

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

REPORT NO 15 of 1990

2 October 1990

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY


STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

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Mr W G Stefaniak MLA
Acting Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Stefaniak

Please find enclosed a copy of Report No 15 of 1990 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 15 of 1990.

Yours sincerely



Carmel Maher MLA
Presiding Member

2 October 1990



Approved ✓
Bill Stefaniak
Acting Speaker

3 October 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 T Connolly 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-viewable 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 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.

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

NATURE CONSERVATION (AMENDMENT) BILL 1990

This Bill authorises the carrying out of archaeological investigations with the written consent of, and under the ultimate control of, the Conservator of Wildlife.

VENEREAL DISEASES (AMENDMENT) BILL 1990

This Bill repeals a provision under which a fee of \$1.00 is paid to medical practitioners upon notification of a notifiable disease.

In relation to the following Bills, the Committee offers the following comments:

MOTOR TRAFFIC (AMENDMENT) BILL (NO. 4) 1990

This Bill will require children under the age of one year travelling in a motor vehicle to be carried in an approved restraint.

MOTOR TRAFFIC (AMENDMENT) BILL (NO. 5) 1990

This Bill permits the Minister to determine maximum taxi fares, but such determinations will become disallowable instruments.

MOTOR TRAFFIC (AMENDMENT) BILL (NO. 6) 1990

This Bill changes the basis for the imposition of certain penalties by bringing them under general offence provisions and increases the level of penalties for traffic offences.

In relation to the abovementioned Bills and the Motor Traffic (Amendment) Bill (No. 3) 1990 (see comments later), the Committee noted that all 4 Bills amended one principal Act, namely the Motor Traffic Act 1936.

The Committee would be interested to know whether consideration was given to having just one Bill drafted to cover the content of the 4 Bills that were introduced. Should the Bills become law, a person trying to get access to all the legislation will be required to purchase 4 Acts, whereas it may have been possible for them to purchase just one Act containing all the amendments to the principal Act.

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

The Committee dealt with earlier versions of these three Bills and reported on them in Report No 6. There was a positive response from the Attorney-General on 13 June 1990, which was attached to the Committee's Report No 9 and for which we thanked the Attorney-General.

The Bills had their origins in the carrying out of undertakings given to the Senate Standing Committee on Regulations and Ordinances.

The present Bills increase the level of penalties under the principal Acts, which the ACT inherited from New South Wales.

None of the minor changes made in these versions concern the Committee.

MOTOR TRAFFIC (AMENDMENT) BILL (NO. 3) 1990

The Bill incorporates a reference to Australian Design Rules generally and brings up-to-date the legislation in this ADR area.

The committee notes with approval that any exemptions granted by the Minister under the new s. 7A(6)(d) or (f) of a class of motor vehicles or trailers from the provisions are disallowable instruments (new s. 7A(7)). Exemptions by the Minister of a specified motor vehicle or specified trailer would not be disallowable. However, where the Minister refuses to grant an exemption of a specified motor vehicle or trailer, the Committee again notes with approval that there is an appeal to the AAT under new ss. 7B and 7C. These sections also provide a similar right of appeal where the Registrar refuses to register a motor vehicle or trailer.

SCRUTINY OF SUBORDINATE LEGISLATION

Declaration of the Jerrabomberra Wetlands Nature Reserve made under s. 51 of the Nature Conservation Act 1980 declares an area of 174 hectares as a reserved area.

The committee makes two minor points.

First, it is noted that the declaration does not have a number. Almost certainly there are unlikely to be very many declarations made under s. 51 of the Nature Conservation Act 1980, but one never knows and a number does help identification.

Secondly, although there is a helpful Explanatory Statement, it could have covered a couple of aspects of s. 51. Section 51(3)(a) precludes the making of a declaration over fee simple land. Fee simple land is disappearing in the ACT and presumably there is none in this declared area. However, to be absolutely sure that the Declaration is valid, the Committee (and Members of the Assembly) need to be assured of this. Again, s. 51(5) protects the rights of any occupier of any declared area. The Explanatory Statement does not say if there are any occupation rights and it would have helped if this had been covered in the Explanatory Statement. Of course, this aspect of protection of an occupier's rights does not affect the validity of the declaration, as the fee simple point does, but it would merely have been useful information to supply about a declaration made under this section.

These are both tiny points, but, if covered, they would help Assembly Members to assess delegated legislation more easily.

A handwritten signature in cursive script, appearing to read 'Carmel Maher', with a long horizontal flourish extending to the right.

Carmel Maher
Presiding Member

2 October 1990