

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

REPORT NO. 10 OF 1992

18 August 1992

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
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.

SUBORDINATE LEGISLATION

(a) Subordinate Legislation upon which no Comment is Offered

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

ACT Determination No. 73 of 1992 made under s. 52A of the Surveyors Act 1967 revokes the existing determination of fees and fixes new fees under the Act.

ACT Determination No. 74 of 1992 made under s. 116 of the Unit Titles Act 1967 revokes the existing determination of fees and fixes new fees under the Act.

ACT Determination No. 95 of 1992 made under s. 257 of the Magistrates Court Act 1930 determines fees for the purposes of the Act.

ACT Determination No. 96 of 1992 made under s. 307B of the Magistrates Court (Civil Jurisdiction) Act 1982 determines fees for the purposes of the Act.

ACT Determination No. 97 of 1992 made under s. 50A of the Small Claims Act 1974 determines fees for the purposes of the Act.

ACT Determination No. 98 of 1992 made under s. 6A of the Legal Practitioners Act 1970 determines a fee for the purposes of the Act.

Declaration of Exemption Instrument No. 111 of 1992 made under section 19 of the Credit Act 1985 being Credit Order No. 73 - St George (Visa Card Products) exempts St George Bank Limited from complying with specified provisions of the Credit Act 1985.

ACT Determination No. 112 of 1992 made under section 9 of the Buildings (Design and Siting) Act 1964 fixes new fees.

ACT Determination No. 133 of 1992 made under s. 4 of the Public Place Names Acts 1989 determines the name, origins and significance of the Division of Forde.

ACT Determination No. 134 of 1992 made under s. 4 of the Public Place Names Acts 1989 determines the name, origins and significance of the Division of Throsby.

ACT Regulations 1992 No. 10 being the Financial Institutions (Supervisory Authority) Regulations specify changes of financial interest that must be entered on the Register of Financial Interests.

ACT Regulations 1992 No. 11 being the Magistrates Court (Civil Jurisdiction) Regulations (Amendment) provide for a simplified table of prescribed interest rates on judgments.

ACT Determination No. 68 of 1992 under s. 12 of the Housing Assistance Act 1987 makes the Supported Accommodation Assistance Program to provide recurrent funding to eligible organizations to enable them to provide transitional accommodation to people who are homeless or in crisis.

ACT Determination No. 69 of 1992 made under s. 99 of the Taxation (Administration) Act 1987 revokes ACT Determination No. 46 of 1992 and determines the concession rates of stamp duties that are payable by eligible home buyers.

ACT Regulations 1992 No. 12 being the Motor Vehicle (Third Party Insurance) Regulations (Amendment) fix the maximum rates of premium that may be charged for a motor vehicle trader's plate and for a number of other classes of motor vehicle.

ACT Determination No. 125 of 1992 made under s. 24(2)(a) of the Building Act 1972 revokes the existing instrument of Adoption of the Building Code and adopts the provisions of the Building Code prepared and published by the Australian Uniform Building Regulations Co-ordinating Council with specified modifications.

Approval of Variation to the Territory Plan made under section 26(1)(a) of the Land (Planning and

In the present instance it would have been of particular help, because amendments to the principal Act by the Agents (Amendment) Act 1992 changed the way in which fees are determined. The section numbers for several kinds of fees have also changed and this causes some confusion. However, the same varieties of fees are to be paid, so the Explanatory Statement could have set out a very helpful comparison and saved Members time in checking.

The Explanatory Statement states that "Increase [sic] are based on a 3% CPI adjustment for 1992/93". The increases vary from 2.6% to 7.69% (the latter for only minor fees). The present increases follow the increases made by Determination No. 43 of 1992 in March 1992, which the Explanatory Statement for that determination stated were fixed using the parameter of 4% from those fixed in October 1990.

(2) Three Minor Matters Corrected

ACT Determination No. 71 of 1992 made under section 48 of the Health Services Act 1990 revokes Determination No. 39 of 1992 and fixes new fees and charges under the Act.

The Committee is pleased to note that the three minor errors mentioned in the Committee's Report No. 1 of 1992 have been corrected.

There is also a very helpful Explanatory Statement which lists the old and new fees and also indicates the percentage increase.

(3) A Very Helpful Explanatory Statement

ACT Determination No. 72 of 1992 made under section 287 of the Land (Planning and Environment) Act 1991 fixes fees and charges to be made under the Act.

