

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

**REPORT NO. 8 OF 1997**

**8 July 1997**

# LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Civic Square, London Circuit  
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STANDING COMMITTEE ON SCRUTINY OF  
BILLS AND SUBORDINATE LEGISLATION

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Mr Greg Cornwell, MLA  
Speaker  
Legislative Assembly  
CANBERRA ACT 2601

Dear Mr *Greg* Cornwell

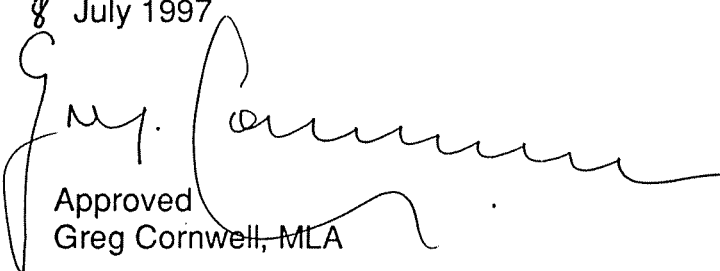
Please find enclosed a copy of Reports Nos 8 and 9 of 1997 of the Standing Committee on Scrutiny of Bills and Subordinate Legislation. Under its resolution of appointment, the Committee is empowered to send a report to you while the Assembly is not sitting so that it may be circulated to Members. I seek your approval to print and circulate Reports Nos 8 and 9 of 1997.

Yours sincerely



Bill Wood, MLA  
Chair

8 July 1997



Approved  
Greg Cornwell, MLA

8 July 1997

## 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 Bill Wood, MLA (Chair)**  
**Mr Paul Osborne, MLA (Deputy Chair)**  
**Mr Harold Hird, MLA**

**Legal Advisor: Emeritus Professor Douglas Whalan, AM**  
**Secretary: Mr Tom Duncan**

## **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**Bills - No Comment

The Committee has examined the following Bills and offers no comments:

**Community and Health Services Complaints (Amendment) Bill 1997**

This Bill broadens the functions of the Commissioner for Health Complaints.

**Coroners (Consequential Provisions) Bill 1997**

This Bill repeals replaced legislation and amends other Acts and regulations consequent upon the passing of the Coroners Bill 1997.

**Domestic Violence (Amendment) Bill (No. 3) 1997**

This Bill tightens up aspects of the principal Act including matters concerning the matters to be taken into account in the making of an order, the duration of an order and the extension of an order.

**Financial Management (Amendment) Bill (No. 2) 1997**

This Bill redefines banking institutions, requires additional information to be included in departmental budgets, makes changes relating to appropriations and end of year balances, clarifies investment of public money and makes provision for unclaimed trust moneys.

**Law Reform (Repeal of Laws) Bill 1997**

This Bill repeals New South Wales private Acts that the ACT inherited from New South Wales and three other spent Acts.

**Remuneration Tribunal (Consequential Amendments) Bill 1997**

This bill amends or repeals redundant provisions of a number of Acts and regulations consequent upon the coming into operation of the *Remuneration Act 1995*.

**Territory Owned Corporations (Amendment) Bill 1997**

This Bill adds CanDeliver Limited to the list of Territory-owned Corporations.

Bills - Comment

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

**Coroners Bill 1997**

This Bill continues the existing Coroners Court and provides for the holding of inquests into deaths and inquiries into fires and disasters.

These References should perhaps be Checked

The Committee queries seven provisions in the Bill.

First, the definition of "Chief Coroner" in clause 3 refers to "the person who is Chief Coroner by virtue of the operation of section 5". In fact it is section 6 that provides that the person holding the office of Chief Magistrate is the Chief Coroner.

Secondly, the definition of "Coroner" in clause 3 states that the definition "includes a Deputy Coroner appointed under section 7". In fact Deputy Coroners are appointed under section 8.

Thirdly, clause 10 refers to the taking of an oath or the making of an affirmation by a Coroner or Deputy Coroner in the form "set out in Part 1 of Schedule 1". In fact, Schedule 1 is not divided into Parts.

Fourthly, clause 45 provides for the issue of a warrant of arrest where a person does not obey a summons to appear as a witness before a Coroner's Court. Paragraph 45 (1) (a) refers to the summons (which has not been complied with) as being "a summons under section 42". In fact, such a summons is issued under section 43.

Fifthly, a possible flow-on error to that under the previous head may occur in clause 79 which creates an offence where a person does not obey a summons to appear before a Coroners Court. Here, too, subclause 79 (1) refers to "a summons under section 42". It, too, should perhaps refer to section 43.

