Legislative Assembly for the ACT

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
(performing the duties of a Scrutiny of Bills and
Subordinate Legislation Committee)

Scrutiny Report

20 SEPTEMBER 2010

Report 27

TERMS OF REFERENCE

The Standing Committee on Justice and Community Safety (when performing the duties of a scrutiny of bills and subordinate legislation committee) shall:

(a) consider whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):

  (i) is in accord with the general objects of the Act under which it is made;

  (ii) unduly trespasses on rights previously established by law;

  (iii) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or

  (iv) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;

(b) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Committee;

(c) consider whether the clauses of bills introduced into the Assembly:

  (i) unduly trespass on personal rights and liberties;

  (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;

  (iii) 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) report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*;

(e) report to the Assembly on these or any related matter and 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, publication and circulation.

MEMBERS OF THE COMMITTEE

Mrs Vicki Dunne , MLA (Chair)
Mr John Hargreaves, MLA (Deputy Chair)
Ms Meredith Hunter, MLA

Legal Adviser (Bills): Mr Peter Bayne
Legal Adviser (Subordinate Legislation): Mr Stephen Argument
Secretary: Ms Janice Rafferty
(Scrutiny of Bills and Subordinate Legislation Committee)
Assistant Secretary: Ms Anne Shannon
(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.

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BILLS

Bills—No comment

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

CLIMATE CHANGE AND GREENHOUSE GAS REDUCTION BILL 2010

This is a bill for an Act to promote the development of policies and practices to address climate change, to set targets to reduce greenhouse gas emissions and to provide for monitoring and reporting in relation to the targets.

FINANCIAL MANAGEMENT (APPOINTMENTS) AMENDMENT BILL 2010

This Bill would amend the *Financial Management Act 1996* and the *Territory-owned Corporations Act 1990* in relation to the appointment of a person who is or has been a Minister to stated positions in a Territory authority.

ROAD TRANSPORT (THIRD-PARTY INSURANCE) (GOVERNANCE) AMENDMENT BILL 2010

This Bill would amend the *Road Transport (Third-Party Insurance) Act 2008* to establish the office of the Australian Capital Territory Compulsory Third-Party Insurance Regulator (the CTP regulator) and to clarify arrangements for the keeping of accounts for the nominal defendant fund and for the audit of these accounts.

Bills—Comment

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

CHILDREN AND YOUNG PEOPLE (DEATH REVIEW) AMENDMENT BILL 2010

This Bill would amend the *Children and Young People Act 2008* to establish a Children and Young People Death Review Committee (CYPDRC) with various functions, including the keeping of a register of deaths of children and young people and more generally to be concerned with the study of the phenomenon of such deaths and their prevention.

Report under section 38 of the *Human Rights Act 2004*
Do any the clauses of the Bill "unduly trespass on personal rights and liberties"?

The Bill is designed to enhance the rights of a child stated in subsection 11(2) of the HRA, that is that "[e]very child has the right to protection needed by the child because of being a child ,…", and the right to life in subsection 9(1). The values these rights protect are to be taken into account in any assessment under section 28 of whether limitations on other rights are proportionate.

The right to privacy (HRA section 12) and the obtaining of information from persons and its recording

There are three provisions to be considered.

1. The Explanatory Statement states with respect to proposed section 727M of the Act:

> [it] provides that the CYP death review committee has the power to require people to provide it with written information and documents relevant to the consideration of a review of a death. This power is one that is commonly given to investigative bodies and is consistent with the powers currently available under the *Discrimination Act 1991*, *Community and Health Services Complaints Act 1993* and the *Human Rights Commission Act 2005*.

It is also the case that a person who without "reasonable excuse" fails to provide information commits an offence punishable by a maximum of 50 penalty points. The Committee also notes that a note to the provision points to sections 170 and 171 of the Legislation Act, which preserves the operation of the privilege against self-incrimination and legal professional privilege.

This is a standard provision, but it does limit the right to privacy. The defence of "reasonable excuse" will limit its operation and indeed may encompass an argument that disclosure to the CYPDRC would adversely affect a person's privacy.

The Explanatory Statement advances a justification and the Committee refers this to the Assembly. The Committee does not however follow the argument "that the information disclosed to the [CYPDRC] committee remains confidential and that the Bill provides for the de-identification of any material to ensure that individuals are not named or identified as a result of the [CYPDRC] committee review process". It cannot see any provision in this regard.

2. By proposed section 727L of the Act, the CYPDRC must keep a register of the deaths of children and young people and various categories of information in relation thereto. Some of this information would be of a personal nature concerning the deceased and of other people, such as parents. It is not clear however whether the register would identify any child by name, or contain information from which identity of a child could be ascertained. Given proposed 727O(5) (see below), it would appear that such information might be in the register.

A question as to whether the keeping of such personal information in the register (if that be what is intended) is a justifiable limitation of the right to privacy.

3. Proposed section 727O of the Act provides that the CYPDRC must report annually to the Minister on a number of matters, and that the Minister "may" amend the report to prevent the disclosure of the identity of a child or young person who has died or information that may allow the identity of a child or young person who has died to be worked out.

There is a question whether this obligation should be mandatory.

The Committee draws these matters to the attention of the Member and recommends that the Member respond.

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2010 (NO 3)

This Bill would amend a number of laws administered by the Department of Justice and Community Safety.

Proposed amendments to the *Fair Trading (Consumer Affairs) Act 1973*

Proposed section 3.3 of Schedule 3 of the Act (see clause 1.18 of Schedule 1 of the Bill) provides that the commissioner for the purposes of the Act may provide stated information to the Australian Securities and Investments Commission. Proposes subsection 3.3(2) then states:

> This section applies despite anything else in this Act or another territory law.

This clause does not mean what it appears to say, for, as has been accepted in a recent Minister's response to a Committee report, "such a provision does not restrain the power of the Legislative Assembly to make laws. [Such a] provision can be amended or repealed by the Assembly at any like any [other] piece of legislation. The Assembly could even make another law that overrides the effect of this law if necessary".[1]

The Committee's objection to a provision such as proposed subsection 109(3) is that it is misleading. It recommends that if it is to be included in a bill, a Note be inserted stating the points made by the Minister that were just quoted.

The Committee draws this matter to the attention of the Assembly and recommends that the Minister respond.

Proposed amendments to section 68 of the *Supreme Court Act 1933*

Existing subsection 68C(3) would be repealed and a new provision inserted, to read:

> (3) In criminal proceedings tried by a judge alone, if a territory law requires a *warning or direction to be given, or a comment to be made,* to a jury in the proceedings, the judge must take the warning, direction or comment into account in considering his or her verdict (emphasis added).

Existing subsection 68C(3) refers only to a "warning" that is required to be given to a jury. While described in the Explanatory Statement as a clarification, this is a change of some substance. The case-law distinguishes between the three concepts of a warning, a direction, and a comment and attaches different consequences to a failure of a judge to take the relevant action. Whether there is a different consequence will turn in part on whether counsel for the defendant requested the relevant action.

[1] See *Scrutiny Report No. 23* of the *7th Assembly* for the response of the Minister dated 3 May 2010 to the Committee's comments on the Emergencies Amendment Bill 2010 in *Scrutiny Report No. 22* of the *7th Assembly*.

This raises a question to be addressed by the Minister: what effect will this change have on the normal rules and principles applicable where there is an appeal from the judge-alone verdict on the basis that a particular warning, direction, or comment was not referred to in the judgment? Do the mandatory terms of proposed subsection 68C(3) mean that such a failure will necessarily have the result that an appeal will succeed?

The Committee draws this matter to the attention of the Assembly and recommends that the Minister respond.

PLANNING AND DEVELOPMENT (PUBLIC NOTIFICATION) AMENDMENT BILL 2010

This Bill would amend the *Planning and Development Act 2007* to require a public notification process applicable in a number of situations to be repeated in cases where there was an error in a particular notification.

Comment on the Explanatory Statement

The Committee commends the high standard of care taken to set out an explanation of the provisions of the Bill in the context of the legislative scheme.

ROAD TRANSPORT (GENERAL) AMENDMENT BILL 2010

This Bill would amend the *Road Transport (General) Act 1999* to clarify the requirements for giving notice to clients of the road transport authority about impending suspension action or fine enforcement action, and to provide that suspension or fine enforcement action takes effect by operation of law if payment of the outstanding amount is not received by the relevant date.

Comment on the Explanatory Statement

The Committee commends the high standard of care taken to set out an explanation of the provisions of the Bill in the context of the legislative scheme.

WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING) BILL 2010

This is a Bill for an Act to provide for background checking as part of a risk assessment of people working with children or vulnerable adults in the Australian Capital Territory.

Background

The Bill would establish a centralised background checking and risk assessment system for individuals working with children and vulnerable adults to reduce the risk of sexual, physical, emotional or financial harm or neglect. Persons seeking to engage in a regulated activity (in the sense of having contact with a child or vulnerable person in a regulated activity as part of that engagement) must apply to the Commissioner of Fair Trading to be registered to engage with children and vulnerable adults. The commissioner (or more particularly a "screening unit" within JACS) will undertake a screening of the applicant. An

application will not be valid unless the applicant consents to the commissioner obtaining a wide range of personal information about the applicant, including histories of convictions and of certain "non-conviction" information. The commissioner has a very wide power to obtain information about the applicant "from any entity". Several strict liability offences underpin the requirement that a person be registered and provide information to the commissioner. There is provision for merits review by ACAT of significant decisions made under this scheme.

The need for a full HRA section 28 justification of limitations to HRA rights

It is evident to the Committee that many provisions of the Bill appear to limit rights stated in the *Human Rights Act 2004*, and thus to call for a demonstration from the Government of how these limitations are justifiable in terms of the overarching test in subsection 28(1), and the more particular matters stated in subsection 28(2) of that Act. It appears, however, from the documents publicly available,[2] that the Government has not undertaken the task of a provision by provision analysis of the Bill to ascertain where a provision engages the HRA and then to make the section 28 justification.[3]

In the end, the question is whether the limitations to the HRA rights are "demonstrably justified in a free and democratic society" (subsection 28(1)), and any matter relevant to answering this question may be advanced. In addition, the justification must address the particular matters stated in HRA subsection 28(2). The matter stated in paragraph 28(2)(e) – that is, whether there are "any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve" – is particularly important.[4]

The Committee's previous comments in *Scrutiny Report No 23* of the *7th Assembly*[5] on the value of an analysis of a bill in terms of the HRA right bear repeating:

> The Human Rights Act is often promoted as embodying a "dialogue model", and the first stage of dialogue should occur between the promoter of a bill and the Assembly. The point of section 38, which requires this Committee to report to the Assembly "about human rights issues raised by" a bill, is to ensure that when a bill is debated the Assembly appreciates that a provision of the bill impinges on a right protected by the Act. Given that section 37, which requires the Attorney-General to prepare and present a written "compatibility" statement to the Assembly, has been (with very few exceptions) understood to be satisfied by a single line statement of compatibility with the Act,[6] the Explanatory Statement must be the vehicle for a Minister to identify the rights issues that are raised by a bill, and to explain either why it is considered that any relevant provision does not derogate from a right, or, if it does, why that derogation is compatible with HRA

[2] ACT Department of Disability, Housing and Community Services, *A Working with Vulnerable People Checking System for the ACT: Discussion Paper*, August 2009; ACT Department of Disability, Housing and Community Services, *A Working with Vulnerable People Checking System for the ACT: Policy Position*, August 2010; and the Explanatory Statement to this Bill.

[3] There is some detailed consideration of the strict liability offences – see below.

[4] See for more detail, *Scrutiny Report No 25* of the *7th Assembly*, concerning the Road Transport (Drink Driving) legislation Amendment Bill 2009.

[5] In the section "Comments on Government response – Crimes (Sentence Administration) Bill 2010".

[6] Where the Attorney considers that a provision in a bill is not compatible, the obligation to explain why this is so will require more than a single line statement. The Attorney's obligations extend only to bills presented by a Minister.

section 28. The first stage in the dialogue is then the Explanatory Statement. The next stage is the Committee report, followed by debate in the Assembly.[7]

In Victoria, the Second Reading speech to a bill contains a quite often lengthy compatibility statement. This statement takes up every provision of a bill in respect of which an issue of compatibility with the Victorian Charter of Rights could be raised, and then, by specific reference to the matters such as are found in HRA subsection 28(2), provides a justification for saying that the provision of the bill is compatible (or, in rare cases, that it is not).

This practice is best practice, and the Committee urges the Government to adopt it. The ACT was the first Australian jurisdiction to adopt a Human Rights Act. While there was a need for a settling in period in which the Government could set up structures for its implementation, it is the case that in this crucial respect of providing an adequate compatibility statement, Territory practice has not come up to the mark.

The Committee will proceed by outlining key aspects of the scheme, and then identifying rights issues.

Key aspects of the scheme

1. Key concepts are very broadly defined:

- "**vulnerable person**" embraces a "child" (being any person under the age of 18 years), and "an adult who is — (i) disadvantaged; and (ii) accessing a regulated activity in relation to the disadvantage": clause 6.[8] There is no apparent limit to the ways in which a person might be disadvantaged;[9]

- "**regulated activity**" means an activity or service mentioned in schedule 1, or prescribed by regulation, but not an activity or service declared by the Minister not to be a regulated activity: clause 7. Schedule 1 mentions six kinds of services or activities relating to children, and 12 kinds relating to vulnerable people. Some of these categories are very broadly stated, such as, for example, that of conducting an "activity" or providing a "service" to "(a) people and families suffering social or financial hardship; or (b) people who need support to live independently": clause 1.15 of Schedule 1;

- **a person is "engaged** in a regulated activity if the person – (a) has contact with a vulnerable person as part of engaging in the activity; and (b) is engaged in the activity in any capacity …": clause 8[10];

[7] The Explanatory Statement also plays a role in the promotion of dialogue, at this pre-enactment stage, between the promoter of the bill and the public. It also serves to promote knowledge of the rights stated in the Act.

[8] Thus, "[w]hile a child is considered vulnerable at all times, adults are considered vulnerable only when disadvantaged and only at the time of accessing a regulated activity in relation to the disadvantage": Explanatory Statement at 6.

[9] An Example attached to this definition instances the case of "an adult who suffers social or financial hardship".

[10] An Example attached to this definition instances the case of a "volunteer".

- "**contact**" means non-incidental contact that "would reasonably be expected as a normal part of engaging in the activity", and includes oral and written communication: clause 9; and

- "**employer**" in relation to a regulated activity "means an entity for whom a person engages in the activity": clause 10.

