

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

REPORT NO. 18 OF 1993

19 October 1993

TERMS OF REFERENCE

- (1) a Standing Committee for scrutiny of bills and subordinate legislation shall be appointed;
- (2) the Committee shall with respect to any instrument of a legislative nature which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act consider whether the instrument -
 - (a) is in accord with the general objects of the Act under which it is made;
 - (b) unduly trespasses on rights previously established by law;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; or
 - (e) or the explanatory statement accompanying it meets the technical or stylistic standards to which such an instrument or explanatory statement ought, in the opinion of the Committee, to conform;
- (3) the Committee shall with respect to the clauses of Bills introduced into the Legislative Assembly consider whether such Bills -
 - (a) unduly trespass on personal rights and liberties;
 - (b) makes rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) inappropriately delegate legislative powers;
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny; or
 - (f) or the explanatory memorandum accompanying it meets the technical or stylistic standards to which such a Bill or explanatory memorandum ought, in the opinion of the Committee, to conform;
- (4) the Committee shall consist of three members;
- (5) if the Assembly is not sitting when the Committee is ready to report on Bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing and circulation;
- (6) the majority of members constitutes a quorum of the Committee;
- (7) the Committee be provided with the necessary additional staff, facilities and resources; and
- (8) the foregoing provisions of the resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

MEMBERS OF THE COMMITTEE

Mrs E. Grassby, MLA (Chairperson)
Mr G. Humphries, MLA (Deputy Chairperson)
Ms H. Szuty, MLA

Legal Advisor: Emeritus Professor D. Whalan
Secretary: Mr T. Duncan
Deputy Secretary: Ms B. Irvin

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Legislative Assembly. The Committee does not make any comments on the policy aspects of the legislation. The terms of reference contain the customary principles of scrutiny that enable the Committee to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation that have been adopted, without exception, by all scrutiny committees in Australia. Such non-partisan, non-policy scrutiny allows the Committee to assist the Assembly passing into law Acts and subordinate legislation that comply with the high ideals set out in the terms of reference.

BILLS

Bills upon which no Comment is Offered

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

Land (Planning and Environment) (Consequential Provisions) (Amendment) Bill (No. 2) 1993

This Bill provides that an appeal against a decision to make an order in respect of a building on a place that may be of possible heritage significance is appellable to the Land and Planning Appeals Board.

Noise Control (Amendment) Bill 1993

This Bill permits the imposition of conditions when granting an exemption under the Act and provides for a review of such decisions and ensures that both the original Noise Control Manual and any amendment of it are disallowable instruments.

Stamp Duties and Taxes (Amendment) Bill (No. 3) 1993

This Bill expands the range of stamp duty concessions available to spouses, provides concessions to employment groups forced to amalgamate under Federal Government changes and varies the measures relating to the payment of duty on life and general insurance premiums.

Supreme Court (Amendment) Bill (No. 2) 1993

This Bill amends the Principal Act in a number of ways the principal of which relate to the creation of a new class of acting Judge, the composition of the Court when it deals with legal profession disciplinary matters, the term of the Master of the Supreme Court and appointment of officers of the Court.

Bills upon which Comment is Offered

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

Land (Planning and Environment) (Amendment) Bill (No. 4) 1993

This Bill establishes the Land and Planning Appeals Board as the body which will, in most cases, review decisions made under the *Land (Planning and Environment) Act 1991*.

A Probable Incorrect Reference

Subclause 20(b) of the Bill amends section 256 of the Principal Act by repealing subsections 256(3) and (4) and inserting new subsections 256(3), (4), (4A), (4B), (4C) and (4D).

New subsection 256(4C) provides thus:

"(4C) The Registrar shall cause a copy of each order made under subsection (4C) [sic] to be given to the Minister as soon as practicable after the order is made."

The reference to "subsection (4C)" appears to be incorrect. Perhaps the reference should be to "subsection (4B)".

A Change that may be Appropriate

Clause 28 of the Bill inserts new Part VIA setting up the Land and Planning Appeals Board. New section 282ZJ (on pages 28-29) deals with the "operation and implementation of a decision that is subject to appeal". New subsections 282ZJ(2) and (3) both refer to the Supreme Court "or a Judge of the Court sitting in chambers". (Emphasis added.)

