

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

**REPORT NO. 15 OF 1997**

**4 November 1997**



## TERMS OF REFERENCE

- (1) A Standing Committee for scrutiny of bills and subordinate legislation be appointed.
- (2) The Committee will consider whether:
  - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
    - (i) meet the objectives of the Act under which it is made;
    - (ii) unduly trespass on rights previously established by law;
    - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
    - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
  - (b) its explanatory statement meets the technical or stylistic standards expected by the Committee.
  - (c) clauses of bills introduced in the Assembly:
    - (i) do not unduly trespass on personal rights and liberties;
    - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
    - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
    - (iv) inappropriately delegate legislative powers; or
    - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
  - (d) its explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of three members.
- (4) If the Assembly is not sitting when the Committee is ready to report on Bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing and circulation.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) The foregoing provisions of the resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

## **MEMBERS OF THE COMMITTEE**

**Mr Bill Wood, MLA (Chair)**  
**Mr Paul Osborne, MLA (Deputy Chair)**  
**Mr Harold Hird, MLA**

**Legal Advisor: Mr Peter Bayne**  
**Secretary: Mr Tom Duncan**

## **ROLE OF THE COMMITTEE**

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

## BILLS

### Bill - No Comment

The Committee has examined the following Bill and offers no comments:

#### **Births, Deaths and Marriages Registration (Consequential Provisions) Bill 1997**

#### **Crimes (Amendment) Bill (No. 4) 1997**

This Bill makes amendments to sections 429, 429A and 429B of the *Crimes Act 1900* with the object for making changes to the principles according to which the courts pass sentence on persons convicted of crime.

#### **Crimes (Amendment) Bill (No. 5) 1997**

This Bill amends the *Crimes Act 1900* with the object of giving to the courts power to deal with outstanding sentences of juvenile offenders whose subsequent sentences for adult crimes bring them into contact with adult offenders. This Bill should be seen in conjunction with the Children's Services (Amendment) Bill 1997.

#### **Drugs of Dependence (Amendment) Bill 1997**

This Bill will amend the *Drugs of Dependence Act 1989* so as to affect the operation of that Act in relation to a hospital and a hospice. The object is to assist those who work in those institutions without weakening the necessary controls over drugs of dependence and other prohibited substances.

#### **Electoral (Amendment) Bill (No. 2) 1997**

This Bill would amend the *Electoral Act 1992* to give effect to various recommendations made by the ACT Electoral Commission in its report on the 1995 election.

#### **Electricity Supply (Consequential and Transitional Provisions) Bill 1997**

This Bill will provide for certain consequential and transitional arrangements consequent upon the enactment of the Electricity Supply Bill 1997.

#### **Freedom of Information (Amendment) Bill 1997**

This Bill would make a number of amendments to the *Freedom of Information Act 1989*. Its object is to increase the range and quantity of information which would be available as of right and to reduce the costs of requests.

#### **Independent Pricing and Regulatory Commission (Consequential Provisions) Bill 1997**

The objective of this Bill is to make amendments to the *Energy and Water Act 1989* which would be necessary upon the passing into law of the Independent Pricing and Regulatory Commission Bill 1997.

### **Intoxicated Persons (Care and Protection) (Amendment) Bill 1997**

This Bill would amend the *Intoxicated Persons (Care and Protection) Act 1994* to make provision for searches to be made of persons prior to their entry into a 'Sobering Up Shelter' in the ACT. Recommendations to this effect have been made by the Sobering Up Shelter Steering Committee, which body considered comments made by a Coroner following a death in the ACT.

### **Legal Practitioners (Amendment) Bill (No. 2) 1997**

This Bill would amend the *Legal Practitioners Act 1970* to the effect that the Act would take into account the impact of the Mutual Recognition Scheme concerning the admission to practise of legal practitioners. The Bill follows the model suggested for implementation of a national market in legal services. The Bill makes some other changes to the Act. The term 'legal practitioner' is now employed in preference to 'barrister' and 'solicitor' (and other such terms). There are other minor amendments.

### **Legal Practitioners (Amendment) Bill (No. 3) 1997**

This Bill would amend the *Legal Practitioners Act 1970* to the effect that persons who practise foreign law in the ACT would be placed on the same regulatory footing as local lawyers with regard to matters such as indemnity insurance, trust accounts and discipline.

