a remand centre may be held in a remand centre in the ACT.

Bills - Comment

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

Family Provision (Amendment) Bill 1996

This Bill adds to the list of potential claimants persons who have lived with the deceased on a long-term and genuine domestic basis, amends the criteria for making an order under the Act, makes a number of technical amendments and removes sexist language.

Retrospectivity

The amended Act will apply to the estates of all persons, whether they leave a will made before or after the amended Act commences or whether they die before or after the amended Act commences.

The only exceptions to this retrospective effect are that the amended Act will not apply to estates where probate or letters of administration have been granted before the amendments commence or where the Public Trustee has given notice of intention to administer an estate, lodged an election to administer an estate or been granted an order to collect and administer an estate under the provisions of the *Administration and Probate Act 1929* before the amendments commence.

Tenancy Tribunal (Amendment) Bill 1996

This Bill provides that the principal Act will apply to disputes covered by the Act, whether the relevant lease was entered into, varied, renewed or extended under an option, before, on or after 1 January 1995.

Retrospectivity

This Bill provides that disputes under the Act can be dealt with whenever the lease was entered into. This means that the Act will be retrospective in effect.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Subordinate Law No. 1 of 1996 being the Liquor Regulations (Amendment) made under the *Liquor Act 1975* declared certain areas to be dry areas during the Autumn Feast event conducted by ACT Festivals on 17 March 1996.

Determination No. 17 of 1996 made under subsection 39B(1) of the *Bookmakers Act 1985* determines the location of a sports betting venue at Bruce Outdoor Stadium.

Determination No. 18 of 1996 made under subsection 39B(2) of the *Bookmakers Act 1985* determines the directions for the operation of the sports betting venue at Bruce Outdoor Stadium.

Instrument No. 19 of 1996 made under subsection 39A(1) of the *Bookmakers Act 1985* determines the outcome of the annual Academy Awards to be a sports betting event.

Instrument No. 20 of 1996 made under subsection 39C(1) of the *Bookmakers Act 1985* varies the rules relating to betting on approved events by adding a rule relating to betting on the annual Academy Awards.

Determination of Charges No. 24 of 1996 made under section 4 of the *Motor Omnibus Services Act 1955* revokes Determination of Charges No. 76 of 1995 and determines new charges payable under the Act.

Subordinate Legislation - Comments

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

Instrument No. 16 of 1996 made under section 19 of the *Credit Act 1985* declares that section 122 of the Act does not have effect in relation to communications by post, telephone or telex.

Would it be appropriate to cover Facsimile Transmission also?

As the Explanatory Statement states:

"Section 122 of the Act prohibits the canvassing of credit at a person's place of residence or business with the view to inducing that person to apply for or obtain credit under a regulated contract.

However, section 122 is unclear as to whether canvassing of credit by telephone, mail or telex constitutes a contravention of section 122."

The Explanatory Statement mentions that all the other "Credit Act" jurisdictions have made the present change to remove ambiguity.

Perhaps facsimile transmission may already be covered by the reference to "telephone". However, perhaps this could be checked to see if there is a possible gap.

Determination of Fees and Charges No. 21 of 1996 made under the *Health Act 1993* revokes Determination of Fees and Charges No. 131 of 1995 and determines new fees and charges payable under the Act.

An inaccuracy is repeated yet again - Determinations are not Published in the Gazette

In its Report No. 8 of 1995 the Committee drew attention to an inaccuracy in a number of determinations, including Determination of Fees and Charges No. 90 of 1995 that was revoked by Determination of Fees and Charges No. 131 of 1995. In its Report No. 13 of 1995 the Committee drew attention to the fact that the inaccuracy had been repeated in Determination of Fees and Charges No. 131 of 1995.

Perhaps Report No. 13 did turn out to be unlucky, as its terms appear not have been heeded and the inaccuracy is repeated in the present determination.

The present determination states that the previous determination "was published in Australian Capital Territory *Gazette* No. S241 on 21 September 1995". (Emphasis added.) The determination was not published in the *Gazette*. Such determinations used to be published, but, in recent years, all that has been published is a Notification of the Making of Determination, which indicates that a determination has been made and where a copy can be bought.

There is no problem of validity involved, but perhaps this aspect should be corrected when the next version of this determination of fees and charges is made. Otherwise people could be misled into searching the *Gazette* for detailed information that is, in fact, no longer published.

The Committee hopes that perhaps it will be third time lucky!

