

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

REPORT NO. 3 OF 1993

3 March 1993

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. 3 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. 3 of 1993.

Yours sincerely



Ellnor Grassby, MLA
Presiding Member

3 March 1993



Approved
Roberta McRae, OAM, MLA
Speaker

3 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.

BILLS

Bills upon which no Comment is Offered

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

Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1993

This Bill provides that a driver who has undergone a breath or blood analysis in accordance with the Act that is equal to, or above, the prescribed limit and who relies on a later blood analysis or other evidence that is consistent with the driver's blood alcohol concentration being equal to, or above, the prescribed limit, may still be convicted.

Occupational Health and Safety (Repeal) Bill 1993

This Bill would have repealed the *Occupational Health and Safety (Amendment) Act 1992*, which provides that the provisions requiring the establishment of designated work groups and the appointment of health and safety representatives apply to employers of 10 or more employees instead of more than 20 employees.

Bills upon which Comment is Offered

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

Animal Welfare Act [sic] (Amendment) Bill 1993

This Bill limits the animals covered by the definition of "prohibited circus animal" to those animals prescribed by regulations made under section 52 of the principal Act and aims to provide that only cruelty or the infliction of pain in excess of that which varies "significantly ... from established and accepted practice in the industry or activity involved" would amount to an offence under sections 7 and 8 of the principal Act.

Some Possible Problems

The Committee makes three comments.

First, the heading to the Bill and the short title in clause 1 are given as *Animal Welfare Act (Amendment) Act 1993*. This is an unusual form.

Secondly, clause 2 provides that "Sections 4, 5 and 6 of this Act commence on the day on which this Act is notified in the *Gazette*" and such a clause is not necessary in the circumstances.

This is so because, as there are no other commencement provisions in the Bill, all provisions of the Act would commence on the day of notification in the *Gazette* (*Australian Capital Territory (Self-Government) Act 1988* section 25(2) (Commonwealth)).

Thirdly, some adjustments to clauses 5 and 6 may perhaps be appropriate.

Clauses 5 and 6 amend section 7 and subsection 8(1) of the principal Act, which respectively create the offences of cruelty to animals and of deliberately causing an animal unnecessary pain. While the basic intentions of the amendments can be gauged from the wording as interpreted in the above summary of the Bill, perhaps some further drafting may be needed for the amendments to effect their intention with certainty.

Medical Practitioners Registration (Amendment) Bill 1993

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

Are Differences Intended?

The new section 4A (starting at line 32 on page 2) provides as follows:

"4A. For the purposes of this Act, a person shall be taken to be competent to practise medicine only if the person -

- (a) has sufficient physical capacity, mental capacity and skill to practise medicine; and
- (b) has sufficient communication skills for the practice of medicine, including an adequate command of the English language."

However, for an applicant to obtain registration the qualifications required are higher. New section 22E (starting at line 24 on page 7) provides as follows:

"22E(1) Subject to subsection (2), the Board shall not register a person as a medical practitioner unless it is satisfied that the person -

- (a) has the physical capacity, mental capacity and skill required to competently practise medicine;
- (b) has sufficient communication skills for the practice of medicine including an adequate command of the English language; and
- (c) is of good character". (Emphasis added).

Even if the split infinitive in paragraph 22E(1)(a) is overlooked, it does seem as if there may be some differences between the qualifications required for becoming registered compared with those for actually practising medicine. The "becoming registered" form also appears to be favoured in the provision relating to re-registration under new section 29C(4) (starting at line 3 on page 13).

Were any differences intended?

Are there Rights to Review?

There are two questions here.

The first concerns the possibility that there may not be a right to review of a decision to refuse re-registration under section 29C (starting at line 27 on page 12).

New section 39C (starting at line 14 on page 18) provides for rights of reviews by the Administrative Appeals Tribunal of a number of decisions made by the Medical Board.

New section 22H (starting at line 16 on page 8) provides that the Board must determine an application by "registering the applicant unconditionally or subject to conditions" or by "refusing the application".

