

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

REPORT NO. 5 OF 1994

19 April 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) or 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) or 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
Deputy Secretary: Ms B. Irvin

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

Bills Upon Which No Comment is Offered

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

Buildings (Design and Siting) (Amendment) Bill 1994

This Bill ensures that the ACT Planning Authority is able to approve or refuse applications for the approval of a development where the development has already been commenced or completed.

Children's Services (Amendment) Bill 1994

This Bill transfers responsibility for some functions relating to the protection of children from the Community Advocate to the Director of Family Services.

Community Advocate (Amendment) Bill 1994

This Bill includes new functions for the Community Advocate relating to the services for the protection of children and advocacy for the rights of children.

Long Service Leave (Building and Construction Industry) (Amendment) Bill 1994

This Bill repeals provisions relating to payments to the existing fund set up for training purposes consequent upon that function being provided for by the Construction Industry Training Fund Bill 1994.

Bills Upon Which Comment is Offered

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

Construction Industry Training Fund Bill 1994

This Bill establishes a construction industry training levy scheme.

The Customary "Entry by Consent or Warrant" Provisions Appear to be Missing

Clauses 34 to 38 deal with the powers and duties of inspectors and their power of entry.

The Committee is pleased to note that the now usual provisions for identity cards (clause 35) and limited self-incrimination (subclause 37(3) and also earlier in the Bill in subclause 8(5)) have been included.

However, the Bill does not appear to provide for the now customary provisions for entry into land or premises by inspectors. These can be called, in short, the "entry either by consent or search warrant" provisions.

The entry provisions in the present Bill are in clause 36 and give very wide powers to inspectors to enter land, buildings or premises upon production of the identity card. Even the abbreviated entry with consent provision in subclause 36(3) is not backed up with the usual protective provisions relating to seeking and proving consent.

There are now many "entry either by consent or search warrant" provisions in our legislation. Recent examples, in circumstances that may possibly be thought to be analogous to the present, are to be found in sections 266 to 274 of the *Land (Planning and Environment) Act 1991*, sections 66 to 69 of the *Gas Act 1992*, sections 87 to 92 of the *Animal Welfare Act 1992* and sections 44 to 47, 52 and 53 of the *Animal Diseases Act 1993*.

Should There be Independent Outside Review?

Clauses 48 to 51 deal with the approval of training programs, courses or projects by the Board, for review of decisions by the Minister and financial support for training programs, courses or projects.

Approval of such applications and funding could be of considerable commercial value and there are possibilities for clashes of applications. For example, paragraphs 49(2)(a) and 50(2)(a) provide that a program, course or project is not to be approved if a similar one has already been approved.

Would it be appropriate for there to be independent outside review of such decisions?

Is There a Small Mistake?

Clause 52 declares void any contracts that evade the training levy. Subclause 52(3) provides that:

"This section does not apply to a provision in a contract that relates to work to be carried out for a public authority that is a party to an arrangement with the Board under Division 2 of Part III." (Emphasis added.)

Certainly Division 2 of Part III does deal with liability for training levy, but it appears to be Division 3 of Part III that mainly deals with arrangements between the Board and public authorities. This seems to be confirmed when it is noted that Division 4 of Part III, which deals with training levy in respect of individual projects rather than public authority projects, provides in clause 30 that:

"This Division applies in relation to construction work other than work carried out or to be carried out for a public authority that is a party of an arrangement under Division 3." (Emphasis added.)

Perhaps a check should be made.

Lotteries (Amendment) Bill 1994

This Bill provides that in an instant lottery a statement that a prize is won by matching three symbols (or matching three identical symbols) means, and is taken always to have meant, that a prize is won if the same symbol appears three times, removes sexist language and updates drafting.

Retrospectivity

The main reason for the amendments is to outlaw possible applications of the decision of the New South Wales Court of Appeal delivered on 19 May 1993 in *N.S.W. State Lotteries v Burgin*, which decided that three different pairs of numbers would qualify for a prize.

