STANDING COMMITTEE ON SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION

REPORT NO. 18 OF 1992

24 November 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.

BILLS

Bills upon which no comment is offered

Buildings (Design and Siting) (Amendment) Bill (No. 2) 1992

This Bill allows the making of regulations for exempting proposals for the external design and siting of a building from the provisions of Part VI of the *Land (Planning and Environment) Act 1991*, which deals with approvals and orders.

Canberra Institute of Technology (Amendment) Bill 1992

This Bill changes the name of the A.C.T. Institute of Technical and Further Education to the Canberra Institute of Technology (including changing the name of the principal Act to reflect this change), increases the size of the Institute's renamed Advisory Council and permits the Institute to enter into contracts up to $250,000.00 instead of the previous $100,000.00 without seeking Ministerial approval.

Remand Centres (Amendment) Bill 1992

This Bill permits the provision of information by approved persons as counsellors and permits AIDS and STD kits to be supplied to detainees in a remand centre.

Bills upon which comment is offered

The Committee has examined the following Bills and makes the following comments:

Adoption Bill 1992

This Bill repeals and replaces the existing adoption laws in the Territory.

A Possible Tiny Mistake

In clause 4(1) of the Bill "Director" is defined to mean:

> "the Director of Family Services appointed under section 4 of the *Children's Services Act 1986* and includes a person appointed to act as Director under section 10 of that Act".

Although the Director of Family Services is mentioned in section 4(1) of the *Children's Services Act 1986*, her or she appears to be appointed under section 7 of that Act.

Building (Amendment) Bill (No. 2) 1992

This Bill provides that the Building Controller may only approve plans for the erection of a dwelling if the plans provide for insulation of each of the elements of the dwelling to comply with specified requirements.

Henry VIII Clause - Amendment of Act by Regulations

The requirements as to insulation for each element of a dwelling are set out in a Schedule to the Bill which would become Schedule 2 to the principal Act.

Clause 4(a) of the Bill would add the following provision to section 33 of the principal Act:

Subordinate Law No. 25 of 1992 being the *Heritage Council (Remuneration and Allowances) Regulations* fixes the remuneration and allowances that are to be paid to the Chairperson and members of the Heritage Council.

Is the Reference to a Section in the Explanatory Statement Correct?

The Explanatory Statement says that the regulations are made under section 102A(1) of the *Land (Planning and Environment) Act 1991*. The *Land (Planning and Environment) Act 1991* section 102(1) provided that appointed members of the Heritage Council were to be paid "such remuneration and allowances as are prescribed". The Committee has been unable to find an amendment that varies that section nor one that inserts section 102A(1). Possibly a check should be made, but, of course, the regulations are not effected in any event.

GOVERNMENT RESPONSE

The Committee has received a response to comments made concerning the *Credit Regulations (Amendment)* (No. 25 of 1991) (Report No. 17 of 1991). The Committee thanks the Attorney-General for his positive response.

Ellnor Grassby, MLA
Presiding Member

24 November 1992

A.C.T. GOVERNMENT

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Dear ~~Mrs Grassby~~ Ellnor

I refer to the Committee's Report No. 17 of 1991 and apologise for the delay in responding.

I note that in Report No. 17 of 1991 the Committee commented upon the Credit Regulations (Amendment) (No. 25 of 1991). I also note that the Committee expressed its concern about the amendments effected by regulation 8 of these amending regulations because they were taken to have commenced on 28 February 1985.

Regulation 8 amended schedules 3, 4 and 6 of the Principal Regulations to widen the scope of "consumer credit insurance" to include insurance against unemployment. As you are aware, the Committee commented that the Explanatory Statement for these amending regulations gave no explanation about the long period of retrospectivity and did not indicate whether such retrospectivity would be prejudicial to any person.

I believe that the retrospective operation of the amendments effected by regulation 8 will not disadvantage any person. This is because it has always been a common assumption of many consumers and credit providers that the term "consumer credit insurance" included insurance against unemployment. The Committee should also note that the *Credit (Amendment) Act 1991* amended the *Credit Act 1985* to provide that the disclosure of unemployment insurance commission may be incorporated with the disclosure of death, accident, disability and sickness insurance commission; and these amendments are also taken to have commenced on 28 February 1985.

1989-90-91

AUSTRALIAN CAPITAL TERRITORY

CREDIT ACT 1985

CREDIT REGULATIONS (AMENDMENT)

EXPLANATORY MEMORANDUM

Circulated by authority of the
Attorney General
Terry Connolly, MLA

Clause 8 amends Schedules 3, 4 and 6 of the Principal Regulations to widen the scope of the descriptive term 'consumer credit insurance' to include insurance against unemployment. This is a term authorised to be used in the Statement of Amount Financed required to be given by credit providers under regulated credit sale and credit loan contracts. It is also a term authorised to be used in the Statement of Account required to be given by credit providers under continuing credit contracts. The amendments effected by clause 8 shall be taken to have commenced on 28 February 1985, the date that the Principal Regulations commenced.

The retrospective operation of the amendments effected by clause 8 will not disadvantage either consumers or credit providers. This is because it has always been a common assumption of many consumers and credit providers that the term 'consumer credit insurance' included insurance against unemployment. It should also be noted that the *Credit (Amendment) Act 1991* amended the *Credit Act 1985* to provide that the disclosure of unemployment insurance comission may be incorporated with the disclosure of death, accident, disability and sickness insurance commission; and these amendments are also taken to have commenced on 28 February 1985.