

Legislative Assembly for the Australian Capital Territory



The electronic version of this report does not contain attachments, these can be obtained from the committee office

**Standing Committee on Justice and
Community Safety**

**(incorporating the duties of a
Scrutiny of Bills and Subordinate
Legislation Committee)**

SCRUTINY REPORT NO. 6 OF 1998

25 August 1998

TERMS OF REFERENCE

- (1) A Standing Committee on Justice and Community Safety be appointed (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee).
- (2) The Committee will consider whether:
 - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
 - (i) meet the objectives of the Act under which it is made;
 - (ii) unduly trespass on rights previously established by law;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
 - (b) the explanatory statement meets the technical or stylistic standards expected by the Committee.
 - (c) clauses of bills introduced in the Assembly:
 - (i) do not unduly trespass on personal rights and liberties;
 - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
 - (d) the explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of four 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 John Hargreaves, MLA (Deputy Chair)
Mr Trevor Kaine, MLA
Mr Harold Hird, MLA

Legal Advisor: Mr Peter Bayne
Secretary: Mr Tom Duncan
Assistant Secretary (Scrutiny of Bills and
Subordinate Legislation): Ms Celia Harsdorf

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 - No Comment

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

Subordinate Law No. 14 of 1998 being the Dangerous Goods (Exemption) Regulations (Amendment) made under the *Dangerous Goods Act 1984* amends subregulation 3(1) of the regulations.

Subordinate Law No. 16 of 1998 being the Motor Traffic Regulations (Amendment) made under section 218 of the *Motor Traffic Act 1936* prescribes new penalties for certain new parking offences consequent upon the amendments made to the Act by the Motor Traffic (Amendment) Act (No. 4 of 1997).

Subordinate Law No. 26 of 1998 being the Vocational Educational and Training Regulations made under section 68 of the *Vocational Educational and Training Act 1995* prescribes for a matter which is necessary to be prescribed for the purposes of the Act.

Subordinate Law No. 27 of 1998 being the Motor Traffic Regulations (Amendment) made under paragraph 218(ag) of the *Motor Traffic Act 1936* inserts a new Part IVA in respect of taxis using public transport routes.

Determination No. 79 of 1998 made under subsection 10(2) of the *Legislative Assembly (Members' Staff) Act 1989* is an approval by the Chief Minister for the employment of persons as members of the staff of Members of the Legislative Assembly. It varies the Schedule to the arrangements made in Determination No. 72 of 1998 by deleting reference to the Non-Executive staff allocation to Mr Moore.

Determination No. 84 of 1998 made under section 4 of the *Public Place Names Act 1989* determines the names of certain streets in the Division of Nicholls.

Determination No. 85 of 1998 made under section 4 of the *Public Place Names Act 1989* determines the names of certain streets in the Division of Nicholls.

Determination No. 86 of 1998 made under section 4 of the *Public Place Names Act 1989* determines the name of a certain park in the Division of Nicholls.

Determination No. 87 of 1998 made under section 4 of the *Public Place Names Act 1989* determines the names of certain streets in the Division of Gordon.

Determination No. 88 of 1998 made under section 4 of the *Public Place Names Act 1989* determines the name of a certain street in the Division of Greenway.

Determination No. 89 of 1998 made under subsection 33(4) of the *Motor Traffic Act 1936* declares a holiday period.

Determination No. 90 of 1998 made under section 4 of the *Public Place Names Act 1989* determines the name of a certain street in the Division of Phillip.

Determination No. 91 of 1998 made under paragraph 99(1)(b) of the *Taxation (Administration) Act 1987* determines an interest rate for the purposes of section 31 of the Act.

Determination No. 95 of 1998 made under subsection 248A(1) of the *Magistrates Court Act 1930* and subsection 94(1) of the *Coroners Act 1997* revokes Determination No. 21 of 1998 and determines fees payable for the purposes of section 248B of the *Magistrates Court Act 1930* and section 95 of the *Coroners Act 1997*.

