

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

REPORT NO. 12 OF 1993

6 July 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.

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

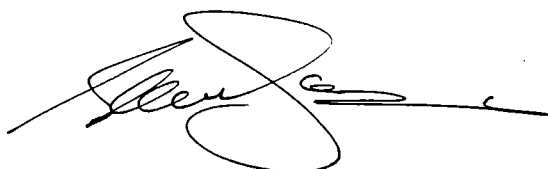
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Ms Roberta McRae, OAM, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Ms McRae

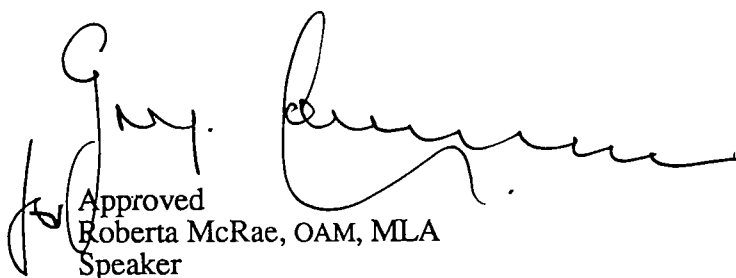
Please find enclosed a copy of Report No. 12 of 1993 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No. 12 of 1993.

Yours sincerely



Ellnor Grassby, MLA
Presiding Member

6 July 1993



Approved
Roberta McRae, OAM, MLA
Speaker

6 July 1993

BILLS

Bills Upon Which no Comment is Offered

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

Acts Revision (Position of Crown) (Amendment) Bill 1993

This Bill makes consequential changes to many Acts to reflect the fact that the Crown will ordinarily be bound by ACT legislation.

Discrimination (Amendment) Bill (No. 2) 1993

This Bill applies the provisions of the Principal Act to discrimination on the ground of membership or non-membership of a student association or organisation.

Dog Control (Amendment) Bill (No. 2) 1993

This Bill inserts a number of controls on the keeping of dangerous dogs.

Fire Brigade (Administration) (Amendment) Bill 1993

This Bill provides for the retirement of members of the ACT Fire Brigade who are excess to requirements and who consent to such action.

Food (Amendment) Bill 1993

This Bill prohibits the sale of food that is injurious to health and provides for codes of practice, licences and improvement and prohibition notices.

Interpretation (Amendment) Bill 1993

This Bill inserts a "severability" section in the Principal Act which has the effect that, although parts of legislation may be held to be beyond constitutional power, the remaining parts within constitutional power will still be effective.

Interpretation (Amendment) Bill (No. 2) 1993

This Bill ensures that the Crown in all respects except in the right of the Commonwealth or in respect of criminal liability will be bound by ACT legislation unless a provision in an Act expressly provides otherwise.

Landlord and Tenant (Amendment) Bill 1993

This Bill makes modifications to the way in which bond moneys are dealt with and removes sexist language from the Principal Act.

Litter (Amendment) Bill 1993

This Bill increases the range of offences that may be dealt with by litter notices and changes the administrative arrangements for such notices, introduces a new offence that may arise following the introduction of tip charges, increases penalties and removes sexist language from the Principal Act.

Motor Traffic (Amendment) Bill (No. 3) 1993

This Bill provides for a graduated system of licence grants, provides for a person to hold only one valid licence in Australia and establishes a demerit points system.

Motor Traffic (Alcohol and Drugs) (Amendment) Bill (No. 3) 1993

This Bill provides that a person may be given a Traffic Infringement Notice and incur demerit points in respect of a drink driving offence and requires that a person whose licence has been cancelled by a Court must hold a probationary licence for 12 months before applying for a full or provisional licence.

Pharmacy (Amendment) Bill 1993

This Bill makes amendments to enable mutual recognition of registration of pharmacists between States and Territories, to provide for common standards and conditions for registration and in discipline areas and to provide for standards of competence.

Prisoners (Interstate Transfer) Bill 1993

This Bill makes provision for the transfer of prisoners to and from the ACT.

Registrar-General Bill 1993

This Bill provides for the establishment of the office of Registrar-General of the Australian Capital Territory.

Registrar-General (Consequential Provisions) Bill 1993

This Bill makes amendments consequent upon the establishment of the office of Registrar-General of the Australian Capital Territory.

