STANDING COMMITTEE ON SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION

REPORT NO. 1 OF 1992

8 April 1992

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 totallly 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.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION

MEMBERS OF THE COMMITTEE

Mrs E Grassby, MLA (Presiding Member)
Mr G Humphries, MLA
Ms H Szuty, MLA

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

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;

(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;

(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.

SUBORDINATE LEGISLATION

(a) No comment offered.

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

ACT Determination No. 104 of 1991 made under section 4 of the Public Place Name Act 1989 determines the names of a number of public places in the division of Palmerston.

ACT Determination No. 107 of 1991 made under section 4 of the Public Place Names Act 1989 determines the name of a park in the division of Hughes.

ACT Determination No. 111 of 1991 made under section 49(2) of the Health Services Act 1990 determines the rate of interest to be paid on overdue accounts.

ACT Regulations 1991 No. 33 being City Area Leases (Betterment Charge Assessment) Regulations (Amendment) correct an error by substituting a remission rate of 35% for 29%.

ACT Regulations 1991 No. 34 being Motor Traffic Regulations (Amendment) insert provisions relating to traffic infringement notices by prescribing offences and prescribing penalties for those offences.

ACT Regulations 1991 No. 35 being Magistrates Court (Civil Jurisdiction) Regulations (Amendment) prescribe a new rate of interest for the period between the date of the cause of action and date of judgement.

ACT Regulations 1991 No. 36 being Guardianship and Management of Property Regulations make regulations under the Guardianship and Management of Property Act 1991 relating to the countries whose citizens may register guardianship and maintenance orders, fix a fee for applications and provide that applications must be in writing, provide for the information that must be included in a manager's accounts and provide for a seal for the tribunal.

ACT Determination No. 112 of 1991 made under section 90A of the Sale of Motor Vehicles Act 1977 revokes the existing determination of fees and determines licence and contribution fees and fees for inspecting the register.

ACT Determination No. 113 of 1991 made under section 263 of the Credit Act 1985 revokes the existing fees and determines new fees in relation to a Credit Provider's or a Finance Broker's licence.

ACT Regulations 1991 No. 37 being Workers' Compensation Rules (Amendment) make minor amendments as a consequence of the passing of the Workers' Compensation (Amendment) Act 1991, update cross references and drafting and remove sexist language from the principal regulations.

ACT Regulations 1991 No. 38 being Workers' Compensation Rules (Amendment) make minor amendments as a consequence of the passing of the Workers' Compensation (Amendment) Act 1991, update references in the principal regulations, remove sexist language and repeal regulations that are redundant because there are now appropriate provisions in the Act.

ACT Determination No. 114 of 1991 made under section 217A of the Motor Traffic Act 1936 determines the fees payable for the registration of a motorcycle.

ACT Determination No. 1 of 1992 made under section 99 of the Taxation (Administration) Act 1987 revokes the existing determination and provides for concessions on the payment of stamp duty to eligible home buyers.

ACT Determination No. 5 of 1992 made under section 4 of the Public Place Names Act 1989 revokes a street name and reuses it and varies two other streets by relocating them.

ACT Regulations 1992 No. 1 being Motor Traffic Regulations (Amendment) introduce variable penalties for the prescribed offence of exceeding speed limits in school zones.

Exemption No. 9 of 1992 made under sections 10(3) and 12(4) of the Tobacco Act 1927 exempts contracts and agreements between the Australian Cricket Board Incorporated and The Benson and Hedges Company owned by W D and H O Wills (Australia) Limited relating to the display of perimeter and scoreboard advertising at Manuka Oval during the conduct of matches between the ACT and Pakistan on 13 February 1992 and between South Africa and Pakistan on 15 February 1992 from the operation of sections 10(1), 12(1) and 12(2) of the Tobacco Act 1927.

Exemption No. 10 of 1992 made under sections 10(3) and 12(4) of the Tobacco Act 1927 exempts contracts and agreements between the Australian Cricket Board Incorporated and The Benson and Hedges Company owned by W D and H O Wills (Australia) Limited relating to the display of perimeter and scoreboard advertising at Manuka Oval during the conduct of a match between South Africa and Zimbabwe on 10 March 1992 from the operation of sections 10(1), 12(1) and 12(2) of the Tobacco Act 1927.

ACT Determination No. 8 of 1992 made under section 27 of the Interpretation Act 1967, under which Determination No. 101 of 1991 is revoked and under section 4 of the Motor Omnibus Services Act 1955 determines charges.

ACT Determination No. 13 of 1992 made under section 4 of the Public Place Names Act 1989 determines the name of a place.

Declaration of Exemption Determination No. 11 of 1992 made under section 13 of the Credit Act 1985 being Credit Order No. 72 - Rental Purchase Contracts exempts genuine rental arrangements from the provisions of the Credit Act 1985.

