Legislative Assembly for the Australian Capital Territory

Standing Committee on Justice and Community Safety

(incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee)

The electronic version of this report does not contain attachments, these can be obtained from the committee office

SCRUTINY REPORT NO. 5 OF 2000

28 MARCH 2000

Terms of reference

(1) A Standing Committee on Justice and Community Safety be appointed (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee).

(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) the 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) the explanatory memorandum meets the technical or stylistic standards expected by the Committee.

(3) The Committee shall consist of four 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 John Hargreaves, MLA (Deputy Chair)
Mr Trevor Kaine, MLA
Mr Harold Hird, MLA

Legal Adviser: Mr Peter Bayne
Acting Secretary: Mr Mark McRae
(Scrutiny of Bills and Subordinate Legislation Committee)
Assistant Secretary: Ms Celia Harsdorf
(Scrutiny of Bills and Subordinate Legislation Committee)

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 - Comment

The Committee has examined the following Bills and offers these comments on them.

Cooperatives Bill 2000

This is a Bill to repeal the *Cooperatives Societies Act 1939* and to replace the Act with a reformed scheme for the regulation of cooperatives. The scheme is based on agreements reached by the Standing Committee of Attorneys-General and the Ministerial Council for Corporations. These agreements are designed to facilitate the enactment in all Australian jurisdictions of laws governing cooperatives that are consistent in their core provisions. The Bill also deals with matters that are presently dealt with in the *Corporations Law*. This latter law will be amended by the Commonwealth Parliament to make the appropriate the adjustments.

The Bill would vest in the registrar of cooperatives (in particular), and also in the Minister and the Supreme Court, a large number of discretionary powers. In this connection, the Committee draws to the attention of the Legislative Assembly a number of matters.

Paragraph 2 (c) (ii) – insufficiently defined administrative powers

Many of these discretionary powers are expressed in open-ended language that will permit a wide range of choice as to outcome in a particular case. It would be desirable to include in the Bill a power, vested in the holder of the particular power, to issue non-exhaustive and non-binding guidelines to indicate the circumstances in which the power may or may not be exercised.

The Committee notes a particular concern about subclause 305(1). This vests in the registrar an open-ended discretion to approve of the transfer the engagements of a cooperative to another cooperative. The registrar must not, however, give such approval unless the Minister has given approval to the registrar exercising this power. It is not apparent why the Minister should be involved. There is no similar provision in respect of the registrar's power to approve a merger (see clause 305), nor in respect of the many other powers of the registrar. If there is seen to be a need for political intervention in relation to this particular power, it is not stated in the Explanatory Memorandum.

(The Explanatory Memorandum is, in relation to this clause, and many others in the Bill, very brief, and, in effect, provides no explanation of the provision. Of clause 305, it is said only that it "[p]rovides for a transfer of engagements by direction of the registrar". This does not reveal the role of the Minister.).

Paragraph 2 (c) (iii) – non-reviewable decisions affecting rights

- Very few of the discretions vested in the registrar are subject to any form of review. In a few cases, the Supreme Court may hear what appears to be a 'merits' review appeal from the registrar; (see below for detail).

The Committee notes that the registrar is an administrative authority, and thus subject to complaint to the Ombudsman, or to judicial review in the Supreme Court. In many cases, it may be appropriate to make no specific provision for review. Given, however, the very large number of discretions vested in the registrar, the question arises as to whether consideration was given to providing for review by the Administrative Appeals Tribunal.

These provisions vest unreviewable discretions in the registrar: clauses (or sub-clauses, or paragraphs, as the case may be) 19(2), 25, 61(2), 69(1), 122(4), 142, 146(1), 184(4), 192, 196(2), 2041(b), 241(1), 252(1), 254(e), 256(1),(6),(7), 262(1), 264(6), 265(2), 268(3)(a), 276(2), 280(2),(6), 286(5), 289, 297, 301(4),(5), 303(1), 304(1), 305(1),(3),(4),(6), 308(3), 315(1), 318(2), 321, 325(1), 327(2), 330(1), 342(1)(a), 351(1), 372, 373(1), 374(1), 377(2), 379(2), 382(2),(3), 383(4),(5), 385(1),386(1), 411(3), 412(4)(e), Division 1.4, 451(4)(m), and 453(3)(b).