As the Explanatory Statement points out, this is the first time that fees and charges have been fixed under the new Land (Planning and Environment) Act 1991. However, where there were comparable fees and charges payable under the old City Area Leases Act 1936 these have been listed alongside the fees and charges payable under the new Act.

Determination No. 75 of 1992 appear to be identical with those fixed last year in Determination No. 50 of 1991.

Thus there appear to have been no increases in these fees this year. Was this intended?

The same comment can be made in relation to one of the items in Determination No. 76 of 1992 compared with the relevant item in last year's Determination No. 39 of 1991. The fee of \$125.00 for taking an animal that is wildlife has not changed from last year, although all others have increased.

There also appears to be a slight error in the Explanatory Statement. The licence fee for importing or exporting an animal for retail purposes has increased from \$21.00 to \$22.00, but the Explanatory Statement suggests that the fee has stayed the same.

(5) References to the Numbers of the Revoked Determinations Would be Helpful

ACT Determination No. 77 of 1992 made under section 83(1) of the Pesticides Act 1989 revokes the existing determination and fixes new fees and charges under the Act.

ACT Determination No. 79 of 1992 made under section 47A of the Rabbit Destruction Act 1919 revokes the existing determination and fixes a new fee under the Act.

ACT Determination No. 80 of 1992 made under section 7 of the Pounds Act 1928 revokes the existing determination and fixes new fees and charges under the Act.

ACT Determination No. 87 of 1992 made under section 105A of the Liquor Act 1975 revokes the existing determination and determines new fees under the Act.

ACT Determination No. 88 of 1992 made under section 139 of the Real Property Act 1925 revokes the existing determination and determines new fees under the Act.

ACT Determination No. 91 of 1992 made under section 4A of the Business Names Act 1963 revokes the

(6) Full References would have been Particularly Helpful in these Cases

ACT Determination No. 84 of 1992 made under section 90A of the Sale of Motor Vehicles Act 1977 revokes the existing fees and charges and determines licence and contribution fees and fees for inspecting the register.

ACT Determination No. 85 of 1992 made under section 263 of the Credit Act 1985 revokes existing fees and determines new fees under the Act.

In the case of Determinations Nos. 84 and 85 of 1992 there are no references to the determinations revoked nor to the numbers and dates of the Gazettes in which they appeared.

This would have been particularly helpful to Members who wished to check, because it will be recalled that the Committee raised problems last year about the equivalent determinations, Determinations Nos. 27, 47 and 48 of 1991 in its Report No. 12 of 1991. There was then a very helpful reply of 23 December 1991 received from the Attorney-General, Mr Connolly, which resulted in the making of correcting determinations, Determinations Nos. 112 and 113 of 1991.

(7) No Reference to Revoked Determination and Is there a Mistake?

ACT Determination No. 78 of 1992 made under section 39 of the Water Pollution Act 1984 revokes the existing determination and fixes new fees payable under section 19(1)(g) of the Act.

As with the above determinations, it would have been helpful to have a reference to the specific determination, Determination No. 52 of 1991, that was being revoked.

The Explanatory Statement is helpful as it lists the new and previous fees, although they are not directly comparable in some cases because the areas and litres of discharge have been varied and there are new categories where there are limited numbers of discharges during the year.

There is an inconsistency between the determination and the Explanatory Statement. Last year's fee for storm water run-off

The first of these is a reference to s. 13(1) covering the fees for registration of a dog. Section 13 was repealed by s. 9 of the Dog Control (Amendment) Act 1991 and does not appear to have been substituted. Could s. 9 of the principal Act, as it was repealed and substituted by s. 6 of Dog Control (Amendment) Act 1991, perhaps be relevant? If not, what is the correct reference? If the new s. 9 is the correct reference, does it cover both first registrations and renewals of registrations? There does not appear to be a reference to s. 18B (inserted by s. 12 of the Dog Control (Amendment) Act 1991), which provides for determined fees for keepers licences.

It is suggested that the references to ss. 18 and 30(1) alongside their respective fees are correct. However, s. 30(1) does not appear to cover the last fee fixed by the determination, which is "The fee for a certified replacement of a certificate [which] is, 2.00". Would s. 36 perhaps be relevant here? Of course, s. 36 does not cover only replacement certificates, but certified copies of certificates of registration required for any purpose.

The Committee suggests that the Determination should be checked.

(10) No Reference to Revoked Determination and a Possible Mistake?

