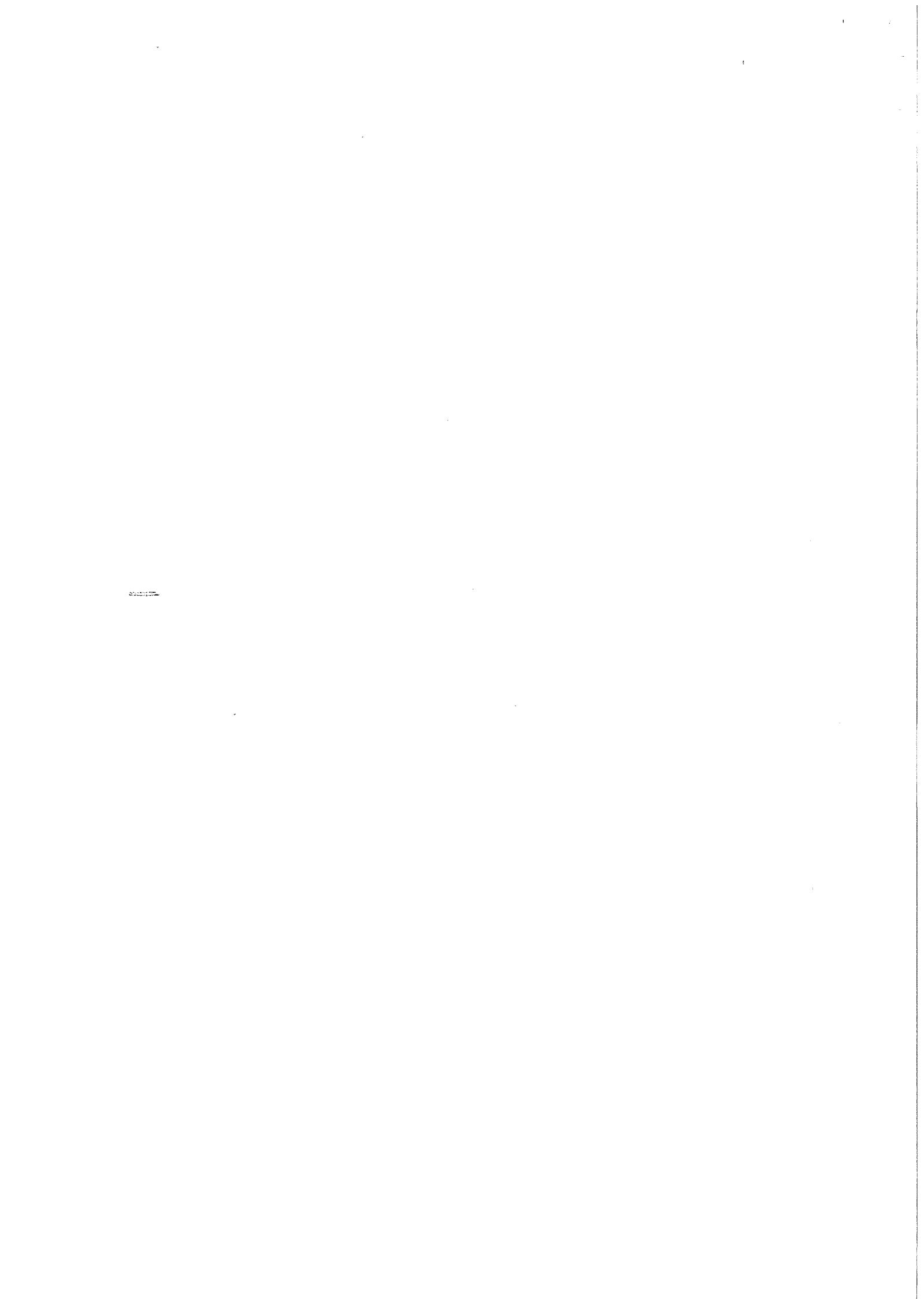


**STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION**

REPORT NO. 1 OF 1995

23 March 1995





LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Standing Committee on Scrutiny of
Bills and Subordinate Legislation

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CANBERRA A.C.T. 2601

Mr Greg Cornwell, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Mr Cornwell,

Please find enclosed a copy of Report No. 1 of 1995 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 Report No. 1 of 1995.