### **Legal Practitioners (Consequential Amendments) Bill 1997**

The Legal Practitioners (Amendment) Bill (No. 2) 1997 would amend the *Legal Practitioners Act 1970* to the effect that the term 'legal practitioner' is now employed in preference to 'barrister' and 'solicitor' (and other such terms).

This Bill would amend various Acts and other legislation to reflect this change.

### **Motor Traffic (Amendment) Bill (No. 5) 1997**

This Bill would amend section 143 of the *Motor Traffic Act 1936* to the effect that maximum speed applicable in public streets would be 50 kph instead of 60 kph.

### **Statutory Appointments (Amendment) Bill 1997**

This Bill would amend the *Statutory Appointments Act 1994* to make it plain that that Act does not apply to the appointment of a Justice of the Peace in the ACT.

### **Territory Owned Corporations (Amendment) Bill (No. 3) 1997**

This Bill would amend the *Territory Owned Corporations Act 1990* to facilitate borrowings by such corporations from the Territory without the need for specific appropriation by the Legislative Assembly for that purpose.

### **Wills (Amendment) Bill 1997**

The Births, Deaths and Marriages Registration Bill 1997 contains provisions which recognise that a person can undergo sex reassignment surgery. In order to protect the position of a person who undergoes such surgery who had been named as a beneficiary in a will, the Wills (Amendment) Bill 1997 makes an amendment to the *Wills Act 1968* to ensure that a person will be treated as having not undergone the surgery. The person making the will may express a contrary intention in this regard.

### Bills - Comments

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

#### **Births, Deaths and Marriages Registration Bill 1997**

This Bill repeals the *Registration of Births, Deaths and Marriages Act 1963* and replaces it with a new scheme based closely on a model law approved by the Standing Committee of Attorneys-General (SCAG). The object is to promote uniformity in the law in Australia. Like the repealed Act, it is based on the concept of compulsory civil registration, but, in relation to names, permits of more flexibility to accommodate societal change. The concept of a 'prohibited name' (as defined in clause 4) is central to the means for setting limits to the names persons may choose for themselves or their children. The Bill also contains provisions relating to legal recognition of gender reassignment.

#### Paragraph (2) (c) (iii) - Non-reviewable decisions affecting rights, etc.

The Committee draws attention to the power vested in the Registrar-General by clause 41, and suggests that consideration be given to providing for review of an exercise of this power.

#### Possible drafting matters

There may be a drafting mistake in subclause 43 (3). The words 'the matters set out in paragraphs 42 (3) (a), (b), (c) and (d) to' appear to be inserted in error. Reference to the Explanatory Memorandum suggests that this is so, and, as it stands, this subclause does not appear to make sense.

#### **Children's Services (Amendment) Bill 1997**

The major object of this Bill is to amend the *Children's Services Act 1986* to permit the Director of Family Services to direct or to arrange for the transfer of persons sentenced under that Act from one institution to another within the Territory, or from the Territory to a State institution.

#### Paragraph (2) (c) (iii) - Non-reviewable decisions affecting rights, etc.

The Committee notes that there is no provision for independent review of the exercise of the powers conferred by clauses 62A (transfer between institutions) and 69D (transfer to a State) on the Director of Family Services.

It is however noted that by clauses 62B and 69FA respectively, there is provision for the scrutiny of the exercise of those powers by reason of the fact that an exercise of them must be notified to the Legislative Assembly Standing Committee on Legal Affairs, to the Chief Magistrate and the Community Advocate.

#### **Crimes (Assisted Suicide) Bill 1997**

Subsection 17 (1) of the *Crimes Act 1900* provides for the offence of aiding or abetting the suicide or attempted suicide of another person, and on conviction the offender is punishable by imprisonment for 10 years. This Bill creates a number of new offences in relation to assisting a person to suicide, and provides that in any circumstances which would constitute one of the new offences, subsection 17 (1) of the *Crimes Act 1900* does not apply. The object is to provide penalties in relation to the new offences which are much lighter than the penalty under subsection 17 (1).

The Committee comments as follows:

Paragraph (2) (c) (ii) - Insufficiency defined administrative powers  
Paragraph (2) (c) (iii) - Non-reviewable decisions affecting rights, etc.

