

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

REPORT NO. 7 OF 1992

23 June 1992

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 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;
- (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.

BILLS

Bill upon which no comment is offered.

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

Building (Amendment) Bill 1992

This Bill, together with appropriate complementary regulations, will exempt minor building works from the full approval, building permit and inspection process; and the Bill removes sexist language from the principal Act.

Buldings (Design and Siting) (Amendment) Bill 1992

This Bill confers power on the Minister to determine fees for the administration of applications relating to the external design and siting of buildings.

Crimes (Amendment) Bill (No. 2) 1992

This Bill extends the circumstances where police may seize, search for and retain (for a specified time) weapons.

Domestic Violence (Amendment) Bill 1992

This Bill provides for the approval of crisis support organisations and allows information to be disclosed by the Australian Federal Policy to an approved crisis support centre.

Drugs of Dependence (Amendment) Bill 1992

This Bill adds pharmacists' premises to treatment centres thus adding such premises to those where methadone may be administered.

Financial Institutions (Consequential Amendments) Bill 1992

This Bill amends a number of Acts consequent upon the introduction of the financial institutions scheme.

Financial Institutions (Supervisory Authority) Bill 1992

This Bill establishes the office of the Registrar of Financial Institutions and provides for its staffing, functions, constitution and required standards of conduct.

Holidays (Amendment) Bill 1992

This Bill provides that where Christmas Day, New Year's Day or Boxing Day falls on a Saturday then there is to be a holiday on either the following Monday or Tuesday.

Housing Assistance (Amendment) Bill 1992

This Bill confers a right to purchase a dwelling at current market value on tenants who have resided in a Commission dwelling for a minimum period of 5 years and who have paid a full non-rebated rent for that period.

- (ii) declare that the payment of a specified amount within a specified time shall be taken to discharge all liability in respect of the account; or
- (iii) declare that all liability of the account shall be taken to be discharged;
..." (Emphasis added.)

It appears that subparagraphs 22(a)(ii) and (iii) only confer jurisdiction to make a declaration to discharge all liability of the account, either by the payment within a specified time of a specified amount (which payment discharges the whole account) or by no payment having to be made at all to discharge the whole account.

There does not appear to be jurisdiction to declare that part only of the account is taken to be discharged. However, the emphasised part of clause 26 suggests that subparagraphs 22(a)(ii) or (iii) confer jurisdiction to discharge the liability in part or in whole.

If the intention was to confer jurisdiction to discharge only a part of the relevant account as well as jurisdiction to discharge all liability, an amendment needs to be made to subparagraph 22(a)(ii) or (iii). Of course, if the intention was, in fact, only to confer jurisdiction to discharge the whole liability, there needs to be an amendment to clause 26.

The Committee also noted that there was no explanation concerning clause 26 of the Bill in the explanatory memorandum. The Committee considers that it would be helpful to Members, the Courts and the public for clauses to be explained in the explanatory memorandum, especially where there may be, in the present case, some confusion over its application.

Financial Institutions (Application of Laws) Bill 1992

This Bill establishes a new scheme for regulating building societies and credit unions in the ACT as part of a national scheme.

Clauses 24, 25, 27, 29 and 30 use the abbreviation "SSA" without any direct explanation in the Bill itself. From the contexts and the explanations in the Explanatory Memorandum and from other provisions in the Bill and some Queensland legislation, it is suggested that it probably refers to the office of the Registrar of Financial Institutions referred to in clause 14.

Clause 14 makes it clear that that office is to be the "State supervisory authority" for the Territory.

Furthermore, section 21 states that in Part IX of the Bill

"unless the contrary appears, a word or expression has the same meaning as in the Financial Institutions (ACT) Code ...".

By following through clauses 3, 5 and 8 of the Bill one learns that the ACT Code is virtually the same as that set out at the end of the Queensland statute, the Financial Institutions (Queensland) Act 1992. Paragraph 3 of that Code defines SSA as the State Supervisory Authority.

However, for anyone reading the present Bill there are several steps to be taken not only in interpreting the present Bill but also in searching the Queensland legislation.

The Committee suggests that it might be appropriate to make the meaning clear in the Bill.

There is a Commonwealth Therapeutic Goods Amendment Act 1991, but it is suggested that it is probably the principal Act, the Commonwealth Therapeutic Goods Act 1989, that is meant.

This is probably so, as the present Bill defines "food", among other things, in terms of the definition of "food" in the Commonwealth National Food Authority Act 1991. The Commonwealth National Food Authority Act 1991 sets out what is included in "food" and then provides that "food"

"does not include a therapeutic good within the meaning of the Therapeutic Goods Act 1989".

It would be helpful to Members if it could be confirmed that the Commonwealth Therapeutic Goods Act 1989 was intended.

Gas Bill 1992

This Bill regulates the reticulation of natural gas in the Territory.

