

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

REPORT NO. 13 OF 1993

17 August 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 (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

Subordinate Legislation Upon Which no Comment is Offered

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

Subordinate Law No. 25 of 1993 being the *Motor Vehicle (Third Party Insurance) Regulations (Amendment)* made under sections 88 and 218 of the *Motor Traffic Act 1936* provides for a general increase in maximum rates of third party insurance premiums.

Subordinate Law No. 26 of 1993 being the *Boxing Control Regulations* made under section 21 of the *Boxing Control Act 1993* exempted a specified kick boxing contest from the provisions of the Act.

Subordinate Law No. 27 of 1993 made under subsection 12(e) of the *Public Health Act 1928* being the *Public Health (Infectious and Notifiable Diseases) Regulations (Amendment)* makes changes relating to the provision of immunisation records to schools and the exclusion of unimmunised children from schools on the outbreak of diseases and allows the Medical Officer of Health access to immunisation records.

Subordinate Law No. 28 of 1993 made under section 36 of the *Supreme Court Act 1933* being the *Supreme Court Rules (Amendment)* makes changes consequent upon the repeal of the *Service and Execution of Process Act 1901*, changes the structure of fees for copies of documents and introduces a fee for scanning documents rather than perusing them.

Subordinate Law No. 29 of 1993 made under the *Land (Planning and Environment) Act 1991* being the *Land (Planning and Environment) Regulations (Amendment)* provides for the exemption of public works for which funding from public money has been authorised before 1 October 1993 from the application of the *Land (Planning and Environment) Act 1991* or the *Buildings (Design and Siting) Act 1964*.

Subordinate Law No. 30 of 1993 made under section 36 of the *Supreme Court Act 1933* being the *Supreme Court Rules (Amendment)* makes changes consequent upon the repeal of the *Adoption of Children Act 1965* and the passing of the *Adoption Act 1993* and provides for applications for adoption orders, variation of adoption orders, discharge of adoption orders and applications for access to identifying information in relation to an adoption.

Approval of Draft Plan Variation made under paragraph 26(1)(a) of the *Land (Planning and Environment) Act 1991* approved the Territory Plan - Written Statement and the associated Territory Plan maps.

Determination No. 54 of 1993 made under subsection 161(5) of the *Land (Planning and Environment) Act 1991* specifies criteria for the direct grant of a Crown lease for land with government improvements which is no longer required for government use.

Determination No. 55 of 1993 made under subsection 87(1) of the *Occupational Health and Safety Act 1989* approves the adoption of the ACT Demolition Code of Practice (Second Revised Edition) in the Australian Capital Territory.

Determination No. 56 of 1993 made under section 83A of the *Nature Conservation Act 1980* revokes Determination No. 76 of 1992 and under section 63 of the Act fixes fees for the grant of licences under the Act.

Determination No. 57 of 1993 made under section 42 of the *Stock Act 1991* revokes Determination No. 75 of 1992 and fixes fees and charges under the Act.

Determination No. 59 of 1993 made under section 47 of the *Ozone Protection Act 1991* revokes Determinations Nos. 135, 136 and 137 of 1992 and fixes fees and charges under the Act.

Determination No. 60 of 1993 made under section 7 of the *Pounds Act 1928* revokes Determination No. 80 of 1992 and fixes fees and charges under the Act.

Determination No. 61 of 1993 made under section 47A of the *Rabbit Destruction Act 1919* revokes Determination No. 79 of 1992 and fixes fees and charges under the Act.

Determination No. 63 of 1993 made under section 139 of the *Real Property Act 1925* revokes Determination No. 168 of 1992 and fixes fees payable under the Act.

Determination No. 64 of 1993 made under section 62 of the *Registration of Births, Deaths and Marriages Act 1963* revokes Determination No. 89 of 1992 and fixes fees payable under the Act.

Determination No. 67 of 1993 made under section 37 of the *Instruments Act 1933* revokes Determination No. 92 of 1992 and fixes fees payable under the Act.

