

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

**REPORT NO. 13 OF 1995**

**24 October 1995**



## 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 Paul Osborne, MLA (Chair)**  
**Mr Andrew Whitecross, MLA (Deputy Chair)**  
**Mr Harold Hird, MLA**

**Legal Advisor: Emeritus Professor Douglas Whalan, AM**  
**Secretary: Mr Tom Duncan**  
**Deputy Secretary: Ms Beth Irvin**

## **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 comment:

#### **Crimes (Amendment) Bill (No. 2) 1995**

This Bill provides for summary offence forms of the three existing offences of theft of property, making off without paying for goods or services and destroying or damaging property where the value of the matter involved does not exceed \$1,000.

#### **Occupational Health and Safety (Amendment) Bill 1995**

This Bill extends the role of the Occupational Health and Safety Council to provide advice to the Minister on occupational health and safety matters to include providing advice on workers' compensation and occupational rehabilitation matters, increases the number of members of the Council, provides for protection of members from lawsuits and removes the maximum age provision for members.

#### **Public Sector Management (Amendment) Bill 1995**

This Bill abolishes the Senior Executive Service and substitutes Executives, provides for Chief Executives and Executives to be employed under contract for terms of up to 5 years, changes the name of the ACT Government Service to the ACT Public Service and provides for transitional arrangements.

#### **Workers' Compensation (Amendment) Bill (No. 2) 1995**

This Bill changes the provisions for consultation by the Minister with representatives of employers, unions and insurers before approving or amending a protocol by providing that the Minister must consult with the Occupational Health and Safety Council instead of the non-statutory Workers' Compensation Monitoring Committee.

## SUBORDINATE LEGISLATION

### Subordinate Legislation - No Comment

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

**Subordinate Law No. 36 of 1995 being the *Land (Planning and Environment) Regulations (Amendment)* ensures that Part VI of the *Land (Planning and Environment) Act 1991* will not apply to the subdivision of a lease where that lease was granted for the purpose of development and subdivision.**

Subordinate Law No. 37 of 1995 being the *Vocational Training Regulations (Amendment)* expands the lists of declared vocations.

Public Sector Management Standard 7/1995 made under section 251 of the *Public Sector Management Act 1994* by the Commissioner for Public Administration with the approval of the Chief Minister amends Public Sector Management Standard - 1/1994 by varying the levels and arrangements for the approval of travel by SES officers.

Determination of fees and charges No. 132 of 1995 made under sections 4 and 80 of the *Freedom of Information Act 1989* revokes Determination of fees and charges No. 12 of 1994, restructures the payment of fees and charges under the Act and determines the new fees and charges that are payable.

Determination No. 134 of 1995 made under subsection 39A(1) of the *Bookmakers Act 1985* determines events that are sports betting events for the purposes of the Act.

Determination No. 136 of 1995 made under subsection 39B(2) of the *Bookmakers Act 1985* determines the directions for the operation of the sports betting venue at the Canberra Racecourse.

Determination No. 138 of 1995 made under subsection 39D(1) of the *Bookmakers Act 1985* determines that the maximum number of licences that may be granted by the Bookmakers Licensing Committee is four.

Determination No. 139 of 1995 made under subsection 39C(1) of the *Bookmakers Act 1985* determines the criteria that the Bookmakers Licensing Committee shall have regard to in granting a sports betting licence.

Determination No. 140 of 1995 made under paragraph 55(1)(a) of the *Bookmakers Act 1985* determines the fee payable for a sports betting licence under section 39K of the Act.

Determination No. 141 of 1995 made under paragraph 55(1)(c) of the *Bookmakers Act 1985* determines the period within which the fee for a sports betting licence must be paid under section 39K of the Act.

Determination No. 142 of 1995 made under subsection 55(1) of the *Bookmakers Act 1985* determines the fee for a sports betting agents licence payable under section 39X.

Determination No. 143 of 1995 made under subsection 55(1) of the *Bookmakers Act 1985* determines that the fee for a sports betting agent's licence must be paid upon the granting of the licence under section 39X of the Act.

Determination No. 144 of 1995 made under subsection 55(1) of the *Bookmakers Act 1985* determines under paragraph 39E(2)(c) that the application fee for a sports betting licence will be \$500.00.

Determination No. 145 of 1995 made under subsection 55(1) of the *Bookmakers Act 1985* determines under paragraph 39S(2)(c) that the application fee for a sports betting agent's licence will be \$100.00 for the grant of a new licence and that there will be no fee payable for a renewal.