This reference is correct as the law now stands. However, clause 13 of Supreme Court (Amendment) Bill (No. 2) 1993 repeals and substitutes section 21 of the *Supreme Court Act 1933*. The new subsection 21 provides thus:

"21. (1) The distinction between court and chambers is abolished.
(Emphasis added.)

(2) The business of the Court, whether conducted in a courtroom or otherwise, shall be taken to be conducted in court.

(3) Nothing in this section affects the practice and procedure of the Court with respect to the business of the Court that may be conducted in chambers or elsewhere other than in a courtroom."

If the Supreme Court (Amendment) Bill (No. 2) 1993 is dealt with and commences as an Act before the Land (Planning and Environment) (Amendment) Bill (No. 4) 1993 finally becomes an Act, it may be appropriate to consider an amendment to new subsections 282ZJ(2) and (3).

Voice of the Electorate Bill 1993

This Bill enables electors to introduce, amend or repeal laws by referendum.

Explanatory Notes

Throughout the Bill there are Explanatory Notes, which the Explanatory Note on page 6 indicates are:

"to illustrate how certain provisions work, but do not form part of the legal provisions of the Act."

Even if this is so, section 11B of the *Interpretation Act 1967* provides in detail for the use of extrinsic material in interpreting an Act. Other provisions in section 11B could also be relevant, but paragraph 11B(2)(a) is particularly relevant to these Explanatory Notes. It provides as follows:

"11B(2)(a) all matters not forming part of the Act that are set out in the document containing the text of the Act as printed by the Government Printer [may be considered in interpreting a provision of an Act]."

This means that great care needs to be taken in considering all the Explanatory Notes in the Bill. A detailed check needs to be made, as there may well be some inconsistencies between the Explanatory Notes in the present Bill and the clauses.

The Bill's Provisions - General Comments

In many respects, the Bill does not follow the conventional styles used in drafting ACT legislation. So perhaps the best way to deal with the Bill is to follow it through clause by clause, but relevant cross references will be picked up where appropriate.

The Committee notes that the Explanatory Statement for clause 2 states that "where defined words first appear in the text, they are in bold type". This Report uses bold type where bold type appears in the Bill.

Clause 2 - Definitions

"Binding Referendum" and "referendum"

There may be some difficulty with the definitions of "referendum" and "Binding Referendum". The latter provides:

"'Binding Referendum' means a referendum, the result of which is binding upon the ACT Legislative Assembly and is required to be enacted into law."

The phrase is used many times in the Bill and the Committee merely picks up some illustrative uses of it.

The Committee notes that there is a reference to the "ACT Legislative Assembly". This error is looked at later under the definitions of "Law" and "Speaker".

The definition appears to be consistent with its use in the definition of "Electors' Bill Committee" whose members are "to guide the Electors' Bill through to a Binding Referendum."

However, in the definition of "referendum" there is a reference to a "binding referendum". This seems to have the same meaning, but is bereft of initial capitals. Is it meant to mean something different?

Again, subclause 3(1) provides that:

"Electors have the right to put forward an Electors' Bill requiring that a **Binding Referendum** be held ...".

This provision does not seem to be totally consistent with the definition given in clause 2.

This difference is underlined when subclause 7(4) is noted. It provides that "The Committee is not required to pay any Government costs incurred in processing the Electors' Bill through to Binding Referendum".

The same matter is illustrated in subclause 18(1). Subclauses 4(1) and clauses 23 and 24 to 26 need also to be considered in this context.

Incidentally it is given as "Binding referendum" in subclause 26(1).

Also, in passing, the Committee notes the use of the phrase "asked at referendum" in subclause 23(1). Should it be "asked at a referendum", or should it be "asked at a Binding Referendum" in an effort to be consistent.

It is suggested that this matter of the use of the phrase "Binding Referendum" and the word "referendum" needs to be reconsidered.

"Court"

The definition provides as follows:

" 'Court' means the Supreme Court of the Australian Capital Territory with respect to the matters referred to in Section 31, and otherwise means the Magistrates Court." (Emphasis added.)

