

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

**REPORT NO. 14 OF 1994**

**20 September 1994**



## 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;
  - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; or
  - (e) 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;
  - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny; or
  - (f) the explanatory memorandum accompanying it meets the technical or stylistic standards to which such a Bill or explanatory memorandum 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.

## **MEMBERS OF THE COMMITTEE**

**Mrs E. Grassby, MLA (Chairperson)**  
**Mr G. Humphries, MLA (Deputy Chairperson)**  
**Ms H. Szuty, MLA**

**Legal Advisor: Emeritus Professor D. Whalan, AM**  
**Secretary: Mr T. Duncan**  
**A/g Deputy Secretary: Mrs S. Platt**

## **ROLE OF THE COMMITTEE**

The Committee examines all Bills and subordinate 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 subordinate legislation that comply with the high ideals set out in the terms of reference.

## BILLS

### Bill - No Comment

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

#### **Drugs of Dependence (Amendment) Bill (No. 2) 1994**

This Bill provides for the office of Director, Alcohol and Drug Service, Department of Health.

### Bill - Comment

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

#### **Bail (Amendment) Bill 1994**

This Bill makes amendments to the principal Act relating to the circumstances in which bail may be granted, clarifies a number of provisions and provides that the Minister may approve certain forms.

#### Perhaps it would be appropriate for these Forms to be Disallowable

Clause 21 inserts new section 57A, which would authorise the Minister to approve forms under specified sections of the Act. The provisions are significant in the areas of personal rights as they cover forms dealing with acknowledgments of conditions on which bail is granted, undertakings to appear on release on bail, notices requiring attendance before the court, written notices of conditions of bail, the furnishing of information to a person in custody with information about his or her rights to bail and to review of decisions about bail and notifications to the court that bail conditions have not been satisfied.

The Explanatory Statement very openly indicates the present rather unsatisfactory position.

The Explanatory Statement says that the amendment is effected by clause 20, but, in fact, it is effected by clause 21. The explanation appears on page 4 of the Explanatory Statement and states:

"To date only one form has [been] prescribed in the Regulations, namely, the notice from the Superintendent of the Remand Centre to the Court that a bail condition has not been satisfied. A number of other forms were prepared by the Department, but they have no official status and are not binding on the users.

Prescription of forms has become unfashionable because of the difficulty of adapting the forms to changing circumstances. It is important, however, for forms such as the undertaking to be common to all users, be they police, the Magistrates Court or the Supreme Court.

The amendment in clause 20 [actually clause 21] therefore proposes to allow for forms to be approved by the Minister. This approach strikes a reasonable balance between formality and administrative convenience."

At the present time such forms are required to be prescribed by regulations, and, of course, they are subject to tabling and disallowance and thus subject to ultimate control by the Assembly.

The present situation in relation to important rights is unsatisfactory in that only one properly prescribed form is in existence and so a method of fixing this situation should be devised. The way suggested in the clause is for the Minister to be able to approve the forms, so that quick changes can be effected to deal with changing circumstances.

However, as the rights involved are important ones, it may be appropriate for the Ministerially approved forms to be made disallowable instruments. This would ensure that not only would the Assembly be kept fully informed, but the Assembly would retain ultimate control in this area of personal rights. To adopt the words of the Explanatory Statement, it is suggested that:

"[t]his approach strikes a reasonable balance between formality and administrative convenience."

In addition, if the present forms were made subject to tabling and disallowance as suggested, this would also make their treatment consistent with that in clause 22 of the Magistrates Court (Enforcement of Judgments) Bill 1994 that is presently before the Assembly.

Among the Acts to be amended by that Bill is the Magistrates Court (Civil Jurisdiction) Act 1982. Clause 22 of the amending Bill amends s. 284 of the Act by inserting new subclauses (3)-(8). The forms will change from being enacted as part of the Schedule of the Act to being approved by the Minister by notice in the Gazette (subclauses 284(3) and (4) and that notice is to be a disallowable instrument (subclause 284(7)). The Committee commented favourably on this provision saying that thus "the Forms remain subject to scrutiny by the Assembly." (Report No. 13 of 1994 page 6).

## SUBORDINATE LEGISLATION

### Subordinate Legislation - No Comment

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

ACT Determination No. 119 of 1994 made under s. 4 of the Public Place Names Act 1989 determines the names, origin and significance of streets in the Division of Nicholls.

ACT Determination No. 120 of 1994 made under s. 4 of the Public Place Names Act 1989 determines the names, origin and significance of streets in the Division of Amaro.

ACT Determination No. 121 of 1994 made under s. 4 of the Public Place Names Act 1989 determines the names, origin and significance of streets in the Division of Amaro.