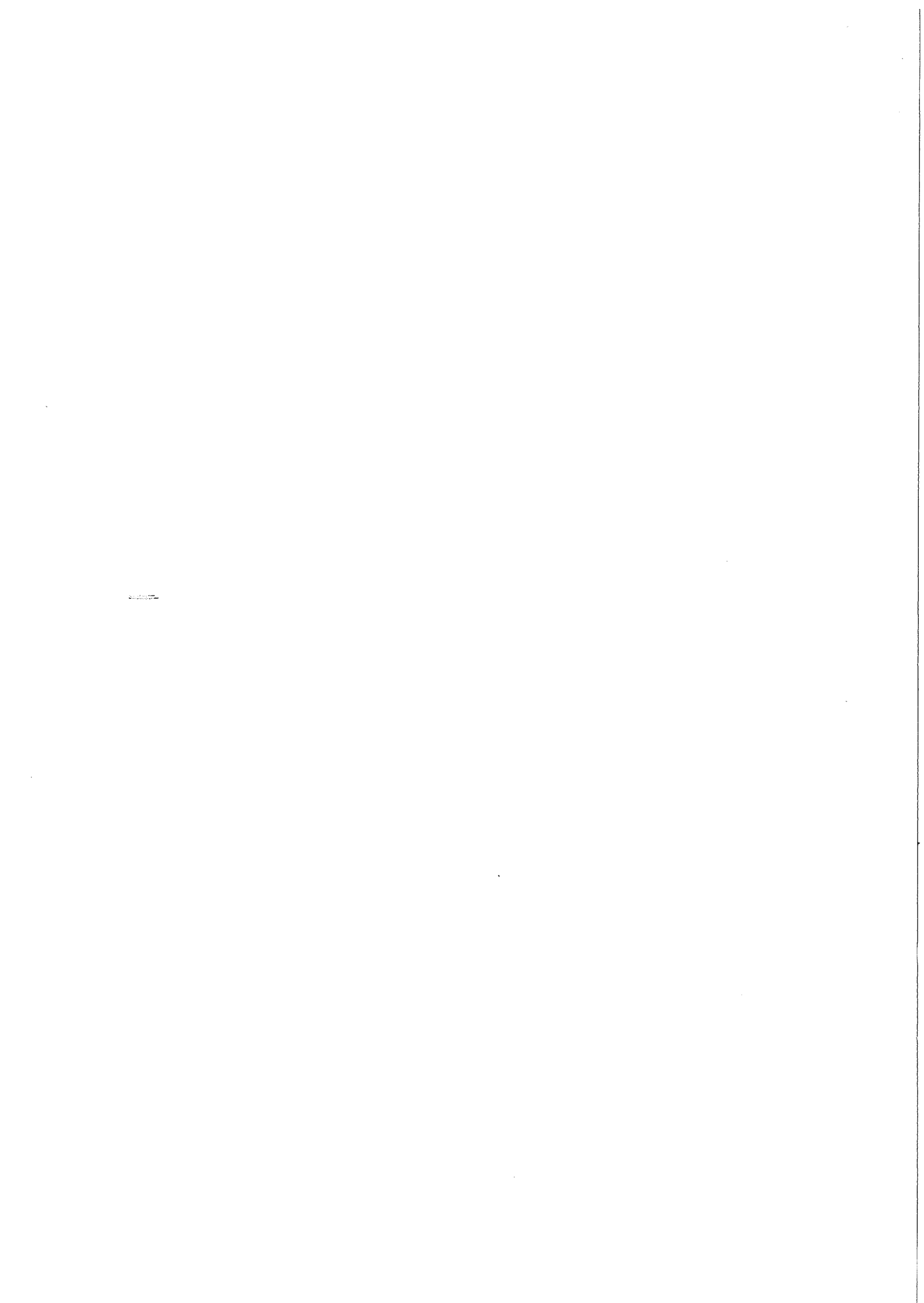
Yours sincerely,

Paul Osborne, MLA
Chair

23 March 1995

Approved
Greg Cornwell, MLA
Speaker

23 March 1995



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) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) contains matter which should properly be dealt with in an Act of the Legislative Assembly; or
 - (v) its explanatory statement meets the technical or stylistic standards expected by the Committee.
 - (b) 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;
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny; or
 - (vi) its explanatory memorandum meet 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 Paul Osborne, MLA (Chair)
Mr Andrew Whitecross, MLA (Deputy Chair)
Mr Harold Hird, MLA

Legal Advisor: Emeritus Professor Douglas Whalan, AM
Secretary: Mr Tom Duncan
Deputy Secretary: Ms Beth Irvin

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.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Determination No. 156 of 1994 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of public places that are Territory Land in the Division of Ngunnawal.

Determination No. 157 of 1994 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of public places that are Territory Land in the Division of Ngunnawal.

Determination No. 158 of 1994 made under section 4 of the *Public Place Names Act 1989* amends Instrument No. 3 of 1991 by omitting a street name in the Division of Gordon.

Determination No. 159 of 1994 made under section 4 of the *Public Place Names Act 1989* amends an instrument published in the Commonwealth Gazette No. P25 of 31 August 1988 by omitting one street name in the Division of Bonython and three street names in the Division of Conder.