2. The key element of the scheme is the requirement that a person "be registered to engage in a regulated activity": subclause 11(1). There is then a statement in subclause 11(2) of a wide range of exemptions from this requirement, including persons who are "under 16 years old"; or persons "engaged in the activity (other than an overnight camp for children) for not more than — (i) three days in any four-week period; and (ii) seven days in any 12-month period"; or a close relative acting in defined roles; or certain public officers acting in defined roles.

3. An offence will be committed by an unregistered person (who is required to be registered) who engages in a regulated activity. Where the person knows, or is reckless about whether, (i) the person is engaging in a regulated activity; and (ii) is required to be registered, subclause 12(2) states a maximum penalty of 200 penalty points and/or two years imprisonment. Where the person does not have either of these degrees of knowledge, the strict liability offence in subclause 12(1) states a maximum penalty of 50 penalty points and/or 6 months imprisonment.

Clause 13 provides for two similar offences where an employer engages a person in a regulated activity, and the person is required to be registered does not have a registration.

These offences do not apply where the unregistered person is engaging in a regulated activity in the circumstances set out in clause 14.[11]

4. Part 4 of the Bill provides for the making of an application for registration by a person to the commissioner.

4A. The application must contain:

- personal information about the applicant, and evidence of identity;

- the name of any prospective employer;

[11] "This clause establishes that an unregistered person may work in a regulated activity pending the outcome of an application to the commissioner under certain conditions, including that the person is not disqualified and a registered person is present at all times. The purpose of the clause is to enable service providers to engage essential staff promptly if certain safeguards are in place": Explanatory Statement at 8.

- a consent[12] for the commissioner to (i) conduct checks concerning an "applicant's criminal history, non-conviction information and any other information about the applicant that may be relevant in deciding the application": subclause 16(2); (ii) seek information or advice from any entity under clause 31 (to assist in making a risk assessment) or clause 47 (to monitor whether a registered person "continues to pose no risk or an acceptable risk of harm to a vulnerable person"); and (iii) contact the named employer (if any) in relation to the status of the applicant's application or registration; and

- a statutory declaration concerning whether the applicant has been convicted or found guilty of relevant offences outside of Australia.

4B. Clause 19 would create strict liability offences where a person who has applied for registration fails within 14 days of the relevant event to inform the commissioner of (i) a new charge for a relevant offence, or (ii) of a conviction or finding of guilt for a relevant offence. A maximum penalty of 50 penalty units and/or 6 months imprisonment applies to these offences

5. Part 5 of the Bill provides for the making of a "risk assessment", being "an assessment by the commissioner of whether the person poses an unacceptable risk of harm to a vulnerable person": subclause 21(1).[13]

5A. The commissioner "must make guidelines (*risk assessment guidelines*) about how risk assessments are to be conducted …" (subclause 25(1)), and "must provide for — (a) matters the commissioner must or may take into account in conducting a risk assessment; and (b) how those matters must or may be taken into account": subclause 26(1). In addition, the guidelines must provide for certain matters to be taken into account, including:

- the person's "criminal history" (paragraph 26(2)(a)), and clause 27 states how this information is to be evaluated;

- "non-conviction information" about the person (paragraph 26(2)(b), and clause 28 states how this information is to be evaluated; and

- "any other information the commissioner believes on reasonable grounds is or may be relevant in deciding whether, in engaging in the activity, the applicant poses a risk of harm to a vulnerable person"(paragraph 26(2)(e)), and clause 29 states how this information is to be evaluated.

The concept of "criminal history" embraces "any conviction of, or finding of guilt against, the person for a relevant offence".[14] The concept of "non-conviction information" about a person

[12] The Explanatory Statement at 3 refers to this as "informed consent", and while an applicant could determine what might happen as a consequence of giving consent, it should be noted that he or she has no choice but to consent if they desire to be registered.

[13] The concept of "harm" is not defined, but an Example attached to subclause 21(1) instances the cases of "emotional" and "financial" harm.

[14] A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, paragraph 16(c) (i)).

means any of the following information about a relevant offence (or an alleged relevant offence):

(a) the person has been charged with the offence but—

(i) a proceeding for the alleged offence is not finalised; or

(ii) the charge has lapsed, been withdrawn or discharged, or struck out;

(b) the person has been acquitted of the alleged offence;

(c) the person has had a conviction for the alleged offence quashed or set aside;

(d) the person has been served with an infringement notice for the alleged offence;

(e) the person has a spent conviction for the offence: clause 23.

The concept of a "relevant offence" is exhaustively, but widely defined, and apart from the obvious cases, includes, for example, an offence "involving dishonesty or fraud"; or "relating to property; or "a driving offence": clause 24.

5B. A risk assessment guideline is a notifiable (and not a disallowable) instrument.

5C. A risk assessment "must be conducted in accordance with the risk assessment guidelines" (subclause 30(2)), and by clause 31

[t]he commissioner may seek information or advice from any entity the commissioner considers may be able to give information or advice that will assist the commissioner in conducting a risk assessment for a person.[15]

5D. Where the commissioner "is satisfied that the person poses an unacceptable risk of harm to a vulnerable person (*a negative risk assessment*)', he or she must provide written reasons in support of this intention, and that the latter may seek reconsideration of the proposal under clause 33 on the ground that the assessment "has been made because of incomplete or incorrect information": clause 32.

5E. After a reconsideration, the commissioner must refuse to register the applicant if "satisfied that the person poses an unacceptable risk of harm to a vulnerable person" (paragraph 35(1)(a)). The commissioner must refuse registration if the applicant did not seek a reconsideration, or, having done so, did not provide certain information to the commissioner (paragraph 35(1)(b)).

5F. Clause 35 also provides, as the Explanatory Statement states, that "the commissioner must tell the applicant that the commissioner refuses to register the applicant and the reasons why. The commissioner must also give the person a reviewable decision notice, which allows the person to ask the ACT Civil and Administrative Tribunal to review the commissioner's decision". Any relevant employer must also be informed, although not of the reasons for the refusal to register.

[15] In an application, the person must consent to such action by the commissioner under clause 31 (paragraph 16(2)(a)(ii)), and more generally consent to the commissioner having power to "check the applicant's criminal history, non-conviction information and any other information about the applicant that may be relevant in deciding the application": paragraph 16(2)(a)(i)).

6. Part 6 of the Bill provides for the registration of applicants in respect of whom the commissioner "is satisfied … poses no risk or an acceptable risk of harm to a vulnerable person" (subclause 36(1)).[16] The person and any named employer must be informed.

6A. A registration "may be subject to conditions" (subclause 37(1)), or, more specifically, subject to the condition "that the person may engage only in stated regulated activities for a stated employer": subclause 37(2). An applicant may seek reconsideration of an exercise of this power on the ground that the assessment "has been made because of incomplete or incorrect information": paragraph 38(2)(b).

6B. An offence will be committed by registered person who contravenes a condition of the registration. Where the person knows, or is reckless about whether they have contravened the requirement, subclause 42(3) states a maximum penalty of 200 penalty points and/or two years imprisonment. Where the person does not have either of these degrees of knowledge, the strict liability offence in subclause 42(1) states a maximum penalty of 50 penalty points and/or 6 months imprisonment.

6C. Division 6.2 provides for the issuing of registration cards that will contain a unique identifying number. There are strict liability offences in relation to failing to produce a card on demand by a police officer or person authorised by the commissioner (clause 44), and of failing to return a card on suspension or cancellation of the card (clause 46). The maximum penalty for a clause 44 offence is 10 penalty points, and for a clause 46 offence is "50 penalty units, imprisonment for 6 months or both".

The Committee notes that there is a lack of clarity surrounding the times at which a person could be asked to produce the card. Are these times limited to periods in which the person is engaged in the relevant activity, or might the person be asked at any other reasonable time?

6D. Division 6.3 provides for the monitoring of registered people. Clause 47 provides:

> (1) The commissioner may seek information or advice from any entity the commissioner considers may be able to give information or advice that is relevant to whether a registered person continues to pose no risk or an acceptable risk of harm to a vulnerable person.
> [Example omitted]
>
> (2) An entity may give information or advice in response to a request under this section and, in doing so, does not contravene any duty of confidentiality the entity has under any law or agreement, despite anything to the contrary in the law or agreement.

The result of any such exercise (or for any other reason) may be that the commissioner "believes on reasonable grounds that there is new relevant information about a registered person" (subclause 48(1)). If so, the commissioner must conduct an additional risk assessment for the person taking into account the new relevant information, and tell the person in writing that the additional risk assessment is being conducted: subclause 48(2). (The commissioner has an unconfined discretion to suspend the person's the person's registration while the assessment is conducted: subclause 51(2).)

[16] Registration must be for not longer than three years: subclause 36(3).

If "satisfied that that the person poses no risk or an acceptable risk of harm to a vulnerable person, the commissioner may — (a) leave the person's registration unchanged; or (b) make the person's registration conditional": subclause 48(3).

6E. By clause 49, there are strict liability offences in relation to failing to tell the commissioner that the person has been "charged with a relevant offence" or "convicted or found guilty of a relevant offence. The maximum penalty for each offence is "50 penalty units, imprisonment for 6 months or both".

By clause 50, there is a strict liability offences in relation to failing to inform the commissioner of a change in the registered person's name or address within 14 days after the relevant event.

7. Division 6.4 provides for the suspension or cancellation of registration. One instance is where the person has contravened a requirement of a condition on the registration and the "commissioner believes on reasonable grounds that suspension or cancellation is necessary for this Act": subclause 51(1). A second is where the commissioner, after conducting an additional risk assessment for the person "is satisfied that the person poses an unacceptable risk of harm to a vulnerable person", in which case the registration must be cancelled: subclause 51(3).

In both instances (it would appear), notice of proposed suspension or cancellation of registration, stating the ground the action, must be given, and the person may within 14 days give reasons why the person considers that the registration should not be suspended or cancelled: clause 52.

The commissioner, having complied with clause 52 and considered any reasons given by the person, must suspend or cancel a person's registration if "satisfied that the ground for suspension or cancellation under section 51 exists": subclause 53(1).

8. Part 7 provides for review by ACAT of decisions made under the provisions of the Bill that would have a significant impact on the interests of an applicant for registration or of a registered person.

9. Clause 58 provides for offences in relation to the use of, or the divulging of, protected information, being "information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else" (subclause 58(6)).

Report under section 38 of the *Human Rights Act 2004*
Do any the clauses of the Bill "unduly trespass on personal rights and liberties"?

The rights enhancement dimension of the scheme[17]

[17] The material in this section has borrowed from the UK Parliament's Joint Committee On Human Rights Twenty-Fifth Report Session 2005-06 report on the Safeguarding Vulnerable Groups Bill: http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/241/24105.htm#n16

The scheme of the Bill is designed (and no doubt would) protect the rights of children and vulnerable adults, it is commended for the contribution it seeks to make to the protection of these vulnerable groups. The steps taken by this Bill are clearly intended to enhance the rights of a child stated in subsection 11(2) of the HRA, that is that "[e]very child has the right to protection needed by the child because of being a child …". They will also enhance the right to liberty and security of children and vulnerable adults in HRA subsection 18(1). The right to equal and effective protection against discrimination on any ground (HRA subsection 9(3)) will also be enhanced. The provisions of *United Nations Convention on the Rights of the Child* reinforce the State's positive obligation to protect the needs of our children, through appropriate legal protection.[18]

The values these rights protect are to be taken into account in any assessment under section 28 of whether limitations on other rights are proportionate.

However, despite the legitimacy of the aim this Bill serves, its operation engages the individual rights of each person subject to the operation of the new scheme and any interference must be justified and proportionate. As indicated above, an issue arising in respect of some aspects of the Bill – in particular, the definition provisions – is whether the Bill takes the least restrictive approach to the limitation to the right to privacy.

The rights to privacy and reputation: HRA section 12

The scheme will have a significant impact on the estimated[19] 12% of the population of the Territory - some 42,000 people – who will need to be registered and thus subject to background checking. Many other people will be affected by the scheme. For example, the commissioner may seek information about an applicant, or a registered person, from any "entity". Under the Dictionary in the Legislation Act, this term embraces persons as well as corporate and unincorporated bodies. Thus, the friends, work colleagues and acquaintances of the subject of the commissioner's request will find that they are called upon to divulge information about the subject. Furthermore, the checking process will impinge on the privacy of other persons.[20]

<u>The impacts on the privacy of an applicant</u>

First, an applicant must provide personal information to the commissioner.

Secondly, the commissioner will check the applicant's criminal history, non-conviction information and any other information about the applicant that may be relevant in deciding the application. Just what checking may involve is indicated in part by clauses 27, 28 and 29. The application of these provisions in a risk assessment process will involve a large ranging and extensive inquiry into the private affairs of an applicant. For example, under section 28 in relation to some aspect of the applicant's criminal history, the commissioner will assess matters such as "whether the person's circumstances have changed since the offence was committed", "the person's attitude to the offence", and "if the person has undergone a program of treatment or intervention for the offence—any assessment of the person following

[18] *UN Convention on the Rights of the Child*, preamble, Articles 3, 19, 34, 36.

[19] See ACT Department of Disability, Housing and Community Services, *A Working with Vulnerable People Checking System for the ACT: Policy Position*, August 2010 at 7.

[20] Note for example what will be involved in an application of paragraph 28(e).

the program". Under section 27 in relation to some aspect of the applicant's criminal history, the commissioner will assess matters such as "the nature, gravity and circumstances of the offence or alleged offence", and "the nature, extent and outcome of any investigation into the offence or alleged offence".

Thirdly, under clause 31, the commissioner may obtain from "any entity" information or advice – which might of course concern the private affairs of the applicant - the commissioner considers will assist the commissioner in conducting a risk assessment for a person.

Fourthly, under clause 47, the commissioner may seek from "any entity" information or advice the commissioner considers is relevant to whether a registered person continues to pose no risk or an acceptable risk of harm to a vulnerable person. In this respect, the entity that gives the information or advice may do so without contravening any duty of confidentiality the entity has under any law or agreement, despite anything to the contrary in the law or agreement.

Fifthly, the commissioner has other powers to require an applicant to provide information to the commissioner.

The displacement of legal safeguards of privacy

It is evident that compelling a person to reveal personal information limits the right to privacy (and probably their freedom of speech). A law that removes the protection afforded by the law concerning breach of confidence removes a significant common law protection of privacy.