Clause 5 defines the circumstances in which a medical practitioner who assists a 'prescribed person' to commit suicide is punishable by imprisonment for 3 months if the latter administered a substance by her or himself, or by imprisonment for 6 months in any other case. But under subclause 6 (1) a police officer 'may serve' an offence notice on a medical practitioner, and by subclause 6 (2) the Director of Public Prosecutions 'may serve' an offence notice on a medical practitioner who has been charged with an offence under clause 5. The effect of such a notice is to enable the 'alleged offender' to opt to pay a fine (as prescribed), and if this is done, no further proceedings shall be taken in respect of the offence and the person shall not be regarded as having been convicted of an offence against clause 5.

These provisions raise important considerations of constitutional law, for in effect they permit public officers to dispense with the operation of the law in favour of particular individuals; (see the first substantive provision of the *Bill of Rights 1689*). While there is probably no constitutional limit of the ability of the Legislative Assembly to vest a dispensing power in police officers or the DPP, the limits of any such power should be clearly defined.

Thus, the Committee draws attention to the lack of criteria in subclause 6 (1) and (2) as to the circumstances in which the discretions vested in police officers and the DPP should be exercised. Furthermore, there is no provision for review of an exercise of discretion by the DPP.

Paragraph (2) (c) (i) - Undue trespass on personal rights and liberties

The Committee notes that a 'prescribed person' (being (briefly) a person in the terminal phase of an illness who is suffering intolerable pain) makes a 'request' if he or she makes it in writing to a 'health professional' (defined to mean a medical practitioner or a nurse). The request is to assist the person to commit suicide. By clause 4 of the Bill, a 'health professional' is liable to imprisonment for 2 years if he or she assists a 'prescribed person' to commit suicide.

On the other hand, a medical practitioner who, in the circumstances described in clause 5, assists a 'prescribed person' to commit suicide is punishable by a lighter penalty if clause 5 applies, or, if clause 6 applies, may be liable only to pay a fine and be in a situation where he or she shall not be regarded as having been convicted of an offence against clause 5.

The Committee raises the question whether there is not here an unjustifiable distinction between the position of a 'health professional' under clause 4 and a medical practitioner under clause 5. It will be seen that a 'prescribed person' cannot make a valid request unless he or she gives it to a 'health professional'. Where the latter is a nurse, then it would appear very likely that he or she will give the request to a medical practitioner, so that the latter can set in train events which will bring clause 5 into operation. But it would seem that by giving the request to the medical practitioner, the nurse would be committing an offence under clause 4.

The Committee may misunderstand the effect of clauses 4 and 5, but draws this matter to the attention of the Legislative Assembly.



## Electricity Supply Bill 1997

The purpose of this Bill is to facilitate the introduction of competition in electricity retailing in the ACT. A central feature of the scheme it will introduce is that customers will have the right to choose their own retailer. ACTEW would lose its decision factio monopoly status and there would be other retailers of electricity in the ACT. In this situation, it is thought necessary to establish a regulatory framework in order to provide some assurance to customers about the quality of supply. An attempt has been made to mirror the NSW regulatory regime. There is provision for the licensing of retailers, the incorporation of conditions (including those relating to the environment) in those licences, a framework of customer contracts, and provisions to enhance customer rights in relation to the supply to them of electricity.

The Committee comments as follows:

### Paragraph (2) (c) (iii) - Non-reviewable decisions affecting rights, etc.

In some respects the Bill made no provision for the review of actions which may be taken or decisions which may be made by virtue of powers conferred by the clauses of the Bill:

- the preparation and amendment of standing form customer connection contracts by an electricity distributor under clauses 10 and 13.

The Committee notes in particular that these contracts must establish procedures for the handling of inquiries and complaints by customers (paragraph 11 (1) (f)). The Committee notes that an electricity distributor must in effect consult with a 'prescribed body' before completing the preparation of such a contract (subclause 10 (2)), but this safeguard is dependent on there being such prescription. The Committee also notes that the relevant Minister may be able to exercise some control over these contracts through the application of the powers in Schedule subclause 6 (2):

- requirements which may be made of a customer by an electricity distributor under clauses 15 to 23 to do certain things which would impose costs upon that customer. Upon failure to comply, the customer might be refused customer connection services (subclause 15 (2));
- the preparation and amendment of standard form customer supply contracts by a retail supplier under clauses 30 and 33.