Determination No. 160 of 1994 made under section 105A of the *Liquor Act 1975* revokes Determination No. 67 of 1994 and determines fees that are payable under the Act.

Determination No. 162 of 1994 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 65 of 1990 and determines the payroll tax rates for the purposes of the *Payroll Tax Act 1987* that are effective from 1 January 1995.

Determination No. 164 of 1994 made under section 4 of the *Motor Omnibus Services Act 1955* approves a cash fare of \$4.00 for the after hours Nightrider service.

Determination No. 165 of 1994 made under section 75 of the *Tenancy Tribunal Act 1994* approves variations to the Commercial and Retail Leases Code of Practice.

Determination No. 2 of 1995 made under section 217A of the *Motor Traffic Act 1936* varies Determination No. 65 of 1994 in relation to fees under subsection 65(4) of the Act by inserting a fee for the grant or renewal of a licence for a period of less than 12 months for a person not currently entitled to a concession but who is the holder of a Health Care Card.

Determination No. 3 of 1995 made pursuant to subsection 34(2) of the *Betting (Totalizator Administration) Act 1964* determines that the percentage of turnover to be paid by the ACT TAB to the Racecourse Development Fund under subsection 34(1) is to be 0.5%.

Determination No. 6 of 1995 made under paragraph 78(1)(a) of the *Tenancy Tribunal Act 1994* determines a fee of \$100.00 for the referral of a dispute to the Registrar of the Tenancy Tribunal.

Determination No. 7 of 1995 made under section 4 of the *Public Place Names Act 1989* revokes Determination No. 45 of 1994 and determines the names, origins and significance of public places that are Territory Land in the Division of Nicholls.

Determination No. 8 of 1995 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of public places that are Territory Land in the Division of Nicholls.

Determination No. 9 of 1995 made under subsection 18(2) of the *Health Act 1993* revokes Determination of Fees and Charges No. 111 of 1991 and fixes the level of interest payable on overdue accounts at 15% per annum.

Determination No. 10 of 1995 made under section 15H of the *Nature Conservation Act 1980* determines the remuneration of the members of the Flora and Fauna Committee.

Determination No. 11 of 1995 made under section 15E of the *Nature Conservation Act 1980* appoints the members of the Flora and Fauna Committee.

Determination No. 12 of 1995 made under section 15E of the *Nature Conservation Act 1980* appoints the Chairperson and Deputy Chairperson of the Flora and Fauna Committee.

Determination No. 13 of 1995 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 147 of 1993 and determines the concession rates of duties that are payable by eligible homebuyers under the *Stamp Duties and Taxes Act 1987*.

Determination No. 15 of 1995 made under section 99 of the *Taxation (Administration) Act 1987* determines the rate of duty payable on changes in the beneficial ownership of marketable securities under section 49F of the *Stamp Duties and Taxes Act 1987*.

Determination No. 17 of 1995 made under section 12 of the *Housing Assistance Act 1987* approves variations to the Rent Relief Program being the Rent Relief Program Variation dated 10 January 1995 made by the Acting Commissioner for Housing.

Determination No. 18 of 1995 made under section 12 of the *Housing Assistance Act 1987* approves variations to the Public Rental Housing Assistance Program being the Public Rental Housing Assistance Program Variation dated 10 January 1995 made by the Acting Commissioner for Housing.

Determination No. 21 of 1995 made under section 28B of the *Rates and Land Tax Act 1926* revokes Determination No. 106 of 1993 and determines that the rate of interest to be paid on overpaid rates and land tax is 7.5% per annum from 1 March 1995.

Determination No. 22 of 1995 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 98 of 1993 and determines that the rate of interest to be paid for the purposes of subsection 35(1) of the Act on overpaid taxes, duties and fees is 7.5% per annum from 1 March 1995.

Determination No. 25 of 1995 made under section 4 of the *Public Place Names Act 1989* varies Determination No: 108 of 1994 by omitting three specified street names and inserting the name, origin and significance of one of those streets as a public place that is Territory Land in the Division of Ngunnawal.

Public Sector Management Standard No. 4/1994 made and approved under section 251 of the *Public Sector Management Act 1994* amends Public Sector Standard 1/1994 by revoking specified provisions relating to mobility with the Australian Public Service and making new management standards in the area.

Public Sector Management Standard No. 7/1994 made and approved under section 251 of the *Public Sector Management Act 1994* amends Public Sector Standard 1/1994 by amending specified provisions relating to the transfer of teachers.

Public Sector Management Standard No. 8/1994 made and approved under section 251 of the *Public Sector Management Act 1994* amends Public Sector Standard 1/1994 by adding two Entry to the Workforce Programs.