ACT Determination No. 86 of 1992 made under section 12 of the Trade Measurement Act 1991 revokes the determination made under the Weights and Measures Act 1929 and determines fees under the Act.

Once again, it would have been helpful to have a reference to the specific determination, Determination No. 53 of 1991, that was being revoked.

However, there appears to be a more significant problem. The present determination is made under s. 12 of the Trade Measurement Act 1991 and also refers to s. 11 of that Act. Sections 11 and 12 of the Trade Measurement Act 1991 refer to verification by inspectors and certification by licensees and do not appear to mention fees. Perhaps ss. 11 and 12 of the Trade Measurement (Administration) Act 1991, which do refer to fees and the power of the Minister to make determinations of fees, are the correct Act and sections.

Perhaps a check should be made.

(13) No Reference to Revoked Determination and a Mistake

ACT Determination No. 101 of 1992 made under s. 57(1) of the Motor Vehicles (Dimensions and Mass) Act 1991 [sic] revokes the existing determination of fees and determines fees payable under the Act for breaking up the surface of a road or public place and repairing it.

In this case, although the determination itself does not refer to the determination that is being revoked, the Explanatory Statement very helpfully does note that it is Determination No. 38 of 1991.

The determination makes the determination under the Motor Vehicles (Dimensions and Mass) Act 1991. The Act is the Motor Vehicles (Dimensions and Mass) Act 1990 as the heading of the determination accurately states.

Perhaps this may be able to be categorized as a typographical mistake, but the matter should be checked.

(14) No Reference to Revoked Determinations and Mistakes

ACT Determination No. 102 of 1992 made under section 65 of the Building Act 1972 revokes all existing determinations of fees and determines fees payable under the Act.

ACT Determination No. 109 of 1992 made under section 65 of the Building Act 1972 determines fees payable under the Act.

The need for proper and full identification of determinations that are being revoked is well illustrated by these cases.

The Explanatory Statement for Determination No. 109 of 1992 states that the determination "revokes the previous determinations under the Building Act, a determination notice dated 21 June 1991 and published in the Australian Capital Territory Gazette S56 of 1 July 1991". The determination itself does not have a revocation clause, but merely determines fees. Thus, if there was an existing

(15) Re-revocation of Determinations and no Revocation of Current Determinations

ACT Determination No. 103 of 1992 made under section 39B of the Architects Act 1959 purports to revoke a determination of fees and determines fees payable under the Act.

ACT Determination No. 104 of 1992 made under section 45A of the Plumbers Drainers and Gasfitters Board Act 1982 purports to revoke a determination of fees and determines fees payable under the Act.

One of the possible problems just identified in Determination No. 102 of 1992 is taken a step further in these two determinations. Both the Explanatory Statements and the two determinations themselves refer to the present determinations revoking instruments that were published in the ACT Gazette No 35 of 5 September 1990.

In fact, here, too, there were equivalent determinations last year. They were Determinations Nos 22 and 41 of 1991 which were both dated 21 June 1991 and published in ACT Gazette No. S56 of 1 July 1991. Determinations Nos 22 and 41 of 1991 both actually revoked those earlier determinations that were published in the ACT Gazette No. 35 of 5 September 1990.

So, in addition to the problem of inaccuracy and misleading referred to above in discussing Determination No. 102 of 1992, there is the re-revocation of determinations that have already been revoked. This, in itself, may not be a difficulty. However, as the present determinations were quite specific in their revocations, can they be interpreted as also impliedly revoking Determinations Nos 22 and 41 of 1991?

This matter probably needs to be considered.

(16) Avoiding Possible Confusion

ACT Determination No. 100 of 1992 made under s. 9A of the Roads and Public Places Act 1937 revokes the existing determination of fees and determines fees payable under the Act for breaking up the surface of a road or public place and repairing it.

Section 7C was inserted in the principal Act by s. 5 of the Dog Control (Amendment) Act 1991.

(19) References to the Numbers of the Revoked Determinations Would have been Helpful and May have Avoided a Mistake

ACT Determination No. 117 of 1992 made under section 4A of the Machinery Act 1949 revokes existing fees and determines new fees under the Act.

ACT Determination No. 118 of 1992 made under section 6B of the Scaffolding and Lifts Act 1957 revokes existing fees and determines new fees under the Act.

In the case of Determination No. 117 of 1992 there is a specific revocation clause and the number and date of the Gazette, Gazette No. S56 of 1 July 1991, in which the previous determination appeared, is given. This does identify the determination adequately, but it would be even more helpful if the number of the determination being revoked were given. The determination being revoked was Determination No. 34 of 1991.