Supreme Court (Amendment) Bill 1993

This Bill enables an accused person in the Supreme Court to choose to be tried by a judge alone rather than by a judge and jury, and enables the Supreme Court, at the end of trial for an indictable offence and with the consent of the accused, to dispose of any summary offence that is related to the indictable offence.

Taxation (Administration) (Amendment) Bill 1993

This Bill amends the Principal Act to allow seizure and sale of any gaming machine that contravenes the law.

Tobacco Products (Health Warnings) (Amendment) Bill 1993

This Bill gives effect to a new system of stronger health warnings labelling for tobacco products.

Trustee Companies (Amendment) Bill 1993

This Bill provides that, where an authorised trustee company changes its name in accordance with the Corporation Law, the reference to the company in the Schedule to the Principal Act is deemed to be a reference to the company's new name and removes sexist language.

Voluntary and Natural Death Bill 1993

This Bill makes provision for the withholding or withdrawing of medical treatment or the administration or provision of drugs to induce the death of terminally ill people.

Bills Upon Which Comment is Offered

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

Gaming Machine (Amendment) Bill 1993

This Bill provides that a club's machines may be linked with those of other clubs for jackpot purposes, provides less restrictive rules for the purchase and financing of machines, introduces the concept of multi-stake machines and relaxes the rules limiting life members to not more than 5% of the total club membership.

Retrospectivity

Clause 18 inserts new section 30CA which relaxes the rule that life membership of a club must not exceed 5% of total club membership. The relaxation of the rule is made retrospective to 1 January 1992. The new clause provides that, where the life memberships of a club exceeded 5% on 1 January 1992, that excess will not breach the 5% maximum rule. However, such a club will breach the rule if it grants life membership to another ordinary member before natural attrition or increase in the number of ordinary club members has brought life membership below the 5% maximum.

Although this does, in effect, confer a benefit retrospectively, the presentation speech indicates that to enforce the current provisions strictly would be onerous for a number of clubs.

Animal Diseases Bill 1993

This Bill provides for the control of both endemic and exotic animal diseases.

Disclosure of Personal Interest in the Bill by Legal Adviser

In commenting on this Bill, the Committee's Legal Adviser has disclosed a personal interest. In 1986-87 the Legal Adviser to the Committee prepared a report on *The Adequacy of Exotic Animal Diseases Legislation in Australia* (the *Whalan Report*) for the then Department of Primary Industry of the Commonwealth of Australia following initiatives of the Australian Agriculture Council and the Standing Committee on Agriculture.

The first recommendation of the *Whalan Report* was "That uniform exotic animal diseases legislation be enacted throughout Australia". The *Report* covered more than is in the Animal Disease Bill, but the Bill is part of the Australia-wide realisation of that recommendation.

Self-Incrimination

Clause 53 deals with self-incrimination and provides as follows:

"53. (1) A person is not excused from making available documents or records, furnishing information or answering questions in compliance with this Act on the ground that such action would tend to incriminate the person.

(2) If, before producing any document, record or information or answering any question in compliance with this Act, a person states that the document, record, information or answer may tend to incriminate him or her, then any document, record, information or answer obtained under this Act, or any information or thing obtained directly or indirectly as a consequence of that document, record, information or answer, is not admissible in evidence against the person in criminal proceedings other than proceedings relating to -

- (a) the refusal or failure to produce any document, record or information or to answer any question; or
- (b) the furnishing of any document, record, information or answer that is false or misleading." (Emphasis added.)

The part of the provision emphasised appears to depart from more usual form of such self-incrimination provisions. There are many provisions in our legislation that follow the usual form, but recent illustrations are section 66 of the *Trade Measurement Act 1991* and section 69 of the *Weapons Act 1991*. Section 66 of the *Trade Measurement Act 1991* provides as follows:

"66. (1) A person is not excused from answering any question or producing any record, if required to do so under this Part, on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

(2) An answer given or document produced by a person in compliance with a requirement of this Part is not admissible against the person in any criminal proceedings other than proceedings for an offence under section 73 (dealing with false or misleading statements)."

The clause in the present Bill appears to impose a heavier burden on the person who may be incriminating himself or herself than is imposed by the usual form. The present Bill expressly requires the person to state at the time that the document, record is being supplied or the answer is being made, that he or she may be incriminating himself or herself. The more usual form does not specifically require the person to state that reason at the time.

