

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

REPORT NO. 11 OF 1997

2 September 1997

TERMS OF REFERENCE

- (1) A Standing Committee for scrutiny of bills and subordinate legislation be appointed.
- (2) The Committee will consider whether:
 - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
 - (i) meet the objectives of the Act under which it is made;
 - (ii) unduly trespass on rights previously established by law;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
 - (b) its explanatory statement meets the technical or stylistic standards expected by the Committee.
 - (c) clauses of bills introduced in the Assembly:
 - (i) do not unduly trespass on personal rights and liberties;
 - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
 - (d) its explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of three members.
- (4) 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.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) 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

Mr Bill Wood, MLA (Chair)
Mr Paul Osborne, MLA (Deputy Chair)
Mr Harold Hird, MLA

Legal Advisor: Emeritus Professor Douglas Whalan, AM
Secretary: Mr Tom Duncan

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

BILLS

Bills - No Comment

The Committee has examined the following Bills and offers no comments:

Bank Mergers Bill 1997

This Bill facilitates the process of merger of banks once a merger has been approved.

Board of Senior Secondary Studies Bill 1997

This Bill establishes the Board of Senior Secondary Studies as a statutory body.

Building (Amendment) Bill 1997

This Bill repeals the provisions that require provisions to be made by regulations for the refund of fees.

Roads and Public Places (Amendment) Bill 1997

This Bill provides for the payment of a fee determined by the Minister instead of the fee being determined by regulations.

Stamp Duties and Taxes (Amendment) Bill 1997

This Bill provides for a concessional rate of interest on transfers of assets from superannuation funds to pooled superannuation funds and between pooled superannuation funds and provides for a concessional rate of duty in some circumstances involving domestic relationships.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Determination No. 113 of 1997 made under section 41 of the *Overseas Students (Registration and Regulation of Providers) Act 1994* fixes recognition services fees.

Determination No. 114 of 1997 made under section 67 of the *Vocational Education and Training Act 1995* revokes Determination No. 57 of 1996 and determines fees under the Act.

Determination No. 115 of 1997 made under section 118 of the *Adoption Act 1993* revokes Determination No. 58 of 1996 and determines fees under the Act.

Determination No. 123 of 1997 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 114 of 1996 and determines fees under the Act.

Determination No. 124 of 1997 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 115 of 1996 and determines fees under the Act.

Determination No. 125 of 1997 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 116 of 1996 and determines fees for drivers licences.

Determination No. 126 of 1997 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 117 of 1996 and determines fees for number plates.

Determination No. 127 of 1997 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 29 of 1997 and determines fees for parking labels for commercial vehicles, medical labels and residents' labels for specified areas.

Determination No. 128 of 1997 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 249 of 1996 and Determination No. 288 of 1996 and determines fees for load carrying trailers, buses, special purpose vehicles and large motor vehicles.

Determination No. 131 of 1997 made under section 27B of the *Hawkers Act 1936* revokes Determination No. 123 of 1996 and determines fees under the Act.

Determination No. 132 of 1997 made under section 22A of the *Cemeteries Act 1933* revokes Determination No. 126 of 1996 and determines fees under the Act.

Determination No. 133 of 1997 made under subsection 57 (1) of the *Motor Vehicles (Dimensions and Mass) Act 1990* and paragraph 2 (b) of the *Road Transport Charges (Australian Capital Territory) Act 1993* revokes Determination No. 127 of 1996 and Determination No. 203 of 1996 and determines fees payable under the Acts.

Determination No. 134 of 1997 made under section 83A of the *Nature Conservation Act 1980* revokes Determination No. 111 of 1997 and determines entry fees to Tidbinbilla Nature Reserve.

Determination No. 135 of 1997 made under the *Health and Community Care Services Act 1996* revokes Determination No. 54 of 1997 and determines fees under the Act.

Determination No. 136 of 1997 made under subsection 6 (2) of the *Legislative Assembly (Members' Staff) Act 1989* revokes previous determinations and provides for arrangements and conditions under which members are able to employ staff.

Determination No. 138 of 1997 made under subsection 6 (2) of the *Legislative Assembly (Members' Staff) Act 1989* revokes previous determinations and provides for arrangements and conditions under which members are able to employ staff.

Determination No. 139 of 1997 made under subsection 6 (2) of the *Legislative Assembly (Members' Staff) Act 1989* provides for the interim staff salary allocation to non-executive members for the 1996/97 financial year.