"Magistrates Court" is not defined and thus the definition of "Magistrates Court" in subsection 14 (1) of the *Interpretation Act 1967* seems to apply. This provides as follows:

" 'Magistrates Court' means the Magistrates Court established pursuant to the *Magistrates Court Act 1930*."

However, the first time the phrase is used is in paragraph 11(6)(a), which provides that

"declarations may also be witnessed by:

- (a) a Local Electoral Official or Clerk of the Magistrates **Court** of an Australian State or Territory."

The reference in bold takes us back to the definition in clause 2 and rather undoes the restriction to the ACT Magistrates Court. It would include, say, the Magistrates Court in the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island, to pick up those far away from ACT action.

Then, the Committee notes that clause 35 provides that

"Proceedings for an offence against this Act are to be dealt with by a Magistrates Court". (Emphasis added.)

Will any Magistrates Court do?

"Duly"

The definition provides that:

" 'duly' means in a correct, suitable or appropriate manner or time: properly done."

The drafting is unusual. Also, who is to determine the matter?

"Electors' Bill"

The definition provides as follows:

" 'Electors' Bill' means a document originating within the general electorate calling for the introduction of a new law or the repeal or amendment of an existing law of the Australian Capital Territory, by means of a Binding Referendum."

This seems to be expanded in subclause 4(2), which provides as follows:

"An Electors' Bill must have a title and contain a plain English description (in not more than 150 words) of the law which the Electors' Bill seeks to introduce, amend or repeal. If the Electors' Bill seeks to amend a law, the description must also specify which sections of the Act are to be amended and what amendments are proposed. The description must be reasonably informative and broadly define the subject matter of the Electors' Bill without being ambiguous or misleading."

The form of the Electors' Bill appears to change again as it goes through the process of drafting by Parliamentary Counsel in clauses 21 and 22. That this is so, is clear from the provisions of subclause 22(2) which provides that:

"The Speaker is required to table a copy of the Certificate of Qualification and the approved Parliamentary Counsel's draft of the Electors' Bill on the next sitting day [after delivery to the Speaker by Parliamentary Counsel]."

Finally, if the Electors' Bill is approved at the ensuing referendum, subclause 26(5) provides for the Electoral Commissioner to "present the approved Electors' Bill to the Chief Minister for assent ...".

It is clear that the Electors' Bill has undergone changes during the process and the Electors' Bill presented to the Chief Minister for assent is not at all like the Electors' Bill at the beginning of the process.

This chameleon-like progress is most unusual in an Act and, because of the difficulty and possible confusion of deciding what the phrase "Electors' Bill" means at any given point in the process, perhaps consideration should be given to drafting a set of consistent provisions.

Also see a relevant comment on this definition under the definitions of "Law" and "Speaker".

"Electors' Bill Committee"

This definition provides as follows:

" 'Electors' Bill Committee' (hereinafter called the 'Committee') means those signatories to an Electors' Bill who are nominated and appointed [under Section 6(1) or (2) of this Act] to guide the Electors' Bill through to a Binding Referendum."

Two points are made.

First, why are square brackets used?

Secondly, although the "(hereinafter called the 'Committee')" interpolation is generally obeyed in the rest of the Bill, the Committee noted that the whole phrase "**Electors' Bill Committee**" appears in subclause 6(1). Perhaps this was just because it was being used for the first time after the definition and the bold lettering injunction was being obeyed.

"Law" and "Speaker"

The definition of "law" provides as follows:

" 'law' includes Acts of Parliament of the Legislative Assembly, regulations, administrative orders, by-laws, rules, and any other subordinate legislation whatsoever within the legislative competence of the ACT Legislative Assembly."

The phrase "Acts of Parliament" needs to be corrected. As will be noted in a moment, so does the phrase "ACT Legislative Assembly".

In passing, the Committee notes two other points.

First, it would be unusual to describe "administrative orders" as "law".

Secondly, the Committee refers back to the definition of "Electors' Bill" cited above from subclause 4(2). The Committee notes that it provides that, despite this wide definition of "law", the definition of "Electors' Bill" provides that:

"the description must also specify which sections of the Act are to be amended and what amendments are proposed.". (Emphasis added.)

