

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

REPORT NO. 1 OF 1993

16 February 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; or
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
 - (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; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
 - (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 (Presiding Member)
Mr G. Humphries, MLA (Deputy Presiding Member)
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.

SUBORDINATE LEGISLATION

Subordinate Legislation upon which no Comment is Offered

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

Determination No. 176 of 1992 made under section 161(5) of the *Land (Planning and Environment) Act 1991* determines the criteria for the direct grant of a Crown lease to an incorporated association for the purposes of a licensed club.

Determination No. 177 of 1992 made under section 19 of the *Credit Act 1985* being *Credit Order No. 76 - R&I Bank of Western Australia Ltd (Mastercards)* exempts the R and I Bank of Western Australia Ltd in relation to its Mastercards continuing credit contracts from the provisions of specified provisions of the *Credit Act 1985*.

Determination No. 178 of 1992 made under section 19 of the *Credit Act 1985* being *Credit Order No. 77 - A.G.C. Personal Line of Credit* exempts Australian Guarantee Corporation Limited in relation to its A.G.C. Personal Line of Credit continuing credit contracts from the provisions of specified provisions of the *Credit Act 1985*.

Determination No. 179 of 1992 made under section 11(1) of the *Electoral Act 1992* appoints the Chairperson and the member of the Australian Capital Territory Electoral Commission for a period of 12 months.

Determination No. 180 of 1992 made under section 20(1) of the *Electoral Act 1992* appoints the Australian Capital Territory Electoral Commissioner for a period of 12 months.

Determination No. 184 of 1992 made under section 36 of the *Gas Act 1992* determines the conditions for the reticulation of gas by AGL Canberra Limited in the Australian Capital Territory.

Determination No. 187 of 1992 made under section 55A(1) of the *Administration and Probate Act 1929* determines 5 per cent per annum as the rate at which interest is to be paid on legacies.

Determination No. 2 of 1993 made under section 48 of the *Health Services Act 1990* revokes Determination No. 71 of 1992 and fixes new fees and charges under the Act.

Determination No. 3 of 1993 made under section 12 of the *Housing Assistance Act 1987* varies the Public Rental Housing Assistance Program, the Rent Relief Program and the Short Term Lodging Housing Assistance Program to reflect changes made by Commonwealth legislation and, in addition, varies the formula in the Short Term Lodging Housing Assistance Program for fees chargeable under the Program.

Determination No. 4 of 1993 made under section 161(5) of the *Land (Planning and Environment) Act 1991* determines the criteria for the direct grant of a Crown lease for use by Commonwealth Government Departments or agencies.

Determination No. 7 of 1993 made under section 161(5) of the *Land (Planning and Environment) Act 1991* determines the criteria for the direct grant of a Crown lease over part block 12, section 19, Braddon for use for takeaway food shop purposes.

Subordinate Law No. 34 of 1992 being the *Supreme Court Rules (Amendment)* makes a number of formal amendments to the Rules relating to the distinction between court and chambers, updating references to the *Supreme Court Act 1933* and rationalising interpretation provisions of the Rules and clarifying some ambiguous legislative references.

Subordinate Law No. 35 of 1992 being the *Supreme Court Rules (Amendment)* corrects an error in Order 34A Rule 2 and inserts Part 5A relating to the reciprocal enforcement of judgments under the *Foreign Judgments Act 1991* (Commonwealth).

Subordinate Law No. 1 of 1993 made under the *Fire Brigade (Administration) Act 1974* being the *Fire Brigade (Administration) Regulations (Amendment)* repeals a number of regulations that have been rendered redundant by the amendments made to the *Fire Brigade (Administration) Act 1974*.

Subordinate Law No. 2 of 1993 made under the *Magistrates Court (Civil Jurisdiction) Act 1982* being the *Magistrates Court (Civil Jurisdiction) Regulations (Amendment)* reduces the prescribed rate of interest on judgments.

Subordinate Law No. 3 of 1993 made under the *Land (Planning and Environment) Act 1991* being the *Land (Planning and Environment) Regulations (Amendment)* provides for the exemption of public works for which funding from public money has been authorised before 1 July 1993 from the application of Part VI of the *Land (Planning and Environment) Act 1991*.

Approval of Variation to the Territory Plan made under section 26(1)(a) of the *Land (Planning and Environment) Act 1991* dealing with West Belconnen land located West of Charnwood and Macgregor in the District of Belconnen.

Approval of Variation to the Territory Plan made under section 26(1)(a) of the *Land (Planning and Environment) Act 1991* dealing with Braddon, section 22, blocks 6, 7, 8 and 9.