Determination No. 70 of 1993 made under subsection 12(1) of the *Trade Measurement Act 1991* revokes Determination No. 86 of 1992 and fixes fees payable under the Act.

Determination No. 73 of 1993 made under subsection 263(1) of the *Credit Act 1985* fixes fees payable under section 211 of the Act.

Determination No. 74 of 1993 made under section 101 of the *Weapons Act 1991* revokes Determination No. 86 of 1991 and fixes fees payable under the Act.

Determination No. 76 of 1993 made under section 105A of the *Liquor Act 1975* revokes Determination No. 26 of 1993 and fixes fees payable under the Act.

Determination No. 79 of 1993 made under section 287 of the *Land (Planning and Environment) Act 1991* revokes Determinations of Fees Nos. 40, 41 and 72 of 1992 and determines a number of fees that are payable under the Act.

Determination No. 80 of 1993 made under section 116 of the *Unit Titles Act 1970* revokes Determination No. 38 of 1993 and fixes fees payable under the Act.

Determination No. 82 of 1993 made under section 17 of the *Health Act 1993* revokes Determination No. 2 of 1993 and determines new fees and charges under the Act.

Determination No. 93 of 1993 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 36 of 1991 and Determinations Nos. 113 and 173 of 1992 and determines fees and the periods of time covered by those fees for voucher parking in specified locations under section 163C of the Act.

Determination No. 94 of 1993 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 120 of 1992 and determines new fees under sections 149 and 150 of the Act.

Determination No. 95 of 1993 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 121 of 1992 and determines new fees for the purposes of specified sections of the Act and for the purposes of regulation 22 of the Regulations.

Determination No. 96 of 1993 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 122 of 1992 and determines new fees under subsections 8(1), 14(a), 14(c), 22(3) and 105(4) of the Act.

Determination No. 98 of 1993 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 52 of 1992 and determines the rate of interest payable on overpaid taxes, duties and fees for the purposes of subsection 35(1) of the Act at 5.25%.

Determination No. 101 of 1993 made under section 111 of the *Gas Act 1992* fixes fees for testing meters under paragraphs 90(1)(b) and 91(1)(b) of the Act.

Determination No. 103 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the name, origin and significance of a street in the Division of Narrabundah.

Determination No. 104 of 1993 made under section 4 of the *Public Place Names Act 1989* determines the name, origin and significance of a street in the Division of Nicholls.

Determination No. 106 of 1993 made under section 288 of the *Rates and Land Tax Act 1926* revokes Determination No. 155 of 1992 and fixes the rate of interest to be paid on overpaid rates or land tax at 5.25% per annum.

Determination No. 107 of 1993 made under subsection 161(5) of the *Land (Planning and Environment) Act 1991* specifies criteria for the direct sale of block 30, section 78 in the Division of Griffith for commercial purposes.

Determination No. 108 of 1993 made under section 54 of the *Poisons and Drugs Act 1978* determines fees payable for the issue and renewal of licences for the manufacture and sale of poisons and for the issue of an authorisation to possess or use a poison to conduct a program.

Subordinate Legislation Upon Which Comment is Offered

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

Reference to the Revoked Determination as Well as Relevant Gazette Would Have Been Helpful

Determination No. 62 of 1993 made under section 4A of the *Machinery Act 1949* revokes Determination No. 117 of 1992 and fixes fees and charges under the Act.

Determination No. 83 of 1993 made under section 27B of the *Hawkers Act 1936* revokes Determination No. 31 of 1991 and fixes fees payable under the Act.

Determination No. 84 of 1993 made under subsection 12A(1) of the *Dangerous Goods Act 1984* revokes Determination No. 106 of 1992 and fixes fees and charges under the Act.

Determination No. 85 of 1993 made under section 9A of the *Roads and Public Places Act 1937* revokes Determination No. 105 of 1992 which fixed fees payable under the Act for placement of objects for an outdoor cafe.

Determination No. 86 of 1993 made under section 12 of the *Clinical Waste Act 1990* revokes Determination No. 107 of 1992 and determines a fee under the Act.