ACT[21] or Commonwealth government agencies are obliged to observe the principle stated in Information Privacy Principle 11.1 stated in section 14 of the Commonwealth *Privacy Act 1988* – that is, that "A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned)". But IPP 11.1 does not apply where "the disclosure is required or authorised by or under law". This exception will be picked up by those provisions of the Bill that authorise these government agencies to provide personal information about an applicant to the commissioner.

Assessing the proportionality of these impacts on privacy

Are there less restrictive measures available?

In a response[22] to the Discussion Paper that sought responses to any early version of proposals for this scheme,[23] the Office of the Privacy Commissioner stressed the need for a careful delineation of the coverage of the scheme in order to minimise its impact on the right to privacy. The response argued that:

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[21] ACT Government agencies are bound by the Privacy Act as it was at 1 July 1994 when the *Australian Capital Territory Government Service (Consequential Provisions) Act 1994* commenced and as modified by the schedule in that Act (the schedule is found at: www.austlii.edu.au/au/legis/cth/consol_act/actgspa1994806/sch3.html)).

[22] Submission to the ACT Department of Disability, Housing and Community Services, October 2009 (a link is provided at http://www.dhcs.act.gov.au/publications/wwvpc).

[23] ACT Department of Disability, Housing and Community Services, *A Working with Vulnerable People Checking System for the ACT: Discussion Paper*, August 2009.

> The breath of the definition that is settled on for 'vulnerable adult' will have a significant bearing on the scope of the prospective employees and existing employees who will be subject to background checking. This in turn will have a correlation with the amount of personal information that is collected. Good privacy practice suggests limiting collection of personal information to essential purposes. … a clearer definition of 'vulnerable people' may result in more effectively targeting the appropriate potential, and existing, employees for the proposed background checking system and reduce the risk of collecting personal information unnecessarily.[24]

There thus arises a question as to whether the Bill could have adopted a less comprehensive definition of the concept of a "vulnerable person". In terms of HRA paragraph 28(2)(e), the question is whether there are "any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve". This is an issue that needs to be addressed by the Minister.

The Office of the Privacy Commissioner also pointed to the need to ensure that:

> the breadth of the occupations and services listed may result in individuals being subject to screening, when they are not actually working with vulnerable people [and] suggests further consideration be given to the list of proposed regulated activities to ensure that the proposed background checking system will only apply to individuals who will be working with vulnerable people.

In this respect too, the paragraph 28(2)(e) issue needs to be addressed by the Minister.

The Office also pointed to the undesirability of displacing the scheme under a spent convictions scheme (as is achieved in the definition of "non-conviction information"):

> While the Office acknowledges the importance of determining whether an individual seeking to work with vulnerable people holds criminal convictions in relation to certain offences, the Office is also aware of the sensitivity attaching to personal information that relates to an individual's criminal history information. This is because there is potential for an individual to be stigmatised, embarrassed or discriminated against as a result of this information.
>
> For this reason, the Office considers that the collection of criminal history information, in particular, the collection of criminal convictions normally excluded under the Spent Convictions Schemes should only occur where it is necessary to fulfil an important public interest objective and the collection is necessary or directly related to fulfilling that objective.

In this respect too, the paragraph 28(2)(e) issue needs to be addressed by the Minister.

In these comments, the Committee has not attempted an exhaustive statement of where a measure less restrictive of rights might be adopted. That is a matter for the Minister to address in relation to each aspect of the scheme of the Bill.

[24] The Office suggested a quite narrow definition.

Are there protections that might be added to the scheme?

One particular matter that occurs to the Committee is the addition of a provision – such as is commonly found in licensing and registration schemes – for the holder of the registrant to surrender the registration (and thus, of course, to be able to have contact with children or vulnerable adults). It is difficult to see how such a facility could damage the operation of the scheme in relation to that person.

This is a matter for the Minister to address.

Fair trial in the context of administrative decision-making – HRA subsection 21(1)

Some aspects of the scheme raise an issue as to whether in a particular respect the scheme satisfies HRA subsection 21(1).

Some administrative discretions that are not conditioned upon the holder of the power acting upon "reasonable grounds" or some equivalent basis

There are several critical provisions in the Bill that do not condition the exercise of a discretion on the part of the commissioner on his or her having "reasonable grounds" to exercise the power, being the powers in section 31, subsections 31(1), 35(1), 37(1), paragraph 39(3)(b)(ii), subsections 47(1), 51(2), 51(3), and paragraph 53(1)(c).

The Committee notes that there are comparable provisions that do state a reasonable grounds qualification; see subsections 34(2), 40(2), 48(1), and paragraph 51(1)(c).

The Committee recommends that the Minister advise the Assembly why in each case the exercise of the relevant discretion could not be conditioned upon the holder of the power acting upon "reasonable grounds" or some equivalent basis.

A limitation on the scope of the reconsideration powers

Provision for a person aggrieved by a decision to seek internal reconsideration of the relevant administrative action is beneficial to an applicant, and enhances the overall fairness of a decision-making scheme. In this scheme certain decisions of the commissioner are amenable to such review. For example, upon the commissioner giving an applicant a proposed negative notice under subsection 32(1), the applicant may, within 14 days, ask the commissioner "to reconsider the application based on new or corrected information" (paragraph 32(2)(a)). The commissioner is then obliged to "conduct a risk assessment (a revised risk assessment) considering the new or corrected information" (subclause 33(3)).

A decision under subsection 32(1) will in some circumstances have a significant impact on the person affected, and the question arises as to whether this ground of review is too restrictive. It would not, for example, permit the applicant to seek reconsideration on the ground that the reasoning of the commissioner, based on the information that was before the commissioner, did not support the findings involved in making the a proposed negative notice.

The question arises: should the applicant be permitted to seek reconsideration on a full merits review basis? That is, to submit that the relevant decision is not the correct or preferable decision to be made? In other words, clause 32 might provide simply that the applicant can seek reconsideration of the decision under subsection 32(1).

The Committee draws this matter to the attention of the Assembly and recommends that the Minister respond.

Non-conviction information and the right to privacy (HRA section 12) and presumption of innocence (HRA subsection 22(1))

There is a question whether the ability of the commissioner in making a risk assessment to have regard to "non-conviction" information undermines the presumption of innocence. The Committee considered this issue in an analogous context in *Scrutiny Report No 18* of the *7th Assembly*, concerning the Health Practitioner National Law. It quoted comments by the Victorian Scrutiny Committee concerning the Queensland model for this law:

> While the Committee considers that facilitating National Boards' access to unresolved criminal charges is not an arbitrary limit on applicants' right to privacy, it is concerned that the same cannot be said for access to charges that have been resolved in favour of the applicant.
>
> In addition, the Committee considers that a denial of registration on the basis of criminal charges that have been resolved in the applicant's favour may engage the Charter right of charged persons 'to be presumed innocent until proven guilty according to law'. While the Victorian Supreme Court has held that a health regulator can consider the subject-matter of unresolved charges when making registration decisions, different considerations may apply in relation to finalised criminal charges, especially acquittals. In particular, the European Court of Human Rights has held that the presumption of innocence will be infringed if a government body acts in a way that casts doubt on the correctness of a verdict of acquittal.[25]
>
> The Committee notes that … an English judge … dismissed a claim based on the rights to privacy and the presumption of innocence.[26] However, late last year, a unanimous ruling of the European Court's Grand Chamber held, in a different context, that the indefinite retention on a state investigative database of data about unconvicted persons on the same basis as data on convicted persons is incompatible with the right to privacy.[27]

This Committee considers these observations to be applicable to this Bill, and recommends that the Minister advise the Assembly why it should not be considered that provisions of the Bill permitting or requiring the gathering and consideration of information about criminal charges resolved in an applicant's favour are an arbitrary interference with an applicant's privacy; and why they should not be viewed as incompatible with the HRA right of those applicants to be presumed innocent until proven guilty.

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[25] *Sekanina v Austria* [1993] ECHR 37, [30]: "The voicing of suspicions regarding an accused's innocence is conceivable as long as the conclusion of criminal proceedings has not resulted in a decision on the merits of the accusation. However, it is no longer admissible to rely on such suspicions once an acquittal has become final." See also *Rushiti v Austria* [2000] ECHR 106.

[26] *D v Secretary of State for Health* [2005] EWHC 2884 (Admin). Although the judge, citing the issue's uncertainty and importance, granted leave to the doctor concerned to appeal the ruling, no such judgment has eventuated.

[27] S & Marper v UK [2008] ECHR 1581, [122].

The definition of non-conviction information also includes information about any spent conviction for an offence. This provision appears to undermine the policy of the *Spent Convictions Act 2000*, which in turn may be argued to rest on the protection of the right to privacy.

The Committee draws this matter to the attention of the Assembly and recommends that the Minister respond.

The strict liability offences and the presumption of innocence (HRA subsection 22(1))

The various strict liability offences have been noted above. The Explanatory Statement does note that these provisions engage the HRA, and while there is no reference to HRA section 28, it does argue that:

> [t]he use of strict liability offences for the registration of people working with vulnerable people can be justified on the basis that offences will apply to people who choose to engage in regulated activity and are on notice that they are operating in a regulated context. It is on this basis that the Government believes that the use of strict liability offences contained in this Bill is relevant to the policy objectives of minimising the risk of harm to vulnerable people, which is demonstrably justifiable and reasonable.

This is an acceptable line of justification if it is accepted that engaging with a child or vulnerable person in a regulated activity is comparable to the more usual context – such as the regulation of a business, trade or profession – in which strict liability offences are employed as a regulatory tool. It might be argued that given that some 42,000 people will be affected by the scheme, the analogy with a regulated profession or trade is weak.

In respect of the strict liability offence in subclause 12(1), it might be argued that given the width and lack of clarity in the definition provisions, in many cases the person who commits the actions that constitute physical elements of this offence would have had no awareness of the need to register.

There is then a question whether some of these offences should be ones of strict liability.

The fact that imprisonment is a possible penalty for breach of several of these offences is addressed only by the argument that this penalty "is set at a level that a person will regard as a sanction rather than a mere expense for breaching the provision". There are however serious human rights concerns where imprisonment is a penalty.

The Committee has been informed that when the Human Rights and Criminal Law Units of the Department of Justice and Community Safety assesses whether an offence is suitable to be a strict liability offence, they have regard, among other matters, to the severity of penalty for the offence, and take the view that "[a] penalty of imprisonment is very serious, and requires exceptional justification".[28]

In *Scrutiny Report No 38* of the *5th Assembly*, the Committee drew attention to the possibility that the derogation of the rights that is involved in the creation of a strict liability offence would not be justifiable where the potential punishment included imprisonment. In that

[28] See letter to the Committee from the Chief Minister concerning the Road Transport (Mass, dimensions and Loading) Bill 2009, attached to *Scrutiny Report No 8 of the 7th Assembly*.

report, it quoted the words of Lamer CJ of the Supreme Court of Canada in *R v Wholesale Travel Group Inc* [1991] 3 S.C.R. 154 at 184:

> The rationale for elevating mens rea from a presumed element … to a constitutionally required element, was that it is a principle of fundamental justice that the penalty imposed on an accused and the stigma which attaches to that penalty and/or to the conviction itself, necessitate a level of fault which reflects the particular nature of the crime.

Moreover, the severity of the punishment for an offence may be such that it will derogate from the HRA right not to be "treated or punished in a cruel, inhuman or degrading way": HRA paragraph 10(1)(b). To imprison a person for committing an act they did not intend to commit might well be regarded as breaching this right.

Since the commencement of the HRA, the Committee has, on a number of occasions, raised the issue whether a strict liability offence to which attaches a punishment of imprisonment can be regarded as a justifiable derogation of the relevant HRA rights. It considers that there is a serious question about the HRA compatibility of such provisions.

The Committee suggests that the severity of the punishments provided for in the offence sections be reviewed. For example, strict liability offence of failing to return a registration card that has been suspended or cancelled within 14 days is punishable by 50 penalty points, imprisonment for six months or both.

The Committee considers that there is a serious question as to whether the strict liability offence provisions that provide for imprisonment as a punishment are compatible with the Human Rights Act. The Committee draws this matter to the attention of the Assembly and recommends that the Minister address this issue.

Does the Bill inappropriately delegate legislative power?
Does the Bill subject the exercise of legislative power to insufficient scrutiny?

The process of risk assessment is of critical significance to the integrity of the scheme and to the extent to which it will impact on applicants for registration, and of registered persons. This assessment is to take place in terms of guidelines to be issue by the commissioner. While some provisions of the Bill stipulate what must be provided by the guidelines, a substantial area of choice is left to the commissioner. The Committee notes that a risk assessment guideline is only "notifiable" and is not disallowable.

The first issue is whether the power to make guidelines is an inappropriate delegation of legislative power, that is: is it of such significance to the scheme that the risk assessment principles should be stated in the Act?

The second issue, assuming that the power to make guidelines is appropriate, is whether the lack of a power in the Assembly to disallow means that the exercise of the power is insufficiently subject to legislative Scrutiny.

The Committee draws these matters to the attention of the Assembly and recommends that the Minister respond.

SUBORDINATE LEGISLATION

Disallowable Instruments—No comment

The Committee has examined the following disallowable instruments and offers no comments on them:

Disallowable Instrument DI2010-176 being the Education (Non-government Schools Education Council) Appointment 2010 (No. 2) made under section 109 of the *Education Act 2004* **appoints a specified person as an education member of the Non-government Schools Education Council.**

Disallowable Instrument DI2010-177 being the Education (Government Schools Education Council) Appointment 2010 (No. 2) made under paragraph 57(2)(c) of the *Education Act 2004* **appoints a specified person as an education member of the Government Schools Education Council.**

Disallowable Instrument DI2010-178 being the Utilities (Consumer Protection Code) Determination 2010 (No. 2) made under sections 59 and 63 of the *Utilities Act 2000* **revokes DI2010-108 and determines the Consumer Protection Code—July 2010.**

Disallowable Instrument DI2010-179 being the Health (Fees) Determination 2010 (No. 3) made under section 192 of the *Health Act 1993* **revokes DI2010-142 and determines fees payable for the purposes of the Act.**

Disallowable Instrument DI2010-189 being the Housing Assistance Public Rental Housing Assistance Program 2010 (No. 1) made under subsection 19(1) of the *Housing Assistance Act 2007* **repeals DI2008-112 and approves the Housing Assistance Public Rental Housing Assistance Program 2010 (No. 1).**

Disallowable Instrument DI2010-190 being the Betting (ACTTAB Limited) Rules of Betting Determination 2010 (No. 1) made under subsection 55(1) of the *Betting (ACTTAB Limited) Act 1964* **revokes DI2009-194 and determines the Rules of Betting.**

Disallowable Instruments—Comment

The Committee has examined the following disallowable instruments and offers these comments on them:

Are these appointments validly made?