Determination No. 141 of 1997 made under section 105A of the *Liquor Act 1975* revokes Determination No. 101 of 1996 and determines fees under the Act.

Determination No. 147 of 1997 made under section 139 of the *Land Titles Act 1925* revokes Determination No. 152 of 1996 and determines fees under the Act.

Determination No. 148 of 1997 made under section 36 of the *Motor Traffic Act 1936* revokes Determination No. 287 of 1996 and determines maximum taxis fares under the Act.

Determination No. 149 made under section 19A of the *Children's Services Act 1986* appoints a specified person as an Official Visitor for the period up to and including 31 March 2000.

Determination No. 150 of 1997 made under section 80 of the *Energy and Water Act 1982* revokes Determination No. 44 of 1997 and determines fees under the Act.

Determination No. 151 of 1997 made under section 39B of the *Architects Act 1959* revokes Determination No. 124 of 1996 and determines fees under the Act.

Determination No. 152 of 1997 made under section 45A of the *Plumbers, Drainers and Gasfitters Board Act 1982* revokes Determination No. 125 of 1996 and determines fees under the Act.

Determination No. 153 of 1997 made under section 287 of the *Land (Planning and Environment) Act 1991* revokes Determination No. 42 of 1997 and Determination No. 119 of 1997 and determines fees under the Act.

Determination No. 154 of 1997 made under section 116 of the *Unit Titles Act 1970* revokes Determination No. 132 of 1996 and determines fees under the Act.

Determination No. 155 of 1997 made under section 52A of the *Surveyors Act 1967* revokes Determination No. 133 of 1996 and determines fees under the Act.

Determination No. 156 of 1997 made under section 287 of the *Land (Planning and Environment) Act 1991* revokes Determination No. 41 of 1997 and Determination No. 120 of 1997 and determines fees under the Act.

Determination No. 157 of 1997 made under section 104 of the *Electricity Act 1971* revokes Determination No. 45 of 1997 and determines fees under the Act.

Determination No. 159 of 1997 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. 184 of 1997 made under section 217A of the *Motor Traffic Act 1936* revokes existing Determinations and determines parking meter fees under section 163C of the Act.

Determination No. 185 of 1997 made under section 4 of the *Public Place Names Act 1989* amends Determination No. 92 of 1991 by omitting the name Kosciusko Avenue and replacing it with the name Kosciuszko Avenue in the Division of Palmerston.

Determination No. 186 of 1997 made under subsection 3 (2) of the *Agents Act 1968* exempts Havelock Housing Association Incorporated from the provisions of the Act subject to a condition imposed under subsection 3 (2A) of the Act.

Determination No. 187 of 1997 made under subsection 11B (2) of the *Bushfire (Amendment) Act 1996* exempts land under rural lease that gives a right to exclusive possession and is used for agricultural primary production purposes from requiring bushfire management plans under the Act.

Subordinate Legislation - Comments

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

Defects in Explanatory Statement Repeated Yet Again

Determination No. 112 of 1997 made under section 132 of the *Casino Control Act 1988* revokes Determination No. 105 of 1996 and determines fees under the Act.

Defects Repeated Yet again in the Explanatory Statement

Incidentally, from the heading of the quotation from Report No. 10 of 1996, it will be noted that the Committee drew attention to defects in the Explanatory Statement for the last year's Determination No. 105, some of which are repeated again this year. The Committee had reported on defects in 1994 as well as 1996. So some appear for at least the third time.

The particular defect in the present Explanatory Statement is that it does not give a comparative table of this year's new fees with those payable last year. Such a table give members of the Assembly and of the public a quick way of checking the level of increase for the year.

The Guidelines for the Preparation of Disallowable Instruments, prepared by the Attorney-General's Department, are very helpful, clearly written document and is a boon to all of us involved with subordinate legislation. The Guidelines have been around since May 1993 (and were updated in September 1996) and one would have hoped that they have percolated to most areas by now. The Committee will keep hoping!

A Mistake Repeated Yet Again

Determination No. 129 of 1997 made under section 120 of the *Roads and Public Places Act 1937* revokes Determination No. 120 of 1996 and determines fees for opening up or breaking the surface of a carriage way or public place.

Last year in its Report No. 10 of 1996 and the year before in its Report No. 8 of 1995 the Committee referred to the fact that the two relevant Determinations erroneously referred to the fact that the Determinations were published in the *Gazette*.