Determination No. 92 of 1993 made under section 9A of the *Roads and Public Places Act 1937* revokes Determination No. 100 of 1992 and determines fees payable under the Act for breaking up the surface of a road or public place and repairing it.

Determination No. 97 of 1993 made under section 6B of the *Scaffolding and Lifts Act 1957* revokes Determination No. 118 of 1992 and fixes fees under the Act.

Determination No. 99 of 1993 made under section 18A of the *Lotteries Act 1964* revokes Determination No. 146 of 1992 and fixes fees for the purposes of subsection 7(1A) of the Act.

In all of these determinations there is a reference to the *Gazette* in which the revoked determinations appeared, but the determinations that are being revoked are not identified by their unique numbers.

Provided that there are no problems with any of the determinations or no confusion can arise, this does mean that the determinations being revoked are adequately identified for revocation purposes. However, it also means that Members of the Assembly or of the community do have greater problems in checking details of changes.

Moreover, as the Committee pointed out in Report No. 10 of 1992 (at pages 15-16), confusion can occur when there is more than one relevant determination in a particular *Gazette*. This happened last year with two determinations made under section 9A of the *Roads and Public Places Act 1937*. The Committee said this:

"These determinations are both made under the same section, but deal with different aspects. However, they both refer to revoking a determination published in a [specified *Gazette*]. In fact, there were two determinations made under the same section and both were published in that same *Gazette*. Confusion could have been avoided, if they had indicated that they were revoking Determinations Nos 45 and 46 of 1991 respectively."

In fact, almost the same thing has happened with the same determinations this year. Determinations Nos. 85 and 92 of 1993 are both revoking determinations made under section 9A of the *Roads and Public Places Act 1937* that appeared in *Gazette* S105 dated 1 July 1992. Although Determination No. 85 of 1993 does not identify the number of the determination which it is revoking (it appears to be Determination No. 105 of 1992), fortunately some help is afforded to a searcher as Determination No. 86 of 1993 does follow the helpful formula and indicate that it is revoking Determination No. 100 of 1992.

The Guidelines for the Preparation of Disallowable Instruments ("the Guidelines"), which is a very helpful document that was prepared in the ACT Attorney-General's Department and is dated May 1993, makes the point very well when it states (at page 11):

"Revocation of Previous Instruments. 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 *Gazette* No. 5 of 8 February 1993 and determine ...'."

Reference to the Number of the Revoked Determination in the Determination as well as Relevant Gazette would have been Helpful even if Explanatory Statement does Mention the Relevant Revoked Determination

Determination No. 52 of 1993 made under section 80C of the *Co-operative Societies Act 1939* revokes Determination No. 67 of 1992 and fixes fees under the Act.

In this case there is a reference to the *Gazette* in which the revoked determination, Determination No. 67 of 1992, was published and that revoked determination is referred to in full in the Explanatory Statement. For completeness, it would have been even more helpful if the suggestion made in the Committee's Report No. 9 of 1992 in relation to Determination No. 67 of 1992 had been followed that:

"it would be helpful if the revocation clause referred to the number of the Determination that is being revoked to avoid any possible doubt."

This would also be helpful, because not everyone making a check would have the Explanatory Statement readily available to him or her.

No References to either the Revoked Determination or the Relevant Gazette

Determination No. 71 of 1993 made under section 263 of the *Credit Act 1985* revokes Determination No. 85 of 1992 and fixes fees payable under the Act.

Determination No. 72 of 1993 made under section 90A of the *Sale of Motor Vehicles Act 1977* revokes Determination No. 84 of 1992 and fixes fees and charges payable under the Act.

Determination No. 89 of 1993 made under section 39B of the *Architects Act 1959* revokes Determination No. 103 of 1992 and fixes fees payable under the Act.

Determination No. 90 of 1993 made under section 45A of the *Plumbers Drainers and Gasfitters Board Act 1982* revokes Determination No. 104 of 1992 and fixes fees payable under the Act.