Where an application for registration is refused, there is a right to review provided by new section 39C(f) (at line 26 on page 18). Section 39C(h) (at line 29 on page 18) also provides a right to a review of a decision to refuse to re-register under subsections 27(4) or 30B(2).

However, there is also a right to re-registration given by section 29C (starting at line 27 on page 12) and re-registration can be refused under subsections 29C(4) and (5).

The right to review under section 39C(f) applies only to refusals under section 22H, which in turn is restricted to applications made under section 22G. Section 29C(2) requires a special form of application rather than the general section 22G one. Thus review under section 39C(f) does not apply to section 29C decisions.

Again, as noted above, the special re-registration right to review in section 39C(h) refers only to refusals to re-register under subsections 27(4) or 30B(2). Section 27(4) deals with deregistration and re-registration on the basis of disciplinary action under foreign law and is thus irrelevant here. Section 30B(2) is also irrelevant, as section 30B(1) expressly excludes cancellations under section 29B and its complementary re-registration section, section 29C, from the re-registration provisions of section 30B. (See amendment made to section 30B by clause 17(a) of the present Bill, which starts at line 20 on page 17).

Perhaps a check should be made to see if there is a right to a review of a refusal to re-register under section 29C.

Secondly, there may possibly be a gap in the review process in relation to conditions imposed on interns.

In the case of registration subject to conditions, specific review provisions are provided in section 39C for the imposition of conditions or for refusal to review, alter or remove conditions. These specific provisions appear to cover most circumstances. But there may be a gap.

New section 20 (starting at line 37 on page 3) provides for conditional registration of interns and section 20(2) indicates in very general terms the kinds of conditions that may be imposed.

The Committee has been unable to find in section 39C a right to review of these conditions and perhaps a check should be made.

Removal of Sexist Language, Some Minor Errors and How do You Spell Administratrix?

The Committee is pleased to note that the opportunity has been taken to remove sexist language from the principal Act. This has been effected by clause 24 (last line on page 20) and the Schedule (starts at the bottom of page 25).

Four small hiccups appear to have occurred in the process of removing the sexist language. In the amendments to section 39BA in the fourth last line and the last line of the Bill (on page 28), the word "administratrix" is spelt as "adminstratrix". The Committee has become aware of two different spellings of the word in the Macquarie Dictionary and the Oxford Dictionary. In the Committee's opinion the correct spelling is administratrix, and therefore the Bill will need correcting. The same spelling appears in new section 39C(s) (at line 17 on page 19) and the explanation of new section 39C(s) on page 19 of the explanatory memorandum.

Incidentally, the top of page 26 of the explanatory memorandum may be the place to look at to find the explanation for all that clause 24 does. Including other things than the removal of sexist language. Although there is no reference to clause 24, the passage that appears there seems to be the explanation of the effect of the Schedule.

SUBORDINATE LEGISLATION

Subordinate Legislation upon which no Comment is Offered

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

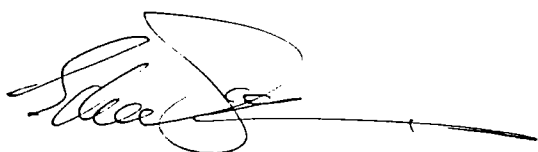
Determination No. 8 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of a number of streets in the Division of Ngunnawal.

Determination No. 9 of 1993 made under section 9(2) of the *Heritage Objects Act 1991* determines the criteria for the assessment of the heritage significance of an object.

Determination No. 10 of 1993 made under section 161(5) of the *Land (Planning and Environment) Act 1991* determines the criteria for the direct grant of a Crown lease for the purposes of aged persons accommodation.

Determination No. 11 of 1993 made under section 18 of the *Noise Control Act 1988* deletes section 12 General Motorsport Noise Measurement including Motorcross and Mini Bides (Drive-By Test) from the Noise Control Manual.

Subordinate Law No. 4 of 1993 being the *Supreme Court Rules (Amendment)* repeals and substitutes the Order dealing with amendments, requires a respondent to an appeal to enter an appearance, varies office hours, repeals and substitutes a matter dealing with objection of irregularity and repeals redundant provisions.



Ellnor Grassby, MLA
Presiding Member

3 March 1993