The provisions of clause 5 of the Bill are as follows:

"The Principal Act as amended by this Act applies in relation to tickets in instant lotteries whether purchased before or after the commencement of this Act, including any ticket in relation to which proceedings have been instituted but not determined."

The presentation speech acknowledges that there is "a further matter in the ACT Supreme Court involving a dispute on the wording" of a scratch lottery ticket.

The amendments reverse the New South Wales Court of Appeal's decision in relation to scratch lottery tickets sold in the future. However, in addition, clause 5 also retrospectively negates the possible rights of claimants under such tickets bought in the past and also retrospectively negates the possible rights of a claimant already before the ACT Supreme Court.

Removal of Sexist Language and Updating Drafting

The opportunity is also taken in the Bill to remove sexist language from the principal act and to update its drafting style.

SUBORDINATE LEGISLATION

Subordinate Legislation Upon Which No Comment Is Offered

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

Determination No. 19 of 1994 made under section 17 of the *Health Act 1993* revokes **Determination of Fees and Charges No. 131 of 1993** and sets fees and charges under the Act.

Subordinate Legislation Upon Which Comment Is Offered

Determination No. 18 of 1994 made under section 4 of the *Public Place Names Act 1989* determines the name of a public place that is Territory Land in the Division of Banks.

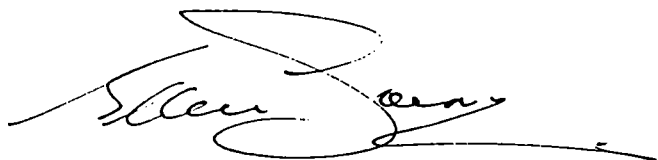
There Appears to be an Error

The determination itself and the map in the Schedule describe the park as "Beau and Jesse Park". However, in the Schedule on page 2 of the Name, Origin and Significance columns all give the names as "Beau and Jessi".

Perhaps a check should be made to see which is correct.

GOVERNMENT RESPONSE

The Attorney General, Mr Connolly, wrote to the Committee concerning the progress on the removal of sexist language from Acts and regulations (copy attached). The Committee thanks the Attorney for his positive response.

A handwritten signature in black ink, appearing to read 'Ellnor Grassby', with a long horizontal flourish extending to the right.

Ellnor Grassby, MLA
Chairperson

19 April 1994



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

ATTORNEY GENERAL

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Mrs Ellnor Grassby MLA
Presiding Member
Standing Committee on Scrutiny
of Bills and Subordinate Legislation
ACT Legislative Assembly
Constitution Avenue
CANBERRA ACT 2601


Dear Mrs Grassby

On 26 June 1992 I wrote to you about the Government's decision to routinely remove sexist language from ACT legislation when amending that legislation except where circumstances of urgency exist.

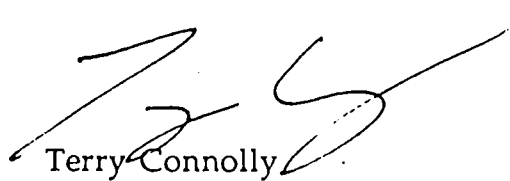
The Attorney-General's Department has been monitoring progress in giving effect to the Government's decision. I am advised that sexist language has now been removed from approximately 70% of ACT Acts and 83% of ACT regulations.

In relation to the removal of sexist language from NSW Acts which apply in the Territory, these will be considered under the terms of the Law Review Program "Audit of ACT and NSW Law Reform Initiatives" which I tabled in the Assembly on 31 March 1993.

The Government considers that the scheme for the removal of sexist language has worked very well in moving toward gender neutral language in ACT legislation. As a consequence it is proposed to continue the scheme and to conduct a further review of progress by mid-1995. At that stage the option of legislating specifically to correct the remaining sexist terms can be considered.

I will write to you again on the matter at that time.

Yours sincerely,


Terry Connolly

11 MAR 1994