Determination No. 96 of 1998 made under subsection 37(1) of the *Supreme Court Act 1933* revokes Determination No. 22 of 1998 and determines fees payable for the purposes of section 37A of the Act.

Determination No. 97 of 1998 made under subsection 59A(1) of the *Administrative Appeals Tribunal Act 1989* and subsection 78(1) of the *Tenancy Tribunal Act 1994* revokes Determination No. 107 of 1997 and determines fees payable for the purposes of section 59B of the *Administrative Appeals Tribunal Act 1989* and section 79 of the *Tenancy Tribunal Act 1994*.

Determination No. 98 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Dental Board.

Determination No. 99 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Dental Board.

Determination No. 100 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person to be the Chairperson of the Dental Board.

Determination No. 101 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Dental Board.

Determination No. 102 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as the Chairperson of the Psychologists Board.

Determination No. 103 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Psychologists Board.

Determination No. 104 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Psychologists Board.

Determination No. 105 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Psychologists Board.

Determination No. 106 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Psychologists Board.

Determination No. 107 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Psychologists Board.

Determination No. 108 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as the Chairperson of the Podiatrists Board.

Determination No. 109 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Podiatrists Board.

Determination No. 110 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Podiatrists Board.

Determination No. 111 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Podiatrists Board.

Determination No. 112 of 1998 made under subsection 5(1) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as the Chairperson of the Pharmacy Board.

Determination No. 113 of 1998 made under subsection 5(1) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Pharmacy Board.

Determination No. 114 of 1998 made under subsection 5(1) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Pharmacy Board.

Determination No. 115 of 1998 made under subsection 5(1) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Pharmacy Board.

Determination No. 116 of 1998 made under subsection 67(1) of the *Births, Deaths and Marriages Registration Act 1997* determines fees payable for the purposes of sections 42 and 43 of the Act.

Determination No. 118 of 1998 made under subsection 36(1) of the *Motor Traffic Act 1936* revokes Determination No. 148 of 1997 and determines the maximum taxi fares payable for the purposes of the Act.

Determination No. 120 of 1998 made under section 11A of the *Public Health Act 1928* revokes Determination No. 241 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 121 of 1998 made under section 19B of the *Meat Act 1931* revokes Determination No. 248 of 1996 and determines fees payable for the purposes of regulation 5(4) of the *Meat Regulations*.

Determination No. 122 of 1998 made under section 34 of the *Health Records (Privacy and Access) Act 1997* determines fees payable for the purposes of the Act.

Determination No. 123 of 1998 made under section 217A of the *Motor Traffic Act 1936* determines fees payable for the purposes of subsection 163C(2) of the Act and makes a specification for the purposes of subsection 163C(3) of the Act.

Note - this Determination has been revoked by Determination No. 181 of 1998.

Determination No. 124 of 1998 made under section 5A of the *Lakes Act 1976* revokes Determination No. 179 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 125 of 1998 made under section 27B of the *Hawkers Act 1936* revokes Determination No. 131 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 127 of 1998 made under section 3F of the *Building and Services Act 1924* revokes Determination No. 130 of 1997 and determines charges payable for the purposes of the Act.

Determination No. 128 of 1998 made under subsection 57(1) of the *Motor Vehicles (Dimensions and Mass) Act 1990* revokes Determination No. 13 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 129 of 1998 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 184 of 1997 and determines fees payable for the purposes of subsection 163C(2) of the Act and makes a specification for the purposes of subsection 163C(3) of the Act.

Determination No. 130 of 1998 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 281 of 1996 and determines fees payable for the purposes of subsection 163C(2) of the Act and makes a specification for the purposes of subsection 163C(3) of the Act.

Determination No. 131 of 1998 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 275 of 1997 and determines fees payable for the purposes of various provisions of the Act.

Determination No. 132 of 1998 made under section 217A of the *Motor Traffic Act 1936* revokes Determinations No. 125 of 1997 and 13 of 1998 and determines fees payable for the purposes of various provisions of the Act and of the Motor Traffic Regulations.