In these cases there is a general revocation clause, which, of course, is effective to revoke any current determination, but this form of blanket revocation makes it even more difficult for:

"a member of the Assembly or a member of the community who wishes to check back on the previous situation to do so easily." (see the Guidelines, at page 11).

Reference to the Number of the Revoked Determination would have been Helpful and May have Avoided a Mistake

Determination No. 100 of 1993 made under section 55 of the *Bookmakers Act 1985* purports to revoke "the determination of fees, notice of which appeared in the Australian Capital Territory Gazette No. S56 of 1 July 1992, only in respect of fee [sic] payable under section 24(2) of the Act".

The Committee has been unable to find a *Gazette* No. S56 of 1 July 1992. The only *Special Gazette* that I have found for that date is *Gazette* No. S105.

However, on searching, the Committee discovered Determination No. 23 of 1991 in *Gazette* No. S56 of 1 July 1991 which appears to be the relevant one.

If the practice of identifying a determination that is being revoked by number as well as *Gazette* had been followed as recommended by the Guidelines this mistake of revoking a determination that does not exist may not have occurred.

A question: What odds would the bookmakers affected by the determination offer about the validity of this erroneous revocation?

Unhelpful Revocations, Inaccurate or Incomplete Explanatory Statements and an Error Repeated yet Again

Determination No. 87 of 1993 made under section 65 of the *Building Act 1972* revokes Determinations Nos. 102 and 109 of 1992 and fixes fees under certain specified provisions of the Act.

Determination No. 88 of 1993 made under section 65 of the *Building Act 1972* fixes fees under other specified provisions of the Act.

In its Report No. 10 of 1992 (at pages 13-14) the Committee pointed out a number of uncertainties or errors in the equivalent 1992 determinations, Determinations Nos. 102 and 109 of 1992. The Committee received a very helpful reply of 12 October 1992 from the Attorney-General, Mr Connolly, which was attached to the Committee's Report No. 14 of 1993. Unfortunately, some of the problems are repeated in these determinations and a new one or two have emerged.

First, the Committee mentions the question of providing helpful revocations in determinations. Here, the Committee merely refers to the quotation under heading 1 above from the excellent Guidelines.

Next, the Explanatory Statement for Determination No. 87 of 1993, which determines fees payable for many aspects such as for a builder's licence, approval of plans, building permits and so on, states that the determination:

"has the effect of increasing fees for most classes The rates are listed below with the existing rates at the left."

Unfortunately, no lists have been given in the Explanatory Statement. However, pages 21-30 published in *Gazette* No. S127 of 1 July 1993 immediately after the publication of Determination No. 87 of 1993 provide information that looks suspiciously like that which should have been provided in the Explanatory Statement.

Perhaps a check should be made to see if this is so.

In addition, the following provisions in the Guidelines (at page 16) seem to be relevant:

"Fees and Charges. First, if you are preparing a determination of fees or charges the explanatory statement **must** include a comparative list of the old fees or charges (if any) and the new fees or charges.

Also the explanatory statement **must** explain the reason for the variation in the fees or charges. There could be a variety of reasons such as an increase in the Consumer Price Index; the Government's budget strategy for the year in question; recovery of the full cost of providing the services or items; brings the fees or charges in line with those applying elsewhere."

Thirdly, in Report No. 10 of 1992 (at page 14) the Committee commented on an apparent mistake in last year's determination in the following terms:

"There also appears to be an error in Determination No. 102 of 1992, which is repeated from Determination No. 24 of 1991. In paragraph 14 dealing with certificates of occupancy and use there is a reference to a 'certificate under section 52(3), (3), (10) or (11)'. Probably it should be a 'certificate under section 52(2), (3), (10) or (11)'.

As this apparent error has been in existence for at least a year (and possibly longer) ... it should be looked at as well as the matters raised above."

In the Attorney-General's letter he stated that the matter had been looked at, and, although advice was that the various mistakes might not lead to loss of revenue, he advised that "this Determination will be revoked and remade to avoid unnecessary confusion". This has not been done until the present revocation and re-making and, unfortunately, some of the mistakes have been repeated.

