

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

REPORT NO. 9 OF 1996

25 June 1996

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

Ms Rosemary Follett, MLA (Chair)
Mr Harold Hird, MLA (Deputy Chair)
Mr Paul Osborne, 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 comment:

Freedom of Information (Amendment) Bill 1996

This Bill brings Territory owned corporations and their subsidiaries within the coverage of the Principal Act, provides for increased review rights of decisions relating to fees and charges and updates the annual reporting requirements.

Health and Community Care Services Bill 1996

This Bill establishes the Australian Capital Territory Health and Community Care Service.

Rates and Land Tax (Amendment) Bill 1996

This Bill provides that the 1994 unimproved values are to be used in assessing the 1996-97 and 1997-98 rates and land tax and provide for an increase in rates for the 1996-97 financial year.

Territory Owned Corporations (Amendment) Bill 1996

This Bill substitutes new provisions relating to the principal objectives of a territory owned corporation and provides new provisions relating to directors and the selection of certain directors.

Trading Hours Bill 1996

This Bill repeals the existing trading hours legislation and regulates the trading hours of large supermarkets in Civic Centre and the Belconnen, Woden and Tuggeranong Town Centres.

Bills - Comments

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

Crimes (Amendment) Bill (No. 2) 1996

This Bill specifies the requirements for the conduct of an examination by a medical practitioner of a person in lawful custody on a charge of committing an offence without the consent of that person.

Retrospectivity

The repealed and substituted section 349ZX of the *Crimes Act 1900* sets out new provisions for setting up and conducting an examination of a charged person in lawful custody by a medical practitioner without the charged person's consent.

The provision is more detailed and, in some ways, is more protective than the provision that is being repealed. However, in one sense the new provision is retrospective in effect.

Clause 5 of the present Bill provides that the new provision will apply

"in relation to a person in lawful custody before the commencement of this Act upon a charge of committing an offence."

This means that the existing rights of such a person could well be reduced by the new provision.

The Committee gives an illustration. The provision reverses a decision of the Court of Appeal in New South Wales that the mirror provision to the "old" ACT provision did not permit the taking of a blood sample without the person's consent. If the New South Wales decision were to be followed in the ACT, the "old" provision would not allow the taking of a blood sample without consent. The present provision permits taking without consent and would thus diminish the rights of a person who is already in lawful custody on a charge.

Gungahlin Development Authority Bill 1996

This Bill establishes the Gungahlin Development Authority.

Are the Responsibilities of the Chief Executive Officer Clear?

Clause 13 provides that, unless the contrary intention appears, "member" means a person in paragraph 14(1)(a) to (h) or an acting member. As the Chief Executive Officer is appointed to the Authority by paragraph 14(1)(i), he or she is not covered by clause 13.

Clause 18(1) requires all members of the Authority to disclose any direct or indirect pecuniary interest in matters being considered or about to be considered by the Authority. Clause 18(2) provides that the disclosure is to be recorded in the minutes and the member must not be present during deliberation or take any part in the decision. Clause 18(3) specifically includes the Chief Executive Officer as a member for these purposes so it complies with the requirements of clause 13.

Clause 21 provides as follows:

21. (1) The Minister may terminate the appointment of a member or acting member because of the misbehaviour or physical or mental incapacity of the member or acting member.

(2) If a member or acting member -

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;

(b) is absent, except on leave granted under section 17, for 3 consecutive meetings; or

(c) contravenes section 18;

the Minister shall terminate the appointment of that member or acting member."

Clause 21 does not appear to express a "contrary intention" as clause 13 requires if clause 21 is to apply to the Chief Executive Officer. As there is no contrary intention, do the provisions of clause 21 apply to the Chief Executive Officer?

The Committee looks at the position if the provisions of clause 21 do apply to the Chief Executive Officer and then at the position if the provisions of clause 21 do not so apply.

If they do apply, then this covers the position of a contravention of the disclosure provisions of clause 18 by the Chief Executive Officer. Thus, on breach, the Minister must terminate under clause 21(2)(c).

But, if clause 21 does so apply to the Chief Executive Officer, is there duplication in the Bill, as some of the matters covered in clause 21 are also covered later where the Bill specifically deals with the position of the Chief Executive Officer.

For instance, parts of clause 29 duplicate parts of clause 21. Clause 29 provides as follows:

"29. (1) The Minister may terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity.

