

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

**REPORT NO. 4 OF 1994**

**12 April 1994**



## 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 which is subject to disallowance and/or disapproval by the Assembly (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;
  - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; or
  - (e) or the explanatory statement accompanying it meets the technical or stylistic standards to which such an instrument or explanatory statement ought, in the opinion of the Committee, to conform;
- (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) makes rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
  - (d) inappropriately delegate legislative powers;
  - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny; or
  - (f) or the explanatory memorandum accompanying it meets the technical or stylistic standards to which such a Bill or explanatory memorandum ought, in the opinion of the Committee, to conform;
- (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.

## MEMBERS OF THE COMMITTEE

Mrs E. Grassby, MLA (Chairperson)  
Mr G. Humphries, MLA (Deputy Chairperson)  
Ms H. Szuty, MLA

Legal Advisor: Emeritus Professor D. Whalan, AM  
Secretary: Mr T. Duncan  
Deputy Secretary: Ms B. Irvin

## ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate 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 subordinate legislation that comply with the high ideals set out in the terms of reference.

## SUBORDINATE LEGISLATION

### Subordinate Legislation Upon Which No Comment Is Offered

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

Subordinate Law No. 4 of 1994 being the *Food Regulations* exempts food businesses solely retailing non-perishable and pre-packaged food, transporting food, selling and delivering milk to residential premises under a vendor's permit or licence and inter-state mobile vendors at shows, festivals or other outdoor activities from the requirement of holding a licence under the Act.

Subordinate Law No. 5 of 1994 being the *Land (Planning and Environment) Regulations (Amendment)* specifies the daily rates at which the Chairperson and Members of the Land and Planning Appeals Board will be paid.

Subordinate Law No. 6 of 1994 being the *Credit Regulations (Amendment)* adds Swiss Roman and Dutch Roman to the list of print or typesfaces that may be used in credit contracts.

Subordinate Law No. 7 of 1994 being the *Regulations Revision Regulations* amends a number of sets of regulations to remove sexist language, updates drafting, corrects references and removes references to redundant regulations and corrects typographical errors.

Subordinate Law No. 8 of 1994 being the *Door-to-Door Trading Regulations (Amendment)* amends Forms 1 and 2 to remove references to a consumer having a right to rescind a contract if a trader fails to read out the Form 1 notice to the consumer, as this is not a ground for rescission of a contract provided for in section 12 of the *Food Act 1992*, but is only an offence under subsection 7(2) for which the maximum penalty is \$2,000.

Determination No. 13 of 1994 being a *Notice* made under section 8(4) of the *Ambulance Service Levy Act 1990* fixes the prescribed rate of contribution at 56 cents from 1 March 1994 in place of the previous rate of 55 cents.

Determination No. 14 of 1994 made under section 65 of the *Building Act 1972* sets new fees for the approval of plans and specifications for the installation of solid fuel appliances.

Determination No. 16 of 1994 made under section 19A of the *Food Act 1992* approves Code of Practice No. 4 "The Food Premises Code".

Instrument No. 17 of 1994 being an *Instrument of Approval* made under subsection 87(1) of the *Occupational Health and Safety Act 1989* approves the National Standard for Occupational Noise and the National Code of Practice for Noise Management and Protection of Hearing at Work for the purposes of the Act.

## GOVERNMENT RESPONSES

The Committee has received responses to comments made concerning the following subordinate legislation and Bill:

- (a) Determination No. 150 of 1993 made under the *Dog Control Act 1975* (Report No. 22 of 1993);
- (b) Determinations Nos 177 and 178 of 1993 made under the *Building and Services Act 1924* and *Motor Omnibus Services Act 1955* (Report No. 1 of 1994); and
- (c) Canberra Institute of Technology (Amendment) Bill 1994 (Report No. 3 of 1994).

Copies of the responses are attached.

The Committee thanks the Attorney-General for his positive responses.

The Attorney General, Mr Connolly, also wrote to the Committee concerning the availability of legislation, subordinate legislation and explanatory documentation to members of the public (copy attached).



Ellnor Grassby, MLA  
Chairperson

12 April 1994



# A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

ATTORNEY GENERAL

1 Constitution Ave, Canberra ACT 2601

Phone (06) 20 50011

Mrs Ellnor Grassby ~~MLA~~  
Presiding Member  
Standing Committee on Scrutiny of Bills and  
Subordinate Legislation  
ACT Legislative Assembly  
1 Constitution Ave  
CANBERRA ACT 2601

  
Dear Mrs ~~Grassby~~

In its Report No. 22 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on Determination No. 150 of 1993 made under section 40A of the *Dog Control Act 1975* ("the Act"). Issues raised by the Committee's comments have proved to be complicated and taken some time to resolve.

As noted in the Report, Determination No. 150 responded to comments by the Committee in respect of Determination No. 134 of 1993 and Determination No. 82 of 1992.