Determination No. 133 of 1998 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 123 of 1997 and determines fees payable for the purposes of various provisions of the Act.

Determination No. 134 of 1998 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 124 of 1997 and determines fees payable for the purposes of subsection 4(10) of the Act.

Determination No. 135 of 1998 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 126 of 1997 and determines fees payable for the purposes of various provisions of the Act.

Determination No. 136 of 1998 made under section 83A of the *Nature Conservation Act 1980* revokes Determination No. 175 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 137 of 1998 made under section 7 of the *Pounds Act 1928* revokes Determination No. 176 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 138 of 1998 made under section 40A of the *Dog Control Act 1975* revokes Determination No. 174 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 139 of 1998 made under section 63 of the *Animal Diseases Act 1993* revokes Determination No. 180 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 140 of 1998 made under section 110 of the *Animal Welfare Act 1992* revokes Determination No. 181 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 141 of 1998 made under section 4 of the *Public Place Names Act 1989* amends Determination No. 234 of 1997 and determines the name of a certain street in the Division of Gungahlin.

Determination No. 142 of 1998 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 100 of 1996 and determines fees payable for the purposes of the *Stamp Duties and Taxes Act 1987*.

Determination No. 143 of 1998 made under subsection 5(1) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Physiotherapists Board.

Determination No. 144 of 1998 made under subsection 5(1) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Physiotherapists Board.

Determination No. 145 of 1998 made under subsection 5(1) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as the Chairperson of the Physiotherapists Board.

Determination No. 146 of 1998 made under subsection 5(1) of the *Health Professions Boards (Procedures) Act 1989* appoints a specified person as a member of the Physiotherapists Board.

Determination No. 147 of 1998 made under section 67 of the *Vocational Education and Training Act 1995* revokes Determination No. 114 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 150 of 1998 made under paragraph 99(1)(b) of the *Taxation (Administration) Act 1987* revokes Determination No. 22 of 1995 and determines a rate of interest payable for the purposes of the Act.

Determination No. 151 of 1998 made under subsection 67(1) of the *Births, Deaths and Marriages Registration Act 1997* determines fees payable for the purposes of the Act.

Determination No. 153 of 1998 made under section 9A of the *Roads and Public Places Act 1937* revokes Determination No. 129 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 154 of 1998 made under section 11A of the *Ambulance Service Levy Act 1990* revokes Determination No. 64 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 156 of 1998 made under paragraph 8(1)(g) of the *Board of Senior Secondary Studies Act 1997* appoints a specified person as a member of the Board of Senior Secondary Studies.

Determination No. 157 of 1998 made under subsection 11(1) of the *Board of Senior Secondary Studies Act 1997* appoints a specified person as an alternate member of the Board of Senior Secondary Studies.

Determination No. 158 of 1998 made under paragraph 8(1)(m) of the *Board of Senior Secondary Studies Act 1997* appoints a specified person as a member of the Board of Senior Secondary Studies.

Determination No. 159 of 1998 made under subsection 11(1) of the *Board of Senior Secondary Studies Act 1997* appoints a specified person as an alternate member of the Board of Senior Secondary Studies.

Determination No. 160 of 1998 made under section 30 of the *Canberra Institute of Technology Act 1987* appoints a specified person as a member of Canberra Institute of Technology Advisory Council.

Determination No. 161 of 1998 made under section 39B of the *Architects Act 1959* revokes Determination No. 151 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 162 of 1998 made under section 65 of the *Building Act 1972* revokes Determination Nos 156 and 226 of 1997 determines fees payable for the purposes of the Act.

Determination No. 163 of 1998 made under section 104 of the *Electricity Act 1976* revokes Determination No. 157 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 164 of 1998 made under section 80 of the *Energy and Water Act 1988* revokes Determination No. 150 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 165 of 1998 made under section 287 of the *Land (Planning and Environment) Act 1991* revokes Determination Nos 153 and 225 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 166 of 1998 made under section 45A of the *Plumbers, Drainers and Gasfitters Board Act 1982* revokes Determination No. 152 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 167 of 1998 made under section 9A of the *Roads and Public Places Act 1937* revokes Determination No. 14 of 1998 determines fees payable for the purposes sections 15E and 15K of the Act.