Disallowable Instrument DI2010-180 being the Cemeteries and Crematoria (ACT Public Cemeteries Authority Governing Board) Appointment 2010 (No. 1) made under section 29 of the *Cemeteries and Crematoria Act 2003* **and section 79 of the** *Financial Management Act 1996* **appoints a specified person as chair of the ACT Public Cemeteries Authority governing board.**

Disallowable Instrument DI2010-181 being the Cemeteries and Crematoria (ACT Public Cemeteries Authority Governing Board) Appointment 2010 (No. 2) made under section 29 of the *Cemeteries and Crematoria Act 2003* **and section 79 of the** *Financial Management Act 1996* **appoints a specified person as deputy chair of the ACT Public Cemeteries Authority governing board.**

Disallowable Instrument DI2010-182 being the Cemeteries and Crematoria (ACT Public Cemeteries Authority Governing Board) Appointment 2010 (No. 3) made under section 29 of the *Cemeteries and Crematoria Act 2003* **and paragraph 78(5)(b) of the** *Financial Management Act 1996* **appoints a specified person as a member of the ACT Public Cemeteries Authority governing board.**

Disallowable Instrument DI2010-183 being the Cemeteries and Crematoria (ACT Public Cemeteries Authority Governing Board) Appointment 2010 (No. 4) made under section 29 of the *Cemeteries and Crematoria Act 2003* **and paragraph 78(5)(b) of the** *Financial Management Act 1996* **appoints a specified person as a member of the ACT Public Cemeteries Authority governing board.**

Disallowable Instrument DI2010-184 being the Cemeteries and Crematoria (ACT Public Cemeteries Authority Governing Board) Appointment 2010 (No. 5) made under section 29 of the *Cemeteries and Crematoria Act 2003* **and paragraph 78(5)(b) of the** *Financial Management Act 1996* **appoints a specified person as a member of the ACT Public Cemeteries Authority governing board.**

Disallowable Instrument DI2010-185 being the Cemeteries and Crematoria (ACT Public Cemeteries Authority Governing Board) Appointment 2010 (No. 6) made under section 29 of the *Cemeteries and Crematoria Act 2003* **and paragraph 78(5)(b) of the** *Financial Management Act 1996* **appoints a specified person as a member of the ACT Public Cemeteries Authority governing board.**

Disallowable Instrument DI2010-186 being the Cemeteries and Crematoria (ACT Public Cemeteries Authority Governing Board) Appointment 2010 (No. 7) made under section 29 of the *Cemeteries and Crematoria Act 2003* **and paragraph 78(5)(b) of the** *Financial Management Act 1996* **appoints a specified person as a member of the ACT Public Cemeteries Authority governing board.**

The instruments listed above appoint specified persons as the Chair, Deputy Chair and as members (5) of the ACT Public Cemeteries Authority governing board. The appointments are made under section 29 of the *Cemeteries and Crematoria Act 2003* and also under various sections of the *Financial Management Act 1996* that have general application to the appointment of the governing boards of territory authorities. The Financial Management Act provisions include section 79, which provides for the appointment of chairs and deputy chairs of governing boards. It provides:

79 Appointment of chair and deputy chair

(1) The responsible Minister for a territory authority with a governing board may appoint a chair for the board and, unless the establishing Act otherwise provides, a deputy chair for the board.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

(2) However, the responsible Minister must not appoint the CEO of the territory authority as chair or deputy chair.

(3) Also, the responsible Minister must not appoint a public servant as chair or deputy chair unless—

(a) there is no member of the board who—

(i) is not a public servant; and

(ii) is available to be appointed; and

(b) the Legislative Assembly approves, by resolution, the appointment.

(4) The responsible Minister must try to ensure that the governing board of a territory authority always has a chair and, unless the establishing Act otherwise provides, deputy chair.

The appointments are made by disallowable instrument. The Committee notes that Division 19.3.3 of the *Legislation Act 2001* deals with the making of statutory appointments. Section 229 of the Legislation Act provides that an instrument making (or evidencing) an appointment to which Division 19.3.3 applies is a disallowable instrument. That provision gives the Committee the jurisdiction to scrutinise and report on instruments of appointment. It is important to note, however, that the Committee's jurisdiction is limited by section 227 of the Legislation Act, which defines the application of Division 19.3.3. It provides:

227 Application of div 19.3.3

(1) This division applies if a Minister has the power under an Act to appoint a person to a statutory position.

(2) However, this division does not apply to an appointment of—

(a) a public servant to a statutory position (whether or not the Act under which the appointment is made requires that the appointee be a public servant); or

(b) a person to, or to act in, a statutory position for not longer than 6 months, unless the appointment is of the person to, or to act in, the position for a 2nd or subsequent consecutive period; or

(c) a person to a statutory position if the only function of the position is to advise the Minister.

This means that Division 19.3.3 (including the requirement that appointments be by disallowable instrument) does not apply to the appointment of public servants to statutory positions. It is for this reason that the Committee generally prefers that the Explanatory Statement to an instrument of appointment indicate clearly that the persons appointed are not public servants.

In the case of these instruments, the Explanatory Statement contains no indication as to whether or not the specified persons are public servants. As the Committee has consistently observed, it is not an onerous obligation for an Explanatory Statement to be required to contain a statement to the effect that "this is not a public servant appointment".

In this particular case, the Committee notes that the Explanatory Statement might also have addressed the issues raised by subsections 79(2) and (3) of the Financial Management Act (which, respectively, provide that the CEO of an authority must not to be appointed as chair or deputy chair of governing board and impose limitations on the appointment of public servants).

In making this comment, the Committee notes that the Explanatory Statement for each instrument states that the ACT Legislative Assembly Standing Committee on Planning, Public Works and Territory and Municipal Services was consulted in relation to the appointments. That being so, it might be assumed that *that* Committee had already satisfied itself that the appointments were validly made (and that the appointments were properly

made by disallowable instrument, as the appointees are not public servants). While that may be the case, the fact remains that the Committee (and the Legislative Assembly) are entitled to information that allows it to be satisfied that any formal requirements for an appointment have been met.

The Committee draws attention to the Explanatory Statements for these instruments, under principle (b) of the Committee's terms of reference, on the basis that the Explanatory Statements for the instruments do not meet the technical or stylistic standards expected by the Committee.

Exemptions from the requirements Government Agencies (Campaign Advertising) Act 2009

Disallowable Instrument DI2010-187 being the Government Agencies (Campaign Advertising) Exemption 2010 (No. 1) made under section 23 of the *Government Agencies (Campaign Advertising) Act 2009* **exempts the ACT Health Capital Asset Development Project advertising campaign from the Act.**

Disallowable Instrument DI2010-188 being the Government Agencies (Campaign Advertising) Exemption 2010 (No. 2) made under section 23 of the *Government Agencies (Campaign Advertising) Act 2009* **exempts the Land Development Agency Bonner Living Showcase advertising campaign from the Act.**

The Committee notes that the two instruments listed above exempt two specified advertising campaigns from the requirements of the *Government Agencies (Campaign Advertising) Act 2009*. The instruments are made under section 23 of the Act, which provides:

> **23 Exemptions**
>
> (1) The Minister may exempt a campaign from this Act.
>
> (2**)** However, the Minister may exempt a campaign only if satisfied it is appropriate because of—
>
> (a) an emergency; or
>
> (b) extreme urgency; or
>
> (c) other extraordinary circumstances.
>
> (3) The Minister must tell the Legislative Assembly, in writing, about an exemption and the reasons for the exemption as soon as practicable after the exemption is given.
>
> (4) An exemption is a disallowable instrument.
>
> *Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

The Committee notes that, in both instances, the Explanatory Statement for the instrument contains the following statement:

> The failure of the Legislative Assembly to appoint an independent reviewer in accordance with the Act is an extraordinary circumstance and requires that any ACT Government advertising campaign exceeding $40,000 will require an exemption from the Minister before proceeding.

The Committee merely notes the explanation provided.

This comment does not require a response from the Minister.

Subordinate laws—No comment

The Committee has examined the following subordinate laws and offers no comments on them:

Subordinate Law SL2010-31 being the Environment Protection Amendment Regulation 2010 (No. 1) made under the *Environment Protection Act 1997* **removes the requirement for activity managers of wastewater recycling systems, in which recycled water does not come into contact with the environment, to hold an environmental authorisation or environmental protection agreement.**

Subordinate Law SL2010-32 being the Adoption Amendment Regulation 2010 (No. 1) made under the *Adoption Act 1993* **ensures that the contemporary adoption practice, as legislated, is properly supported by an accountable legal framework.**

Subordinate Law SL2010-33 being the Road Transport Legislation Amendment Regulation 2010 (No. 4) made under the *Road Transport (General) Act 1999 and Road Transport (Safety and Traffic Management) Act 1999* **enables protective service officers of the Australian Federal Police to exercise traffic direction and marshalling functions as authorised persons for the purposes of rule 304 of the Australian Road Rules.**

Subordinate Law SL2010-35 being the Crimes (Sentencing) Amendment Regulation 2010 (No. 1) made under the *Crimes (Sentencing) Act 2005* **prescribes the offence of negligent driving causing grievous bodily harm as an offence to which Part 4.3 of the Act applies.**

Subordinate Laws—Comment

The Committee has examined the following subordinate law and offers the following comments on it:

Henry VIII clause / Positive comment

Subordinate Law SL2010-34 being the Planning and Development (Transitional) Amendment Regulation 2010 (No. 1) made under the *Planning and Development Act 2007* **inserts a transitional provision in the Act to enable steps taken under the repealed Act, in the preparation of some plans of management, to be considered as if they were done under the Act.**

The Committee notes that this subordinate law amends the *Planning and Development Act 2007*, including by inserting into the Act a new section 468. The subordinate law is made under section 429 of the Act, which provides:

> **429 Transitional regulations**
>
> (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Building Legislation Amendment Act 2007*, the *Planning and Development (Consequential Amendments) Act 2007* or this Act.
>
> (2) A regulation may modify this chapter to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
>
> (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

The Committee notes that section 429 of the Act is a "Henry VIII" clause. The website of the Parliament of the United Kingdom (**www.parliament.uk**) provides the following explanation as to what constitutes a "Henry VIII" clause:

> The Government sometimes adds a provision to a Bill which enables the Government to repeal or amend it after it has become an Act of Parliament. The provision enables the amendment of primary legislation using delegated (or secondary) legislation. Such provisions are known as "Henry VIII clauses". The House of Lords Select Committee on the Scrutiny of Delegated Powers in its first report of 1992-93 defined a Henry VIII clause as: a provision in a Bill which enables primary legislation to be amended or repealed by subordinate legislation, with or without further Parliamentary scrutiny. [HL 57 1992-93, para 10] The clauses were so named from the *Statute of Proclamations 1539*, which gave King Henry VIII power to legislate by proclamation.

Dennis Morris (in an article titled "Henry VIII clauses: Their birth, a late 20th century renaissance and a possible 21st century metamorphosis") states:

> A Henry VIII clause is so called because of the penchant of the English monarch of that name to give himself power to amend (and in some cases to suspend or dispense with) statutes passed by the Parliament. So the expression "Henry VIII clause" has come to mean "a provision in a Bill which enables primary legislation to be amended or repealed by subordinate legislation with or without further parliamentary scrutiny". After the death of Henry VIII, such clauses fell into disuse and it was 1888 before they seem to have re-emerged in the United Kingdom.

The Committee notes that, though generally frowned-upon by legislative scrutiny committees, "Henry VIII" clauses are not uncommon in Australian legislation, including in ACT legislation. The Committee also notes that, in this case, in enacting section 429, the Legislative Assembly has expressly authorised the amendment of the Act (in limited circumstances) by subordinate law.

The Committee notes that the Explanatory Statement for this subordinate law contains the following explanation:

> Under Part 10.4 of the *Planning and Development Act 2007* (the Act) there must be plans of management for public land.
>
> Certain procedures must take place in relation to the making of plans of management under the Act. For instance, draft plans must contain certain material and public consultation on draft plans must take place in accordance with s323. Draft plans must also be given to the Minister (s325) and the Legislative Assembly must consider draft plans (s326). There are also provisions relating to notification, presentation and disallowance of plans (s330). The provisions in Part 10.4 are in similar terms to those in the previous *Land (Planning and Environment) Act 1991* (the repealed Act) s197 onwards.
>
> The Act also contains transitional provisions for plans of management. Section 467 provides that a plan of management made under the repealed Act is taken to be a plan of management under the Planning and Development Act. This transitional provision is limited in its operation and the purpose of the amending regulation is to ensure that the transitional arrangements for plans of management also apply to plans that commenced preparation under the repealed Act but had not been made before the commencement of the Act.

Some plans of management were not in existence when the Act began but the preparation of the plans had commenced and many of the steps required under the Act were done when the repealed Act was in force and before the Act became operational.

There is presently no mechanism under the Act to allow recognition of these steps having been undertaken. The amending regulation corrects this by inserting a transitional provision in the Act that allows those actions to be considered as if they were done under the Act. It does this by way of the regulation-making power in section 429 of the Act which permits a regulation to modify the Act, chapter 15 (Transitional).

The Committee notes with approval the explanation provided in relation to the use of the power in section 429 of the Act to make this subordinate law.

This comment does not require a response from the Minister.