The Committee notes in particular that these contracts must establish procedures for the handling of inquiries and complaints by customers (paragraph 31 (1) (e)). The Committee notes that a retail supplier must in effect consult with a 'prescribed body' before completing the preparation of such a contract (subclause 30 (2)), but this safeguard is dependent on there being such prescription. The Committee also notes that the relevant Minister may be able to exercise some control over these contracts through the application of the powers in Schedule subclause 6 (2);

- orders made by the Minister under clause 39 to declare a person or persons to be non-franchise customers. (It is noted that such an order must be published in the *Gazette*);
- determinations of fees made by the Minister under clause 40. (It is noted that such an order must be published in the *Gazette*);

Paragraph (2) (c) (iv) - Inappropriate delegation of legislative power

Subclause 37 (1) provides that a person may 'appeal' against a decision of an electricity distributor to impose charges under a standard form contract, or, where the decision-maker is a retail supplier, a decision to impose charges under a standard form contract or to classify a person as a franchise or non-franchise customer. By subclause 37 (2), the procedures 'for making and dealing with an appeal shall be as prescribed by the regulations'.

The Committee queries whether a matter such as this which will affect all residents of the ACT should be left to regulation rather than by prescription in the statute.

**Independent Pricing and Regulatory Commission Bill 1997**

This Bill will establish an Independent Pricing and Regulatory Commission to regulate pricing, access and other matters in relation to a 'regulated industry'. This is an industry engaged in the supply in the Territory of electricity, water or sewerage services, or any other industry declared by any Minister to be a regulated industry for the purposes of the Act (clauses 3 and 4). From the presentation speech it can be seen that the object of this scheme and of the work of the Commission is to 'promote effective competition in the interests of consumers, to facilitate efficiency and to ensure non-discriminatory access to monopoly and near-monopoly infrastructure'.

The Committee comments as follows:

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

The Committee notes that the term 'infrastructure facility' is not defined except in an indirect way in clause 3. Given the centrality of this concept to critical aspects of the scheme of the Bill (see for example clause 29 concerning arbitration), the Committee asks whether the term might be fully defined.

Paragraph (2) (c) (v) - Insufficient scrutiny of legislative power

Clause 4 confers power on any Minister to declare (by instrument) an industry to be a regulated industry for the purposes of the Act. The effect of such an instrument is to bring that industry under the scheme and could result in significant costs being imposed on that industry. The Committee recommends that these instruments be made disallowable by the Assembly under section 10 of the *Subordinate Laws Act 1989*.

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

The Committee notes that while clause 33 obliges an arbitrator to issue a draft determination to each party to a dispute, it does not state what is then to occur if a party has comments to make about the draft. Is the arbitrator obliged to have regard to any comments? Is there any time period which must elapse before the arbitrator may make a determination under clause 34? In this respect, the Committee also notes that by clause 36 the party that referred the dispute to arbitration may terminate it at any time before the arbitrator makes a determination. Is it intended that this be so after that party has received a draft under clause 33.

Paragraph (2) (c) (i) - Undue trespass on personal rights and liberties

The Committee has concerns about the scope of application of clause 43. Subclause 43 (2) speaks of a person using 'any confidential information' and imposes penalties in relation thereto. In clause 3, the term 'confidential information' includes information that was stated by the person giving it to be confidential or commercially sensitive. The Committee's concern is that clause 43 might be read as stating a rule which applies

generally to the use of any information (and not only that which has been given to a person in relation to the scheme of the Act).

#### Comments on the Explanatory Memorandum

The Committee notes that while well presented, the Explanatory Memorandum does not key its comments to the clauses of the Bill by their number.

#### **University of Canberra (Transfer) Bill 1997**

Consequent upon the transfer of the University of Canberra from the Commonwealth to the Territory, this Bill would amend the *University of Canberra Act 1989* to place the University under the *Financial Management Act 1996* and thus within the accountability framework of ACT public authorities. The Bill recognises however that as an institution of higher education which is accountable to the Commonwealth (which provides most of its funding), it is desirable that certain provisions of the *Financial Management Act 1996* should not apply to the University. The Bill would also amend some provisions of the *University of Canberra Act 1989* to change aspects of the operations of the University.

The Committee comments as follows:

#### Paragraph (2) (c) (v) - Insufficient scrutiny of legislative power

The Committee notes that clause 15 of the Bill would amend section 42 of the *University of Canberra Act 1989* to the effect that while all statutes made by the University must be tabled in the Legislative Assembly, only a 'legislative statute' will be disallowable by the Assembly. A new subsection 42 (8) of the Act would define the term 'legislative statute'.

