

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

REPORT NO. 23 of 1991

17 December 1991

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Mrs E Grassby, MLA (Presiding Member)
Mr B. Collaery, MLA
Mr B Stefaniak, MLA

Secretary: Mr T Duncan
Legal Advisor: Emeritus Professor D Whalan

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 (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; and
 - (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) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make 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.

ROLE OF THE COMMITTEE

The Committee examines all Bills and delegated 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 delegated legislation that comply with the high ideals set out in the Terms of Reference.

SUBORDINATE LEGISLATION

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

Declaration made under section 11B(1) of the Stock Diseases (Amendment) Act 1991 [sic] declares cattle, including buffalo, bull, cow, ox, steer, heifer or calf and swine weighing 25kg or more "to be defined stock for the purposes of this Act".

Declaration made under section 11H(1) of the Stock Diseases (Amendment) Act 1991 [sic] declares the manner in which approved tags are to be attached to the following defined stock namely, cattle, including buffalo, bull, cow, ox, steer, heifer or calf and swine.

Three Possible Problems

First, no Explanatory Statements for these disallowable Declarations seem to have been received, nor are they numbered.

Secondly, there does not appear to be either a section 11B(1) or section 11H(1) in the Stock Diseases (Amendment) Act 1991. There is a section 11 of that Act, but it merely inserts a heading "PART III - DISEASED STOCK" into the Stock Diseases Act 1933.

However, section 16 of the Stock Diseases (Amendment) Act 1991 inserts Part IV into the Stock Diseases Act 1933 and, as a result, that Act does now have both a section 11B and a section 11H. Perhaps it was intended to make Declarations under sections 11B(1) and 11H(1) of the Stock Diseases Act 1933.

Thirdly, the Committee notes that the powers to make Declarations under sections 11B and 11H of the Stock Diseases Act 1933 are vested in the Minister. The present Declarations are made by a delegate. It is noted that, under section 4D, the Director "may, by writing, delegate any of his or her powers or functions". However, the Committee would be grateful to receive confirmation of the provision under which the power to make the present Declarations has been delegated by the Minister.

BILLS

(a) No comment offered

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

Appropriation (Amendment) Bill 1991

This Bill amends the principal Act to permit funds appropriated to the Department of Health to be paid to Totalcare Industries Limited instead of to the Totalcare Industries Trust Account.

Casino Control (Amendment) Bill 1991

This Bill amends the principal Act to provide for an interim casino, authorises the Minister to designate an area for the casino and interim casino, varies the eligibility criteria for the issue of key casino employees' licences and provides for conditions upon which an interim casino licence may be suspended or cancelled.

Health Services (Amendment) Bill 1991

This Bill provides that appointed members of the Board of Health will be paid such remuneration and allowances as are prescribed or which are authorised under a determination of the Remuneration Tribunal.

Land (Planning and Environment) (Consequential Provisions) Bill 1991

This Bill provides for consequential and transitional arrangements following on the passage of the Land (Planning and Environment) Act 1991.

Liquor Tax Bill 1991

This Bill provides for new arrangements for the payment of liquor tax.

Liquor Tax (Consequential Provisions) Bill 1991

This Bill makes amendments to the Liquor Act 1975 and the Taxation (Administration) Act 1987 consequential upon the passing of the Liquor Tax Bill 1991, with the purpose of integrating the Liquor Tax Bill with the latter Act.

Magistrates Court (Amendment) Bill (No. 3) 1991

This Bill removes the power of a magistrate to issue a warrant for unpaid traffic fines, provides that a gaol term is no longer possible for the non-payment of traffic fines and ensures that parking and traffic fines are treated in similar fashion and traffic fines administration is transferred to the Registrar of Motor Vehicles.

Motor Traffic (Amendment) Bill (No. 3) 1991

This Bill enables the non-payment of Traffic Infringement Notices to be enforced by cancellation of licences or registration or the right to drive in the ACT.

Payroll Tax (Amendment) Bill 1991

This Bill varies the exemptions relating to payroll tax.

Taxation (Administration) (Amendment) Bill (No. 2) 1991

This Bill amends the provisions for grouping firms for tax purposes, and also amends those dealing with the gathering of information, the making of compromise assessments, the remission of penalties and appeals against assessments.

Taxation (Administration) (Amendment) Bill (No. 3) 1991

This Bill provides for the administration of the new gaming machine taxing arrangements.

(b) Bills upon which Comment is Offered

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

Gaming Machine (Amendment) Bill (No. 2) 1991

This Bill alters the revenue raising arrangements for gaming machines and provides that the profits from gaming machines in clubs remain in the clubs for the benefit of members.