GOVERNMENT RESPONSES

The Committee has received responses from:

- The Attorney-General, dated 23 August 2010, in relation to comments made in Scrutiny Report 25 concerning the Liquor Bill 2010.
- The Minister for Gaming and Racing, dated 24 August 2010, in relation to comments made in Scrutiny Report 24 concerning Disallowable Instruments:
  - DI2010-97 being the Betting (ACTTAB Limited) Payments to Territory Determination 2010 (No. 1); and
  - DI2010-98 being the Betting (ACTTAB Limited) Payments to Territory Determination 2010 (No. 2).
- The Minister for Territory and Municipal Services, dated 25 August 2010, in relation to comments made in Scrutiny Report 24 concerning the following Disallowable Instruments:
  - DI2010-62 being the Government Procurement Appointment 2010 (No. 1);
  - DI2010-84 being the Animal Welfare (Animals Used on Film Sets) Code of Practice 2010;
  - DI2010-85 being the Animal Welfare (Welfare of Dogs in the ACT) Code of Practice 2010; and
  - DI2010-89 being the Animal Welfare (Welfare of Poultry: Non-Commercial) Code of Practice 2010.
- The Treasurer, dated 1 September 2010, in relation to comments made in Scrutiny Report 26 concerning Disallowable Instrument DI2010-133, being the Taxation Administration (Amounts Payable—Motor Vehicle Duty) Determination 2010 (No. 2).
- The Minister for Planning, dated 9 September 2010, in relation to comments made in Scrutiny Report 26 concerning Disallowable Instruments:
  - DI2010-124 being the Electricity Safety (Fees) Determination 2010 (No. 1);

  - DI2020-125 being the Gas Safety (Fees) Determination 2010 (No. 1);
  - DI2010-138 being the Public Place Names (Bonner) Determination 2010 (No. 2); and
  - DI2010-139 being the Public Place Names (Macgregor) Determination 2010 (No. 2).
- The Minister for the Environment, Climate Change and Water, dated 14 September 2010, in relation to comments made in Scrutiny Report 26 concerning Disallowable Instrument DI2010-143, being the Nature Conservation (Fees) Determination 2010 (No. 2).
- The Minister for Transport, dated 17 September 2010, in relation to comments made in Scrutiny Report 26 concerning:
  - Disallowable Instrument DI2010-154, being the Dangerous Goods (Road Transport) Fees and Charges Determination 2010 (No. 3); and
  - Subordinate Law SL2010-28, being the Road Transport Legislation Amendment Regulation 2010 (No. 3).

The Committee wishes to thank the Attorney-General, the Minister for Gaming and Racing, the Minister for Territory and Municipal Services, the Treasurer, the Minister for Planning, the Minister for the Environment, Climate Change and Water and the Minister for Transport for their helpful responses.

COMMENT ON GOVERNMENT RESPONSE—LIQUOR BILL 2010

The Committee thanks the Attorney-General for the detailed and thoughtful response to the Committee's comments on this Bill in Scrutiny Report No 25. Comment on some aspects of the response may assist the developing process of dialogue between the Assembly and the Executive concerning the application of the *Human Rights Act 2004* (and of rights more generally considered) to proposed legislation.

Equal protection of the law without discrimination - HRA subsection 8(3)

The Attorney argues that clause 8 of the Bill did not engage the right to equal protection of the law inasmuch as it would benefit only "corporations and other business entities", who are not entitled to the enjoyment of the HRA rights, citing section 6 of that Act.

The Committee was aware of section 6, but a reading of clause 8 does not make it apparent that in all cases a sale of liquor in an exempt university building could never be by an individual. Whether this was so would depend on what was provided for by any relevant statute of a university.

The Committee remains of the view that HRA subsection 8(3) was engaged, and thus a section 28 justification was called for.

Fair trial in the context of administrative decision-making - HRA subsection 21(1)

Provisions restricting review of a primary administrative decision

In view of the effect of HRA subsection 21(1) on schemes of administrative decision-making, it is desirable that an explanatory statement state briefly what is provided for in a bill in the way of the matters of limitation of judicial review, standing to seek review, the exclusion of the reasons obligation in the ADJR Act; any omission to provide for merits review where that would normally be provided, or any reduction in the jurisdiction of the Ombudsman.

Provisions conferring administrative power in wide or open-ended terms

The Attorney's comments do not address the Committee's reasons – notwithstanding that the courts will "read down" widely expressed powers – as to why it is desirable that powers be more closely confined.

There is another dimension to this issue. Where the exercise of a discretionary power could have an adverse impact on any HRA right (or indeed on any right, whatever the source), it is more critical that the boundaries of the power be spelt out in the legislation conferring the power. This point has been made by the UK Parliament's Joint Committee On Human Rights:

> It has consistently been our view that where primary legislation confers very broad discretion capable of being exercised in a way which is incompatible with Convention rights, it is for primary legislation to provide safeguards, where necessary, to ensure proportionality. We consider that statements of compatibility and the supporting analysis in Explanatory [material] accompanying Bills would be more constructive if the reasons given for the Government's view dealt specifically with the provisions of the legislation to which they refer, rather than merely reciting the effect of the duty in [HRA section 30, to interpret a law in a way that is compatible with HRA rights]. We believe that more detailed explanations would, in future, aid our work. We re-iterate that where appropriate, safeguards to minimise the risk of discretion being exercised incompatibly with human rights should be included in primary legislation.[29]
>
> …
>
> The case law of the European Court of Human Rights accepts that some interferences with ECHR rights may occur as a result of secondary legislation, or through the exercise of discretion, without breaching the requirement for legal certainty. However, where a potential interference with Convention rights is subject to the exercise of a discretion, the scope of that discretion and its manner of exercise must be defined with sufficient clarity to allow the individual concerned to know that he has not been treated arbitrarily or in a disproportionate way.[30]

[29] The insertions in square brackets adapt this quote to the Territory context.

[30] Joint Committee On Human Rights Twenty-Fifth Report Session 2005-06 report on the Safeguarding Vulnerable Groups Bill:
http://www.publications.parliament.uk/pa/jt200506/jtselect/jtrights/241/24105.htm#n16

Assessment of schemes of administrative decision-making for compliance with HRA subsection 21(1)

The Attorney's comments deal with the quite separate issue of strict liability offences. The Committee did not suggest that such offences engage HRA subsection 21(1), and does not think that they do. The Committee adheres to its view that subsection 21(1) has significant implications for the design of administrative decision-making schemes.

Application of these principles to the provisions of the Liquor Bill 2010

(a) Administrative discretions that are not conditioned upon the holder of the power acting upon "reasonable grounds" or some equivalent basis.

The Attorney accepts the Committee's point, and suggests that this limitation is not necessary where the discretionary power must be exercised according to stated criteria. This does not meet the point of inserting a "reasonable grounds" limitation (and the Committee acknowledges that it did not spell this out). The point is that this limitation permits the courts to make an objective assessment of the exercise of the discretion. There is a significant difference between a power framed in terms that "The power-holder must grant a licence if satisfied that the applicant meets the relevant criteria", and a power in terms that "The power-holder must grant a licence if satisfied on reasonable grounds that the applicant meets the relevant criteria".

In the first case the question is whether as a matter of fact the power-holder "was satisfied", that is, as to what is her or his state of mind.[31] In the second case there is there an additional issue of fact as to whether that state of mind was based on reasonable grounds. This second form permits of greater judicial review in that the factual basis for the state of mind can be reviewed to determine whether it was reasonable for the power-holder to be satisfied.

The Committee has no further comment.

Vicki Dunne, MLA
Chair

September 2010

[31] The Committee is aware that some of the grounds for judicial review would permit a limited review of the basis in fact for the relevant state of mind.

JUSTICE AND COMMUNITY SAFETY—STANDING COMMITTEE (PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE)

REPORTS—2008-2009-2010

OUTSTANDING RESPONSES

Bills/Subordinate Legislation

Report 1, dated 10 December 2008
Development Application (Block 20 Section 23 Hume) Assessment Facilitation Bill 2008

Report 2, dated 4 February 2009
Education Amendment Bill 2008 (PMB)

Report 8, dated 22 June 2009
Disallowable Instrument DI2009-75 - Utilities (Consumer Protection Code) Determination 2009

Report 10, dated 10 August 2009
Disallowable Instrument DI2009-93 - Utilities (Grant of Licence Application Fee) Determination 2009 (No. 2)

Report 11, dated 24 August 2009
Disallowable Instrument DI2009-104 - Government Procurement Appointment 2009 (No. 1)

Report 12, dated 14 September 2009
Civil Partnerships Amendment Bill 2009 (PMB)
Disallowable Instrument DI2009-185 - Public Sector Management Amendment Standards 2009 (No. 7)
Eggs (Cage Systems) Legislation Amendment Bill 2009 (PMB)

Report 14, dated 9 November 2009
Building and Construction Industry (Security of Payment) Bill 2009
Disallowable Instrument DI2009-58 - Heritage (Council Chairperson) Appointment 2009 (No. 1)

Report 18, dated 1 February 2010
Planning and Development (Notifications and Review) Amendment Bill 2009 (PMB)

Report 19, dated 22 February 2010
Education (Suspensions) Amendment Bill 2010 (PMB)

Bills/Subordinate Legislation

Report 22, dated 27 April 2010

Infrastructure Canberra Bill 2010 (PMB)

Radiation Protection (Tanning Units) Amendment Bill 2010 (PMB)

Report 24, dated 28 June 2010

Disallowable Instrument DI2010-65 - Auditor-General (Standing Acting Arrangements) Appointment 2010

Subordinate Law SL2010-18 - Road Transport (General) Amendment Regulation 2010 (No. 1)

Report 25, dated 9 August 2010

Road Transport (Drink Driving) Legislation Amendment Bill 2010

Report 26, dated 23 August 2010

Disallowable Instrument DI2010-100 - University of Canberra (Statutes Interpretation) Statute 2010

Disallowable Instrument DI2010-132 - Medicines, Poisons and Therapeutic Goods (Medicines Advisory Committee) Appointment 2010 (No. 1)

Disallowable Instrument DI2010-141 - Attorney General (Fees) Amendment Determination 2010 (No. 1)

Disallowable Instrument DI2010-162 - Canberra Institute of Technology (Advisory Council) Appointment 2010 (No. 2)

Disallowable Instrument DI2010-169 - University of Canberra (Academic Board) Amendment Statute 2010

Disallowable Instrument DI2010-172 - Civil Law (Wrongs) Professional Standards Council Appointment Amendment 2010 (No. 1)

Simon Corbell MLA

ATTORNEY GENERAL
MINISTER FOR THE ENVIRONMENT, CLIMATE CHANGE AND WATER
MINISTER FOR ENERGY
MINISTER FOR POLICE AND EMERGENCY SERVICES

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
CANBERRA ACT 2601

Dear Mrs Dunne

Thank you for your Scrutiny of Bills Report No. 25 of 9 August 2010. I offer the following response in relation to the Committee's comments on the Liquor Bill 2010 (the Bill).

Equal protection of the law without discrimination – HRA subsection 8(3)

As noted by the Committee, the exemption in clause 8 of the Bill would apply to university retailers of liquor. However, section 6 of the *Human Rights Act 2004* (HRA) clearly provides that only individuals have human rights. It follows then that only natural people and not legal entities, such as corporations and other business entities, are entitled to the enjoyment of civil and political rights.

Section 8(3) HRA protects individuals, not business entities, from the threat of discrimination based on race, colour, sex, sexual orientation, language, religious beliefs, political or other opinion, and is therefore, not engaged by this exemption.

Fair trial in the context of administrative decision-making – HRA subsection 21(1)
Provisions restricting review of a primary administrative decision

The Committee considers that the explanatory statement should identify and justify any limitation to the scope of judicial review of administrative action, or of a person's standing to seek review, (as those matters are understood at common law), or the exclusion of the reasons obligation in the ADJR Act; an omission to provide for merits review where that would normally be provided; and a reduction in the jurisdiction of the Ombudsman.

It is important to note that the Bill does not seek to remove the obligation to give reasons as stated in the *Administrative Decisions (Judicial Review) Act 1989* or limit the scope of judicial review or seek to modify the common law principles concerning standing to seek review. The Bill has not placed any limitation on the scope of judicial or administrative review of administrative decisions or action. Nowhere in the Bill is there any limitation on a person's standing to seek review at common

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law. Nowhere in the Bill is there any limitation on a person's ability to seek merits review of an administrative decision by the ACT Ombudsman. Schedule One to the Bill clearly sets out the types of administrative decision-making which will be subject to merits review by the ACT Civil and Administrative Tribunal (ACAT), including refusal to grant, amend, renew, transfer, approve and the cancellation of liquor licences and permits.

All other administrative decisions will be subject to merits review by the ACT Ombudsman or judicial review through the administrative decisions judicial review process.

Provisions conferring administrative power in wide or open-ended terms

The Committee considers that the explanatory statement should identify and justify any administrative power that is conferred in wide or open-ended terms.

In the exercise of administrative power in the bill, the commissioner's discretion is not unfettered or cast in wide or open ended terms, but remains constrained by ordinary administrative law principles, for example, including a requirement not to take into account irrelevant considerations, and not to fail to take relevant considerations into account.

When the commissioner has determined the facts of a particular matter, he or she is required to give all relevant facts or issues full and proper consideration and to ignore any irrelevant considerations. Relevant considerations may be deduced in the context of the objects and principles of the Bill. A practical example relates to clause 78 which sets out a number of criteria which the commissioner for Fair Trading must take into account when deciding the suitability of premises for a liquor licence or permit. In the circumstances where an applicant is seeking a licence for new premises, paragraph (a) would be an irrelevant consideration, because the premises are new and there is no criminal history involving the premises.

Provisions that do not condition an exercise of power on the decision-maker having "reasonable grounds" for the existence of a state of affairs that must exist as a basis for the exercise of the power

The Committee considers that the explanatory statement should identify and justify any administrative power, the exercise of which might have a significant adverse impact on a person's interest, where the exercise of the power is not conditioned on the decision-maker having "reasonable grounds" for the existence of a state of affairs that must exist as a basis for the exercise of the power.

I agree with the Committee's view that there should be justification for the exercise of administrative power which may have an adverse impact on a person's interest where the exercise of the powers is not conditioned on the decision-maker having reasonable grounds. However, as the Committee notes, "not every discretionary power should be framed in a way that conditions an exercise of a power on the decision-maker having "reasonable grounds" for the existence of a state of affairs that must exist as a basis for the exercise of the power". The Bill does not contain administrative powers, the exercise of which, might have a significant adverse impact on a person's interest, where the exercise of the power is not conditioned on the commissioner having "reasonable grounds" or an equivalent basis for believing the facts as presented.

Assessment of schemes of administrative decision-making for compliance with HRA subsection 21(1)

The Committee considers that in relation to the exercise of any kind of administrative power that may affect adversely a person's interests in a significant way, the explanatory statement should address the question whether the scheme, taken as a whole, complies with HRA subsection 21(1). More particularly, any aspect of the scheme that may suggest that it is not compliant should be identified and justified in terms of the proportionality analysis required by HRA section 28.

I agree with the Committee's view that an explanatory statement should address these questions and in this regard, I draw the Committee's attention to pages 4 & 5 of the explanatory statement for the Bill, which clearly address aspects of the new liquor licensing scheme, in particular, the strict liability offences.

