

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

REPORT NO. 7 OF 1993

11 May 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; or
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
 - (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; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
 - (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 (Presiding Member)
Mr G. Humphries, MLA (Deputy Presiding Member)
Ms H. Szuty, MLA

Legal Advisor: Emeritus Professor D. Whalan
Acting Secretary: Ms M. Weeks
Deputy Secretary: Ms B. Irvin

ROLE OF THE COMMITTEE

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

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 11 of 1993 being the *Supreme Court Rules (Amendment)* made under section 36 of the *Supreme Court Act 1933* increases the scale of solicitors' costs by 3.13%.

Subordinate Law No. 14 of 1993 made under the *Drugs of Dependence Act 1989* being the *Drugs of Dependence Regulations* specifies the trafficable quantity and the commercial quantity for each drug of dependence or prohibited substance and prescribes those drugs of dependence whose manufacture is controlled by the provisions of the Act.

Subordinate Law No. 15 of 1993 made under the *Poisons and Drugs Act 1978* being the *Poisons and Drugs Regulations* prescribes institutions at which a program of research or education, which requires the possession of a Schedule 7 poison, may be conducted and prescribes the classes of persons, the purposes and the relevant poison that the prescribed classes of persons may possess.

Subordinate Law No. 16 of 1993 made under the *Buildings (Design and Siting) Act 1964* being the *Buildings (Design and Siting) Regulations (Amendment)* prescribes times required to be prescribed under Part VI of the *Land (Planning and Environment) Act 1991* and provides for exemptions from the requirement for public notification and third party appeals.

Subordinate Law No. 17 of 1993 being the *Finance Regulations (Amendment)* made under section 125 of the *Audit Act 1989* widens the scope of persons who may be authorised to approve expenditure.

Subordinate Law No. 18 of 1993 being the *Canberra Sewerage and Water Supply Regulations (Amendment)* made under section 82 of the *Electricity and Water Act 1988* clarifies the relationship between the National plumbing and drainage code (Australian Standard 3500) and the principal regulations, applies that Standard to the ACT water supply system as appropriate, lowers the minimum volume of water required to flush a water-closet pan in some circumstances and repeals a redundant regulation.

Subordinate Law No. 19 of 1993 being the *Prostitution Regulations* made under section 22 of the *Prostitution Act 1992* prescribes the Division of Fyshwick and the Division of Mitchell as locations where brothels may be operated.

Determination No. 31 of 1993 made under section 7 of the *Betting (Totalizator Administration) Act 1964* determines the proportions of amounts and fees to be paid to racing clubs.

Determination No. 32 of 1993 made under section 10 of the *Betting (Totalizator Administration) Act 1964* declares the ACT Racing Club Inc, the Canberra Greyhound Racing Club Inc and the Canberra Harness Racing Club Inc to be declared race clubs for the purposes of the Act.

Determination No. 33 of 1993 made under section 7 of the *Betting (Totalizator Administration) Act 1964* determines the percentage of bets that is to be set aside by the TAB for payment to declared race clubs at 3.5 %.

Determination No. 34 of 1993 made under section 111(1)(b) of the *Gas Act 1992* determines the percentage for the payment of levy payable by an authorised distributor of gas at 0.2%.

Determination No. 35 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the name, origin and significance of a street in the Division of Gordon.

Determination No. 36 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the name, origin and significance of a street in the Division of Ngunnawal.

Determination No. 37 of 1993 made under section 3F of the *Building and Services Act 1924* determines the fees to be paid for the disposal of wastes at ACT Government landfills.

Determination No. 38 of 1993 made under section 116 of the *Unit Titles Act 1970* revokes the existing determination and determines the fees payable for the purposes of the Act.

Subordinate Legislation Upon Which Comment is Offered

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

Subordinate Law No. 12 of 1993 being the *Animal Welfare Regulations* exempts specified electrical devices and animals from the prohibition on the use of electrical shock and sets up animal experimentation Ethics Committees.

Possible Need for a "Reasonable Excuse" Defence

Regulation 27 provides that records must be kept about the animals that are used in a program of research and teaching and that the Ethics Committee may require a licensee or an authorised person to produce these records for inspection.

Regulation 27(3) provides that a "licensee or authorised person shall not contravene a request made by the Ethics Committee" to produce the records for inspection.

Perhaps the clause should provide a "reasonable excuse" defence, in the same way that regulation 23 very properly provides that the Ethics Committee may impose conditions on approvals which are desirable "on reasonable grounds".

If there is no such defence and records are destroyed by fire or other accident or occurrence beyond the control of the licensee or authorised person, the licensee or authorised person could be innocent but nevertheless liable.

GOVERNMENT RESPONSES

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

- . Radiation (Amendment) Bill 1993 (Report No. 6 of 1993).
- . Determination No. 174 made under subsection 87(1) of the *Occupational Health and Safety Act 1989* (Report No. 23 of 1992).
- . Determinations Nos 165 and 166 made under subsection 27(1) of the *Building Act 1972* (Report No. 21 of 1992).

Copies of the responses are attached.

The Committee thanks the Minister for Health and the Attorney-General for their positive responses.

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

Ellnor Grassby, MLA
Presiding Member

11 May 1993

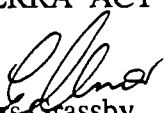


A.C.T. GOVERNMENT

WAYNE BERRY MLA
DEPUTY CHIEF MINISTER
MINISTER FOR HEALTH
MINISTER FOR SPORT

1 Constitution Ave Canberra ACT 2601

Mrs Ellnor Grassby MLA
Presiding Member
Standing Committee on the Scrutiny
of Bills and Subordinate Legislation
ACT Legislative Assembly
PO Box 1020
CANBERRA ACT 2601

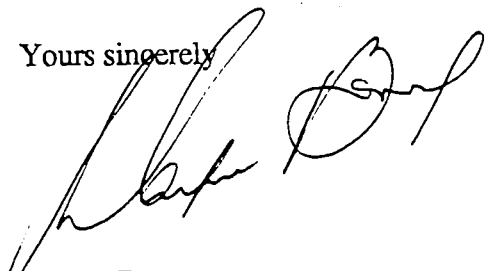

Dear Mrs Grassby

I refer to Report No 6 of 1993 of the Standing Committee on the Scrutiny of Bills and Subordinate Legislation which comments on the Radiation (Amendment) Bill 1993.

