

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

REPORT NO 17 of 1990

23 October 1990

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Ms C Maher MLA (Presiding Member)

Mr B Stefaniak MLA

Mr T Connolly MLA

Secretary: Mr T Duncan

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.

The Committee has examined the following Bills.

Motor Traffic (Amendment) Bill (No. 7) 1990

This Bill would enable the Registrar of Motor Vehicles to auction taxi licences and would allow licence holders to lease their taxis or private hire cars.

The Committee previously commented in Report No. 15 that a number of Bills all amended the same principal Act. This Bill also amends the same principal Act, and the Committee looks forward to a response from the Attorney-General on this matter.

Consumer Affairs (Amendment) Bill 1990

This Bill would abolish the Consumer Affairs Council, which will be replaced by voluntary advisory committees on consumer affairs, and transfer the Council's executive functions to the Minister advised by the Consumer Affairs Bureau.

The Bill provides in proposed new sections 15FB and 15FC that the Minister may make, amend or revoke a consumer product safety order or may make or revoke an interim safety order. In limited circumstances the Director may also make a consumer product safety order. These changes, as well as others that would be made by the Bill, properly place responsibility on the Minister in "post self-government circumstances" as the presentation Speech states. The Committee wonders whether the possibility was considered of carrying this responsibility further by providing for tabling and disallowance of such orders?

It is noted that the Act also provides in s. 18 as amended that consumer product safety standards may be prescribed by regulation and these regulations would be required to be tabled and would be subject to disallowance.

However, it is also noted that s. 15FK provides that making, refusing to make, amending or revoking a consumer product safety order and making, refusing to make, extending or revoking an interim safety order are subject to independent review by the Administrative Appeals Tribunal and this does afford some protection. It may have been thought that this was sufficient protection, especially given these actions will be affecting specific products or classes of products, whereas consumer product safety standards, which are subject to tabling and disallowance, are more general in nature.

As ultimate responsibility for subordinate legislation rests with the Assembly, the Committee starts from the premise that subordinate legislation should be tabled and disallowable. Thus it would be helpful for Members of the Assembly if the explanatory memorandum explained the rationale where subordinate legislation is not made subject to tabling and disallowance. In the present instance the Committee notes that the consumer product safety standards are subject to tabling and disallowance, but that the consumer product safety order and the interim safety order are not.

The Committee would be interested to know whether the protection afforded by independent review by the Administrative Appeals Tribunal was considered to be preferable to the tabling and disallowance of the consumer product safety order and the interim safety orders.

A handwritten signature in cursive script, appearing to read 'Bill Stefaniak', with a long horizontal flourish extending to the right.

Bill Stefaniak MLA
Acting Presiding Member

23 October 1990