

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

REPORT NO. 14 OF 1992

13 October 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.

BILLS

Bills upon which no comment is offered

The Committee has examined the following Bills and makes no comment.

Appropriation Bill 1992

This Bill provides for the issue and expenditure of public monies of the ACT for services provided in the financial year that commenced on 1 July 1992.

Crimes (Offences Against the Government) (Amendment) Bill 1992

This Bill repeals three sections of the Principal Act that provide for offences relating to the disclosure of information by officers of the Territory and stealing, fraudulently misappropriating or fraudulently converting any property belonging to the Territory or a Territory authority.

SUBORDINATE LEGISLATION

Subordinate legislation upon which no comment is offered

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

Determination No. 127 of 1992 made under section 55A of the Administration and Probate Act 1991 sets the rate of interest that is payable on a legacy at 8 percent per annum.

Determination No. 128 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 Nicholls.

Determination No. 148 of 1992 made under section 19 of the Credit Act 1985 being Credit Order No. 74 - R & I Bank of Western Australia (Bankcards) exempts the R and I Bank of Western Australia Ltd from the provisions of specified Provisions of the Credit Act 1985.

Determination No. 151 of 1992 made under section 12 of the Housing Assistance Act 1987 being the Rent Relief Program 1992 varies the principal Program by updating a number of references to programs under Commonwealth Acts and increasing the level of rental contributions of tenants as a percentage of their income.

Subordinate Law No. 19 of 1992 being the Land (Planning and Environment) Regulations (Amendment) corrects a number of errors, expands the classes of matters excluded from provisions of Part VI of the Act and provides that Part VI may now have a limited operation in respect of certain previously excluded matters.

The original determination dealing with the streets in the Division of Gordon was Determination No. 140 of 1992 and, among other things, the present determination revokes Determination No. 138 of 1992, which made changes to streets in the Division of Banks.

Both the present determination and its Explanatory Statement specifically state that Determination No. 138 is being revoked by the present determination. Thus the present determination has revoked the changes to the streets in the Division of Banks that were made by Determination No. 138. Of course, this revocation may have been intended. But, if this revocation was not intended, a determination needs to be made to reinstate the changes to the streets in the Division of Banks.

The body of the present determination appears to be effective to make the intended changes to the streets in the Division of Gordon. However, the status of Determination No. 140 of 1992 needs to be looked at. Possibly it could be argued that the body of the present determination, as opposed to the specific revocation clause, has revoked it, but it may be appropriate specifically to repeal it and make the matter certain.

Subordinate Law No. 17 of 1992 being the Motor Traffic Regulations (Amendment) adds offences and penalties dealing with emerging from a slip lane and use of child restraints to the list of offences that can be dealt with under the Traffic Infringement Notice provisions, corrects a drafting error and removes sexist language.

Subordinate Law No. 18 of 1992 being the Canberra Sewerage and Water Supply Regulations (Amendment) applies Australian Standard 3500 as the applicable standard for plumbing and drainage work in the Territory, modifies a number of machinery provisions, removes sexist language and updates appeal provisions.

(c) Removal of sexist language.

It was pleasing to see that, when other amendments were required to the principal regulations, the opportunity was taken to remove sexist language from many provisions in the regulations.

GOVERNMENT RESPONSES

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

- . Determination No. 90 of 1992 made under the Associations Incorporated Act 1991 (Report No. 11 of 1992).
- . Determinations Nos. 117 and 118 of 1992 made under the Machinery Act 1949 and the Scaffolding and Lifts Act 1957 (Report No. 10 of 1992).
- . Determination No. 140 of 1992 made under the Public Place Names Act 1989 (Report No. 11 of 1992).
- . Determinations Nos. 102 and 109 of 1992 made under the Building Act 1972 (Report No. 10 of 1992).
- . Determinations Nos. 103 and 104 of 1992 made under the Architects Act 1959 and the Plumbers, Drainers and Gasfitters Act 1982 (Report No. 10 of 1992).

Registrar's Office

① 29 SEP 1992
DL Rec'd

A.C.T. Government

OUR REF : 92/10045
YOUR REF

Mr Tom Duncan
Secretary
Standing Committee on Scrutiny
of Bills and Subordinate Legislation Committee
cc. Anita Kanay

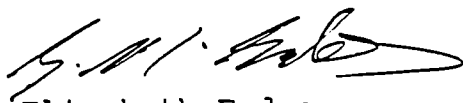
Re : Scrutiny of Bills Committee - Report No. 10 of 1992

In its report of 18 August 1992 the Committee reported an incorrect reference in the Determinations.

The A.C.T. Determination No. 90 of 1992 made under the Associations Incorporated Act 1991 determining fees payable under the Act referred to the power to determine fees arising pursuant to Section 19 or section 26 of the Act. This is an error. The correct Section is Section 18 or Section 26. As you have pointed out these sections are confirmed by item 2 for follow-up certificates of incorporation.

