

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

REPORT NO. 6 OF 1992

17 June 1992

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION

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

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;
- (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;
- (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.

BILL

Bill upon which no comment is offered.

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

Termination of Pregnancy (Repeal) Bill 1992

This Bill repeals the Termination of Pregnancy Act 1978.

Bill upon which Comment is Offered

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

Dog Control (Amendment) Bill 1992

This Bill amends the Principal Act to provide that where existing facilities are used for the keeping of more than three dogs an application may be made for a licence even although the facilities do not comply with the new requirements for such facilities, exempt a dog temporarily in the ACT for mating purposes from the registration requirements for 30 days, render a licence obtained by fraud or misrepresentation liable to cancellation and remove sexist language from the Act.

Commencement and Retrospectivity

The Bill provides for the formal parts to commence on notification in the Gazette (clause 2(1)). Clause 2(2) then provides that:

"The remaining provisions commence, or are to be taken to have commenced, on the day on which Part IIA of the Principal Act commences or commenced."
(Emphasis added.)

The emphasised parts have a potential to render the amendments retrospective in operation.

Part IIA of the Principal Act was inserted by the Dog Control (Amendment) Act 1991. Section 2(2) and (3) of that Act follow the usual formula and provide that the substantive provisions of the Act are to commence on a day fixed by the Minister or on the day following the elapse of 6 months after gazettal. The Act was gazetted on 24 December 1991 and there does not appear to have been a notification by the Minister. Provided that there is no such notification fixing a commencement date earlier than 25 June 1992, then the substantive provisions of the Dog Control (Amendment) Act 1991, including Part IIA, will commence on that date.

Thus, provided that the present Bill is passed and notified in the Gazette on or prior to 25 June 1992, then the potential retrospective provisions in the Bill will have no effect. However, if the Bill is not so passed and notified, there would be retrospectivity which could cause some complications.

Removal of Sexist Language

The Committee was pleased to note that the opportunity has been taken to remove sexist language from the Principal Act. However, there may be one tiny omission in the present Bill.

Determination No. 54 of 1992 made under section 33A of the Water Rates Act 1959 revokes the previous determination of fees and determines fees for reading or testing a water meter or issuing a certificate showing the amount of rates payable in relation to a specified property.

Following on the Committee's comments last year in its Report No. 12 of 1991 concerning defects in the equivalent explanatory statements last year, the Committee is pleased to see that the explanatory statements for these determinations are very helpful.

There are a couple of tiny typos in the explanatory statement for Determination No. 53 of 1992 with "one" becoming "ony" and "Urban" becoming "Ubran" in the second paragraph. However, they very helpfully indicate the rationale for the changes, or lack of changes, in the fees, set out the new fees, set out last year's fees and indicate the percentage changes, if any.

However, the Committee would find it helpful where determinations are being revoked if the number of the determination that is being revoked was included in the explanatory statement. This would make for increased certainty and it would also be helpful to Members and others trying to identify the determination being revoked. In the present case the determinations that are revoked appear to be Determination Nos 62 and 63 of 1991.

Regulations 1992 No. 8 being the Public Health (Infectious and Notifiable Diseases) Regulations (Amendment) update the lists of infectious and notifiable diseases.

Possible Overlap of Provisions

These regulations have no intrinsic flaws and are accompanied by an excellent explanatory statement.

However, they may perhaps create an overlap.

Tuberculosis appears in the list of infectious diseases in Schedule 3 of the present amendment. The explanatory statement does not mention tuberculosis in the list of diseases that are being added for the first time. However, tuberculosis does not appear in the lists in the reprint of the Public Health (Infectious and Notifiable Diseases) Regulations that was reprinted as at 31 October 1991. So, unless it has been added since that date (such an addition has not been found), then it does appear in the regulations for the first time.

The Tuberculosis Act 1950, which was also reprinted last year (as at 31 May 1991), does not appear to have been repealed or amended since then.

Thus there appear to be two regimes in existence covering tuberculosis. In some respects there is no problem with the overlap. For instance, section 4(1) of the Tuberculosis Act 1950 and clause 4(1) of the Public Health (Infectious and Notifiable Diseases) Regulations provide for notification by a medical practitioner to the Medical Officer of Health in almost, but not quite, identical terms. In this instance, there is overlap, but no problem appears to have been created. But this may not be true for other aspects of the two pieces of legislation.

If the Tuberculosis Act 1950 is, in fact, still extant, a check may already have been made to ensure that there are no problems with the existence of the two regimes. For instance, it may have been decided that there are special additional requirements that are needed for dealing with tuberculosis.

However, if there are two regimes in existence and a check has not already been made, it is suggested that this would be appropriate to ensure that there are no conflicts.

It is noted that the colon at the end of the subdivision which indicates that something is to follow. Is there a missing subdivision "ii)"?

In the third last paragraph on page 792, in the last paragraph on page 792 and in the second last paragraph on page 793 the phrase "manufacture's specifications" is used. This could possibly be correct, but was "manufacturer's specifications" or even "manufacturers' specifications" perhaps intended?

In the guideline "Pistols (10 or More)" on page 793, the introduction is as follows:

"Security container - Minimum Specifications only for -

- i) Pistols (the retention of 10 or more), and
- ii) Pistol Dealers

are as follows:"

Then follow provisions about free standing safes, wall safes and under-the-floor safes. It is understood that a pistol might require to be kept in such a "Security container". But the Committee is intrigued to know about a

"Security container - minimum Specifications only for - ... Pistol Dealers ...".

After describing in detail (at the bottom of page 793) the kinds of display cases that may be used for weapons, the following paragraph appears at the top of page 794 :

"No dangerous weapon shall be displayed, [sic] in a cabinet as mentioned above, where the owner or lawful occupier of those premises, where the dangerous weapons are displayed, is absent from those premises for a period of more than seventytwo [sic] (72) hours. The security of those weapons shall be the same as for weapons described in these guidelines."

The meaning does not appear to be clear. Does it mean that, if the owner or occupier is going to be absent for more than 72 hours, the weapons must be stored in other sorts of security? If so, which guidelines are to apply? Or does it mean that, if the owner or occupier is ever going to be absent from the premises for 72 hours, the kind of display units that are described at the bottom of page 793 may never be used at all? Or does the passage have another meaning? Perhaps the position should be made clear.

The Committee has not commented specifically on a number of other punctuation oddities, a drafting change from "shall" to "will" and several sentences without verbs that were picked up during the scrutiny of the Guidelines. This was not done, for, despite the possible mistakes, the meanings seem reasonably clear in the contexts.

Finally, the last heading in the Guidelines is "Offence". The passage then sets out s. 82(1) of the Weapons Act 1991 accurately. How can this provision possibly be a Guideline?

The Committee feels that these Guidelines should be reconsidered. It is suggested that the Weapons Act 1991 itself is well drafted and sets out the law clearly. The errors that these Guidelines appear to contain may detract from the impact that the Legislative Assembly appears to be having on the debate about gun law legislation in Australia.

GOVERNMENT RESPONSE