These provisions vest in the registrar discretions reviewable by the Supreme Court: clauses (or sub-clauses, or paragraphs, as the case may be) 17(4),(5), 18(4), 20(1), 107(4), and 110(3).

- The Supreme Court is also vested with various discretionary powers.

In addition to the review powers just noted, these provisions are relevant: clauses (or sub-clauses, or paragraphs, as the case may be) 84, those in Divisions 4.5, and 4.6, 132, 214, 283, 322, 331(1), those in Part 13, 413(2), 415, and 456.

Some of these powers appear to be appropriate for exercise by the Supreme Court. Many, however, will require the Court to make judgments about the proper management of a cooperative, or to be concerned in some other way in taking a view about the business and affairs of a cooperative. In this latter respect, it may be asked whether it is appropriate to vest these powers in the Supreme Court. The open-ended nature of many of these discretions is such that the Court will have to supply standards for the application of the discretion. In so doing, it will have to make value judgments about the appropriate manner to conduct the affairs of the particular cooperative in question. The Court will then have to apply those standards to the particular fact situation before it.

The question is whether such a function is appropriate for exercise by the Supreme Court. It may be thought that this task is more suitable to be exercised by a person or persons with expertise relevant to the conduct of the affairs of cooperatives. This would mean that where the function of the Supreme Court is one of primary decision-making, the function might be vested in the registrar. Where function of the Supreme Court is one of review, the function might be vested in a body such as the Administrative Appeals Tribunal.

The AAT is a body to which may be appointed (on a part-time basis if necessary) persons with expertise relevant to the conduct of the affairs of cooperatives.

Another matter to consider in this context is the cost of making an application to the Supreme Court. In some instances, this cost, and the risk of paying the costs of any other party, may be such as to deter a person from making use of the provision for approaching the Court.

Paragraph 2 (c) (i) - undue trespass on personal rights and liberties

Widely expressed offences

Clause 222(1) makes it an offence for an officer of a cooperative to fail “at all times [to] act honestly”. If the person does so with intent to deceive or defraud”, the offence is aggravated. Thus, acting dishonestly must mean more than acting with intent to deceive or defraud.

There will be room for debate concerning what this obligation entails. It may be taken to require the officer to act in good faith, to not act maliciously, and not to seek to achieve some ulterior purpose. Given clause 223 (see below), it will probably be taken to exclude situations in which an officer simply fails to exercise the caution and diligence that would be expected of a person of ordinary prudence. But there may be a lack of honesty where the officer fails to make inquiry of some matter such that he or she wilfully shuts their eyes to the matter; (see generally *Mid Density Developments Pty Ltd v Rockdale Municipal Council* (1993) 116 ALR 459 at 467-468).

The issue is whether it is appropriate to make such defaults by an officer of a cooperative the subject of a criminal penalty. While the immediate penalty may be small, the consequences for the reputation and future employment of the officer may be grave. There is an argument that such a broadly stated offence should be the basis for disciplinary action, and not the criminal law.

This general point applies with more force to the next provision.

Clause 223(1) makes it an offence for an officer of a cooperative to fail to "exercise the degree of care and diligence that a reasonable person in a like position in a cooperative would exercise in the cooperative's circumstances".

It is clear that clause 223 will embrace situations in which an officer fails to exercise the caution and diligence that would be expected of a person of ordinary prudence. The officer will be judged against the standards of a hypothetical reasonable person, and, furthermore, the court must place that person in a "like position" in some hypothetical cooperative. Thus, an officer may be found guilty of a criminal offence, carrying with it serious consequences for their future employment, in circumstances where the officer has not acted intentionally or with reckless disregard. As such, this provision runs counter to fundamental principles of criminal liability.

Again, the issue is whether such a broadly stated offence should be the basis for disciplinary action, and not the criminal law.

Mandatory penalty provision

Subclause 419(1) provides that an officer of a cooperative commits an offence where he or she accepts a commission, fee or reward in connection with a transaction of the cooperative. By subclause 419(2), the officer "is also liable to make good to the cooperative double the value or amount of the commission, fee or reward".

In this context, the words "is liable" probably mean that the officer is under a legal obligation to make good double the value of the commission, etc (see *Stroud's Judicial Dictionary* (4th ed, 1973)). As such, subclause 419(2) imposes, in effect, a mandatory civil penalty on the officer. A court would appear to have no discretion to require the officer to pay to the cooperative any amount lesser than double the value of the commission, etc.

