

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

REPORT NO. 19 of 1991

19 November 1991

**STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION**

MEMBERS OF THE COMMITTEE

Mrs E Grassby, MLA (Presiding Member)
Mr B. Collaery, MLA
Mr B Stefaniak, MLA

Secretary: Mr T Duncan
Legal Advisor: Emeritus Professor D Whalan

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 (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; and
 - (d) contains matter which in the opinion of the committee should properly be dealt with in an Act of the Legislative Assembly;
- (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) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make 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;
- (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.

ROLE OF THE COMMITTEE

The Committee examines all Bills and delegated 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 delegated legislation that comply with the high ideals set out in the Terms of Reference.

SUBORDINATE LEGISLATION

(a) No Comment Offered.

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

ACT Regulations 1991 No. 26 being Stock Diseases Regulations (Amendment) identify and prescribe the laws of the States and Territories that provide for a uniform system of stock tagging.

ACT Regulations 1991 No. 28 being Trade Measurement Miscellaneous Regulations prescribe units of measurement for determining the price of certain liquors and the units of measurement to be used for a number of articles when exposed for sale.

ACT Regulations 1991 No. 29 being Trade Measurement (Weighbridges) Regulations prescribe requirements for the marketing of information on pre-packaged goods.

(b) Subordinate Legislation upon which Comment is Offered

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

ACT Regulations 1991 No. 27 being Trade Measurement (Measurement Instruments) Regulations set out the requirements relating to verification and re-verification of measurement instruments, batch testing and glass measures, licences and related matters.

(i) Strict Liability Offences

There is a number of strict liability offences created by the regulations. Perhaps arguments can be made that most of these provisions are justified. However, Regulation 24 could do injustice if it remains a strict liability clause instead of having a reasonable excuse provision included. Regulation 24 provides as follows:

- "24. If a measuring instrument is used for trade in order to measure a liquid, the person in possession of the measuring instrument or who makes it available for use for trade is guilty of an offence unless -
- (a) the measuring instrument is, at least to the extent necessary for the purpose of permitting proper observation of its operation, artificially illuminated between sunset and sunrise and at any other time when illumination is necessary for that purpose;
 - (b) in the case of a flowmeter fitted with a zero re-setting device - the flowmeter is re-set to zero before the commencement of a measurement to be made by its use; and
 - (c) in the case of a sale of liquid measured by a driveway flowmeter - the existing readings of volume, price per litre and price are not erased until the sale has been completed.

Penalty: \$2,000" (Emphasis added.)

It is noted that, although the person who makes it available has parted with possession, it is still possible for that person to commit an offence.

The Committee offers the following illustration.

With paragraph (a), the sun may have long ago set and the person who supplied the instrument for trade is happily asleep in bed, dreaming the blissful sleep of a person who diligently checked that very day that the artificial illumination was operating perfectly. However, the person in possession, who runs a 24 hour service, is a bit sloppy and when the illumination lights blow at 2 a.m. says:

"I'll fix it in the morning. I'll just use this good torch of mine to read the measurement. It's got one of Jacko's Energizers in it, so she'll be right, mate.

It seems unfair that the sleeping innocent is also committing an offence.

Even more likely is the possibility that a person in possession may not put the flowmeter back to zero (paragraph (b))

or erase things before everything has been completed (paragraph (c)). Yet an innocent supplier also commits an offence in these instances.

ACT Regulations 1991 No. 30 being Trade Measurement (Weighbridges) Regulations prescribe requirements for weighbridges used for trade and matters relating to certificates of suitability of weighbridges, weighbridge licences and related matters.

Strict Liability Offences

In these regulations, too, there is a number of strict liability offences created for which arguments can perhaps be made that some are justified. However, Regulation 19 provides as follows:

"19, If a certificate of suitability issued to a licensee is cancelled, the licensee (whether or not still holding a licence) is guilty of an offence unless the certificate is delivered to the licensing authority not later than 7 days after its cancellation.

Penalty: \$200."

Members of the Assembly will recall that when the Committee reported on the original Weapons Bill 1990, it asked questions in its Report No. 2 of 1990 about a number of strict liability offences, including several dealing with the return of licences. There was then a very positive response (the response is attached to the Committee's Report No. 6 of 1990) and all sections in the Weapons Act 1991 that are similar to the present regulation contain "without reasonable excuse" provisions.

As those provisions were included in a Bill that was subject to direct scrutiny and debate in the Assembly, it would seem appropriate that delegated legislation that is made under authority conferred by the Assembly should comply with the same standards.

