

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

REPORT NO 6 of 1990

1 May 1990

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Ms C Maher MLA (Presiding Member)
Mr B Stefaniak MLA
Mr B Wood 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 Assesmbly 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 Bills. 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 that comply with the high ideals set out in the Terms of Reference.

The Committee has examined the following Bills:

Audit (Amendment) 1990
Housing Assistance (Amendment) 1990
Pawnbrokers (amendment) 1990
Second-hand Dealers and Collectors (Amendment) 1990

In relation to the Audit (Amendment) Bill 1990 the Committee offers no comment.

HOUSING ASSISTANCE (AMENDMENT) BILL 1990

This Bill amends the principal Act by inserting the Commonwealth-State Housing Agreement to which the Territory is now a party.

The Committee had only one query in relation to the commencement provisions of the Bill. It was noted that in the Pawnbrokers (Amendment) Bill, the Second-hand Dealers and Collectors (Amendment) Bill, the Truck (Amendment) Bill and the Audit (Amendment) Bill the commencement provisions followed the drafting practice of providing that the substantive amendments are to commence either when fixed by the Minister by Gazette notice, or, if not so fixed, 6 months after the first notification of the amendment in the Gazette. The Committee considers that this is a commendable practice as it means that there is not a lot of passed but inoperative legislation on the statute books. However, the Housing Assistance (Amendment) Bill 1990 does not follow this practice, and the Committee questions why the commencement provisions were not included.

PAWNBROKERS (AMENDMENT) BILL 1990, SECOND-HAND DEALERS AND COLLECTORS (AMENDMENT) BILL 1990 AND THE TRUCK (AMENDMENT) BILL 1990

The principal reasons for the three Bills is that they set out to give effect to undertakings given by the relevant Federal Minister to the Senate Standing Committee on Regulations and Ordinances in 1987. As the Senate Committee's Legal Advisor in 1987 is also our Legal Advisor, the Committee was briefed on the history that gave rise to these three Bills. The committee was advised that the Bills dealt accurately, fully and properly with almost all the provisions that the relevant Federal Minister agreed to have changed as recommended by the Senate Committee.

The Committee had only one minor query in relation to Pawnbrokers (Amendment) Bill 1990. Section 26 of the Pawnbrokers Act 1902 contains a strict liability provision which forbids selling on certain days and times set by the Trading Hours Act 1962. The committee notes that it would be unfortunate if, for example, a pawnbroker's clock stopped and he or she accidentally sold something after trading hours. There would be no defence of reasonable excuse.

Report No 2 of the Committee-Government response

The Committee reported on the Weapons Bill 1990 in Report No 2 which was tabled in the Assembly on 20 March 1990. The committee has since received a response dated 26 April 1990 from the Attorney-General which is attached.

The Committee thanks the Attorney-General for his positive response to the Committee's report, and considers that all the major points contained in the report have been adequately addressed.

A handwritten signature in dark ink, appearing to read 'Carmel Maher', with a long, sweeping horizontal line extending to the right.

Carmel Maher
Presiding Member

1 May 1990

Attachment



Australian Capital Territory
DEPUTY CHIEF MINISTER

1 2 6 APR 1990

1 Constitution Ave
Canberra ACT 2601

Ms C Maher MLA
Presiding Member
Standing Committee for the Scrutiny
of Bills and Subordinate Legislation
ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2600

Dear Ms Maher

In its Report No. 2 of 1990 the Committee commented on a number of general issues arising from the Weapons Bill 1990.

My response to each of the issues raised by the Committee in relation to that Bill follow.

Power to Delegate

The Committee noted the different approaches adopted in the Clinical Waste Bill, the Motor Vehicle (Dimensions and Mass) Bill and the Weapons Bill and suggests that there would be benefit in a standard approach being adopted.

Because of the diversity of legislation which exists or may in future be developed my view is that each piece of legislation needs to be considered on its merits. For example, in respect of the Clinical Waste Bill the Committee commented that it would seem inappropriate for the power to grant, refuse, vary, suspend or cancel a licence to be delegated too far down the line. However licences under the Clinical Waste Bill can be expected to number a handful at most. Licences under the Weapons Bill will number many hundreds, much of the administrative work being of a routine nature. It is imperative that flexibility exist.

In referring to the Dimensions and Mass Bill the Committee noted that the most significant power in that Bill - appointing inspectors - is to be exercised by the Registrar personally. The Weapons Bill however has no equivalent power - its most significant power is the licensing power I mention above.

