

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

REPORT NO. 1 OF 1996

27 February 1996

TERMS OF REFERENCE

- (1) A Standing Committee for scrutiny of bills and subordinate legislation be appointed.
- (2) The Committee will consider whether:
 - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
 - (i) meet the objectives of the Act under which it is made;
 - (ii) unduly trespass on rights previously established by law;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
 - (b) its explanatory statement meets the technical or stylistic standards expected by the Committee.
 - (c) clauses of bills introduced in the Assembly:
 - (i) do not unduly trespass on personal rights and liberties;
 - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
 - (d) its explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of three members.
- (4) 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.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) 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.

MEMBERS OF THE COMMITTEE

Mr Paul Osborne, MLA (Chair)
Mr Andrew Whitecross, MLA (Deputy Chair)
Mr Harold Hird, MLA

Legal Advisor: Emeritus Professor Douglas Whalan, AM
Secretary: Mr Tom Duncan
Deputy Secretary: Ms Beth Irvin

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

BILLS

Bill - No Comment

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

Fair Trading (Amendment) Bill 1996

This Bill prevents disclosure of particulars of the use of a cash card where those particulars identify or tend to identify the user unless the user consents or the disclosure is required by a court or is required or authorised by a law in force in the Territory.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Approval of Variation No. 49 to the Territory Plan made under section 26 of the *Land (Planning and Environment) Act 1991* approves a variation relating to Section 35 Block 18 in the Division of Deakin.

Subordinate Law No. 44 of 1995 being the Supreme Court Rules (Amendment) sets out procedures for the service of subpoenas in New Zealand and for videoconferencing and telephone evidence between Australia and New Zealand.

Subordinate Law No. 47 of 1995 being the Classification (Publications, Films and Computer Games) (Enforcement) Regulations prescribes areas for the purposes of sale and exhibition of "X" classified films and specifies the wording of warning signs that must be displayed at the entrance to restricted publications areas.

Determination No. 163 of 1995 made under section 23A of the *Ozone Protection Act 1991* determines criteria for granting an essential use classification for an installation that uses halon.

Determination No. 14 of 1996 made under section 23 of the *Motor Omnibus Services Act 1955* determines the administrative charge of \$30 to be paid in relation to infringement notices.

Determination No. 164 of 1995 made under section 23A of the *Ozone Protection Act 1991* determines criteria for granting an exemption for an installation that uses halon.

Determination No. 165 of 1995 made under section 3F of the *Building and Services Act 1924* revokes Determination No. 177 of 1993 and determines new fees for the disposal of garbage at ACT Government landfills.

Determination No. 166 of 1995 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 154 of 1995 and determines fees that are to be paid under the Act and those to be paid under the *Road Transport Charges (Australian Capital Territory) Act 1993* (Commonwealth).

Determination No. 167 of 1995 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 138 of 1994 and Determination No. 162 of 1994 and determines the wages threshold below which no employer is required to lodge returns and pay payroll tax from 1 January 1996 and determines the payroll tax rates for the purposes of the *Payroll Tax Act 1987* that are effective from 1 January 1996.

Declaration No. 1 of 1996 made under subsection 3 (2) of the *Agents Act 1968* exempts a specified company from the nominated director requirements of paragraph 47B (b) of the Act.

Instrument No. 2 of 1996 made under section 87 of the *Occupational Health and Safety Act 1989* approves the application of the National Standard for Limiting Occupational Exposure to Ionising Radiation being [NOHSC: 1013 (1995)].

Determination No. 7 of 1996 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of a number of streets in the Division of Dunlop.

Instrument No. 8 of 1996 made under section 22 of the *Animal Welfare Act 1992* approves as a Code of Practice the Code of Practice for the Welfare of Cats in the ACT.

Instrument No. 9 of 1996 made under section 22 of the *Animal Welfare Act 1992* varies the Code of Practice for the Welfare of Horses in the ACT by approving Appendix 4: Commercial Horse Riding Establishments.

Instrument No. 10 of 1996 made under section 27(1) of the *Building Act 1972* exempts Works and Services from the application of a specified requirement of the Building Code in relation to the ACT Public Hospitals Redevelopment Tower Block at Woden Valley Hospital.