(2) The Minister shall terminate the appointment of the Chief Executive Officer if he or she -

(a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;

(b) without reasonable excuse, contravenes section 27; or

(c) is absent from duty, except on leave of absence granted by the Authority, for 14 consecutive days or for 28 days in any period of 1 year."

It will be noted that clause 29(1) covers the same ground as is covered by clause 21(1). Also clause 29(2)(a) is identical with clause 21(2)(a), except for the addition of the words "his or her" twice in the middle of clause 29(2)(a).

The Committee now looks at the position if the provisions of clause 21 do not apply to the Chief Executive Officer.

If the provisions of clause 21 do not apply to him or her, can the Chief Executive Officer contravene the disclosure provisions of clause 18 with impunity? If this were so, there would be a serious gap in the disclosure provisions.

Of course, there are specific disclosure provisions in clause 27, but they do not cover the precise circumstances covered by clause 18.

Clause 27 provides as follows:

"27 (1) A person appointed to be the Chief Executive Officer or to act as Chief Executive Officer shall, upon his or her appointment and on each subsequent 30 June, give written notice to the Minister of all his or her direct or indirect pecuniary interests.

(2) If the Chief Executive Officer or a person acting as Chief Executive Officer has or acquires a direct or indirect pecuniary interest in a matter which to his or her knowledge, is being considered or about to be considered by the Authority, the Chief Executive Officer shall give written notice to the Minister of that interest."

A breach of clause 27 is covered by the provisions of clause 29(2)(b) cited above and the Minister must terminate the appointment of the Chief Executive Officer, if he or she "without reasonable excuse, contravenes section 27".

Perhaps the interrelationship of clauses 13, 18, 21, 27 and 29 needs to be considered.

"Without reasonable excuse" Defence Available in one Situation but not in Another

The Committee raise another aspect of these provisions.

It is noted that clause 21(2)(c) provides that "If a member or acting member - ... contravenes section 18 the Minister shall terminate the appointment of that member or acting member". (Emphasis added.)

However, clause 29 (2)(b) provides that the "Minister shall terminate the appointment of the Chief Executive Officer if he or she - ...without reasonable excuse, contravenes section 27". (Emphasis added.)

There is no explanation in either the Explanatory Statement or the Presentation Speech as to why the defence of "reasonable excuse" is

available for a contravention of clause 27, but is not available for a contravention of clause 18.

It is noted that the equivalent provision to clause 21(2)(c) in the *Health and Community Care Services Bill 1996*, clause 19(2)(b), which is also considered in the present report, does include the "without reasonable excuse" defence.

Perhaps this matter could also be considered.

Gungahlin Development Authority (Consequential Provisions) Bill 1996

This Bill makes amendments to the *Buildings (Design and Siting) Act 1964* and the *Land (Planning and Environment) Act 1991* consequent upon the passing of the Gungahlin Development Authority Bill 1996.

Are there Some Words Missing or Should Some be Deleted?

Among other amendments made to the *Buildings (Design and Siting) Act 1964* subsection 7(3) is repealed and substituted and provides for the giving of notice about an implementation plan before it is considered by the Authority.

Then a new section 7A is inserted, which provides as follows:

"7A. On receiving a notice and a copy of a plan under paragraph 7(3)(b), the Gungahlin Development Authority shall consider whether the implementation plan would be consistent with -

(a) the objectives of the Gungahlin Development Authority set out in its latest statement of intent; and

(b) any direction in force under section 11 of the *Gungahlin Development Authority Act 1996* ;

and advise the Authority in writing accordingly within the period specified in the notice subparagraph 7(3)(a)(ii)." (Emphasis added.)

There seems to be something wrong with the emphasised passage. Does a word, or perhaps words, need to be added? Or would it perhaps be appropriate to delete the words "the notice"?

Health and Community Care Services (Consequential Provisions) Bill 1996

This Bill makes amendments consequential upon the establishment of the Australian Capital Territory Health and Community Care Service by the *Health and Community Care Services Bill 1996* .

Some Overlapping of Numbering in the Explanatory Statement

Any person who reads the Explanatory Statement for the Bill, will need to note that the references to Clauses 11 and 12 in the explanation of PART IV - CONSEQUENTIAL AMENDMENTS are in fact explanations for clauses 13 and 14.

Clauses 11 and 12 appear in Part III of the Bill and there are explanations for them given in the Explanatory Statement under the correct heading.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Determination No. 71 of 1996 made under section 8 of the *Ambulance Service Levy Act 1990* fixes the rate for the ambulance service levy.