Does this rule out the possibility of an Electors' Bill amending anything except an Act?

In the same vein, "Speaker" is defined as meaning:

"the Member of Parliament who is responsible for the conduct and proceedings of meetings of the Legislative Assembly of the ACT". (Emphasis added.)

The Committee realised the phrase did not seem to apply to any known institution, for it does not apply to the "Legislative Assembly for the Australian Capital Territory". (Emphasis added.) This incorrect reference does create problems, for there are duties cast on this elusive Speaker. (See, for example, subclauses 20(3), 21(3) and clause 22).

This comment is also relevant under the definitions of "Binding Referendum" and "referendum" and under that for "Electors' Bill" above.

"Parliamentary Counsel"

The definition provides as follows:

" 'Parliamentary Counsel' means the lawyer appointed within the Attorney-General's Department to prepare the legal draft for Electors' Bills. The term can also mean the Counsel's office or staff."

This definition, and especially the second sentence of it, perhaps needs to be looked at with care. It would be interesting to see the Parliamentary Counsel's office table and chair and other contents of the Parliamentary Counsel's office drafting these Bills.

"qualified Electors' Bill"

See comment under Clause 3 below.

Clause 3

In that there are Explanatory Notes interpolated throughout the Bill, the contents of subclause 3(2) look as if they could properly be placed in such a Note, for there are positive provisions later on in the Bill that deal with each of the points made in the subclause.

For example, the reference to the qualifying levels in subclause 3(2)(b) is dealt with in detail in subclause 18(1). Indeed, there seems to be some additional over-kill here, as the definition of "qualified Electors' Bill" in clause 2 also appears to cover the point.

Incidentally, the Committee notes that the Explanatory Note for clause 3 uses the phrases and words "bill for an Act", "list" and "petition", but there are no definitions of these phrases in clause 2. Thus their use does not comply with the requirements of the Explanatory Note referred to under General Comments. That Note states that words or phrases were used in bold when they were used for the first time after they have been defined.

Clause 4

Subclause 4(2) ends with the injunction that:

"The description must be reasonably informative and broadly define the subject-matter of the Electors' Bill without being ambiguous."

This is an illustration of ambiguous or vague phrases that occur in a number of provisions in the Bill. Clause 31 gives the Supreme Court jurisdiction in a number of specific instances, including an objection to "changes to the description as set out in the Electors' Bill". It might be difficult to argue that this provision applies to the present instance. If it does not apply here and to the other similar ambiguous or vague provisions in the Bill, who is qualified to decide any dispute?

Clause 7

Paragraph 7(1)(d) refers to "other Electoral Office official as appointed". Who does this appointing?

Subclause 7(5) uses the dreaded "and/or" form of drafting. It also appears elsewhere in the Bill (see, for example, clause 8(3)).

Subclause 7(6) refers to withdrawal. Does the Committee authorise withdrawal? Where is this very important power spelled out, as clause 29 does not appear to cover withdrawal at this stage?

For further comment on withdrawal, see comment under clause 24.

Paragraph 7(7)(e) provides that the Electoral Commissioner may refuse to register an Electors' Bill if:

"(e) it clearly contravenes the Rule of Law".

The same phrase (drafted slightly differently) appears in subclause 27(d).

What is meant by the phrase "Rule of Law"?

Possibly the provision in paragraph 31(1)(h) which confers power on the Supreme Court to determine "whether an Electors' Bill is a qualified Electors' Bill" covers these matters. But, if so, who has standing to initiate proceedings?

Clause 11

Subclause 11(1) authorises the Committee to "appoint any number of electors as Electors' Bills Representatives ...".

They have important duties of presenting the Electors' Bill to electors and collecting and witnessing signatures. There does not appear to be any sort of qualification other than being an elector. There are offences for transgressions, but there does not seem to be any quality control. Subclause 16(6) permits, but does not require, the Electoral Commissioner or a Local Electoral Official to check the validity of signatures.

Furthermore, subclause 11(5) permits such electors to witness signatures, "including those that they have previously collected". This is a very wide form of retrospectivity.

Clause 15

Subclause 15(2) provides that:

"Before a person signs an Electors' Bill, the Electors' Bill Representative must give the person an opportunity to read the description of the Electors' Bill or must read the description to the person".

Would it be appropriate for there to be an obligation on the Representative to give the person an opportunity to read the whole of the Electors' Bill?

Clause 16

See Clause 11 for a relevant comment.

Clause 23

Subclause 23(3) provides as follows:

"The Committee, after consultation with the Electoral Commissioner and the Parliamentary Counsel, shall determine the wording, presentation and order of the questions on the ballot paper."

As the Committee is, in a sense, the sponsor of the referendum proposal, this provision seems to contain the possibility of being seen to permit the Committee to be "judge in its own cause" on the issue.

Subclause 23(6) also gives the Committee the right to decide whether there will be preferential voting. Moreover, both the subclause and the accompanying Explanatory Note do not appear to give a very full indication of the way in which preferential voting is to be conducted.

Do the provisions of subclause 23(6) conflict in any way with the obligatory provisions of subclause 26(4) which appear to impose an obligation that preferences be taken into account?

These seem to be important technical issues and it would perhaps be appropriate for them to be set out more fully in the Act.

Clause 24

Subclause 24(3) provides as follows:

"An Electors' Bill may not be withdrawn or amended less than 21 (twenty-one) days before the poll unless authorised by order of the Supreme Court."

Subclause 29(2) provides as follows:

"No withdrawal may be made less than 21 (twenty-one) days before the poll unless approved by an order of the Supreme Court."

These two provisions should be checked to see if there is any overlap. Even if there is not, consideration should be given to see whether it might be better to consider withdrawal provisions in the one section.

Then paragraph 31(1)(b) confers jurisdiction on the Supreme Court in relation to the:

"withdrawal in part or in full or postponement in part or in full of an Electors' Bill prior to a Binding Referendum."

Does this provision also overlap with the provisions in subclauses 24(3) and 29(2)?

This matter of withdrawal needs to be reconsidered.

Clause 26

Subclause 26(3) provides as follows:

"No lack of formality disqualifies an Electors' Bill or vote which otherwise complies with the requirements of this Act."

This seems not only to be a vague provision, but it could have very wide ramifications.

Subclause 26(5) provides for the presentation of the:

"approved Electors' Bill to the Chief Minister for assent and the Chief Minister shall assent to the approved law."

This provision seems to import into the ACT a concept that is alien to our system (ie assent) and should perhaps be changed to fit in with the manner in which laws are dealt with under the *Australian Capital Territory (Self-Government) Act 1988*.

See also a comment under Clause 23.

Clause 29

See a comment under Clause 24.

Clause 30

Paragraph 30(2)(d) provides as follows:

"Any provision of the law expressed to be unamendable except provided the intention and purpose is fully retained and not impaired, may be amended only if the effect of the amending law has that effect, and subject to any other provision of the law approved by Binding Referendum."

As an amendment that is covered by this provision can only be made if "the intention and purpose is fully retained and not impaired", is this a means by which a matter can be entrenched in the law of the ACT, at least so far as the law-making process of the ACT body politic is concerned.

If this provision does mean that there can be entrenchment, it is a very important constitutional issue for the ACT. If this is not the meaning and effect of the provision, what does it mean?

Finally, who is to decide whether the intention and purpose have been retained? It does not appear to be clearly a matter upon which the Supreme Court has been given jurisdiction in clause 31.

In the same vein, subclause 30(3) provides that provisions of subsequent enactments:

"not created under this Act nor [should this be 'or'] in accordance with the requirements of the law approved at Binding Referendum are invalid to the extent that such provisions are inconsistent with a law approved at Binding Referendum."

This is definitely entrenching to the extent that the entrenchment can only be removed by a follow-up Binding Referendum. But, in the present instance, at least that possibility exists. That may not be so in the case of paragraph 30(2)(d).

The question still arises in this case, too, as to who makes the invalidity decision.

Clause 31

As there is a definition of "Court" in clause 2 specifically referring to clause 31, why is it necessary to use the phrase "Supreme Court" in subclauses 31(1) and (3). There is also internal inconsistency within the clause as subclauses 31(2) and (4) refer only to "Court". Thus they do fit in with the definition in clause 2.

This whole clause needs to be reconsidered in the light of the fact that there is a number of provisions in the Bill where it is unclear who is to make decisions. In this connection, comments have been made under Clauses 4, 7 and 30.

Clause 32

Clause 32 creates a number of offences and provides that the maximum penalty for an offence under the clause is \$20,000.

Subclauses 32(18) and (19) provide that the Court may order a person found guilty to pay costs.

In the case of subclause 32(18) it is the:

"costs to remedy any expense which the Committee, Electors' Bill Representatives to the Electoral Commission have incurred or may reasonably incur as a consequence of the offence."

In the case of subclause 32(19) it is:

"the costs of a fresh Electors' Bill or fresh poll as may be appropriate or necessary."

The Committee makes two comments.

First, it is not clear whether these costs may be imposed in addition to the possibility of a penalty of up to \$20,000.

Secondly, the imposition of the costs of a fresh Electors' Bill or fresh poll could be enormous and the provisions may be considered harsh.

Incidentally, the maximum penalties for offences under both clauses 32 and 33 (the latter for non-disclosure of financial contributions) are stated as "\$20,000", whereas that for an offence under subclause 38(2) (the maximum penalty that can be provided for in a regulation) is "five hundred dollars". Perhaps the latter should be made compatible and stated as "\$500".

Clause 36

Clause 36 provides that the Electoral Commissioner may approve forms for use under the Act, in addition to those set out at the end of the Bill.

Perhaps clause 36 should provide that these additional forms should be disallowable instruments.

Clause 38

See a relevant comment under Clause 32.

SUBORDINATE LEGISLATION

Subordinate Legislation Upon Which no Comment is Offered

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

Determination No. 143 of 1993 made under section 287 of the *Land (Planning and Environment) Act 1991* determines a new fee payable under section 226 of the Act relating to variations of a unit title lease.

GOVERNMENT RESPONSES

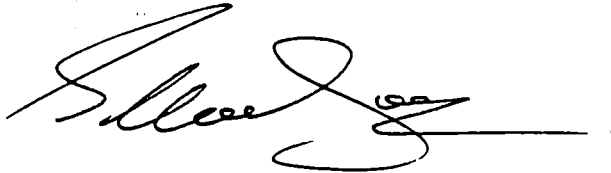
The Committee has received responses to comments made concerning the following Bills and subordinate legislation:

- . Determination No. 65 of 1993 made under the *Associations Incorporation Act 1991* (Report No. 13 of 1993).
- . Determination No. 66 of 1993 made under the *Business Names Act 1963* (Report No. 13 of 1993).
- . Determination No. 68 of 1993 made under the *Deeds Act 1957* (Report No. 13 of 1993).
- . Instrument of appointment made under the *Betting (Totalizator Administration) Act 1964* (Report No. 14 of 1993).

- . Determinations Nos. 81 and 102 of 1993 made under the *Buildings (Design and Siting) Act 1964* (Report No. 13 of 1993).
- . Determination No. 58 of 1993 made under the *Water Pollution Act 1984* (Report No. 13 of 1993).
- . Approval of an amendment of the Noise Control Manual (Report No. 13 of 1993).
- . Criminal Injuries Compensation (Amendment) Bill 1993 (Report No. 15 of 1993).

Copies of the responses are attached.

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

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

Ellnor Grassby, MLA
Chairperson

19 October 1993



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

ATTORNEY GENERAL

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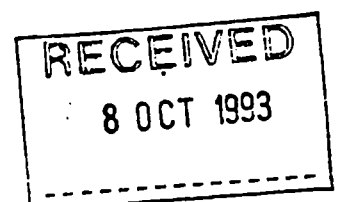

Dear Mrs Grassby

In its Report No. 13 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on Determinations No. 65, 66 and 68 of 1993.

In relation to Determination No. 65 of 1993 made under the Associations Incorporation Act 1991 the Committee drew attention to the fact that an error noted in the same determination for the previous year had been repeated notwithstanding that an acknowledgment of the 1992 error had been received by the Committee.

I apologise that the error has been repeated and advise that I have been informed that action has been taken in the Registrar's Office to ensure that future determinations will refer to the correct sections of the Act.

The Committee asked whether, in relation to Determination No. 66 of 1993 made under the Business Names Act 1963, the Schedule published in Gazette No. S119 of 30 June 1993 was the Schedule which was missing from the accompanying Explanatory Statement. I confirm that this is the case.

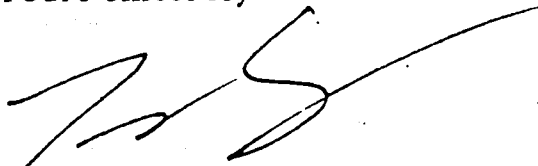


The Committee also questioned the validity of Determination No. 68 of 1993 because of the reference in that determination to the non-existent Deeds Act 1957. I confirm that the Committee's suggestion that the relevant Act is the Registration of Deeds Act 1957 is correct.

In order to remove any possibility of invalidity I propose to revoke Determination No. 68 of 1993 and make a further determination under the Registration of Deeds Act 1957.

I trust this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Terry Connolly', written over a horizontal line.

Terry Connolly

- 7 OCT 1993



A.C.T. GOVERNMENT

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Dear Mrs Grassby

In its Report No. 14 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented that an instrument of appointment made under section 11 of the Betting (Totalizator Administration) Act 1964 to appoint members to the Australian Capital Territory Totalizator Administration Board was not numbered and there was no accompanying explanatory statement.

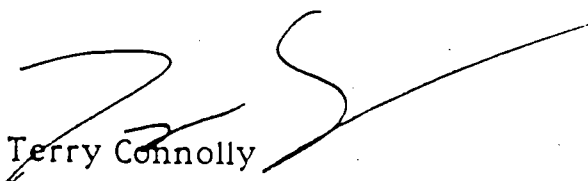
I am advised that section 11 was amended during the debate on the Betting (Totalizator Administration) (Amendment) Act 1993 to provide that such an instrument of appointment is a disallowable instrument for the purposes of the Subordinate Laws Act 1989.

Unfortunately the impact of this amendment was not fully appreciated when the instrument of appointment was made and, as a consequence, the numbering of the instrument and the provision of an explanatory statement was not undertaken.

I apologise for this oversight and now enclose an explanatory statement for the instrument.

I trust this information is of assistance to the Committee.

Yours sincerely


Terry Connolly

- 7 OCT 1993

RECEIVED

8 OCT 1993

AUSTRALIAN CAPITAL TERRITORY
BETTING (TOTALIZATOR ADMINISTRATION) ACT 1964

PARAGRAPH 11(1)(b)

INSTRUMENT OF APPOINTMENT

EXPLANATORY STATEMENT

The Betting (Totalizator Administration) Act 1964 (the Act) establishes the Australian Capital Territory Totalizator Administration Board (the ACTTAB) as a statutory authority. The Act specifies that the ACTTAB shall conduct and provide totalizator betting services relating to betting on horse and greyhound races and other sporting events.

The Act provides that the Minister shall appoint, by instrument, members of the ACTTAB and shall appoint the Chairperson and Deputy Chairperson from members of the ACTTAB.

The Act also specifies that an instrument appointing a person to be a member of the Board is to be a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

The Instrument of Appointment signed by the Minister for Sport on 1 July 1993 appoints four (4) people to be members of the Australian Capital Territory Totalizator Administration Board, in accordance with paragraph 11(1)(b). The Instrument also appoints a member of the ACTTAB to be Chairperson and a member to be Deputy Chairperson.



A.C.T. GOVERNMENT

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Mrs Ellnor Grassby MLA
Presiding Member
Standing Committee on Scrutiny of Bills and
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ACT Legislative Assembly
1 Constitution Avenue
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Dear Mrs Grassby

In its Report No. 13 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on Determinations No. 81 and 102 of 1993 made under section 9 of the Buildings (Design and Siting) Act 1964. The Committee questioned the effect of the determinations and pointed out certain deficiencies in the Explanatory Statement for Determination No. 102 of 1993.

Determination No. 81 was intended to determine fees for the purposes of the Buildings (Design and Siting) Act 1964 and to revoke Determination No. 112 of 1992 but, although it specified details relevant to Determination No. 112 of 1992, it purported to revoke Determination No. 74 of 1992 made under the Unit Titles Act 1970 as the Committee pointed out. Determination No. 74 was in fact revoked by Determination No. 38 of 1992.

The problem created by Determination No. 81 of 1993 was overcome by Determination No. 102 of 1993 which revoked Determination No. 81 and also Determination No. 112 of 1992 which Determination No. 81 failed to revoke. The fees determined by Determination No. 81 of 1993 did not become effective and I am advised that no fees were collected. The effect of Determination No. 102 of 1993 was that it revoked Determination No. 112 of 1992 as was originally intended.

Regarding the deficiencies in the Explanatory Statement for Determination No. 102 of 1992 I am advised that the Department of the Environment, Land and Planning has established a mechanism

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that should ensure that the Committee's requirements in relation to explanatory statements are met in future.

The Committee also commented on Determination No. 58 of 1993 made under the Water Pollution Act 1984 which revoked Determination No. 78 of 1992.

The Committee had previously commented on an inconsistency between a fee of \$848 for storm water run-off fixed by Determination No. 78 of 1992 and a fee of \$1158 included in the accompanying Explanatory Statement. It was intended to increase the particular fee to \$1158 but Determination No. 78 of 1992 was not amended. Unfortunately, the Explanatory Statement for Determination No. 58 of 1993 repeated the incorrect fee specified in the earlier Explanatory Statement.

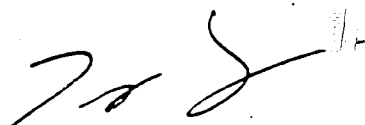
I am advised that no applications for waste water discharge licences for stormwater run-off from developments of 20 hectares or greater were received during the 1992-93 financial year and no person has been overcharged.

The Committee also commented that an Approval of an amendment of the Noise Control Manual was not numbered and asked whether the reference in the Explanatory Statement to the Approval as instrument number 110 of 1993 was, in fact, a reference to the Gazette number in which the Approval was published. I am advised that this is the case.

I am further advised that, in order to assist holders of Manuals, future amendments will be sequentially numbered by the Office of the Environment in addition to the numbering of the instrument of Approval by the Gazette Office.

I trust this information is of assistance to the Committee.

Yours sincerely



Terry Connolly

- 7 OCT 1993

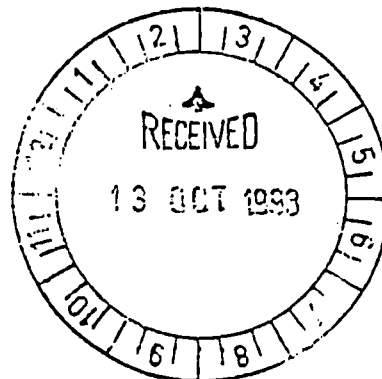


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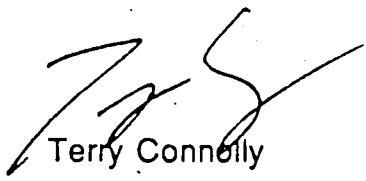



Dear Ms Grassby

I am writing to you in relation to Report Number 15 of 7 September 1993 by the Standing Committee on Scrutiny of Bills and Subordinate Legislation which commented on the Criminal Injuries Compensation Amendment Bill 1993.

On 8 July 1993 I announced that I would be introducing a Bill in the Legislative Assembly to amend the Criminal Injuries Compensation Act to clarify eligibility for compensation. I made that announcement as a result of a Supreme Court decision the preceding day which had the effect of extending the criminal injuries compensation scheme beyond its original purpose of compensating victims of serious violent crime. The Registrar of the Supreme Court advised my Department that an unusual number of applications for compensation were lodged by solicitors soon after my announcement. In giving instructions for the Bill my Department therefore included a commencement provision which would ensure as far as possible that the courts determined all applications for compensation in accordance with the original purpose of the legislation. No one who is a victim of serious violent crime will be disadvantaged by the provisions of the Bill.

Yours sincerely


Terry Connolly

13 OCT 1993