Determination No. 146 of 1995 made under subsection 55(1) of the *Business Franchise (Tobacco and Petroleum Products) Act 1984* revokes determination No. 39 of 1995 in relation to all initial and renewed licences that commence on or after 1 November 1995 and determines licence fees for new and renewed licences for petroleum product wholesalers and retailers and for tobacco wholesalers and retailers that commence on or after 1 November 1995.

Determination No. 148 of 1995 made under subsection 164(3) of the *Land (Planning and Environment) Act 1991* determines criteria for the direct grant of a lease over block 17 of section 112, Symonston.

Approval of Variation No. 50 to the Territory Plan made under section 26 of the *Land (Planning and Environment) Act 1991* approves a variation relating to section 28, block 10 (part) in the division of Hughes.

Variation of a pre-acquisition declaration made under section 24 of the *Land Acquisition Act 1994* varies a pre-acquisition declaration made in respect of the unexpired residue of crown lease volume 771, folio 58 being part of block 1267 in the division of Belconnen to cover the whole of block 1267.

#### Subordinate Legislation - Comment

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

Determination of fees and charges No. 131 of 1995 made under the *Health Act 1993* revokes Determination of fees and charges No. 90 of 1995 and determines new fees and charges payable under the Act.

### An Inaccuracy Repeated - Determinations are not Published in the *Gazette*

In its Report No. 8 of 1995 the Committee drew attention to an inaccuracy in a number of determinations, including Determination of fees and charges No. 90 of 1995 that is revoked by the present determination. The inaccuracy is repeated in the present determination.

The present determination states that the previous determination "was published in Australian Capital Gazette No. S166 on 30 June 1995". (Emphasis added.) The determination was not published in the *Gazette*. Such determinations used to be published, but, in recent years, all that has been published is a notification of the making of a determination, which indicates that a determination has been made and where a copy can be bought.

There is no problem of validity involved, but perhaps this aspect should be corrected when the next version of this determination of fees and charges is made.

**Determination No. 133 of 1995 made under section 57 of the *Pharmacy Act 1931* revokes the existing determination and determines fees payable under the Act.**

### One Aspect of the Guidelines for Preparation of Disallowable Instruments not Followed

In its Reports Nos 10 and 12 of 1995 the Committee reported on new determinations of fees under the *Medical Practitioners Act 1930* and *Physiotherapists Act 1977*. In doing so, the Committee drew attention to the fact that one aspect of the Guidelines for the Preparation of Disallowable Instruments of the Attorney-General's Department of May 1993 had not been followed. The same pattern is evident in the present determination.

As with those earlier determinations, there is a very helpful explanatory statement for this instrument. It sets out the background to the determination, gives a full description of the determined fees, indicates the reasons for increases where these have occurred and gives a comparative table of past and present fees.

However, it would have been helpful if the actual determination itself had followed the Guidelines, which state as follows (at page 11):

"It is important that you clearly identify the previous instrument (if there is one) which the new instrument replaces. Use the number inserted 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."



There is no question of validity involved, but it would be appropriate for the Guidelines to be followed, when fees are next determined under the Act.

**Determination No. 135 of 1995 made under subsection 39B(1) of the *Bookmakers Act 1985* determines a specific location to be the location of the sports betting venue.**

Incorrect Explanatory Statement

The explanatory statement attached to this determination appears to be a part of the relevant explanatory statement for Determination No. 136 of 1995 (see above) which deals with directions under subsection 39B(2) of the Act.

The correct explanatory statement for the present determination, which should have dealt with the fixing of a location for sports betting under subsection 39B(1), appears to be missing.

**Determination No. 137 of 1995 made under subsection 39C(1) of the *Bookmakers Act 1985* determines the rules for sports betting.**

Is there an Incorrect Reference to a Regulation?

Section B of the determination provides for the minimum and maximum bet levels for sports betting.

Paragraphs 2 and 2.1 provide as follows:

“2. In relation to bets transmitted and accepted via approved telecommunications equipment, the following additional restriction applies.

2.1 For bets on any thoroughbred, harness or greyhound racing event, the minimum bet arrangements shall be in accordance with the provisions of Section 41A(a) of the *Bookmakers Act 1985* and Regulation 5B of the Bookmakers Regulations.”.