The Committee notes two problems with this approach. First, the definition will not be easy to apply, and appears to be deficient in its coverage in that a statute which imposed a penalty may not fall within its terms. Secondly, the difficulty of applying the definition may lead to the result that disputes may arise as to whether a particular statute is disallowable by the Assembly. To avoid these problems, it may be better to provide that all statutes made by the University will be disallowable by the Assembly.

#### **Water Resources Bill 1997**

This Bill would establish a scheme for the management of the water resources of the Territory. Key aspects of the scheme are:

- means for the determination of environmental guidelines;
- a system for the grant of water allocations;
- a system of licensing of those who hold a water allocation to take water from a waterway or to take groundwater;
- controls over the drilling of groundwater bores;
- provision for the Environmental Management Authority to administer the scheme.

The Committee comments as follows:

Paragraph (2) (c) (iii) - Non-reviewable decisions affecting rights, etc

While the Bill does contain (in clause 61) provision for review by the Administrative Appeals Tribunal of a number of decisions, a number of other decisions are not reviewable:

- decisions under clause 10 in respect of the inspection of documents;
- decisions under clause 14 to grant a water allocation (although in the case of the Minister, the Committee notes subclause 14 (7));
- decisions of the Minister under clause 20 to limit the taking of water (although the Committee notes subclause 20 (4), and perhaps by their nature external review of these decisions is not practicable);
- decisions under clause 24 to cancel a licence to take water (and compare to review of decisions under clause 21 to refuse to grant a licence);
- decisions under clause 27 to cancel a driller's licence (and compare to review of decisions under clause 25 to refuse to grant a licence);
- decisions under subclause 30 (6) to cancel a bore construction permit (and compare to review of decisions under subclause 30 (1) to refuse to grant a permit);
- directions given under clause 32;
- decisions under clause 34 to cancel a recharge licence (and compare to review of decisions under subclause 33 (2) to refuse to grant a permit);
- decisions under clause 46 to order the release of things seized by authorised officers; and
- the giving of notices under subclause 49 (2) requiring action to be taken in relation to damage to waterways.

Paragraph (2) (c) (i) - Undue trespass on personal rights and liberties

Failure to provide for compensation

While in one respect (see clauses 20 and 60) the Bill provides for the payment of compensation in circumstances where this appears just, there are other similar situations to which such an obligation does not arise:

- under subclause 11 (2), whether the Authority has entered land and carried out certain works;
- under subclause 28 (1), whether the Authority has required a bore driller to provide information and samples; and
- under subclause 46 (1), where, a thing having been seized, there has been no prosecution or the person has been found not guilty.

Failure to protect the privilege against self-incrimination

The Committee notes that under paragraph 42 (2) (a), a person is required to 'answer questions or furnish information' without the person being granted any kind of immunity with respect to information which might tend to incriminate the person. A court might not 'read in' such a limit between subclause 47 (2) might be taken to have afforded this kind of protection in respect of demands made by an authorised officer under subclause 47 (1). In other words, the fact that subclause 47 (2) does afford this

protection might be taken as an indication that no such protection is intended in respect of paragraph 42 (2) (a).

Possible drafting matter

The Committee queries whether it is intended that the word 'intention' should appear in subclause 43 (4).

## SUBORDINATE LEGISLATION

### Subordinate Legislation - No Comment

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

**Subordinate Law No 11 of 1997 being the Energy and Water (Regulation of Charges) Regulations (Amendment) made under the *Energy and Water Act 1997* amends regulation 18 and clarifies what shall be specified by the ACT Energy and Water Charges Commission when it gives directions concerning charges.**

**Subordinate Law No. 12 of 1997 being the Prohibited Weapons Regulations made under the *Prohibited Weapons Act 1996* provides for matters required or permitted to be prescribed in regulations under the Act. The regulations provide largely for certain exemptions from provisions of the Act.**

**Subordinate Law No. 14 of 1997 being the Dangerous Goods (Exemption) Regulations (Amendment) made under the *Dangerous Goods Act 1984* suspended the operation of regulation 46(2) of the Dangerous Goods Regulations to permit the sale of fireworks in the period leading up to the 1997 Queen's Birthday long weekend.**