Instrument No. 22 of 1996 made under section 55 of the *Skin Penetration Procedures Act 1994* revokes Determination No. 13 of 1996 and determines fees payable under the Act.

This determination appears to correct matters raised by the Committee

In its Report No. 1 of 1996 the Committee pointed out a number of apparent errors in Determination No. 13 of 1996.

The Committee has not yet had a response to its concerns raised in Report No. 1, but the present determination appears to address those concerns.

The Explanatory Statement for the present determination appears to be little changed from that which accompanied Determination No. 13 of 1996.

Thus it does not make the customary reference to the fact that it is addressing concerns raised by the Committee.

Nor does it refer to the fact that the present determination is revoking a determination and making a new determination of fees. The determination itself does revoke the earlier determination, but does not follow the instructions on Revocation of previous instruments on page 11 of the *Guidelines for the Preparation of Disallowable Instruments* issued by the ACT Attorney-General's Department in May 1993 which require a reference to be made to the specific number of the determination being revoked.

Nor does the present Explanatory Statement follow the requirements of Matters that must be included on page 16 of the Guidelines by comparing the previous and present fees. In the present case there appear to be no changes in the levels of fees and, in such cases, it is customary merely to state this fact.

Following the Guidelines in these two respects enables Members of the Legislative Assembly and members of the public to identify easily the instrument being revoked and to see what changes, if any, have been made to fees and the reasons for any changes.

Finally, have any fees been collected under the defective provisions in Determination No. 13 of 1996? If so, consideration should be given to the question whether they have been validly collected.

Instrument No. 23 of 1996 made under subsection 395(3) of the *Magistrates Court (Civil Jurisdiction) Act 1982* varies the approval of forms made by Determination No. 27 of 1995 by revoking the approval of Form 78 and approving a new Form 78 of warrant of apprehension consequent upon amendments made to the principal Act by the *Magistrates Court (Civil Jurisdiction) Act 1995*.

Reference to the Previous Determination would have been helpful

As with the comment made under the previous heading on Determination No. 22 of 1996, here, too, it would have been helpful if the present determination and its Explanatory Statement had referred specifically to the approval of forms that is being amended, namely Determination No. 27 of 1995.

Subordinate Law No. 2 of 1996 being the *Children's Services Regulations (Amendment)* made under the *Children's Services Act 1986* declares that New South Wales, Victoria and Queensland have enacted legislation dealing with the interstate transfer of young offenders.

Notification in the *Gazette* could have been more informative

These regulations are quite valid. It is sufficient compliance with the notification requirements of the *Subordinate Laws Act 1989* for an announcement to be made in the *Gazette* that regulations have been made and where copies may be bought.

The descriptive part of the announcement for the present regulations reads as follows:

Act under which Instrument made	Description of Instrument	Number and year of Instrument
<i>Children's Services Act 1986</i>	Children's Services Regulations (Amendment)	No. 2 of 1996

The Description of Instrument is not very informative. These regulations are quite important for, as the Explanatory Statement indicates, they are the forerunner to significant developments in the area. It states:

"It is proposed that amendments to the *Children's Services Act 1986* will be introduced once other states declare they have enacted legislation relating to the Interstate transfer of young offenders.....

This regulation is the first step in the transfer process and will be followed by the development of negotiated Ministerial agreements with each of the named states."

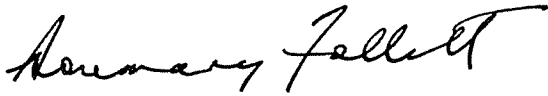
In its Report No. 8 of 1995 the Committee made comments about uninformative *Gazette* descriptions in relation to determinations. The Committee received a letter of 17 October 1995 from the Attorney-General, Mr Humphries, in which he made the following very helpful comments:

"[I]t would be helpful if a meaningful description of these Determinations were included in the *Gazette* notice under the heading 'Description of Determination'. As the Committee noted, such a description has been included in some notices of determinations under the Act in the past at the suggestion of the Committee.

I agree that it is important for the *Gazette* notice to indicate the subject matter of the instrument to allow members of the public to search through the notices and find the particular instrument relevant to their inquiry."

The Minister then indicated steps that had been taken to ensure that more informative descriptions of the content of determinations would appear in the *Gazette* notifications in the future. There were also helpful follow-up comments made in the Minister's letter to the Committee of 21 November 1995.

The Committee suggests that it would be helpful if similar procedures were applied to regulations, so that interested Members of the Legislative Assembly or members of the public could find particular instruments relevant to their needs.



Rosemary Follett, MLA
Chair

3rd April 1996