I requested an opinion on this error from the A.C.T. Government Solicitor who has advised that in his opinion "this misdescription does not create an ambiguity as to what is the subject matter in respect of which the fee is being determined and therefore the validity of the determination is not affected.

There are over 1500 Associations in the A.C.T. currently familiarising themselves with the legislation. We believe that the re-execution of the instrument would cause unnecessary confusion.



Elizabeth Erdos
Director
Business Names and Associations
21 September 1992

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HAACHMEND A

AUSTRALIAN CAPITAL TERRITORY
GOVERNMENT SOLICITOR

Your Reference:

Our Reference: 90-1-16032/90-2-106171

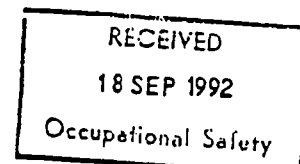
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17 September 1992

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ACT Occupational Health and Safety Office
Industrial Relations Branch
Chief Minister's Department
1st Floor
North Building
London Circuit
CANBERRA CITY ACT 2601

FAXED



FAX: 2050797

Attention: Ms Heather Lawson

**RE: DETERMINATIONS UNDER THE MACHINERY ACT 1949 AND
THE SCAFFOLDING AND LIFTS ACT 1957 RESPONSE TO STANDING
COMMITTEE ON SCRUTINY OF BILLS AND SUB-ORDINATE
LEGISLATION**

I refer to your request for advice dated 9 September 1992.

The Standing Committee on the Scrutiny of Bills and Subordinate Legislation has noted that the most recent determination of fees under the *Scaffolding and Lifts Act 1957* has purported to revoke a determination of fees published in the *Australian Capital Territory Gazette* No. 49 of 1 July 1991. The report of the Standing Committee notes, and you do not dispute this, that no such determination of fees appears in *Gazette* No. 49 (which in any event is dated 11 December 1991 and not 1 July 1991). It appears that that reference to fees should have been a reference to *Gazette* No. S56 of 1 July 1991.

In my view, this error does not invalidate the purported revocation of previously determined fees, if there are no other fees determined under that Act other than those which were found at *Gazette* No. S56 of 1991. If there is no chance of the fees concerned being confused with any other set



A.C.T. GOVERNMENT

TERRY CONNOLLY MLA

ATTORNEY GENERAL

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

Dear Mrs  Grassby

In its Report No. 10 of 1992, the Committee raised concerns in respect of Determinations No. 102 and 109 of 1992 made under the *Building Act 1972* and Determinations No. 103 and 104 of 1992 made under the *Architects Act 1959* and the *Plumbers, Drainers and Gasfitters Act 1982*, respectively.

I am advised that the errors noted by the Committee are administrative in nature and do not affect the validity of the instruments.

First, the Committee questioned the accuracy of the explanatory statement accompanying Determination No. 109 of 1992, which mentioned the revocation of previous determinations. The Determination itself contained no revocation clause. The Committee was correct in that Determination No. 109 was fixing fees under the particular provisions for the first time so the absence of the revocation clause from the determination was appropriate. The explanatory statement was indeed inaccurate for mentioning the previous revocations.

Secondly, Determination No. 102 of 1992, by its revocation clause, albeit incomplete, did have the effect of revoking previous Determination No. 24 of 1991. The Committee also identified an incorrect section reference in Determination No. 102. I am advised that this error does not invalidate the instrument as it is quite clear from the context of the paragraph that it concerns fees payable under the correct section. Nevertheless, this Determination will be revoked and remade to avoid unnecessary confusion.

Finally, the Committee noted that Determinations No. 103 and 104 of 1992 revoked two previously revoked determinations which were gazetted in ACT Gazette No. 35 of 5 September 1990. These 1990 Determinations had in fact been revoked by previous



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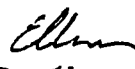
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Mrs E Grassby MLA
Presiding Member
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Dear Mrs Grassby

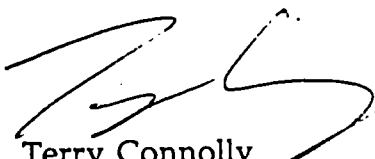
In its Report No. 11 of 1992 the Standing Committee on Scrutiny of Bills and Subordinate Legislation raised a concern about Determination No. 140 of 1992 made under section 4 of the *Public Place Names Act 1989*.

The Committee noted that the Explanatory Statement referred to three Schedules of the Determination, but the Determination itself only had two Schedules attached. Schedule C was missing and hence, the intention indicated by the Explanatory Statement may not have been effected by the instrument.

I am advised by the Department of the Environment, Land and Planning that the Committee's concern was justified. To overcome the omission, the Determination will be revoked and redone correctly. I am informed that the revised Determination will be finalised shortly.

I thank the Committee for bringing this matter to my attention and trust that the foregoing information is of assistance.

Yours sincerely


Terry Connolly

- 7 OCT 1992 