STANDING COMMITTEE ON SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION

REPORT NO. 17 OF 1992

17 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.

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. 20 of 1992 being the *Financial Institutions Duty Regulations (Amendment)* exempts the accounts used by Thomas Cook Limited for the purchase and sale of foreign currency, foreign currency notes and travellers cheques and foreign currency banking instruments from the payment of Financial Institutions Duty.

Subordinate Law No. 23 of 1992 being the *Supreme Court Rules (Amendment)* enables a defendant to submit to Court orders by making a submitting appearance without submitting to an order for costs, clarifies the procedure for entering a conditional appearance when testing the Court's jurisdiction, amends the procedure for making a bail application and makes a number of amendments of a drafting nature.

Subordinate Law No 24 of 1992 being the *Epidemiological Studies (Confidentiality) Regulations* prescribes the Territory epidemiological study known as the Feasibility Research into the Controlled Availability of Opioids being conducted by the National Centre for Epidemiology and Population Health and the Australian Institute of Criminology as a "prescribed study" for the purposes of section 3(1) of the *Epidemiological Studies (Confidentiality) Act 1992.*

Determination No. 160 of 1992 made under section 4 of the *Public Place Names Act 1989* determines the name, origins and significance of a street in the Division of City and then revokes that street name as the road is to be closed, but the name may be used later in a different location.

Determination No. 162 of 1992 made under section 161(5) of the *Land (Planning and Environment) Act 1991* determines criteria for the direct grant of leases at full market value to Binational or Multinational organisations approved by the Territory.

Subordinate legislation upon which comment is offered

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

Determination No. 157 of 1992 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of a number of streets in the Division of Ngunnawal.

Possibly Overlapping Determinations

This Determination may possibly overlap with an earlier Determination. Determination No. 157 of 1992 appears to be very similar to, or perhaps identical with, Determination No. 150 of 1992.

An Appropriate Correction of a Previous Error

In *Report* No. 1 of 1992 the Committee noted some errors in Determination No. 109 of 1991 and its explanatory statement. A full and very helpful explanation from the Attorney-General dated 29 October 1992 confirming these errors has been received. In addition, the explanatory statement sets out what happened and also very properly indicated the Committee's involvement.

In short, the fees should have been increased from $65 to $68 last year, but were gazetted as $65. Unfortunately, most fees were in fact collected at the rate of $68, thus overcharging by $3. The explanatory statement says that the "$3.00 excess fee collected will be refunded on request". The explanatory statement also says:

> "In fact, in most cases $68.00 was collected in accordance with a renewal notice sent prior to the gazettal of the Determination and before the error was discovered."

The fees for 1993 are set at $70 by the present Determination. If the same procedure of renewal notices is being used this year, perhaps it would be appropriate for the renewal notices to credit all those who overpaid the $3 last year with that sum against their 1993 fee of $70. The request for refund suggestion could stand for those who are not renewing or for those few who did not overpay last year.

Subordinate Law No. 21 of 1992 being the *Supreme Court Rules (Amendment)* provides for a procedure of preliminary discovery, rationalises the appeals process for appeals from the Magistrates Court to the Supreme Court, amends the Rules in relation to appeals from the Administrative Appeals Tribunal and provides procedures for appeals from the Guardianship and Management of Property Tribunal to the Court.

A Possible Error or Omission

Among other things, the Amendment inserts Order 34A Preliminary Discovery into the Supreme Court Rules.

Rule 2 of the Order sets out circumstances in which a person is not required to produce documents on the ground of privilege. Rule 2 provides, in part, as follows:

> "2. An order made under this Order does not operate to require the person against whom the order is made to produce any document that, on the ground of privilege, the person could not be required to produce - ...
>
> (c) in the case of an order made under Rule 9 - if the person had been served with a subpoena for production of the document at the trial of the proceeding."

There does not appear to be a Rule 9. Furthermore, it is difficult to see another Rule in Order 34A to which the cross-reference could apply.

The Committee thanks the Attorney-General and the Department of Urban Services for their positive responses.

Ellnor Grassby, MLA
Presiding Member

17 November 1992

A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

ATTORNEY GENERAL

1 Constitution Ave Canberra ACT 2601

Phone ~~[illegible]~~
2050011

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

Dear ~~Mrs Grassby~~ Ellnor

In its Report No. 1 of 1992, the Committee commented on Determination No. 109 of 1991 made under the *Public Health Act 1928*. The Determination sets fees under various Public Health Regulations for licences, permits and registrations. The Committee was concerned about possible inconsistencies between the Determination and the Explanatory Statement.

I apologise for the delay in responding.

Date of effect

The Committee's first concern was that the Explanatory Statement states that the "Determination comes into effect on 1 January 1992 and ceases 31 December 1992" but there is no mention of these dates of effect in the Determination itself. The Committee is correct in that this omission does not cause a problem. As the Committee has pointed out, in the absence of a specified date, paragraph 6(1)(b) of the *Subordinate Laws Act 1989* provides that the Determination is effective from the date of its gazettal, 20 December 1991. Further, all the licences, permits and registrations granted or renewed after payment of the determined fees, are valid from 1 January to 31 December each year. Therefore, the commencement of the Determination on 20 December 1991 did not have any effect on the validity of the licences, permits and registrations for either 1991 or 1992.