"Without Reasonable Excuse"

In most clauses in the Bill where one would expect to find the phrase "without reasonable excuse", it has been inserted. However, there is one instance where it is missing that bears reconsideration.

Clause 63(1) authorises an inspector to uncover any part of the gas reticulation system that is laid in the ground in order to conduct an inspection. Where the system does not comply with the Act or the Manual, the inspector may serve a notice on the authorised distributor to reinstate the ground before a day specified in the notice under clause 59(1)(b). Clause 59(2) provides that an authorised distributor who fails to comply with the notice is guilty of an offence for which the maximum fine is \$5,000.

This strict liability provision could operate unfairly. If, for instance, there was a downpour for several days and the sloping ground that needs to be reinstated is dangerous for any machinery to work on, and the notice expires before it is safe to do the work, the authorised distributor will have committed an offence. It would seem appropriate to insert the "reasonable excuse" defence in clause 59(2).

DELEGATED LEGISLATION

Delegated Legislation upon which no comment is offered.

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

Determination No. 59 of 1992 made under section 4 of the Public Place Names Act 1989 determines the name and gives details of the origin and significance of street names for the Division of Banks.

Determination No. 60 of 1992 made under section 4 of the Public Place Names Act 1989 determines the name and gives details of the origin and significance of street names for the Division of Gordon and varies the location of other streets in the Division of Gordon.

causes no problem as the citation is correctly given as paragraph 22(6)(e) in the Determination itself.

In other respects the explanatory statements for this Determination and those for Determinations 64, 65 and 66 are very helpful as they set out the existing and new fees. In addition, three of the four (the present Determination is the odd one out) not only indicate that the fees have not changed for several years, but also give an indication how the local fees compare with inter-state fees.

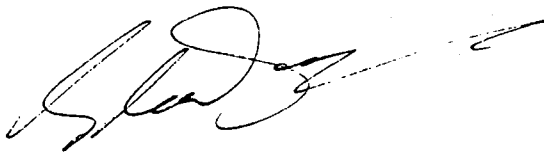
GOVERNMENT RESPONSE

The Committee has received a response to comments made in Report No. 22 of 1991 and Report No. 1 of 1992 concerning the following subordinate legislation:

Declaration of an approved manufacturer of darts under the Weapons Regulations.

Determination Nos. 16, 18 and 19 of 22 February 1992 made under the Land (Planning and Environment) Act 1991

A copy of the response is attached. The Committee thanks the Attorney-General for his positive response.



Ellnor Grassby, MLA
Presiding Member

23 June 1992



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA
ATTORNEY GENERAL

1 Constitution Ave Canberra ACT 2601

Phone 275 8853

Mrs Ellnor Grassby MLA
Presiding Member
Standing Committee on Scrutiny of Bills
and Subordinate Legislation
ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2601


Dear Mrs Grassby

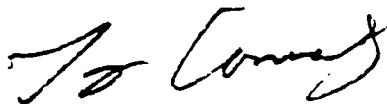
In its Report No. 1 of 1992 the Standing Committee on Scrutiny of Bills and Subordinate Legislation raised a concern about Determinations No. 16, 18 and 19 of 22 February 1992 made under the Land (Planning and Environment) Act 1991 (Land Act). The Committee was concerned that the reference to section 164(2) in Determinations No. 16, 18 and 19 was not correct.

I am advised that the reference to subsection 164(2) is indeed incorrect. The Land Act provides that the criteria are specified under subsection 164(3), as was pointed out in the Report. This error will be corrected by revoking the original Determinations and making further disallowable instruments. The revised disallowable instruments will be finalised shortly.

I thank the Committee for its assistance in bringing this matter to attention.

Also the Committee, in its Report No. 22 of 1991, noted a failure to provide an Explanatory Statement for a declaration of an approved manufacturer of darts under the Weapons Regulations. I apologise for this oversight and enclose an Explanatory Statement for the Committee's assistance.

Yours sincerely



Terry Connolly
- 5 JUN 1992

AUSTRALIAN CAPITAL TERRITORY

WEAPONS REGULATIONS

Declaration of Approved Manufacturer of Darts

No. of 1991

Explanatory Statement

A dart capable of projection from a blow gun is a prohibited weapon under Schedule 3 of the Weapons Act 1991 ("the Act") and under section 16 of the Act it is an offence for a person to possess, acquire, sell or otherwise dispose of a prohibited weapon.

Regulation 7 of the Weapons Regulations, made pursuant to subsection 20(2) of the Act, provides for the Minister to, by notice in the *Gazette*, declare a manufacturer to be an approved manufacturer of darts.

Regulation 7 also provides that an approved manufacturer of darts is exempt from the operation of section 16 of the Act for the purpose of manufacturing and supplying darts for use by persons with disabilities who are unable to participate in a sport or recreation involving the use of hand thrown darts.

The Disability Aids Collective Incorporated, which manufactures blow darts for use by persons with disabilities is declared, by this instrument, to be an approved manufacturer of darts.

Authorised by the Attorney General.