

STANDING COMMITTEE ON

SCRUTINY OF BILLS AND

SUBORDINATE LEGISLATION

REPORT NO. 6 of 1991

15 April 1991

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Ms C Maher MLA (Presiding Member)
Mr T Connolly MLA
Mr B Stefaniak MLA

Acting Secretary: Ms B. Young
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.

BILLS

(a) No comment offered.

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

Inebriates (Amendment) Bill 1991

This Bill makes a substantial number of amendments to the principal Act to make the provisions of the Act gender neutral.

Intoxicated Persons (Care and Detention) Bill 1991

This Bill would provide for places to be prescribed where intoxicated persons can be taken to "sober up".

(b) Possible duplication of sections.

The Committee has examined the following Bill and offers the following comment:

Interpretation (Amendment) Bill 1991

This Bill provides for a penalty points system for the calculation of fines for offences.

The Bill provides for the insertion after section 33 of a new section 33A to effect the change. Section 19 of Ordinance (now Act) No. 24 of 1985 inserted a set of provision after section 33 running from sections 33A–33G. Accordingly, the Committee suggests that the proposed section should perhaps be renumbered 33AA.

(c) Previous points picked up.

The Committee has examined the following Bill and offers the following comment:

Subordinate Laws (Amendment) Bill 1991

This Bill is a revised version of the Bill reported on in the Committee's Report No. 3 of 1991. The Bill makes a number of amendments to the principal Act relating to the tabling and disallowance of subordinate laws.

The Committee makes three comments.

First, the two minor defects noted in the Committee's Report No. 3 have been corrected.

Secondly, the additions that have been made remove many, but not all, of the apparent defects in the Act that were picked up by the Senate Standing Committee on Regulations and Ordinances when the principal Act was made. Of course, there was not time to have the problems that were identified by the Senate Committee dealt with before self-government occurred. The reason not all matters are dealt with in the present Bill flows from the fact that the present Bill deals only with amendments to section 6 and the other problems occur in other sections of the Act.

Thirdly, the Committee warmly welcomes the present amendments, but expresses the hope that the other amendments (particularly those dealing with the time of commencement of subordinate laws and the possibility of repeated repeal and re-enactment of subordinate laws) might be considered at some time. Both of the two possible amendments mentioned did apply to ACT laws for a short time before self-government and, indeed, do apply to those ordinances still made under the *Seat of Government (Administration) Act 1910*.

SUBORDINATE LEGISLATION

(d) No numbering or explanatory statement.

The Committee offers the following comments on the following piece of subordinate legislation:

Exemption under sections 10(3) and 12(4) of the *Tobacco Act 1927*

This instrument exempts contracts and agreements relating to a specified event from the prohibitions on advertising and sponsorship.

The exemption was made for an event that occurred on 8 March 1991, so it is already over and perhaps the contracts and agreements are already fulfilled. However, there is no numbering of the exemption, so that it can be readily identified. In addition, there is no Explanatory Statement for the exemption. Even although the event was over before the exemption was tabled in the Assembly, an Explanatory Statement would inform Members of the Assembly of the need for the exemption.

EXPLANATORY STATEMENT RECEIVED

In Report No. 2 of 1991 the Committee reported that an Explanatory Statement was missing for, among other instruments, Determination No. 79 of 1990 made under section 105A of the *Liquor Act 1975* which revoked the then existing determinations of fees and determined new fees.

An Explanatory Statement has now been received and it is suggested that the statement is very helpful in informing Members of the Assembly. It indicates the classifications of licences, those fees that have remained the same, the level of fee for the new category of special licence and advises that certain other fees applicable to special licences will have to be determined "as required in accordance with the nature of the special licence".



Carmel Maher, MLA
Presiding Member

15 April 1991