



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

4 MAY 2009

Report 6

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)
Ms Mary Porter AM, MLA (Deputy Chair)
Ms Meredith Hunter, MLA

Legal Adviser (Bills): Mr Peter Bayne
Legal Adviser (Subordinate Legislation): Mr Stephen Argument
Secretary: Mr Max Kiermaier
(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.

BILLS

Bills—No comment

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

ASSOCIATIONS INCORPORATION AMENDMENT BILL 2009

This would amend the *Associations Incorporation Act 1991* to provide that a person cannot inspect or obtain a copy of another person's address that is contained in a document lodged with the registrar-general if the other person has asked for their address to be kept confidential.

CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2009
--

This Bill would amend the *Children and Young People Act 2008* to ensure the definition of employment under encompasses all children and young people legally employed in the ACT under a contract *of* service or a contract *for* service.

Bills—Comment

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

BUILDING (ENERGY HOT WATER SYSTEMS) LEGISLATION AMENDMENT BILL 2009
--

This Bill would amend the *Building Act 2004* and the *Building (General) Regulation 2008* to provide that from 1 July 2009 only certain hot water systems may be installed in new homes and townhouses, and from 1 July 2010 in existing homes and townhouses, (but excluding multi-residential apartments).

Has there been an inappropriate delegation of legislative power? – para (c)(iv)

Is there an undue trespass on personal rights and liberties? – para (c)(i)

Is it justifiable in the circumstances to permit a regulation made under proposed subsection 136(1B) of the Act to adopt another document?
--

By proposed section 136 of the Act (see clause 4), the term “building code” would be defined to mean the Building Code of Australia published by the Australian Building Codes Board as amended by certain documents, and “(b) as affected by subsection (1A)”. Subsection 136(1A) would provide:

- (1A) The building code is taken to be amended to the effect that a hot water system in a class 1 building must comply with the standard prescribed by regulation.

Then, proposed subsection 136(1B) would provide:

- (1B) For subsection (1A)
- (a) a regulation may provide for the standard to apply, adopt or incorporate an instrument¹ **as in force from time to time**; and
 - (b) the Legislation Act, **section 47 (6) does not apply** to such an instrument [emphasis added].

Two kinds of issues arise where a law would itself incorporate into its terms the text of some other document, or would permit the maker of a statutory instrument to incorporate into its terms the text of some other document.

The first is whether this technique amounts to an inappropriate delegation of legislative power (Terms of Reference para (c)(iv)). The technique is frequently used, and might generally be thought to be acceptable provided there is adequate provision for a person to find the adopted document.

The second is whether the technique affects the capacity of a person to ascertain the content of the law to an extent that it may be said that the person cannot obtain the protection of the law. This second concern may be posed as an issue as to whether the Bill is an undue trespass on personal rights and liberties (Terms of Reference para (c)(i)), or possibly as an issue arising under section 8 of the *Human Rights Act 2004*. The general point is that the protection and enforcement of rights of any kind presupposes that a person can ascertain the content of the relevant law.

Of course, the extent of concern on either of these bases will turn on just what is provided for in a particular Bill, and the considerations that justify those provisions.

Leaving aside the issue of whether there is an inappropriate delegation, these rights issues are addressed in section 47 of *Legislation Act 2001* (and see the sanction for non-compliance in section 62). **By subsection 47(6) the text of an incorporated document, as it is from time to time, must be published in the legislation register.**² The policy objective is that the public may thus ascertain just what the law of the Territory is as it stands at a particular time. A member of the public need only consult the legislation register. This is an important safeguard of the basic right of a person to ascertain the law.

Displacement of subsection 47(6) thus raises a rights issue, and the Committee looks to the Explanatory Statement for a justification for the displacement of subsection 47(6). There is no reference to this issue in the Explanatory Statement to this Bill.

In terms of justification, a critical question is whether, so far as concerns the accessibility of the incorporated instrument, the law provides for some alternative to the scheme of the Legislation Act. The Committee notes that it is common to provide for an alternative where section 47(6) of the Legislation Act is displaced.

¹ It should be noted that the *Legislation Act 2001* defines "instrument" to mean "any writing or other document" (subsection 14(1)), and "a reference to an *instrument* includes a reference to a provision of an instrument" section 14(2)).

² A notification of the making of a notifiable instrument must also be put on the ACT Legislation Register (Legislation Act, 19(2)(d)).

It may be that existing sections 138 and 139 of the *Building Act 2004* will apply to an instrument that is applied under proposed subsection 136(1B). This is not abundantly clear, and the Committee suggests that the Assembly consider this issue.

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

ROAD TRANSPORT (THIRD-PARTY INSURANCE) AMENDMENT BILL 2009

This Bill would amend the *Road Transport (Third-Party Insurance) Act 2008*, primarily for the purpose of incorporating trader's plates and unregistered vehicle permits into the compulsory third party (CTP) insurance scheme for the ACT.

Is there an undue trespass on personal rights and liberties? – para (c)(i)
Report under Human Rights Act 2004 section 38

Separation of powers and the function of ACAT in imposing a financial penalty on a licensed insurer

Is it desirable, having regard to the desirability of maintaining a separation of powers, that the ACT Civil and Administrative Tribunal (ACAT) – not being a court – should have the power to levy a financial penalty on a licensed insurer against whom it makes an occupational discipline order?