GOVERNMENT RESPONSES

The Committee has received a number of responses to comment made in earlier reports, which are listed accordingly:

Determinations Nos. 92 and 96 of 1991 made under the Public Place Names Act 1989 (Report No. 17 of 1991)

- . Land (Planning and Environment) Bill 1991 (Report No. 16 of 1991)
- . Determination No. 83 of 1991 made under the Magistrates Court Act 1930, Determination No. 84 of 1991 made under the Magistrates Court (Civil Jurisdiction) Act 1982 and Determination No. 85 of 1991, made under the Small Claims Act 1974 (Report No. 17).

Copies of the responses are attached. The Committee thanks the Attorney-General for his positive response.



Ellnor Grassby
Presiding Member



19 November 1990



ACT GOVERNMENT

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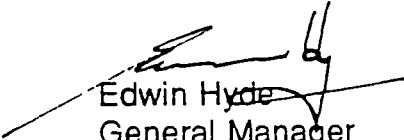
Dear Mr Duncan

In its Report No. 17 1991, the Legislative Assembly Standing Committee on Scrutiny of Bills and Subordinate Legislation drew attention to small errors in Determination No. 92 of 1991 made under the Place Names Act 1989.

The Committee made comments in relation to two typographical errors that occurred in the transcription. As the Committee notes, these errors do not affect the validity of the Determination. An amending Determination, with an Explanatory Statement, will be tabled addressing these errors in due course.

I thank the Committee for drawing these errors to my attention and I apologise for the inconvenience caused. I have now taken steps to implement a quality control process that will prevent similar errors occurring in the future.

Yours sincerely



Edwin Hyde
General Manager
Land Information Office

8 November 1991

cc. Mr R. Jones
Director, Legislation
Government Law Office



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Dear Mr Duncan

An article on Page 20 of the Canberra Times, dated 6 November describes the possibility that the Divisional Names in Gungahlin may be invalid.

Determination Number 96 of 1991 for the Divisional Names of Gungahlin was made by the Delegate of the Minister on 14 October 1991. Unfortunately a typographical error which indicated an incorrect section number of the Act was undetected at that time and it was transcribed incorrectly into the Gazette on 18 October.

The error was detected in this office on 27 October, and advice was sought from the Government Law Office on 28 October. Written advice from that Office, dated 29 October, says in part "In the circumstances where there is no ambiguity about the intention in the notice of Determination, my view is that the wrong use of the section in the Act is not going to effect the validity of the Determination".

With this advice the decision was made not to take the matter any further.

A report was made to the Minister for the Environment, Land and Planning on the 6 November and a possible Assembly question brief has been prepared for the Chief Minister.

This error and some other typographical errors occurred approximately at the same timeframe. I and the staff of the Land Information Office are extremely embarrassed by these errors and are keenly aware of the inconvenience caused by them.

New quality control has now been put in place and I am determined that the errors shall cease.

Yours sincerely



Edwin Hyde
General Manager
Land Information Office

8 November 1991

cc. Mr R. Jones
Director, Legislation
Government Law Office



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

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Ellnor
Dear Mrs Grassby

Lee
In Report No 16 of 1991 the Committee commented on 5 issues in respect of the Land (Planning and Environment) Bill 1991 (the Bill).

(i) USE OF THE TERM 'TERRITORY PLAN'

The Committee commented that although the term 'Plan' is defined in clause 4 of the Bill to mean the 'Territory Plan as in effect from time to time under this Act' the term 'Territory Plan' is used in several places in the Bill. Following consideration of the provisions where the term 'Territory Plan' occurs the Government will introduce an amendment when the Bill is debated to omit the word 'Territory' from the following provisions:

- . subclause 158(1);
- . paragraph 164(4)(a);
- . paragraph 164(4)(c);
- . paragraph 191(b);
- . subclause 196(1); and
- . Schedule 2, Item 4.

(ii) CONSENT TO ENTRY

The Committee commented that subclause 151(2) does not accord with the usual provision relating to the consent to entry of a place. The Committee also pointed out that subclause 265(2) is an example of the usual formula. I agree that provisions in relation to consent to entry should, where possible, follow a standard model and the Government will introduce an amendment to clause 151 when the Bill is debated to ensure that clause 151 is consistent with the usual consent to entry formula.