Perhaps the matter should be looked at again.

Moving to Determination No. 88, its Explanatory Statement states that:

"This instrument revokes all previous fee determinations under the Building Act".

There is no revocation clause in Determination No. 88, but last year's equivalent determination, Determination No. 109, would have been revoked in passing by the all-embracing revocation clause in Determination No. 87 considered above.

The Committee commented last year in Report No. 10 on a somewhat similar inaccurate statement in the Explanatory Statement for Determination No. 109 and the Attorney-General agreed in the letter of 12 October 1992 that the "explanatory statement was indeed inaccurate for mentioning the previous revocations".

Finally, the current Explanatory Statement and Determination No. 88 itself set out the relevant licence fees, which are identical with the three fees set last year by Determination No. 109. Given the lack of change, why was it considered necessary to revoke and re-make these fees? Was it intended to increase the fees this year? If so, it has not happened.

Has Anyone been Overcharged during the Year?

Determination No. 58 of 1993 made under section 39 of the *Water Pollution Act 1984* revokes Determination No. 78 of 1992 and fixes fees payable under paragraph 19(1)(g) of the Act.

In Report No. 10 of 1992 (at pages 9-10) the Committee noted that there was an inconsistency last year between Determination No. 78 of 1992 and its Explanatory Statement. The Explanatory Statement stated that the fee for storm water run-off during disturbance caused by land development for 20 hectares or more was set at \$1,158.00, whereas Determination No. 78 of 1992 actually fixed the fee at \$848.00 (the same as for the previous year). The Committee then concluded:

"Was it intended to increase the fee to \$1,158.00? If so, it has not occurred."

The Explanatory Statement for the present determination follows last year's incorrect Explanatory Statement and indicates that the existing fee was \$1,158.00 instead of the legally fixed fee of \$848.00. The Committee has been unable to find an amendment to Determination No. 78 of 1992 legally increasing the fee to \$1,158.00, and it may be significant that the present determination revokes only Determination No. 78 of 1992 and no amending determination.

If an amendment has not been made and if anyone has in fact been charged \$1,158.00, they have been overcharged.

Perhaps a check should be made.

Did Something Odd Happen on the Way to Publication in the *Gazette*?

Determination No. 66 of 1993 made under section 4A of the *Business Names Act 1963* revokes Determination No. 91 of 1992 and fixes fees and charges payable under the Act.

The Explanatory Statement for this determination helpfully indicates that the basis for the fees and charges is full cost recovery and in line with other Australian jurisdictions and that the increases of 3% are in accordance with anticipated movements in the Consumer Price Index.

However, the Explanatory Statement also states that the "new fee structure is as set out in the attached schedule". Unfortunately, there is no Schedule attached to the Explanatory Statement.

Recalling what appears to have happened with the missing Schedule for the Explanatory Statement for Determination No. 87 of 1993 made under section 65 of the *Building Act 1972* (dealt with above), the Committee searched through *Gazette* No. S119 of 30 June 1993 as Determination No. 66 of 1993 appears at pages 10-13 of that *Gazette*. At pages 32-33 of that *Gazette* there are pages which look a little lost. They are respectively headed "SCHEDULE" and "THIS IS PAGE ONE [TWO] OF THE SCHEDULE TO THE EXPLANATORY STATEMENT UNDER THE BUSINESS NAMES ACT 1963". Then follow detailed comparisons of old and proposed charges that fit in with those in Determination No. 66 of 1993 and those of the revoked Determination No. 91 of 1992.

Here, too, confirmation should be sought that this is, in fact, the missing Schedule for the Explanatory Statement.

A Determination made under a Possibly Non-existent Act

Determination No. 68 of 1993 made under section 8 of the *Deeds [sic] Act 1957* purports to revoke Determination No. 94 of 1992 made under section 8 of the *Registration of Deeds Act 1957* and fixes fees payable under the Deeds Act.