Public Sector Management Standard No. 9/1994 made and approved under section 251 of the *Public Sector Management Act 1994* amends Public Sector Standard 1/1994 by adding management standards in relation to ACTTAB officers.

Public Sector Management Standard No. 12/1994 made and approved under section 251 of the *Public Sector Management Act 1994* amends Public Sector Standard 1/1994 by adding management standards in relation to Canberra Theatre Officers.

Public Sector Management Standard No. 1/1995 made and approved under section 251 of the *Public Sector Management Act 1994* amends Public Sector Standard 1/1994 by revoking Schedule 9, Salaries of Nursing Staff on pages 693 and 694 and inserting new pages setting new salaries for nursing staff.

Subordinate Law No. 43 of 1994 being the *Bail Regulations (Amendment)* made under section 58 of the *Bail Act 1992* repeals two regulations relating to forms that were made redundant on the passing of the *Bail (Amendment) Act 1994*.

Subordinate Law No. 44 of 1994 being the *Buildings (Design and Siting) Regulations (Amendment)* made under section 14 of the *Buildings (Design and Siting) Act 1964* exempts the approval of the external design and siting of a garage or carport from the notification and review requirements of the principal regulations in specified circumstances.

Subordinate Law No. 45 of 1994 being the *Casino Control Regulations (Amendment)* made under section 133 of the *Casino Control Act 1988* prescribes \$5,000 as the minimum amount that can be used as an inducement to people who visit the casino for the purpose of junket gaming as defined in section 3 of the Act.

Subordinate Law No. 46 of 1994 being the *Public Health (Infectious and Notifiable Diseases) Regulations (Amendment)* made under paragraph 12 (e) of the *Public Health Act 1928* substitutes a reference to the 5th edition of the "National Health and Medical Research Council 'Australian Immunisation Procedures Handbook' " for the 4th edition.

Subordinate Law No. 47 of 1994 being the *Essential Services (Continuity of Services) Regulations (Repeal)* made under section 28 of the *Essential Services (Continuity of Supply) Act 1992* repeals the principal regulations.

Subordinate Law No. 48 of 1994 being the *Education Services for Overseas Students (Registration and Regulation of Providers) Regulations* made under section 45 of the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994* provides for the particulars of applications for approval as a provider and for the management and withdrawal of course funds.

Subordinate Law No. 1 of 1995 being the *Fair Trading Regulations* made under section 54 of the *Fair Trading Act 1992* prescribes the Fitness Industry Code of Practice which is an approved code of practice under section 34, and provides that approved codes of practice are disallowable instruments.

Subordinate Law No. 2 of 1995 being the *Referendum (Machinery Provisions) Regulations* made under section 20 of the *Referendum (Machinery Provisions) Act 1994* provides for the form of ballot paper, formality requirements and material that can be carried by a mobile polling team and prescribes who may request a recount or appoint a scrutineer in relation to the conduct of the referendum to be held to give effect to the Proportional Representation (Hare-Clark) Entrenchment Bill 1994.

Subordinate Law No. 3 of 1995 being the *Canberra Sewerage and Water Supply Regulations (Amendment)* made under section 82 of the *Electricity and Water Act 1988* inserts meanings of "drain" and "sewer", clarifies responsibilities for the supply and repair of pipes, permits ACTEW staff to undertake certain work without formal qualifications and makes other small amendments.

Subordinate Law No. 4 of 1995 being the *Electoral Regulations (Amendment)* made under section 341 of the *Electoral Act 1992* varies the form of ballot paper in Schedule 1 by adding the word "Declaration" so that declaration votes can be identified during the electoral process.

Subordinate Law No. 5 of 1995 being the *Essential Services (Continuity of Supply) Regulations* made under section 28 of the *Essential Services (Continuity of Supply) Act 1992* prescribes the supply of reticulated water and sewerage services as essential services for the purposes of the Act.

Subordinate Law No. 6 of 1995 being the *Weapons Regulations (Amendment)* made under section 20 of the *Weapons Act 1991* exempts catapults from some provisions of the Act when used for research purposes by members of the Australian National University or the University of Canberra.

Subordinate Law No. 7 of 1995 being the *Land (Planning and Environment) Regulations (Amendment)* made under the *Land (Planning and Environment) Act 1991* revokes the provision of the principal regulations that exempted an application for a lease variation to permit a dual occupancy development from the notification and third party appeal rights.

Subordinate Law No. 8 of 1995 being the *Juries Fees Regulations (Amendment)* made under section 52 of the *Juries Act 1967* introduces a new scale of payments for jurors.