Approval of Variation to the Territory Plan made under section 26(1)(a) of the *Land (Planning and Environment) Act 1991* dealing with Griffith, section 84, blocks 4, 5, 6 and 7.

Approval of Variation to the Territory Plan made under section 26(1)(a) of the *Land (Planning and Environment) Act 1991* dealing with the proposed Gungahlin (Harcourt Hill) Joint Venture Development being part of Nicholls including Gold Creek Tourist Area.

Subordinate Legislation upon which Comment is Offered

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

Modification of Building Code made under section 24(2)(a) of the Building Act 1972 adds Part F6 dealing with thermal insulation to the ACT Apprentices to the Building Code.

No Numbering and Missing Explanatory Statement

Unlike an earlier instrument dealing with amendments to the Building Code, Determination No. 125 of 1992, the present modification is not numbered and does not appear to have an accompanying explanatory statement.

Numbering helps to identify the particular instrument involved with certainty and an explanatory statement assists Members to assess the content and importance of a tabled and disallowable instrument.

Determination No. 185 of 1992 made under section 120A of the *Agents Act 1968* revokes the "Determination of Fees made by the Chief Minister dated 8 June 1992 and the Schedule to that Determination that appeared in Special Gazette No. S108 on 30 June 1992 ...: revokes[s] all previous determinations of fees in so far as they relate to fees payable for the purposes of sections 41, 53, 77, 93 and 110 of the Act; and ... determine[s] that the fees payable for the purposes of sections 41A, 54A and 110, and subsections 93(6) and 93(11) of the Act shall be in accordance with the Schedule".

Some Slight Puzzles and Possible Improvements to Assist Members

In its Report No. 10 of 1992 the Committee commented on a number of aspects of the determination of fees published in *Gazette* No. S108 that the present determination revokes. Some of those comments are still relevant to the present determination.

Report No. 10 of 1992 mentioned that the June determination did not refer to the number of the determination that it was revoking or to its date of publication in the *Gazette*. Fortunately, the present determination does refer to the *Gazette* but does not give the number of the determination, Determination No. 70 of 1992, that is presently being revoked.

When all of the relevant revocation information is given, it ensures that any doubt is avoided, as the next point perhaps illustrates.

Among other things, the present determination revokes "all previous determinations of fees ... for the purposes of sections 41, 53, 77 ...".

The Committee has been unable to find any determination that still fixed fees under these sections and needed to be revoked.

The Committee also commented in Report No. 10 of 1992 that the:

"Explanatory statement does not follow the now current format of listing the new fees with the old fees alongside. This format is of considerable help to Members, who can tell at a glance what is happening".

The explanatory statement for the present Determination does not follow this advice. Indeed, it appears to be the same as that for Determination No. 70 of 1992 of June 1992, except that it changes the number in the heading from "No. 70" to "No. 185", corrects the word "Increase" to "Increases" and adds "Date" at the bottom.

The explanatory statement continues to state that the "Increases are based on a 3% CPI adjustment for 1992/93". Report No. 10 of 1992 pointed out that "the increases [made in June] vary from 2.6% to 7.69% (the latter for only minor fees)".

The current determination does not appear to increase the dollar amounts of any fees. They all appear to be the same as those set by Determination No. 70 of 1992.

The fact that the explanatory statement has not been substantially altered, means that it does not explain the changes that have been made by the present Determination No. 185 of 1992 when compared with Determination No. 70 of 1992 of June 1992 that it is replacing.

The substantial changes made to the Schedule by the present determination appear to be those in relation to the descriptions of the fee payable under section 41A and the first two fees under section 54A.

First, the previous section 41A provision under the heading of "Fees Payable by Registered Agents" simply stated "Fee payable by registered agents 54.00". It now states "Fee payable by registered agents in relation to each certificate of registration held 54.00".

Secondly, the first section 54A fee under the heading of "Fees payable by Licensed Real Estate Agents, Stock and Station Agents or Business Agents" previously stated:

"Fee payable by persons other than companies who are licensed to carry on business as real estate agents, stock and station agents or business agents 54.00".

This has now been changed to:

"Fee payable by persons other than companies in relation to each licence held 54.00".

Finally, the second section 54A fee under the heading of "Fees payable by Licensed Real Estate Agents, Stock and Station Agents or Business Agents" previously stated:

"Fee payable by companies who are licensed to carry on business as real estate agents, stock and station agents or business agents:

- 1) for the year in which the licence is first granted to the company 247.00
- 2) for each subsequent year 54.00".

