

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

REPORT NO. 16 OF 1993

5 October 1993

TERMS OF REFERENCE

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

MEMBERS OF THE COMMITTEE

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

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

ROLE OF THE COMMITTEE

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

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON
SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION

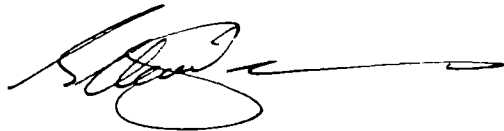
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Ms Roberta McRae, OAM, MLA
Speaker
Legislative Assembly
CANBERRA ACT 2601

Dear Ms McRae,

Please find enclosed a copy of Report No. 16 of 1993 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. Accordingly, I seek your approval to print and circulate Report No. 16 of 1993.

Yours sincerely



Ellnor Grassby, MLA
Chairperson

5 October 1993



Approved
Roberta McRae, OAM, MLA
Speaker

5 October 1993

BILLS

Bills Upon Which No Comment is Offered

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

Appropriation Bill 1993-94

This Bill provides for the issue and expenditure of public monies of the ACT for services provided in the financial year.

Bushfire (Amendment) Bill 1993

This Bill changes the name of the *Careless Use of Fire Act 1936* to the *Bushfire Act 1936*, enables a fire to be lit on a day of acute fire danger in circumstances prescribed by regulation, enables the Minister to place conditions on the lighting of such a fire and removes sexist language from the Act.

Business Franchise (Tobacco and Petroleum Products) (Amendment) Bill 1993

This Bill restricts the diesel fuel exemption scheme to the holders of a Commonwealth Health Care Card or a Commonwealth Pensioner Health Benefits Card.

Crimes (Amendment) Bill (No. 4) 1993

This Bill confers power on a police officer, who has reasonable grounds for suspecting that an offence is about to be, or is being, committed or that a person can assist an investigation, to require a person to state and, if needs be, provide documentation of his or her full name and residential address and permits such a person to require the police officer to state his or her surname, rank and badge number.

Land (Planning and Environment) (Amendment) Bill (No. 3) 1993

This Bill removes public works from the controlled activity provisions of the principal Act (but they remain a controlled activity under the *Buildings (Design and Siting) Act 1964*), provides that if a draft Plan variation is returned to the Authority by the Executive then the automatic public consultation requirements will not apply and that long term rural and concessional lessees may pay out their land rent commitments.

Motor Traffic (Amendment) Bill (No. 4) 1993

This Bill provides for a licensing scheme for restricted taxis and restricted hire vehicles and introduces measures to provide for priority for buses in certain situations by using new traffic light signals and give way rules for buses emerging from bus stops and bus bays.

Bill Upon Which Comment is Offered

The Committee has examined the following Bill and offers the following comment.

Stamp Duties and Taxes (Amendment) Bill (No. 2) 1993

This Bill imposes a new duty on certain conveyances and marketable securities and provides that, where an agreement for sale of a Crown lease or an estate in fee simple is rescinded, an application for a refund of duty must be made within 30 days of assessment unless the Commissioner is satisfied that the agreement was for the transfer of an estate in land intended to be used as principal place of residence of the transferee and that there is a *bona fide* reason for the agreement being rescinded or coming to an end.

No Right of Review

Section 28 of the Act provides for the refund of duties in certain circumstances if an agreement is not completed.

New subsection 28(3A) (inserted by clause 6 of the present Bill) provides that, if an agreement for transfer of a Crown lease or an estate in fee simple is rescinded or comes to an end, an application for a refund of stamp duty that has been paid must be made within 30 days of assessment.

New subsection 28(3)(B) (also inserted by clause 6 of the present Bill) confers a discretion on the Commissioner to determine a longer period than 30 days.

"if he or she is satisfied that -

- (a) the agreement was for the transfer of an estate in land intended to be used as the principal place of residence of the transferee; and
- (b) there is a *bona fide* reason for the agreement being rescinded or coming to an end."

The Committee notes that the Bill does not provide for the review of the exercise of this significant discretion by the ACT Administrative Appeals Tribunal. This contrasts with the position of the other discretions conferred on the Commissioner by section 28 of the *Stamp Duties and Taxes Act 1987*. Those discretions are specifically made reviewable by the Tribunal by section 65 of the Act.

SUBORDINATE LEGISLATION

Subordinate Legislation Upon Which no Comment is Offered

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

Subordinate Law No. 32 of 1993 being the *Boxing Control Regulations* made under section 21 of the *Boxing Control Act 1993* exempts two specified boxing contests from the provisions of the Act.

Subordinate Law No. 33 of 1993 being the *Physiotherapists Registration Regulations (Amendment)* made under section 45 of the *Physiotherapists Registration Act 1977* increases fees for initial and annual registration.

Subordinate Law No. 34 of 1993 being the *Motor Traffic Regulations (Amendment)* made under section 218 of the *Motor Traffic Act 1936* prescribes penalties for parking infringement notices and traffic infringement notices and increases penalties.

Determination No. 110 of 1993 made under section 24 of the *Building Act 1972* revokes the instrument of adoption of the Building Code dated 27 July 1992 and published in ACT Special Gazette No. 132 on 31 July 1992 and the notice of modification of the Building Code signed on 3 December 1992 and published in Special Gazette No. S235 of 16 December 1992 and adopts all of the provisions of the Building Code prepared and published by the Australian Uniform Building Regulations Co-ordinating Council except as modified by Schedule 2 to the determination.