Subordinate Law No. 9 of 1995 being the *Buildings (Design and Siting) Regulations (Amendment)* made under the *Buildings (Design and Siting) Act 1964* lists works which are not subject to design and siting approval.

Instrument of Approval No. 23 of 1995 made under section 87 of the *Occupational Health and Safety Act 1989* approves the National Standard for the Control of Inorganic Lead at Work [NOHSC: 1012(1994)] and the National Code of Practice for the Control and Use of Inorganic Lead at Work [NOHSC: 2015 (1994)].

Instrument of Approval No. 24 of 1995 made under section 87 of the *Occupational Health and Safety Act 1989* approves the National Standard for Plant [NOHSC: 1010 (1994)].

Subordinate Legislation - Comment

The Committee has examined the following Subordinate Legislation and offers the following comments:

Subordinate Law No. 42 of 1994 being the *Supreme Court Rules (Amendment)* modify the procedures to be followed in the Supreme Court when the Court is exercising jurisdiction as the Court of Disputed Returns in respect of disputed elections and questions referred to the Court by the Legislative Assembly under the *Electoral Act 1992*.

Incorrect Spelling of Judge's Name

On the front page of the Subordinate Law the surname of Mr Justice Gallop is given incorrectly as "Galopp".

Determination No. 161 of 1994 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 4 of 1990 and Determination No. 89 of 1991 and determines the rate of tax on the sale of assets on a sale and purchase of a business.

Is the Correct Section Under Which this Tax is to be Paid Referred to?

Paragraph 4 of the determination is headed "Acquisition of business" and is the main provision of the determination. It provides as follows:

"4. For the purposes of section 56A of the Act [meaning the *Stamp Duties and Taxes Act 1987*], the determined amount of tax payable shall be the aggregate of:

- (a) where the ACT assets acquired include an interest in land, the amount of stamp duty that would be payable under section 17 of the Act on a transfer at market value;
- (b) where the ACT assets acquired include vehicles, the amount of stamp duty that would be payable under section 57 of the Act on a transfer at market value;
- (c) where the assets include marketable securities, the amount of stamp duty that would be payable under section 38 or section 44 on a transfer at market value; and
- (d) the amount of 60 cents for each \$100.00 or part of \$100.00 on the residual consideration, or of the net ACT assets acquired, whichever is the higher.”.

Section 56A of the Act refers to the “determined amount of tax [that] is payable on each sale of a used vehicle by a licensed dealer” and does not seem to be relevant in the case of a sale and purchase of a business. This seems to be confirmed by the explanatory statement when it states:

“The rate of duty payable on sales of vehicles by licensed dealers was included in the previous determination (No. 4 of 1990) [which is revoked by the present determination]. It was amended by Determination No. 90 of 1991, and therefore has not been repeated in this determination.”.

It is suggested that this passage accurately states the position.

However, the rest of Determination No. 4 of 1990 and also of Determination No. 89 of 1991, which are both revoked by the present determination, were concerned with tax on the sale and purchase of businesses.

Indeed, the short title of Determination No. 4 of 1990 was the Stamp Duties (Licensed Vehicles Dealers and Acquisition of Businesses) Determination 1990, but Determination No. 89 of 1991 is called simply the Stamp Duties (Acquisition of Businesses) (Amendment) Determination 1991. This reflects the fact that motor vehicle dealers were siphoned off into another determination, Determination No. 90 of 1991.

The explanatory statement correctly mentions that Part VIA of the *Stamp Duties and Taxes Act 1987* “deals with acquisition of businesses”. It is suggested that the first section of Part VIA, section 64A, could perhaps be the relevant section for paragraph 4 of the present determination, as it provides as follows:

“64A (1) The determined amount of tax is payable on the acquisition of a business conducted wholly or partly in the Territory.

(2) Nothing in subsection (1) shall be taken to impose tax on the acquisition of that part of a business that is conducted outside the Territory.”.

Perhaps the matter should be checked.

Determination No. 163 of 1994 made under section 15F of the *Workers' Compensation Act 1951* approves Protocol No. 1 of 1995 for occupational rehabilitation.

Possible Reference to a Wrong Section and a Tiny Mistake

There appear to be two possible errors in the Protocol approved by this instrument.

First, there is a tiny mistake in paragraph 5.2.6 where the concluding quotation marks are omitted from the citation of the definition of "Occupational rehabilitation".

Secondly, and more significantly, paragraph 3.1 refers to the obligations of an employer in relation to developing and displaying an occupational rehabilitation policy and the paragraph states that these obligations are imposed by section 15C of the *Workers' Compensation Act 1951*.

In fact, these obligations appear to be imposed by section 15D of the Act. This is recognised by the first paragraph of Attachment 1 which contains a Model Policy and refers to the fact that the obligations arise under section 15D.