Sixthly, clause 76 refers to responses by custodial agencies to a Coroners report. Subclause 76 (1) refers to a "custodial agency to which a report is given under section 72". In fact, as the later subclause 76 (4) states, such Coroners reports are given under section 75.

Seventhly, subclause 107 (2) provides as follows:

"107. (2) A determination under section 86 of the former Act continues in force until the Minister publishes a notice under subsection 101 (1) of this Act in relation to that form." (Emphasis added.)

Section 86 of the former Act provided as follows:

"86. A summons, warrant, order or other document under this Act shall be in a form determined by the Chief Coroner."

Thus the making or unmaking of a determination under the former Act was under the control of the Chief Coroner and not the Minister.

This control is continued under the present Bill, clause 101 of which provides as follows:

"101(1) The Chief Coroner may, by notice published in the *Gazette*, approve a form for the purposes of this Act.

(2) A notice shall include the text of the form.

(3) A notice is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*."

In contrast to section 86 of the old Act, this provision follows the more modern form of ensuring that the Assembly ultimately controls matters done under powers the Assembly confers on others, by making the notices of forms disallowable instruments. This development is to be praised.

However, as the act of making and unmaking forms in both the former Act and the present Bill involve the Chief Coroner and not the Minister, it is perhaps a little puzzling that it should be the Minister, who is to act under subclause 107 (2). Indeed,

clause 101 does not appear to give the Minister any authority to give notices under that clause.

Perhaps all of these matters should be checked.

## SUBORDINATE LEGISLATION

### Subordinate Legislation - No Comment

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

**Determination No. 62 of 1997 made under section 120A of the *Agents Act 1968* revokes Determination No. 70 of 1996 and fixes fees payable for the issue and renewal of licence fees payable by real estate agents, stock and station agents and business agents and travel agents and fixes fees payable for a copy of a transcript or part of a proceeding and for inspecting a register and taking an extract.**

**Determination No. 79 of 1997 made under section 125 of the *Firearms Act 1996* fixes fees payable for licences under the Act.**

**Determination No. 85 of 1997 made under section 63 of the *Consumer Credit (Administration) Act 1996* appoints a specified person as a member of the ACT Credit Tribunal under paragraph 62 (b) of the Act until 31 December 1999.**

**Determination No. 86 of 1997 made under section 63 of the *Consumer Credit (Administration) Act 1996* appoints a specified person as a member of the ACT Credit Tribunal under paragraph 62 (c) of the Act until 31 December 1999.**

**Determination No. 90 of 1997 made under section 8 of the *Medical Practitioners Act 1930* appoints a specified person as Chairperson of the Medical Board from 6 June 1997 to 5 June 2000.**

**Determination No. 91 of 1997 made under section 8 of the *Medical Practitioners Act 1930* appoints a specified person as a member of the Medical Board from 6 June 1997 to 5 June 2000.**

**Determination No. 92 of 1997 made under section 8 of the *Medical Practitioners Act 1930* appoints a specified person as a member of the Medical Board from 6 June 1997 to 5 June 2000.**

**Determination No. 93 of 1997 made under section 8 of the *Medical Practitioners Act 1930* appoints a specified person as a member of the Medical Board from 6 June 1997 to 5 June 2000.**

**Determination No. 94 of 1997 made under section 75 of the *Tenancy Tribunal Act 1994* exempts a specified site from the operation of the Code of Practice.**

**Determination No. 99 of 1997 made under section 3 of the *Agents Act 1968* declares that subsections 57 (2) and 59 (2) do not apply to real estate agents, stock and station agents and business agents and banks respectively, thus enabling real estate agents, stock and station agents**

and business agents to use electronic funds transfer facilities instead of cheques when paying moneys out of trust accounts.

Determination No. 100 of 1997 made under section 87 of the *Occupational Health and Safety Act 1989* varies the ACT First Aid in the Workplace Code of Practice to exclude a specified item from the list of materials in first aid kits.

Determination No. 101 of 1997 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 154 of 1992 and reduces the rate of financial institutions duty to be paid under section 10 of the *Financial Institutions Duty Act 1987* from 0.10 percent to 0.06 per cent with a maximum of \$1,200 for a receipt exceeding \$2,000,000.

Determination No. 102 of 1997 made under paragraph 111 (1) (a) of the *Gas Act 1992* revokes Determination No. 158 of 1996 and determines fees made under the Act.

Determination No. 104 of 1997 made under section 12A of the *Dangerous Goods Act 1984* revokes Determination No. 185 of 1996 and determines fees made under the Act.

Determination No. 105 of 1997 made under section 37 of the *Supreme Court Act 1933* revokes Determination No. 165 of 1996 and determines the fees and charges payable under section 37A of the Act.