Determination No. 72 of 1996 made under section 30 of the *Business Franchise (Tobacco and Petroleum Products) Act 1984* revokes Determination No. 125 of 1995 and determines the value to be attributed to tobacco sold or purchased during a specified period.

Determination No. 73 of 1996 made under section 30 of the *Business Franchise (Tobacco and Petroleum Products) Act 1984* determines the value to be attributed to tobacco sold or purchased on and from 1 June 1996.

Determination No. 74 of 1996 made under section 39B of the *Bookmakers Act 1985* varies Determination No. 33 of 1996 by determining that betting on a specified event was to take place on 2 June 1996 instead of 3 June 1996 as determined in Determination No. 33 of 1996.

Determination No. 75 of 1996 made under section 39A of the *Bookmakers Act 1985* varies the list of approved sports betting events determined by Determination No. 134 of 1995 by deleting Part (6) - Soccer and inserting an expanded list of soccer events.

Determination No. 77 of 1996 made under section 16 of the *Nature Conservation Act 1980* declares that named species that have been declared endangered are to have special protection status.

Determination No. 78 of 1996 made under section 161(5) of the *Land (Planning and Environment) Act 1991* revokes Determination No. 26 of 1992 and determines the criteria for the direct grant of Crown leases to statutory authorities and Territory owned corporations.

Determination No. 79 of 1996 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of streets in the Division of Ngunnawal.

Determination No. 96 of 1996 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of streets in the Division of Ngunnawal.

Determination No. 97 of 1996 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of streets in the Division of Bruce.

Subordinate Law No. 7 of 1996 made under section 13 of the *Dangerous Goods Act 1984* being the Dangerous Goods (Exemption) Regulations (Amendment) suspends the operation of subclause 46(2) of Dangerous Goods Regulation, 1978 in relation to the sale of shopgoods fireworks from 24 May 1996 to 10 June 1996.

Subordinate Law No. 8 of 1996 being the Regulations Revision (Penalties) Regulations amends the penalties under a large number of Regulations.

Subordinate Law No. 9 of 1996 being the Motor Vehicle (Third Party Insurance) Regulations (Amendment) revises the compulsory third party premium rates.

Public Sector Management Standard 10/1996 made under section 251 of the *Public Sector Management Act 1994* by the Commissioner for Public Administration with the Approval of the Chief Minister revokes relevant aspects of the Management Standards and clarifies aspects of the Standards relating to transitional benefits.

Subordinate Legislation - Comments

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

Determination No. 76 of 1996 made under section 12 of the *Housing Assistance Act 1987* makes amendments to the Public Rental Housing Assistance Program relating to review of decisions for the termination of public tenancies, rent contribution rates for independent members of a household other than the tenant and minimum rebated rents.

A Small Error

The present determination amends the Public Rental Housing Assistance Program as it has been amended by 8 further determinations. These Amendments are listed. This listing is helpful, as there does not seem to

have been a consolidation and these Amendments collectively have changed the original determination very considerably.

Unfortunately, the amending determination listed in paragraph 1(c), No. 152 of 1992, proved to be quite elusive. Paragraph 1(c) states that it was "published in Australian Capital Territory Gazette No. 171 of 1992 dated 1 October 1992". There was no Gazette No. 171 of 1 October 1992, and, indeed, the highest Gazette number in that series appears to have been No. 51 of 23 December 1992. However, a further search discovered that there was a Gazette No. S171 published on 1 October 1992 and it contained the missing determination.

It is a small error, but it does present difficulty to a member of the Assembly or a member of the public attempting to discover the full effect of significant changes to the Public Rental Housing Assistance Program.

Determination No. 80 of 1996 made under section 9 of the *Agents Act 1968* appoints a specified person as a member of the Agents Board for a period of three years from 6 June 1996 to 5 June 1999 inclusive.

Determination No. 81 of 1996 made under section 9 of the *Agents Act 1968* appoints a specified person as a member of the Agents Board for a period of three years from 6 June 1996 to 5 June 1999 inclusive.

Determination No. 82 of 1996 made under section 9 of the *Agents Act 1968* appoints a specified person as a member of the Agents Board for a period of three years from 6 June 1996 to 5 June 1999 inclusive.

Determination No. 83 of 1996 made under section 9 of the *Agents Act 1968* appoints a specified person as a member of the Agents Board for a period of three years from 6 June 1996 to 5 June 1999 inclusive.

A Possible Tiny Problem of Retrospectivity

Determinations Nos. 80, 81, 82 and 83 of 1996 were all signed on 7 June 1996 and also published in the *Gazette* on 7 June 1996. All 4 stated that the appointments were "for a period of three years from 6 June 1996 to 5 June 1999 inclusive".

