

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

REPORT NO. 20 OF 1993

23 November 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 (Chairperson)
Mr G. Humphries, MLA (Deputy Chairperson)
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. 40 of 1993 being the *Boxing Control Regulations (Amendment)* made under section 21 of the *Boxing Control Act 1993* amends the principal regulations by adding an exemption for the holding of a specified kick boxing contest on 23 October 1993.

Subordinate Law No. 41 of 1993 being the *Gaming Machine Regulations (Amendment)* made under the *Gaming Machine Act 1987* set a maximum bet limit of \$10, specify procedures a club must follow in the conduct of a ballot and make a number of minor updating amendments.

Subordinate Law No. 42 of 1993 being the *Litter Regulations* made under the *Litter Act 1977* prescribe penalties for offences where the offence is dealt with by a litter notice.

Determination No. 146 of 1993 made under subsection 3(1) of the *Poisons and Drugs Act 1978* modifies Schedule 7 of the Act to include specified amphetamine precursors.

Determination No. 147 of 1993 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 124 of 1993 and determines the concession rates of duties that are payable by eligible homebuyers and includes a minimum duty payment of \$20.

Determination No. 149 of 1993 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 123 of 1993 and remakes the stamp duties provisions, but varies the grounds upon which duty will be payable on the conveyance of a fee simple or the transfer of a lease by including a minimum duty payment of \$20.

Subordinate Legislation Upon Which Comment is Offered

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

Determination No. 145 of 1993 determines fees for the purposes of section 226 of the *Land (Planning and Environment) Act 1991* in relation to applications to conduct controlled activities.

The determination states as follows:

"UNDER Section 226 of the *Land (Planning and Environment) Act 1991* I DETERMINE that the fees payable for the purposes of that Act shall be in accordance with the Schedule."

In fact, it is section 287 of the *Land (Planning and Environment) Act 1991* which provides that:

"The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act."

Thus it would be more accurate for the determination to provide that it is made under section 287 for the purposes of section 226.

The present situation differs from that with some other sections in the Act under which determinations are made. For instance, under sections 163, 164 and 167 of the Act, it is the sections themselves which provide that the Executive may specify the criteria for the granting of leases covered by those sections. Thus a determination made under those sections properly refer to the relevant section.

A Probable Mistake in a Revocation Clause

Determination No. 148 of 1993 made under section 99 of the *Taxation (Administration) Act 1987* purports to revoke Determination No. 67 of 1993 and remakes the stamp duties provisions, but varies the grounds upon which duty will be payable on marketable securities by including a minimum duty payment of \$20.

The determination purports to revoke Determination No. 67 of 1993. The Committee believes that Determination No. 67 of 1990 was intended. It suggests this, because, fortunately, the revocation clause goes on to indicate that the determination being revoked was made:

"by the Minister of Finance, Craig John Doby, on 28 September 1990, and published in Gazette No. S71 on 28 September 1990."

The Committee believes that this is a case where the "slip rule" would apply to the incorrect reference to Determination No. 67 of 1993 and the incorrect reference would be overlooked.

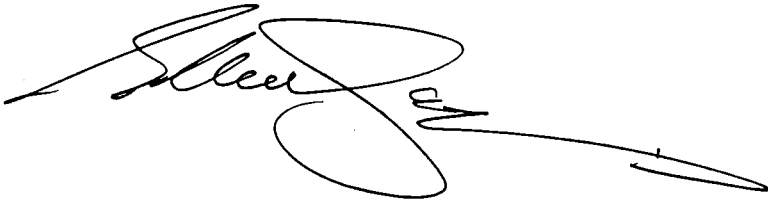
GOVERNMENT RESPONSES

The Committee has received responses to comments made concerning the following Bills and subordinate legislation:

- . Dentists Registration (Amendment) Bill 1993 (Report No. 15 of 1993).
- . Real Property (Consequential Provisions) Bill 1993 (Report No. 19 of 1993).
- . Subordinate Law No. 35 of 1993, being the Supreme Court Rules (Amendment) (Report No. 16 of 1993).
- . Determination No. 69 of 1993 made under the *Adoption of Children Act 1965* (Report No. 13 of 1993).
- . Determination No. 75 of 1993 made under the *Adoption Act 1993* (Report No. 13 of 1993).

