

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

**REPORT NO. 11 OF 1994**

**23 June 1994**



# LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON  
SCRUTINY OF BILLS AND  
SUBORDINATE LEGISLATION

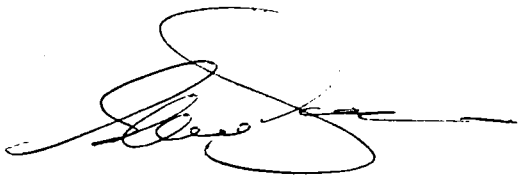
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Ms Roberta McRae, OAM, MLA  
Speaker  
Legislative Assembly  
CANBERRA ACT 2601

Dear Ms McRae,

Please find enclosed a copy of Report No. 11 of 1994 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. 11 of 1994.

Yours sincerely



Ellnor Grassby, MLA  
Chairperson

23 June 1994



Approved  
Roberta McRae, OAM, MLA  
Speaker

23 June 1994



## 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, AM**  
**Acting Secretary: Ms M Weeks**  
**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 - No Comment

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

#### **Administrative Appeals Tribunal (Amendment) Bill (No. 2) 1994**

This Bill makes a number of procedural amendments, inserts provisions for mediation and for participation in a hearing by telephone, closed circuit television or other means of communication.

#### **Crimes (Amendment) Bill 1994**

This Bill provides the framework for Courts to refer matters to the Mental Health Tribunal established by the Mental Health (Treatment and Care) Bill 1994.

#### **Drugs of Dependence (Amendment) Bill 1994**

This Bill provides that proceedings may not be brought for a "simple cannabis offence" unless an offence notice has been served and the prescribed penalty has not been paid within 60 days of the service of that notice and adds the offence of administering cannabis to oneself to the category of "simple cannabis offence".

#### **Electors Initiative and Referendum Bill 1994 [No. 2]**

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

#### **Interpretation (Amendment) Bill 1994**

This Bill provides that where the phrase "Administrative Appeals Tribunal" is used, it means the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1989*.

#### **Mental Health (Consequential Provisions) Act 1994**

This Bill contains provisions consequential upon the passing of the Mental Health (Treatment and Care) Bill 1994.

### Bills - Comment

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

#### Changes Needed on Passing of Public Sector Management Legislation

#### **Annual Reporting (Government Agencies) Bill 1994**

This Bill establishes a framework for annual reporting for Government Service agencies.

#### **Annual Reporting (Government Agencies) (Consequential Provisions) Bill 1994**

This Bill makes a number of changes to ensure that the Annual Reporting (Government Agencies) Bill 1994 will be consistent with existing legislation.

If the Public Sector Management Bill 1994, the Public Sector Management (Consequential and Transitional Provisions) Bill 1994 and the complementary Commonwealth legislation are passed before the present Bills are passed, a number of changes will need to be made to the present Bills.

As the final shape of that other legislation is not yet known, the Committee cannot be exhaustive. However, some provisions that may need to be watched or changed in the Annual Reporting (Government Agencies) Bill 1994 include the following:

- in subclause 4(1) the definition of "department" (with its references to administrative units and the provisions of paragraph 54(2)(a) of the *Commonwealth Australian Capital Territory (Self-Government) Act 1988*);
- in subclause 4(1) the definition of "principal officer" (references to Head of Administration);
- in subclause 4(1) the definition of "responsible Minister" (reference to the *Public Service Act 1989*, which is to be repealed by clause 21 of the Public Sector Management (Consequential and Transitional Provisions) Bill 1994);
- in clause 6 (which revolves around the present office of Head of Administration and where there are references to the *Commonwealth Public Service Act 1922* and section 21 of the *Commonwealth A. C. T. Self-Government (Consequential Provision) Act 1988*, which, as clause 5 of the Public Sector Management (Consequential and Transitional Provisions) Bill 1994 states, "ceases to have effect");
- in clause 12 (reference to Head of Administration).

There may well be other recasting of the provisions as well. In addition, the amendments to the Acts in the Schedule to the Annual Reporting (Government Agencies) (Consequential Provisions) Bill 1994 may need to be reconsidered.