Subsection 6(1) of the *Subordinate Laws Act 1989* states as follows:

"6(1) A subordinate law -

(a) shall be notified in the *Gazette* ;

(b) takes effect on the day of notification or, if the law otherwise provides, as so provided; and

- (c) shall be laid before the Legislative Assembly within 15 sitting days after the date of notification."

Section 7 of the *Subordinate Laws Act 1989* provides as follows:

"7. A subordinate law shall not be expressed to take effect from a date before the date of its notification in the *Gazette* where, if the law so took effect -

(a) the rights of a person (other than the Territory or a Territory authority) existing at the date of notification would be affected in a manner prejudicial to that person; or

(b) liabilities would be imposed on a person (other than the Territory or a Territory authority) in respect of any act or omission before the date of notification;

and where any subordinate law contains a provision in contravention of this subsection, that provision is void and of no effect."

The fact that all 4 determinations were signed and notified in the *Gazette* on 7 June 1996 but were to take effect from and including 6 June 1996 is relevant.

There is only one day of retrospectivity involved here. It is suggested that no problem exists if the new appointees took no actions on 6 June 1996 that could have prejudiced the rights of, or imposed liabilities on, any person other than the Territory or a Territory Authority.

However, perhaps a check needs to be made as the Agents Board does have very wide powers relating to registration of agents and the issue and revocation of licences and other matters.

Determination No. 92 of 1996 made under section 58 of the *Veterinary Surgeons Act 1965* revokes the existing determinations of fees and determines fees payable under the Act.

A Very Helpful Explanatory Statement

The Committee makes a comment on the Explanatory Statement for this determination.

This determination revokes a number of determinations. At least one determination, which covered several fees, dates back to before self-government and thus is not numbered; however, the entry in the *Commonwealth Gazette* is given and identifies it precisely. The post self-government ones are properly identified by numbers and *Gazette* entry.

Since the last major updating of fees, there have been major amendments to the *Veterinary Surgeons Act 1965* and the Act has also been renumbered. In all cases, the "new" provision is mentioned, of course, but the "old" provision

is also identified and this helps to compare the old and new fees. In addition, there is a page which summarises the old and new fees and the "old" and "new" sections.

The Explanatory Statement also mentions the rationale for the new fees, whether it be a CPI-based increase, an increase in the movement towards full cost recovery or a change to align the fees with those for other health professions registration Acts.

It is an Explanatory Statement that is very helpful to members of the Assembly or to members of the public, who want to find, compare or monitor fees. It would be a good template for others to use.

Determination No. 93 of 1996 made under section 8 of the *National Exhibition Centre Trust Act 1976* appoints a specified person as Chairperson of the National Exhibition Centre Trust for a period of 3 years.

Determination No. 94 of 1996 made under section 8 of the *National Exhibition Centre Trust Act 1976* appoints 4 specified persons as members of the National Exhibition Centre Trust for a period of 3 years.

Appointments are not made under the Statutory Appointments Act 1994

The headings to the determinations and to the Explanatory Statement state that these appointments are made under the *Statutory Appointments Act 1994*.

Although the *Statutory Appointments Act 1994* requires consultation to occur with an appropriate Assembly committee nominated by the Speaker and also provides that such appointments are subject to disallowance by the Assembly, in fact, they are not made under the *Statutory Appointments Act 1994* but under the *National Exhibition Centre Trust Act 1976*.

GOVERNMENT RESPONSES

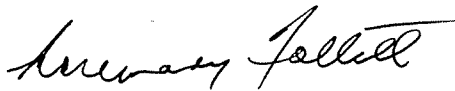
The Committee has received a response to comments made concerning:

- Compliance with *Statutory Appointments Act 1994* (Report No. 6 of 1996).
- Removal of gender specific terms in ACT legislation.
- Legislation (Republication) Bill 1996 (Report No. 6 of 1996).
- Family Provision (Amendment) Bill 1996 (Report No. 3 of 1996).
- Determination No. 21 of 1996 made under the *Health Act 1993* (Report No. 3 of 1996).

- Instrument No. 22 of 1996 made under the *Skin Penetration Procedures Act 1994* (Report No. 3 of 1996).
- Subordinate Law No. 2 of 1996 being the Children's Services Regulations (Amendment) (Report No. 3 of 1996).
- Subordinate Law No. 3 of 1996 being the Building Regulations (Amendment) (Report No. 4 of 1996).
- Subordinate Law No. 4 of 1996 being the Weapons Regulations (Amendment) (Report No. 4 of 1996).

