

REVISED

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

REPORT NO. 19 OF 1993 (REVISED)

27 October 1993

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
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.

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

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Telephone: (06) 275 8570
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Ms Roberta McRae, OAM, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Ms McRae,

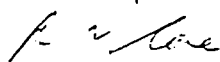
Please find enclosed a copy of Report No. 19 of 1993 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. Accordingly, I seek your approval to print and circulate Report No. 19 of 1993.

Yours sincerely



Ellnor Grassby, MLA
Chairperson

27 October 1993



Approved
Roberta McRae, OAM, MLA
Speaker

27 October 1993

BILLS

Bills upon which no Comment is Offered

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

Chiropractors and Osteopaths (Amendment) Bill 1993

This Bill makes amendments to enable mutual recognition of registration of chiropractors and osteopaths between States and Territories, to provide for common standards and conditions for registration and in discipline areas and to provide for standards of competence and requires the Chiropractors and Osteopaths Board to undertake a review of the qualifications of persons currently registered to determine whether the registration of any person should be transferred to registration as an osteopath.

Optometrists (Amendment) Bill 1993

This Bill makes amendments to enable mutual recognition of registration of optometrists between States and Territories, to provide for common standards and conditions for registration and in discipline areas and to provide for standards of competence.

Pharmacy (Amendment) Bill 1993 [No. 2]

This Bill makes amendments to enable mutual recognition of registration of pharmacists between States and Territories, to provide for common standards and conditions for registration and in discipline areas and to provide for standards of competence.

Real Property (Amendment) Bill 1993

This Bill amends the Principal Act to facilitate the computerisation of the Land Titles Register.

Bills upon which Comment is Offered

The Committee has examined the following Bills and offers the following comments:

Food (Amendment) Bill (No. 2) 1993

This Bill gives administrative support to previous legislation by providing for the appointment and powers of health officers, the sampling and analysis of food that has been seized, for offences in relation to investigations and for renumbering of the Principal Act and its amendments.

Is this Self-Incrimination Provision Justified?

New subsection 19YD(j) (on page 7) requires the occupier of premises to provide information or answer questions and failure to comply is made an offence under new section 19YZ.

Is the lack of protection for the possibility of self-incrimination in such circumstances justified?

A Possible Error, Renumbering and a Reprint

New subsection 19YG(2) provides that where an item has been detained on premises the health officer must give a notice in writing specifying various details about the detention. Paragraph 19YG(2)(d) provides that the notice must specify:

"the liability of the occupier in respect of an offence under subsection 19ZC(2) [sic]".

This reference needs to be checked, as the Committee has been unable to find subsection 19ZC. Possibly subsection 19YZC(2) is intended.

The numbering of the Principal Act as amended has led to complicated numbering of sections and this mistake, if it is, in fact, a mistake, indicates the difficulties involved.

Clause 9 of the present Bill will overcome these complications, as it provides for renumbering of the Principal Act as amended. This is a very helpful move.

However, it would be helpful if a reprint could be produced promptly. For, even in clause 10 of the present Bill, there is a need to know what the new section numbers are in order to see which provisions the clause refers to.

Real Property (Consequential Provisions) (Amendment) Bill 1993

This Bill makes minor technical amendments to a number of Acts consequent upon the changes made by the Real Property (Amendment) Bill 1993 which amends its Principal Act to facilitate the computerisation of the Land Titles Register.

Could There be a Possible Problem with Commencement?

The changes made by the present Bill are intertwined with the amendments made by the Real Property (Amendment) Bill 1993 and it is appropriate that the changes commence at the same time as the amendments made by that Bill.

Clause 2(2) of the present Bill provides as follows:

"2. (2) Section 3 [which effects a number of consequential amendments to Acts] commences on the day fixed under subsection 2(2) of the *Real Property (Amendment) Act 1993*."

