

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

REPORT NO. 2 OF 1995

2 May 1995

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.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Subordinate Law No. 10 of 1995 being the *Liquor Regulations (Amendment)* made under section 84 of the *Liquor Act 1975* declared a specified area to be a prescribed public place for 19 March 1995, thus making it an offence to consume or possess liquor during the Food, Wine and All That Jazz event.

Subordinate Law No. 11 of 1995 being the *Supreme Court Rules (Amendment)* made under section 36 of the *Supreme Court Act 1933* amends provisions relating to claims for interest, confers an additional power on the Master, replaces references to the "Curator" with references to the "Public Trustee" and repeals obsolete rules.

Subordinate Law No. 12 of 1995 being the *Supreme Court Rules (Amendment)* made under section 36 of the *Supreme Court Act 1933* provides for an increase of 2.21% in the scale of costs chargeable by solicitors for litigious work.

Subordinate Law No. 13 of 1995 being the *Supreme Court Rules (Amendment)* made under section 36 of the *Supreme Court Act 1933* specifies the procedures to be followed in respect of appeals to the Court from the Tenancy Tribunal.

Determination No. 26 of 1995 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of four streets as public places that are Territory Land in the Division of Ngunnawal.

Determination No. 29 of 1995 made under subsections 10(2), 10(3) and 12 (4) of the *Tobacco Act 1927* exempts the existing contract between the New South Wales Rugby League Limited and Rothmans of Pall Mall Pty Limited and the existing contract between the Canberra Raiders and Rothmans of Pall Mall Limited from specified signage at Bruce Stadium during the conduct of Winfield Cup matches until 31 December 1995, subject to specified conditions.

Subordinate Legislation - Comment

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

Determination No. 27 of 1995 made under the *Magistrates Court (Civil Jurisdiction) Act 1982* provides new forms for matters relating to the enforcement of judgments under the *Magistrates Court (Civil Jurisdiction) Act 1982*.

No Reprint To Check Sections And A Tiny Inconsistency In Spelling

The Committee makes two points.

First, as the Explanatory Statement states, the *Magistrates Court (Enforcement of Judgments) Act 1994*:

“renumbers the Civil Jurisdiction Act. The section numbers in the forms are of the Act as renumbered.”.

The renumbering of the *Magistrates Court (Civil Jurisdiction) Act 1982* is appropriate given the large number of amendments that have been scattered through the Act. Similarly, as the new Forms are to operate under the new numbering, it was sensible for the Forms to carry the new numbering. However, unfortunately, the reprint of the Act is not yet available. This has meant that the references to the sections to which the new Forms are relevant have not been able to be checked as would normally happen.

Secondly, there is a tiny inconsistency in spelling in the Forms. In the NOTE at the bottom of Form 73 the spelling “installment order” occurs. This spelling is an acceptable alternative spelling.

However, the spelling used in section 229A (the unrenumbered section as inserted in the *Magistrates Court (Civil Jurisdiction) Act 1982* by section 18 of the *Magistrates Court (Enforcement of Judgments) Act 1994*) is “instalment” and in sections 278A, 278F and 278K (inserted by section 21 of the *Enforcement of Judgments Act*) is “instalment order”. Also, in many of the other new Forms where the word occurs, the spelling is “instalment”. See, as examples, Forms 74, 79, 80, 81, 83 and 90. It is suggested that no question of invalidity is involved here, but consistency might be appropriate. It also proves that the Committee thoroughly scrutinises subordinate legislation!

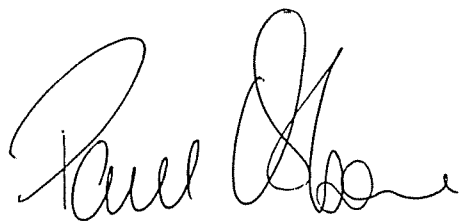
Determination of Fees and Charges No. 28 of 1995 made under the *Health Act 1993* revokes Determination of Fees and Charges No. 140 of 1994 and determines new fees and charges under the Act.

Two Minor Mistakes

The Committee draws attention to two minor mistakes.

First, in subclause 1(1) in the definition of “physiotherapy” there is a reference to the *Physiotherapy Registration Act 1977*. In fact, the name of this Act was changed to the *Physiotherapy Act 1977* by section 4 of the *Physiotherapy (Amendment) Act 1994*.

Secondly, subclause 1(4) appears to be a complete clause at the bottom of the fourth page of the determination, but part of the clause is repeated at the top of the next page.

A handwritten signature in black ink, appearing to read "Paul Osborne". The signature is written in a cursive style with a large initial "P" and "O".

Paul Osborne, MLA
Chair

2 May 1995