Copies of the responses are attached.

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



Rosemary Follett, MLA
Chair

25 June 1996



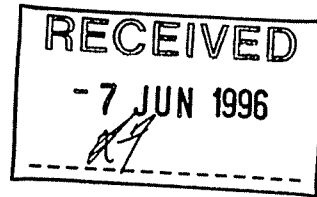
Gary Humphries MLA

→ *Don Duncan, Tel
for scrutiny*

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Minister for Consumer Affairs

Member for Molonglo
Australian Capital Territory

Ms Rosemary Follett MLA
Presiding Member
Standing Committee on Scrutiny of Bills
and Subordinate Legislation
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Rosemary
Dear Ms Follett

On 21 May 1996 when you tabled the Standing Committee's Report No 6 of 1996 in the Assembly you mentioned that it raises a number of concerns about compliance with the *Statutory Appointments Act 1994* and that doubts have been cast on the validity of an appointment.

The Government Solicitor has advised that, although the matter is not free from doubt, in their opinion the appointments are not invalidated because of non-compliance with the consultation requirements of the Act. A copy of the advice is attached for your information. Of course the validity of the appointments is not the end of the matter and I am not saying there is not room for improvement, particularly within my portfolio. I have directed my Department to review its procedures to ensure that appointments are attended to in an orderly fashion. The review will pay special attention to the requirements of the Act.

As you know I am a strong supporter of the Act and I find the matters highlighted in the Report a matter of some concern. You have my assurance the review I have directed take place will be a thorough one.

I will be responding to the other matters raised in the Report shortly.

Yours sincerely

Gary Humphries
Attorney-General

- 6 JUN 1996

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24 May 1996

Mr L Sorbello
Deputy Law Officer
Constitutional and Law Reform

RE: STATUTORY APPOINTMENTS ACT 1994 - VALIDITY OF
APPOINTMENTS NOT COMPLYING WITH PROCEDURE

I refer to your request of 29 Feb 1996 for urgent advice whether non-compliance with the procedure of consultation set out in section 4 of the *Statutory Appointments Act 1994* (the Act) has the consequence that an appointment made is invalid or void. This is to confirm my oral advice to you on 29 February 1996. In my opinion the appointment is not invalidated, but the matter is obviously one which is not free from doubt.

My reasons are first that the Act does not expressly deal with this question. In an Act such as this dealing with this subject it would be expected that an express provision would deal with the consequences of non-compliance if the consequence were to be as drastic as the avoidance of the appointment, especially given the inconvenience which might flow from this. The uncertainty in this area of the law is well-known, and it is therefore difficult to imagine that the legislature, had it intended the consequence of invalidity, would have omitted to include an express provision dealing with the matter. Second the Act provides that the Assembly can disallow appointments by applying the *Subordinate Laws Act* to them. There is I believe a strong *expressio unius* argument that the Legislature has turned its mind to the question of cancellation of appointments and dealt with it fully in this way. Third the language of the provision (section 4) seems to support the proposition that the



Gary Humphries MLA

→ Cite Secretariat
(Tom Sumner)

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Member for Molonglo
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Dear Ms Follett

On 26 July 1995 I wrote to your predecessor Mr Paul Osborne MLA advising him that I intended the 1996 Statute Law Revision (Miscellaneous Provisions) Bill would remove outstanding instances of gender specific terms in ACT legislation.

Since that time I have given further thought to the best mechanisms for keeping ACT legislation up-to-date and on 16 May 1996 I introduced the *Legislation (Republication) Bill 1996* into the Assembly.

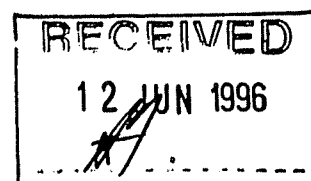
Amongst other things the Bill, if passed into law, will authorise the Parliamentary Counsel to make editorial amendments to legislation when the legislation is being republished. The removal of gender specific terms is one of the editorial amendments that may be made in this way. In view of this development the need for Statute Law Revision (Miscellaneous Provisions) Bills is likely to be greatly reduced.

Given my previous correspondence with your Committee concerning this issue I am writing to advise that, subject to the Assembly's consideration of the Republication Bill, I do not now intend to introduce a Statute Law Revision Bill to address the removal of gender specific terms.