If this practice had been followed in the case of Determination No. 118 of 1992, as well as giving a full reference for a Member wishing to check an error may possibly have been avoided. The determination states that it revokes

"the determination of fees notice of which was published in the Australian Capital Territory Gazette No. 49, 1 July 1991."

The Committee has been unable to find a determination of fees under the Scaffolding and Lifts Act 1957 in Gazette No. 49, which is dated 11 December 1991 and not 1 July 1991. However, it has found what may be a relevant determination at pages 120 and 121 of ACT Gazette No. S56 of 1 July 1991. The present mistake may have occurred because the determination on those pages is Determination No. 49 of 1991 and the apparently erroneous references to Gazette No. 49 in the determination itself and in its Explanatory Statement may have been picked up from the 1991 determination number.

The effectiveness of this apparently erroneous revocation needs to be considered.

vehicle as a taxi is given as "Section 27(7)". The authority appears to be s. 27(4). However, given the whole context, it could be argued that the validity of this fee is not affected.

Two new fees that appear in the Schedule are not explained in the Explanatory Statement, nor is the statutory authority for their imposition given in the Schedule. These are the fees under "4. Other Fees", which provide for fees for issuing a motorcycle handbook and the fee for changing a driving test booking. Assembly Members may wish to know the source of statutory authority for charging these fees.

Incidentally, in the future, it may be appropriate for the authority for the charging of a fee for the grant or renewal of a driver's licence (Schedule item 1.(a)) to be given. This is probably s. 14.

(22) A Probable Mistake

ACT Determination No. 131 of 1992 made under s. 12 of the Housing Assistance Act 1987 sets up the Homesafe Housing Assistance Program.

Clause 3 of the Program defines "Income" in terms of the definition of "Income" in the Social Security Act 1947 (Commonwealth). The Social Security Act 1947 was repealed by s. 3 of the Social Security (Rewrite) Transition Act 1991 (Commonwealth).

"Income" is defined in s. 8(1) of the Social Security Act 1991 (Commonwealth) and it could be looked at to see if it is appropriate for the present Program.

(23) Serendipity - Determinations of Fees now Subject to Scrutiny by the Assembly

ACT Determination No. 123 of 1992 made under clause 7 of the Long Stay Caravan Park Housing Assistance Program made under section 12 of the Housing Assistance Act 1987 revokes existing fees and determines new fees.

ACT Determination No. 124 of 1992 made under clause 4 of the Homebuyer Housing Assistance Program made under section 12 of the Housing Assistance Act 1987 revokes existing fees and determines new fees.

Milk Authority (Amendment) (No. 2) Bill 1992

This Bill amends the definition of "milk" under the Act.

Occupational Health and Safety (Amendment) Bill 1992

This Bill provides that the provisions requiring the establishment of designated work groups and the appointment of health and safety representatives applies to employers of 10 or more employees instead of more than 20 employees as has been the case up to now.

Tuberculosis (Repeal) Bill 1992

This Bill repeals the Tuberculosis Act 1950.

GOVERNMENT RESPONSES

The Committee has received responses to comments made in previous Reports concerning the following Bills and subordinate legislation:

- Various Bills - Sexist language (Reports Nos 20, 21 and 22 of 1991 and No. 2 of 1992)
- Financial Institutions (Application of Laws) 1992 (Report No. 7 of 1992)
- Guidelines for the purposes of the *Weapons Act 1991* (Report No. 6 of 1992)
- Crimes (Amendment) Bill 1992 (Report Nos 2 & 4 1992)
- Public Health (Infectious and Notifiable Diseases) Regulations (Amendment) [Regulation No. 8 of 1992] (Report No. 6 of 1992)
- Food Bill 1992 (Report No. 7 of 1992)

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

Ellnor Grassby, MLA
Presiding Member
18 August 1992



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

ATTORNEY GENERAL

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Mrs E Grassby MLA
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Standing Committee on Scrutiny
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Dear Mrs ~~Grassby~~

In its Report No. 6 of 1992, the Committee commented on the Public Health (Infectious and Notifiable Diseases) Regulations (Amendment), [Regulation No 8 of 1992].

The Committee was concerned about a possible overlap between those Regulations and the *Tuberculosis Act 1950*, particularly given that there is a requirement for medical practitioners to report cases of tuberculosis or suspected tuberculosis to the Medical Officer of Health under the Act and the Regulations. While this overlap does not pose a problem, the Committee questioned whether this was true for other aspects of the two pieces of legislation.