Perhaps these matters should be checked.

Possible Confusion with Revocation and Explanatory Statements
Mixed up

Determination No. 166 of 1994 made under section 16 of the *Casino Control Act 1988* "revoke[s] the determination under section 16 of the *Casino Control Act 1988* notified in ACT Gazette No S72 on 29 May 1992" and determines the rate of general tax on the non-junket profit at a rate of 20%.

Determination No. 167 of 1994 made under section 16A of the *Casino Control Act 1988* determines the rate of junket tax on the junket profit at a rate of 10%.

(a) Is there Confusion with Revocation?

ACT Determination No. 166 of 1994 "revoke[s] the determination under section 16 of the *Casino Control Act 1988* notified in ACT Gazette No. S72 on 29 May 1992".

Although it is unnumbered, there was such a determination and it fixed a rate of 20% of tax which at that time would have applied to all profit as there was no "junket tax" legislation until late 1994. The Committee cannot find an earlier determination than the present determination that specifically revoked this determination.

However, a further determination was made, following the issue of the licence for the permanent casino on 28 July 1994. This is ACT Determination No. 113 of 1994 dated 28 July 1994, which was notified in Gazette No S157 on 28 July 1994. It also fixes a tax of 20% of profit.

There is no reference in the present determination, Determination No. 166 of 1994, to Determination No. 113 of 1994.

Why was it thought necessary expressly to revoke the 1992 determination, but not revoke Determination No.113 of 1994?

Perhaps the matter should be looked at.

(b) Explanatory Statements are Mixed up

There are two Explanatory Statements for the two new Determinations, ACT Determinations Nos. 166 and 167.

Unfortunately, the Explanatory Statements have been reversed. That relevant to Determination No. 166 of 1994 is numbered as if it were relevant to Determination No. 167 of 1994 and that for Determination No. 167 of 1994 is numbered as if it were relevant to Determination No. 166 of 1994.

Determination No. 1 of 1995 made pursuant to section 104 of the *Electricity Act 1971* determines fees for the initial grant of electrical licences and for electrical licence renewals.

No Reprint Available to Check Sections

This Determination determines the fees for both the initial grant and the renewal of electrical licences and refers to the sections under which grants or renewals are made.

When the *Electricity Act 1971* was amended in 1994, section 48 of the *Electricity (Amendment) Act 1994* provided for the renumbering of the principal Act. The renumbering of this much amended Act was timely, but unfortunately, no reprint of the Act appears to be available at present. This has meant that the references to the sections under which the fees have been determined have not been able to be checked as would normally happen.

Determination No. 4 of 1995 made pursuant to subsection 32(2) of the *Betting (Totalizator Administration) Act 1964* determines that the percentage of turnover to be paid by the ACT TAB to the Territory under subsection 32(1) is to be 5.75%.

There Seems to be an Error

Under section 32 of the *Betting (Totalizator Administration) Act 1964* the determined amounts are to be paid to the Territory monthly.

The explanatory statement correctly states that section 32:

“requires the Board to pay to the Territory, as soon as practicable after the first day of each month, the determined percentage of all bets accepted by the Board in the preceding month.”. (Emphasis added.)

Unfortunately, the Determination itself refers to payment of the percentage of the amount of bets accepted “during the proceeding month”.

If the Board could correctly predict the amounts of bets that will be accepted “during the proceeding month”, then the Committee suggests that they would not be bothering to take bets but would be using this fantastic foresight to make bets!

This seems to be a simple mistake which should perhaps be corrected.

Under what Authority were Fees under the Dairy Regulations Collected?

Determination of Fees and Charges No. 5 of 1995 made under section 11A of the Public Health Act 1928 revokes Determination of Fees and Charges No. 3 of 1994 and determines fees to be paid under regulations relating to barber’s shops, boarding-houses, piggeries and dairies.

Determination of Fees and Charges No.5 of 1995 revokes Determination of Fees and Charges No. 3 of 1994 and fixes fees under the barbers’ shops, boarding-houses and piggeries and dairy regulations. The fees for barber’s shops, boarding houses and piggeries are increased from \$72.00 to \$74.00.

The Explanatory Statement states as follows:

“The two fees under the Dairy Regulations were inadvertently missed when adjusting the fees for 1994. The increase in 1995 reflects an adjustment from \$70.00 to \$74.00 to regain parity with other fees levied under the Public Health Act.”

The accuracy of this statement perhaps needs to be checked.

Determination No. 159 of 1992 fixed fees of \$70.00 under the barbers’ shops, boarding-houses, dairy, eating houses, meat and piggeries regulations and corrected some errors to which the Committee had drawn attention in its Report No. 1 of 1992.