Subsections 2(2) and (3) of the *Real Property (Amendment) Act 1993* follow the usual form and provide as follows:

"2. (2) The remaining provisions [that is, apart from subsections 1, 2 and 3] commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period."

This means that if, by any chance, the Minister does not fix a commencement day for the *Real Property (Amendment) Act 1993* within 6 months of its notification in the *Gazette*, that Act will commence by virtue of the operation of subsection 2(3).

The Committee notes that clause 2(2) of the *Real Property (Consequential Provisions) Bill 1993* refers only to commencement of the *Real Property (Amendment) Act 1993* under subsection 2(2) and does not also refer to commencement under subsection 2(3). Thus, it would seem that, if, in fact, the *Real Property (Amendment) Act 1993* commences by the operation of subsection 2(3), this would not be effective to commence the provisions of the (by then) *Real Property (Consequential Provisions) (Amendment) Act 1993*.

Of course, there may not be a 6 months delay in commencing the *Real Property (Amendment) Act 1993*. But perhaps the matter needs to be considered in any event.

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. 38 of 1993 being the *Medical Practitioners (Advertising) Regulations (Amendment)* made under section 60 of the *Medical Practitioners Act 1930* gives a medical practitioner broad rights to advertise.

Subordinate Law No. 39 of 1993 being the *Landlord and Tenant Regulations (Amendment)* made under section 97 of the *Landlord and Tenant Act 1949* specifies the provision of information and services to tenants as a purpose to which excess interest from the Trust Fund relating to bond money may be applied.

Instrument No. 144 of 1993 being an *Exemption* made under subsections 10(3) and 12(4) of the *Tobacco Act 1927*, subject to conditions set out in the instrument, exempts such contracts and agreements as are in force at the date of this instrument between the Australian Cricket Board Incorporated and The Benson and Hedges Company owned by W.D. and H.O. Wills (Australia) Limited from the operation of subsections 10(1), 12(1) and 12(2) of the *Tobacco Act 1927* during the conduct of a cricket match between the Prime Minister's XI and the touring South African team on 2 December 1993.

GOVERNMENT RESPONSES

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

- . Determination No. 87 of 1993 made under the *Building Act 1972* (Report No. 13 of 1993).
- . Determination No. 88 of 1993 made under the *Building Act 1972* (Report No. 13 of 1993).

Determination No. 78 of 1993 made under the *Motor Omnibus Services Act 1955*
(Report No. 13 of 1993).

Copies of the responses are attached.

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

A handwritten signature in black ink, appearing to be 'Ellnor Grassby', with a long horizontal stroke extending to the right.

Ellnor Grassby, MLA
Chairperson

27 October 1993



A.C.T. GOVERNMENT

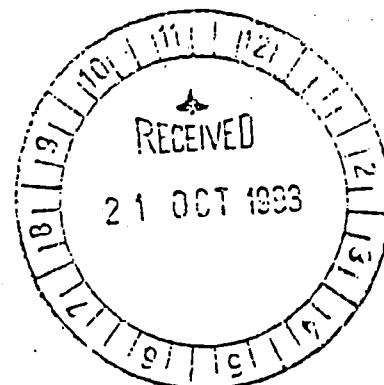
TERRY CONNOLLY MLA

ATTORNEY GENERAL

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Phone (06) 20 50011

Mrs Ellnor Grassby MLA
Presiding Member
Standing Committee on Scrutiny of Bills
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1 Constitution Avenue
CANBERRA ACT 2601



Ellnor
Dear Mrs Grassby

In its Report No. 13 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on various aspects of Determination No. 87 of 1993 made under section 65 of the Building Act 1972.

The Committee pointed out that the Determination was unhelpful in that it did not cite details of the instrument it was revoking. I apologise for this omission.

The Committee also noted that, despite an indication to the contrary, the Explanatory Statement did not include a comparative list of the old and new fees. However the Committee observed that the list referred to in the Explanatory Statement appeared to be the list published in Gazette No. S127 of 1 July 1993 at pages 21 - 30, that is to say, part of the schedule to the Determination. I am advised that this is the case.