ACT Determination No. 15 of 1992 made under section 4 of the Public Place Names Act 1989 determines the name, origin and significance of the Division of Gungahlin.

ACT Regulations 1992 No. 2 being the Land (Planning and Environment) (Casino) Regulations exempt an application to vary a lease of Territory Land or an application for a new lease following subdivision or consolidation of Territory Land that is subject to a designation under the Casino Control Act 1988 from certain provisions of the Land (Planning and Environment) Act 1991.

ACT Determination No. 17 of 1992 made under section 178(3) of the Land (Planning and Environment) Act 1991 determines the criteria for the authorisation of a refund to a person on surrender of a lease.

ACT Determination No. 20 of 1992 made under section 164(3) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of special Crown leases.

ACT Determination No. 21 of 1992 made under section 167(1)(a) and (b) of the Land (Planning and Environment) Act 1991 declares that section 167 shall apply to a specified class of lease and thus there is a need to obtain the Minister's consent to specified dealings with the lease.

ACT Determination No. 22 of 1992 made under section 163(4) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of Crown leases community organisations.

ACT Determination No. 23 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of Crown leases for diplomatic or consular missions or diplomatic residences.

ACT Determination No. 24 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of Crown leases to the Australian Capital Territory and Territory budget-funded authorities.

ACT Determination No. 25 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of Crown leases to The Commissioner for Housing for the Australian Capital Territory.

ACT Determination No. 26 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of Crown leases to statutory authorities and Territory owned corporations.

ACT Determination No. 27 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of Crown leases over developed blocks within private enterprise land developments.

ACT Determination No. 28 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant, by application or negotiation, of a lease over an area of unserviced land for the purpose of enabling the developer to develop the land in the lease for subdivision and resale.

ACT Determination No. 29 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of Crown leases for minor industrial purposes.

ACT Determination No. 30 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of Crown leases for rural purposes.

ACT Determination No. 31 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of Crown leases for the purposes of national and local associations.

ACT Determination No. 32 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of Crown leases for commercial, industrial or tourism purposes.

ACT Determination No. 33 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of commercial Crown leases to applicants after an auction.

ACT Determination No. 34 of 1992 made under section 161(5) of the Land (Planning and Environment) Act 1991 determines the criteria for the direct grant of residential Crown leases to applicants after an auction.

ACT Determination No. 35 of 1992 made under section 4 of the Public Place Names Act 1989 revokes the names of a number of places, varies the names of others and determines the names of yet another group.

ACT Regulations 1992 No. 3 being the Discrimination (Remuneration and Allowances) Regulations set the remuneration and allowances payable to the Discrimination Commissioner.

ACT Determination No. 37 of 1992 made under section 75 of the Guardianship and Management of Property Act 1991 sets the fees that may be charged by a guardian or manager appointed under the Act and the fee that may be charged by the Public trustee for examination of accounts under the Act.

ACT Determination No. 38 of 1992 made under section 27C of the Workers' Compensation Act 1951 determines the fees to accompany an application by an insurer or an employer.

ACT Determination No. 40 of 1992 made under section 287 of the Land (Planning and Environment) Act 1991 determines the fees payable in relation to the grant or transfer of leases, for a licence to occupy or use an unoccupied area of unleased land, for the inspection and copying of the register and the amount to be deducted on a refund of the amount paid for the grant of a lease.

ACT Determination No. 41 of 1992 made under section 287 of the Land (Planning and Environment) Act 1991 sets the fees for the grant of a lease to community organizations.

ACT Determination No. 110 of 1991 made under Section 48 of the Health Services Act 1990 cancels ACT Determination of Fees and Charges No.21 of 1991 and determines hospital, nursing home and various other charge to take effect from 1 January 1991.

(b) Comment Offered.

The Committee has examined the following Subordinate Legislation and offers the following comments:

ACT Determination No. 108 of 1991 made under section 27 (1) of the Building Act 1972 exempts the ACT Public Works and Services Group from the application of specified provisions of the Building Code.

(i) Possible Inconsistencies between Determination and Explanatory Statement.

There is a very helpful Explanatory Statement that details the way in which the relevant buildings depart from the Building Code and the specific provisions of the Building Code that are being relaxed in relation to each building or part of a building.

However, there appear to be some inconsistencies between the listings in the schedule to the Determination and the listings under some items of the Explanatory Statement.

First, there appear to be three exemptions listed in the Schedule that do not show up in the Items in the Explanatory Statement. They are C3.4, C3.8 and E1.4. In the case of E1.4, is it possible that there is confusion with E1.3, as it is listed as an exemption in Item 12 of the Explanatory Statement, but does not appear in the Schedule?