Determination No. 106 of 1997 made under section 248A of the *Magistrates Court Act 1930* and section 74 of the *Coroners Act 1956* revokes Determination No. 166 of 1996 and determines the fees and charges payable under those Acts.

Determination No. 107 of 1997 made under section 59A of the *Administrative Appeals Tribunal Act 1989* and section 78 of the *Tenancy Tribunal Act 1994* revokes Determination No. 167 of 1996 and determines the fees and charges payable under those Acts.

Determination No. 110 of 1997 made under section 22 of the *Animal Welfare Act 1992* approves the Code of Practice for the Humane Control of the Fox as a Code of Practice.

Determination No. 111 of 1997 made under section 83A of the *Nature Conservation Act 1980* determines the fees payable for the purposes of section 53A of the Act.

Determination No. 119 of 1997 made under section 287 of the *Land (Planning and Environment) Act 1991* revokes Determination No. 42 of 1997 in part and fixes fees payable under sections 116, 117, 171, 172 and 226 of the Act.

Determination No. 120 of 1997 made under section 65 of the *Building Act 1972* revokes Determination No. 41 of 1997 in part and fixes fees payable under sections 33, 34 and 35 of the Act.

Determination No. 121 of 1997 made under section 9 of the *Parole Act 1976* appoints a specified person as a member of the Parole Board until 3 March 2000.



Subordinate Law No. 16 of 1997 being the Land Planning and Environment Regulations (Amendment) made under the *Land (Planning and Environment) Act 1991* makes a number of significant changes to the requirements under the Act in relation to development proposals and inserts provisions relating to use of a dwelling as a special dwelling or for confidential services and relating to parking of heavy vehicles.

Subordinate Legislation - Comments

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

**Determination No. 87 of 1997 made under section 68 of the *Consumer Credit (Administration) Act 1996* appoints a specified person as an acting member of the ACT Credit Tribunal for the purposes of paragraph 62 (c) of the Act.**

**Determination No. 88 of 1997 made under section 68 of the *Consumer Credit (Administration) Act 1996* appoints a specified person as an acting member of the ACT Credit Tribunal for the purposes of paragraph 62 (b) of the Act.**

No Period of Appointment Fixed

Determinations Nos. 87 and 88 appoint specified persons to be acting members of the ACT Credit Tribunal either during any vacancy in the office of a member or during any period that a member is unable to perform the functions of the office.

Subsection 68 (2) of the *Consumer Credit (Administration) Act 1996* provides that such acting members "appointed to act as a member during a vacancy in the office of the member shall not act continuously for more than 12 months".

There does not appear to be any time restriction on the period during which a person can be appointed to act for a member who is unable to perform the functions of the office.

The present determinations do not fix any time period for the two appointments. Perhaps the effect of the lack of a fixed period for appointments should be considered.

**Determination No. 98 of 1997 made under section 85 of the *Dentists Act 1931* revokes all existing determinations and determines the fees payable under the Act.**

Very Helpful Explanatory Statement

There were a number of determinations of fees payable under the *Dentists Act 1931*, the origin of some of which were lost in the mists of time.

The present Determination wipes the slate clean and sets new fees.

The Explanatory Statement gives the background to each change made in the fees (including noting that some fees are no longer being set as the amendments to the Act have removed the relevant provisions), indicates that the Act has been both amended and renumbered, gives reasons for the increases in fees and provides a table setting out the old and new numbering of the Act while giving a comparison of the old and new fees.

In summary, the Explanatory Statement will prove a very helpful document to Members of the Assembly and the public in explaining the complicated changes that have occurred.

**Determination No. 103 of 1997 made under section 12 of the *Clinical Waste Act 1990* revokes Determination No. 159 of 1996 and determines fees made under the Act.**

A Mistake Repeated from Last Year - and the Year before!

This Determination refers to the Determination being revoked - Determination No. 159 of 1996, being published in the *Gazette* .

As was pointed out by the Committee in Report No. 8 of 1995, Report No. 10 of 1996 and Report No. 11 of 1996, this practice of publication ceased some time ago and there is merely notification in the *Gazette* of the making of the determination and a statement as to where a copy can be bought. Most of the determinations that have had this flaw in them have been corrected in the last two years, but at least this one remains. Oddly, the Explanatory Statement for the present determination gets the matter correct.

There is no problem of invalidity involved as the inaccurate statement occurs in the revocation provision, but it can be misleading to Members of the Assembly or members of the public wishing to check on fees.

The Committee repeats again its suggestion that when the next determination is made under this Act, a correction should be made.



Bill Wood, MLA  
Chair

8 July 1997