Burden of proof and the protection of privileges in some offence provisions

Under clause 394, an inspector may require certain persons to appear before the inspector to answer questions, and to produce documents. Under subclause 398(1), it is an offence to fail to comply with such a requirement. This is qualified by subclause 398(5), whereby a person, as a matter of defence, may prove that he or she had a reasonable excuse for not complying with the relevant requirement.

The first comment is that the Explanatory Memorandum offers no justification reversing the onus of proof in relation to the issue of reasonable excuse; (the Explanatory Memorandum does not even mention the matter).

In contrast, subclause 398(3) provides that a person "must not without reasonable excuse obstruct or hinder an inspector …". Given the comparison to the wording of subclause 398(5), the intention must be, in relation to subclause 398(3), to require the prosecution to negative the existence of a reasonable excuse on the part of the person charged. The question is why this policy is not followed in relation to an offence under subclause 398(1).

The second comment is that the Bill does not deal very clearly with the issue of whether a person subject to a requirement of an inspector may claim legal professional privilege. This would normally be possible under a reasonable excuse provision, although, in a Bill of this kind, it is desirable that the matter be addressed specifically. Many non-lawyers who administer cooperatives will consult this law, and it should be plain to the non-lawyer what it means.

In this Bill, however, the situation is made more complex by the inclusion of clause 402. This provides that where the person subject to the requirement of an inspector is a legal practitioner, the person is entitled to refuse to comply with clauses 394 and 397 where to do so would require the person to disclose privileged communications made to the person. There is no objection to this provision, but legal professional privilege is a privilege of the client, not of the lawyer. The failure to deal specifically with a person who is a client may suggest that the Bill does not intend to enable the person to avail her or himself of the privilege where he or she is subject to the requirement of an inspector.

The points just made also arise in relation to the clauses 406, 408 and 409, concerning inquiries.

In these parts of the Bill, there are provisions dealing with the privilege against self-incrimination – see clauses 399 and 407. A person may be compelled to self-incriminate, and is given some protection. The scope of the protection does not, however, extend to a derivate use of the information compelled, and in this respect these provisions are deficient in the scope of the protection they afford to the privilege against self-incrimination.

Paragraph 2 (c) (v) – insufficient scrutiny of legislative power

- Clauses 144 and 145 require the board of a trading cooperative to make certain disclosures. Under clause 146 the registrar may grant exemptions in respect of these requirements, and an instrument of exemption is a disallowable instrument (clause 146(3)). It is not apparent why this power should be reviewable by the Legislative Assembly. The judgment required to be made (see subclause 146(2) does not appear to be appropriate to be made by a legislative body, (given that it must relate to the affairs of a particular cooperative). In addition, there are many other exemption powers of the registrar that are **not** subject to disallowance.
- Similar points may be made about clause 315(6).

The general point here is that it is not possible to discern in the bill a coherent policy concerning the circumstances in which an exercise of power by the registrar is subject to disallowance by the Assembly.

Drafting points

- Perhaps the note to subclause 4(1) might state more fully just what is the *Corporations Law*.
- Should paragraphs (a) and (b) of subclause 33(1) be joined by “or” rather than “and”?
- The first words of paragraph 44(1)(d) should probably be “that **a** document”.
- In paragraph 62(2)(a), who is to hold the belief?
- In subclause 224(1), does the use of the word “improper” unduly narrow the scope of the provision?
- In subclause 335(2), the words “new body” should be in italics.
- In subclause 367(2), it appears that the word “not” should be omitted.

Interstate agreement

The Committee notes that this Bill is based on agreements reached by the Standing Committee of Attorneys-General and the Ministerial Council for Corporations.

The Committee considers that it is appropriate to raise the question whether any of the steps taken by Ministers or others to reach this agreement were subject to the requirements of the *Administration (Interstate Agreements) Act 1997*.

Executive Documents Release Bill 2000

This is a Bill for an Act to require the annual release of certain documents that relate to meetings of the Executive of the Australian Capital Territory. These are official records of the Executive, and some kinds of documents that were submitted by Ministers to the Executive. These records would be released as an annual batch on a specific date in the 11th year after the creation of the document. The chief executive may, in defined circumstances, specify a later release day for a document where that is in the public interest, or where release on the usual date would constitute an unreasonable breach of an individual's privacy.