Yours sincerely

Gary Humphries
Attorney-General

11 JUN 1996



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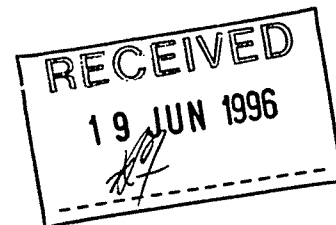
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Rosemary
Dear Ms Follett

I refer to the Standing Committee's Report No 6 of 1996 and in particular to the Committee's comments regarding the *Legislation (Republication) Bill 1996*.

As pointed out in the Report the Bill provides for formal amendments to be made to Acts and subordinate laws. As also pointed out section 14 of the *Interpretation Act 1969* gives the term "subordinate law" a meaning which, subject to a contrary intention appearing, applies when the term is used in an Act.

The Report makes the point that a contrary intention appears in section 6(19) of the *Subordinate Laws Act 1989* and seeks clarification as to the meaning intended in the Republication Bill. A contrary intention also appears in section 4 of the Subordinate Laws Act. However, in other sections, such as section 7, the Subordinate Laws Act relies on the meaning the term is given in the Interpretation Act.

Parliamentary Counsel advise that the meaning given to the term by the Interpretation Act is the one applicable to the Republication Bill. This is what was intended.

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Dear Ms  Follett

In its Report No. 3 of 1996, the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on the retrospective effect of the Family Provision (Amendment) Bill.

The purpose of the retrospective provision in the Bill is to enable the proposed amendments to the Act to have the widest possible effect because they address an anomaly in the present law. The Bill confers a benefit on unmarried partners and domestic partners by giving them the right to apply to the Supreme Court for provision from the estate of a deceased person. At present, they do not have this right.

The exceptions to this retrospective effect were included in the Bill at the suggestion of the ACT Law Society. Their purpose is to provide certainty in the case of the estates of persons who die shortly before the Bill comes into force.

In Report No. 3 of 1996, the Committee commented on Determination of Fees and Charges No. 21 of 1996 made under the *Health Act 1993* and indeed you raised this issue in the Assembly as well stating that it was a "recurring irritant to the committee". The Committee pointed out that despite comments made by it in its Reports Nos. 8 and 13 of 1995 regarding the fact that determinations are no longer published in the Gazette but are merely notified, this present determination continues to state that the revoked determination was "published" in the Gazette. I very much regret that the Committee has had to raise this matter for the third time.

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the practice with determinations). The effect on the size, and therefore the costs, of the Gazette will be almost non-existent. The Gazette office will ask line areas responsible for preparing explanatory documentation to also provide a description of all Gazette notices. This description, although brief, should as accurately as possible reflect the content of the determination, regulation or Act.

It should be noted, however, that often amending Acts or regulations can cover a number of topics. In such cases it could be difficult to give a meaningful description of regulations in a short, concise manner as would be required for the purposes of notification in the Gazette. A more fulsome description would defeat the advantages of the notification system. It may be that a more generalised notice description may have to suffice in certain cases.

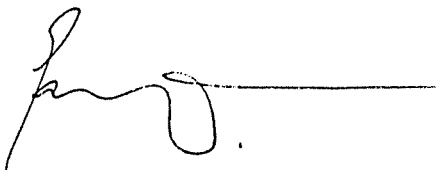
In its Report No. 4 of 1996, the Committee commented on Subordinate Law No. 3 of 1996 being the Building Regulations (Amendment). The Committee correctly noted an error in the explanatory statement to the instrument. This has been pointed out to the relevant area and the importance of ensuring that all documentation is accurate has been emphasised. I am confident that the mistake will not be repeated.

In its Report No. 4 of 1996, the Committee commented on Subordinate Law No. 5 of 1996 being the Weapons Regulations (Amendment). The Committee observed that the explanatory statement indicates that the regulation provides for authorised bodies to be exempt from item 11 of Schedule 3 of the Act in respect of paint pellet guns. However, the regulation itself makes no specific reference to item 11 of Schedule 3. Instead, the regulation confers power on the Minister to authorise a body to operate a paint pellet range which authorisation has the effect of exempting the agency from section 16 of the Act in respect of item 11 of Schedule 3 in relation to paint pellet guns.

I thank the Committee for its comments on the explanatory statement and confirm the Committee's summation of the interpretation of the Weapons Regulations (Amendment).

I trust that this information is of assistance to the Committee.

Yours sincerely



Gary Humphries MLA
Attorney-General

18 JUN 1996

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