Determination No. 168 of 1998 made under section 52A of the *Surveyors Act 1967* revokes Determination No. 155 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 169 of 1998 made under section 116 of the *Unit Titles Act 1970* revokes Determination No. 154 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 170 of 1998 made under section 4 of the *Public Place Names Act 1989* determines the name of a certain public place in the Division of Holder.

Determination No. 172 made under section 28B of the *Rates and Land Tax Act 1926* revokes Determination No. 17 of 1998 and determines a rate of interest for the purposes of subsection 28B(1) of the Act.

Determination No. 173 of 1998 made under section 23 of the *Rates and Land Rent (Relief) Act 1970* revokes Determination No. 15 of 1998 and determines a rate of interest for the purposes of subsection 23(1) of the Act.

Determination No. 174 of 1998 made under section 4 of the *Public Place Names Act 1989* determines the name of certain streets in the Division of Gungahlin.

Determination No. 175 of 1998 made under section 4 of the *Public Place Names Act 1989* determines the name of a certain street in the Division of Tuggeranong.

Determination No. 178 of 1998 made under section 58 of the *Medical Practitioners Act 1930* revokes Determination No. 121 of 1995 and determines fees payable for the purposes of the Act.

Determination No. 179 of 1998 made under subsection 51B(4) of the *Gaming Machine Act 1987* determines the content and nature of a warning notice required to be affixed on each gaming machine installed on licensed premises and at or near the entrance to each gaming area within the licensed premises.

Determination No. 180 of 1998 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 251 of 1997 and determines fees payable for the purposes of the Act.

Note - this Determination is revoked by Determination No. 184 of 1998.

Determination No. 181 of 1998 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 123 of 1998 and determines fees payable for the purposes of subsection 163C(2) of the Act and makes a specification for the purposes of subsection 163C(3) of the Act.

Determination No. 182 of 1998 made under subsection 26C(2) of the *Domestic Violence Act 1986* appoints a specified person as the Domestic Violence Project Coordinator and ex-officio member of the Domestic Violence Prevention Council of the Australian Capital Territory.

Determination No. 183 of 1998 made under subsection 23(6) of the *Domestic Violence Act 1986* appoints a specified person as a member of the Domestic Violence Prevention Council of the Australian Capital Territory.

Determination No. 184 of 1998 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 180 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 188 of 1998 made under section 54 of the *Chiropractors and Osteopaths Act 1983* revokes Determination No. 71 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 189 of 1998 made under subsection 10(2) of the *Legislative Assembly (Members' Staff) Act 1989* is an approval by the Chief Minister of a staff salary allocation for the employment of persons as members of the staff of Members of the Legislative Assembly.

Determination No. 190 of 1998 made under subsection 5(2) of the *Legislative Assembly (Members' Staff) Act 1989* is an approval by the Chief Minister of a staff salary allocation for the employment of persons as members of the staff of the Speaker of the Legislative Assembly.

Determination No. 191 of 1998 made under section 23C of the *Nature Conservation Act 1980* is an instrument made by the Conservator of Flora and Fauna to provide for an Action Plan for a species, or a community, of flora or fauna which has been declared by the Minister to be vulnerable or endangered; (the Ministerial Determinations No. 26 of 1996 and Determination No. 7 of 1998 are relevant here). The three Plans concern the Golden Sun Moth, the Button Wrinklewort and the Small Purple Pea.

Note - Determination No. 7 of 1998 is revoked by Determination No. 191 of 1998, but this does not affect the validity of Determination No. 191 of 1998.

Determination No. 192 of 1998 made under section 21 of the *Nature Conservation Act 1980* revokes Determination No. 7 of 1998 and declares that certain species, or a community, of flora or fauna, to be vulnerable or endangered.