Paragraph 2 (c) (i) - undue trespass on personal rights and liberties

In Scrutiny Report No 3 of 2000, the Committee noted what the Australian Law Reform Commission (ALRC) and the Administrative Review Council (ARC) said in their report on Freedom of Information legislation:

> "Access to government information is a prerequisite to the proper functioning of a democratic society. Without information, people cannot exercise their rights and responsibilities or make informed choices. Information is necessary for government accountability. Limited information can distort the accountability process: governments are questioned about the wrong issues and programs are incorrectly evaluated. Without information people cannot make an informed choice at the ballot box and members of Parliament cannot supervise the Executive. [ALRC, *Freedom of Information*, Discussion Paper 59 (AGPS, 1995 pp. 6-7)]" (ibid at 89-90).

This Bill may be seen as promoting the exercise of the rights and responsibilities of citizens to make informed choices.

On the other hand, it is not clear how this Bill would impinge on the scope of the rights a person now has to obtain access to executive documents under the *Freedom of Information Act 1989*. The Bill might be read as restricting those rights to the extent provided for in the Bill. To obviate this result, the Bill might contain a provision that states that it does not in any way qualify the operation of the *Freedom of Information Act*.

Public Access to Government Contracts Bill 2000

This is a Bill for an Act to provide for the publication of the terms of government contracts. The provisions of the Bill would act prospectively

- to require a government agency to prepare a public text of a government contract which text does not include a term of the contract that is confidential;
- to include a number of matters in the public text; and
- to make that text public by making paper copies available for purchase, and an electronic copy available free of charge.

In relation to confidentiality clauses in government contracts:

- any such provision must follow the effect of a model confidentiality clause as stated in the Schedule;
- a government agency may only agree to such a clause in the circumstances stated in subclause 10(1); and
- may not agree to make such an agreement in the circumstances stated in subclause 10(2).

Paragraph 2 (c) (i) - undue trespass on personal rights and liberties

In Scrutiny Report No 3 of 2000, the Committee drew attention to the competing rights considerations in relation to a Bill such as this.

Interpretation Amendment Bill 2000

This Bill would amend the *Interpretation Act 1967* to insert a new section 30AC in these terms: "If an Act authorises or requires the determination of a fee, charge or other amount, the power includes a power to determine a tax."

Paragraph 2(c)(iv) – inappropriate delegation of legislative power

The primary effect of this provision will be to authorise the levying of a tax by means of a subordinate law. The maker of that law need not be a Minister, or a person for whom a Minister is responsible.

This provision would operate whether or not the relevant determination was disallowable by the Assembly. In such cases, there is no possibility of review of the levying of the tax by the Assembly.

In cases where the relevant determination is disallowable, the Assembly may review the levying of the tax, but only after the tax has been levied. In these circumstances, there will be arguments that disallowance of the tax will disturb business and other arrangements made by members of the community on the basis of the tax taking effect. Recovery of paid taxes will also be a very complicated matter.

In Scrutiny Report No 14 of 1999, the Committee noted that many scrutiny committees operate according to the principle that "[i]t is for Parliament to set a tax rate and not for the makers of subordinate legislation to do so": Senate Standing Committee for Scrutiny of Bills, *The Work of the Committee during the 37th Parliament May 1993 – March 1996*, (June 1997), at 62. This Committee said: "[t]he vice to be avoided is taxation by non-primary legislation".

This approach reflects the long-standing constitutional position that "the raising* and expenditure** of public revenue have long been under the control of Parliament": *Northern Suburbs General Cemetery Reserve Trust v Commonwealth* (1993) 176 CLR 555 at 579 per Brennan J.

> **Petition of Right* (1627), s 8; Bill of Rights (1688), s 1; Maitland, *The Constitutional History of England*, (1908), pp 307-309; *Attorney-General v Wilts United Dairies* (1922) 91 LJKB 897, at p 900.
>
> ***Auckland Harbour Board v The King* (1924) AC 318, at pp 326-327; Maitland, op cit, pp 309-310.

While the causes and concerns of the constitutional conflicts and the civil war in England in the 17th century were far wider than the issue at hand here, it is nevertheless the case that a major objective of the parliamentarians of that period was to establish that the raising of public revenue must be under the control of Parliament.