Fee discrepancy

The Committee's second concern was a reference in the Explanatory Statement to the licence and registration fees set by the previous determination, Determination No. 78 of 1990. The Explanatory Statement said that the previous fees were $62.00

A.C.T. City Services
Roads and Transport Branch

GPO Box 158
CANBERRA ACT 2601

Telephone: 06 207 6151
Facsimile: 06 207 6148

Mr Tom Duncan
Secretary
Standing Committee on Scrutiny of Bills
and Subordinate Legislation
ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2601

Dear Mr Duncan

I refer to Report No 10 of 1992 of the ACT Legislative Assembly Standing Committee on Scrutiny of Bills and Subordinate Legislation, and the comment of the Committee on Determination No 101 of 1992 made under the Motor Vehicles (Dimensions and Mass) Act 1990. The Committee noted a typographical error in the Determination, in that it referred to the enactment year as being 1991 instead of 1990, and asked that its effect on the validity of the Determination be checked.

At the request of the ACT Government Law Office, we have sought the advice of the ACT Government Solicitor. The advice of his office is that in their view, the erroneous reference to 1991 rather than 1990 does not affect the validity of the Determination. A copy of that advice, together with the relevant extract from the Committee's Report are attached. As this view is shared by the Law Office, we do not propose to take any further action.

I understand from Ms Anita Kaney of the Law Office that I am to pass this information direct to you, with a copy to the Law Office.

I trust the information will be satisfactory to the Committee. If you wish to discuss the matter, please contact Mr Jim Maher on telephone 2076155.

Yours sincerely

Rohan Clark

ROHAN CLARK
Acting General Manager
Roads and Transport Branch

2 November 1992

A.C.T. GOVERNMENT
TERRY CONNOLLY MLA
ATTORNEY GENERAL

1 Constitution Ave, Canberra ACT 2601 Phone 2050011

Mrs E Grassby MLA
Presiding Member
Standing Committee for the Scrutiny of Bills and Subordinate Legislation
ACT Legislative Assembly
1 Constitution Avenue
CANBERRA ACT 2601

Dear ~~Mrs Grassby~~ Ellnor

I refer to the Committee's Report No. 1 of 1992 and apologise for the delay in responding.

I note that in Report No. 1 of 1992 the Committee commented upon the Explanatory Statement which accompanied Declaration of Exemption No. 6 of 1992. As you are aware, this Declaration of Exemption was made under section 19 of the *Credit Act 1985* (the Act) and enables Diners Finance Pty Ltd to calculate interest charges on a daily basis for its Extra Cash continuing credit facility.

I note that, in relation to the Explanatory Statement, the Committee has queried the figure of "42" which was contained in the assertion: "The Act provides that billing cycles shall be based on a period of between 25 and 42 days".

As you are aware, the Committee noted that sub-section 50(2) of the Act provides that a credit provider providing credit under a continuing credit contract for "a period exceeding 40 days is guilty of an offence". As you are also aware, the Committee contended that section 56 of the Act provides for a billing cycle "the period of which is not less than 24 days".

In light of the Committee's comments and a review of the provisions of the Act relating to billing cycles, the assertion has been amended so that it reads: "The Act effectively provides that billing cycles shall be based on a period of 24 to 40 days". The reason that the word "effectively" has been added and the figure "24" substituted is because: (1) section 56 of the Act only makes concessions in

EXPLANATORY STATEMENT

This Declaration enables Diners Finance Pty Ltd (Diners) to calculate interest charges on a daily basis for its Extra Cash continuing credit facility.

On 17 July 1991 the solicitors acting for Diners advised the Director of Consumer Affairs that Diners intended to introduce a continuing credit facility in the ACT to be known as Diners Finance Extra Cash. This credit facility will require the calculation of interest on a daily basis, a method of calculation prohibited by the *Credit Act 1985* (the Act).

Therefore, Diners is seeking a general exemption from sections 52, 54(2), 55(1) 59(1)(b), 59(1)(f) and clause 1(n) of Schedule 7 of the Act. These provisions of the Act require a credit provider to calculate interest based on the amount owing at the end of each billing cycle. The Act effectively provides that billing cycles shall be based on a period of 24 to 40 days. Most credit providers adopt 30/31 day billing cycles to coincide with the end of each calendar month.

The proposed credit facility will make funds available to selected customers of Diners via the automatic teller systems of major banks throughout Australia. Interest will be charged at the rate of 48 per cent per annum, the highest rate allowed under the Victorian *Credit Act 1984*. There are no limits on how much interest can be charged in the other uniform credit states, including the ACT. The solicitors acting for Diners have advised that the high rate of interest is necessary to cover fees charged by the banks for use of their facilities.

However, the Director of Consumer Affairs does not object to the granting of this Declaration as the "Extra Cash" facility will be offered as an additional service to selected Diners' customers. Further, other uniform credit states will also grant exemptions similar to that contained in the Declaration.