As the issues raised have legal implications they will be examined by the Attorney-General, Mr Terry Connolly, MLA.

Mr Connolly will respond to the Report when the issues have been investigated.

Yours sincerely


Wayne Berry

20 APR 1993



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

ATTORNEY GENERAL

1 Constitution Ave, Canberra ACT 2601

Phone (06) 20 50011

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


Dear Mrs Grassby

The Standing Committee on Scrutiny of Bills and Subordinate Legislation, in its Report No. 23 of 1992, commented on various aspects of Determination No. 174 made under subsection 87(1) of the *Occupational Health and Safety Act 1989*. This determination approved the Australian Capital Territory Demolition Code of Practice.

In Report No. 23 of 1992, the Committee suggested that a number of matters in the Demolition Code of Practice should be checked. In response to the Committee's comments, the Demolition Code of Practice has been closely examined and appropriate changes identified. These changes have been incorporated in a revised second edition of the Demolition Code of Practice.

The first of the matters that the Committee raised was the use of various terms to refer to "Regulations made under the ACT Scaffolding and Lifts Act 1957". The regulations that are being referred to are the Regulations under the Scaffolding and Lifts Act, 1912-1948 (New South Wales) as applied and modified in the Australian Capital Territory by the *Scaffolding and Lifts Act 1957*. The revised Demolition Code of Practice refers consistently to these Regulations as the "Scaffolding and Lifts Regulations".

Where there are references in the Demolition Code of Practice to specific provisions of the Scaffolding and Lifts Regulations these have been checked and, where necessary, appropriate changes have been made.

The Committee also commented on various references to the "ACT Builders Licensing Board" and the fact that there is no such Board established by Territory legislation. The Committee is correct in identifying the Building Controller as being responsible for building licences under the *Building Act 1972*. The revised Demolition Code of Practice refers consistently to the Building Controller and to ACT Building Control.

The Committee identified several references in the Demolition Code of Practice to various statutory provisions that were incorrect. All of these references have been checked and the revised Demolition Code of Practice contains corrected references to the relevant statutory provisions.

In its report No. 21 of 1992, the Committee commented on two aspects of Determination No. 166 of 1992 and one aspect of Determination No. 165 of 1992. Both of these Determinations were made under subsection 27(1) of the *Building Act 1972* and exempted the Public Works and Services Group from complying with specified provisions of the Building Code.

Firstly, the Committee questioned the inconsistency between Determination No. 166 of 1992 and its Explanatory Statement in that the Explanatory Statement referred to an exemption from clause ACT D2. 103 but this was not in the Determination itself. The Committee asked that a check be made to see whether this was an omission or whether it was decided not to include this exemption in the final determination. I am advised that the omission of clause ACT D2. 103 from the Schedule to the Determination was unintentional. The Schedule should have included ACT D2.103 as a clause from which the exemption was given.

Secondly, the Committee raised questions concerning two entries in the Schedule to Determination No. 166 of 1992.

The first of these relates to a reference in the Schedule to "Table E2.3" in the Building Code of Australia. As the Committee noted, there is no such item in the Building Code of Australia and this reference should not have appeared in the Schedule. Reference to "Table E2.3" should be deleted and replaced with a reference to "Table 2.1".

The second question raised by the Committee concerns reference in the Schedule to Determination No. 166 to "E1.7" and the fact that Instrument No. 12 of 1992 published in Gazette No. S24 modified the Building Code of Australia by stating "Delete E1.7 and insert ACT E1.7 as follows".

Section A1 of the Building Code of Australia deals with interpretation and clause A1.5 refers to the application of the BCA to a particular State or Territory. It states that for application within a particular State or Territory, the BCA comprises-

- (a) sections A to H; and
- (b) the variations, deletions and additions to sections A to H applicable to that State or Territory specified in the relevant Appendix.

Reference in the Schedule to "E1.7" would therefore automatically invoke "ACT E1.7" which is the Appendix that supersedes E1.7 in the Building Code of Australia when applied in the ACT. From the point of view of consistency and to avoid possible confusion however, the reference should be changed to "ACT E1.7".

A further determination is being prepared which will revoke Determination No. 166 and substitute a new Determination with an appropriately amended Schedule as indicated above.

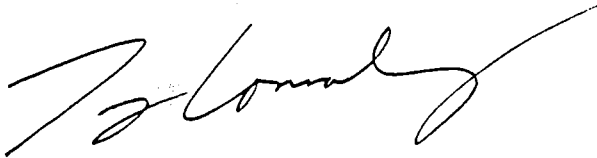
Thirdly, the Committee sought to confirm that the exemptions being proposed in Determination No. 165 of 1992 had the support of Public Works and Services, the Fire Brigade, the Building Controller and the Project Director with the Public Hospitals

Redevelopment Project (in a manner similar to that stated in the Explanatory Statement which accompanied Determination No. 166 of 1992).

I am advised that the written confirmation of support for the exemptions in Determination No. 165 of 1992 was received from the agencies mentioned in the previous paragraph prior to the Gazettal of the Determination.

I trust that this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Terry Connolly', with a long, sweeping horizontal stroke extending to the right.

Terry Connolly

30 APR 1993