The explanatory statement states that:

“bets received by telephone on thoroughbred, harness and greyhound racing events have a minimum bet of \$250.00 or the bookmaker must risk to lose a minimum of \$2,000.00.”.

The reference to paragraph 41A(a) appears to be correct as it provides as follows:

“41A A bookmaker shall not accept a bet by telephone unless -

- (a) the bet is equal to or greater than the prescribed amount or the amount that may be won on the bet is equal to or greater than the prescribed amount.”.

However, regulation 5B of the Bookmakers Regulations (as it appears in the reprint of 31 January 1995) does not appear to be relevant, as it refers to limitations on information that a bookmaker can supply to a person by telephone. The relevant provision for paragraph 2.1 may be subregulation 5A(1) which provides as follows:

- “5A. (1) For the purposes of paragraph 41A(a) of the Act -
- (a) the prescribed amount (first referred to) is \$250.00; and
  - (b) the prescribed amount (second referred to) is \$2,000.00.”.

Perhaps this matter should be checked.

**Determination No. 147 of 1995 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of the names of two public places, Nagel Place and Rubin Court, in the Division of Nicholls.**

*Gazette* Notices to be More Informative

This determination is quite valid. Determinations are no longer published in full in the *Gazette*. Instead, an announcement is simply made in the *Gazette* that a determination has been made and where copies may be bought.

The descriptive part of the announcement for the present determination reads as follows:

<b>Act under which Instrument made</b>	<b>Description of Instrument</b>	<b>Number and year of Instrument</b>
<i>Public Place Names Act 1989</i>	Determination of names	No. 147 of 1995

Time, energy and resources used to be wasted in publishing every determination in full in the *Gazette*. However, a member of the Assembly or a member of the public interested in the matter would not gain much from reading this present announcement.

In its Report No. 8 of 1995 the Committee made similar comments in relation to determinations made under the *Taxation (Administration) Act 1987*.

In his letter of 17 October 1995 (which is attached to this Report) the Attorney-General, Mr Humphries, makes the following very helpful comments:

“The Committee considered that as determinations are no longer published in the *Gazette*, it would be helpful if a meaningful description of these Determinations were included in the *Gazette* notice under the heading ‘Description of Determination’. As the Committee noted, such a description has been included in some notices of determinations under the Act in the past at the suggestion of the Committee.

I agree that it is important for the Gazette notice to indicate the subject matter of the instrument to allow members of the public to search through the notices and find the particular instrument relevant to their inquiry. While the Committee's comments concerned determinations under the Taxation (Administration) Act, I consider that the comments apply equally to other instruments including determinations, exemptions, declarations and appointments. I am advised that the Publications and Public Communication Section, which arranges Gazette notices, has taken steps to have short description of the subject instrument included in the Gazette notice in as many cases as practicable and irrespective of the nature of the instrument or the Act under which it is made."

This procedure set out in the Minister's response should result in a good compromise between the old wasteful pattern of publishing every instrument in full in the *Gazette* and making a very brief, uninformative announcement in the *Gazette*.

As a result, in the future, people should be able to use the *Gazette* to identify those instruments that are relevant to their needs.

## **GOVERNMENT RESPONSE**

The Committee has received a response to comments made concerning:

- Determination No. 58 of 1995 made under the Adoption Regulations (Report No. 8 of 1995);
- Determination No. 60 of 1995 made under the *Business Names Act 1963* (Report No. 8 of 1995);
- Determination No. 62 of 1995 made under the *Credit Act 1995* (Report No. 8 of 1995);
- Determination No. 66 of 1995 made under the *Real Property Act 1925* (Report No. 8 of 1995);
- Determination No. 69 of 1995 made under the *Sale of Motor Vehicles Act 1977* (Report No. 8 of 1995);
- Determination No. 71 of 1995 made under the *Trade Measurement (Administration) Act 1991* (Report No. 8 of 1995);
- Determinations Nos 74 and 75 of 1995 made under the *Taxation (Administration) Act 1987* (Report No. 8 of 1995);
- Determination No. 91 of 1995 made under the *Building (Design and Siting) Act 1964* (Report No. 8 of 1995);

- Appropriation Bill 1995-96 (Report No. 12 of 1995);
- Law Reform (Miscellaneous Provisions) (Amendment) Bill 1995 (Report No. 12 of 1995);
- Vocational Education and Training Bill 1995 (Report No. 12 of 1995);  
and
- Health Promotions Bill 1995 (Report No. 12 of 1995).