Thus, the *Petition of Right* of 1628, after reference to a statute of the reign of Edward I, and other matters, recited in its preamble the freedom of all subjects "that they should not be compelled to contribute to any

tax, tallage, aid or other like charge not set by the common consent in parliament". The same sentiment was stated in the body of the *Petition*; (C Stephenson and F Marcham, *Sources of English Constitutional History* (1972), 451).

The *Bill of Rights* of 1689, the key document in the laws that make up the legislative outcome of the Revolution of 1689, declared that "levying of money for or to the use of the crown by pretence of prerogative without grant of parliament, or for longer time or in other manner then the same is or shall be granted, is illegal …" (ibid at 601).

The *Petition of Right* more strongly suggests than the *Bill of Rights* that the Parliament must sanction the levying of a tax. The courts have allowed that Parliament may delegate to a Minister or to some other person legislative power to levy a tax. In order, however, to give effect the principle that the raising of public revenue must be under the control of Parliament, the courts insist that such a delegation must be expressed in very clear terms.

This explains why the courts have held that a statutory power to impose by subordinate law a fee or a charge will be restricted to fixing an amount that is genuinely a recompense for the provision of a service rendered. If the amount fixed exceeds what is a fair recompense, the amount will be characterised as a tax, the essential nature of which is an exaction for public purposes. If the power to make the subordinate law does not clearly authorise the imposition of a tax, it will be invalid to the extent that it purports to do so.

As the Explanatory Memorandum to this Interpretation Amendment Bill 2000 notes, this Committee drew attention to the judicial attitude and its basis in Scrutiny Report No 14 of 1999. In that report, the Committee stated its concern that a provision of a Bill that empowered the determination of a fee also empowered the levying of a tax by means of that fee. The same concern has been expressed in later Scrutiny Reports.

The Committee does not consider that there is a 'gap' in the law of the Territory that needs to be filled by a new section of the *Interpretation Act 1967*. Rather, the point is that the Legislative Assembly should not, as a general matter, authorise a subordinate legislative authority to levy a tax. This is, however, what the Interpretation Amendment Bill 2000 would do.

The Explanatory Memorandum argues that the bill is designed to remove the 'theoretical' possibility of challenge being made to some of the existing determinations of fees on the ground that they are, in substance, taxes. Whether this is merely a 'theoretical' possibility is open to some doubt. There are quite a few reported judicial cases in which challenges to such determinations have been made. In any event, if the possibility of challenge is remote, it may be asked whether the basic principle of parliamentary control over the levying of taxes should be reversed.

The Explanatory Memorandum also argues that reversal of the principle is necessary in order to cope with the introduction of the GST. The Committee is unable to evaluate this argument. But, to the extent that it points to a problem, it can be dealt with by a much more limited provision. That is, it could be provided that if an Act authorises or requires the determination of a fee, charge or other amount, the power includes a power to make such determination as takes into account the GST.

The Committee draws this matter to the attention of the Assembly.

Subordinate Legislation - No Comment

The Committee has examined the following subordinate legislation and offers no comment on them.

Subordinate Law No. 4 of 2000 being the Road Transport (Hire Vehicle Services) Regulations 2000 made under the *Road Transport (General) Act 1999* brings the hire vehicle industry into line with those regulations applying in the ACT taxi industry and specifically address the licensing of hire

vehicle drivers; the maintenance of records; behaviour, dress and conduct of drivers; conduct of hiring; payment of fares; and conduct of passengers.

Subordinate Law No. 5 of 2000 being the Road Transport (Taxi Services) Regulations 2000 made under the *Road Transport (General) Act 1999* incorporates the introduction of fare deposits to minimise the incidence of fare invasion; provisions to support the delivery of high quality services for people with disabilities; formalises arrangements for the provision of stand-by taxis to replace vehicles that become inoperable; and provisions relating to the conduct of both drivers and passengers to strengthen occupational health and safety arrangements and address offensive behaviour.

Subordinate Law No. 7 of 2000 being the Road Transport (Dimensions and Mass) Regulations 2000 made under the *Road Transport (Dimensions and Mass) Act 1990* provides that a person authorised to issue infringement notices must be able to be identified by a unique number.

