

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

REPORT NO. 23 OF 1992

24 December 1992

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

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Ms Roberta McRae, OAM, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Ms McRae

Please find enclosed a copy of Report No. 23 of 1992 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No. 23 of 1992.

Yours sincerely



Ellnor Grassby, MLA
Presiding Member

24 December 1992



Approved
Greg Cornwell, MLA
Deputy Speaker

5 January 1993

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.

The Presentation Speech states that this:

"amendment included in the Bill is to correct a drafting error which was made in the *Workers' Compensation (Amendment) Act 1991*".

It is noted that the amendment is made retrospective to 22 January 1991. The substantive provisions of the *Workers' Compensation (Amendment) Act 1991*, which appear to have made the changes to the formula that is now being corrected, were not brought into force until 22 January 1992 by a notice of commencement published in *Gazette* No. S9 of 1992.

Perhaps a check should be made to see if clause 5(2) should be amended to operate retrospectively to 22 January 1992 instead of to 22 January 1991.

SUBORDINATE LEGISLATION

Subordinate Legislation upon which no Comment is Offered

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

Determination No. 164 made under section 87(1) of the *Occupational Health and Safety Act 1989* approves the ACT Manual Handling Standard and Code of Practice (Second Edition).

Determination No. 175 made under section 65 of the *Building Act 1972* sets fees for Design and Siting Approval for residential building work.

Subordinate Law No. 32 of 1992 made under section 14 of the *Buildings (Design and Siting) Act 1964* prescribes buildings that are exempt from Part VI of the *Land (Planning and Environment) Act 1991*.

Subordinate Law No. 33 of 1992 made under section 67 of the *Building Act 1972* exempts prescribed buildings from the requirements of seeking approval of plans and obtaining a building permit.

Subordinate Legislation upon which Comment is Offered

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

Instrument No. 181 of 1992 prepared under section 70 of the *Gas Act 1992* being the *Gas Manual* sets out the minimum technical requirements, standards and procedures for gas reticulation.

Instruments Incorporated "as in force from time to time"

Paragraphs 2.1(a)(i), (ii), (iii) and (iv) provide that specifically numbered and named standards published by the Standards Association of Australia "as in force from time to time" are to be complied with by a distributor of gas in a gas reticulation system.

Paragraphs 3.2.2(a) and (b) provide that a specified standard of the Australian Gas Association and the Australian Liquefied Petroleum Gas Association and a specified code of the Standards Association of Australia "as in force from time to time" are to be complied with in carrying out gasfitting work.

Subdelegation of making of Rules

Paragraph 3.2.1 provides as follows:

"With the approval of the Controller, a distributor may make rules, consistent with any relevant standard or code, concerning the manner in which gasfitting work should be carried out in relation to gas installations that are, or are to be, connected to the distributor's reticulation system."

Paragraphs 3.2.2 and 3.3 then require compliance with the "distributor's gasfitting rules or the relevant standard or code" and for the issue of a certificate of compliance.

Perhaps a check needs to be made to ensure that there is authority given in the Act for the exercise of these rule-making powers on the part of a distributor.

Determination No. 174 made under section 87(1) of the *Occupational Health and Safety Act 1989* approves the Australian Capital Territory Demolition Code of Practice.

Matters that perhaps need to be Checked

There are a number of matters in the Australian Capital Territory Demolition Code of Practice that perhaps need to be checked. Because the legislation referred to in the Code is so complicated, it is important to ensure that the references to the relevant legislation are accurate, so that people affected by the Code can easily discover the legislation that applies to their work under the Code.