This has now been changed to:

"Fee payable by companies:

- 1) for the first licence granted to the company 247.00
- 2) for each subsequent licence 54.00".

The present explanatory statement does not indicate whether these changes of substance alter the incidence of fees payable or make clarifications.

The Committee notes with concern the fact that these issues were raised in relation to previous determinations and reported on in Report No. 10 of 1992, dated 18 August 1992 and the errors have been repeated in this determination.

Determination No. 1 of 1993 made under section 161(5) of the *Land (Planning and Environment) Act 1991* determines the criteria for the direct grant of a holding lease for estate development by Government Joint Venture.

Possible Small Errors

One criterion provides that a Joint Venture Company:

"must except the requirement to execute and deliver a Commonwealth Government Industrial Conduct Undertaking for annexure for the Holding Lease". (Emphasis added).

A reading of the helpful explanatory statement supplied with Determination No. 1 of 1993 suggests that possibly the criterion should provide that a Joint Venture Company:

"must accept the requirement to execute and deliver a Commonwealth Government Industrial Conduct Undertaking for annexure to the Holding Lease." (Emphasis added).

Perhaps a check could be made, as the particular criterion appears to be a significant one.

Determination No. 6 of 1993 made under section 22A(1) of the *Cemeteries Act 1933* revokes Determination of Fees No. 169 of 1992 and determines the fees to be paid under the Act.

Fulfilment of Undertaking

The Committee commented on Determination No. 169 of 1992 in its Report No. 21 of 1992. In his response of 28 January 1992 the Attorney-General, Mr Connolly, indicated that it was intended to revoke Determination No. 169 and make a new determination.

The present Determination No. 6 of 1993 carries out this undertaking. The Committee thanks the Attorney-General for the prompt action.

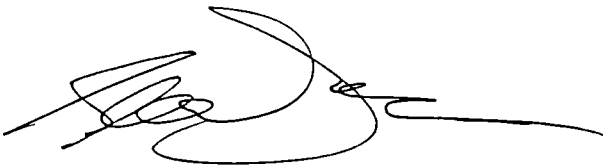
GOVERNMENT RESPONSES

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

- . Adoption Bill 1992 (Report No. 18 of 1992);
- . Housing Assistance (Amendment) Bill 1992 (Report No. 19 of 1992);
- . Crimes (Amendment) Bill (No. 4) 1992, Magistrates Court (Amendment) Bill 1992 and Evidence (Amendment) Bill 1992 (Report No. 21 of 1992; and
- . Statute Law Revision (Miscellaneous Provisions) Bill (No. 2) 1992 (Report No. 21 of 1992).

Copies of the responses are attached.

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

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Ellnor Grassby, MLA
Presiding Member

16 February 1993



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

ATTORNEY GENERAL

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Mrs Ellnor Grassby MLA
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Dear Mrs Grassby

In its Report No. 18 of 1992 the Standing Committee on Scrutiny of Bills and Subordinate Legislation questioned a possible error in the definition of 'Director' in subclause 4(1) of the Adoption Bill 1992.

I confirm that the reference to section 4 in the definition should be a reference to section 7, as the Committee suggested, and I propose to move an appropriate amendment during the debate on the Bill to rectify the matter.

Also, in Report No. 19 of 1992, the Committee commented about the manner of referring to section 85 of the Audit Act 1989 in subsection 18(2), inserted by clause 7, of the Housing Assistance (Amendment) Bill 1992.

I am advised that the reference to subsection (2) of section 85 of the Audit Act was deliberately chosen because of the concluding words of subsection 18(2). In the absence of such a reference it would not have been possible, without further drafting work, to make it clear that the accounts to be established under the Audit Act are to be maintained in accordance with section 85 as a whole.

I trust the foregoing information is of assistance to the Committee.

Yours sincerely

Terry Connolly

15 JAN 1993



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Dear Mrs Grassby

In its Report No 21 of 1992 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented, *inter alia*, on the Crimes (Amendment) Bill (No 4) 1992, the Magistrates Court (Amendment) Bill 1992 and the Evidence (Amendment) Bill 1992.

The Committee commented that the Explanatory Memorandum and the Presentation Speech for the Crimes (Amendment) Bill (No 4) 1992 do not refer to the exclusion from the requirements of the new section 354 (which requires the use of an interpreter in the investigation of certain offences) of an offence under the *Motor Traffic Act 1936* where a police officer questioning a person in relation to such an offence intends to take no further action in respect to the offence. Whilst it could have been a little more fulsome perhaps, the Explanatory Memorandum states the actual effect of the provision.