Secondly, in addition to E1.3 already mentioned, Items 4 and 5 of the Explanatory Statement both list C3.14(f) as an exemption, but C3.14(f) does not appear in the Schedule. Was C3.15(f), which is listed in the Schedule, perhaps intended as it is noted that C3.15(f) appears in Items 1,2 and 3 of the Explanatory Statement?

The exemptions in the Determination are quite extensive and important, as many relate to fire precautions, so perhaps a check should be made.

Incidentally, there is what appears to be a setting-out error in the Schedule, where "C3.9D1.3(b)" appears and probably the intention was to have two separate exemptions of C3.9 and D1.3(b).

ACT Determination No. 109 of 1991 made under section 11A of the Public Health Act 1928 sets the fees to be paid under the Public Health Regulations relating to barbers' shops, boarding houses, dairies, eating houses, meat suppliers and registered piggeries.

(ii) Possible Inconsistencies Between Determination and Explanatory Statement

The Committee makes two coments on Determination No. 109 of 1991.

First, the Explanatory Statement states that the "Determination comes into effect on 1 January 1992 and ceases 31 December 1992". Unlike the practice of previous years with these fees, nowhere does the present Determination appear to state these dates of effect.

However, this omission may not cause a problem. In accordance with the provisions of S.6(1)(b) of the Subordinate Laws Act 1989, Determination No. 109 of 1991 took effect on its date of notification in the Gazette, 20 December 1991, and the fees appear, in most or perhaps all of the cases, to be annual fees needings to be paid from 1 January. Thus, as the previous Determination expired on 31 December 1991 and the present Determination came into effect before 1 January 1992, there may be no problem. However, perhaps the matter should be checked, as the Determination and the Explanatory Statement appear to be in conflict.

Secondly, the Explanatory Statement states that the present Determination replaces "the Determination of Fees dated 16 December 1990", which was presumably Determination No. 78 of 1990 of that date. The Explanatory Statement goes on to say that "the previous Determination . . . allowed for a licence or registration fee for all (licences and registrations) of $62.00 (and the 1992 fee) is $65.00 an increase of only $3.00".

In fact, the fee set out in Determination No. 78 of 1990 for all of these licences or registrations, appears to have been $65.00, up from the fee of $60.00 set by the Determination of 19 December 1989. Was there an intermediate Determination between Determination No. 78 of 1990 (in addition to one that merely corrected the date in Determination No. 78 of 1990) and the present Determination, or is there an error in the Explanatory Statement? Could this also be looked at?

Declaration of Exemption No. 6 of 1992 made under section 19 of the Credit Act 1985 being Credit Order No. 71 - Diners Finance Pty Ltd (Extra Cash Facility) will enable the company to calculate interest charges on a daily basis for its Extra Cash continuing credit facility.

(iii) Time for billing cycle

This Declaration appears to be completely in order and nothing in this comment bears on the validity of the Declaration.

However, perhaps a check could be made of a general comment made in the otherwise helpful Explanatory Statement in case someone is misled by it. It states that the Credit "Act provides that billing cycles shall be based on a period of between 25 and 42 days".

Section 56 of the Credit Act 1985 provides for a billing cycle "the period of which is not less that 24 days". Thus the period of 25 days mentioned in the Explanatory Statement is correct. However, s. 50(2) provides that a credit provider providing credit under a continuing credit contract for " a period exceeding 40 days is guilty of an offence". If s. 52 is the relevant section here, perhaps the 42 day period should be checked.

Exemption No. 7 of 1991 [sic] made under s. 27(1) of the Building Act 1972 exempts ACT Public Works and Services from compliance with specified provisions of the Building Code in relation to the construction of the proposed diagnostic and treatment building at Woden Valley Hospital.

(iv) Possible wrong numbering

The Committee makes two comments in relation to this Exemption.

First, it is noted that the Exemption is numbered No 7 of 1991. However, quite by chance, the Committee saw a statement in Gazette No. S23 of 7 February 1991 which indicated that the Exemption should be Exemption No. 7 of 1992.

Secondly, there is a helpful Explanatory Statement, which appears to belong to Exemption No. 7, but is labelled as an Explanatory Statement for Exemption No. 2 of 1991 (again probably 1992 is intended).

To assist Members and others in identifying things, could these matters be confirmed.

Instrument No. 12 of 1992 made under section 24(2)(a) of the Building Act 1972 being the Revocation, Adoption and Modification of the Building Code of Australia revokes the previous instrument of adoption and adopts all of the provisions of the Building Code of Australia prepared and published by the Australian Uniform Building Regulations Co-ordinating Council as in force as at 30 September 1991 with modifications specified in the Instrument.

(v) Comittee 's role acknowledged

This revocation and adoption fulfils all of the necessary changes to the previous Instrument outlined in the letter from the Minister, Mr Connolly, of 11 February 1992 to the Committee. The Explanatory Statement generously acknowledges the Committee's assistance.