**Subordinate Law No. 15 of 1997 being the Motor Traffic Regulations (Amendment) made under the *Motor Traffic Act 1936* amended regulation 32 of the Motor Traffic Regulations to double the number of demerit points in the period from 7 June 1997 to 9 June 1997.**

**Subordinate Law No. 17 of 1997 being the Motor Traffic Regulations (Amendment) made under the *Motor Traffic Act 1936* amended the Motor Traffic Regulations to increase penalties for parking and traffic infringements by 1.75%.**

**Subordinate Law No. 18 of 1997 being the Motor Vehicle (Third Party Insurance) Regulations (Amendment) made under the *Motor Traffic Act 1936* amended the Motor Vehicle (Third Party Insurance) Regulations to increase the premiums payable in respect of third party policies.**

**Subordinate Law No. 19 of 1997 being the Liquor Regulations (Amendment) made under the *Liquor Act 1975* amended the Liquor Regulations to extend the restricted trading hours trial.**

**Subordinate Law No. 20 of 1997 being the Supreme Court Rules (Amendment) made under the *Supreme Court Act 1933* amended the Supreme Court Rules in relation to certain writs of execution for the enforcement of judgments and orders of the court.**

Subordinate Law No. 21 of 1997 being the Supreme Court (Remuneration and Allowances) Regulations (Amendment) made under the *Supreme Court Act 1933* amends the Supreme Court (Remuneration and Allowances) Regulations in relation to the remuneration of an acting Judge of the Supreme Court.

Subordinate Law No. 22 of 1997 being the Bushfire Regulations (Amendment) made under the *Bushfire Act 1936* amends the Bushfire Regulations to prescribe the land uses that require Bushfire Control Management Plans.

Determination No. 108 of 1997 made under section 8 of the *Electoral Act 1992* fixes fees for obtaining documents in relation to the registration of political parties by the ACT Electoral Commission.

Determination No. 109 of 1997 made under section 8 of the *Electoral Act 1992* determines that the Commissioner under that Act may in defined circumstances remit or refund fees for certain documents where the latter are used for electoral education purposes.

Determination No. 116 of 1997 made under section 13 of the *Occupational Health and Safety Act 1989* appoints two specified persons as members of the Occupational Health and Safety Council for a period of 3 years.

Determination No. 117 of 1997 made under section 16 of the *Occupational Health and Safety Act 1989* revokes all previous instruments and appoints a specified person as the Chairperson of the Occupational Health and Safety Council and appoints a specified person as the Deputy Chairperson of the Occupational Health and Safety Council.

Determination No. 118 of 1997 made under section 22 of the *Occupational Health and Safety Act 1989* appoints a specified person as an acting member of the Occupational Health and Safety Council for a period of 3 years.

Determination No. 122 of 1997 made under section 274A of the *Land (Planning and Environment) Act 1991* appoints a specified person as the Commissioner for Land Planning for a period of 3 years.

Determination No. 158 of 1997 made under section 4 of the *Public Place Names Act 1989* determines the names of certain public places in the Division of Ngunnawal.

Determination No. 163 of 1997 made under section 55 of the *Psychologists Act 1994* revokes Determination No. 93 of 1995 and determines various fees payable under the Act.

Determination No. 169 of 1997 made under paragraph 25 (a) of the *Building Act 1972* gives notice of the preparation of the Building Code.

Determination No. 170 of 1997 made under paragraph 24 (2) (a) of the *Building Act 1972* revokes Determination No. 81 of 1997 and adopts the Building Code of Australia.

Determination No. 171 of 1997 made under paragraph 24 (2) (b) of the *Building Act 1972* is the Australian Capital Territory Appendix to the Building Code.

Determination No. 172 of 1997 made under subsection 9 (2) of the *Agents Act 1968* appoints a specified person as a member of the Agents Board of the Australian Capital Territory for 3 years.

Determination No. 173 of 1997 made under subsection 9 (2) of the *Agents Act 1968* appoints a specified person as a member of the Agents Board of the Australian Capital Territory for 3 years.

Determination No. 174 of 1997 made under section 40A of the *Dog Control Act 1975* revokes Determination No. 122 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 175 of 1997 made under section 83A of the *Nature Conservation Act 1980* revokes Determination No. 108 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 176 of 1997 made under section 7 of the *Pounds Act 1928* revokes Determination No. 113 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 177 of 1997 made under section 47A of the *Rabbit Destruction Act 1919* revokes Determination No. 8 of 1996 and determines fees payable for the grant of licences to keep live rabbits or hares.