#### Retrospectivity

#### **Commercial and Tenancy Tribunal Bill 1994**

This Bill establishes a Commercial and Tenancy Tribunal, sets out procedures for the resolution of disputes about leases of commercial premises and provides for a Code of Practice.

This Bill may have some retrospective effects.

Clause 6 sets out the disputes that are subject to the Bill in the following terms:

- "6. Subject to section 8, this Act applies to the following disputes:
- "(a) a dispute caused by an alleged breach of a mediated agreement;
  - (b) a claim by a party to a lease that another party to the lease has engaged in harsh and oppressive conduct towards the first mentioned party (whether that conduct is unconscionable or not);
  - (c) a dispute about key money, or a ratchet clause, in relation to the lease;

- (d) a claim by a party to a lease that another party to the lease has breached or is breaching the Code, other than a claim that relates to key money or a ratchet clause;
- (e) a dispute about a lease, being a dispute prescribed by the Code as suitable for resolution under this Act;
- (f) any other dispute about a lease."

Clause 8 deals with the transitional application of the Bill.

Subclause 8(1) provides that the Bill applies to disputes within the categories set out in paragraphs 6(a), (b), (c) and (f) "whether the relevant lease is entered into, varied, renewed or extended under an option before, on or after the [Act's] commencement ...".

However, the retrospective effect of the provisions is restricted to some extent.

First, paragraph (a) is only concerned with disputes under a mediated agreement under this Bill.

Then subclause 8(3) provides that the Act applies to conduct giving rise to claims or disputes under paragraphs (b) and (c) "only if that conduct occurs after the substantive commencement date". Nevertheless, it is noted that clause 9 provides that the Code applies to a paragraph (c) dispute "whether the relevant lease is proposed to be entered into, or is entered into, varied, renewed or extended under an option, before, on or after the substantive commencement date".

In relation to disputes under paragraphs 6(d) and (e), subclause 8(2) provides that the Act only applies to a dispute "if the relevant lease is entered into, varied, renewed or extended under an option on or after the substantive commencement date".

In relation to paragraph 6(f) (the "any other dispute about a lease" provision) it appears that retrospectivity does operate almost completely, as subclause 8(4) provides that the Act applies "to conduct giving rise to a dispute referred to in paragraph 6(f) whether that conduct occurs before, on or after the date of Commencement".

Finally, clause 10 provides that the Act does not apply where action has already been commenced in the Magistrates Court or the Supreme Court before the Act commences.

#### Retrospectivity and Recognition of the Committee's Role in a Matter

#### **Credit (Amendment) Bill 1994**

This Bill establishes a Financial Counselling Trust Fund and for civil penalties to be paid into it, authorises the making of regulations to prescribe the upper limits applicable to credit sale and loan contracts, allows reimbursement in relation to financial institutions, corrects some technical errors and removes sexist language from the Principal Act.

Both the presentation speech of the Minister, Mr Connolly, and the explanatory memorandum generously refer to the fact that the amendment addresses "the concern raised by the Scrutiny of Bills Committee".

Paragraph 4(a) clarifies the meaning of "financial institution" to make sure that it "includes credit unions and other societies which were originally registered outside the ACT" (explanatory memorandum). Subclause 2(2) makes the provision retrospective to 1 July 1992, which was the date when the *Financial Institutions (Consequential Amendments) Act 1992* introduced the possibly doubtful provision.

Subclause 2(3) provides that clause 12 is to be retrospective to 28 February 1985, the date of commencement of the Principal Act, the *Credit Act 1985*. The *Credit (Amendment) Act 1991* had inserted provisions relating to exemptions from civil penalties for breaches of the Act. Those 1991 provisions were made retrospective to 28 February 1985. The provisions were intended to cover specified breaches after the commencement of the Principal Act, but the exemption provisions in fact covered contracts before commencement. The present amendment corrects this mistake.

#### Contrasting Provisions and Should Provisions Relate to Interests in Territory Land?

#### **Lands Acquisition Bill 1994**

This Bill provides for the acquisition of interests in land by the Executive or a Territory authority.

The Committee makes two points.

#### Apparently Contrasting Provisions

Subclauses 25(1) and (2) provide that

"an instrument under subsection 24(1) that confirms or varies a pre-acquisition declaration ... shall be laid before the Legislative Assembly within 3 sitting days after it is made."