(i) A Possible Small Error

Clause 5(c) inserts a number of definitions into s. 4 of the Principal Act, including a definition of "associated organisation". The definition refers to "subsection 30D(1)". Perhaps it should merely say "section 30D", as the new section 30D on pages 10-11 of the Bill is not divided into subsections.

Incidentally, also in clause 5(c), the definition of "relevant influential person", contains the split infinitive "to substantially influence".

Stamp Duties and Taxes (Amendment) Bill 1991

This Bill abolishes stamp duty on residential tenancy agreements and shifts the liability for the payment of stamp duty on commercial lease agreements from the lessee to the lessor.

(ii) Retrospectivity

Clause 2(2) provides that clause 5, which will exempt residential tenancy agreements from stamp duty, is retrospective to 1 October 1991. Clause 8, which provides that stamp duty is not payable on a lease of land to the Territory or the Crown if the Commissioner is satisfied that an agreement had been negotiated before 17 September 1991, exempts the lessor from liability to pay stamp duty on the consummating lease.

Both of provisions are retrospective. However, not only are they budget measures but also they appear to be beneficial in effect to individuals.

Tourism Commission Bill 1991

This Bill sets up the Australian Capital Territory Tourism Commission.

(iii) Some Possible Defects

As the Explanatory Memorandum very properly states, this "Bill is modelled very closely on the New South Wales Tourism Commission Act 1984". This close modelling has perhaps led to some possible difficulties with the Bill.

First, the Bill does not contain any enacting provision such as the customary one in the Territory:

"The Legislative Assembly for the Australian Capital Territory enacts as follows:".

Secondly, there is a tiny error in clause 9(1), occasioned perhaps by the fact that something has been left out that was in the New South Wales Act. The clause should perhaps read:

"9(1) The Commission may, with the approval of the Minister, make a grant or loan."

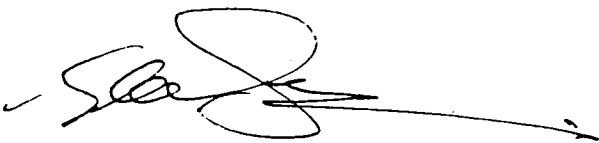
Thirdly, there may be some problems of integrating Part IV - Acquisition of Land with ACT legislation. The Part deals with acquisition of land, resumption and appropriation, subdivision, improvements and dedication, erection, alteration and extension of buildings and disposal of land. The ACT processes are somewhat different from those in New South Wales and some of these provisions may need to be modified to fit local conditions.

GOVERNMENT RESPONSE

The Committee has received a response to comments made in Reports Nos. 20 and 21 concerning the following Bills:

- Motor Traffic (Alcohol and Drugs) (Amendment) 1991
- Bail 1991
- Bail (Consequential Amendments) 1991.

A copy of the response is attached. The Committee thanks the Attorney-General for his positive response.



Ellnor Grassby
Presiding Member

17th December 1991



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

Edna J 13/11/91
Dear Mrs Grassby

In its Reports Nos 20 and 21 of 1991 the Committee commented on a number of criminal law measures I have introduced into the Assembly. I would like to take this opportunity to respond to those comments.

Motor Traffic (Alcohol and Drugs) (Amendment) Bill 1991

The Committee has made the observation (in Report No 20) that the opportunity could have been taken to remove sexist references in the Principal Act at the same time as proposing substantive amendments. The amendments proposed in this Bill were developed in some haste, specifically with the introduction of a new breathalyser in mind. The Bill was not intended to be a general review of the Principal Act.

It is likely further amendments will be proposed in the New Year. I will take the comment on board, and include appropriate amendments in a future review of the Principal Act.

Bail Bill 1991

The Committee has commented (in Report No 21) on the inconsistent reference to "Clerk" with a capital C in subclause 30(4). I will have an amendment prepared to correct this apparent error.

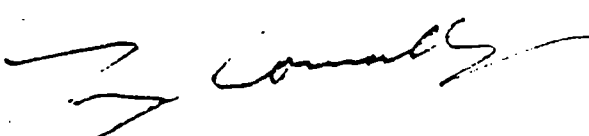
Regarding the reference to the Crimes Act, the Crimes Legislation (Status and Citation) Bill 1991 does not propose to make the shorter citation mandatory. It might be presentationally neater to prepare an amendment to the Bail Bill to adopt the proposed reference, but given that the timetable for debate on the Crimes Legislation (Status and Citation) Bill is not certain, I propose to leave the existing reference to the Crimes Act in the Bail Bill.

Bail (Consequential Amendments) Bill 1991

The same comment about the reference to the Crimes Act has been made in relation to this Bill. Again, I do not propose to amend this reference for the same reasons.

I hope that this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Terry Connolly', with a long horizontal flourish extending to the right.

Terry Connolly

12 DEC 1991