"Regulations made under the ACT Scaffolding and Lifts Act 1957"

There are many references in the Code to regulations made under the *Scaffolding and Lifts Act 1957*. The references appear in several forms, of which these are a few samples: "the *Scaffolding and Lifts Act 1957* and any regulations made under the Act" (paragraph 3.5 on page 7), "Regulation 84(17) *Scaffolding and Lifts Act 1957*" (paragraph 3.6.1 on page 8), "Regulation 118, *Scaffolding and Lifts Act*" (paragraph 3.6.2 also on page 8), "Regulations [sic] 158 of the *Scaffolding and Lifts Act 1957*" (para. 5.8.2 on page 17), "paragraph (2) of Regulation 73 of *Scaffolding and Lifts Act 1957*" (paragraph 6.4 (b) on page 32) and "Paragraph (15) of Lifts and Scaffolding [sic] Regulation 84" (paragraph 6.9.3 on page 39).

The position is very complicated, but the only regulations listed in Laws of the Australian Capital Territory - Tables 1911-1991 that appear to have been made under the regulation-making power in section 9 of the *Scaffolding and Lifts Act 1957* are Regulations No. 9 of 1986 made on 22 July 1986. Those regulations make minor amendments to the principal regulations which are defined in this way in Regulation 1 of Regulations No. 9 of 1986:

"In these Regulations, 'Principal Regulations' means the Regulations under the *Scaffolding and Lifts Act, 1912* of the State of New South Wales in their application to the Territory."

Unless there have been changes that are not listed in the Tables or which have been made very recently, these appear to be the regulations that largely apply to the area. Those regulations (and the associated New South Wales Act, the *Scaffolding and Lifts Act 1912-1948*) were applied to the ACT with modifications by the ACT *Scaffolding and Lifts Ordinance* (now Act) 1957. Perhaps they are the regulations that are intended to be referred to in the Code.

References to Statutory Provisions which need to be Checked

In paragraph 4.4 there are also references to "the requirements of Section [sic] 5(A), 34 and 46 of the ACT Building Act". The Committee can find no section 5(A) in the *Building Act 1972*.

Also, the final sentence of paragraph 4.4 states:

"All persons involved are to be fully trained in accordance with Section 24(2d) of the ACT Building Act."

The Committee can find no section 24(2d) in the *Building Act 1972*. In fact section 24 deals with the Building Code and not training. There may be relevant provisions elsewhere, but one provision that could possibly be relevant in this context is section 27(2)(d) of the *Occupational Health and Safety Act 1989* which provides that an employer commits an offence if the employer:

"fails to take all reasonably practicable steps ... to provide to the employees the information, instruction, training and supervision necessary to enable them to perform their work in a manner that is safe and without risk to their health; ...".

There is a later reference in paragraph 6.9.2 to "Section 27(2d) of the ACT Occupational Health and Safety Act 1989", which the context suggests is probably intended to be a reference to section 27(2)(d) of that Act.

Paragraph 5.32 headed "Noise" states in its opening paragraph;

"Note: Machinery Act 1949 stipulates 115 dba maximum and maximum of 85 dba for an 8 hour exposure."

The reprint of the *Machinery Act 1949* of 30 June 1991 contains no such provision and the Committee has been unable to locate an amendment that effects this change to the Act.

However, very unusually, section 2 of the Act provides that "'this Act' includes the Regulations". So, is there something in the Regulations which provides as the Note suggests? If so, the Note is correct, but it would perhaps be preferable to refer to the relevant Regulation itself to assist people in finding the law that affects them.

There is a reference to "the Machinery Regulations 1948" in paragraph 6.9.3. The Committee has been unable to locate those Regulations and they are not listed in the Laws of the Australian Capital Territory - Tables 1911-1991 in the List of Regulations, By-Laws and Rules in Force on 31 December 1991.

There is a reference in paragraph 6.8(d) to the "ACT Machinery Act 1949 and relevant Regulations". Here, too, a specific reference to the relevant Regulations would have been helpful.

A particular reason for this in this case is that according to the List of Regulations in force on 31 December 1991 referred to above, there are no Machinery Regulations presently in force. However, there are some Regulations listed under the *Machinery Act 1949*, namely, the Boilers and Pressure Vessels Regulations and the Inspection of Machinery Regulations. They may or may not be relevant here, but anyone looking for them unfortunately wouldn't find them under "M" in the List.