Copies of the responses are attached.

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

A handwritten signature in black ink, appearing to read 'Ellnor Grassby', with a long, sweeping horizontal stroke extending to the right.

Ellnor Grassby, MLA
Chairperson

23 November 1993



A.C.T. GOVERNMENT

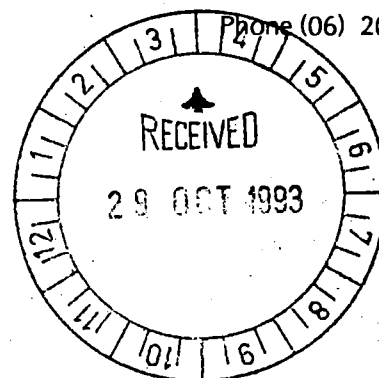
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Mrs Ellnor Grassby MLA
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Dear Mrs  Grassby

In its Report No. 16 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on Subordinate Law No. 35 of 1993, being the Supreme Court Rules (Amendment) made under section 36 of the *Supreme Court Act 1933*.

The Committee was concerned to know whether any of the amendments, by virtue of their retrospective nature, prejudicially affected the right of, or imposed liabilities on, any person.

I am advised that the reason for the retrospective nature of the legislation is that the amendments to the Supreme Court Rules effected by Subordinate Law No. 35 are consequential upon the amendments effected to the Corporations Law by the Corporate Law Reform Act 1992 (Cth) which came into operation on 23 July 1993 and to avoid any lacuna the amendments to the Rules were expressed to commence upon the same date.

It was not possible to prepare the amendments to the Rules in time to commence concurrently with the amendments to the Corporations Law as the amendments to the Rules were based on Federal Court Rules which were not prepared until late June 1993 and time was required to modify those rules, to ensure consistency with the other Supreme Court Rules, and to submit them to the Judges of the Court for approval.

While the Committee has correctly observed that Subordinate Law No. 35 makes many changes of detail and substance to the Supreme Court Rules, the changes simply provide the necessary practice and procedure to enable the provisions of the Corporate Law Reform Act 1992 to operate effectively. Without the retrospectivity there would be a procedural gap between the commencement of the provisions of the Corporate Law Reform Act 1992 and the commencement of the amended Rules.

I am advised that a thorough examination of the amending rules does not reveal any obvious prejudicial effect upon the rights of, or impose liabilities on any person but, rather, facilitates the operation of the Corporations Law, as amended by the Corporate Law Reform Act 1992, during the period of retrospectivity.

I trust this information is of assistance to the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'T. Connolly', with a stylized flourish at the end.

Terry Connolly

29 OCT 1993



A.C.T. GOVERNMENT

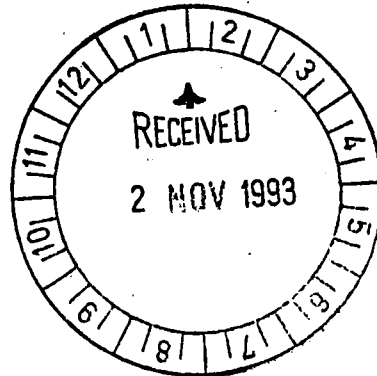
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Dear Mrs Grassby

In its Report No. 13 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on Determination No. 69 of 1993 made under section 64A of the Adoption of Children Act 1965 and Determination No. 75 of 1993 made under section 118 of the Adoption Act 1993.

Firstly, in relation to Determination No. 69, the Committee observed that the Explanatory Statement did not indicate that 2 fees fell outside the general increase of 3% in line with anticipated movements in the CPI and that one fee was unchanged. The increase of the 2 fees by 25% occurred so as to bring the fees into line with certain other jurisdictions including NSW.

The Government Solicitor's Office has considered the further matters raised by the Committee. In relation to Determination No. 69 its view is that as there was no saving provision the Determination was repealed on 31 July 1993 when section 3 of the Adoption Act - the repealing provision - commenced and, as similar appropriate fees under the Adoption Act were fixed by Determination No. 75, no further determination of fees is required.