There are two outstanding matters arising from the Report. First, there is the question of whether some fees and charges have been validly collected. Secondly, there was a concern raised about the fees charged for impounding dogs.

In relation to the question of validity, the Committee pointed out that fees were incorrectly determined under subsection 13(1) of the Act. The reference to that provision was incorrect as section 13 was repealed by the *Dog Control (Amendment) Act 1991* (No. 96), which commenced on 24 December 1991. The issue raised by the Committee was whether the incorrect reference to subsection 13(1), rather than to section 9 of the Act, invalidated the collection of fees for the purposes of section 9.

The ACT Government Solicitor has advised that the fees for registration, including "renewal" of that registration, have been validly collected. The schedule refers to the supposedly relevant sections of the Act under which the fees are collected, and the relevant purposes for which the fees are collected. Accordingly, the error in the references to subsection 13(1) is overcome by the references to the purposes for which the fees have been determined, being the purposes for which fees might be determined under section 9 of the Act.

The ACT Government Solicitor thus considers that such fees, relating to registration, have been validly collected. It did recommend, however, that the error in the determination be corrected. This has been done in Determination No. 150.

The Committee also commented on the reference to section 18B, which provides for a fee for a keeper's licence. The concern was raised that, perhaps, such fees had been collected prior to Determination No. 134 being notified in the *Gazette*, in which case they would have been collected without legal authority.

Section 18B was inserted in the Act by the *Dog Control (Amendment) Act 1991* and I am advised that the fees under that section have been collected since the "1992/1993 Fees and Charges" schedule was published. The view of the Committee, that fees under section 18B collected prior to 28 September 1993, when Determination No. 134 was notified in the *Gazette*, have been collected invalidly has been confirmed by the ACT Government Solicitor.

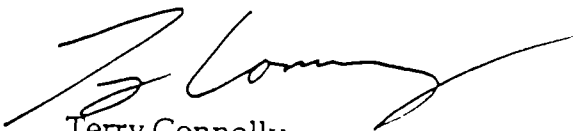
The Minister for the Environment, Land and Planning has expressed to me his appreciation of the Committee having drawn this matter to his attention. It is now proposed that the monies invalidly collected will be refunded. The Department of the Environment, Land and Planning has records to determine who is entitled to a refund and what the quantum of the refund should be.

The second matter raised by the Committee concerns the fees charged for impounding dogs. The Committee has commented about fees set for the return of an impounded dog seized by an inspector. In particular, the question of fees for periods in excess of 120 hours was raised. I understand that a dog will be held for more than 120 hours only at the keeper's request or pending court action. In that event either the keeper agrees to pay the fee of \$25 per day or the court is asked to allow for compensation. Unclaimed dogs are destroyed after 120 hours.

The Committee's comments have been of benefit to the operational area in preparing the revised determinations. The procedures for the preparation of future determinations have also been reviewed in light of the matters raised by the Committee.

I trust this information is of assistance to the Committee.

Yours sincerely



Terry Connolly  
14 MAR 1994



# A.C.T. GOVERNMENT

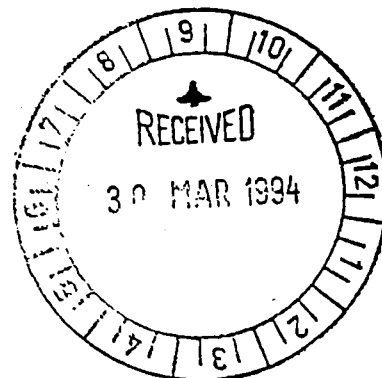
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Dear Mrs Grassby

Thank you for your letter of 25 February 1994 concerning the availability of legislation and explanatory documentation to public libraries for community use. In particular, you were unsure whether determinations, regulations and other subordinate legislation and explanatory documentation were made available.

I am advised that the following is the situation regarding the supply of the different categories of legislation to the ACT Library Service.

The Assembly Secretariat, on the introduction of a Bill into the Assembly, provides a copy of the Bill and its explanatory memorandum to the Service. Also, the Publications and Public Communications Section (P&PC) provides a further 8 copies of each Act to the Service when it is passed and printed. In addition, 8 copies of each reprint of a Principal Act is provided to the Service as and when it becomes available. Therefore all primary legislation and its explanatory documentation is made available to ACT public libraries for community use.

Turning to subordinate legislation, 8 copies of all regulations, rules and by-laws are provided to the Service. Explanatory documentation is not provided. Similarly, 8 copies of each reprint of Principal pieces of subordinate legislation is provided to the Service as and when it becomes available.

P&PC also provides 8 copies of each Gazette, in which disallowable instruments (including determinations of fees and charges) are presently published in full, to the Service. Explanatory documentation is not provided.

When the changes to notification procedures for disallowable instruments which I outlined in my letters come into effect the full text of disallowable instruments will be removed from Gazettes. At that time all legislation will be notified in a consistent manner.