Instrument No. 11 of 1996 made under section 39A(1) of the *Bookmakers Act 1985* determines the outcome of the Federal election to be held on 2 March 1996 to be a sports betting event.

Instrument No. 12 of 1996 made under section 39C(1) of the *Bookmakers Act 1985* varies the rules relating to betting on

approved events by adding rules relating to betting on political elections.

Public Sector Management Standard 3/1996 made under section 251 of the *Public Sector Management Act 1994* by the Acting Commissioner for Public Administration with the Approval of the Chief Minister amends Instrument 1/1994 by repealing the definition of ACTGS and substituting a definition of ACTPS.

Public Sector Management Standard 5/1996 made under section 251 of the *Public Sector Management Act 1994* by the Acting Commissioner for Public Administration with the Approval of the Chief Minister amends Instrument 1/1994 by repealing Standards applying to former Chief Executives and SES officers and determining a new Standard to apply to Chief Executives and Executives.

Subordinate Legislation - Comment

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

Subordinate Law No. 45 of 1995 being the Electoral Regulations (Amendment) fixes the remuneration to be paid to the Electoral Commissioner.

Retrospectivity

This amendment is made retrospective to 1 July 1994. The Explanatory Statement explains the retrospectivity in this way:

"The *Subordinate Laws Act 1989* provides at section 7 that a subordinate law may not have retrospective effect if it would operate so as to prejudicially affect a person. As this amendment will benefit the Commissioner, it is not affected by this provision."

Subordinate Law No. 46 of 1995 being the Buildings (Design and Siting) Regulations (Amendment) inserts "stop-clocks" (that is, provisions that ensure that time is not to count towards the time after which an application is deemed to have been refused) in the Principal Regulations.

Retrospectivity

The amendments are made retrospective to cover applications made on or after 15 July 1992.

The Explanatory Statement explains the retrospectivity in this way:

"Stop-clocks similar to those that apply under the Land Regulations [that is, the Land (Planning and Environment) Regulations] have been applied administratively to design and siting applications since [15 July 1992]. ...Section 7 of the *Subordinate Laws Act 1989* is to the effect that

a subordinate law shall not be expressed to take effect from a date before it is notified in the Gazette if this would prejudicially affect the rights of a person other than the ACT or if liabilities would be imposed on a person other than the ACT. The amendment does not impose liabilities on any person and it operates to provide the benefit of the stop-clock to applicants whose applications have been dealt with on the basis that stop-clocks applied."

Subordinate Law No. 48 of 1995 being the Animal Welfare Regulations (Amendment) imposes minimum cage sizes for the keeping of fowls for egg production.

Is NOTE 1 Correct?

NOTE 1 to the present amendment reads as follows:

"Principal Regulations

1. Regulations 1993 No. 12. See also Subordinate Law No. 64, 1994."

The Principal Regulations are the Animal Welfare Regulations, which are, in fact, "Regulations 1993 No. 12".

However, the Committee has been unable to find a "Subordinate Law No. 64, 1994". The Subordinate Laws for 1994 that appear in the published volumes for 1994 are numbers 1-48 and this coincides with the number of Subordinate Laws for 1994 that were scrutinised by the Committee.

The Animal Welfare Regulations were amended by the *Administrative Appeals (Consequential Amendments) Act 1994*, but it was Act No. 60 of 1994.

Perhaps a check should be made.

Public Sector Management Standard 2/1996 made under section 251 of the *Public Sector Management Act 1994* by the Acting Commissioner for Public Administration with the Approval of the Chief Minister makes amendments to existing management standards reflecting new remuneration arrangements for Senior Offices, changes rates of Allowances, changes rules relating to leave and makes a number of minor amendments.

Could a Check be made of a Reference to a Management Standard and is it Time for a Reprint?

Reference to a Management Standard

The Approval of these amendments by the Chief Minister refers to "the amending of the Management Standards made by Instrument 12/1994".