This determination is made under the *Deeds Act 1957*. The Committee has been unable to find such an Act. The heading to the determination refers to the *Registration of Deeds Act 1957* as does the Explanatory Statement. Perhaps that Act was intended, as the fees look suspiciously like those that are usually payable under that Act. Another possibility is that there has been a recent amendment to the name of the *Registration of Deeds Act 1957*, but an exhaustive search has not uncovered such an amendment.

The validity of this determination should perhaps be considered.

Potential Problems with an old and a new Act

Determination No. 69 of 1993 made under section 64A of the *Adoption of Children Act 1965* revokes Determination No. 93 of 1992 and fixes fees payable under the Act.

Determination No. 75 of 1993 made under section 118 of the *Adoption Act 1993* fixes fees payable under subsection 62(2) of the Act in relation to applications for information.

Determination No. 69 of 1993 increases the fee for a search and two fees relating to copies of entries or orders in relation to the *Adoption of Children Act 1965*.

The Explanatory Statement says that fees "have generally been increased by 3% in accordance with the anticipated movement in 1993/94 of the Consumer Price Index". In fact two of the fees have been increased from \$16.00 to \$20.00 and the other has stayed the same at \$20.00. This appears to be rather different from a 3% increase.

Determination No. 75 of 1993 fixes fees for the first time in relation to the Access to Information Part of the *Adoption Act 1993*.

The substantive provisions of the Adoption Act commenced on 31 July 1993. This will cause the *Adoption of Children Act 1965* and specified other Adoption Acts to be repealed by section 3 of the *Adoption Act 1993*.

The Committee raises two matters.

First, the question whether Determination No. 69 of 1993 will fall with the repeal of the *Adoption of Children Act 1965* under which it is made needs to be considered. If it does fall, consideration will need to be given to whether similar appropriate fees need to be fixed under the new *Adoption Act 1993*.

Secondly, the validity of Determination No. 75 of 1993 perhaps needs to be confirmed. In certain circumstances, section 5 of the *Subordinate Laws Act 1989* permits a subordinate law to be made between the gazettal of an Act, which confers the power to make such an instrument, and that Act's commencement. That subordinate law can then "lie in wait" and come into force when the Act commences.

It perhaps needs to be confirmed whether Determination No. 75 of 1993 falls within section 5.

A More Detailed Explanatory Statement would have been Helpful

Determination No. 77 of 1993 made under subsection 22A(1) of the *Cemeteries Act 1933* revokes Determination No. 6 of 1993 and fixes fees and charges payable under the Act.

The Explanatory Statement indicates that the fees are being aligned with those in other States, that there are re-determinations of existing fees and that fees are being set for new services.

But in this *Cemeteries Act 1933* determination there are some very live issues which caused the Committee quite grave concern.

No attempt is made to compare the levels of the previous and re-determined fees or to indicate which fees are for new services.

In addition, the form of setting out the new determination is quite different from that of the previous determination and it is difficult to compare the two determinations.

A more detailed Explanatory Statement would have been helpful to Members, particularly as such substantial changes were being made.

Some Possible Problems with Revocations

Determination No. 78 of 1993 made under section 4 of the *Motor Omnibus Services Act 1955* revokes "Determination No. 99 of 1992 dated 24 June 1992 and published in the Australian Capital Territory *Special Gazette* No. S221 of 1 December 1992" and fixes charges under the Act.

Determination No. 99 of 1992 was dated 24 June 1992, but was not published in *Special Gazette* No. S221 of 1 December 1992 as suggested in the present determination. It was published in *Special Gazette* No. S104 published on 30 June 1992.

Then, an unnumbered Revocation and Determination of Charges dated 26 November 1992 was published in *Special Gazette* No. S221 of 1 December 1992. It revoked "Determination No. 99 of 1992 notice of which was published in *Gazette* No. S104 of 30 June 1992" and fixed charges under the Act.

Then Revocation and Determination of Charges No. 172 of 1992 was published in *Gazette* No. S228 of 4 December 1992. It was also dated 26 November 1992 and appears to be identical with the unnumbered Revocation and Determination of Charges published in *Gazette* No. S221 of 1 December 1992. Indeed, *Gazette* No. S228 bears this note:

"PLEASE NOTE: *Special Gazette* No. 228, will now super-seed [sic] the *Motor Omnibus Services Act 1955* [sic], previously gazetted in *Special Gazette* No. 221."