ACT Determination No. 122 of 1994 made under s. 4 of the Public Place Names Act 1989 amends Determination No. 4 of 1994 by revoking the determination of the name of a street in the Division of Amaro.

ACT Determination No. 123 of 1994 made under s. 4 of the Public Place Names Act 1989 amends Determination No. 4 of 1994 by revoking the determination of the names of streets in the Division of Amaro.

ACT Determination No. 124 of 1994 made under s. 4 of the Public Place Names Act 1989 amends Determination No. 48 of 1993 by revoking the determination of the names of streets in the Division of Nicholls.

ACT Determination No. 125 of 1994 made under s. 33 of the Betting (Totalizator Administration) Act 1964 revokes Determination No. 31 of 1993 and determines the proportions of the moneys set aside as a percentage of bets accepted by ACTTAB that are to be paid to the prescribed racing clubs.

ACT Determination No. 126 of 1994 made under s. 217A of the Motor Traffic Act 1936 revokes Determination No. 54 of 1994 and determines new fees relating to number plates for the purposes of the Act.

ACT Determination No. 128 of 1994 made under ss. 24 and 25 of the Building Act 1972 adopts as the ACT Building Code the 1990 edition of the Building Code of Australia with its sixth amendment and an ACT Appendix and additions relating to thermal requirements.

ACT Determination No. 129 of 1994 made under s. 24 of the Building Act 1972 revokes the existing instrument of adoption and modification of the Building Code of Australia and adopts as the ACT Building Code the Building Code of Australia with amendments as indicated in the Schedule.

ACT Determination No. 130 of 1994 made under s. 24 of the Building Act 1972 sets out the Australian Capital Territory Appendix to the Building Code of Australia.

ACT Determination No. 131 of 1994 made under s. 99 of the Taxation (Administration) Act 1987 revokes Determination No. 148 of 1993 and determines the rates of stamp duties payable on securities that are liable for duty in the ACT.

ACT Instrument No. 132 of 1994 made under s. 19 of the Credit Act 1985 declares that the ACT does not have effect in relation to a lease of a motor vehicle where, as part of the lessee's remuneration, the lessee's employer assumes the lessee's obligation to make rental payments.

ACT Instrument No. 133 of 1994 made under s. 8 of the Health Complaints Act 1993 appoints a specified person as Commissioner for Health Complaints and determines the terms and conditions applicable to the appointment.

ACT Determination No. 134 of 1994 made under s. 77 of the Radiation Act 1983 revokes Determination No. 127 of 1993 and determines licence fees and fees for the registration of an apparatus.

#### Subordinate Legislation - Comment

ACT Determination No. 127 of 1994 made under s. 217A of the Motor Traffic Act 1936 revokes Determination No. 56 of 1994 and determines new fees relating to parking labels for the purposes of the Act.

#### Two Mistakes

The Committee makes two comments.

First, the determination is signed, but its execution does not appear to be complete as it is not dated. The effect of the execution being incomplete needs to be considered.

Secondly, the Explanatory Statement refers to the fact that it revokes Determination No 64 of 1994, in fact, the determination purports to revoke Determination No. 56 of 1994.

Government Response

The Committee has received a response to comments made on Instrument No. 118 of 1994 made under the Health Complaints Act 1993 (Report No. 13 of 1994). A copy of the response is attached. The Committee thanks the Attorney-General for his positive response.

A handwritten signature in black ink, appearing to be 'Ellnor Grassby', with a large, stylized loop at the end.

Ellnor Grassby, MLA  
Chairperson

20 September 1994



Government of the  
Australian Capital  
Territory

# Terry Connolly MLA

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Mrs Ellnor Grassby MLA  
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Dear Mrs. Grassby

In its Report No. 13 of 1994 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on Instrument No. 118 of 1994 made under the *Health Complaints Act 1993*.

The Committee, observing that the Instrument was made by the Minister alone, asked whether there was a possible problem with invalidity given that subsection 8(1) of the Act provides for the instrument of appointment to be effected by the Executive. The Committee asked whether there was an amelioration which enabled the Minister alone to make the appointment in question.

I am advised that there is no such amelioration. Subsection 3A(3) of the *Administration Act 1989* provides for an amelioration in respect of instruments in terms similar to that which is contained in the *Subordinate Laws Act 1989* in respect of regulations. In other words, it may be signed by any 2 members of the Executive.

Because Instrument No. 118 was signed by only 1 Minister the Instrument is invalid. Accordingly, a new instrument has been made and I am informed that it will be tabled in the Assembly in the September Sitzings.

I trust this information is of assistance to the Committee.

Yours sincerely

  
Terry Connolly

12 SEP 1994