The explanatory statement assesses their proportionality under section 28 of the HRA as justified, on the basis that the strict liability offences are necessary to protect the public interest. The limitation on the presumption of innocence is justified because of the grave risks associated with the supply of liquor to vulnerable intoxicated people or minors on licensed premises. I have considered alternative means to achieve the purpose of protecting the welfare of patrons and believe that the limitation on rights is justified in that there are no less restrictive means available which could effectively accomplish the purpose the limitation seeks to achieve. I have updated the explanatory statement to better reflect this position.

As noted in the statement, the supply of liquor to intoxicated people contributes to anti-social behaviour and alcohol-related violence and can place young women and men at increased risk of indecent and sexual assault, the costs of which are borne by the individuals and by the whole community. I consider that the limitation to the HRA rights is demonstrably justified in a free and democratic society.

In terms of the new licensing scheme complying with subsection 21(1) of the HRA, the explanatory statement concludes by stating that the use of strict liability offences for the new liquor licensing scheme is justified on the basis that the offences apply to people who have chosen to engage in regulated activity or are on notice that they are operating in a regulated environment. It goes on to state that people who elect to apply for a liquor licence or permit choose to do so and are on notice that they must abide by the laws that govern the licence. Licensees and permit-holders place themselves in a relationship of responsibility with their customers and the wider public. It is on this basis that the Government believes that the use of strict liability offences contained in this Bill, in relation to licensees and permit holders, is relevant to the policy objectives of harm minimisation and community safety, both of which are demonstrably justifiable and reasonable.

Application of these principles to the provisions of the Liquor Bill 2010

(a) Administrative discretions that are not conditioned upon the holder of the power acting upon "reasonable grounds" or some equivalent basis.

The Committee has identified a number of clauses in the Bill which condition the exercise of a discretion upon the holder of the power acting upon "reasonable grounds" and has identified and queried why a number of other clauses do not.

I note that the Committee commends the technique used in clause 10 of the Bill which has the beneficial effect of stating a structure within which discretion conferred on the commissioner must be exercised. The clauses which the Committee have drawn to my attention are either subject to a strict criteria structure, or are subject to the objects and principles in the Bill, both of which act as an equivalent basis to the concept of reasonable grounds.

My comments follow in relation to the specific clauses noted by the Committee.

Clause 27(2)
Clause 37(1)
Clause 38(4)
Clause 39(3)
Clause 41(2)
Clause 43(2)

Clause 51(2)
Clause 57(1)
Clause 58(3)
Clause 62(2)
Clause 65(1)
Clause 90(1)
Clause 92(2)
Clause 96(2)

These clauses limit the ability of the commissioner to exercise the power unless the commissioner is satisfied that the applicant/licensee or permit holder meets the criteria set out in the clauses. The exercise of the powers in these clauses is conditional upon there being an equivalent basis to the concept of reasonable grounds.

Paragraph 31(2)(b)
Paragraph 55(2)(b)
Paragraph 98(b)

The commissioner may exercise these powers only by taking into account the objects and principles in the Bill. These objects and principles constitute an equivalent statutory basis to reasonable grounds.

Clause 44(2)
Clause 63(2)
Clause 71(2)

These clauses set out an equivalent basis to reasonable grounds for subclause (1). These are enabling clauses which give the commissioner a power to require evidence so that he or she can be satisfied that the original licence/permit has been lost, stolen or destroyed, or the person is a suitable person.

Clause 67
This clause is a definitional clause. Clauses 68 and 69 set out the criteria the commissioner must consider which is an equivalent basis to reasonable ground.

Clause 72(2)
This clause is not governed by reasonableness on the part of the commissioner. It merely states that the commissioner is not required to make a decision if appropriate documentation is not made available.

Clause 77(1)
There is no discretion built into this subclause. Clause 77(2) builds in reasonable grounds for the operation of the clause.

(b) Administrative discretions not subject to merits review by ACAT

I thank the Committee for drawing my attention to the references in the Schedule of Reviewable Decisions. Items 10 and 12 will be amended by Parliamentary Counsel on first republication.

The clauses identified by the Committee for inclusion in the Schedule of Reviewable Decisions are not subject to full merits review by the ACAT because these are regulatory provisions which ensure that the new liquor licensing scheme can operate effectively. Enabling the commissioner to deal efficiently with issues that arise during, and that affect, the day to day operation of a liquor licence or permit, or aspects of the regulatory scheme, can prevent timely and costly disruptions to the regulation of the liquor industry and to all parties participating in that industry.

Strict liability offences – HRA subsections 21(1) and 22(2)

The Committee draws this matter to the attention of the Assembly and recommends that the explanatory statement be amended to state a justification for the imposition of strict liability offence in terms of what HRA section 28 requires.

The Government acknowledges that while strict liability offences engage the presumption of innocence and the right to a fair trial, some strict liability offences are not inherently incompatible with human rights.

The right to a fair trial is not limited by the issuance of an on-the-spot fine for a breach of certain provisions in the Bill because the individual can choose to challenge the imposition of the fine in a court of law. In addition, no conviction is recorded against the individual from the imposition of the fine. The fine merely represents an offer from the authorised officer for the individual to choose to avoid prosecution for the offence.

Strict Liability offences and actions taken by children and young people

The Committee has drawn my attention to section 11(2) of the HRA, which is aimed at protecting the rights of children in relation to the operation of clauses 121 - 122 of the Bill. I thank the Committee for its comments. I have amended the explanatory statement to address the section 28 justification for the inclusion of these provisions dealing with children.

These provisions are necessary to protect the wellbeing of children and young people from being exposed to a harmful environment in adults-only areas on licensed premises. Children and young people in these areas are at risk because of the presence of alcohol and potentially intoxicated people. Behaviour in adults-only areas can often not take account of the possible presence of children. Limiting this right actually protects children by restricting their access to harmful situations. Indeed, these provisions do not actually limit the right, but operate to enshrine and uphold the right in section 11(2) of the HRA by limiting harmful exposure of children to adults-only areas in licensed premises.

In view of the Committee's comments in relation to strict liability in this context, I will move an amendment to clause 121 to remove strict liability in relation to children and young people for this offence.

In relation to young people using a false ID, by using someone else's ID or deliberately creating a false ID to enter an adults-only area, a young person demonstrates a high degree of premeditation. The law needs to be clear and effective in protecting these young people from exposure to alcohol in licensed premises. Accordingly, I will not be removing strict liability for this offence.

Emergency closure of premises for 24 hours and the right to property (or to peaceful enjoyment of possessions)

Notwithstanding section 6 of the HRA, which states that human rights only apply to individuals not to business entities, the HRA provides for no right to property, or to peaceful enjoyment of possessions, or a right that is similar in some or all material respects. This is because the HRA is based on the International Convention on Civil and Political Rights, rather than the Universal Declaration of Human Rights.

Given the likely impact of a significant threat or risk to community safety, in the event of alcohol fuelled violence in or around licensed premises, the limitation of this right is considered to be proportionate to the level of risk to the community.

Detention of a child to whom a caution is given by a police officer - the right to liberty – HRA section 18 and the rights of a child – HRA subsection 11(2)

The Committee has raised a query about police detaining children and young people for cautionary offences without any kind of adjudication of guilt for offence.

Procedures for dealing with children and young people are found in ACT Policing's Guidelines on Cautions and Diversionary Programs. The cautionary offences are linked to unlawful activities on licensed premises and primarily would occur on licensed premises. In this instance, it is in the best interest of the child or young person for police to remove them from the licensed premises and take them into protective custody, for the time it takes to issue the caution, and contact someone with parental responsibility.

If a child or young person is intoxicated, they can also be held in protective custody under the *Intoxicated People (Care and Protection) Act 1994* for up to eight hours. These measures are consistent with government policy and proportionate in terms of any limitation on rights for the purpose of protecting these vulnerable children and young people.

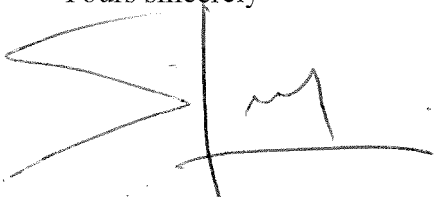
The power of an authorised person to enter premises - HRA paragraph 12(a) - the right to privacy

The Committee has commented on the right to privacy and judicial review of entry powers. The right of entry powers have been carefully considered to ensure that the powers are proportionate to the limitation on the right to privacy. A decision to enter licensed premises is not normally subject to review by a Tribunal, as it is not a civil regulatory power. However, it could be challenged in a proceeding in a court. If the power was found to be used with insufficient grounds, any evidence seized would be excluded according to the *Evidence Act 1989* and there is also the possibility of compensation being sought by the defendant.

In summary, I believe that the new liquor licensing framework as set out in the Liquor Bill is a proportionate means of achieving the objects of the Bill and the least restrictive means of achieving the desired outcome of minimising harm associated with the abuse of alcohol and improving the safety of the ACT community.

I trust that the above response answers the Committee's concerns and I thank the Committee for its observations.

Yours sincerely



Simon Corbell MLA
Attorney General

23.8.10

Andrew Barr MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR PLANNING
MINISTER FOR TOURISM, SPORT AND RECREATION
MINISTER FOR GAMING AND RACING

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
C/- Scrutiny Committee Secretary
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Dear Mrs Dunne

I am writing in response to comments in the Scrutiny of Bills Report No 24 of 28 June 2010 in relation to Disallowable Instruments DI2010-97 and DI2010-98.

The Committee asked whether it is possible to determine a percentage of 0 in the instruments. Advice from the ACT Government Solicitor is that there is no impediment to making a zero determination in this case.

Given the need for complete clarity for ACTTAB, and to ensure that it made the required payments for June 2010 and the 2009-10 financial year, a percentage of zero was deemed to be most appropriate approach. Given that the Racing Development Fund has been replaced by new funding arrangements for the racing industry, I anticipate the associated provisions in the *Betting (ACTTAB) Act 1964* will be repealed as soon as practicable.

I trust these comments assist the Committee and address its concerns.

Yours sincerely

Andrew Barr

Andrew Barr MLA
Minister for Gaming and Racing

24 AUG 2010

ACT LEGISLATIVE ASSEMBLY

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Jon Stanhope MLA

CHIEF MINISTER

MINISTER FOR TRANSPORT MINISTER FOR TERRITORY AND MUNICIPAL SERVICES
MINISTER FOR BUSINESS AND ECONOMIC DEVELOPMENT MINISTER FOR LAND AND PROPERTY SERVICES
MINISTER FOR ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS
MINISTER FOR THE ARTS AND HERITAGE

MEMBER FOR GINNINDERRA

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
(performing the duties of a Scrutiny of Bills & Subordinate Legislation Committee)
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mrs Dunne Vicki

I refer to the Scrutiny of Bills Report No 24 dated 28 June 2010 regarding the:

- Government Procurement Appointment 2010 (No 1)
- Disallowable instruments related to the Animal Welfare code of practice

The Committee's comments in relation to the absence of an Explanatory Statement for Disallowable Instrument DI2010-62, for the appointment of a specified person as a non-public employee member of the Government Procurement Board, are duly noted and in particular, that an Explanatory Statement in this instance could have confirmed the non-public employee status of the person being appointed.

I acknowledge that, whilst not mandatory, the Committee's preference is for an instrument to be accompanied by an Explanatory Statement to clarify the purpose and content of the instrument and as such, assist the Committee in its scrutiny of that instrument. An Explanatory Statement will be presented with any instrument in the future. I confirm the Committee's understanding that the appointee is not a public servant.

I can assure the Committee that Section 24 of the *Animal Welfare Act 1992* was fully complied with in making the:
- Code of Practice for the Welfare of Animals Used on Film Sets 2010 (Film Code);
- Code of Practice for the Welfare of Poultry: Non-Commercial 2010 (Poultry Code); and
- Code of Practice for the Welfare of Dogs in the ACT 2010 (Dog Code).

ACT LEGISLATIVE ASSEMBLY

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Detailed advertisements were placed in the Canberra Times, on Saturday 8 May for the Dog Code and on Saturday 5 June 2010 advertising the Poultry Code and the Film Code. Copies of the advertisements are located at Attachment A.

I thank the Committee for its comments.

Yours sincerely

Jon Stanhope MLA
Minister for Territory and Municipal Services

25 AUG 2010

COMMUNITY NOTICEBOARD

05.06.10

Keeping Canberra in the know.

INVITIATIONS TO COMMENT

Drug Driving Exposure Draft

The ACT Government's proposed road side drug testing Bill has been released for public comment ahead of its expected introduction in the Legislative Assembly in July 2010.

The *Road Transport (Drug Driving) Bill 2010* and *Road Transport (Drug Driving) Regulation 2010* provides a comprehensive model for addressing drug-impaired driving in the ACT. The Bill gives ACT police new powers to conduct random road side drug tests to detect the presence of illicit drugs such as cannabis, methylamphetamine and ecstasy using an oral fluid screening test. It gives police the authority to request a driver to undergo a blood test if they have reasonable grounds to believe the driver is affected by a controlled drug that cannot be detected by the oral fluid screening test.

Under the new laws, people involved in road accidents would also be required to provide a blood sample for testing.

The legislation supports existing laws that make it an offence to drive while impaired by a medicine.

The Bill is available to view online at **www.legislation.act.gov.au** or can be found by visiting **www.tams.act.gov.au** (under 'Get Involved').

The closing date for comments is **Thursday 24 June 2010.**

For further information contact Canberra Connect on 13 22 81.

Car parking plans for the Chifley Health and Wellbeing Hub

The Department of Disability, Housing and Community Services (DHCS) would like to invite residents of Chifley to a public meeting to provide an update on construction of the Chifley Health and Wellbeing Hub.

Representatives of DHCS will make a presentation at the following session.

When: Tuesday 8 June 2010 (6.30pm to 7.30pm)
Where: Community Meeting Room, Chifley Health and Wellbeing Hub, Maclaurin Crescent, Chifley
RSVP: 6205 9472 or community.central@act.gov.au

The Chifley Health and Wellbeing Hub is located on the corner of Eggleston and Maclaurin Crescent, Chifley. This Hub will provide long term tenancy space to a range of valued Canberra community organisations, including:

- Australian Diabetes Educators Association Ltd;
- Nutrition Australia;
- Mental Health Foundation;
- Australian Breastfeeding Association;
- Asthma Foundation;
- Neurospace;
- Australian Council of State School Organisations;
- YMCA;
- Warehouse Circus Incorporated;
- Autism Asperger ACT Inc; and
- Sids and Kids ACT.

A public Community Meeting Room will also be provided.

Internal refurbishment is scheduled to be completed by the end of June 2010, with grounds and car park work to be completed by August 2010.