Turning to Determination No. 75 the Government Solicitor's Office is of the view that although the Determination, having been gazetted on 30 June 1993, purports to come into effect prior to the commencement of the empowering provision of the Adoption Act 1993 (section 118), by virtue of section 5 of the Subordinate Laws Act 1989 the Determination merely waits and takes effect as of 31 July 1993 when section 118 commenced.

I trust this information is of assistance to the Committee.

Yours sincerely


Terry Connolly

2 NOV 1993



A.C.T. GOVERNMENT

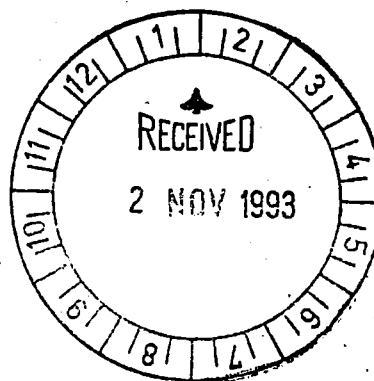
TERRY CONNOLLY MLA

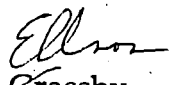
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Dear Mrs Grassby

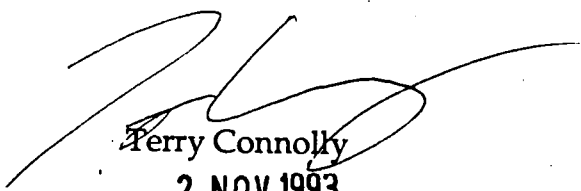
In its Report No. 15 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on the Dentists Registration (Amendment) Bill 1993 ("the Bill") which re-instated a repealed provision of the *Dentists Registration Act* 1931 ("the Act").

The Committee queried whether there had been any prosecutions of dental therapists under the Act as a result of the repeal of subsection 34(1B), of that Act, by the *Health (Consequential Provisions) Act* 1993.

I am advised that there have been no prosecutions of dental therapists in the period commencing with the repeal of subsection 34(1B) of the Act until the re-instatement of a similar provision by the Bill.

I trust this information is of assistance to the Committee.

Yours sincerely


Terry Connolly

2 NOV 1993



A.C.T. GOVERNMENT

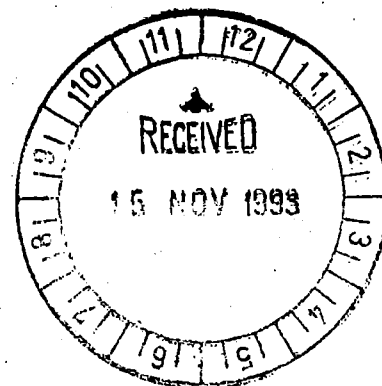
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Dear Mrs Grassby

In its Report No. 19 of 1993 the Standing Committee on Scrutiny of Bills and Subordinate Legislation commented on the Real Property (Consequential Provisions) Bill 1993 ("the Consequential Provisions Bill").

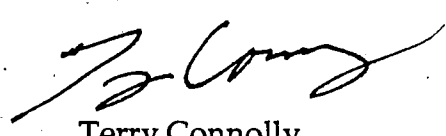
The Committee queried whether there may be a problem with the commencement provisions of that Bill. The Consequential Provisions Bill supports the Real Property (Amendment) Bill 1993 ("the Amendment Bill") which provides for the computerisation of the Land Titles Register and section 3 of the Consequential Provisions Bill is stated to commence on the day or days fixed under subsection 2(2) of the Amendment Bill.

The Committee asked whether this would present a problem if the Minister did not fix a day or days for commencement under subsection 2(2) of the Amendment Bill and, instead, the provisions of the Amendment Bill commenced 6 months after its notification in the *Gazette*, by virtue of the operation of subsection 2(3) of the Amendment Bill.

I am advised that as the Registrar-General is most anxious for the Amendment Bill to commence so that computerisation of the Land Titles Register can be fully implemented there is no possibility that 6 months will elapse without a commencement date being fixed under subsection 2(2) of the Amendment Bill. It is likely that a date for commencement of the provisions of that Bill will be fixed almost immediately it has passed the Legislative Assembly. There is, therefore, no real danger of a problem arising with the commencement of the Consequential Provisions Bill.

I trust this information is of assistance to the Committee.

Yours sincerely


Terry Connolly

12 NOV 1993