Subordinate Law No. 9 of 2000 being the Road Transport (Bus Services) Regulations 2000 made under the *Road Transport (General) Act 1999* brings the ACT into line with regulations applying in NSW. The regulations incorporate acknowledgement of changed ticketing technologies and the issue of ticket tampering; provisions relating to the licensing of drivers and operators; provisions relating to the physical presentation and condition of vehicles; and provisions relating to the conduct of both drivers and passengers to strengthen occupational health and safety arrangements, address offensive behaviour and provide more relevant services to older persons and people with disabilities.

Subordinate Law No. 10 of 2000 being the Road Transport (Safety and Traffic Management) Regulations 2000 made under the *Road Transport (Safety and Traffic Management) Act 1999* incorporates the Australian Road Rules into the law of the Australian Capital Territory (Part 2) and makes other provision with respect to road rules on roads and road related areas in this Territory.

Subordinate Law No. 11 of 2000 being the Road Transport (Offences) Regulations 2000 made under the *Road Transport (General) Act 1999* provides a short description of offences that may be used in an information, summons, warrant, notice, order or other document.

Subordinate Law No. 12 of 2000 being the Road Transport (Vehicle Registration) Regulations 2000 made under the *Road Transport (Vehicle Registration) Act 1999* establishes a system for the registration of both light and heavy vehicles that is consistent with the uniform national road legislation envisaged by the National Road Transport Commission Act 1991 of the Commonwealth; and provides for vehicle standards that are applicable to registerable vehicles and for their inspection by authorised persons.

Subordinate Law No. 13 of 2000 being the Road Transport (General) Regulations 2000 made under the *Road Transport (General) Act 1999* provides general administrative provisions in relation to the administration of the Road Transport legislation.

Subordinate Law No. 14 of 2000 being the Road Transport (Driver Licensing) Regulations 2000 made under the *Road Transport (Driver Licensing) Act 1999* assists in providing for the consistent administration and enforcement of a driver licensing system throughout Australia.

Subordinate Law No. 15 of 2000 being the Duties (Transitional Provisions) Regulations 2000 made under section 34 of the *Duties (Consequential and Transitional Provisions) Act 1999* amends the *Duties Act 1999* for transitional purposes.

Determination No. 68 of 2000 made under section 96 of the *Road Transport (General) Act 1999* determines the fee payable, as specified in the Schedule, in respect of the provisions of the Road Transport (Vehicle Registration) Regulations 2000 made under the *Road Transport (Vehicle Registration) Act 1999* in relation to bicycle rack number plates. The fees are the same as previously

determined under the *Motor Traffic Act 1936*, with the exception of some new fees which result from the adoption of NSW legislation.

Determination No. 69 of 2000 made under section 96 of the *Road Transport (General) Act 1999* determines the fee payable, as specified in the Schedule, in respect of the provisions of the Road Transport (Safety and Traffic Management) Regulations 2000 made under the *Road Transport (Safety and Traffic Management) Act 1999* in relation to parking meters in the areas of Territory Land. The fees and sites listed in the Schedule are the same as previously determined under the *Motor Traffic Act 1936*.

Determination No. 70 of 2000 made under section 96 of the *Road Transport (General) Act 1999* determines the fee payable, as specified in the Schedule, in respect of the provisions of the Road Transport (Safety and Traffic Management) Regulations 2000 made under the *Road Transport (Safety and Traffic Management) Act 1999* in relation to parking permits. The fees are the same as previously determined under the *Motor Traffic Act 1936*.

Determination No. 71 of 2000 made under section 96 of the *Road Transport (General) Act 1999* and in accordance with regulation 153 of the Road Transport (Vehicle Registration) Regulations 2000 made under the *Road Transport (Vehicle Registration) Act 1999* determines the maximum fees, as specified in the Schedule, payable to a proprietor of an authorised premises for inspecting or testing motor vehicles or trailers. The fees are the same as previously determined under the *Motor Traffic Act 1936*.

Determination No. 72 of 2000 made under section 96 of the *Road Transport (General) Act 1999* determines the fee payable in respect of the provisions of the Road Transport (Safety and Traffic Management) Regulations 2000 made under the *Road Transport (Safety and Traffic Management) Act 1999* in relation to the issuing of parking tickets from ticket machines located at the sites as specified in the Schedule. The fees are the same as previously determined under the *Motor Traffic Act 1936*.

Determination No. 74 of 2000 made under section 96 of the *Road Transport (General) Act 1999* determines the fee payable in respect of the provisions of the Road Transport (Safety and Traffic Management) Regulations 2000 made under the *Road Transport (Safety and Traffic Management) Act 1999* in relation to impounding and seizure and speed/reliability tests as specified in the Schedule.
The fees are the same as previously determined under the *Motor Traffic Act 1936*.