NOTICES

Jerrabomberra Wetlands cycle path ready for use

The ACT Government has completed an 880-metre off-road cycle path along the East Basin of Lake Burley Griffin through the Jerrabomberra Wetlands Nature Reserve. The cycle path connects to the existing paths on Newcastle Street and Dairy Flat Road. The new path gives cyclists a dedicated route through the nature reserve that is separate to the pedestrian path that cyclists were using prior to this work, except for the shared bridge across the Jerrabomberra Pond, which was widened as part of the works. This work is part of the Government's record $17.3 million investment in new cycle paths and footpaths, and repairs to existing paths over this term, ensuring Canberra continues to have the best walking and cycling path network in Australia.

ACT Government Infrastructure Plan

The ACT Infrastructure Plan outlines short and medium-term infrastructure priorities over the next 10 years in a range of categories, including health, education, transport, housing and community services, justice and community safety, land development, and culture and the arts. The Plan also looks at long-term projects such as the Very Fast Train, and discusses the potential for new funding models for major infrastructure.

The Plan has been informed by the views of the community and industry, through the Government's budget consultation strategy, and also through a series of high-level roundtables. The Plan is a 'living document' that will be updated annually around the time of the ACT Budget, informed by six-monthly industry and community roundtables.

A copy of the ACT Government Infrastructure Plan 2010 can be found under Highlights at **www.cmd.act.gov.au**

Expression of Interest – ACT Festival Fund Assessment Committee

The ACT Government is seeking expressions of interest from suitably qualified people to join the ACT Festival Fund Assessment Committee. The ACT Government, through the ACT Festival Fund, supports a diverse range of festivals that reflect the wide range of community interests and activities that enrich the experience of living in Canberra.

The ACT Festival Fund Assessment Committee is a voluntary committee that assesses applications to the ACT Festival Fund and makes funding recommendations to the ACT Chief Minister. The Committee may also provide specialist advice on festivals and events to the ACT Government.

Individuals with specific festival and broader event industry interest, knowledge and/or experience are encouraged to submit an Expression of Interest, that should include a current curriculum vitae.

Please send written expressions of interest to Dianne Ireland, Special Events Unit, Arts, Communication, Events and Protocol, Chief Minister's Department, GPO Box 158, Canberra ACT 2601.

Expressions of Interest should be submitted by 5.00pm **Monday 21 June 2010.**

For more information on the ACT Festival Fund Assessment Committee please contact the Festival Fund Officer on 02 6205 7141.

ACT Quality in Healthcare Awards

The ACT Quality in Healthcare Awards are open to all employees within the health sector, including community-based organisations, and to all students studying a health related discipline.

Entries will be accepted based on one of the five categories:

- Safety;
- Access and Efficiency;
- Innovative Models of Care;
- Consumer Participation; and
- Systems Support.

Prizes will be awarded in each category and winning entries will be published in a commemorative booklet.

Application forms are available from **www.health.act.gov.au**

Enquiries can be directed to the Patient Safety and Quality Unit, phone 6244 3014 or email qualityathealth@act.gov.au

Applications close **6 August 2010.**

Symptoms of Influenza

As the 2010 influenza (flu) season fast approaches, it is important to know the symptoms of flu, which include:

- high temperature and chills;
- cough and/or sore throat;
- runny or stuffy nose;
- head and body aches; and
- vomiting and diarrhoea.

It is important to keep a close watch on people with flu like illness and seek medical attention immediately if the symptoms are severe.

Some people are more at risk of serious complications including those with chronic illness, pregnant women, people with weakened immune systems and the elderly.

Remember to stay at home from work or school if you are unwell with these symptoms – it will help stop the spread of flu and speed your recovery.

The most effective measure in preventing influenza is vaccination.

If you are in a risk group the seasonal flu vaccine can be obtained from your GP or Community Clinics. To make an appointment at a community clinic, phone the Community Health intake line on 6207 9977. Although the vaccine is free for at risk groups, your GP may charge a consultation fee.

Health Care Interpreters phone 6205 3333
Translating and Interpreting Service phone 131 450

Dr Charles Guest
Chief Health Officer

Workers Compensation Insurance – an obligation not an option

Did you know that employers are responsible for protecting their workers, including contractors, against the consequences of a work-related injury by maintaining workers' compensation insurance? Ensuring that you have the necessary workers' compensation insurance is an obligation of doing business in the Territory. The protection of workers is not optional.

Changes to the *ACT Workers' Compensation Act 1951* come into effect on 1 July 2010 and give greater clarity to the broad definition of 'worker'.

If an individual on a worksite, for example in a café, at a retail shop, or commercial cleaning company supplies labour only, then without a doubt they are a worker, regardless of whether they have an ABN. These workers must be protected by their employers.

Employers who do not meet their workers' compensation obligations will be fined up to double the avoided premium.

To report fraud and non-compliance to WorkSafe ACT phone 6207 3000. Further advice can also be found at **www.ors.act.gov.au**

New animal Codes of Practice

The *Animal Welfare Code of Practice for the Welfare of Animals Used on Film Sets 2010* and the *Code of Practice for the Welfare of Poultry: Non-Commercial 2010* have been reviewed by the Animal Welfare Advisory Committee and the Department of Territory and Municipal Services.

The *Animal Welfare (Domestic Poultry) Determination 2002* will be revoked and replaced by the new *Code of Practice for the Welfare of Poultry: Non-Commercial 2010* commencing on **Monday 7 June 2010.**

Under the Legislation Act the adoption of the reviewed code is subject to Disallowance by the Legislative Assembly.

Copies of the new Code can be viewed at **www.legislation.act.gov.au** or purchased through the Animal Welfare Unit located at Macarthur House, 12 Wattle Street, Lyneham, ACT.

Nominations for the Default Insurance Fund Advisory Committee

In 2006 the Default Insurance Fund (DI Fund) was established to provide a safety net to meet the cost of workers' compensation claims made against employers who have no insurance, and claims made against insurers who cannot meet their liabilities.

The DI Fund Advisory Committee is responsible for providing advice to the DI Fund Manager and to the Minister for Industrial Relations on the activities of the Committee.

This notice seeks nominations for three representative positions and is specifically seeking expressions of interest from persons with experience, knowledge or expertise to represent worker, employee and insurer groups. Appointments are intended to commence on **30 September 2010** and will be for a term of up to three years.

The ACT Government has a commitment to 50/50 gender balance on boards and committees and also encourages representatives from the indigenous and multicultural communities to apply.

If you are interested in a representative position on the Committee please forward your curriculum vitae to Meg.Brighton@act.gov.au no later than **18 June 2010.**

Further information may be obtained from Meg Brighton, Senior Manager, Workers' Compensation on 6205 3095.

Applications are now being sought for the ACT 2010/11 Natural Disaster Resilience Program (NDRP)

What is NDRP?

The NDRP is a national program that provides Australian Government funds aimed at identifying and addressing disaster risk priorities, through:

- disaster mitigation works, measures and related activities that contribute to safer, sustainable communities better able to withstand the effects of disasters and emergencies, particularly those arising from the impact of climate change;
- support for volunteers, particularly to address the challenges of volunteer recruitment, retention and training. Projects may include initiatives to increase the recruitment and retention of volunteers to emergency services and other groups that contribute to individual and community resilience;
- support for government, to assist them to effectively discharge their emergency management responsibilities; and
- partnerships with business and community groups to improve their ability to assist communities and be integrated in response and recovery activities and arrangements. The private sector owns many of the critical services that underpin communities, and have capacity to help communities prepare for, and recover from, emergencies and disasters.

Applicants from eligible ACT organisations are required to match the Australian Government contribution on a 1:1 basis. Applications of no less than $20,000.00 are sought.

How to apply

Applications are to be submitted electronically to emergencymanagement@act.gov.au or by mail to ACT NDRP Program Manager, ACT Emergency Services Agency, PO Box 104, Curtin ACT.

The ACT NDRP Program Guidelines can be found at **www.esa.act.gov.au**

Applications close 5.00pm **Friday 18 June 2010.**

TEMPORARY ROAD CLOSURES

Notice is hereby given pursuant to Section 4 of the *Roads and Public Places Act 1937*, of the intention to close the following roads in the ACT.

YARRALUMLA

WESTON PARK ROAD at the access to Yarralumla Nursery.
TIME: 7.00am to 4.00pm Sunday 13 June 2010.
REASON: Lake Burley Griffin Race Walking Carnival.

Any person wishing to comment on this notice may contact Slobodan Paunovic on 02 6207 6601.

HUGHES

FOOTPATH: Birdwood Street (western side) between house number 50 and Brand Street.
TIME: 7.00am Monday 14 June to 5.00pm Friday 25 June 2010.
REASON: driveway construction.

O'CONNOR

PRAM CROSSINGS: located at the intersection of David Street, Miller Street and Bolderwood Street will be closed.
TIME: 9.30am Monday 14 June to 5.00pm Friday 16 July 2010.
REASON: roadworks.

CITY

EDINBURGH AVENUE SERVICE ROAD: will be closed from the western side of the main entrance to the Diamant Hotel to Edinburgh Avenue.
FOOTPATH: Edinburgh Avenue from the western side of the main entrance to the Diamant Hotel to Parkes Way.
(Please note vehicular and pedestrian access to the Diamant Hotel will be maintained at all times during these works).
TIME: 7.00am Monday 14 June 2010 to 5.00pm Tuesday 14 June 2011.
REASON: building construction.

O'MALLEY

PEDESTRIAN CROSSING: Hindmarsh Drive (south eastern side) at the intersection with Yamba Drive will be closed.
TIME: 9.30am Monday 14 June to 5.00pm Wednesday 14 July 2010.
REASON: roadworks.

Any person wishing to comment on this notice may contact Colin Evans on 02 6207 6821.

BELCONNEN

LATHLAIN STREET: will be closed between Luxton Street and Wales Street.
COHEN STREET: will be closed between Rae Street and Lathlain Street.
TIME: 6.00pm Friday 11 June to 6.00pm Sunday 13 June 2010, 6.00pm Friday 18 June to 6.00pm Sunday 20 June 2010 and 6.00pm Friday 25 June to 6.00pm Sunday 27 June 2010.
REASON: roadworks.

BELCONNEN

EMU BANK: will be closed between Eastern Valley Way and Soundy Close.
TIME: 6.00pm Friday 11 June to 6.00am Monday 14 June 2010, 6.00pm Friday 18 June to 6.00am Monday 21 June 2010 and 6.00pm Friday 25 June to 6.00am Monday 28 June 2010.
REASON: roadworks.

TURNER

BARRY DRIVE: connection with Dryandra Street.
TIME: will remain closed until 5.00pm on Friday 25 June 2010
REASON: roadworks.

Any person wishing to comment on this notice may contact Ben McHugh on 02 6207 2738.

Barriers, warning and diversion signs to be erected on site.

Rifaat Shoukrallah
Delegated Officer
Roads ACT
Locked Bag 2000
Civic Square ACT 2608

COMMUNITY NOTICEBOARD

08.05.10

Keeping Canberra in the know.

INVITATIONS TO COMMENT

Planning for the new suburb of Kenny in Gungahlin

You are invited to get involved in planning for the future suburb of Kenny in Gungahlin at a community information session and workshop.

The ACT Planning and Land Authority has engaged consultants to undertake a range of studies that will ultimately help decide what the future suburb looks like.

The studies will look at (among other things): traffic and transport; infrastructure; social and and recreation needs; and contamination and environmental matters. You will be able to see initial planning information and talk to consultants and ACTPLA staff about what issues you think need to be addressed in planning for the new suburb.

When: Tuesday 18 May 2010 (from 6.00pm to 8.00pm)
Where: Harrison Public School, Wirrimera Street, Harrison. Multipurpose Meeting Room.

For more information phone Bronwyn Noack on 6205 9657.

Community information session on the new Gungahlin College

When: Thursday 13 May 2010 (7.00pm)
Where: Amaroo School, Katherine Avenue, Amaroo

The ACT Government invites prospective year 11 students and their parents to an information session to learn more about the new senior secondary college opening in 2011.

Representatives from the Department of Education and Training will be available throughout the evening to discuss the design and facilities at the new school, curriculum, procedures for enrolment and the priority enrolment area. If you would like further information please telephone 6205 3313.

Enlarged Cotter Dam Water Security Project Investigation: Public Hearing

The Independent Competition and Regulatory Commission gives notice that a public hearing will be held on the draft report on the Enlarged Cotter Dam Water Security Project on **Monday 24 May 2010**. The hearing will be held at the Novotel Canberra, 65 Northbourne Avenue, Canberra City commencing at 10.00am.

Any persons wishing to appear at the hearing should contact the Commission to register. The Commission will confirm appearance times with those registered. Registration of intention to appear should be made with the Commission by 5.00pm on **Wednesday 19 May 2010.** The Commission can be contacted by telephone on 02 6205 0799 or by email at icrc@act.gov.au

The Commission's draft report is available at **www.icrc.act.gov.au** or through contacting the Commission. *Written submissions on the draft report are also invited.* The closing date for written submissions is **Friday 28 May 2010.** Submissions should be sent to GPO Box 296, Canberra City, ACT 2601 or to icrc@act.gov.au or may be lodged at the Commission's offices at Level 2, 12 Moore Street, Canberra City.

Retail Prices for Non-contestable Electricity Customers: Public Hearing

The Independent Competition and Regulatory Commission gives notice that a public hearing will be held on the draft report and draft decision on retail prices for non-contestable electricity customers on **Friday 21 May 2010**. The hearing will be held in the conference room, level 9, 12 Moore Street, Canberra City commencing at 9.00am.

Any persons wishing to appear at the hearing should contact the Commission to register. The Commission will confirm appearance times with those registered. Registration of intention to appear should be made with the Commission by 5.00pm on **Tuesday 18 May 2010.** The Commission can be contacted by telephone on 02 6205 0799 or by email at icrc@act.gov.au

The Commission's draft report and draft decision is available at **www.icrc.act.gov.au** or through contacting the Commission. Written submissions on the draft report are also invited. The closing date for written submissions is **Tuesday 18 May 2010.** Submissions should be sent to GPO Box 296, Canberra City, ACT 2601 or to icrc@act.gov.au or may be lodged at the Commission's offices at Level 2, 12 Moore Street, Canberra City.