The present Instrument appears to make many amendments to the major instrument in this area, Instrument 1/1994, as it has been amended in the

meantime by a number of other Management Standards. These previous amendments included amendments that were made to Instrument 1/1994 by Instrument 12/1994, which added pages 1057-1060 to Instrument 1/1994 and dealt with management standards relating to Canberra Theatre Officers. Page 1059 of these additions is amended by the present Instrument.

Perhaps an explanation could be asked for as to why the Approval refers specifically to Instrument 12/1994 and not to Instrument 1/1994 or any of the other Instruments that have amended Instrument 1/1994 and to which further amendments are made by the present Instrument.

Is it time for a Reprint?

Since Instrument 1/1994 was made on 29 June 1994 a number of substantial amendments have been made to the Standards. Is the time approaching when it would be appropriate to reprint the Standards?

Determination No. 5 of 1996 made under section 86 of the *Nurses Act 1988* revokes existing determinations and determines fees payable under the Act.

Determination No. 6 of 1996 made under section 55 of the *Optometrists Act 1956* revokes *Determination No. 102 of 1994* and determines fees payable under the Act.

Missing References to Revoked Determinations but Helpful and Detailed Explanatory Statements

First, it would have been helpful if *Determination No. 5 of 1996* under the *Nurses Act 1988* had indicated that the sections referred to in the revocation clause were the section numbers in the Act prior to the recent renumbering and had also given the numbers of the specific determinations that were being revoked and the *Gazette* provisions for an old pre-self-government (and thus unnumbered) determination that was being also revoked.

Secondly, the Explanatory Statements for these determinations are very full, detailed and helpful to Members of the Legislative Assembly or members of the public wishing to check the fees and changes to the fees. These Explanatory Statements comply very satisfactorily with the *Guidelines for the Preparation of Disallowable Instruments* issued by the ACT Attorney-General's Department (May 1993).

For example, there have been substantial changes to the *Nurses Act 1988* as well as the renumbering of the Act. The Explanatory Statement for this determination sets out the background to, and numbering, of the previous determinations and the *Gazette* details for the pre-self-government, unnumbered determination and the reasons and basis for increases in fees. It also has a useful comparative Table indicating the past and new fees and the relevant previous and current or renumbered provisions of the Act. The Explanatory Statement for *Determination No. 6 of 1996* follows the same helpful pattern.

Instrument No. 13 of 1996 made under subsection 14(2) and 15(2) of the *Skin Penetration Procedures Act 1994* determines fees payable under the Act.

Are the References to the Act Complete and Accurate?

First, the determination is made under subsections 14(2) and 15(2) of the *Skin Penetration Procedures Act 1994*. These provisions refer to determined fees for an application for a business licence and an application for an operator's licence respectively. The Schedule to the determination also fixes a fee of \$50 under section 24 for approvals to alterations to premises or appliances. For completeness, should the determination itself also refer to section 24?

Secondly, there seem to be two puzzles in relation to application fees for operators' licences and the renewal thereof.

The Schedule fixes a fee of \$35 for an application for a Class 1 operator's licence under subsection 15(1). The Schedule also fixes a nil fee for an application for a Class 2 operator's licence under subsection 15(2).

There is no reference to different Classes of licences in section 15, but the determination itself provides for these two different Classes. This division into Classes seems appropriate, as those applications that qualify for a nil fee are those made by emergency services personnel, by an operator who is also proprietor of a skin penetration procedures business (who will have already paid a fee of \$100 fixed by the determination under section 14) or by a student practitioner.

However, as Class 1 and Class 2 applications are both applications for an operator's licence under section 15, should the references to subsection 15(1) and subsection 15(2) be consistent with one another?

The Schedule purports to fix a fee of \$35 for the renewal of a Class 1 operator's licence and a nil fee for the renewal of a Class 2 operator's licence. Both entries refer to subsection 24(2) as the provision under which these renewal fees are fixed. As was mentioned above, section 24 refers to alterations of premises and appliances and does not mention renewal of fees. Section 23 is headed "**Annual fees**" and appears to be the relevant section under which such fees are to be determined.

Perhaps checks should be made as to the accuracy and validity of these aspects of the determination.