Clause 43 of the Bill proposes to insert into the Act a new Part 5.4, to govern “occupational discipline”. The occupation referred to here is that of being a licensed insurer for the purposes of the Act. The scheme of this part adopts the more modern practice³ in relation to occupational discipline of separating the regulatory function – which would be vested in the CTP regulator – from the supervisory function – which would be vested in the ACT Civil and Administrative Tribunal (ACAT).

That is, as provided for in proposed section 201,

[i]f the CTP regulator believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensed insurer, the CTP regulator may apply to the ACAT for an occupational discipline order in relation to the licensed insurer.

The grounds for an order are stated in proposed section 201. The role of ACAT is stated in proposed section 202, and in particular:

[i]n addition to any other occupational discipline order that the ACAT may make, the ACAT may require the licensed insurer to pay an amount to the Territory or someone else, of not more than—

- (a) if the licensed insurer is an individual—\$10 000; or
- (b) if the licensed insurer is a corporation—\$50 000.

³ See Hon Justice Michael Barker, “The emergence of the generalist administrative tribunal in Australia and New Zealand”, (2005) - http://www.sat.justice.wa.gov.au/_files/JBspeechGeneralistAdministrativeTribunal.pdf

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out other occupational discipline orders the ACAT may make.

The imposition of a financial penalty on a licensed insurer in respect of which ACAT makes an occupational discipline order is akin to the imposition of a fine by way of a penalty for a criminal offence.

The rights issue that arises is whether it is appropriate to vest what appears to be a judicial power in ACAT – a body which is not a court. In *Scrutiny Report No 55* of the *Sixth Assembly*, in relation to the *ACT Civil and Administrative Tribunal Bill 2008*,⁴ the Committee noted that it was doubtful that a court would find that separation of powers doctrine applied in respect of Territory constitutional arrangements in the same way that it does in the Commonwealth. That is, it is likely that – subject to the *Kable* doctrine⁵ – a law may vest in a non-curial Territory body (such as ACAT) a function that is judicial in nature. The function vested in ACAT by proposed section 202 would not breach the *Kable* doctrine. (This doctrine requires a law cannot vest in a court a function that is incompatible with the integrity, independence and impartiality of the court.)

There is nevertheless an issue to be considered by the Assembly. As the Committee noted in *Scrutiny Report No 55* of the *Sixth Assembly*,

in assessing the impact on human rights of a Bill, the Assembly is not restrained by the limitations of constitutional law. A Member of the Assembly might take the view that the separation of powers doctrine applied to the federal judicial system is a standard that should be adopted when reviewing the impact on human rights of a Bill. The separation of the exercise of judicial power from the exercise of other kinds of power (legislative and executive) has long been justified on the basis that it serves to enhance and protect the independence of the courts, and, in turn, the protection of the legal rights of all potential litigants.

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

Strict liability offence

The Committee draws attention to the repeal, by clause 2.2 of Schedule 2 of the Bill, of section 13 of the *Road Transport (Third-Party Insurance) Regulation 2008* (CTP Regulation).⁶ As explained well in the Explanatory Statement:

section 13 of the CTP Regulations is repealed. The offence created under section 13 was carried over from the old third party insurance scheme. However, it is no longer necessary to keep this offence provision in light of the new CTP scheme.

⁴ <http://www.parliament.act.gov.au/downloads/reports/6scrutiny55.pdf>

⁵ *Ibid* at 4.

⁶ The Treasurer foreshadowed this amendment in her response to comments made in *Scrutiny Report 2* concerning the *Road Transport (Third-Party Insurance) Regulation 2008* (SL2008-37); see attachment to *Scrutiny Report 5*.

Section 13 made it a strict liability offence if a person did not pay the additional premium required as a result of a change of use or construction of a vehicle. However, the offence would only apply where the person did not register the change, as premiums are paid on registration with the Road Transport Authority. As such, evidence that the responsible person had not registered a change in use or construction of a vehicle would only predominantly come to light in the case of a motor accident.

Under the new CTP scheme, section 168 allows an insurer to recover costs reasonably incurred in an accident claim up to the value of \$2000, if the full premium has deliberately not been paid. While an offence provision may in some cases serve as a deterrent, the new Act now applies a commercial solution under section 168 that is more appropriate and reflects modern regulatory jurisprudence.

The Committee commends this attempt to regulate an activity other than by the creation of a strict liability offence.

SUBORDINATE LEGISLATION

Disallowable Instruments—No comment

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

Disallowable Instrument DI2009-22 being the Electricity Feed-in (Renewable Energy Premium) Rate Determination 2009 (No. 1) made under section 10 of the *Electricity Feed-in (Renewable Energy Premium) Act 2008* determines the premium rate.

Disallowable Instrument DI2009-30 being the Utilities (Grant of Licence Application Fee) Determination 2009 made under section 254 of the *Utilities Act 2000* determines the fee payable for an application for grant of licence.

Disallowable Instrument DI2009-31 being the Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2009 (No. 2) made under subsection 21(1) of the *Race and Sports Bookmaking Act 2001* revokes DI2009-25 and determines specified venues to be approved bookmaking venues for the purposes of the Act.

Disallowable Instrument DI2009-32 being the Public Trustee (Investment Board) Appointment 2009 made under section 48 of the *Public Trustee Act 1985* appoints specified persons as members of the Public Trustee Investment Board.

Disallowable Instruments—Comment

The Committee has examined the following items of subordinate legislation and offers the following comments on them:

Accessibility of legislation / minor typographical error

Disallowable Instrument DI2009-26 being the Building (ACT Appendix to the Building Code—2008 and 2009 editions) