

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

REPORT NO. 13 of 1991

13 August 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

Acting 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

(1) Subordinate Legislation upon which no comment is offered.

The Committee has examined the following subordinate legislation and offers no comment.

ACT Determination No. 46 of 1991 made under section 9A of the Roads and Public Places Act 1937 determines fees payable under the Act for placing objects for an outdoor cafe.

ACT determination No. 69 of 1991 made under section 4 of the Public Place Names Act 1989 revokes a street name and determines another name for that street.

ACT Determination No. 72 of 1991 made under section 4 of the Public Parks Act 1928 revokes the Declaration of Tidbinbilla Nature Reserve as a Public Park.

ACT Determination No. 73 of 1991 made under section 51 of the Nature Conservation Act 1980 declares Tidbinbilla Nature Reserve as a reserved area.

ACT Determination No. 74 of 1991 made under section 51 of the Nature Conservation Act 1980 revokes the declaration of Namadgi National Park as a reserved area.

ACT Determination No. 75 of 1991 made under section 51 of the Nature Conservation Act 1980 declares a new and more extensive Namadgi National Park as a reserved area.

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with Hughes Section 30 Block 2 (part) Section 28 Block 4 (part)

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with Pearce Section 49 Block 10 (part).

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with Hackett Section 18 Blocks 4 and 5.

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with the Kingston Group Centre.

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with Pearce Section 30 Blocks 9, 10 (part), 11 and 12.

Approval of Variation to the Territory Plan made under section 19 of the Interim Planning Act 1990 dealing with Ainslie Section 26 Block 1 (part) and Block 2.

(2) Subordinate Legislation upon which comment is offered.

The Committee has examined the following Subordinate Legislation and offers the following comments:

(a) Explanatory statements now received

In its Reports Nos 6 and 7 of 1991 the Committee drew attention to the fact that three exemptions that had been granted under sections 10(3) and 12(4) of the Tobacco Act 1927 had not been numbered so that they could be readily identified and that no Explanatory Statements had been received explaining the need for the exemptions.

Three helpful Explanatory Statements have now been received. In addition, the Committee notes that a later exemption being Exemption No. 14 of 1991, also made under the sections 10(3) and 12(4) of the Tobacco Act 1927, and which was reported on without comment by the Committee in its Report No. 10 of 1991, was appropriately numbered and accompanied by an appropriate Explanatory Statement.

(b) Possible gap in Determinations

ACT Determination No. 70 of 1991 made under section 105A of the Liquor Act 1975 determines liquor licencing fees.

The Committee notes that the Determination does not revoke an existing Determination. The Committee would be grateful to know whether, and, if so, when, the previous Determination authorising collection of these fees was revoked. If the previous Determination has been revoked earlier, the Committee would be pleased to know what the legal authority has been for the collection of any fees since the revocation.

(c) Has a Determination been repeated?

ACT Determination No. 71 of 1991 made under section 217A of the Motor Traffic Act 1936 determines fees for registration and inspections of vehicles.

Is this the same Determination that was published in Gazette No. 556 of 1 July 1991 at pages 71-76 as Determination No. 37 of 1991? They are both dated 21 June 1991, the matter dealt with is the same and the fees appear to be the same. As the Committee pointed out in its Report No. 12 of 1991, the Explanatory Statements for Determination No. 37 of 1991 and Determination No. 65 of 1991 appeared to have been transposed. In the present case the apparently incorrect Explanatory Statement for Determination No. 65 of 1991 and the Explanatory Statement for Determination No. 71 of 1991 also seem to be the same.

BILLS

(3) Bills upon which no comments are offered.

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

Cemeteries (Amendment) Bill 1991

This Bill changes the status of the Cemeteries Trust under the Audit Act 1989 to an authority that must keep accounts in accordance with commercial practice.

Commercial Arbitration (Amendment) Bill 1991

This Bill amends the principal Act to bring the ACT law into line with a uniform Australia-wide approach to commercial arbitration.

Co-operative Societies (Amendment) Bill 1991

This Bill provides for stricter accounting and reporting requirements for co-operative societies.

Electricity and Water (Amendment) Bill 1991

This Bill amends the principal Act to permit the addition of fluoride to the water supply on a permanent basis and removes the requirement that there must be a referendum before this can occur.

Evidence (Closed-Circuit Television) Bill 1991

This Bill provides for the continuation of the use of closed-circuit television for the taking of the evidence of a child before the Magistrates Court and Coroner's Court and extends its use to the Supreme Court until the end of 1992.

Gaming Machine (Amendment) Bill 1991

This Bill will allow individual licensees to choose, subject to a minimum percentage, the percentage payout rate applicable to their gaming machines.

Legal Practitioners (Amendment) Bill 1991

This Bill amends the qualifications for admission as a barrister and solicitor, provides for the Attorney-General to determine a fee to be paid by a practitioner appointed as Queen's Counsel and provides that a client is entitled to receive an itemised account from his or her solicitor.

Legislative Assembly (Members' Staff) (Amendment) Bill 1991

This Bill amends the principal Act to provide that, if the Chief Minister approves arrangements or determines conditions relating to the employment of staff by members, then the Chief Minister

must approve the same arrangements or determine the same conditions for each member.

Magistrates and Coroner's Courts (Registrar) Bill 1991

This Bill will change the title of the Clerk and Deputy Clerk of the Magistrates and Coroner's Courts to Registrar and Deputy Registrar and will consequently replace the title Clerk with Registrar in specified Acts, Regulations and Rules.

Police Offences (Amendment) Bill 1991

This Bill repeals the "sunset clause" under which the Police Offences (Amendment) Act 1989 operated and would thus retain the provisions of that Act which provides for police move on powers.

Water Supply (Chemical Treatment) (Repeal) Bill 1991

This Bill repeals three Acts consequential upon the passing of the Electricity and Water (Amendment) Bill 1991.

(4) Bill upon which comment is offered.

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

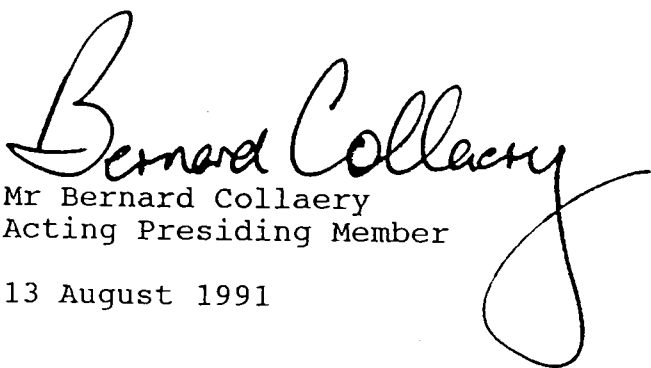
Motor Traffic (Amendment) Bill 1991

This Bill provides for the review by the Administrative Appeals Tribunal of administrative and discretionary decisions that are made under the principal Act by the Minister and the Registrar of Motor Vehicles.

Paragraph (3)(c) of the Committee's Terms of Reference requires the Committee to consider whether Bills

"make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions."

Consistent with its responsibilities under this Term of Reference, the Committee wishes to commend this Bill. Not only does it consolidate and bring some order and consistency in relation to those provisions where appeal rights already exist in the principal Act, but it also ensures that there is independent review by the Administrative Appeals Tribunal of other decisions and discretions that are made or exercised by the Minister or the Registrar under the Act's provisions.


Mr Bernard Collaery
Acting Presiding Member

13 August 1991