Subclause 25(3) provides that, if the instrument is not so laid before the Assembly, "the pre-acquisition declaration to which it relates ceases to have effect". Then the remaining subclauses of clause 25 provide for disallowance of the instrument by the Assembly in much the same form as disallowance of an instrument under the *Subordinate Laws Act 1989*, except that, instead of the days involved being 15 sitting days as under that Act, actions occur within 3 sitting days under the present Bill.

There appears to be a contrast between these provisions and those in clause 21.

Subclause 21(1) provides for the acquisition of land where the Executive certifies that the acquisition is urgent or that using the normal procedures "would result in a disclosure of information that would be prejudicial to the Territory". Subclause 21(4) provides that a copy of the certificate is to be laid before the Assembly within 5 sitting days of the making of the certificate.

In this case, there are no legal sanctions specified if there is a failure to table, nor are there any disallowance powers conferred on the Assembly.

#### Should these Provisions Relate to Interests in Territory Land?

Part IX deals with the vesting and divesting of land in authorities.

Clause 99 deals with the vesting of land and provides as follows:

"99. Notwithstanding the provisions of this Part and Part III, the Executive may, if it thinks it appropriate to do so, direct that an interest in land vested in the Commonwealth be transferred to a particular Territory authority.". (Emphasis added.)

Clause 102 provides that, in specified circumstances, an acquiring authority disposing of acquired land must give the former owner first offer to buy the land back. Part of the process is to give the former owner a right to have the Administrative Appeals Tribunal review the price offered by the selling authority. Subclause 102(7) provides as follows:

"102. (7) If the former owner makes an application to the Administrative Appeals Tribunal, the acquiring authority shall not dispose of the interest to a person other than the former owner -

- (a) until the end of 14 days after the decision of the Tribunal on the application comes into operation; or
- (b) if, within that period of 14 days, the owner gives the Executive written notice of his or her wish to purchase the interest from the Commonwealth at the market value determined by the Tribunal, until the end of 2 months after the decision of the Tribunal comes into operation.". (Emphasis added.)

The provisions may be accurate, but perhaps a doubt could be resolved. The Committee notes that these provisions are very closely modelled on the equivalent provisions in the Commonwealth *Lands Acquisition Act 1989* (section 118 and paragraph 121(7)(b)) and wondered if it was possible that it was Territory land that was being dealt with here. If so, the Bill's provisions should reflect this and refer to the Territory in both cases.

#### Retrospectivity

#### **Land (Planning and Environment) (Consequential Provisions) (Amendment) Bill 1994**

This Bill enacts a "sunset" clause under which all applications made under a number of repealed Acts (which dealt mainly with leases or valuations relating thereto) or the review by a court or tribunal of decisions in relation to such applications, will be dealt with under the *Land (Planning and Environment) Act 1991* from 1 July 1995.

The Bill will not affect any existing applications, review of decisions or rights until 1 July 1995. However, if there are still any existing applications under the old laws or court or tribunal review processes relating to those applications outstanding at that time, then they will be deemed to be under the *Land (Planning and Environment) Act 1991*.

It is possible that the terms of the *Land (Planning and Environment) Act 1991* may be less advantageous to those whose applications or review processes are incomplete and, if that is so, the present amendment could possibly act retrospectively to prejudice existing rights.

A Possible Small Change and the Source of the Right to a Second Opinion

**Mental Health (Treatment and Care) Bill 1994**

This Bill provides for the treatment, care, control and protection of mentally dysfunctional people.

Clause 4 contains the following definition:

"'information statement' means an information statement described in paragraph 50(1)(a)."

Subclause 50(1) provides as follows:

"50. (1) The responsible person shall ensure that on admission to, or before treatment at, the mental health facility, a person -

- (a) is orally advised of his or her rights under this Act; and
- (b) is given a copy of an information statement containing -
  - (i) a prescribed statement setting out the rights and entitlements of persons under this Act, including the right to obtain legal advice and the right to seek a second opinion from an appropriate mental health professional; and
  - (ii) any other information relating to the treatment and care of the person that the Minister considers relevant."

The Committee makes two comments.

First, it appears that it is paragraph 50(1)(b) and not paragraph 50(1)(a) which describes the information referred to in clause 4.

Secondly, there is a reference to the right of a person to seek a second medical opinion. Is this present provision the only source in the Bill to confer this right? If not, where in the Bill is this right specifically conferred?

Need to Integrate this Bill With The Administrative Appeals (Consequential Amendments) Bill 1994

**Nurses (Amendment) Bill 1994 and Administrative Appeals (Consequential Amendments) Bill 1994**

The Nurses (Amendment) Bill 1994 makes amendments to enable mutual recognition of registration of nurses between States and Territories, to provide for common standards and conditions for registration and in discipline areas and for standards of competence.

The Administrative Appeals (Consequential Amendments) Bill 1994 makes amendments consequential to the amendments made by the Administrative Appeals Tribunal (Amendment) Bill (No. 2) 1994 and the Interpretation (Amendment) Bill 1994.

The provisions of the Nurses (Amendment) Bill will need to be integrated with the provisions of the Administrative Appeals (Consequential Provisions) Bill 1994, which amends several provisions of the *Nurses Act 1988* dealing with appeals to the Administrative Appeals Tribunal.

Among other provisions, the Administrative Appeals (Consequential Provisions) Bill 1994 repeals and substitutes parts of the provisions of sections 54 and 55 of the *Nurses Act 1988*. However, the present Nurses (Amendment) Bill 1994 totally repeals and substitutes sections 54 and 55 and the provisions of sections 54 and 55 referred to in the Administrative Appeals (Consequential Provisions) Bill 1994 bear no relation to the provisions of the new sections 54 and 55.

It seems as if there may also be problems with the repeal and substitution of sections 38 and 39 in the Nurses (Amendment) Bill, as the Administrative Appeals (Consequential Provisions) Bill 1994 makes cross-references to sections 38 and 39 in its amendments to section 54 that bear no relationship to the equivalent provisions in the new sections 38 and 39 inserted by the Nurses (Amendment) Bill.

Thus, the Committee suggests that, if the Nurses (Amendment) Bill came into operation first and the Administrative Appeals (Consequential Provisions) Bill 1994 in its present form then came into operation there would be problems.

On the other hand, if the Administrative Appeals (Consequential Provisions) Bill 1994 came into operation before the Nurses (Amendment) Bill, at the very least the Code of Practice reforms made by the Administrative Appeals (Consequential Provisions) Bill 1994 would be wiped out by the repeal and substitution of sections 54 and 55 made by the Nurses (Amendment) Bill.

#### Need To Integrate This Bill, Too, With The Administrative Appeals (Consequential Amendments) Bill 1994

#### **Physiotherapists (Amendment) Bill 1994**

This Bill renames the *Physiotherapists Registration Act 1977* to become the *Physiotherapists Act 1977*, makes amendments to enable mutual recognition of registration of physiotherapists between States and Territories, to provide for common standards and conditions for registration and in discipline areas and for standards of competence and removes sexist language from the Principal Act.

The problems with this Bill do not appear to be as complicated as those with the Nurses (Amendment) Bill 1994. But, here, too, the provisions of this Bill will need to be integrated with the provisions of the Administrative Appeals (Consequential Provisions) Bill 1994, which also amends several provisions of the *Physiotherapy Act 1977* dealing with appeals to the Administrative Appeals Tribunal.

There are perhaps only three difficulties, although this needs to be checked.

First, the amendments effected by the Administrative Appeals (Consequential Provisions) Bill 1994 to section 35 are already in the new clause 35 in the Physiotherapy (Amendment) Bill.

Secondly, both Bills have a new clause 35AA and the various amendments will need to be harmonised.

Thirdly, both Bills appear to provide for similar minor amendments to subsection 35A(1) and paragraphs (2)(a) and (b), although, in addition, the Physiotherapy (Amendment) Bill also makes major amendments to subsection 35A(1).

## Are Changes needed on Passing of Public Sector Management Legislation?

### **Nature Conservation (Amendment) Bill 1994**

This Bill sets up a process for the identification and protection of endangered native plants and animals and removes sexist language from the Principal Act.

As with the Annual Reporting (Government Agencies) Bill 1994 and the Annual Reporting (Government Agencies) (Consequential Provisions) Bill 1994 discussed above, it is possible that some changes may need to be considered, if the Public Sector Management Bill 1994, the Public Sector Management (Consequential and Transitional Provisions) Bill 1994 and the complementary Commonwealth legislation are passed before the present Bill.

The changes here are likely to be very minor, if they are needed at all. In particular, new clause 15G, which deals with the appointment of a Secretary to the Flora and Fauna Committee, may need to be reconsidered.

### Possible Integration Problems Here Also

### **Veterinary Surgeons (Amendment) Bill 1994**

This Bill renames the *Veterinary Surgeons Registration Act 1965* to become the *Veterinary Surgeons Act 1965*, makes amendments to enable mutual recognition of registration of veterinary surgeons between States and Territories, to provide for common standards and conditions for registration and in discipline areas and for standards of competence and removes sexist language from the Principal Act.

Once again, there seem to be possible integration problems between this Bill and the Administrative Appeals (Consequential Provisions) Bill 1994.

If the Administrative Appeals (Consequential Provisions) Bill 1994 were to commence first, then, of course, the amendments would be effective to amend the Principal Act as it is as present. But, if the Veterinary (Amendment) Bill were to follow, it would undo the main changes, because it repeals Part IV, which contains the main amendments made by the Administrative Appeals (Consequential Provisions) Bill 1994.

On the other hand, if the Veterinary (Amendment) Bill were to commence first and the Administrative Appeals (Consequential Provisions) Bill 1994 were to follow, then (except the first three minor amendments which omit the definition of "Tribunal" and add "Administrative Appeals" in two sections) the amendments would not be effective. This is so, because the provisions they amend or repeal and substitute disappear with the repeal of Part IV by the Veterinary (Amendment) Bill and its replacement by Part VA - Appeals.

Thus, it seems possible that there are integration problems to be sorted out.

## SUBORDINATE LEGISLATION

### Subordinate Legislation - No Comment

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

Subordinate Law No. 18 of 1994 being the *Inquiries Regulations* fixes an hourly fee for the person conducting the Board of Inquiry into the agreement between ACTTAB and VITAB and related matters.

Determination No. 33 of 1994 made under the *Supreme Court Act 1933* determines fees and charges payable under the Act.

Determination No. 34 of 1994 made under the *Magistrates Court Act 1930* determines fees and charges payable to the Magistrates Court and the Small Claims Court.

Determination No. 35 of 1994 made under the *Coroners Act 1956* determines fees and charges payable under the Act.

Determination No. 36 of 1994 made under the *Administrative Appeals Tribunal Act 1989* determines application fees and charges for copies of instruments payable under the Act.

Determination No. 37 of 1994 made under the *Administrative Appeals Tribunal Act 1989* determines witnesses' fees and allowances payable under the Act.

Instrument No. 41 of 1994 being an Instrument of Appointment made under subsection 27(1) of the *Betting (Totalizator Administration) Act 1964* appoints a specified person to act as Chief Executive Officer of the Australian Capital Territory Totalizator Administration Board for a specified period.

Instrument No. 42 of 1994 being an Exemption made under subsections 10(3) and 12(4) of the *Tobacco Act 1927*. The Instrument, subject to the conditions set out in it, exempts such contracts and agreements between the Australian Cricket Board Incorporated and The Benson and Hedges Company owned by WD and HO Wills (Australia) Limited as are in force at the date of this instrument, from the operation of subsections 10(1), 12(1) and 12(2) of the *Tobacco Act 1927*. The exemption is for the cricket match between the Prime Minister's XI and the English Cricket Team on 9 November 1994.

Instrument No. 43 of 1994 being an Exemption made under subsection 27(1) of the *Building Act 1972* exempts the Public Works and Services Group as a government agency from specified provisions of the Building Code.

### Subordinate Legislation - Comment

#### Inaccurate Explanatory Statement

**Instrument of Appointment No. 38 of 1994 made under section 11 of the *Betting (Totalizator Administration) Act 1964* appoints a specified person as a member of the Australian Capital Territory Totalizator Administration Board for a specified period.**

**Instrument of Appointment No. 39 of 1994 made under section 11 of the *Betting (Totalizator Administration) Act 1964* appoints a specified person as a member of the Australian Capital Territory Totalizator Administration Board for a specified period.**

**Instrument of Appointment No. 40 of 1994 made under section 11 of the *Betting (Totalizator Administration) Act 1964* appoints a specified person as a member of the Australian Capital Territory Totalizator Administration Board for a specified period.**

The first paragraph of the explanatory statement for these three instruments states as follows:

"Under Section 11 of the *Betting (Totalizator Administration) Act 1964*, the Minister can appoint an acting Chief Executive of the TAB."

In fact, as the explanatory statement for Instrument of Appointment No. 41 correctly states, an acting Chief Executive of the TAB is appointed under subsection 27(1) of the *Betting (Totalizator Administration) Act 1964*.

The present three instruments are not dealing with the appointment of an acting Chief Executive, but with the appointment of three members of the Australian Capital Territory Totalizator Administration Board. Such appointments are made under section 11 of the Act and the instruments themselves do accurately cite section 11.

### **GOVERNMENT RESPONSES**

The Committee has received responses to comments made concerning:

- Determination No. 145 of 1993 made under the *Land (Planning and Environment) Act 1991* (Report No. 20 of 1993);
- Determination No. 170 of 1993 made under the *Public Place Names Act 1989* (Report No. 1 of 1994) and Determination No. 151 of 1993 made under the *Public Place Names Act 1989* (Report No. 22 of 1993);
- Determination No. 18 of 1994 made under the *Public Place Names Act 1989* (Report No. 5 of 1994);
- Public Sector Management Bill 1994 (Report No. 6 of 1994); and
- Public Sector Management (Consequential and Transitional Provisions) Bill 1994 (Report No. 7 of 1994).

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

A handwritten signature in black ink, appearing to read "Ellnor Grassby". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ellnor Grassby, MLA  
Chairperson

23 June 1994





Government of the  
Australian Capital  
Territory

# Terry Connolly MLA

ATTORNEY GENERAL

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Mrs Ellnor Grassby ~~MLA~~  
Presiding Member  
Standing Committee on Scrutiny of Bills and  
Subordinate Legislation  
ACT Legislative Assembly  
1 Constitution Avenue  
CANBERRA ACT 2601

  
Dear Mrs Grassby

In its Report No. 1 of 1994 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on Determination No.170 of 1993 made under section 4 of the Public Place Names Act 1989. The Committee had earlier commented on an almost identical Determination - No. 151 of 1993 - in its Report No. 22 of 1993.

The Committee was concerned about the incorrect spelling in the map accompanying each Determination of the Division of Ngunnawal and, although suggesting that there was no problem with validity, considered that there could be future confusion in referring to the determination of the street name if there was a duplication of determinations.

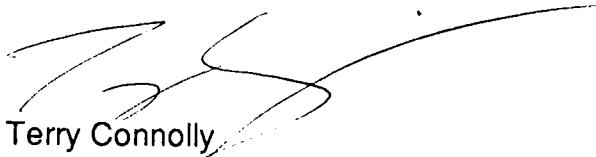
I confirm that there has been a duplication of determinations and, in order to remove any likely future confusion, Determination No. 151 of 1993 will be revoked on the next occasion on which a determination is being made under section 4 of the Public Place Names Act 1989.

In its Report No. 5 of 1994 the Committee noted a possible error in Determination No. 18 of 1994 made under section 4 of the Public Place Names Act 1989. I confirm that the names in the Schedule to the Determination are incorrect and, as a consequence, the Determination will be revoked and a new determination made in due course to rectify the situation.

Finally, in its Report No. 20 of 1993 the Committee correctly pointed out that the determination of fees included in Determination No. 145 of 1993 made for the purposes of section 226 of the Land (Planning and Environment) Act 1991 should instead have been made under section 287 of that Act. I am advised that Determination No. 145 will also be revoked and a new determination made to rectify the matter.

I trust this information is of assistance to the Committee.