ACT Determination No. 14 of 1992 made under section 8 of the Ambulance Service Levy Act 1990 revokes Determination No. 15 of 1991 and prescribes the relevant amount for the calculation of the levy as 53 cents.

(vi) Determination made by Minister not Mentioned in the Authorising Act

The Committee makes two comments in relation to this Determination.

The first minor point is that, although both the heading of the Determination and the Explanatory Statement note that it is Determination No. 14, the actual citation clause, clause 1, is left blank.

Secondly, and perhaps more importantly, the Determination is made by the "Chief Minister and Treasurer", whereas section 8(4) and 8(6) of the Ambulance Service Levy Act 1990 require the "Minister for Finance and Urban Services" to be the person involved. Perhaps a check should be made tp ensure that the Determination is valid.

ACT Determination No. 16 of 1992 made under section 167(1)(a) and (b) of the Land (Planning and Environment) Act 1991 declares that section 167 shall apply to a specified class of lease and thus there is a need to obtain the Minister's consent to specified dealings with the lease.

ACT Determination No. 18 of 1992 made under section 167(1)(a) and (b) of the Land (Planning and Environment) Act 1991 declares that section 167 shall apply to a specified class of lease and thus there is a need to obtain the Minister's consent to specified dealings with the lease.

ACT Determination No. 19 of 1992 made under section 167(1)(a) and (b) of the Land (Planning and Environment) Act 1991 declares that section 167 shall apply to a specified class of lease and thus there is a need to obtain the Minister's consent to specified dealings with the lease.

(vii) Is there an incorrect subsection Reference?

All three of these Determinations require that the criteria that must be met by a proposed transferee or sublessee of a lease, among other things, must

> "satisfy the criteria for the initial grant of a lease for the same or similar purpose under subsections 161(5), 163(4) or 164(2) of the Act."

Subsections 161(5) and 163(4) certainly do provide that the Executive may specify criteria or amend or revoke them. However, subsection 164(2) does not do so, but forbids the granting of a lease

> "otherwise than in accordance with criteria for the granting of special leases specified pursuant to subsection (3)."

So possibly subsection 164(3) was intended and a query about the Determinations should be made. The fact that there may be an error is supported by the fact that Determination No. 20 of 1992 actually determines the criteria to be met under section 164(2).

If, in fact, there is a mistake, it also appears in the Explanatory Statements for Determinations Nos. 16 and 18, and the Explanatory Statement for Determination No 19 cpmpletely misses the fact that section 164 is involved in the Determination.

> ACT Determination No. 39 of 1992 made under section 48 of the Health Services Act 1990 revokes Determination No. 110 of 1991 and fixes new fees and charges under the Act.

(viii) Three minor matters

This health determination of fees and charges has been tidied up very well indeed and a generous acknowledgement made of the Committee's part in the process. However, it is suggested that, when the next amendment is made to the Determination, there are three minor matters that might be considered.

First, it is noted that there is a reference in paragraph 1(1) to the Criminal Injuries Compensation Ordinance 1983, which has now become an Act.

Secondly, in the definition of "hospital" there is sub-paragraph (a) and no other sub-paragraphs. This has occurred with the deletion of sub-paragraph (b) as a result of the consolidation of the hospital facilities.

Finally, there still remains a sexist "he" in sub-paragraph 1(5)(b) The Committee suggests that it be corrected the next time there is an adjustment of fees.

> Declaration made under section 11B(1) of the Stock Diseases (Amendment) Act 1991 [sic] declares cattle, including buffalo, bull,

cow, ox, steer, heifer or calf and swine weighing 25kg or more "to be defined stock for the purposes of this Act".

Declaration made under section 11H(1) of the Stock Diseases (Amendment) Act 1991 [sic] declares the manner in which approved tags are to be attached to the following defined stock namely, cattle, including buffalo, bull, cow, ox, steer, heifer or calf and swine.

Declaration No. 3 of 1992 made under section 11B(1) of the Stock Diseases Act 1933 revokes the declaration of 12 November 1991 and declares cattle including buffalo, bull, cow, ox, steer, heifer, calf and swine weighing 25kg or more "to be defined stock for the purposes of this Act".

Declaration No. 4 of 1992 made under section 11H(1) of the Stock Diseases Act 1933 revokes the declaration of 12 November 1991 and declares the manner in which approved tags are to be attached to the following defined stock namely, cattle including buffalo, bull, cow, ox, steer, heifer and calf and the manner in which swine weighing 25kg or more are to be tattooed

(ix) Minor errors corrected

The Committee noted that the first two declarations had been made pursuant to a non existant Act. However, the later two declarations revoked the previous two declarations and cited the correct Act.

Ellnor Grassby, MLA
Presiding Member
8 April 1992