A copy of the response is attached.

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

**LETTER FROM THE SENATE STANDING COMMITTEE ON  
REGULATIONS AND ORDINANCES**

The Committee has received a letter from the Senate Standing Committee on Regulations and Ordinances concerning regulations made under the Commonwealth *Road Transport Reform (Vehicles and Traffic) Act 1993* (copy attached).

A handwritten signature in black ink, appearing to read 'Paul Osborne', with a long horizontal flourish extending to the right.

Paul Osborne, MLA  
Chair

24 October 1995




Gary Humphries MLA

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

Member for Molonglo  
Australian Capital Territory

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Mr Paul Osborne MLA  
Presiding Member  
Standing Committee on Scrutiny of Bills and  
Subordinate Legislation  
ACT Legislative Assembly  
South Building  
London Circuit  
CANBERRA ACT 2601

  
Dear Mr Osborne

In its Report No. 8 of 1995, the Committee identified a number of deficiencies in relation to Determination No. 58 of 1995 made under regulation 31 of the Adoption Regulations. Determination No. 58 sets the fee to accompany an application for a certificate of an entry in the Register of Births under regulation 24(3)(b).

The most serious of these deficiencies is that the Determination does not indicate it is revoking Determination No 77 of 1994. I have been advised, and this is indicated in the Committee's Report, that Determination No 77 of 1994 is impliedly revoked because it cannot stand with Determination No 58 of 1995, which is later in time.

The other deficiencies concern the Explanatory Statement for the Determination. I agree that the Statement does not comply with the *Guidelines for the Preparation of Disallowable Instruments*. A fresh Statement is attached.

ACT Legislative Assembly,  
London Circuit, Canberra ACT 2601  
GPO Box 1020, Canberra ACT 2601

Phone (06) 205 0133 Fax (06) 205 0427

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In its Report No. 8 of 1995, the Committee commented on the following Determinations:

- No. 60 of 1995 made under the *Business Names Act 1963*
- No. 62 of 1995 made under the *Credit Act 1995*;
- No. 66 of 1995 made under the *Real Property Act 1925*;
- No. 69 of 1995 made under the *Sale of Motor Vehicles Act 1977*;
- No. 71 of 1995 made under the *Trade Measurement (Administration) Act 1991*.

The Committee noted that the Explanatory Statements for the above Determinations stated that fees are generally increased by 4% in accordance with the anticipated movement in the Consumer Price Index for 1995/96 and that minor fees under \$20 are reviewed on a two yearly basis. The Committee also stated that some fees were increased by more than 4% and the 12.5% increase in the fee for inspecting the Register Book set by Determination No. 66 was one instance of this.

I am informed that the following fees in the determinations noted above were increased by more than 4% for the following reasons:

- No. 60 of 1995 - fee for inspecting document lodged with Registrar-General under section 22 of the Business Names Act (item 6)  
current fee \$6; previous fee \$5;  
increase of 20% because fee was not increased in previous 3 year period;
- No. 62 of 1995 - fee for replacement licence under section 166(2) of the Credit Act  
current fee \$17; previous fee \$16;  
increase of 6.25% because fee was not increased in previous three year period and partly because of rounding to dollar amounts;
- No. 66 of 1995 - fee for inspecting register book (item 5A)  
current fee \$27; previous fee \$24;  
increase of 12.5% in order to ensure full cost recovery;
- No. 66 of 1995 - fee for a certified copy of registered grant, certificate of title or instrument affecting land (item 5)  
current fee \$14 per page (max \$42)  
previous fee \$12 (max \$37);  
increase of 16.6% because fee was not increased in previous two year period;
- No. 66 of 1995 - fee for copy other than a certified of a registered grant or certificate of title (item 6)  
current fee \$16; previous fee \$15;

increase of 6.6% because fee was not increased in previous three period and partly because of rounding to dollar amounts; and

- other fees were increased by just over 4% due to rounding to dollar amounts.

I regret that the explanatory statements for the above fees in their use of general descriptions were not as informative as they should have been with respect to specific increases of fees which were significantly greater than 4%.

In its Report No. 8, the Committee commented on Determinations Nos. 74 and 75 of 1995 made under the *Taxation (Administration) Act 1987*. The Committee considered that as determinations are no longer published in the Gazette, it would be helpful if a meaningful description of these Determinations were included in the Gazette notice under the heading "Description of Determination". As the Committee noted, such a description has been included in some notices of determinations under the Act in the past at the suggestion of the Committee.

