

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

REPORT NO 4 of 1991

4 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

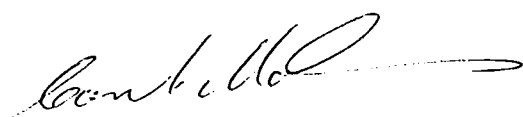
The Committee examines all Bills and delegated legislation presented to the Legislative Assembly. The Committee does not make any comments on the policy aspects of the legislation. The Terms of Reference contain the customary principles of Scrutiny that enable the Committee to operate in the best traditions 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.

Mr D Prowse
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr ^{David} Prowse,

Please find enclosed a copy of Report No 4 of 1991 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under the 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 4 of 1991.

Yours sincerely



Carmel Maher MLA
Presiding Member

4 March 1991



Approved
David Prowse

4 March 1991

BILLS

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

1. Stock Bill 1991

This Bill would set up a system of registration of stock marks, regulate the placement of stock marks on animals and provide for the issue of permits for the movement of stock.

The Committee offers two comments

First, the Committee noted the very appropriate provisions in the Bill for identity cards, for "without reasonable excuse" defences, for determinations of stock levies to be subject to disallowance by the Legislative Assembly and for review of discretionary decisions by the Administrative Appeals Tribunal. In earlier responses to the Committee the Attorney-General, Mr Collaery, has indicated that standard notices advising of the existence of rights of review were being developed under other statutes and it is hoped the same will occur here.

Secondly, there is a slight puzzle in clause 33(1). It provides as follows:

"33(1) A person shall not travel stock unless, before the person moves the stock from a holding or run, he or she has obtained - [a permit]." (Emphasis added).

"Holding" is defined in clause (4)1, but there is no definition of "run". In the Act to be repealed, the Stock Act 1934, "run" was somewhat widely defined as including "any land, road, place or premises". Furthermore, s26 of the Stock Act 1934, which is the equivalent of clause 33, does refer to the need to obtain a permit prior to "departure from a holding or run". Perhaps the wording has been carried forward from that section, but the definition has not been carried forward. Alternatively, perhaps "run" was intended to have its narrower traditional meaning in the present Bill.

2. Trade Measurement Bill 1990 - Government Response

The Committee reported on the abovementioned Bill in Report No 1 of 1991, which was presented out of session on 11 January 1991. The Committee has since received a response which is attached.

The Committee thanks the Attorney-General for his response, but offers two comments. Firstly, the Committee is grateful for the assurances given by the Attorney-General that certain provisions requested by the Committee would be included in the proposed Trade Measurement Administration Bill. However, the Committee considers that it may be beneficial to all Assembly Members if the two Bills could be debated cognately, so that the whole package can be examined.