(iii) SELF INCRIMINATION

Subclause 267(1) empowers an inspector to require a person to give information, produce documents or answer questions. Subclause 267(2) creates an offence of failing, without reasonable excuse, to comply with such a requirement of an inspector. The Committee asked whether the offence created by subclause 267(2) provides protection against self-incrimination. I certainly agree that the common law privilege against self-incrimination should be retained unless there are cogent reasons for displacing that privilege. However, the inclusion of the proviso 'without reasonable excuse' in subclause 267(2) does preserve the common law privilege against self-incrimination.

(iv) INCORRECT REFERENCES

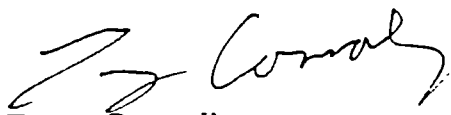
The Committee drew attention to possible incorrect references in clause 269 and 270. The Committee is correct and the Government will introduce an amendment to the Bill during the debate to correct the references.

(v) INCONSISTENCY OF LANGUAGE

The Committee has identified an inconsistency between paragraph 271(4)(e) which provides that a search warrant issued under subclause 271(2) shall cease to have effect after 1 month and paragraph 152(4)(e) which provides that a search warrant issued under subclause 152(2) would cease to have effect on a specified date that is not later than 28 days after the date of issue of the warrant. The Committee suggested that although '1 month' is probably the usual formula it might be advantageous to use the formula 'not later than 28 days'. I agree with the comment of the Committee and the Government will introduce an amendment during the debate on the Bill to alter paragraph 271(4)(e) to specify that a warrant shall cease to have effect on a date being a date not later than 28 days after the date of issue of the warrant.

I trust this advice will be of assistance to the Committee.

Yours sincerely


Terry Connolly

- 4 NOV 1991



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Dear Mrs Grassby


In its Report No 17 of 1991 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on Determination No 83 of 1991 made under the *Magistrates Court Act 1930*, Determination No 84 made under the *Magistrates Court (Civil Jurisdiction) Act 1982* and Determination No 85 of 1991 made under the *Small Claims Act 1974* (the Determinations) which provided for the determination of fees under those Acts.

The Committee noted that the Explanatory Statements did not indicate whether the fees determined were the same as those under the old provisions or whether there were any increases or changes to the fees.

The Committee also noted that there was no indication in the Explanatory Statements as to when the fees determined were to come into effect and sought confirmation as to the intention in relation to the commencement of the Determinations.

The above Acts were amended by the *Magistrates Court (Amendment) Act 1991*, *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1991* and the *Small Claims (Amendment) Act 1991* (the Amending Acts) to provide, *inter alia*, for the determination of fees. The setting of fees by Determination provides a less costly and more flexible means for the setting of fees. The Rules and Regulations which had set fees for the purposes of the Acts were repealed. The Determinations, made as a consequence of the amendments to the Acts, implemented no changes to the fees—

I agree that the Statement should have said this.

Section 5 of the *Subordinate Laws Act 1989* was relied upon for the making of the Determinations prior to the commencement of the operative sections of the Amending Acts. It was intended that the Determinations come into effect on the commencement of the operative provisions of the Amending Acts. The Determinations and the Amending Acts were notified in the *Gazette* on 25 September 1991.

I thank the Committee for bringing these matters to my notice and attach amended Explanatory Statements for the Determinations.

I trust that the foregoing assists the Committee.

Yours sincerely



Terry Connolly

- 5 NOV 1991

AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT ACT 1930

DETERMINATION OF FEES

NO OF 1991

EXPLANATORY STATEMENT

This instrument Determines fees payable to the Magistrates Court under the *Magistrates Court Act 1930* (the Principal Act).

This Determination comes into effect on the day on which sections 4 to 10 inclusive of the *Magistrates Court (Amendment) Act 1991* commence.

The *Magistrates Court (Amendment) Act 1991* amended the Principal Act to omit references to the prescription of fees and provided for the Minister to determine fees for the purposes of the Act. The Magistrates Court Rules (Amendment) 1991 repealed Rule 68 and the Second Schedule to the Magistrates Court Rules which prescribed fees for the purposes of the Principal Act.

The relevant provisions in the Principal Act which provided for fees were:-

- . section 144 of the *Magistrates Court Act 1930* which provided for the prescription of a fee for an application for a copy of an information, a minute or memorandum of a conviction or order, or a formal conviction or order; and

- . section 245 of the *Magistrates Court Act 1930* which provided for the prescription of fees by rules or regulations under the Principal Act.

Fees were prescribed under the Magistrates Court Rules for -

- . the issue of a summons under subsection 37(1);
- . an application for a copy or copies of documents; and
- . for the fees payable for transcripts.

This Determination replaces the above provisions. There are no changes to the fees.

