

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

REPORT NO 7 of 1990

10 May 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-reviewable 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 Bills. 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 that comply with the high ideals set out in the Terms of Reference.

The Committee has examined the following Bills:

Police Offences (Amendment) 1990
Supply 1990-91
Stamp Duties and Taxes (Amendment) 1990

In relation to the Police Offences (Amendment) Bill 1990 and the Supply Bill 1990-91, the Committee offers no comment.

STAMP DUTIES AND TAXES (AMENDMENT) BILL 1990

This Bill makes a number of amendments to the Principal Act relating to the imposition of stamp duties, including levying stamp duties on business agreements, varying the life insurance premium provisions, shifting the liability for tax on transfer of motor vehicles to dealers, abolishing the system of using adhesive stamps as a means of paying duty or tax and introducing a number of provisions aimed at preventing duty or tax avoidance.

(a) Review of discretionary decisions

Clause 56F of the Bill gives the Commissioner a discretion to refund tax on vehicles where an exemption has not been claimed.

Clause 64D of the Bill gives the Commissioner a discretion to disregard a liability where that liability is connected with a tax avoidance scheme.

In both instances the provisions are carefully drafted to ensure that the Commissioner must have a belief on the objective test of "reasonable grounds".

The Principal Act provides, in s. 65 as amended, for review by the Administrative Appeals Tribunal of a number of somewhat similar discretionary decisions, the provisions for which, incidentally, are not so objectively drawn.

The discretionary decisions in clauses 56F and, especially, 64D are important ones and could affect individuals substantially. The Committee would be pleased to see whether a provision for review of the decisions could be added to s.65.

(b) Short transition period

The bill abolishes the system of using adhesive stamps as a means of paying duty or tax. Clause 30 of the Bill provides for the making of refunds for unused adhesive stamps. An application for a refund must, however, be made before 1 December 1990.

The Committee is unsure as to how widely used the adhesive stamps are. If only a few individuals, for instance, have stocks then returning them all before 1 December is less of a problem.

However, if the stamps are distributed amongst many individuals and organisations, and a large volume of unused stamps are on issue, the cut-off period would, in the Committee's view, appear to be somewhat unreasonable

MOTOR VEHICLES (DIMENSIONS AND MASS) BILL 1990 - GOVERNMENT RESPONSE

The Committee reported on the Motor Vehicles (Dimensions and Mass) Bill 1990 in Report No 2 which was tabled in the Assembly on 20 March 1990. The Committee has since received a response dated 2 May 1990 from the Attorney-General which is attached.

The Committee thanks the Attorney-General for his positive response to the Committee's report, and considers that all the major points contained in the report have been adequately addressed.

A handwritten signature in dark ink, appearing to read 'Carmel Maher', with a long, sweeping horizontal line extending to the right.

Carmel Maher
Presiding Member

10 May 1990

Attachment



Australian Capital Territory
DEPUTY CHIEF MINISTER

02 MAY 1990

1 Constitution Ave
Canberra ACT 2601

Ms C. Maher ~~MLA~~
Presiding Member
Standing Committee on Scrutiny of Bills
and Subordinate Legislation
ACT Legislative Assembly
1 Constitution Avenue
Canberra 2600

Dear Ms Maher

Thank you for your comments outlined in the Committee's Report No. 2 on the Motor Vehicles (Dimensions and Mass) Bill 1990.

2. The particular matters the Committee raises in the Report and my comments on them follow.

(a) Crown not liable to prosecution

3. The Committee has raised this issue without making a recommendation either to retain or remove it from future Bills. In my response to Report No.1 to the Committee regarding the Clinical Waste Bill 1990, I indicated that the provision is a standard one, the effect of which is to prevent the Crown prosecuting itself which, if it occurred, would be an absurdity and would create insuperable procedural difficulties. While a statute may impose criminal liability on the Crown, a prosecution would present such procedural difficulties that to do so would be purposeless.

(b) Power to delegate

4. The Committee commented favourably on the provisions which empower the Registrar of Motor Vehicles to delegate his or her powers under the Bill and noted that the power of delegation is a proper one. I understand that the Committee does not require a response in relation to this point.

(c) Penalties for Offences

5. The Committee commented on the penalty provisions contained in clauses 32-40 and 46 and sought confirmation of its understanding of the operation of these clauses, in particular where there are different penalties for the same offences.

6. The Committee's understanding of these provisions is perfectly correct. The administrative or notice of offence penalties are intentionally less than the corresponding penalties which a Court may impose on conviction. As a matter of policy, such penalties are approximately 20% of the maximum penalty that a Court may impose, although this may vary according to the nature and seriousness of the offence.

7. If the alleged offender pays the prescribed penalty within the specified time, his or her liability will be treated as discharged and there will be no conviction for the offence. It is, however, always open to the alleged offender to dispute the matter in Court, however, he or she runs the risk of a conviction and a higher penalty being imposed. The Court imposed penalty is quite distinct from the prescribed penalty attaching to the notice of offence.

(d) Right to review

8. The Committee was also concerned for there to be standard forms that automatically include information about review rights. These concerns were also raised in Report No.1 relating to the Clinical Waste Bill 1990. I indicated to the Committee that the Law Office is developing standard notices similar to those already in existence in other Departments.

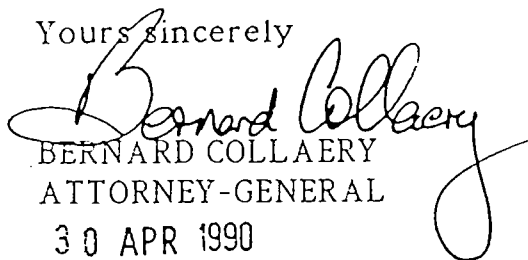
(e) Evidentiary Provisions

9. I understand that the Committee's observations on the evidentiary provisions do not require a response except to confirm that these provisions conform with current criminal law policy. I would point out however that the illustration of the operation of clause 40 is not entirely accurate. Section 37 does not impose vicarious liability on an owner for a breach of clause 34 - that offence is confined to drivers. Consequently, an owner does not have

to rely on the defences in clause 40 since he or she has not committed an offence in the illustration cited.

10. I trust that the above comments are of assistance and reassure the Committee of the intended operation of the Bill.

Yours sincerely


BERNARD COLLAERY
ATTORNEY-GENERAL
30 APR 1990