

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

REPORT NO. 23 OF 1993

14 December 1993

TERMS OF REFERENCE

- (1) a Standing Committee for scrutiny of bills and subordinate legislation shall be appointed;
- (2) the Committee shall with respect to any instrument of a legislative nature which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act consider whether the instrument -
 - (a) is in accord with the general objects of the Act under which it is made;
 - (b) unduly trespasses on rights previously established by law;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (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
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.

BILLS

Bills Upon Which No Comment is Offered

The Committee has examined the following Bills and has no comment:

Administrative Appeals Tribunal (Amendment) Bill 1993

This Bill provides for a new scheme for determining fees and charges payable under the Act, for the payment of only one application fee in some instance where the same person makes multiple applications and provides a review process for the new system.

Australian National Training Authority (Territory Functions) Bill 1993

This Bill provides for the performance of functions within the ACT by the Australian National Training Authority and enables the Minister to nominate a person, organisation or body as the training agency of the Territory for the purposes of the *Australian National Training Authority Act 1992* of the Commonwealth.

Coroners (Amendment) Bill 1993

This Bill provides for a new scheme for determining fees and charges payable under the Act and provides a review process for the new system.

Discrimination (Amendment) Bill (No. 3) 1993

Subject to some exceptions, this Bill makes it unlawful to discriminate on the ground of age in the areas of work, education, access to premises, goods, services and facilities, accommodation, clubs and requests for information.

Evidence (Amendment) Bill (No. 3) 1993

This Bill abolishes the right to make an unsworn statement, but strengthens the provisions protecting the accused in relation to questions about prior convictions and reputation.

Magistrates Court (Amendment) Bill (No. 3) 1993

This Bill provides for a new scheme for determining fees and charges payable under the Act and provides a review process for the new system.

Magistrates Court (Civil Jurisdiction) (Amendment) Bill 1993

This Bill amends the principal Act to provide that the amendments made to the *Magistrates Court Act 1930* by the Magistrates Court (Amendment) Bill (No. 3) 1993 in relation to the payment of fees and charges will apply to fees and charges payable under the principal Act and amends the provisions relating to the right to inspect the register containing particulars of default judgements.

Small Claims Court (Amendment) Bill 1993

This Bill amends the principal Act to provide that the amendments made to the *Magistrates Court Act 1930* by the Magistrates Court (Amendment) Bill (No. 3) 1993 in relation to the payment of fees and charges will apply to fees and charges payable under the principal Act and provides that the Court may order a party to pay some or all of an investigator's costs.

Supreme Court (Amendment) Bill (No. 3) 1993

This Bill provides for a new scheme for determining fees and charges payable under the Act and provides a review process for the new system.

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. 46 of 1993 being the *Supreme Court Rules (Amendment)* specifies a number of powers that the Registrar or Master may exercise under provisions of the *Service and Execution of Process Act 1992* of the Commonwealth.

Subordinate Law No. 47 of 1993 being the *Land (Planning and Environment) Regulations (Amendment)* made under the *Land (Planning and Environment) Act 1991* prescribes leases issued wholly or partly for rural purposes for terms between 21 and 50 years and leases granted at less than the market value of the leases for the purpose of section 186 of the Act and thus enables such leases to be at a nominal rent.

Determination No. 153 of 1993 made under section 90A of the *Sale of Motor Vehicles Act 1987* revokes Determination No. 72 of 1993 and fixes the same level of fees and charges, but, in addition, provides that a pro rata fee may be paid for the renewal of a motor dealer's licence for a period of less than 12 months.

Determination No. 154 of 1993 made under section 282C of the *Land (Planning and Environment) Act 1991* appoints a particular person as Chairperson of the Land and Planning Appeals Board.

Determination No. 155 of 1993 made under section 282C of the *Land (Planning and Environment) Act 1991* appoints a particular person as Deputy Chairperson of the Land and Planning Appeals Board.

Determination No. 156 of 1993 made under section 282C of the *Land (Planning and Environment) Act 1991* appoints a particular person as Member of the Land and Planning Appeals Board.

