

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

REPORT NO 5 of 1991

20 March 1991

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Ms C Maher MLA (Presiding Member)
Mr T Connolly 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:

(a) Possible errors in determination.

1. ACT Determination No. 3 of 1991 made under section 4 of the Place Names Act 1989 determines the names of a number of public places in the ACT and revokes the names of others.

The Committee noted that although an explanatory statement had been provided, it did not have a number inserted at the top.

There also seem to be some errors in the body of the determination itself. The Committee noted the following examples:

- . On page 9 of schedule "A" (page 184 of the Gazette) under Christie Place, the explanation for the name of the place states that Moss Christie was an "Olympic meallist in 1924 in swimming". Perhaps Olympics medallist was intended.
- . On page 11 of the schedule "A" (page 186 of the Gazette) under Knoke Avenue, the explanation for the name states that he was a "coach AIS 1881".
- . On page 15 of schedule "A" (page 190 of the Gazette) under Kindler Place, the explanation for the name states that John Ernest Kindler's birth and death dates are "(1906 - 1923)".

(b) Explanatory statement.

2. ACT Determination No. 4 of 1991 made under section 65 of the Building Act 1972 provides for the payment of a further fee where building work for which a permit has been issued is not completed before the permit expires.

3. ACT Regulations 1991 No. 5 being Financial Institutions Duty Regulations (Amendment) provide for a class of accounts held by a registered financial institution on behalf of a non-business government body to be exempt from financial institutions duty.

An explanatory statement has been provided for Determination No. 4 of 1991. However, the Committee noted that while the statement accurately sets out the authority under which the Determination is made and for the payment of fees, it does not state what the determination actually does. For instance, the Determination sets out a fee of 20% of the assessed fee or \$50 for each period of three months. It doesn't say why 20% or \$50 is appropriate or, indeed, indicate the amounts of the fees upon which the 20% is calculated.

These are only minor points, but nevertheless the delegated legislation is being made under the authority of the Assembly, and the principal purpose of explanatory statements is to inform Members of the Assembly about such things.

In contrast, the explanatory statement for the Financial Institutions Duty Regulations (Amendment) is excellent. It gives the statutory background and gives a summary of what the amendment does, amongst other things.

(c) Explanatory statements received.

In Report No. 2 of 1991 the Committee drew attention to the fact that there are Explanatory Statements missing for ACT Regulations 1990 No. 19 being Gaming Machine Regulations (Amendment) and ACT Regulations 1991 No. 1 being Magistrates Court (Civil Jurisdiction) Regulations (Amendment).

Explanatory Statements have now been received for both Regulations and they are considered by the Committee to be very good.

BILLS

(a) No comment offered.

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

Consumer Affairs (Amendment) Bill 1991

The Bill sets out product information standards requiring the disclosure of such things as the "use by" date, the price, contents, place of manufacture and other details to give consumers information about goods they purchase.

Criminal Injuries Compensation (Amendment) Bill 1991

This Bill increases the maximum amount that may be awarded to a victim from \$20,000 to \$50,000, gives the Territory a right to claim from the offender or offenders any monies paid out and makes procedural amendments.

Occupational Health and Safety (Amendment) Bill 1991

This Bill sets up a review procedure for decisions under the Act, provides for paid leave for health and safety representatives to attend training courses and provides for reports of other incidents as well as accidents.

(b) Retrospective Operation.

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

City Area Leases (Amendment) Bill 1991

This Bill sets up the regime for the payment of betterment charges under the Act and effects changes in the administration of community and association concessional leases.

Clause 8 of the Bill provides in effect that the new betterment charge provisions apply to all applications made on or after 22 February 1990 and upon which no provisional order has been made by the Supreme Court.

The Presentation Speech states that on 22 February 1990 the Chief Minister "released to the media details of the Government's new policy on betterment charges".

Although this provision is retrospective in effect, the provisions that are being made retrospective are similar to taxation and budgetary provisions which it is usual to make retrospective to the date of the announcement. This ensures that in such situations no financial gains can accrue between the date of the announcement and the passing of appropriate legislation.

EXPLANATORY STATEMENTS RECEIVED

The Committee reported in Report No. 2 of 1991 that an explanatory statement was not tabled for the Gaming Machine Regulations (Amendment). A copy of the statement has since been received, and is considered satisfactory.

STOCK BILL 1991 - GOVERNMENT RESPONSE

The Committee commented on the above mentioned Bill in its Report No. 4 of 1991. The Committee has since received a response from the Attorney-General, which is attached.

The Committee thanks the Attorney-General for his positive response.


Carmel Maher, MLA
Presiding Member

20 March 1991.



Australian Capital Territory
DEPUTY CHIEF MINISTER

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Ms Carmel ~~Maher~~
Presiding Member
Standing Committee on Scrutiny of Bills and
Subordinate Legislation
Legislative Assembly for the ACT
1 Constitution Avenue
CANBERRA ACT

Dear Ms Maher

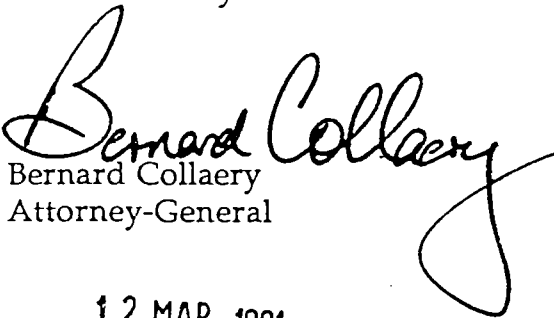
I write in response to the Committee's Report No 4 of 1991 concerning the Stock Bill 1991.

I note the Committee's comment in respect of the development of a standard form of notice to advise persons of their rights of review and confirm that these will be utilised under the Stock Bill.

The second matter which the Committee raised was the absence from the Bill of a definition of the term "run". It was no longer considered necessary to retain the definition of "run" in the legislation. It is intended, as the Committee has anticipated, that the term "run" will be construed, according to its ordinary dictionary definition, as referring to a tract of land for grazing livestock.

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

Yours sincerely


Bernard Collaery
Attorney-General

12 MAR 1991