As the powers to be exercised under the Bill are reviewable by the AAT, irrespective of the level at which the power is exercised the rights and liberties of individuals are fully protected.

Further it is important, it seems to me, to note that the enforcement of the criminal law of the Territory is undertaken

at all levels within the AFP. It would appear incongruous if an AFP officer could be called upon to ensure the enforcement of serious criminal matters but should be seen to be inappropriate to deal with licensing functions.

Return of Licences or Surrender of Weapons

The Committee has raised the same points, in relation to a number of clauses, that it made in relation to the Clinical Waste Bill 1990. Basically these are that:

- (a) obligations imposed upon the Registrar to do certain acts do not specify a time within which the acts should be done or impose a penalty on the Registrar for a failure to comply; and
- (b) obligations imposed upon licensee to do certain acts within a certain time do not provide a reasonable excuse element.

As to (a) I advised the Committee, in relation to the Clinical Waste Bill 1990, that the matter raised administrative law as opposed to criminal law issues and that there would exist an implicit obligation on the Controller to act reasonably and to do the relevant act within a reasonable time. A statutory limitation was not necessary. The position is, in my view, identical to the issue of the Registrar under the Weapons Bill - as is the case with all statutory officeholders the Registrar will be obliged to complete the particular act as soon as possible have regard to the particular circumstances. There is no requirement for a criminal sanction for the Registrar failing to do so.

As to (b) I consider that offences such as those identified by the Committee should not be strict liability offences unless there are compelling reasons for so doing, in which case the intention should be expressly stated.

Although arguments could be advanced for the need for strict liability in each of the offences cited by the Committee on the basis of the inherent danger of weapons and the concern for safety of members of the public I nevertheless feel that a without reasonable excuse formulation should be included in the clauses identified by the Committee. I have also requested that the Bill be examined to ensure that there are no other provisions in which the formulation should be included.

The Committee also requested advice as to why the period of 2 days for a licensee to notify the Registrar of his or her licence being lost, stolen or destroyed was considered necessary. I should point out that the requirement arises only upon the licensee becoming aware of its loss, theft or destruction and not on the event itself. The loss or theft of a licence is considered, as a matter of policy, to be a serious occurrence with such possible consequences as another person coming into possession of the licence representing himself or herself as being licensed and acquiring a weapon. The Registrar needs to be advised at the earliest time of the situation.

Directory or Mandatory Provisions

The Committee commented on those provisions which are either mandatory or discretionary in terms of the exercise of the Registrar's powers and suggested that these be checked. The Committee noted two provisions in particular which it considered required examination.

The Law Office has examined each of the provisions in the Bill. Arising from that examination the following amendments to the Bill are considered to be desirable:

- (a) in subclauses 48(3), 51(1) and 59(1) directory provisions will become mandatory upon the Registrar; and
- (b) in subclause 101(2) a mandatory provision will be expressed in directory terms.

Rights to Review

The Committee has reiterated its view as expressed in its report on the Clinical Waste Bill that standard forms should be developed to automatically advise affected persons of the precise information about their review rights. The ACT Government Law Office is developing a suitable standard form.

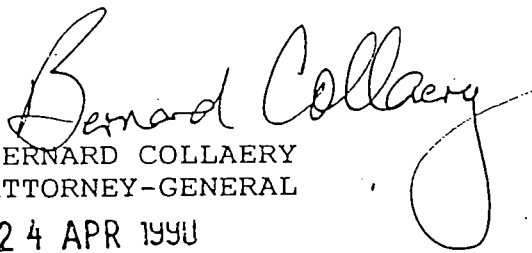
Devices for Protection Against Assault

The Committee sought advice as to whether any of the prohibitions in Schedule 3 will outlaw devices that have been developed to permit women to thwart interference with their rights and freedoms.

It is not desired that any legislation should be seen as encouraging or allowing any person to carry weapons for protective purposes - to do so would be contrary to the principle of weapons control and could lead to an increase in aggressive and anti-social behaviour. However it is intended only to prevent persons from having items which could be used for criminal activity.

As a consequence I intended to amend item 12 so that it will refer only to an irritant or poison gas bomb, grenade, rocket of a stated kind, missile of a stated kind, mine or similar device. This will accord more closely with the definition used in certain State legislation and clarify the scope of the item.

Yours sincerely


BERNARD COLLAERY
ATTORNEY-GENERAL
24 APR 1990