The Committee commented that clause 10 of the Magistrates Court (Amendment) Bill 1992 would not include the offence created by subsection 7(1) of the *Traffic Act 1937* in the offences which are prescribed for the purposes of the "pleas by post" scheme under Part VIIA of the *Magistrates Court Act 1930* because the new provision prescribing offences for the purposes of Part VIIA would not include an offence for which the penalty was a fine not exceeding \$1,000 *whether with or without any other penalty*.

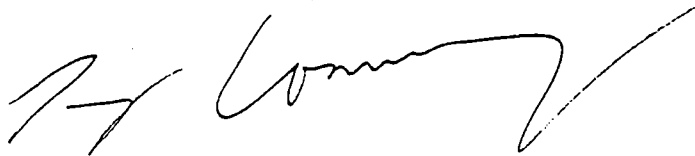
The Committee's attention is drawn to subclause 10(3) of the Magistrates Court (Amendment) Bill. The words "*...whether or not any other penalty may be imposed with that fine*" are appended to that subclause and apply to each of the classes of offence detailed in paragraphs 10(3)(a), (b) and (c). Paragraph 10(3)(c) and the appended words would have the effect of bringing an offence under subsection 7(1) of the *Traffic Act 1937* within the "pleas by post" scheme.

The Committee also commented that an offence created by subsection 7(1) of the *Traffic Act 1937* would not be covered by clause 31 of the Bill. I intend to move an amendment to the Bill to include a reference to the *Traffic Act 1937* in clause 31 of the Bill.

The Committee commented that the Evidence (Amendment) Bill 1992 does not remove sexist language from the *Evidence Act 1971*. My concern was to introduce some significant reforms as quickly as possible and not delay them by making technical amendments to the Principal Act. I intend to introduce a Bill to amend the *Evidence Act 1971* early in 1993 which will include the removal of sexist language from the Principal Act.

I thank the Committee for bringing these matters to my notice and trust that the above information is of assistance to the Committee.

Yours sincerely

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

Terry Connolly

15 JAN 1993



A.C.T. GOVERNMENT

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Dear Mrs Grassby

In its Report No.21 of 1992 the Standing Committee on Scrutiny of Bills and Subordinate Legislation made several comments about the Statute Law Revision (Miscellaneous Provisions) Bill (No.2) 1992.

Firstly, the Committee noted the proposed amendments of various Acts which are dependent upon the prior commencement of the Adoption Bill 1992 and expressed the view that care would need to be taken to ensure that the amendments proposed in the Statute Law Revision (Miscellaneous Provisions) Bill (No.2) 1992 did not take effect prematurely.

As a consequence of the delay that will occur as a result of the decision of the Assembly to refer the Adoption Bill 1992 to the Standing Committee on Social Policy for consideration and report, I propose to move Government amendments to the Statute Law Revision (Miscellaneous Provisions) Bill (No.2) 1992 to remove from it all amendments relating to the Adoption Bill 1992.

Secondly, the Committee questioned a possible mistake at page 10 of the Explanatory Memorandum. I confirm that the reference to the Interim Planning (Amendment) Act (No.3) 1991 should not have been included in the Explanatory Memorandum and I propose to present a corrigendum to the Assembly during the debate on the Bill.

Also, in its Report No.21 of 1992, the Committee commented about a failure in Determination No.169 of 1992 made under subsection 22A(1) of the Cemeteries Act 1933 to refer to the determination that it purports to revoke.

The Committee also noted that there were incorrect references to the appropriate Gazette in the determination and in the explanatory statement, and that the explanatory statement did not have the attached schedule of fees to which it referred.

I am advised that, whilst the incorrect gazettal number of the revoked determination might not necessarily invalidate Determination No.169 of 1992, it would be preferable to revoke the instrument and publish a new one.

A further determination has, therefore, been made which revokes Determination No.169 of 1992, following the guidelines contained in Report No.10 of 1992.

The wording of the explanatory statement would appear to have given rise to the Committee's concern that the statement did not have an attached schedule of fees. The schedule is, in fact, part of the determination and the explanatory statement will be amended to read: "The fees payable are set out in the schedule to the instrument."

Also, in its Report No.23 of 1992, the Committee questioned whether the retrospectivity provided for by subclause 5(2) of the Workers' Compensation (Amendment) Bill 1992 is correct. I am advised that the correct period of retrospectivity is to 22 January 1992 and that a Government amendment will be moved when the Bill is debated in the Assembly.

I thank the Committee for drawing these matters to attention and I trust the foregoing information is of assistance to the Committee.

Yours sincerely

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

Terry Connolly

28 JAN 1993