This process did not quite go out with Noah's safe deliverance from the Ark, but for years now publication has no longer occurred and there is merely notification in the *Gazette* of the making of a determination and a statement as to where a copy can be bought.

All Members have long known about the change, but it must be most irritating to a member of the public to find that the *Gazette* does not supply the information that he or she wants, but that a further visit and payment must be made for the Determination.

The Committee repeats for the third time its suggestions of previous years that "when the next determination is made under the Act, perhaps correction should be made" and the law set out correctly.

Determinations are No Longer Published in the Gazette

Determination No. 160 of 1997 made under subsection 22 (3) of the *Rates and Land Tax Act 1926* revokes Determination No. 151 of 1995 and determines that the rate of interest for the purposes of subsection 22 (4) of the Act shall be 17%.

Determination No. 161 of 1997 made under section 28B of the *Rates and Land Tax Act 1926* revokes Determination No. 21 of 1995 and determines that the rate of interest for the purposes of paragraph 28 (1) (b) of the Act shall be 6%.

Determination No. 162 of 1997 made under section 23 of the *Rates and Land Rent (Relief) Act 1926* revokes the Notice Fixing Rates of Interest made on 25 October 1995 and determines that the rates of interest for the purposes of section 23 of the Act shall be 6% and 17%.

These Determinations refer to the fact that the Determinations being revoked were published in the *Gazette*. The point, and the reasons for making the point, that such Determinations are no longer published but merely notified in the *Gazette* is made in the immediately preceding heading and needs not be repeated here.

A Small Error

Determination No. 130 of 1997 made under section 3F of the *Building and Services Act 1924* purports to revoke Determination No. 296 of 1997 and determine fees under the Act.

The Determination Purports to revoke Determination No. 296 of 1997. In fact the relevant Determination that should have been revoked is Determination No. 296 of 1996. The Explanatory Statement gets the number correct and, undoubtedly, a court would regard this as a "slip" and hold the revocation valid.

Is the Date of Revoked Determination Accurate and, if not, what is the Effect of the Revocation?

Determination No. 137 of 1997 made under the *Legislative Assembly (Members' Staff) Act 1989* revokes previous determinations and provides for arrangements and conditions under which members are able to employ staff.

In Schedule 1 the Determination purports to revoke two previous Determinations dated 1 July 1995. In fact, the Senior Officer Grade A, B, C Annual Allowance Determination was signed on 10 July 1995, although clause (2) of the instrument states that the "Determination shall take effect from 1 July 1995".

The effect of this difference in dates needs to be looked at to see if the current Determination is effective to effect the revocation.

No Indication that *Statutory Appointments Act 1994* Complied With

Determination No. 142 made under section 8 of the *Canberra Tourism and Events Act 1997* appoints a specified person as Chairperson of the Canberra Tourism and Events Corporation for a period of not more than 3 years.

Determination No. 143 made under section 8 of the *Canberra Tourism and Events Act 1997* appoints a specified person as a member of the Canberra Tourism and Events Corporation for a period of not more than 3 years.

Determination No. 144 made under section 8 of the *Canberra Tourism and Events Act 1997* appoints a specified person as a member of the Canberra Tourism and Events Corporation for a period of not more than 3 years.

Determination No. 145 made under section 8 of the *Canberra Tourism and Events Act 1997* appoints a specified person as a member of the Canberra Tourism and Events Corporation for a period of not more than 3 years.

Determination No. 146 made under section 8 of the *Canberra Tourism and Events Act 1997* appoints a specified person as a member of the Canberra Tourism and Events Corporation for a period of not more than 3 years.

Unfortunately, none of the Explanatory Statements for these five Determinations indicates that there has been consultation about the appointments with the Legislative Assembly as required by the *Statutory Appointments Act 1994*.

GOVERNMENT RESPONSES

The Committee has received responses in relation to comments made concerning:

- Trans-Tasman Mutual Recognition Bill 1997 (Report No. 5 of 1997).
- Environment Protection Bill 1997 and Environment Protection (Consequential Provisions) Bill 1997 (Report No. 6 of 1997).
- Residential Tenancies Bill 1997 (Report No. 6 of 1997).
- Public Health Bill 1997 (Report No. 6 of 1997).
- Determination No. 77 of 1997 made under the *Prostitution Act 1992* (Report No. 7 of 1997).
- Rates and Land Tax (Amendment) Bill 1997 (Report No. 7 of 1997).
- Territory Owned Corporations (Amendment) Bill 1997 (Report No. 7 of 1997).
- Motor Traffic (Amendment) Bill (No. 3) 1997. (Report No. 7 of 1997).
- Motor Traffic (Alcohol and Drugs) (Amendment) Bill (No. 2) 1997. (Report No. 7 of 1997).

