

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

REPORT NO 5 of 1990

18 April 1990

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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Mr D J Prowse MLA
Speaker
ACT Legislative Assembly
CANBERRA ACT 2601

David
Dear Mr Prowse

Please find enclosed a copy of Report No 5 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 5 of 1990.

Yours sincerely

Carmel Maher
Carmel Maher MLA
Presiding Member

18 April 1990

David Prowse

Approved
David Prowse
Speaker

18 April 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-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 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:

Taxation (Administration)(Amendment) (No 2)1990
Ambulance Service Levy 1990
Long Service Leave (Building and Construction Industry)
(Amendment) 1990

In relation to the Taxation (Administration)(Amendment)(No 2) 1990 the Committee offers no comment.

AMBULANCE SERVICE LEVY BILL 1990

This Bill provides for a levy on Health Benefits Funds for the continuation of the provision of ambulance services in the ACT.

(a) Incorporation of Provisions of Another Act

The Committee notes that clause 3 of the Bill uses legislative shorthand by incorporating the provisions of the Taxation (Administration) Act 1987 into the present Bill. This process of incorporation can be confusing and infuriating when one is endeavouring to discover the state of the law and several cross-referenced or incorporated pieces of legislation need to be consulted.

However, given that the incorporated provisions are essentially administrative in character, the Committee considers that in this case it is acceptable.

(b) Form not Subject to Assembly Scrutiny

Under clause 9 returns must be made monthly to the Commissioner "in a form approved by the Commissioner".

As the form is approved by the Commissioner and is not one made by regulations, it will not be subject to tabling in the Assembly and thus will not be subject to scrutiny and, if needs be, disallowance, by the Assembly.

There has been a tendency in recent years for legislation to proliferate which takes away parliamentary scrutiny and control and gives it to a Minister or to officials. This is usually done in the name of "increased efficiency and the need to have an opportunity to make rapid changes". If the power is given to a Minister, at least the Minister is directly subject to parliamentary scrutiny and control.

The Committee, however, notes that the form to be approved by the Commissioner in the present instance is a fairly routine one, and that clause 9 does set out in considerable detail what the contents of the form are to be.

Thus, while the Committee is not concerned in this case about of the lack of parliamentary scrutiny and control, it will, in the future, be examining Bills to ensure that the control is vested in the Assembly rather than in a Minister or officials.

**LONG SERVICE LEAVE (BUILDING AND CONSTRUCTION INDUSTRY)
(AMENDMENT) BILL 1990**

This Bill amends the provisions relating to calculation and payment of entitlements, provides for the use of part of the levy collected under the Act to be used for training and project purposes and permits the investment of funds without the Minister's consent to each transaction.

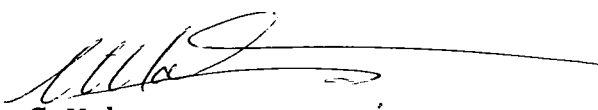
Retrospectivity

The Committee examined two aspects of retrospectivity in the Bill, but considered that neither of them warranted any concern. However, the instances are detailed below for the information of Members.

First, the proposed new section 19C (inserted by clause 7 and to be found at the top of page 3) empowers the Board to transfer certain funds to the Building and Construction Industry Training and Projects Fund on a regular three monthly basis. The first of such periods is for the period of three months that commenced on 1 January 1990. There will be a period of retrospectivity, but how long it will be will depend upon how long it is before this Bill becomes an Act and is brought into operation. However, assuming reasonable speed of passage the period should be short.

Secondly, clause 13 provides that money that has already been set aside by the Board between 1 July and 31 December 1989 is to be regarded for all purposes as part of the new Fund. Again, the period of retrospectivity is relatively short and presumably people in the industry will have been aware of the setting aside of these funds in anticipation of the passing of legislation to allow them to be used for training and project purposes.

However the Committee recognises that because of the problems that would arise if the Bill were not to be made retrospective, retrospectivity may be justified in the present instance.


C Maher
Presiding Member
April 1990