Public Sector Management Standard No. 1 of 1998 made under section 251 of the Public Sector Management Act 1994 amends the Public Sector Management Standards that were prescribed by Public Sector Management Standard No. 1 of 1994.

Public Sector Management Standard No. 2 of 1998 made under section 251 of the Public Sector Management Act 1994 amends the Public Sector Management Standards that were prescribed by Public Sector Management Standard No. 1 of 1994.

Subordinate Legislation - Comment

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

Subordinate Law No. 43 of 1997 being the Supreme Court Rules (Amendment) made under section 36 of the *Supreme Court Act 1933* amends the Rules in various ways relating to costs chargeable by the legal profession.

The Committee draws attention to the fact that while these Rules, other than Rule 8, purport to commence on 1 January 1998, they were not notified in the *Gazette* until 13 January 1998 (*Gazette* No. S20, dated 13 January 1998).

On this basis, it is possible that these Rules are, in terms of section 7 of the *Subordinate Laws Act 1989*, void and of no effect by reason that they purport to have retrospective effect.

Subordinate Law No. 8 of 1998 being the Bushfire Regulations (Amendment) made under the *Bushfire Act 1936* amends regulation 6 of the *Bushfire Regulations* in relation to prescribed fires.

The Committee has not received an Explanatory Memorandum in respect of these regulations.

Subordinate Law No. 15 of 1998 being the Supreme Court (Admission of Legal Practitioners) Rules made under section 36 of the *Supreme Court Act 1933* implements in the Australian Capital Territory the Uniform Admission Rules developed by the Consultative Committee of State and Territory Law Admitting Authorities.

Paragraph 2 (c) (ii) - insufficiently defined administrative powers

The Committee draws attention to clause 18 of these Rules. This provision confers on the Court a very wide discretion - to be exercised "as the Court thinks just" - to dispense in a particular case with any of the other provisions of the Rules. This power to dispense with the law is on the face of it contrary to the rule of law.

Subordinate Law No. 17 of 1998 being the Residential Tenancies Regulations made under the *Residential Tenancies Act 1997* prescribe for certain matters which are necessary to be prescribed for the purposes of the Act.

The Committee notes that the Explanatory Memorandum was not complete in that page one ends in mid sentence.

Determination No. 81 of 1998 made under subsection 135(1) of the *Residential Tenancies Act 1997* determines the fees payable for the purposes of section 73 of the Act.

Paragraph 2 (c) (iii) - non-reviewable decisions affecting rights, liberties and obligations

The Committee draws attention to the discretion in the Minister under clause 2 to defer or exempt the payment of fees in respect of applications to the Residential Tenancies Tribunal, and that there is no provision for review of an exercise of this discretion.

Drafting error

The words "deferred payment" in clause 2(a) should probably read "defer payment".

Determination No. 82 of 1998 made under subsection 134(1) of the *Residential Tenancies Act 1997* determines the criteria to which the Residential Tenancies Tribunal is to have regard for the purposes of section 10 of the Act.

The Committee notes that the Explanatory Memorandum is not complete in that page one ends in mid sentence.

Determination No. 83 of 1998 made under subsection 6E(3) of the *Motor Traffic Act 1936* revokes Determination No. 266 of 1997 and specifies the contents of a Vehicle Inspection Manual prepared under subsection 6E(1) of the Act.

The Committee notes that this Determination incorporates other documents by reference, and it may be that the only place in the ACT at which a complete set of these documents may be found is the Motor Vehicle Registry. While this practice appears to comply with section 8 of the *Subordinate Laws Act 1989*, it does raise questions of (a) access of the public to the law and (b) just how a member of the public is to ascertain what is the document to be incorporated. This is a general problem, and the Committee suggests the need for some process of verification as to just what are the documents to be incorporated.

Determination No. 119 of 1998 made under section 16 of the *Independent Pricing and Regulatory Commission Act 1997* is the specification of the requirements in relation to an investigation by the Commission in relation to maximum taxi fares.