NOTICES AND EVENTS

Mother's Day Party in Glebe Park tomorrow

When: Sunday 9 May 2010 (11.00am – 3.00pm)

Spoil your mum and enjoy a day out with the family in beautiful Glebe Park. There will be massage clinics, pamper and market stalls, dance shows, live music by Soul Juice and even a Robbie Williams tribute show. For the children there will be mini golf, pony rides, a reptile display, an animal farm and a variety of rides and activities. Food and drink will be available.

For more information visit **www.roundtown.act.gov.au** or call 13 22 81.

Code of Practice for the Welfare of Dogs in the ACT

The 'Animal Welfare (Welfare of Dogs) Code of Practice 1997' has been reviewed by the Animal Welfare Advisory Committee and the Department of Territory and Municipal Services.

The 'Animal Welfare (Welfare of Dogs) Code of Practice 1997' will be revoked and replaced by the new 'Code of Practice for the Welfare of Dogs in the ACT' commencing on **10 May 2010.**

The new Code of Practice has been prepared to provide guidelines for the welfare of dogs, including minimum standards of accommodation, management and care.Under the Legislation Act the adoption of the reviewed code is subject to Disallowance by the Legislative Assembly.

Copies of the new Code can be viewed or purchased through the Animal Welfare Unit located at Macarthur House, 12 Wattle Street, Lyneham, ACT. For more information contact Canberra Connect on 13 22 81.

New Walk-in Centre opens 18 May

Australia's first Walk-in Centre will open **Tuesday 18 May** at Canberra Hospital. The Walk-in Centre can provide:

- fast, free access to health care;
- treatment of cuts, sprains and abrasions;
- advice and treatment for minor illnesses;
- a sick certificate; and
- information about other health care services.

The Walk-In Centre is situated opposite the emergency department at Canberra Hospital. The Centre is a free service, no appointment required and will be open from 7.00am-11.00pm, seven days a week. Please note children under two years of age and people with complex health issues should visit their GP.

For further information visit **www.walkincentre.act.gov.au**

GP Development Fund 2010: Round 2

The ACT GP Development Fund Round 2 for 2010 is open! The Fund aims to develop, attract and retain the general practice workforce through:

- practice infrastructure grants to support and maintain the general practice workforce;
- supporting teaching and learning at all levels in general practice;
- supporting ideas to attract and retain the general practice workforce; and
- encouraging innovation in the organisation and provision of primary health care services to the ACT.

While it is anticipated that most funding applications will not exceed $50,000, no proposal will be considered too small and greater sums may be awarded for exceptional applications.

ACT general practices are eligible to apply.Applications open on **Monday 3 May** and close at 5.00pm, **Friday 2 July 2010.** For more information **www.health.act.gov.au**

NAPLAN testing in ACT schools this week

Students in years 3, 5, 7, and 9 will be sitting the National Assessment Program – Literacy and Numeracy (NAPLAN) tests next week from **Tuesday 11 May – Thursday 13 May.**

These tests are very important in ensuring parents and carers understand how their child is getting on in the key areas of reading, writing and maths as they move through school.

Data from these tests also helps all education systems and governments to more accurately target resources to schools. This ensures that schools and teachers meet the needs of all students.

Parents are encouraged to ensure their child participates in the testing. If you would like to know more about NAPLAN please contact your school or the Department of Education and Training on 620 75111.

2010–2011 ACT Environment Grants call for applications

The ACT Environment Grants provides financial assistance to community-based, 'not-for-profit' *environmental projects in the ACT. Applications are invited from individuals, community* organisations and groups.

Information and application forms can be obtained by phoning 6205 2989 or by visiting **www.environment.act.gov.au**

Applications close 5.00pm on **30 May 2010.**

To assist in developing applications, an information session will be held by Department of the Environment, Climate Change, Energy and Water at the Reception Room in the ACT Legislative Assembly, Civic from 5.30pm to 7.00pm on **Tuesday 11 May.**

To reserve a place, please email environment@act.gov.au or phone 6205 2913 by the close of business on **Monday 10 May.**

Workers' compensation policy holders

The ACT Default Insurance Fund (the DI Fund) provides a safety net to injured workers who are left without compensation through the actions of their employer.

The cost of providing this protection is met by every ACT employer who does the right thing and obtains a compulsory workers' compensation insurance policy. In the past, the cost to policy holders (the DI Fund levy) has been incorporated within the overall workers' compensation premium paid by employers.

From 4.00pm, **30 June 2010** insurers will be required to disclose the DI Fund levy amount on every premium notice. This will allow every employer who does the right thing to see the true cost of non-compliance in the community.

Through community awareness and action, those employers who avoid their workers' compensation responsibilities will be brought to account. Report fraud and non-compliance to WorkSafe ACT on 02 6207 3000.

Understanding side effects from influenza vaccination

All vaccines currently available in Australia must pass stringent safety testing before being approved for use by the Therapeutic Goods Administration (TGA). The safety of vaccines continues to be monitored once they are in use, by the Advisory Committee on the Safety of Medicines (ACSOM) and other teams of experts.

Vaccines may produce some unwanted side effects, such as pain and redness at the injection site, or fever. Most reactions are mild and resolve quickly.

Recently, there have been reports of the number of young children having high temperatures following the seasonal influenza (flu) vaccine leading, on occasion, to febrile convulsions. Febrile convulsions are quite common in young children when they have a temperature from any cause. Whilst they can be distressing, children generally make a full recovery.

The reporting of suspected adverse events following immunisation to local and national authorities is encouraged. Such reporting led to the pause in the use of the seasonal influenza vaccine for young children.

If you think that you have suffered an adverse reaction following immunisation, please discuss this with your doctor or immunisation provider. Reports of adverse events can be made by your healthcare provider or by calling the ACT Health Immunisation enquiry line on 6205 2300.

Reporting these events will not only allow you to receive further advice on your own health, but assists the TGA to continue to assess the ongoing safety of vaccines in use in our community.

Health Care Interpreters phone 6205 3333 or Translating and Interpreting Service phone 131 450.

Inner North Community Fair

Come learn about the proposed wetlands for Dickson and Lyneham while sampling local and organic food and indulging in the work of local designers and artisans at the Inner North Community Fair, taking place from 11.00am to 3.00pm on **Sunday 16 May**, at Hawdon Street Oval, Dickson.

The fair, hosted by the Department of the Environment, Climate Change, Energy and Water, will also feature an enchanted wetlands area for the children with unicorn rides, crafts and games. There will be vibrant entertainers, live music, pre-loved clothes and other wares, a clothes swap, a fashion parade featuring the three leading fashion houses in pre-loved apparel and a recycling station (so bring your old mobiles, batteries, corks, even bikes). Come browse the many stalls and displays showcasing sustainable living ideas.

The wetlands are a $13.9 million ACT Government initiative to improve water quality, enhance wildlife habitat and supply stormwater to irrigate nearby sportsgrounds and schools to ease demand on potable water supplies.

For more information, contact the Fair Co-ordinator on 6207 5849 or the Urban Waterways Co-ordinator on 6207 5520. To find out more about the wetlands, visit **www.environment.act.gov.au/water/constructed_wetlands**

TEMPORARY ROAD CLOSURES

Notice is hereby given pursuant to Section 4 of the *Roads and Public Places Act 1937*, of the intention to close the following roads in the ACT.

BELCONNEN
LATHLAIN STREET: will be closed between Luxton Street and Wales Street.
COHEN STREET: will be closed between Rae Street and Lathlain Street.
TIME: 6.00am to 6.00pm Saturday 15 May 2010.
REASON: roadworks.
BELCONNEN
LATHLAIN STREET: will be closed between Luxton Street and Wales Street.
COHEN STREET: will be closed between Rae Street and Lathlain Street.
TIME: 6.00am Sunday 16 May to 6.00am Monday 17 May 2010.
REASON: roadworks.

Any person wishing to comment on this notice may contact Ben McHugh on 02 6207 2738.

GUNGAHLIN
WARWICK STREET: will be closed between The Valley Avenue and Hibberson Street.
FOOTPATH: The Valley Avenue (northern side) located approximately 100 metres either side of Warwick Street will be closed.
TIME: 7.00am Monday 17 May to 5.00pm Monday 20 September 2010.
REASON: roadworks.
TURNER
STAWELL STREET: will be closed between David Street and Condamine Street.
HALE CRESCENT: will be closed between David Street and Stawell Street.*Please note local traffic access will be maintained at all times during these works).*
TIME: 7.00am Tuesday 4 May to 5.00pm Monday 26 July 2010.
REASON: McCaughey Street stormwater upgrade.

Any person wishing to comment on this notice may contact Colin Evans on 02 6207 6821.

Barriers, warning and diversion signs to be erected on site.

Rifaat Shoukrallah
Delegated Officer
Roads ACT
Locked Bag 2000
Civic Square ACT 2608

Katy Gallagher MLA

DEPUTY CHIEF MINISTER

TREASURER
MINISTER FOR HEALTH
MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
C/- Scrutiny Committee Secretary
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Dear Mrs Dunne

I am writing in response to positive comments in the Scrutiny of Bills Report No 26 of 23 August 2010, in relation to disallowable instrument DI2010-133, *Taxation Administration (Amounts Payable – Motor Vehicle Duty) Determination 2010 (No 2).*

I acknowledge the Committee's approval of the statement provided in the instrument's Explanatory Statement as a result of previous comments provided by the Committee (Scrutiny Report No 22) on the earlier instrument.

Yours sincerely

Katy Gallagher

Katy Gallagher MLA
Treasurer
1/9/10

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0840 Fax (02) 6205 3030 Email: gallagher@act.gov.au

Andrew Barr MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR PLANNING
MINISTER FOR TOURISM, SPORT AND RECREATION
MINISTER FOR GAMING AND RACING

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
CANBERRA ACT 2601

Dear Mrs Dunne

I refer to Scrutiny Report No. 26 of 23 August 2010 and the Committee's comments regarding several disallowable instruments. The following address the matters raised by the Committee:

DI2010-124 Electricity Safety (Fees) Determination 2010 (No. 1)
The notes for the schedule in this instrument rely on Building Code of Australia (BCA) classes of occupancy to distinguish between the types of buildings that the fees apply.

The construction industry generally understands what each of the classes of occupancy under the BCA mean. The following table provides an indication of what each class of occupancy relates to in terms of building type:

BCA class of occupancy	**Brief description of building type**
Class 1	Single dwelling
Class 2	Flats or apartments
Class 3	Motel or boarding house
Class 4	Caretaker flat
Class 5	Office
Class 6	Shop
Class 7	Warehouse or carpark
Class 8	Laboratory
Class 9	Public assembly building e.g. church
Class 10	Non-habitable building, carport, garage or shed

Knowing what the different occupancy classes represent may assist in understanding the notes for the schedule. For example the first note could be read as follows:

"For building of class 1 (single dwelling) and 10 (carport, garage or shed etc) when 10 (carport, garage or shed etc) is associated with the class 1 (single dwelling). This category captures the typical standard house and associated structures like carports and garages.

The second category applies to all building types of class 2 to 10 but distinguishes that the class 10 building in this category excludes a class 10 building when it is associated with a class 1 building (standard house), which is captured in the first category.

It is agreed that the first sentence of the "Additions & Alterations" for both sets of notes would be better understood if reworded as "The Fee Multiplier as per New Work, also applies to work that is required to be inspected".

DI2010-125 Gas Safety (Fees) Determination 2010 (No. 1)
The Committee's reference to fees is correct, the item should refer to "fees" and not "fee".

DI2010-138 Public Place Names (Bonner) Determination 2010 (No. 2) and Disallowable Instrument DI2010-139 Public Place Names (Macgregor) Determination 2010 (No. 2).

The committee's comments of approval in relation to the wording contained in the explanatory statements to DI2010-138 and DI2010-139 are appreciated. The two explanatory statements included reasons why the revocations of these instruments had been necessary.

I would like to thank the Committee for its consideration of these items of legislation.

Yours sincerely

Andrew Barr MLA
Minister for Planning
09 SEP 2010

Simon Corbell MLA

ATTORNEY GENERAL
MINISTER FOR THE ENVIRONMENT, CLIMATE CHANGE AND WATER
MINISTER FOR POLICE AND EMERGENCY SERVICES
MINISTER FOR ENERGY

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mrs Dunne

I am writing in response to comments in the Standing Committee on Justice and Community Safety's Scrutiny Report No 26 of 23 August 2010, in relation to the *Nature Conservation (Fees) Determination 2010 (No 2)*, made under the *Nature Conservation Act 1980*.

The Committee is correct that the power to determine fees for the Act is contained within section 139, as indicated in the Explanatory Statement, and not section 88 as indicated on the instrument.

I thank the Committee for its vigilance and have asked my Department to ensure that this drafting error does not reoccur.

Yours sincerely

Simon Corbell MLA
Minister for the Environment, Climate Change, Energy and Water

14.9.10

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0000 Fax (02) 6205 0535 Email corbell@act.gov.au

Jon Stanhope MLA

CHIEF MINISTER

MINISTER FOR TRANSPORT MINISTER FOR TERRITORY AND MUNICIPAL SERVICES
MINISTER FOR BUSINESS AND ECONOMIC DEVELOPMENT MINISTER FOR LAND AND PROPERTY SERVICES
MINISTER FOR ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS
MINISTER FOR THE ARTS AND HERITAGE

MEMBER FOR GINNINDERRA

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
(performing the duties of a Scrutiny of Bills & Subordinate Legislation Committee)
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mrs Dunne Vicki

I refer to the Scrutiny of Bills Report No 26 dated 23 August 2010 regarding the:

- *Dangerous Goods (Road Transport) Fees and Charges Determination 2010 (No 3)* (DI2010-154)
- *Road Transport Legislation Amendment Regulation 2010 (No 3) (SL2010-28)*

In relation to the *Dangerous Goods (Road Transport) Fees and Charges Determination (No 3)* (DI 2010-154), I draw the Committee's attention to the commencement provision at Clause 2, which provides:

> (a) Clause 3 (a) commences on 30 June 2010.
> (b) The remaining provisions of this instrument commence on 1 July 2010.

The effect of this split commencement is that the purported revocation of DI 2010-41 by DI 2010-79 did not take effect. This is because DI 2010-79 itself was revoked, by virtue of clause 3 (a) of DI 2010-154, before it was due to come into operation. Instead, the revocation of DI 2010-41 took effect on 1 July 2010 by virtue of clause 3 (b) of DI 2010-154.

I thank the Committee for its approval and comments in relation to *Road Transport Legislation Amendment Regulation 2010 (No 3)* (SL2010-28)

Yours sincerely

Jon Stanhope MLA
Minister for Transport

17 SEP 2010

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