I agree that it is important for the Gazette notice to indicate the subject matter of the instrument to allow members of the public to search through the notices and find the particular instrument relevant to their inquiry. While the Committee's comments concerned determinations made under the *Taxation (Administration) Act*, I consider that the comments apply equally to other instruments including determinations, exemptions, declarations, and appointments. I am advised that the Publications and Public Communication Section, which arranges Gazette notices, has taken steps to have a short description of the subject instrument included in the Gazette notice in as many cases as practicable and irrespective of the nature of the instrument or the Act under which it is made.

In its Report No. 8 of 1995, the Committee commented on Determination No. 91 made under the *Building (Design and Siting) Act 1964*. The Committee correctly noted that the Determination should have stated that it is made pursuant to section 14 of the Act as it is this section which confers power on the Minister to determine fees. I am advised that the reference to the wrong section will not affect the validity and intended operation of the Determination, however, to avoid confusion a new Determination to replace the flawed Determination No. 91 is in preparation.

In its report No. 12 of 1995, the Committee commented on the explanatory memorandum for the Appropriation Bill 1995/96. The Committee correctly observed that the reference to clause 3 in the first paragraph concerning the details of the Schedule to the Bill is incorrect. The paragraph should refer to clause 4 of the Bill and not clause 3. I am informed that a corrigendum to the explanatory memorandum will be tabled in the Legislative Assembly in relation to this matter.

In its Report No. 12 of 1995, the Committee commented on the Law Reform (Miscellaneous Provisions) (Amendment) Bill 1995. The Bill is to remove one element of what is often referred to as the "Mozambique Rule". The "Mozambique rule" contains two distinct elements. The first element, which the Bill does not affect, is the rule that the courts will not determine the title to or possession of land situated outside the geographic jurisdiction of the court. As noted in my explanatory memorandum, the Bill is to remove the second element of the "Mozambique rule" which is the rule that prevents a Court from hearing a claim simply because it is based in part on the claimant's possession of foreign land.

The Committee stated that the Bill is to apply to proceedings pending before the Court and therefore has the potential to confer jurisdiction retrospectively on the ACT courts. The Committee asked whether any cases are currently before the ACT courts.

It is difficult to say with any precision or certainty whether there are cases pending or being heard in the courts which involve this issue of jurisdiction. This is because the issue may arise in several contexts in negotiations between the parties, pleadings, and/or in the hearing itself. The issue may influence the bargaining position of the parties even if not raised in proceedings before the court. I am not aware of any proceedings before the courts in which this issue is specifically raised.

I consider that it is appropriate for this reform to have a retrospective operation and in particular for it to apply to proceedings pending before the courts. This reform does not affect the substantive rights of people; on the contrary it removes an illogical rule which in some circumstances could prevent people from pursuing their legitimate claims through the ACT courts even if the ACT is otherwise the most appropriate jurisdiction. As I noted in the Explanatory Memorandum:

"The .... rule denies jurisdiction to entertain a personal action merely because foreign land is incidentally involved. For example, jurisdiction would be denied in an action for the recovery of damages for trespass to foreign land even if title to that land is not in issue.

... The rule has been severely criticised. It has been said to result in anomalous and arbitrary decisions, the injustice of possibly denying a plaintiff a venue for the hearing of the case, and illogical operation."

I note that the *Jurisdiction of Courts (Foreign Land) Act 1989* (NSW) which abolishes the "Mozambique rule" in NSW, states that the Act applies "whether the cause of action concerned arose before, or arises after, the commencement of this Act".

In addition, the reform is a further step in the removal of arbitrary



restrictions on the jurisdiction of courts which is already well progressed by cross vesting laws, the approach of the High Court in *Voth v Manildra Flour Mills Pty Ltd* and the above NSW legislation.

In its report No. 12 of 1995, the Committee made several comments on the Vocational Education and Training Bill 1995 (Training Bill) and compared this Bill with the Health Promotions Bill 1995.

The Committee commented on the definition of "federal award" in the Vocational Education and Training Bill. The Committee asked why the definition does not include "a decision to certify, or to approve implementation of, an agreement under Part VIB [of the *Industrial Relations Act 1998*]" but does include enterprise flexibility agreements and certified agreements as defined in the Industrial Relations Act. The definition of "federal award" includes enterprise flexibility agreements and certified agreements because it is these agreements which contain employees' terms and conditions and not the decisions to certify or approve them.

