

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

REPORT NO. 9 OF 1994

14 June 1994

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, AM
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.

BILL

Bill Upon Which Comment is Offered

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

Medical Treatment Bill 1994

This Bill makes provision for the withholding or withdrawal of medical treatment.

A Possibly Incorrect Cross-Reference

The definition of "direction" in clause 3 refers to "a written or oral direction made in accordance with Division 1 of Part 1". Directions are dealt with in Division 1 of Part II, so perhaps the reference in the definition should be to "Division 1 of Part II".

Are the Witnessing Provisions Deliberately Different?

Clause 7 provides that, for a written direction to be valid, the following witnessing requirements must be adhered to:

"the signature is witnessed by 2 persons, and

the witnesses each sign the direction in the presence of each other and the person making the direction."

Clause 12(2) provides that, for a power of attorney to be valid, these witnessing requirements must be followed:

"that signature is witnessed by 2 persons, neither of whom is the grantee, or a relative of the grantee."

The Committee makes two comments.

First, it is noted that, under clause 12(2) relatives must not be witnesses to the execution of the power of attorney. In contrast, under clause 7, one or both of the witnesses to a direction relating to the refusal or withdrawal of medical treatment could be a relative or relatives of the person giving the direction.

Secondly, clause 7 requires the witnesses to sign in the presence of each other and the person making the direction. These same strict requirements do not need to be followed in the case of a power of attorney under clause 12.

It could be that the differences are deliberate, but perhaps the matters could be considered.

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. 15 of 1994 being the *Canberra Institute of Technology Regulations* made under the *Canberra Institute of Technology Act 1987* provides that contracts up to the value of \$500,000 may be entered into by the institution without the Minister's approval.

Subordinate Law No. 17 of 1994 being the *Supreme Court Rules (Amendment)* increases the scale of costs chargeable by solicitors by 4.35 %.

Instrument No. 24 of 1994 made under section 24A of the *Air Pollution Act 1984* authorises a specified person to be a person who may issue a certificate of compliance in respect of solid fuel-burning equipment.

Instrument No. 25 of 1994 being an Instrument of Approval made under section 87 of the *Occupational Health and Safety Act 1989* approves the Code of Practice for Smoke Free Workplaces.

Determination of Fees No. 30 of 1994 made under section 120A of the *Agents Act 1968* revokes Determination No. 53 of 1993 and fixes new fees payable for the issue and renewal of licence and registration fees payable by real estate agents, stock and station agents, business agents and travel agents.

Instrument No. 31 of 1994 being an *Instrument of Approval* made under section 87 of the *Occupational Health and Safety Act 1989* approves the Code of Practice for ACT First Aid in the Workplace.

Subordinate Legislation Upon Which Comment is Offered

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

Determination No. 26 of 1994 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of public places that are Territory Land in the Division of Nicholls.

Some Errors and Other Matters That Need to be Checked

There seem to be some errors and perhaps checks should be made of other matters.

First, Gordon Close which is named after Graham Gordon, OAM, contains the following passage:

"Although his consuming passion was Rugby Union for over 40 years."

This is not a complete sentence.

Secondly, Barclay Place is named after three Tasmanian sisters, Grace Barclay (1888-1979), Lillias Barclay (1888-1973) and Ethel Barclay (1892-1971). The birth dates of Grace and Lillias may be correct, if either they were twins (which is not mentioned in the information) or if they were born very close together. But it might be worth checking this. In addition, the heading of the instrument informs us that the public places in the present determination are named after sportsmen and sportswomen and, under the "Significance" heading, the three Barclay sisters are described as "Golfer's". The same incorrect use occurs later in the entry, where it is said that:

"They were also delegate's of the Australian Ladies Golf Union."

Finally, Ponsford Place is named after Bill Ponsford (1900-1991). He is correctly described as "Test Cricketer", but the next sentence reads as follows:

"Played 29 test matches and scored 2,122 runs including seven centuries at the Oval in 1934."

This information needs to be checked and corrected, as it appears to be inaccurate.

Determination No. 32 of 1994 made under section 4 of the *Motor Omnibus Services Act 1955* revokes Determination No. 178 of 1993.

In its Report No. 1 of 1994 the Committee drew attention to the fact that there seemed to be two Determinations numbered 178 of 1993, with one fixing fees under the *Building and Services Act 1924* and one fixing fees under the *Motor Omnibus Services Act 1955*. There were two other duplications involved: the contents of the one made under the Building and Services Act was a repeat of Determination No. 177 of 1993 and the contents of the one made under the Motor Omnibus Services Act was repeated in Determination No. 179 of 1993.