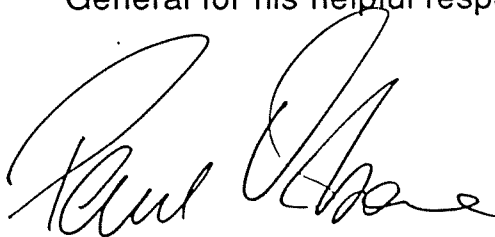
GOVERNMENT RESPONSE

The Committee has received a response concerning comments made concerning:

- Determination No. 78 of 1995 made under the *Lotteries Act 1964* (Report No. 8 of 1995);

- Determination No. 92 of 1995 made under the *Taxation (Administration) Act 1987* (Report No. 8 of 1995);
- Sale of Motor Vehicles (Amendment) Bill 1995 (Report No. 15 of 1995);
- National Crime Authority (Territory Provisions) Regulations made under the *National Crime Authority (Territory Provisions) Act 1991* (Report No. 15 of 1995);
- Determination No. 158 of 1995 made under the *Bookmakers Act 1985* (Report No. 15 of 1995);
- Classification (Publications, Films and Computer Games) Enforcement Bill 1995 (Report No. 16 of 1995);
- Land Titles (Amendment) Bill 1995 (Report No. 16 of 1995);
- Subordinate Law No. 43 of 1995 being the Liquor Regulations (Amendment) (Report No. 16 of 1995);
- Determination No. 149 of 1995 made under the *Adoption Act 1993* (Report No. 15 of 1995);
- Community Referendum Bill 1995 (Report No. 16 of 1995);
- Fire Brigade (Amendment) Bill 1995 (Report No. 18 of 1995);
- Domestic Violence (Amendment) Bill 1995 (Report No. 20 of 1995); and
- Magistrates Court (Amendment) Bill (No. 2) 1995 (Report No. 20 of 1995).

Copies of the responses are attached. The Committee thanks the Attorney-General for his helpful responses.



Paul Osborne, MLA
Chair

27 February 1996




Gary Humphries MLA

Attorney General
Minister for the Environment
and Planning
Minister for Police
Minister for Emergency Services
Minister for Arts and
Minister for Consumer Affairs

Member for Molokai
Australian Capital Territory

Mr Paul Osborne MLA
Presiding Member
Standing Committee on Scrutiny of Bills and
Subordinate Legislation
ACT Legislative Assembly
South Building
London Circuit
CANBERRA ACT 2601

Dear Mr  Osborne

In its Report No. 8 of 1995, the Committee commented on Determination No. 78 of 1995 made under the *Lotteries Act 1964*. The Committee noted that Determination No. 78 inadvertently revoked Determination No. 48 of 1994 (which sets fees under the *Bookmakers Act 1985*) instead of revoking Determination No. 49 of 1994 (which sets fees under the *Lotteries Act 1964*). The Committee thought that a court may decide that Determination No. 48 has not been revoked by Determination No. 78 and that Determination No. 49 was intended to be revoked, given that a simple mistake had occurred and suggested that this be confirmed.

I am pleased to be able to confirm the Committee's views. I am advised that if it is obvious that a simple mistake has been made in the text of a Determination, the courts will read the Determination in its correct form. Accordingly, it is very unlikely that Determination No. 78 would be interpreted to mean that it was effective in revoking Determination No. 48. Determination No. 78 would have impliedly revoked Determination No. 49 because Determination No. 78 is wholly inconsistent with the previous Determination No. 49. However, having said that, I am further advised that to put the matter beyond doubt a fresh determination will be prepared.

In its Report No. 8 of 1995, the Committee commented on Determination No. 92 made under section 99 of the *Taxation (Administration) Act 1987*. Determination 92 determines the types of liquor applicable to the calculation of franchise fees under section 23 of the *Business Franchise (Liquor) Act 1993*.

ACT Legislative Assembly
London Circuit, Canberra
GPO Box 1020, Canberra

Phone (06) 205 0100

Printed on recycled paper

The Committee correctly suggested that the first part of Determination No. 92 in error. The Determination should have stated that it revokes the previous Determination No. 23 of 1993 under the *Business Franchise (Liquor) Act 1993* and not, as indicated, under the *Taxation (Administration) Act 1987*.