Determination No. 119 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of a number of streets in the Division of Ngunnawal.

Determination No. 121 of 1993 made under subsection 87(1) of the *Occupational Health and Safety Act 1989* approves the adoption of the National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment.

Subordinate Legislation Upon Which Comment is Offered

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

Subordinate Law No. 35 of 1993 being the *Supreme Court Rules (Amendment)* made under section 36 of the *Supreme Court Act 1933* makes amendments consequential upon the amendments effected to the Corporations Law by the *Corporate Law Reform Act 1992* of the Commonwealth.

Is There Prejudicial Retrospectivity?

Rule 1(1) and Part II of this Subordinate Law commenced on the date of gazettal, which was 7 September 1993. However, rule 1(2) provides that:

"The remaining rules shall be taken to have commenced on 23 June 1993."

There is thus a period of retrospectivity of approximately two and a half months. The Subordinate Law makes very many changes of detail and substance to the Supreme Court Rules and perhaps a check needs to be made to see if any of these amendments prejudicially affect the rights of, or impose liabilities on, a person other than the Territory or a Territory authority.

Determination No. 111 of 1993 made under section 58 of the *Medical Practitioners Act 1930* revokes previous determinations made under specified provisions of the *Medical Practitioners Act 1930* and fixes new fees under the Act.

Reference to Revoked Determinations and the Relevant Gazettes Would Have Been Helpful but not Essential in This Case

It would have been helpful to have references to the revoked determinations and to the relevant Gazettes in which the determinations appeared. As the *Guidelines for the Preparation of Disallowable Instruments* issued by the Attorney-General's Department in May 1993 suggests (at page 11):

"This will enable a member of the Assembly or a member of the community who wishes to check back on the previous situation to do so easily."

In the present case these are not such important omissions as there is a very helpful and detailed explanatory statement. Although it, too, does not give the relevant details, it does outline the level of the changes in considerable detail.

This was necessary because not only were substantial amendments made to the Act by the *Medical Practitioners Registration (Amendment) Act 1993* but also the new look Act, under its revised name of the *Medical Practitioners Act 1930*, has been totally renumbered.

As a result it was difficult to compare the old and new fees. Indeed, as the explanatory statement indicates in paragraph 2, there may actually have been an hiatus in relation to fees for registering "eminent medical practitioners". However, the explanatory statement explains the relationship between the old and new statutory provisions, gives reasons for changes of fees and adds a helpful table comparing the old and new fees.

Determination No. 112 of 1993 made under section 60 of the *Nurses Act 1988* revokes previous determinations made under specified provisions of the Act and fixes new fees under those provisions of the Act.

Determination No. 113 of 1993 made under section 47AE of the *Optometrists Act 1956* revokes previous determinations made under specified provisions of the Act and fixes new fees under those provisions of the Act.

Determination No. 114 of 1993 made under subsection 73(1) of the *Dental Technicians and Dental Prosthetists Act 1988* revokes previous determinations made under specified provisions of the Act and fixes new fees under those provisions of the Act.

Determination No. 115 of 1993 made under section 42B of the *Veterinary Surgeons Registration Act 1965* revokes previous determinations made under specified provisions of the Act and fixes new fees under those provisions of the Act.

Determination No. 116 of 1993 made under section 50 of the *Pharmacy Act 1931* revokes previous determinations made under specified provisions of the Act and fixes new fees under those provisions of the Act.

Determination No. 117 of 1993 made under section 41 of the *Dentists Registration Act 1931* revokes previous determinations made under specified provisions of the Act and fixes new fees under those provisions of the Act.

Determination No. 118 of 1993 made under section 68 of the *Chiropractors Registration Act 1983* revokes previous determinations made under specified provisions of the Act and fixes new fees under those provisions of the Act.

References to Revoked Determinations and the Relevant Gazettes Would Have Been Helpful

In contrast to the position relating to the fee changes made under the *Medical Practitioners Act 1930* just dealt with, in all of the present determinations it would have been helpful if the *Guidelines* had been followed and references to the revoked determinations and *Gazettes* had been given.

Determination No. 120 of 1993 made under subsection 57(1) of the *Motor Vehicles (Dimensions and Mass) Act 1990* revokes determination No. 91 of 29 June 1993 published in *Gazette* No. S127 of 1 July 1993 and determines fees payable under the Act.

Prompt Carrying Out of a Correction

In its Report No. 10 of 1992 (at page 13) the Committee made some comments on last year's equivalent determination. Following a very helpful reply of 2 November 1992 (attached to Report No. 17 of 1992) from the Department of Urban Services on these matters, most of the matters raised were corrected in Determination No. 91 of 1993. A further comment on the outstanding issues was made in the Committee's Report No. 13 of 1993 (at page 15).

The present Determination corrects the remaining errors.

This very prompt action is appreciated by the Committee as is the comment in the explanatory statement acknowledging the part played by the Committee in getting the matters sorted out.

A handwritten signature in black ink, appearing to read 'Ellnor Grassby', followed by a long horizontal flourish.

Ellnor Grassby, MLA
Chairperson

5 October 1993