The Committee received a helpful letter of 5 April 1994 from the Attorney-General, Mr Connolly, who confirmed that the Committee was correct and said that both Determinations numbered 178 would be revoked, which would leave in operation Determinations Nos 177 (for building and services fees) and 179 (for motor omnibus fees).

The present Determination revokes the Determination No. 178 that fixed fees under the *Motor Omnibus Services Act 1955* and thus fulfils one undertaking given to the Committee very helpfully.

Has the other Determination No. 178 made under the *Building and Services Act 1924* been revoked yet?

References to What is Being Revoked Would be Helpful

Determination No. 27 of 1994 made under section 80 of the *Electricity and Water Act 1988* revokes some determinations and fixes fees for permits, plans and inspections relating to plumbing, drainage and water.

Determination No. 28 of 1994 made under section 33a of the *Water Rates Act 1959* revokes a determination and fixes fees for reading a water meter, testing a meter and giving a certificate showing the amount of rates payable.

Determination No. 29 of 1994 made under subsection 48(1A) of the *Electricity and Water Act 1988* determines the basic water allowance from 1 July 1994 as 1 kilolitre.

The Guidelines for the Preparation of Disallowable Instruments issued by the Attorney-General's Department in May 1993 give this very helpful advice:

"It is important that you clearly identify the previous instrument (if there is one) which the new instrument replaces. Use the number inserted by the Gazette Officer and identify the *Gazette* in which the previous instrument was notified.

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.

A suitable form of words to ensure that a previous instrument is fully identified is provided by the following example -

'Under section 10 of the *Motor Traffic Act 1936*, I revoke Determination No. 3 of 1993 dated 4 February 1993 and notified in ACT Gazette No. 5 of 8 February 1993 and determine ...'.

Unfortunately, the advice given in that passage is not followed in the above three Determinations.

Determinations Nos 27 and 28 of 1994

In Determinations Nos 27 and 28 no numbers are given of the Determinations that are being revoked. The relevant Explanatory Statements are also of no help on this point, although they do give helpful information about the levels of existing and new fees and the percentages of increases.

Determination No. 27 says that the present determination:

"revokes the determination for [sic] fees made by instrument [sic] published in the Australian Capital Territory Gazettes Nos 21, 27 May 1992 and S76, Friday 7 May 1993 ...".

Determination No. 28 says that the present determination:

"revokes the determination of fees relating to Section 18, subsection 21(1) and Section 20B of the Water Rates Act 1959 published in the Australian Capital Territory Gazette No. 21, 7 May 1992 ...".

ACTEW has 10 numbered determinations in *Gazette* No. 21 of 1992 and has 9 numbered determinations in *Gazette* No. S76 of 1993. So there are 19 possible determinations that may or may not be revoked by Determinations Nos 27 and 28.

A sufficiently determined person can perhaps discover which of the 19 are intended to be revoked. However, uncertainty could possibly remain in the person's mind, as the present Determinations do not definitely identify which, and how many, of the 19 are intended to be revoked. In contrast, if the Guidelines were followed, it would take a Member of the Assembly, or a member of the community who was not familiar with the *Gazette*, only a very short time to find and identify the Determinations that are intended to be revoked.

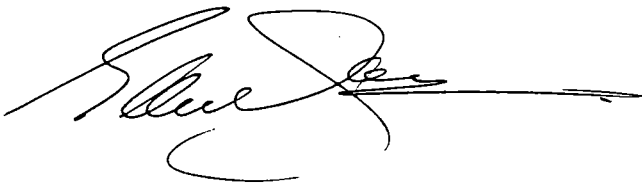
Could the Committee be advised as to which of the 19 Determinations are, in fact, intended to be revoked? A search suggests that they may possibly be only Determinations Nos 53 and 54 of 1992 and Determination No. 39 of 1993, but, given the sweeping nature of Determination No. 29 of 1994, confirmation would be helpful.

Determination No. 29 of 1994

The Committee notes that Determination No. 29 of 1994 does not revoke any previous determination. The Explanatory Statement does not refer to a previous determination nor does it give a reference to a *Gazette*, but does give a helpful clue by noting that the basic water allowance had been determined on 2 September 1992.

A search of the *Gazette* revealed that the ordinary *Gazette* for that date had a lot of pages but no relevant determination. However, gold was struck (or should it be "water was found by boring" - definitely the right word when one is searching the *Gazette*!) in *Gazette* No S153 of 1992. Determination No. 141 of 1992, which determined a basic water allowance, was discovered.

Probably a Court would hold that the present Determination No. 29 has impliedly repealed Determination No. 141. But here, too, following the Guidelines would have saved an Assembly Member of a member of the community time in conducting a search.

A handwritten signature in black ink, appearing to read 'Ellnor Grassby', with a long horizontal line extending to the right.

Ellnor Grassby, MLA
Chairperson

14 June 1994