Ignorance of the law may be no excuse, but the present provision does require every person, who is involved with animals to which this Act applies, to know about, and comply precisely with, this unusual form. Furthermore, given the stressful circumstances in which these incidents may occur, even in the unlikely situation that a person may indeed know about the provision, the person may fail to comply with it.

The present form also creates the possibility that there could be a conflict of evidence as to what actually occurred at the time.

In passing, the Committee notes that the present provision seems to contrast with the very careful protective provisions that are included in the Bill in clause 45 relating to the proving of consent to entry.

Sports (Drug Testing) Bill 1993

This Bill establishes a statutory regime for the testing of athletes for evidence of drug use for enhancement of sports performance.

Protection of Confidentiality

The Bill is complementary to the Commonwealth *Australian Sports Drug Agency Act 1991*. Both that Act and the Bill provide for strict provisions about testing, the notification of athletes and the making of entries on the Register of Notifiable Events and for offences for breach of confidentiality. Many of these provisions aim to protect the personal rights of athletes and for confidentiality in relation to testing.

Clause 13 provides that the Minister may require the Australian Sports Drug Agency to notify him or her whether a competitor's name is on the Register and, if so, to provide the contents of the entry.

There may be a reason for this breach of the confidentiality of information relating to an athlete, but none is given in either the presentation speech or the explanatory memorandum.

It is noted that a similar provision is contained in section 18 of the Commonwealth Act, but the explanatory memorandum for the present Bill points out that the Commonwealth Act:

"relates basically to athletes representing Australia or receiving assistance from the Commonwealth." (Emphasis added.)

This perhaps indicates that the Commonwealth Minister does have a legitimate "need to know" the confidential details about an athlete's appearance or non-appearance on the Register of Notifiable Events.

Do the same or similar considerations apply in relation to the present Bill to justify this apparent breach of an athlete's privacy?

Comment on Explanatory Memoranda

Some changes in the explanatory memoranda accompanying a number of these Bills should prove helpful to members.

For instance, the Pharmacy (Amendment) Bill makes many changes relating to pharmacists that are similar to those made for medical practitioners earlier in the year by the *Medical Practitioners Registration (Amendment) Bill (now Act) 1993*. A major change in the explanatory statement for the Medical Practitioners Registration (Amendment) Bill 1993 is that there is now a Table of Contents which indicates the page where the explanation for a particular clause can be found. This makes it much easier and quicker to find the explanation for a particular clause.

Similarly, there is a very helpful index for the Food (Amendment) Bill 1993.

The explanatory memorandum for the Acts Revision (Position of Crown) Bill 1993 does something in addition. That Bill makes consequential amendments to many Acts and it is impossible to see from the Bill itself what the amendments are doing. In this case there is a index for the explanatory memorandum, but, in addition, sections from several of the Acts that are being amended are quoted in the explanatory memorandum. This means that members wishing to gauge the nature and extent of the changes that are being made by the present Bill do not have to pull out volume after volume of the Acts to find out what is happening. Particularly in this kind of omnibus Bill this kind of explanatory memorandum will be of considerable help.

SUBORDINATE LEGISLATION

Subordinate Legislation Upon Which no Comment is Offered

Subordinate Law No. 23 of 1993 being the *Supreme Court Rules (Amendment)* made under section 36 of the *Supreme Court Act 1933* amends the Rules in minor ways to clarify provisions, increases distances for addresses from 5 to 10 kilometres from the Registry in a number of Rules and reduces the rate of interest on judgement debts from 15% to 12% from 1 July 1993.

Subordinate Law No. 24 of 1993 being the *Electoral Regulations* made under section 52 of the *Electoral Act 1992* fixes the remuneration and allowances of the three members of the Australian Capital Territory Electoral Commission.

Determination No. 53 of 1993 made under section 120A of the *Agents Act 1968* revokes all previous determinations of fees and fixes fees payable under the Act.

GOVERNMENT RESPONSES

The Committee has received responses to comments made concerning the following subordinate legislation:

- . Determinations Nos. 70 and 185 of 1992 made under section 120A of the *Agents Act 1968* (Reports Nos. 10 of 1992 and 1 of 1993).
- . Determination No. 41 of 1993 made under section 99 of the *Taxation (Administration) Act 1987* (Report No. 8 of 1993).

Copies of the responses are attached.

The Committee thanks the Chief Minister and Attorney-General for their positive responses.



Ellnor Grassby, MLA
Presiding Member

6 July 1993