Yours sincerely



Terry Connolly

14 JUN 1994

*Received*  
*E. J. J.*  
*15/6-94*

# Terry Connolly MLA

ATTORNEY GENERAL

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Mrs Ellnor Grassby MLA  
Presiding Member  
Standing Committee on Scrutiny of Bills  
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CANBERRA ACT 2601

Dear Mrs *Ellnor* Grassby

In its Report No. 7 of 1994 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on the Public Sector Management (Consequential and Transitional Provisions) Bill 1994.

The Committee's first point concerned the possibility of prejudicial retrospectivity arising from a declaration by the Commissioner under clause 18. This clause is intended to allow the Commissioner to deal with the transition of staff to the new Service where, because of particular circumstances, it is more appropriate to use a more specific power of appointment rather than the more general provisions that appear earlier in the Bill.

The clause is intended to be beneficial and to facilitate a smooth transition to the new Service. Where the power is exercised, retrospectivity is essential because the power relates to existing rather than future staff. If there were to be no retrospectivity, then the persons appointed might be denied benefits such as long service leave that depend on length of service. It is intended to be exercised on the basis of the Commissioner certifying as to the facts, rather than choosing a date in the exercise of a discretion. For the Commissioner to certify that a person was appointed on a particular day when that was not in fact the case would be an abuse of power and open to legal challenge. Sub-clauses 18 (9) and 18 (10) require a disclosure in the annual report and put a time limit of 12 months on the clause for reasons of transparency and accountability. This will further minimise any possibility of abuse.

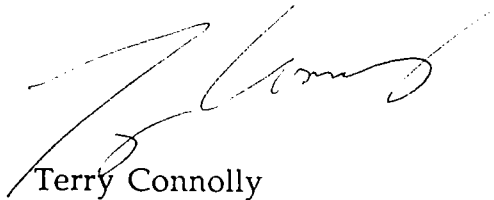
In short, in the absence of an abuse of power, no person will be affected prejudicially.

The next point relates to the ability to amend Acts by regulations, within the first 12 months of the new Service, with retrospective effect to the commencement day.

This clause is included simply because of the very large size of the separate Service project. The Consequential and Transitional Provisions Bill proposes amendments to some 83 Acts and 6 regulations and it is quite possible something will be omitted, even with all due care. A similar course was taken in the Self Government exercise and clause 20 is modelled on Section 31 of the ACT Self Government (Consequential Provisions) Act 1988. Various regulations were made under that section. The Commonwealth has also made similar provisions in clause 23 of its ACT Public Service (Consequential Provisions) Bill 1994.

The Committee has acknowledged the protections or "ameliorating points" in its Report that is, a 12 months sunset clause, retrospectivity limited to the commencement day and the ability of the Assembly to disallow regulations so made in any event. I believe that this combination of controls represents a sensible approach.

Yours sincerely



Terry Connolly

14 JUN 1994

Received 8/Jan  
16-6-94



Government of the  
Australian Capital  
Territory

# Terry Connolly MLA

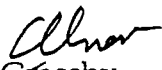
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Mrs Ellnor Grassby MLA  
Presiding Member  
Standing Committee on Scrutiny of Bills  
and Subordinate Legislation  
ACT Legislative Assembly  
1 Constitution Avenue  
CANBERRA ACT 2605

  
Dear Mrs Grassby

In my letter to you dated 16 May 1994, in response to the Committee's Report No. 6 of 1994, I indicated that Government amendments to the Public Sector Management Bill 1994 would be introduced into the Assembly and that certain other minor matters would be dealt with, where appropriate, under Standing Orders.

However, since writing to you, it has become apparent that an examination of the many references to periods of time which the Committee drew to attention as being inconsistent is a complex task which will involve considerations other than consistency. Many of these references have implications for the rights of employees or may impact on the financial obligations of the ACT. For example, the distinction between 28 days and 1 month has implications for payments and entitlements.

In this light the review of references to time will take longer than anticipated and will not be included in the Government's amendments. On completion of the review a suitable amending Bill will be introduced into the Assembly.

The other instances of minor error will nevertheless be included in the Government amendments as I indicated in my earlier letter.

I trust that this situation is satisfactory to the Committee.

Yours sincerely

  
Terry Connolly

14 JUN 1994