Determination of Fees and Charges No. 3 of 1994 revoked Determination No. 159 of 1992 and fixed new fees of \$72.00 for the barbers’ shops, boarding-houses and piggeries regulations only.

Thus, all the \$70.00 fees disappeared, including those under the dairy regulations.

However, the Explanatory Statement for Determination of Fees and Charges No. 3 of 1994 explained this disappearance as follows:

“Fees for dairymen and dairies, dairy herds, eating houses, meat vendors and prepared meat goods previously determined under the Public Health Act are now determined under the Food Act 1992.”

Determination No.10 of 1994 does fix fees under the Food Act 1992 for four designated classes of food licences. The fees are based on the level of food risk rather than applying to specified foods.

Have these Food Act 1992 fees been applied to “dairymen and dairies, dairy herds” as the Explanatory Statement to Determination of Fees and Charges No. 3 of 1994 suggested was going to happen?

If so, the comment quoted above from the Explanatory Statement for the present determination, Determination of Fees and Charges No. 5 of 1995, about an increase from \$70.00 to \$74.00 seems to be inaccurate, as there is no fee of \$70.00 in Determination No. 10 of 1994.

If the Food Act 1992 fees have not been applied as suggested, was there perhaps another unrevoked determination that fixed \$70.00 fees under the Dairy Regulations?

To sum up the possible doubts: Were "dairymen and dairies, dairy herds" charged fees after the revocation of Determination No. 159 of 1992 by Determination of Fees and Charges No. 3 of 1994? If so, under what authority were they charged, at what level and what was the total amount of fees?

Determination No. 14 of 1995 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 161 of 1994 and determines the rate of tax on the sale of assets on a sale and purchase of a business.

What are the Consequences of the Correction of an Error?

The Committee's comments on Determination No. 161 of 1994 drew attention to a reference to the wrong section under which duties were to be levied under the *Stamp Duties and Taxes Act 1987* on the sale and purchase of a business.

The present determination acknowledges that the mistake was made and corrects it.

Paragraph 4 is the main provision of both revoked Determination No. 161 of 1994 and the present determination, as paragraph 4 dealt with the level of tax payable. The revoked determination referred to section 56A which has nothing to do with business, when the paragraph should have referred to section 64A. The present determination now correctly refers to section 64A.

Were any taxes levied in reliance upon the incorrect provision during the month in which it was in force? If so, the legality of those taxes needs to be considered.

Determination of Fees and Charges No. 16 of 1995 made under section 19B of the *Meat Act 1931* determines the fee for the renewal of a permit to slaughter at \$74.00.

Setting Fees and Charges Relating to Meat

First, the Committee notes that the determination only fixes a fee for the renewal of a permit under subregulation 5(4) of the *Meat Regulations*. It does not fix a fee for the initial grant of a permit to slaughter under subregulation 5(1). Does another instrument fix a fee under subregulation 5(1)?

Secondly, the Explanatory Statement for this determination states as follows:

"This fee was inadvertently missed when adjusting the fees for the 1994 calendar year. The increase reflects an adjustment from \$70.00 to \$74.00 to regain parity with fees levied under the *Public Health Act 1928*."

The Committee does not appear to have seen a Determination of Fees and Charges made under section 19B of the *Meat Act 1931* that has been tabled in the Assembly and which fixes a fee of \$70.00 for the renewal of a permit to slaughter. The committee would be interested in knowing whether such a determination exists.

Determination of Fees and Charges No. 159 of 1992 made under the *Public Health Act 1928* did fix fees of \$70.00 under the *Public Health (Meat) Regulations*, but these related to fees for a meat vendor's licence and for a permit to sell prepared meat goods, but did not cover the renewal of a permit to slaughter under the *Meat Act 1931*. Determination of Fees and Charges No. 159 of 1992 was revoked by Determination of Fees and Charges No. 3 of 1994, which has, in turn, been revoked by the current determination, Determination of Fees and Charges No. 5 of 1995.

As the Committee noted earlier in this report, when dealing with dairies, the explanatory statement for Determination of Fees and Charges No. 3 of 1994 indicated that the fees for "meat vendors and prepared meat goods are now determined under the Food Act 1992" and the relevant *Food Act 1992* determination does not have a \$70.00 fee. Consistently with these intentions, the provisions in the *Public Health (Meat) Regulations* under which fees were determined for a meat vendor's licence and for a permit to sell prepared meat goods were repealed by Subordinate Law No. 12 of 1994. The explanatory statement for that subordinate law also stated that these fees would now come under the *Food Act 1992*.

In addition to seeking information about the determination under the *Meat Act 1931* relating to fees for the initial grant of a permit to slaughter and for the renewal of such a permit, perhaps confirmation could be sought that fees for meat vendors and sellers of prepared meat goods are now collected under the *Food Act 1992* determination, Determination No. 10 of 1994.