Determination No. 178 of 1997 made under section 42 of the *Stock Act 1991* revokes Determination No. 112 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 179 of 1997 made under section 5A of the *Lakes Act 1976* revokes Determination No. 111 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 180 of 1997 made under section 63 of the *Animal Diseases Act 1993* revokes Determination No. 109 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 181 of 1997 made under section 110 of the *Animal Welfare Act 1992* revokes Determination No. 110 of 1996 and determines fees payable for the purposes of sections 26 and 53 of the Act.

Determination No. 182 of 1997 made under section 39 of the *Water Pollution Act 1984* revokes Determination No. 180 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 183 of 1997 made under section 47 of the *Ozone Protection Act 1991* revokes Determination No. 181 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 188 of 1997 made under section 4 of the *Public Place Names Act 1989* amends Determination No. 3 of 1991 relating to the names of certain public places in the Division of Gordon.

Determination No. 189 of 1997 made under section 4 of the *Public Place Names Act 1989* determines the name of a certain public place in the Division of Mitchell.

Determination No. 190 of 1997 made under section 4 of the *Public Place Names Act 1989* amends Determination No. 56 of 1992 relating to the name of certain public place in the Division of Melba.

Determination No. 191 of 1997 made under section 4 of the *Public Place Names Act 1989* determines the name of a certain public place in the Division of Weston.

Determination No. 192 of 1997 made under paragraph 9 (1) (a) of the *Bookmakers Act 1985* appoints two specified persons as members of the Bookmakers Licensing Committee until 27 July 1998.

Determination No. 200 of 1997 made under subsection 161 (5) of the *Land (Planning and Environment) Act 1991* determines criteria for the direct grant of a lease over land at local centres or adjacent to local centres.

Determination No. 201 of 1997 made under section 4 of the *Public Place Names Act 1989* determines the names of certain public places in the Division of Conder.

Determination No. 202 of 1997 made under subsection 139 (1) of the *Land Titles Act 1925* revokes Determination No. 147 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 203 of 1997 made under section 126 of the *Associations Incorporation Act 1991* revokes Determination No. 235 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 204 of 1997 made under section 4A of the *Business Names Act 1963* revokes Determination No. 236 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 205 of 1997 made under section 37 of the *Instruments Act 1933* revokes Determination No. 237 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 206 of 1997 made under section 8 of the *Registration of Deeds Act 1957* revokes Determination No. 238 of 1996 and determines fees payable for the purposes of the Act.

Determination No. 207 of 1997 made under regulation 31 of the *Adoption Regulations* revokes Determination No. 239 of 1996 and determines fees payable for the purpose of regulation 24 (3) (b).

Determination No. 225 of 1997 made under subsection 287 of the *Land (Planning and Environment) Act 1991* revokes Determination No. 153 of 1997 and determines fees payable under sections 217 and 226 of the Act.

Determination No. 226 of 1997 made under section 65 of the *Building Act 1972* revokes Determination No. 156 of 1997 and determines fees payable under sections 33, 34 and 35 of the Act.



**Determination No. 227 of 1997 made under subsection 229A (1) of the *Land (Planning and Environment) Act 1991* prescribes the classes of applications that are to be referred to the Commissioner in accordance with subsection 229A (3) of the Act.**

**Determination No. 228 of 1997 made under subsection 161 (5) of the *Land (Planning and Environment) Act 1991* determines criteria for the purpose of a direct grant of a Crown lease for any or all of commercial, industrial, residential or tourism purposes.**

#### Subordinate Legislation - Comments

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

**Subordinate Law No. 13 being the Firearms Regulations made under the Firearms Act 1996 provides for matters required or permitted to be prescribed in regulations under the Act. The regulations provide largely for certain exemptions from provisions of the Act.**

The Committee notes that regulation 5 (1) has the effect of amending subsection 18 (2) of the *Firearms Act 1996*. It is however noted that subsection 18 (2) confers power on the Executive to do so.

**Determination No. 164 of 1997 made under subsection 6 (2) of the *Legislative Assembly (Member's Staff) Act 1989* makes an amendment to a determination made by the Chief Minister on 10 July 1995, and concerns an allowance paid to Senior Officers Grade A, B and C.**

Instruments made under the *Legislative Assembly (Member's Staff) Act 1989* are allocated a number in the series of instruments published in the *Gazette* (and are referred to here as Determination No. 164 of 1997 and so forth).