Thus the present position is that Determination No. 99 of 1992 has been revoked at least twice and perhaps three times.

However, the unnumbered Revocation and Determination of Charges and Determination No. 172 of 1992 do not appear to have been specifically revoked. If the unnumbered Revocation and Determination of Charges was not tabled it will have "cease[d] to have effect" as 15 sitting days have occurred since its making (*Subordinate Laws Act 1989* subsection 6(6)).

Given the specificity of the revocation in the present Revocation and Determination of Charges No. 78 of 1993, it is an interesting question whether there has been an implied revocation of Determination No. 172 of 1992.

Perhaps the matter needs to be considered.

Something Appears to have Gone Wrong

Determination No. 81 of 1993 made under section 9 of the *Buildings (Design and Siting) Act 1964* purports to revoke "the determination of fees No. 74, notice of which was published in Australian Capital Territory *Gazette* No. S109 on 1 July 1992" and determines fees payable for the purposes of the Act.

Determination No. 102 of 1993 made under section 9 of the *Buildings (Design and Siting) Act 1964* revokes Determination No. 112 of 1992 and Determination No. 81 of 1993 and determines fees payable for the purposes of the Act.

The Committee deals first with Determination No. 81 of 1993.

There does not seem to be any Determination No. 74 in *Gazette* No. S109 of 1 July 1992. Determination No. 74 of 1992, which appears in *Gazette* No. S95 of 30 June 1992, was not made under the *Buildings (Design and Siting) Act 1964*, but was a good and faithful servant made under section 116 of the *Unit Titles Act 1970* until it was revoked by Determination No. 38 of 1993.

However, Determination No. 112 made under the *Buildings (Design and Siting) Act 1964* does appear in *Gazette* No. S109 of 1 July 1992. Perhaps this was what was intended.

Two comments are made.

First, no "collateral damage" seems to have been done to the *Unit Titles Act 1970* fees by this apparently incorrect revocation as Determination No. 74 of 1992 had already been revoked and replaced by Determination No. 38 of 1993.

Secondly a check should be made to decide if Determination No. 112 was effectively revoked by Determination No. 81 of 1993 and the fees determined by Determination No. 81 of 1993 then became effective. Depending on how many fees were actually paid about this time, the practical effect may not be great, because a replacement determination, Determination No. 102 of 1993, was soon made.

The Committee now turns to look at Determination No. 102 of 1993.

The substance of the Explanatory Statement for Determination No. 102 of 1993, is identical with that for Determination No. 81 of 1993. It gives no explanation for the signing of a revocation of Determination No. 81 of 1993 less than a week later. Perhaps some of the concerns expressed above were recognised, but there is no indication of the problems in the documents.

Determination No. 102 of 1993 does specifically revoke the two determinations in a way that is consistent with the suggestions made in the Guidelines.

However, the Explanatory Statement fails to follow the Guidelines, as it does not give the customary listing of old and new levels of fees and the rationale for the changes to assist Members and the public. Nor does it explain that, in contrast to both Determination No. 112 of 1992 and Determination No. 81 of 1993, some of the fees commence on 1 July 1993 and some commence on 1 September 1993.

An Error Repeated from Last Year

Determination No. 65 of 1993 made under section 126 of the *Associations Incorporation Act 1991* revokes Determination No. 90 of 1992 and fixes fees and charges under the Act.

In its Report No. 10 of 1992 (at pages 12-13), among other things, the Committee had this to say about the Schedule to Determination No. 90 of 1992 that is being revoked:

"There is a reference in Item 1 of the Schedule to an application made under either section 19 or section 26 for incorporation or amalgamation. In fact, applications appear to be made under either section 18 or section 26. This appears to be confirmed by Item 2 which refers to the issue of the follow-up certificate of incorporation under section 19, section 27 or subsection 38(3)."