The Committee also questioned why the explanatory statement did not mention the addition of tuberculosis in the list of diseases being added for the first time.

Tuberculosis has been an infectious disease notifiable in the ACT since 1930. Originally, it was listed as an infectious disease under the then Public Health (Infectious Diseases) Regulations. When the *Tuberculosis Act 1950* was enacted it also provided for a medical practitioner to give notice to the relevant health officer, if the medical practitioner encountered cases, or suspected cases, of tuberculosis. Subsequently, in 1954, the (renamed) Public Health (Infectious and Notifiable Diseases) Regulations were amended to exclude tuberculosis from the list of infectious diseases.

Given that tuberculosis has been an infectious, notifiable disease since 1930, it was thought unnecessary to highlight its addition to the list of infectious diseases in the explanatory memorandum for the Public Health (Infectious and Notifiable Diseases) Regulations, although it is acknowledged that it should have been mentioned as the Committee has noted. Tuberculosis was merely included in the updated list of infectious diseases to clarify reporting by listing all diseases with



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Dear Mrs Grassby

In its Reports Nos. 20, 21 and 22 of 1991 and No.2 of 1992 the Legislative Assembly Standing Committee on Scrutiny of Bills and Subordinate Legislation commented about a failure to remove sexist language from various Principal Acts when amending those Acts.

I apologise for not responding sooner to the Committee's comments but the Government was desirous of considering all the options which are open to it to ensure the removal of this offensive language, having regard to the Government's Legislation Program as a whole and the resources which are available to give effect to that Program.

As the Committee may be aware it has been the practice of the Attorney-General's Department to remove sexist language from a Principal Act whenever an amendment of that Act is being prepared. However, because of the quite high demand for legislation to be prepared as a matter of urgency, the removal of sexist language has frequently not occurred.

The Government has now agreed to a scheme to systematically remove sexist language from ACT legislation. Its features are as follows -

- a) As a basic position sexist language will be removed from a Principal Act when next amending that Act. The exception to this position will be when the Government excuses the non-removal of the language for reasons of urgency. The Government's agreement to the non-removal of the language will need to be obtained by the sponsoring Minister when seeking approval for the amendment of the Principal Act;



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Dear Mrs Grassby

In its Report No. 7 of 1992 the Standing Committee on Scrutiny of Bills and Subordinate Legislation raised a concern about the use of the abbreviation "SSA" in the *Financial Institutions (Application of Laws) Act 1992* ("the ACT Act").

The ACT Act will apply, as Territory laws, two comprehensive uniform Codes (the Australian Financial Institutions Commission Code ("the AFIC Code") and the Financial Institutions Code), two associated sets of Regulations and a set of "Prudential Standards" under the uniform scheme. In accordance with the strategy determined by the national Committee of Parliamentary Counsel to implement the agreement on financial institutions upon which the uniform scheme is based, none of this material is substantively included in the ACT legislation. Anyone wishing to find out in detail about the new regulatory regime for credit unions and building societies established under this set of legislation will need to read the ACT Act (and its sister *Financial Institutions (Supervisory Authority) Act 1992*) together with the Codes mentioned above and, if a complete understanding of the scheme is sought, the Regulations and Standards.

In particular, the method used to refer to the "SSA" must be understood in the light of the scheme as a whole. The term occurs in the "Transitional" Part IX of the ACT Act, and all occurrences of the term are accompanied by references to particular provisions of the Financial Institutions (ACT) Code. These Code provisions *also* contain references to the "SSA", which is defined in the interpretation provisions of the Code itself. As the Committee correctly notes, section 21 of the ACT Act is sufficient to give a certain meaning to "SSA" for the purposes of Part IX - the term is to have the substantive meaning given by the Code. If the import of any provision of Part IX is to be grasped adequately, however, the reader *must* read such a provision together with the corresponding



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Dear Mrs Grassby

In its Report No 6 of 1992 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on an instrument made under Section 13(1)(b) of the *Weapons Act 1991* to determine *Guidelines* for the security of premises where dangerous or restricted weapons are kept and for the safe custody of those weapons.

The Guidelines have been re-examined in the light of those comments, and I agree that the present instrument does not comply with the standards that the Assembly has come to expect in recent times. The absence of an accompanying explanatory statement was also an unfortunate oversight.

Consequently, I have requested that the present Guidelines be revoked and an amended version be substituted, along with an explanatory statement for tabling in the Assembly, as soon as possible.