There is however some confusion here. There are 2 documents intituled “Instrument No. 119 of 1998”. One is as described above. The other is a declaration by the Minister under subsection 4(1) of the Act that the ACT taxi industry is a regulated industry. This too is a disallowable instrument and should have a separate number.

Determination No. 126 of 1998 made under subsection 22A(1) of the *Cemeteries Act 1933* revokes Determination No. 132 of 1997 and determines fees payable for the purposes of the Act.

The Determination should clearly specify the year of the Determination being revoked. We also note that there is a difference between the text of the Determination and the Explanatory Memorandum as to just which previous Determination is revoked. The error may be in Determination No. 126 of 1998.

Determination No. 148 of 1998 made under section 41 of the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994* revokes Determination No. 114 of 1997 and determines fees payable for the purposes of the Act.

The Committee notes that both the *Gazette* Notice (No. S173, 1 July 1998) and the text of Determination No. 148 of 1998 both refer, incorrectly, to the relevant Act as the *ACT Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994*. The reference to “ACT” in the title to the Act should be omitted.

Determination No. 149 of 1998 made under section 118 of the *Adoption Act 1993* revokes Determination No. 115 of 1997 and determines fees payable for the purposes of section 62 of the Act.

There is an error in the text of the Determination. Instead of “Adoption Information provides ...” there should read “Adoption Information provided ...”.

Determination No. 152 of 1998 made under section 105A of the *Liquor Act 1975* purports to revoke “Determination Fees No. 2 of 1998” and determines fees payable for the purposes of the Act.

There is some doubt as to just which previous Determination is revoked. The description “Determination Fees No. 2 of 1998” is apt to be misleading.

Determination No. 155 of 1998 made under section 12 of the *Housing Assistance Act 1987* is a variation to the Public Housing Assistance Program made by the Commissioner of Housing.

Attached to the Instrument is an approval for this variation made by the Minister under section 12. This approval is not a disallowable instrument, but we note that it does not contain the date of the variation made by the Commissioner and for this reason may be ineffective.

The Committee notes too that the Explanatory Statement does not contain the relevant number and date of the *Gazette* notice.

Determination No. 176 of 1998 made under paragraph 24(2)(a) of the *Building Act 1972* revokes Determination No. 9 of 1998 and adopts all of the provisions of the Building Code of Australia prepared and published by the Australian Building Codes Board in July 1998.

The Committee notes that this Determination incorporates another document by reference, and this raises the problem of just what is that other document.

Determination No. 177 of 1998 made under paragraph 24(2)(b) of the *Building Act 1972* revokes Determination No. 10 of 1998 and publishes the Australian Capital Territory Appendix to the Building Code of Australia.

There is no Appendix to the Building Code of Australia published with this instrument.

Comment on instruments which make appointments

A number of determinations were appointments made by Ministers which are affected by section 4 of the *Statutory Appointments Act 1994*. The Committee is of the opinion that an Explanatory Statement should indicate that the requirements of section 4 were met.

This could be in terms which record:

- (a) that there has been consultation;
- (b) the nature of any recommendation of the Committee; and
- (c) that the Minister had regard to any such recommendation in making the relevant appointment.

GOVERNMENT RESPONSE

The Committee has received a response in relation to comments made concerning:

- Subordinate Law No. 37 of 1997 being the Fair Trading Regulations made under the *Fair Trading Act 1992* (Report No. 3).
- Subordinate Law No. 3 of 1998 being the Fair Trading Regulations (Amendment) made under the *Fair Trading Act 1992* (Report No. 3).
- Subordinate Law No. 12 of 1998 being the Fair Trading Regulations (Amendment) made under the *Fair Trading Act 1992* (Report No. 3).

Subordiante Law No. 13 of 1998 being the Fair Trading Regulations (Amendment) made under the *Fair Trading Act 1992* (Report No. 3).

A copy of the response is attached.

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

Paul Osborne, MLA
Chair

25 August 1998