

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

REPORT NO. 2 OF 1993

23 February 1993

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; or
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
 - (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; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
 - (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 (Presiding Member)
Mr G. Humphries, MLA (Deputy Presiding Member)
Ms H. Szuty, MLA

Legal Advisor: Emeritus Professor D. Whalan
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:

Business Franchise ("X" Videos) (Amendment) Bill 1993

This Bill replaces the present advance fee with an initial fee, amends the definition of wholesale value to make it clear that Commonwealth taxes and duties are included and expands the investigation into a corporate applicant for a licence.

Crimes (Amendment) Bill 1993

This Bill introduces a system of offence notices of the "on-the-spot fine" kind for a number of specified offences.

Health Bill 1993

This Bill provides for a number of matters relating to the administration of health services by providing for the appointment of quality assurance committees, the arrangements for the appointment of health service providers, the determination of fees and charges and for a statement of the Medicare Principles and Commitments.

Health (Consequential Provisions) Bill 1993

This Bill repeals the legislation setting up the Board of Health, transfers the functions of the Board of Health to the Department of Health and makes amendments to other Acts and regulations consequential upon the changes made upon the disappearance of the Board of Health.

Poisons and Drugs (Amendment) Bill 1993

This Bill makes the possession of anabolic steroids by an unauthorised person an offence.

Stamp Duties and Taxes (Amendment) Bill 1993

This Bill provides that the liability of motor vehicle dealers for duty applies only to trading in used vehicles and purchasers of new vehicles become primarily responsible for the payment of duty.

Bills upon which Comment is Offered

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

Business Franchise (Liquor) Bill 1993

This Bill introduces one regime for the payment of licence fees for all licensees instead of there being two regimes for different classes of licensees, aims to ensure that the liquor legislation does not breach section 90 of the constitution in relation to excise duties and repeals the *Liquor Tax Act 1991*.

The Committee raises two matters.

Are there Possible Small Errors

The transitional provisions in subclauses 26(2) and (3) refer to amounts paid "under paragraph 10(b) or 15(b)" of the *Liquor Tax Act 1991* that is being repealed.

Perhaps these references should be to amounts paid "under paragraph 10(1)(b) or 15(1)(b)" respectively.

Clause 10(1) refers to "a quarterly franchise fee calculated under section 10". This may possibly be correct, but perhaps a check should be made.

Is there a Right of Review?

Subclause 15(1) provides that:

"Where a licensee fails to pay -

(a) an amount payable under this Act; ...

on or before the date for payment, the licence is, by force of this subsection, suspended." (Emphasis added.)

Subclause 15(2) provides further that, if the payment is overdue for 30 days, the licence is automatically cancelled.

Subclause 15(3) then provides that:

" 'date for payment' means -

(a) in relation to an amount referred to in paragraph (1)(a) -

(i) the day by which the amount is required to be paid in accordance with this Act; or

(ii) where the Commissioner allows further time for payment - the last day so allowed; ...". (Emphasis added.)

A failure to pay on time results in the serious penalties of suspension or cancellation of a licence. Thus the discretion given to the Commissioner to allow further time for payment is a very important discretion that can affect a licensee's livelihood.

The present Bill does not appear to give a licensee a right to independent review of the Commissioner's failure to exercise the discretion in the licensee's favour. There are some rights to review conferred by the *Taxation (Administration) Act 1987*, which is incorporated and read as one with the present Bill (clause 5).

Perhaps a check should be made to see if the rights to seek review of an adverse exercise of the present important discretion are covered.

Business Franchise (Liquor) (Consequential Amendments) Bill 1993

This Bill makes amendments to the *Liquor Act 1975* and the *Taxation (Administration) Act 1987* consequent upon the passing of the Business Franchise (Liquor) Bill 1993.

Is there a Possible Error?

Paragraph 41(3)(b) of the *Liquor Act 1975* currently provides that the licensee is to lodge the licence and certain "records kept under section 21 of the *Liquor Tax Act*".

The present amendment (at the very bottom of page 3) would add the following words at the end of paragraph 43(3)(b):

"and under section 17 of the *Business Franchise (Liquor) Act*".

Clause 17 of the present Business Franchise (Liquor) Bill 1993 deals with payments to be made by Universities and the Canberra Theatre Trust and does not appear to deal with records.

However, clause 18 of the Business Franchise (Liquor) Bill 1993 does deal with records and requires records to be kept containing information very similar to that required to be kept under section 21 of the *Liquor Tax Act 1991*.

Perhaps a check should be made to see if the present amendment should be adding to paragraph 41(3)(b) the words "and under section 18 of the *Business Franchise (Liquor) Act*". (Emphasis added.)

SUBORDINATE LEGISLATION

Subordinate Legislation upon which no Comment is Offered

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

Approval of Variation to the Territory Plan made under section 26(1)(a) of the Land (Planning and Environment) Act 1991 dealing with Phillip, section 53, block 1.

Subordinate Legislation upon which Comment is Offered

The Committee has examined the following subordinate legislation and offers the following comments:

Approval of Variation to the Territory Plan made under section 26(1)(a) of the Land (Planning and Environment) Act 1991 dealing with Mawson, section 45, block 24.

Approval of Variation to the Territory Plan made under section 26(1)(a) of the Land (Planning and Environment) Act 1991 dealing with Curtin, section 63, blocks 5 and 6.

Recommendations not Signed or Dated, Missing Annexe and Numbering of Approvals

After the procedures required by the *Land (Planning and Environment) Act 1991* relating to a draft Plan variation have been completed, the Australian Capital Territory Planning Authority "shall submit a draft Plan variation to the Executive for approval "together with various specified documents (*Land (Planning and Environment) Act 1991* section 24(1)).

In contrast to the Approval in Item 1 above which is properly executed, neither of the Submissions of the Draft Variation to the Territory Plan to the ACT Executive for Approval from the Authority, which include the formal recommendations for approval of the Variations by the Executive is signed and dated. This is part of the completion of the Variation process and the legal effect of there being no execution of the formal recommendation by, or on behalf of, the Authority needs to be considered.

In addition, the tabled copy of the Variation to the Territory plan dealing with Mawson, section 45, block 24 appears to have part of Annex C missing and Annex E also appears to be missing. Perhaps a check could be made as to the effect of the apparent failure to present these Annexures to the Assembly.

The Committee would see benefit in numbering Approvals of Variations to the Territory Plan. This would enable Members and ACT citizens to more easily identify each variation, and would bring them in line with the numbering of determinations and regulations.

Determination No. 5 of 1993 made under section 4 of the *Public Place Names Act 1989* "determine[s] the names [sic] of the public places [sic] that are Territory Land described in the attached Schedule "A" and as indicated on the attached map".

A Missing Revocation

The Determination does determine the name of Windsor Walk in the Division of Barton and Forrest as included in Schedule A and as indicated on the map.

The explanatory statement indicates that there was an intention to revoke the determination of Windsor Walk in Schedule B.

Schedule B is, in fact, attached to the instrument, but the Determination itself does not effect a revocation or refer to Schedule B. It does not, for example, follow the effective formula for determining and revoking the name of the William Herbert Place in the same instrument that was followed in Determination No. 160 of 1992 dated 26 October 1992 and which was published in *Gazette* No. 44 of 4 November 1992.

The Determination needs to be reconsidered.



Ellnor Grassby, MLA
Presiding Member

23 February 1993