Advice from the Government Solicitor's Office has been sought and I enclose copy for your information. The tenor of that advice is that the revocation of previous Determination No. 23 of 1993 under the wrong source of power, namely, the *Taxation (Administration) Act 1987*, does not invalidate the revocation. Thus, Determination No. 23 has been legally revoked by Determination No. 92 of 1995.

In its Report No. 15 of 1995, the Committee noted a possible inaccurate section reference in the Sale of Motor Vehicles (Amendment) Bill 1995. The Committee is correct in its observation and the error has been rectified by the Clerk of the Assembly under Standing Order 191.

In its Report No. 15 of 1995, the Committee commented on the National Crime Authority (Territory Provisions) Regulations made under section 31 of the *National Crime Authority (Territory Provisions) Act 1991*. The Committee noted that there are references in regulation 4 to services by "registered post or certified mail" and asked whether these services still exist for use within Australia. Australia Post has confirmed that both terms are still in use for mail posted within Australia. Further, Australia Post explained that the term "Security Post" to which the Committee refers, is the generic term used to cover both services.

In its Report No. 15 of 1995, the Committee commented on Determination No. 158 of 1995 made under subsection 39(C)(1) of the *Bookmaker's Act 1985*. My letter of 21 November 1995 which the Committee would not have received when Report No. 15 was prepared explained the circumstances surrounding Determination No. 137 of 1995. In the course of preparing new Determination No. 158, the comments of the Committee in relation to Determination No. 137 in its Report No. 13 of 1995 were considered and the new Determination and its explanatory statement were expanded to more fully explain the minimum betting provisions and address the concerns raised by the Committee.

In its Report No. 16 of 1995, the Committee commented on the Classification (Publications, Films and Computer Games) (Enforcement) Bill 1995. In relation to comments made in respect of clauses 2 and 27 the errors were rectified by the Clerk of the Assembly under Standing Order 191. In relation to clause 40, the Committee rightly noted that the clause as drafted did not make sense. Indeed as the Committee suggested the defence in paragraph 40(2)(b) is intended to go to knowledge. As a consequence, I moved a Government amendment in the Assembly during the debate to correct this error.

In its Report No. 16 of 1995, the Committee noted an incorrect section reference in the Land Titles (Amendment) Bill 1995. The Committee is correct in its observation and I am advised that the Clerk of the Assembly has been requested to rectify the error under Standing Order 191.

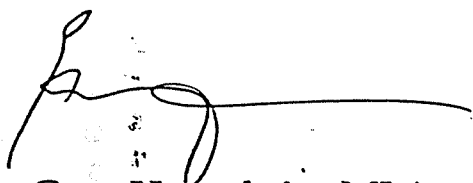
In its Report No. 16 of 1995, the Committee commented on Subordinate Law No. 43 of 1995 being the Liquor Regulations (Amendment) which makes it an offence to consume liquor in prescribed areas during Summernats and the Booze Less Be Your Best Sleepout. The Committee noted that the regulation covered the Archbishop's residence and the Regatta Point cafe during the period of the sleepout on 1-2 December 1995. I am advised that while the Archbishop's residence and the Regatta Point cafe are physically within the area declared dry these were not subject to the Regulation.

The regulation provides that the area defined as a 'prescribed public place' for the purposes of paragraph 84(3)(c) of the *Liquor Act 1975* is so much of the area shown on the map as is a public place. The Archbishop's residence is not a public place under the *Liquor Act* and therefore was not subject to the regulation.

Subsection 84(2) of the *Liquor Act* provides that the drinking in public places offences provided in subsections 84(1) and 84(1A) do not apply to licensed premises. Regatta Point cafe is a licensed premises and therefore was not subject to the regulation.

I thank the Committee for its helpful comments and trust this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Gary Humphries', with a long horizontal line extending to the right.