- Traffic (Amendment) Bill 1997 (Report No. 7 of 1997).
- Coroners Bill 1997 (Report No. 8 of 1997).
- Determinations Nos 87 and 88 of 1997 made under the *Consumer Credit (Administration) Act 1996* (Report No. 8 of 1997).
- Determination No. 103 of 1997 made under the *Clinical Waste Act 1990* (Report No. 8 of 1997).
- Determination No. 105 made under the *Casino Control Act 1988* (Report No. 10 of 1996).

Copies of the responses are attached. The Committee thanks the Attorney-General for his helpful responses.



Bill Wood, MLA
Chair

2 September 1997



Gary Humphries MLA

Mr Bill Wood MLA
Chair

Standing Committee on Scrutiny of Bills
and Subordinate Legislation
ACT Legislative Assembly
CANBERRA ACT 2601

Attorney General
Minister for the Environment, Land
and Planning
Minister for Police and
Emergency Services
Minister for Arts and Heritage
Minister for Consumer Affairs

Member for Molonglo
Australian Capital Territory

Dear Bill

I refer to the Standing Committee's Report No. 7 of 1997 (24 June 1997). I am now in a position to refer to the Committee comments on Determination No. 77 of 1977 made under the Prostitution Act 1992 (the Act).

In relation to that Determination, you point out that it is expressed to be made pursuant to section 7 of the Act. As you note the "determining" section is, in fact, section 21 of the Act.

You indicate concern that the Determination might not be valid as a result of this error, and suggest that the matter be considered.

The Government Solicitor has advised me that the Determination is in fact valid, as the power for making the Determination is contained within the Act, albeit not the section which is purported to confer it. As you will note, decisions made in case law, explained in the opinion given by the Government Solicitor, provide that the validity of the determination depends on whether there is a power with the Act to make the determination at all. As you have suggested that power is conferred in section 21 of the Act, thereby providing that this Determination is valid.

Yours sincerely

Gary Humphries MLA
Attorney-General

24 JUL 1997

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Mr Bill Wood MLA
Chair

Standing Committee on the Scrutiny of Bills and Subordinate Legislation
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Dear Mr ~~Wood~~ *Bill*

I refer to the Standing Committee's Reports No. 5 and 6 of 1997 and advise that I am now in a position to respond to some of the matters raised in those reports.

In Report No. 5 the Committee commented upon the Trans-Tasman Mutual Recognition Bill 1997, expressing concern over provisions which allowed changes to the national uniform scheme created under the Bill without reference to the Legislative Assembly.

In particular it noted that amendments and regulations could be made where there was agreement among participating States and Territories and each designated person of the State or Territory (in the case of ACT, the Chief Minister) notified by Gazette of his or her approval of the proposal. The designated person also has the power to terminate the application of the uniform scheme to their own State or Territory.

At its introduction, the Bill did not require the Chief Minister to consult or notify the Assembly about her decision to approve changes to the scheme. The lack of consultation or notification of the Assembly was of particular concern to the Committee and it has been addressed by way of government amendment to the Bill. The Bill now requires the Chief Minister to notify the Assembly wherever she exercises her power to approve amendments, endorse regulations or terminate the Act.

In Report No. 6, the Committee commented on possible incorrect references in the Environment Protection Bill 1997 and the Environment Protection (Consequential Provisions) Bill 1997. I am advised the references will be corrected under Standing Order 191.

The Committee also commented in Report No. 6 that the Residential Tenancies Bill 1997 did not repeal all existing Acts dealing with residential tenancy law. I am advised that the repeal of these Acts will be dealt with in the Residential Tenancies (Consequential Provisions) Bill, to be introduced at the next sittings.

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The Committee also raised in Report No. 6, a number of issues surrounding the Public Health Bill 1997.