The Committee asked why the Training Bill does not specifically provide that the annual reports of the Vocational Education and Training Authority and the Accreditation and Registration Council are "periodic reports" for the purposes of section 30A of the *Interpretation Act 1967*. I am advised that the annual reports are, by the terms of clauses 8 and 15 of the Bill, "periodic reports" for the purposes of section 30A of the Interpretation Act. It is therefore unnecessary to include what would amount to merely declaratory provisions to that effect.

The Committee asked why the annual reports provided for in the Training Bill and in the Health Promotions Bill "have not been put within the scope of the recently passed *Annual Reports (Government Agencies) Act 1995*." In relation to the Training Bill, the annual reporting requirements were not brought within the annual reporting legislation because of the potential conflict between that legislation and the reporting requirements of the Authority as the State Training Agency for the Territory under the *Australian National Training Authority Act 1992 (Cth)*. It is desirable that the Authority's reporting requirements as a Territory body and as a State Training Agency remain consistent. Given the close association between the Authority and the Council, it is preferable that they have the same reporting requirements.

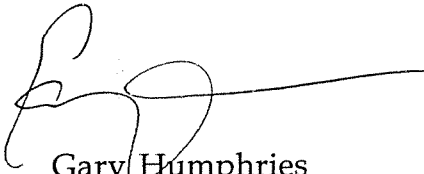
The Committee commented on clauses 25 and 26 of the Training Bill which provide for the Training Authority to determine the types of education and training and the types of trades or vocations to which the Act is to apply. The Committee suggested that consideration should be given to making these decisions subject to independent merits review by the Administrative Appeals Tribunal. I note that unlike other decisions under the Bill that will be reviewable by the Administrative Appeals Tribunal, decisions under clauses 25 and 26 will not be made with respect to specific cases concerning

specific individuals. They are instead decisions of general application to determine the kinds of training and trades to which the Act is to apply. It is not appropriate for such decisions of general application to be subject to merits review by the Administrative Appeals Tribunal. I am informed that these decisions will be made in consultation with industry groups for the purpose of meeting the training needs of industry.

In commenting on the Training Bill, the Committee raised issues concerning the Health Promotions Bill 1995. The Committee highlighted differences between the two Bills with respect to annual reports and ministerial directions. I am informed that, as a result of the Committee's comments, Government amendments are being developed to bring the Bills more into line.

I trust this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Gary Humphries', with a long horizontal line extending to the right.

Gary Humphries  
Attorney-General

17 OCT 1995

**ATTACHMENT**

**REVISED EXPLANATORY STATEMENT  
DETERMINATION OF FEES NO. 58 OF 1995  
MADE UNDER THE ADOPTION REGULATIONS**

**AUSTRALIAN CAPITAL TERRITORY**

**ADOPTION REGULATIONS**

**DETERMINATION OF FEES**

**No 58 of 1995**

**REVISED EXPLANATORY STATEMENT**

The *Adoption Act 1993*, regulates the adoption of children in the Australian Capital Territory. Section 121 empowers the Executive to make regulations for the purposes of the Act.

Part VII of the Adoption Regulations deals with the registration of adoptions and regulation 24 enables an adopted person born in a foreign country or his or her adoptive parent to apply for a certificate of an entry in the register of births. Further, regulation 31 enables the Minister to determine fees for the purposes of the Regulations.

Determination No 58 of 1995 revokes Determination No 77 of 1994 which was notified in the Gazette on 27 June 1994 [Gazette No S 127].

The determination increases the fee for a certificate of an entry in the register of births under regulation 24(3)(b) to \$22 from \$21. The fee has been increased by 4%, rounded up, in accordance with the anticipated movement in 1995/96 of the Consumer Price Index. The fee is intended to ensure full cost recovery for this service.

This revised statement has been prepared following examination of the previous statement by the Standing Committee on Scrutiny of Bills and Subordinate Legislation [see Report No 8 of 1995].

Circulated by Gary Humphries MLA Attorney-General



Attorney General

Minister for the Environment, Land  
and Planning

Minister for Police

Minister for Emergency Services

Minister for Arts and Heritage

Minister for Consumer Affairs

**Gary Humphries MLA**

Australian Capital Territory

FOR IMMEDIATE RELEASE

17 October 1995

## BAN ON HOW TO VOTE CARDS AT FUTURE A.C.T. ELECTIONS

How-to-vote cards will be banned within 100 metres of a polling booth at future ACT elections under laws passed by the ACT Legislative Assembly today.

