

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

REPORT NO. 2 OF 1996

20 March 1996

TERMS OF REFERENCE

- (1) A Standing Committee for scrutiny of bills and subordinate legislation be appointed.
- (2) The Committee will consider whether:
 - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
 - (i) meet the objectives of the Act under which it is made;
 - (ii) unduly trespass on rights previously established by law;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
 - (b) its explanatory statement meets the technical or stylistic standards expected by the Committee.
 - (c) clauses of bills introduced in the Assembly:
 - (i) do not unduly trespass on personal rights and liberties;
 - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
 - (d) its explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of three members.
- (4) 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.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) 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

Mr Paul Osborne, MLA (Chair)
Mr Andrew Whitecross, MLA (Deputy Chair)
Mr Harold Hird, MLA

Legal Advisor: Emeritus Professor Douglas Whalan, AM
Secretary: Mr Tom Duncan
Deputy Secretary: Ms Beth Irvin

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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CANBERRA ACT 2601
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STANDING COMMITTEE ON SCRUTINY OF
BILLS AND SUBORDINATE LEGISLATION

Telephone: (06) 2050171
Facsimile: (06) 2053109

Mr Greg Cornwell, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Cornwell,

Please find enclosed a copy of Report No. 2 of 1996 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. I seek your approval to print and circulate Report No. 2 of 1996.

Yours sincerely,



Paul Osborne, MLA
Chair

20 March 1996



Approved
Greg Cornwell, MLA

20 March 1996

BILLS

Bill - No Comment

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

Unit Titles (Amendment) Bill 1996

This Bill provides that a proposal to subdivide a lease into units under the Act must contain a minimum of 4 units instead of 2 units, thus returning to the position that existed until the coming into operation of amendments made by the *Unit Titles (Amendment) Act 1993*.

Bill - Comment

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

Liquor (Amendment) Bill 1996

This Bill provides that the Executive may prescribe liquor trading hours.

A Minor Comment on the Explanatory Memorandum

The Committee makes a minor technical comment on the explanatory memorandum to the Bill.

The explanatory memorandum for the Bill states that:

"[t]he purpose of the Bill is to make provision for the Attorney-General to regulate the liquor trading hours by way of a disallowable instrument."

While the reality may be that the Attorney-General, as the responsible Minister in the area, may recommend action, the legal means chosen by the present Bill to put any recommendation into effect is by "prescribing" action. That is, the disallowable instrument will be a set of regulations. Formally, regulations are not made by a Minister, but are made by the Executive and must be signed by at least two Ministers who are members of the Executive.

Mr Osborne's presentation speech in *Hansard* sums up the matter succinctly when it states as follows:

"While this bill itself does not set the trading hours, it allows the Government [that is, the Executive] to set them by regulation."

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Determination No. 15 of 1996 made under paragraph 55 (1) (a) of the *Bookmakers Act 1955* determines the fee payable for a sports betting licence under section 39K of the Act.

A handwritten signature in black ink, appearing to read 'Paul Osborne', with a large, stylized initial 'P' and 'O'.

Paul Osborne, MLA
Chair

20 March 1996