The first issue is the omission of a review process for the Minister's decision to suspend or cancel activity or procedure licences. I am advised that the inclusion of a review process was given careful consideration by the Department of Health and Community Care, but was ultimately rejected on the advice of my Department. My Department concluded that it would be extremely unlikely that a licence would be suspended or cancelled unfairly or without due reason given the procedures that the Minister would have had to comply with before he or she could suspend or cancel a licence.

The second issue raised by the Committee was that an officer taking a sample for the purposes of determining whether a person has contravened provisions of the Bill is not required to divide the sample so that the person may have the sample independently analysed. Further, once the sample has been analysed by a Government Analyst a certificate signed by the Analyst is evidence of the matters stated in the certificate. The Committee argues that the lack of the opportunity for independent analysis and the evidentiary rule combine to disadvantage a person accused of contravening the Bill.

I am advised that the inclusion of a "division of sample" scheme to allow independent analysis was given careful consideration by the Department of Health and Community Care, but it decided against such a scheme after receiving advice from the ACT Government Analyst. The advice of the Government Analyst refers to a number of difficulties surrounding the introduction of such a scheme, including:

- (a) instances where the sample is not capable of being divided;
- (b) instances where the sample is difficult to divide in such manner as to provide homogeneity between samples; and
- (c) the sample's integrity and hence suitability for analysis being dependent on specialised knowledge on how to store the sample.

The Government Analyst also notes in its advice that division of sample schemes are not universally used throughout ACT legislation.

However, the Department has indicated that where it is appropriate it will implement administrative procedures allowing for the division of samples.

Yours sincerely



Gary Humphries MLA
Attorney-General

7 8 AUG 1997



Gary Humphries MLA

Deputy Chief Minister
Attorney General
Minister for the Environment, Land
and Planning
Minister for Police and
Emergency Services
Minister for Arts and Heritage
Minister for Fair Trading

Member for Molonglo
Australian Capital Territory

Mr Bill Wood MLA *BW 11/9*
Chair

Standing Committee on the Scrutiny of Bills and Subordinate Legislation
ACT Legislative Assembly
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Bill
Dear Mr Wood

I refer to the Standing Committee's Reports No. 7 and 8 of 1997 and advise that I am now in a position to respond to some of the matters raised in those reports.

In Report No. 7 the Committee commented that if the Rates and Land Tax (Amendment) Bill 1997 and the Territory Owned Corporations (Amendment) Bill 1997 did not commence before 1 July 1997 they would have retrospective effect. I am advised that both Bills commenced before 1 July 1997.

In the same report the Committee commented upon the Motor Traffic (Amendment) Bill (No. 3) 1997. The Committee noted that under clause 5 of the Bill, the ACT Vehicle Inspection Manual is an instrument rather than a disallowable instrument, unlike most other Manuals. It also noted that the Australian Design Rules (ADRs) which comprise part of the Manual and which are also very technical in nature, are nevertheless disallowable under Commonwealth legislation.

I confirm that the Manual is not considered suitable for disallowance because of the technical nature of its contents and to ensure that the ACT remains consistent with other States and Territories so far as vehicle standards issues are concerned.

In Report No. 7 the Committee also commented on the Motor Traffic (Alcohol and Drugs) (Amendment) Bill (No. 2) 1997 and the Traffic (Amendment) Bill 1997 which imposes a mandatory duty upon medical practitioners and nurses to take and test body samples of "drivers, pedestrians, cyclists and riders or drivers of animals who attend a hospital after an accident". The Committee drew attention to the impact of the Bill's provisions on personal rights and liberties and its impact in terms of imposing a mandatory duty on professional carers to actively intrude on the bodies of their patients.

I am informed that careful consideration was given to the inclusion of these provisions in the Motor Traffic (Alcohol and Drugs) (Amendment) Bill (No. 2) 1997 and the Traffic

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(Amendment) Bill 1997. The Government finally decided that inclusion was appropriate, considering:

- the provisions mirror similar procedures in New South Wales which have been in place since 1982 and their implementation will remove inconsistencies in the administration of justice between ACT and NSW with respect to the testing of persons involved in accidents; and
- the provisions will further strengthen enforcement of ACT laws in relation to drink-driving, while acting as a further deterrent to drink driving.

I am advised that members of the medical profession are well acquainted with the procedures in NSW and consider them reasonable and fair.

In the same report the Committee also commented on an oversight in the Traffic (Amendment) Bill 1997 with respect to s.16A of the *Motor Traffic (Alcohol and Drugs) Act 1977*. I am advised this matter will be addressed by way of Government Amendment.