Gary Humphries MLA
Attorney-General

- 4 JAN 1996



AUSTRALIAN CAPITAL TERRITORY
GOVERNMENT SOLICITOR

Your Reference:
Our Reference:

95-2-256639
Dr D Jarvis
Ph 20 70635

1st Floor
GIO House
City Walk
CANBERRA CITY 2

29 November 1995

Mr J Casburn
Senior Policy Officer
ACT Revenue
FAI House

RE: BUSINESS FRANCHISE (LIQUOR) ACT 1993 - SECTION 23 -
DETERMINATION NO. 92 OF 1995 - SCRUTINY OF BILLS REPORT NO. 8
OF 1995

I refer to your memorandum of 22 September 1995 seeking advice concerning the above matter. You have asked for advice concerning a view expressed in Scrutiny of Bills Report No. 8 of 1995 to the effect that Determination No. 92 of 1995 has stated the wrong source of power under which the previous Determination (No 23 of 1993) is purported to be revoked.

2. The Committee says in the effect that if section 23 of the Act is the power under which the Determination is made, being a determination of types of liquor for purposes of sections 9 and 17 of the Act, then it is also section 23 which is the source of power to revoke the Determination, not section 99 of the *Taxation (Administration) Act 1987* which is stated to be the source of power in the Determination.

3. I agree with that point. Section 27 of the *Interpretation Act 1967* provides to the effect that a power under an Act to make an instrument is to be construed as including a power to vary or revoke it. Thus, section 23 contains the power both to make and to revoke the determination of types of liquor.

4. However, the fact that the wrong source of power has been referred to in Determination No. 92 does not in my opinion work any invalidity on the revocation. Provided that a statutory power does exist it may be exercised by a repository of that power even if the repository makes a mistake as to its source in the relevant instrument: *Wright v McQualter* (1970) 17 FLR 305; *Brown v West* (1989) 91 ALR 197; *Johns v ASC* (1993) 116 ALR 567.

5. As I am of the view that Determination No. 23 has been revoked by Determination No. 92 it is unnecessary to answer the question whether it may have been revoked by implication by the determining of new types of liquor in Determination No. 92 but I should think that there is doubt whether a repeal by implication had occurred. Such a repeal only occurs when the later enactment is so inconsistent with or repugnant to the earlier enactment that the two cannot stand together, and I am not sure that this result occurs in the present case. In the present case the result could equally be that all the types of liquor determined stand together, but I stress that I am not expressing a concluded view on this point.

ACT GOVERNMENT SOLICITOR

Per.





Gary Humphries MLA

Attorney General
Minister for the Environment
and Planning
Minister for Police
Minister for Emergency Services
Minister for Arts
Minister for Consumer Affairs

Member for Melbourne
Australian Capital Territory

Mr Paul Osborne MLA
Presiding Member
Standing Committee on Scrutiny of Bills and
Subordinate Legislation
ACT Legislative Assembly
South Building
London Circuit
CANBERRA ACT 2601

Dear Mr ^{Paul} Osborne

Adoption Act 1993

In its Report No. 15 of 1995, the Committee commented on Determination No. 149 of 1995 made under section 118 of the *Adoption Act 1993*. The Committee correctly noted that the explanatory statement had a clerical error as it referred to the Adoption Information Act 1993 instead of the *Adoption Act 1993*. I thank the Committee for drawing attention to this error and I am advised that the explanatory statement will be rectified the next time the instrument is made.

Community Referendum Bill 1995

In its Report No. 16 of 1995, the Committee commented on the Community Referendum Bill 1995. As you would be aware this Bill was defeated in the Assembly and, consequently, there would appear to be no purpose in pursuing the matters raised at this stage.

Fire Brigade (Amendment) Bill 1995

In its Report No. 18 of 1995, the Committee made several comments on the Fire Brigade (Amendment) Bill 1995 which, together with a number of amendments moved by the Government, was passed by the Assembly on 14 December 1995. In large part the Government amendments addressed the issues raised by the Committee in its Report, however I provide the following information in respect of each of the matters raised.

Authority to lay information

The issue raised by the Committee was that the Act was being amended in such a way that an information could be laid by anybody. I amended the amending

Bill by moving amendments that resulted in the Chief Officer remaining the only person who could apply for an order for the issue of one of the three notices referred to in the new section 12A.