Attorney-General, Gary Humphries, said the laws were designed to ensure the Hare-Clark electoral system with the Robson Rotation system of rotating names on ballot papers was maintained.

"It is quite clear that Hare-Clark with rotational ballots is not designed as a system to be controlled by the party machines. Hare-Clark was designed as a system to be controlled by individual voters. Indeed, this is the case in Tasmania and has been so for some years.

"The days of party machines in the ACT telling voters who to vote for as they approach the polling booth are now over," Mr Humphries said.

The *Electoral (Amendment) Bill 1995* was passed 11 votes to 6, with just the Labor Party opposing the change.

The change will apply to future ACT elections, but will not extend to Federal elections. The ACT Legislative Assembly has no jurisdiction to deal with federal electoral matters.

Mr Humphries said that the changes were not about restricting freedom of speech, as Labor had claimed.

"Parties and candidates will have opportunities to make their views known during the campaign period about who to vote for - it's just that they can't do that within 100 metres of a polling booth," Mr Humphries said.

**Media Contact:**

**Stephen Forshaw**

**(Minister's office)**

**(06) 205 0133 office  
(06) 205 0407 mobile**

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PARLIAMENT OF AUSTRALIA · THE SENATE  
STANDING COMMITTEE ON REGULATIONS AND ORDINANCES



1 September 1995

Mr Paul Osborne MLA  
Chair  
Standing Committee on Scrutiny of Bills  
and Subordinate Legislation  
ACT Legislative Assembly  
London Circuit  
CANBERRA ACT 2601

Dear Mr Osborne

You will recall that earlier this year the Chairs of scrutiny of legislation Committees throughout Australia circulated Discussion Paper No.1, Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles.

I am writing to inform you of progress in this Committee's scrutiny of regulations made under such a uniform national legislative scheme. The regulations in question, both made under the Commonwealth *Road Transport Reform (Vehicles and Traffic) Act 1993*, are the:

- Road Transport Reform (Heavy Vehicle Standards) Regulations  
Statutory Rules 1995 No.55
- Road Transport Reform (Oversize and Overmass Vehicles) Regulations  
Statutory Rules 1995 No.123

The national uniform legislative scheme was established by the Commonwealth *National Road Transport Commission Act 1991*, which included as a schedule an Agreement between the Commonwealth, the States and the Australian Capital Territory. Among other things, the Agreement recited the necessity for uniform or consistent road transport legislation throughout Australia, to be achieved by a cooperative scheme. The Road Transport Reform (Vehicles and Traffic) Act provided that its purpose was to empower the making of laws for the Australian Capital Territory and the Jervis Bay Territory that are intended to be adopted by the States and Northern Territory. Both sets of regulations provided that this purpose was to provide uniform or consistent legislation throughout Australia. Their Explanatory Statements advised that the regulations would be incorporated into the law of the States and Northern Territory by means of adopting legislation.

The Committee scrutinised the two sets of regulations in the usual way and found that both provided for discretions to exempt vehicles from the legislation, with no apparent review of an adverse exercise of the discretion. In addition, one set provided for strict liability offences punishable by a \$2000 penalty for an individual and \$10000 for a body corporate. Following an exchange of letters, the Parliamentary Secretary to the Minister for Transport advised that amendments to meet the Committee's concerns would be submitted to the Ministerial Council, which must approve amendments, and that the regulations would not be commenced until the amendments were approved.

In the usual course the Committee would have then concluded its scrutiny of the two instruments by accepting the undertakings and monitoring their implementation. In this case, however, the Committee decided on further action, asking for similar assurances from the Minister rather than the Parliamentary Secretary. The reasons for this were the complexities of the national legislative scheme, under which the Ministerial Council must approve all regulations, and the fact that while the Minister is answerable in Parliament for his or her actions, the Ministerial Council is not.

The Committee also asked for a report in three months time on the progress of this particular legislative scheme.

I believe that the Committee's scrutiny of this legislation is an informative case study in the light of the discussion paper on Scrutiny of National Scheme Legislation. Copies of the legislation and associated correspondence may be obtained from the Secretary of the Committee, Mr David Creed, on 06 277 3065.

Yours sincerely



Mal Colston  
**Chairman**