Determination No. 75 of 2000 made under section 96 of the *Road Transport (General) Act 1999* determines the fee payable in respect of the provisions of the Road Transport (General) Regulations 2000 in relation to refund fees and charges as specified in the Schedule. The fees are the same as previously determined under the *Motor Traffic Act 1936*.

Determination No. 76 of 2000 made under section 96 of the *Road Transport (General) Act 1999* determines the fee payable in respect of public vehicle licences as specified in the Schedule. The fees are the same as previously determined under the *Motor Traffic Act 1936*.

Determination No. 78 of 2000 made under section 96 of the *Road Transport (General) Act 1999* determines the fee payable in respect of the provisions of the Road Transport (Driver Licensing) Regulations 2000 made under the *Road Transport (Driver Licensing) Act 1999*, in relation to driver licences as specified in the Schedule. The fees are the same as previously determined under the *Motor Traffic Act 1936*.

Determination No. 79 of 2000 made under section 96 of the *Road Transport (General) Act 1999* determines the fees for transactions in respect of the provisions of the Road Transport (Vehicle Registration) Regulations 2000 relating to the registration of motor vehicles and trailers made under the *Road Transport (Vehicle Registration) Act 1990*, as specified in the Schedule. The fees are the same

as previously determined under the *Motor Traffic Act 1936.* this instrument does not affect the fees listed in Part 2 of the Schedule to the *Road Transport Charges (Australian Capital Territory) Act 1993* of the Commonwealth which the ACT Government is required to collect for vehicles with a GVM in excess of 4.5 tonnes.

Subordinate Legislation - Comment

The Committee has examined the following subordinate legislation and offers these comments on them.

Incorrect reference to section

Subordinate Law No 6 of 2000 being the Road Transport (Third-Party Insurance) Regulations 2000 made under subsection 232 (1) of the *Road Transport (General) Act 1999* prescribes matters necessary to give effect to Part 10 (Compulsory Vehicle Insurance) of the Act.

The Committee draws attention to what appears to be an incorrect reference in the explanatory statement to subsection 232 (1) of the *Road Transport (General) Act 1999* in relation to the provision for the Executive to make regulations for the purposes of the Act. Perhaps this should read subsection 233 (1)?

No schedule attached to instruments

Subordinate Law No 8 of 2000 being the Road Transport (Alcohol and Drugs) Regulations 2000 made under the *Road Transport (Alcohol and Drugs) Act 1997* provides for the deletion of schedules for breath analysis machines that are no longer used.

The schedule relating to machines currently in use is referred to in the explanatory statement as an attachment. The Committee notes that the relevant schedule is not attached to this instrument.

Determination No. 73 of 2000 made under section 96 of the *Road Transport (General) Act 1999* determines the fees, as specified in the Schedule, for transactions relating to permit applications under the *Road Transport (Dimensions and Mass) Act 1990*. The fees are the same as previously determined under the *Motor Traffic (Dimensions and Mass) Act 1990.* Permit fees relating to vehicles with a loaded mass exceeding 125 tonnes are calculated by referring to the formula in Part 3 of the Schedule to the *Road Transport Charges (Australian Capital Territory) Act 1993* of the Commonwealth.

The schedule detailing charges that shall apply where a vehicle is a vehicle of a kind referred to in Part 3 of the Schedule to the *Road Transport Charges (Australian Capital Territory) Act 1993* (Cwth) is referred to in the instrument as an attachment. The Committee notes that the relevant schedule is not attached to this instrument.

GOVERNMENT RESPONSES

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

- Determination No. 262 of 1999 made under the *Motor Traffic Act 1936* (Report No.16 of 1999)
- Determination No. 277 of 1999 made under the *Nature Conservation Act 1980* (Report No. 2 of 2000)
- Determination No. 51 of 2000 made under the *Bookmakers Act 1985* (Report No. 3 of 2000)
- Determination No. 281 of 1999 made under the *Gambling and Racing Control Act 1999* (Report No. 2 of 2000).

Copies of the response are attached.

The Committee thanks the Treasurer and the Minister for Urban Services for their helpful responses.

Paul Osborne, MLA
Chair

March 2000