In the interests of maintaining consistency and also of ensuring reasonable access to these documents by interested citizens, I have requested that P&PC liaise with the Service so that, as soon as possible, the Service is also provided with copies of disallowable instruments and with explanatory documentation for regulations, rules, by-laws and disallowable instruments.

I should mention that Bills and their explanatory documentation, regulations, rules and by-laws and reprints of these when they become available are also available for purchase from the City shopfront. All of the foregoing and their explanatory documentation and disallowable instruments and their explanatory documentation may also be purchased from the Allara House Office of P&PC.

I trust that this fully explains the position.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Terry Connolly', written in a cursive style.

Terry Connolly

29 MAR 1994



# A.C.T. GOVERNMENT

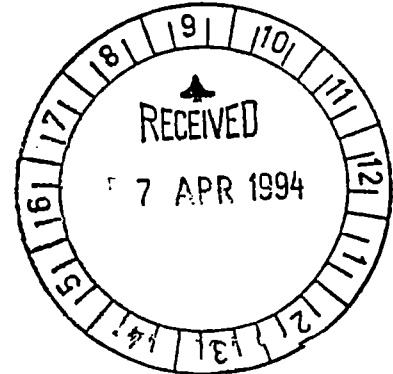
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Dear Mrs Grassby

In its Report No. 1 of 1994 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on a series of Determinations - Nos. 177 and 178 of 1993 made under section 3F of the *Building and Services Act 1924* and Nos. 178 and 179 of 1993 made under the *Motor Omnibus Services Act 1955*.

The Committee noted that Determinations Nos. 177 and 178 made under the *Building and Services Act 1924*, setting fees for the disposal of waste, appeared to be identical, except for the numbers assigned to the determinations.

The Committee noted that, similarly, Determinations Nos. 178 and 179, setting fees for bus fares on New Year's Eve and New Year's Day, made under the *Motor Omnibus Services Act 1955*, appeared to be a duplication. The Committee also noted that Determination No. 179 was not notified in the *Gazette* until 14 January 1994 and did not, therefore, under the provisions of subsection 6(1) of the *Subordinate Laws Act 1989*, come into force until that date.

However, as Determination No. 178 was notified in the *Gazette* on 24 December 1993, the collection, on New Year's Eve 1993 and New Year's Day 1994, of the fares set by the determination was legally authorised.

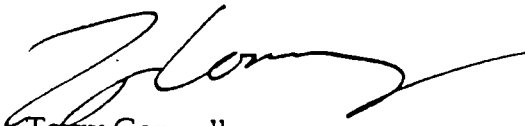
The Committee suggested in relation to both sets of apparently duplicated determinations that a check be made and, in the case of the determinations under the *Building and Services Act 1924*, further suggested that perhaps one of the determinations should be revoked to end confusion.

I am advised that the duplication of the two determinations occurred as a result of procedural irregularities in the lodgement of one of the determinations, the registration of the determinations and the assignment of numbers to the determinations.

In order to minimise further confusion Determination No. 178 in relation to waste disposal fees will be revoked, as this duplicates Determination No. 177. Determination No. 178 in relation to bus fares will also be revoked, leaving Determination No. 179 as authority for the fares established by that determination to be charged on New Year's Eve and New Year's Day in future.

I trust this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Terry Connolly', with a long horizontal flourish extending to the right.

Terry Connolly

5 APR 1994



# A.C.T. GOVERNMENT

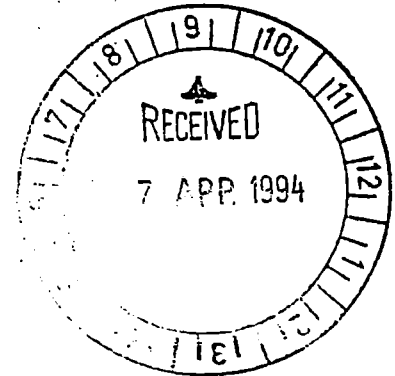
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Dear Mrs Grassby

In its Report No. 3 of 1994 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on the Canberra Institute of Technology (Amendment) Bill 1994 ("the Bill").

The Committee drew attention to references, in paragraphs (b) and (c) of the new definitions of "Chairperson" and "Deputy Chairperson", to "Division 1 of Part IIIB" and "Division 2 of Part IIIB", and pointed out that it appeared that the references should be to "Part IIIC". A check of the Bill has confirmed the Committee's suggestion that those paragraphs should refer to "Part IIIC". The error will be corrected by a Clerk's Amendment, pursuant to clause 191 of the Standing Orders of the Legislative Assembly.

Similarly, a Clerk's Amendment will be made to replace the incorrect reference in new paragraph 7(1)(p) to "Institutions" with a reference to "institutions".

The final matter which the Committee raised was the apparent failure to substitute the word "Institution" for "Institute" in subsection 19A(2). This was an oversight and it is proposed that the substitution be effected by a Government amendment to the Bill.

I trust this information is of assistance to the Committee.

Yours sincerely

  
Terry Connolly  
5 APR 1994