Overlapping of Court's and Chief Officer's Functions

The Committee refers to the fact that while it is a function of a magistrate to authorise the issue of all three types of notices under section 12A, it is the Chief Officer who actually serves the notice and the Chief Officer has power to extend the period set in an improvement notice or revoke an occupancy notice or closure notice and must revoke an improvement notice in certain circumstances.

I believe that the power for the Chief Officer to revoke a closure or occupancy notice remains appropriate as, before doing so, he or she will need to be satisfied that it is reasonable to do so and the risk(s) which led to the application (and was accepted by the court) would not be increased. As the Chief Officer has, in the first instance, formed a view about the risk that has led to an application to the court, it is considered appropriate that if the Chief Officer assesses that the risk has passed, possibly due to remedial work being undertaken to address the concerns that led to the risk, that the Chief Officer should have the authority to revoke an occupancy or closure notice. The Government was conscious of the impact that such notices would have on businesses and believes that a capacity to remove the notice quickly is needed.

It would be purposeless if the Chief Officer's power of revocation was subject to court approval in circumstances where the business proprietor has taken action to the satisfaction of the Chief Officer arising from the notice such that the Chief Officer considers the notice should be revoked. In these cases it would be a waste of the court's time and resources, and would result in an unnecessary penalty being imposed upon the business proprietor.

Owner may not know of the issue of a Notice

Having regard to the issues that are sought to be addressed by the issuance of the notices under subsection 12A (1) it is not considered appropriate that the elimination, reduction or removal of the risk(s) that has resulted in the court agreeing to the issuance of a notice should be affected by the fact that the owner of the premises has not been served with a notice. It is accepted that in some circumstances the owner's rights might be adversely affected, however it is believed that the safeguard of requiring the Chief Officer to obtain the permission of a magistrate to issue a notice will ensure that the issues are well considered and the notice not issued unless there is adequate justification.

It should also be noted that in some circumstances the risks that present themselves need to be addressed expeditiously and information about who might be the owner of a particular premises, and where service of a notice should take place, may not be readily available to the Chief Officer.

Is the intention of subsection 12AG (1) accurately expressed

The amendments moved by the Government amended new paragraph 12AG (1) (b) by removing "variation or revocation, as the case requires" and substituting "revocation". This brought paragraph 12AG (1) (b) in line with subsection 12AG (1) which only gave the Chief Officer the power to revoke an occupancy or closure notice.

Usual protective provisions for entry on premises not inserted

The Committee has commented on the fact that the Chief Officer's, or an authorised officer's, entry to a premises is not contingent upon the production of an identity card or that they will leave the premises if proper identification is not produced.

The Attorney General's Department is presently conducting a review of the powers of entry of all government officials, including those such as members of the fire brigade and police, who usually wear a uniform. The production of identity cards on entry to premises and withdrawal from premises if a card is not produced are general principles that the Government believes should apply when government officials enter premises.

The Committee's comments concerning the *Fire Brigade Act* will be taken into account in the course of the review.

Modification of Appeal Provisions

The Committee raised comments in relation to proposed amendments to section 12B of the *Fire Brigade Act 1957*. The Government decided not to proceed with the amendments to section 12B of the Act and accordingly I moved amendments to remove these from the Bill.

Could existing legal rights be affected

I acknowledge that the amendments that are proposed would allow the Chief Officer to take action under the *Fire Brigade Act* in relation to matters that might otherwise be before the Administrative Appeals Tribunal as a result of an appeal from a determination of an occupancy loading by the Registrar of Liquor Licences under the *Liquor Act 1975*.

The issues sought to be addressed by granting additional powers to the Chief Officer under the *Fire Brigade Act* are ones that can be of fundamental importance to issues of public safety, may not be confined to premises that have liquor licences under the *Liquor Act*, and in my view should not be influenced by the fact that an affected party might be before another tribunal arguing the merits of a previous determination. At the end of the day the Chief Officers powers are only exercisable with the approval of a Magistrate after a contested hearing, unless there is an immediate danger to public safety.