I thank the Committee for its constructive comments on the present instrument, particularly in the light of the Government's commitment to remaining at the forefront of gun control policy and legislation in Australia.

Yours sincerely

Terry Connolly

21 JUL 1992

The Private Member of the Legislative Assembly for whom the Crimes (Amendment) Bill 1992 has been prepared has been advised of the difficulties which have arisen in the numbering of the sections of the Crimes Act and it has been suggested to him that amendments should be moved to the Bill in the Legislative Assembly which would result in the provision which was to have been inserted in the Crimes Act as section 156 now being inserted as section 115.

In relation to the renumbering of section 155 of the Crimes Act by the *Statute Law Revision (Miscellaneous Provisions) Act 1992*, the Committee commented in its Report number 4 of 1992 that the Statute Law Revision Act did not contain a provision equivalent to subsection 4(2) of the *Crimes (Amendment) Act (No. 3) 1991*. A provision in the terms of subsection 4(2) was not included in the Statute Law Revision Act as there was soon to be a new section 155 of the Crimes Act in respect of which the subsection would have had a quite inappropriate operation (the new section 155 was provided for in the *Crimes (Amendment) Act (No. 2) 1991*). It was not considered necessary to include in the Statute Law Revision Act a modified form of subsection 4(2) as it is believed that no other law of the Territory refers to the section 155 of the Crimes Act that was relocated by the *Crimes (Amendment) Act (No. 3) 1991* and other instruments and documents could, it seems, be appropriately amended on a case by case basis.

I should perhaps mention that if the provision to be inserted in the Crimes Act by the Crimes (Amendment) Bill 1992 is to be section 155, then it will be necessary to repeal subsection 4(2) of the *Crimes (Amendment) Act (No. 3) 1991*. Provisions such as subsection 4(2) cannot be allowed to have an indefinite operation in respect of provisions of frequently amended Acts such as the Crimes Act.

In its Report No. 4 of 1992, the Committee noted that the Explanatory Memorandum relating to the *Statute Law Revision (Miscellaneous Provisions) Act 1992* had not referred to the amendments made by that Act to the Crimes Act. This is correct and the situation arose because the amendments to the Crimes Act were only included in the Statute Law Revision Act at the last moment when it became apparent that urgent amendments were required to the Crimes Act to overcome the difficulties mentioned by the Committee and that the Statute Law Revision Act was the most convenient vehicle for the making of those amendments.

The Committee has suggested in both Report number 2 and Report number 4 that following enactment of the *Crimes Legislation (Status and Citation) Act 1992* consideration should be given to renumbering and reprinting the Crimes Act. I am pleased to be able to advise the Committee that a reprint of the Crimes Act is presently being prepared.



A.C.T. GOVERNMENT

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DEPUTY CHIEF MINISTER

MINISTER FOR HEALTH

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Dear Mrs Grassby

I refer to Report No. 7 of the Standing Committee on the Scrutiny of Bills and Subordinate Legislation in which the Food Bill 1992 was discussed.

As the issues raised have legal implications, I have referred the matter together with supporting information to the Attorney-General, Terry Connolly MLA, for investigation.

Mr Connolly will respond to you direct when the issue has been investigated.

Yours sincerely

Wayne Berry

29 JUL 1992



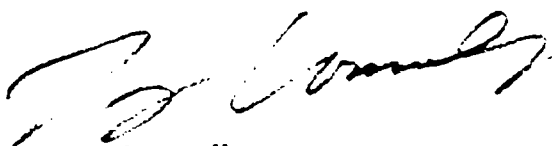
I am unsure as to the exact thrust of the Committee's suggestion. The provision is designed to avoid a defence of truth where an advertisement, however truthful, nevertheless creates, or is intended to create, a deceptive or untrue impression in the mind of a reasonable person.

An example would be when a non nutrient product is advertised in such a way as to imply that the product will cause weight loss, when in fact any weight loss would be due to other factors. These factors could include a change in diet, a reduction in food intake or an exercise regime undertaken in conjunction with using the advertised product.

The Committee also requested that the reference to the *Therapeutic Goods Act 1991* in the Explanatory Statement for the Bill be checked. I am advised that the reference to that Act is incorrect. The reference should be to the Commonwealth *Therapeutic Goods Act 1989* and I thank the Committee for bringing this matter to my attention.

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

Yours sincerely



Terry Connolly

17 AUG 1992