Details of the fees determined are in the Attachment.

Authorised by the Attorney General

ATTACHMENT

ITEM	MATTER IN RESPECT OF WHICH A FEE IS PAYABLE	FEE PAYABLE (IN \$)
1.	For the issue of a summons under subsection 37(1):	25.00
2.	For the purposes of subsection 144(1):	19.00
3.	On each request, not being an application under subsection 255C(1):	
	(a) for the making of a request for a copy or copies of a document or documents:	0.60
	(b) for each page included in a copy furnished in accordance with a request referred to in Item 3(a):	0.25
4.	For the purpose of subsection 255C(3), the amount of the fee is to be calculated at the following rate: -	
	(a) for each page of a transcript:	8.00
	(b) for each page of a copy of the transcript:	0.15

AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT (CIVIL JURISDICTION) ACT 1982

DETERMINATION OF FEES

NO OF 1991

EXPLANATORY STATEMENT

This instrument Determines fees payable to the Magistrates Court under the *Magistrates Court (Civil Jurisdiction) Act 1982* (the Principal Act).

This Determination comes into effect on the day on which sections 4 to 12 inclusive of the *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1991* commence.

The *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1991* amended the Principal Act by omitting references to a prescribed fee and substituting references to determined fees, repealing the *Magistrates Court (Civil Jurisdiction) (Fees) Regulations* and providing for the Minister to determine fees for the purposes of the Act.

The *Magistrates Court (Civil Jurisdiction) (Fees) Regulations* set fees for the following purposes:-

- . on filing an originating process;
- . on an application for a document or documents;
- . for each page of a copy applied for;
- . for service by post;
- . for service other than by post;
- . for the execution of a warrant; and
- . for the entitlement to inspect at any time during a financial year a register of the court.

This Determination replaces the provisions of the *Magistrates Court (Civil Jurisdiction) (Fees) Regulations*. There are no changes to the fees.

Details of the fees determines are in the Attachment.

Authorised by the Attorney General.

ATTACHMENT

ITEM	MATTER IN RESPECT OF WHICH A FEE IS PAYABLE	FEE PAYABLE (IN \$)
1.	For the purposes of the institution of proceedings:-	
	(a) where the amount in dispute is less than \$10,000:	55.00
	(b) where the amount in dispute is \$10,000 or more:	220.00
	(c) for an application to the Court where no amount of money is in dispute:	55.00
2.	For serving, and for each attempt to serve, originating process by post:	5.50
3.	For serving, and for each attempt to serve, otherwise than by post, originating process, a summons, a notice or other process issued under the Act:	25.00
4.	For executing, and for each attempt to execute, a warrant issued in connection with proceedings:	25.00
5.	On an application under subsection 306(1):-	
	(a) for the making of a request for a copy or copies of a document or documents:	00.60
	(b) for each page included in a copy furnished in accordance with an application referred to in Item 5(a):	00.25

ITEM	MATTER IN RESPECT OF WHICH A FEE IS PAYABLE	FEE PAYABLE (IN \$)
6.	For the entitlement to inspect, under section 306A, a document or documents in a register of the Court that contains or contain particulars of:- (a) a judgment that has been entered pursuant to section 41; or (b) the setting aside of such a judgment ordered pursuant to section 219, not being a register in relation to the inspection of which the relevant person has paid a fee under Item 7:	5.50
7.	For the entitlement to inspect at any time, under section 306A, a register of the Court that contains particulars of:- (a) a judgment that has been entered pursuant to section 41; or (b) the setting aside of such a judgment ordered pursuant to section 219, during a particular financial year:	2,700.00

AUSTRALIAN CAPITAL TERRITORY

SMALL CLAIMS (AMENDMENT) ACT 1974

DETERMINATION OF FEES

NO OF 1991

EXPLANATORY STATEMENT

This instrument Determines fees for the purposes of the *Small Claims Act 1974* (the Principal Act).

This Determination comes into effect on the day on which sections 4 to 7 inclusive of the *Small Claims (Amendment) Act 1991* commence.

The *Small Claims (Amendment) Act 1991* amended the Principal Act by repealing the Small Claims Regulations and providing for the Minister to determine fees for the purposes of the Act.

The Small Claims Regulations set fees for the filing of an originating process in the Small Claims Court.

This Determination replaces the provisions of the Small Claims Regulations. There are no changes to the fees.

Details of the fees Determined are: -

(a) in the case of proceedings in respect of an amount not exceeding \$2,000:	25.00
(b) in any other case:	55.00

Authorised by the Attorney General.