I am conscious, however, that the issue of the determinations of occupancy loadings, which are part of the increased powers of the Chief Officer, has become somewhat confusing and I have requested that a review be undertaken of the various pieces of legislation dealing with the issue to ensure that a scheme is in place that is both easy to understand and ensures that public safety is not compromised.

Domestic Violence (Amendment) Bill 1995

In its Report No. 20 of 1995, the Committee noted a minor discrepancy between the explanatory memorandum to the Domestic Violence (Amendment) Bill 1995 and an explanatory note appearing at the end of the Bill. The Committee's suggestion has been taken up and I am advised that the Clerk of the Assembly has been requested to make the appropriate amendment under Standing Order 191.

Magistrates Court (Amendment) Bill (No 2) 1995

The Committee, in its Report No 20 of 1995, commented that the Explanatory Memorandum relating to the Magistrates Court (Amendment) Bill (No 2) 1995 does not reflect the effect of paragraph 7(b) of the Bill.

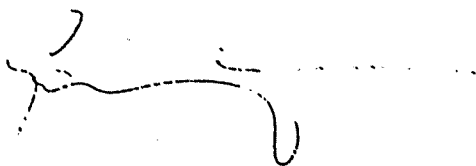
Paragraph 7(b) of the Bill merely inserts the words 'a Clerk of Petty Sessions' into section 12 of the *Magistrates Court Act 1930*. The Explanatory Memorandum states that paragraph 7(b) "amends section 12 to delete (my emphasis) references to the 'Registrar of Petty Sessions' and to substitute references to the 'Clerk of Petty Sessions'". There is, thus, a discrepancy between the Bill and the Explanatory Memorandum.

A corrigendum to the Explanatory Memorandum has been prepared and I attach a copy for your information. It will reflect clause 7 of the Bill. I propose to table the corrigendum in the Legislative Assembly at the time the Bill is debated.

The Committee also commented on the provision relating to retrospectivity in the commencement of paragraph 7(b). The Committee's comments on this aspect of the Bill do not require any changes either to the Bill or the Explanatory Memorandum.

I trust this information is of assistance to the Committee.

Yours sincerely



Gary Humphries MLA
Attorney-General

22 FEB 1995

1996

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY

MAGISTRATES COURT (AMENDMENT) BILL (NO 2) 1995

EXPLANATORY MEMORANDUM

CORRIGENDUM

Circulated by
authority of

GARY HUMPHRIES
MLA
ATTORNEY-
GENERAL

MAGISTRATES COURT (AMENDMENT) BILL (No 2) 1995

CORRIGENDUM TO THE EXPLANATORY MEMORANDUM

The following paragraph is substituted for the paragraph dealing with clause 7 on page 5 of the Explanatory Memorandum relating to the Magistrates Court (Amendment) Bill No 2 1995 issued with that Bill on its presentation to the Legislative Assembly.

"ACTS OF A MAGISTRATE OR REGISTRAR

Clause 7 amends section 12 of the Principal Act to correct the reference to the Registrar of the Magistrates Court and to include a reference to a 'Clerk of Petty Sessions'.

Paragraph 7(a) omits the reference to 'a Registrar' from subsection 12(1) and substitutes a reference to 'the Registrar'. The subsection refers to the Registrar of the Magistrates Court.

Paragraph 7(b) inserts 'a Clerk of Petty Sessions' into subsection 12(2). This is intended to ensure that any acts which may have been done under legislation providing for acts to be done by a 'Clerk of Petty Sessions' and which were done by a Magistrate or the Registrar under the power given in section 12 of the Principal Act are protected from the time of the commencement of the *Magistrates and Coroner's Courts (Registrar) Act 1991* which amended the *Magistrates Court Act 1930* and the *Coroners Act 1956* to delete references to the 'Clerk' of each of those Courts and to substitute references to the 'Registrar' of the Court subsequent to the change in the title of that officer. The title of the Court was altered from the 'Court of Petty Sessions' to the 'Magistrates Court' in 1985." However, a reference to 'a Clerk of Petty Sessions' in Imperial or New South Wales Acts applicable in the Territory may have continuing relevance."