A helpful letter of 21 September 1992 was received from the Registrar's Office (attached to Report No. 14 of 1992) totally agreeing with the Committee's point.

Unfortunately, the mistake has not been corrected in Determination No. 65 of 1993.

Another Error Repeated from Last Year

Determination No. 91 of 1993 made under subsection 57(1) of the *Motor Vehicles (Dimensions and Mass) Act 1990* revokes Determination No. 101 of 1992 and fixes fees payable under the Act.

In its Report No. 10 of 1992 (at page 13) the Committee made some comments on the equivalent determination for last year, Determination No. 101 of 1992.

The Committee had a very helpful reply of 2 November 1992 (attached to Report No. 17 of 1992) from the Department of Urban Services on these matters. The matters raised by the Committee have been corrected apart from this one, which the Committee stated thus in its Report No. 10 of 1992:

"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."

This comment is still relevant to the present new determination.

In addition, it is noted that, although the heading of the determination gets the date correct, it calls the Act the *Motor Vehicles (Dimension [sic] and Mass) Act 1990*. The mis-spelling also occurs in the heading of the Explanatory Statement.

These are probably typographical mistakes, but they mar an otherwise very helpful determination and good Explanatory Statement.

Reference to the Revoked Determination and the Relevant *Gazette* Would Have Been Helpful

Determination No. 105 of 1993 made under clause 4 of the Homebuyer Housing Assistance Program made under section 12 of the *Housing Assistance Act 1987* revokes Determination No. 124 of 1992 and determines new fees.

This determination gives the date of the determination that is being revoked, but does not refer to the relevant *Gazette* or give the number of the determination that is being revoked.

This means that Members of the Assembly or of the community do have greater problems in checking the details of any changes.

No Numbering

Approval of amendment to the Noise Control Manual made under section 18 of the *Noise Control Act 1988* and published in *Gazette* No. S110 on 17 June 1993 amends the Manual by adding two approved tertiary courses to the list of approved courses.

The Committee noted that the Approval was not numbered to assist in identifying it. The explanatory statement for the instrument also refers to the Approval as instrument number 110 of 1993. Is this a reference to the *Gazette* number? Perhaps a check should be made.

GOVERNMENT RESPONSE

The Committee has received a response to comments made concerning the Betting (Totalizator Administration) (Amendment) Bill 1993 (Report No. 9 of 1993). A copy of the response is attached.

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



Ellnor Grassby, MLA
Presiding Member

17 August 1993



A.C.T. GOVERNMENT

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07 JUL 1993


Dear Mrs Grassby

In its Report No. 9 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on an inconsistency between two provisions of the Betting (Totalizator Administration) (Amendment) Bill 1993 that relate to the appointment of a person to act in a position.

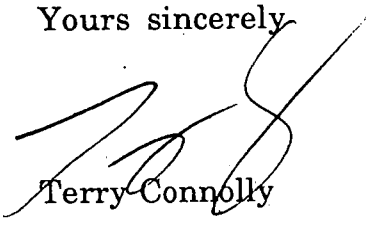
New section 5P of the Bill provides that the Minister may appoint a person to act as a member of the Australian Capital Territory Totalizator Administration Board. New section 5Y provides that the Minister may appoint a person to act during the absence of the Chief Executive Officer of the Board, or during a vacancy in that office.

I am advised that it was intended that section 28A of the Interpretation Act 1967, detailing the conditions relating to acting appointments, would apply. This policy was adopted in relation to new section 5P. However, in new section 5Y the application of section 28A of the Interpretation Act 1967 was qualified by the inclusion of a statement restricting the period that a person could act where that person was appointed during a vacancy in that office.

During the debate in the Legislative Assembly a Government amendment was made to new subsection 5Y(1) to remove the statement relating to the period a person appointed during a vacancy could continue to act. The amendment has removed the inconsistency and the provisions of the Interpretation Act 1967 relating to acting appointments apply to both new sections 5P and 5Y.

I trust this information is of assistance to the Committee.

Yours sincerely


Terry Connolly