Determination of Fees No. 19 of 1995 made under section 8 of the *Electoral Act 1992* determines the fees for obtaining a copy of a claim or return in relation to election funding and financial disclosure.

Is Payment Direct to the Electoral Commission Payment to the Territory?

The Determination provides that the determined fees are "payable to the Electoral Commission in advance".

This seems to be a sensible and practical arrangement.

However, paragraph 8(2)(b) of the *Electoral Act 1992* provides that a determination made by the Electoral Commission may provide for "the time at which, and the manner in which, the fee is payable to the Territory". Paragraph 8(3)(a) underlines this by providing that a determined fee "is payable to the Territory in accordance with the determination".

Confirmation is sought that payment direct to the Electoral Commission constitutes payment "to the Territory".

Determination of Fees under the Land (Planning and Environment) Act 1991- Various Comments.

Determination No. 20 of 1995 made under section 287 of the *Land (Planning and Environment) Act 1991* revokes Determination No. 85 of 1994 and determines the fees payable under the Act.

The Committee makes comments on the determination and its explanatory statement under six heads.

First, the determination itself correctly states that it is made under section 287 of the Act, but the Explanatory Statement states that it is made under section 267 of the Act.

Secondly, the explanatory statement lists the fees under the headings "Last Year" and "This Year" and shows an increase in most fees. In fact, most fees have not been increased at all as compared with those fixed by Determination No. 85 of 1994 that is being revoked and replaced.

Thirdly, there appear to have been three areas where additions or alterations have been made.

- (a) There is a new fee of \$175 under section 171 for the grant of a further lease for residential purposes where the lease is to expire within 30 years. This is correctly identified in the explanatory statement as a new fee.
- (b) Some of the fees under section 227 for copies of the Register of Applications, Approvals and Orders have also been varied. With one exception, these changes have been correctly identified in the explanatory statement. The one exception is that of "\$10 above A3 size per page". The explanatory statement states under "Last Year" that this was "N/A". In fact, such a fee did appear in Determination No. 85 of 1994 and has not been changed.
- (c) There are additions to the determination under section 217. These make it clear that an application by a community organisation under section 163 of the Act to conduct a market to sell used goods, or conduct a meeting of a community organisation or conduct community activities attracts a "Nil" fee. There is no mention of these additions in the explanatory statement.

Fourthly, there is a fee of \$700 under section 162 for an application for a grant of a lease for rural land. This is not a new fee as an identical fee was payable under Determination No. 85 of 1994. There is no mention of this fee in the explanatory statement.

Fifthly, in its Report No. 12 of 1994 the Committee commented that the explanatory statement for Determination No. 85 of 1994:

"could have been a little more helpful in relation to the fees set under sections 210 and 226. In the entries for these sections the old and new fees both state "Varies based on activity'".

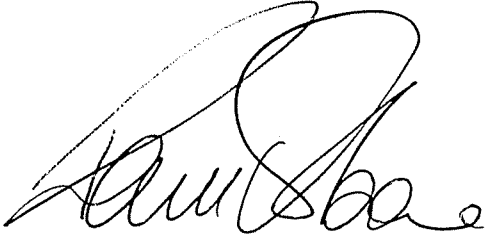
The Report then gave the actual changes involved, which could have been included in the explanatory statement. There have been no changes to the fees in the present determination, but the phrase "Varies based on activity" is repeated. It would be helpful to Members of the Assembly and to the public if the explanations could be given fully on the next occasion the fees are reconsidered.

Finally, is there a fee missing from the determination? The fees under section 210 are for "Application for the grant of a licence to occupy or use an area on unleased Territory Land that is not Public Land in respect of Public Parks or Open Urban Space".

Paragraph (a) of the determination refers to "Business promotion" and no fees appear alongside it. Paragraph (b) of the determination fixes fees for "Short term commercial use for restricted clientele" under subparagraphs (i), (ii) and (iii).

Perhaps these three subparagraphs were also meant to apply to "Business Promotion". But it is difficult to argue this when it is noted that the fees for licences to occupy under section 217 ("Application for the grant of a licence to occupy or use an area of unleased Territory Land that is not Public Land in respect of Nature Strips") are carefully repeated for the various uses. These include fees for use for "Business promotion".

The explanatory statement is also no help, for, as mentioned under the previous head, it merely states that a fee "Varies based on activity". Perhaps this matter should also be checked, including checking whether any fees have in fact been collected under this heading "Business Promotion".

A handwritten signature in black ink, appearing to read "Paul Osborne". The signature is fluid and cursive, with a large loop at the top.

Paul Osborne, MLA
Chair

23 March 1995