It also appears that they are given another number in another series of instruments. This second series appears to be limited to those which are made under the *Legislative Assembly (Member's Staff) Act 1989*. The potential for confusion is made greater by reason, firstly, that the instruments in the second series may be called 'determinations' or 'arrangements', and, secondly, that the same number in the series appears to have been given to a number of different instruments. (It may be that there are two series of instruments made under the *Legislative Assembly (Member's Staff) Act 1989* - that is, 'determinations' and 'arrangements').

The Committee suggests that consideration be given to making it clear just what numbering system is being pursued in relation to instruments made under the *Legislative Assembly (Member's Staff) Act 1989*.

The Explanatory Memorandum appears to say that the determination of 10 July 1995 is Determination No. 1/1997. Determination No. 164 of 1997 is also styled as Determination No. 3/1997. Both Determination No. 1/1997 and Determination No. 3/1997 appear to be instruments in a series of those made under the *Legislative Assembly (Member's Staff) Act 1989*.

**Determination No. 165 of 1997 made under subsection 11 (2) of the *Legislative Assembly (Member's Staff) Act 1989* makes an amendment to a determination made by the Chief Minister on 10 July 1995, and concerns an allowance paid to Senior Officers Grade A, B and C.**

The Explanatory Memorandum appears to say that the determination of 10 July 1995 is Determination No. 1/1997. Determination No. 165 of 1997 is, like Determination No. 164, also styled as Determination No. 3/1997.

**Determination No. 166 of 1997 made under subsection 11 (2) of the *Legislative Assembly (Member's Staff) Act 1989* determines the terms and conditions of certain persons employed under Part III of the Act in relation to recreation leave.**

This determination is styled as Determination No. 2/1997.

**Determination No. 167 of 1997 made under subsection 5 (2) of the *Legislative Assembly (Member's Staff) Act 1989* makes arrangements for the employment of staff of Executive Members.**

This instrument is styled simply as No. 2/1997.

**Determination No. 168 of 1997 made under subsection 6 (2) of the *Legislative Assembly (Member's Staff) Act 1989* determines the terms and conditions of certain persons employed under Part II of the Act in relation to recreation leave and, replacing the "Contract of Employment" attached to Determination No. 1 of 1997, and provides the form of contract of employment to be used by Part II employees.**

This determination is, like Determination No. 166, also styled as Determination No. 2/1997. While it refers to a Determination No. 1 of 1997, it is not clear to just what document this refers.

**Determination No. 195 of 1997 made under subsection 5 (2) of the *Legislative Assembly (Member's Staff) Act 1989* revokes "arrangements approved by [the Chief Minister] dated 26 June 1997" and makes arrangements for the employment of staff by Members of the Legislative Assembly.**

These arrangements are referred to in the Explanatory Memorandum as "arrangements made in 1/1997". Determination No. 195 is also styled as No. 3/1997.

**Determination No. 196 of 1997 made under subsection 6 (2) of the *Legislative Assembly (Member's Staff) Act 1989* revokes "Schedule 2 of Determination No. 1 of 1997" and determines the terms and conditions of staff employed under the Act.**

Determination No. 196 is also styled as Determination No. 4/1997.

**Determination No. 197 of 1997 made under subsection 10 (2) of the *Legislative Assembly (Member's Staff) Act 1989* revokes 'Arrangements No. 2 of 1997' and makes arrangements for the employment of staff by Members of the Legislative Assembly.**

Determination No. 197 is also styled as No. 3/1997 and is headed "Arrangements ...".

**Determination No. 198 of 1997 made under subsection 11 (2) of the *Legislative Assembly (Member's Staff) Act 1989* revokes 'Schedule 2 of Determination No. 1 of 1997' and determines the terms and conditions of staff employed under the Act.**

Determination No. 198 is also styled as Determination No. 4/1997

**Determination No. 199 of 1997 made under subsection 10 (2) of the *Legislative Assembly (Member's Staff) Act 1989* varies the 'Schedule to Arrangements No. 3 of 1997' makes arrangements for the employment of staff by certain Non-Executive Members of the Legislative Assembly.**

Determination No. 199 is also styled as No. 4/1997 and is headed "Arrangements ...".

A handwritten signature in cursive script that reads "B Wood".

Bill Wood, MLA  
Chair

4 November 1997