In Report No. 8 the Committee commented upon a number of incorrect references in the Coroners Bill 1997. The Office of Parliamentary Counsel has advised that the incorrect references in the Coroners Bill will be amended by way of Standing Order 191.

Also in Report No. 8 the Committee commented on appointments made to the Credit Tribunal in Determinations 87 and 88 of 1997 noting that the appointments were made without a fixed period. I am advised that these appointments have no fixed period because they are made as standing acting appointments to positions on the Tribunal. That is the appointee will be available to act as a member of the Tribunal at any time the conditions specified in the instrument are satisfied.

The Committee also commented on Determination No. 103 of 1997 under the *Clinical Waste Act 1990*, noting that the Determination wrongly refers to a Determination being revoked as being "published" in the Gazette. Officers of the Department of Urban Services who prepare instruments have been informed that the practice of publication has ceased and there is now only notification of determinations in the Gazette.

Yours sincerely



Gary Humphries MLA
Attorney-General

28 AUG 1997



Gary Humphries MLA

Deputy Chief Minister
Attorney General
Minister for the Environment, Land
and Planning
Minister for Police and
Emergency Services
Minister for Arts and Heritage
Minister for Fair Trading

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Mr Bill Wood MLA *W 1/9*
Chair
Standing Committee on Scrutiny of Bills
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Dear Mr ~~Wood~~ *Bill*

I refer to the Standing Committee's Report No 9 of 1997 in which you have reported to the Legislative Assembly on Government Amendments to Mr Wayne Berry MLA's *Health and Community Care Services (Validation of Fees and Charges) Bill 1997*.

As you know the matter dealt with in Mr Berry's Bill and some of the matters the subject of the Government Amendments have also been the subject of comments by your Committee. In particular:

- Reports 12 and 19 of 1994 commented on the omission of a fee for replacement licences and registration certificates in Determination No 53 of 1994. This matter is addressed in proposed section 6.
- Report 10 of 1996 commented on Determination No 135 of 1996. This matter is addressed in proposed section 9.
- Report 17 of 1996 commented on Determinations No 227 and 240 of 1996. The issues raised by these Determinations have also been canvassed in Report No 4 of 1997. This matter is dealt with in Mr Berry's Bill.
- Report 19 of 1996 commented on Determination No 281 of 1996. This matter is addressed in proposed section 7.

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- Reports 1 and 3 of 1997 commented on Determination No 290 of 1996 and Determination No 40 of 1997. The issues raised by these Determinations are addressed in proposed section 8.

You will appreciate that the Government has decided that when it appears a determination of fees is for some reason defective it will generally be desirable that corrective action be taken. As I said in the Assembly on 25 June 1997 the Government is yet to decide whether this corrective action should take the form of substantive legislation or whether it will be appropriate to take the action in an instrument made under an Act.

Before this decision was taken, when a defect in a determination of fees came to light decisions on the appropriate course of action were made on a case by case basis. I am advised that this approach has most recently been taken with respect to fees paid under the *Casino Control Act 1988*. This matter came to light as a result of the Committee's comments, in Report No 10 of 1996, on Determination No 105 of 1996. Amongst other things the Committee pointed out the Determination appeared to be revoking a Determination (the 1995 Determination) that had not been notified in the Gazette or tabled before the Assembly. I am advised that an investigation of this matter has confirmed the 1995 Determination was not notified in the Gazette or tabled before the Assembly. This was the result of an administrative oversight.

Following investigation of the matter it was concluded that refunds should be paid where the payer could be located. You will appreciate that as there is a high turnover amongst those employed in the casino industry it has not been possible to locate all those who paid the fees. I should also explain that the refund made was not of the whole amount paid. It was concluded that during the period when the 1995 Determination was thought to have been in force the previous determination (the 1994 Determination) would have been in force. Accordingly, the overpayment was limited to the amount by which amounts provided for in the 1995 Determination exceeded those provided for in the 1994 Determination.

You also commented that Determination No 105 of 1996 and its Explanatory Statement did not comply with *the Guidelines for the Preparation of Disallowable Instruments*. I am advised the Guidelines have been brought to the attention of those who prepare instruments under the Casino Control Act.

Yours sincerely



Gary Humphries
Attorney-General

28 AUG 1997