Determination No. 157 of 1993 made under section 282C of the *Land (Planning and Environment) Act 1991* appoints a particular person as Member of the Land and Planning Appeals Board.

Determination No. 158 of 1993 made under section 282C of the *Land (Planning and Environment) Act 1991* appoints a particular person as Member of the Land and Planning Appeals Board.

Determination No. 159 of 1993 made under section 282C of the *Land (Planning and Environment) Act 1991* appoints a particular person as Member of the Land and Planning Appeals Board.

Determination No. 160 of 1993 made under section 282C of the *Land (Planning and Environment) Act 1991* appoints a particular person as Member of the Land and Planning Appeals Board.

Subordinate Legislation Upon Which Comment is Offered

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

Determination No. 161 of 1993 determines the fee that is to be payable under paragraph 282U(1)(d) of the *Land (Planning and Environment) Act 1991* in relation to an application for review of a decision by the Appeals Board as \$100.

The determination states, in part, as follows:

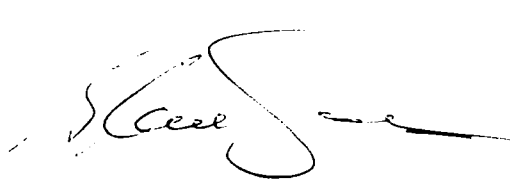
"UNDER paragraph 282U(1)(d) of the *Land (Planning and Environment) Act 1991* I DETERMINE that the fees payable for the purpose of that Act shall be in accordance with the Schedule."

In fact, the Minister's powers to determine fees under the *Land (Planning and Environment) Act 1991* are conferred by section 287 of the Act. Probably what was intended in the present determination was that the Minister determined the fees under section 287 for the purposes of paragraph 282U(1)(d).

GOVERNMENT RESPONSE

The Committee has received a response to comments made concerning the Land (Planning and Environment) (Amendment) Bill (No. 4) 1993 (Report No. 18 of 1993). A copy of the response is attached.

The Committee thanks the Attorney-General for his positive response.



Ellnor Grassby, MLA
Chairperson

14 December 1993



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

ATTORNEY GENERAL

1 Constitution Ave, Canberra ACT 2601

Phone (06) 20 50011

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

Dear  Mrs Grassby

In its Report No. 18 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on the Land (Planning and Environment) (Amendment) Bill (No.4) 1993 ("the Bill").

The Committee commented on a probable incorrect reference in subclause 20(b) of the Bill, inserting a number of new sections in the *Land (Planning and Environment) Act 1991* ("the Act"). The Committee correctly noted that perhaps the reference in new subsection 256(4C) to "subsection (4C)" should be, instead, a reference to "subsection (4B)". I am advised that this error was detected and rectified by way of a Clerk's amendment pursuant to Standing Order 191 of the Legislative Assembly.

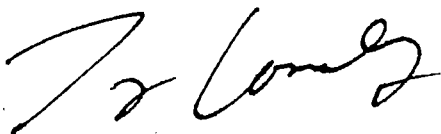
A further matter raised by the Committee was whether the reference in new section 282ZJ to a "Judge of the Court sitting in chambers", (emphasis added), should be retained in view of the abolition of the distinction between Court and chambers proposed in the provisions of clause 13 of the Supreme Court (Amendment) Bill (No.2) 1993. It was suggested that if those provisions commenced prior to the commencement of the provisions of the Bill an amendment to new subsections 282ZJ(2) and (3) may be appropriate.

As the Bill has been passed by the Legislative Assembly and it is proposed that the substantive provisions of the Bill be commenced on 1 December 1993, while the Supreme Court (Amendment) Bill (No.2) 1993 is yet to be passed by the Assembly and it will not be possible for its provisions to commence prior to 1 December 1993, amendments of the type to which the Committee referred are not, presently, appropriate.

However, once the Supreme Court (Amendment) Bill (No.2) 1993 commences it is intended that those Acts, including the *Land (Planning and Environment) Act 1991*, which contain unnecessary references to "chambers" will be amended as part of a statute law revision process.

I trust this information is of assistance to the Committee.

Yours sincerely



Terry Connolly

- 7 DEC 1993