More importantly, the Committee pointed out that an error (initially noted by the Committee in Report No. 10 of 1992) in paragraph 14 of the schedule to the Determination had not been rectified despite the fact that I had given an undertaking to do so in my reply to the Committee of 12 October 1992. I am advised that the error, a reference to 'section 52(3), (3), (10) or (11)' instead of 'section 52(2), (3), (10) or (11)', is in fact compounded in that the reference should have been in relation to subsections of section 53 and not section 52. Furthermore I am advised that a reference should have been made to subsection 53 (6) as certificates may also be issued under that subsection.

I view it as most serious that my undertaking to the Committee has not been given effect and that the correctness of the various references has not been previously established.

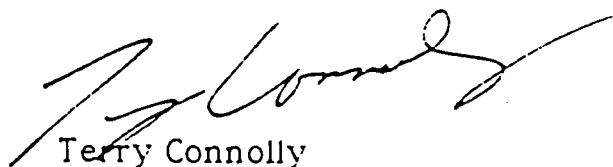
The Committee also commented on Determination No. 88 of 1993 which was also made under section 65 of the Building Act 1972. The Committee correctly stated that there is no revocation clause in the Determination (because of the effect on revocation of Determination No. 87) and there should, therefore, have been no reference to revocation, as effected by Determination No.88, in the Explanatory Statement.

The Committee also questioned the need for the making of the Determination given that the relevant fees are unchanged from the fees set by the prior equivalent Determination No. 109 of 1992. I am advised that it was necessary to re-determine the fees because Determination No. 109 of 1992 had been revoked by Determination No. 87 as pointed out by the Committee.

In the light of all the circumstances, and having particular regard to the confusion arising from the totality of shortcomings in Determinations No. 87 and 88, a single determination will be made to revoke the existing instruments and re-determine all the fees.

I trust this information is of assistance to the Committee.

Yours sincerely



Terry Connolly

40 OCT 1993



A.C.T. GOVERNMENT

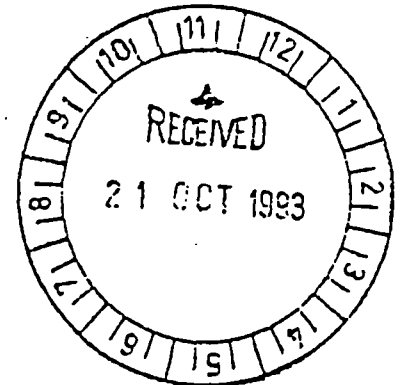
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Dear Mrs Grassby

In its Report No. 13 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on Determination No. 78 of 1993 made under section 4 of the Motor Omnibus Services Act 1955 and 2 prior disallowable instruments each of which purported to revoke Determination No. 99 of 1992.

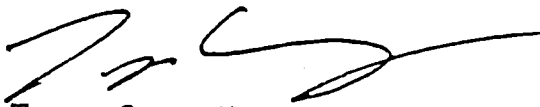
Specifically the Committee questioned whether there had been an implied revocation of Determination No. 172 of 1992 bearing in mind that the prior un-numbered Revocation and Determination of Charges dated 26 November 1992 ceased to have effect because of it not being tabled as required by the Subordinate Laws Act 1989.

The Government Solicitor's Office has considered the matter raised by the Committee. Its view is that to the extent that Determination No. 172 of 1992 and Determination No. 78 of 1993 are inconsistent, the later one prevails. It would only be where Determination No. 172 of 1992 contains material that Determination No. 78 of 1993 does not deal with that an express revocation of Determination No. 172 would be necessary. I am advised that there are no matters contained in Determination No. 172 which would demand an express revocation.

The Government Solicitor's Office suggests however that when the next determination of these fees and charges is prepared it should expressly revoke both Determination No. 172 and Determination No. 78

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

20 OCT 1993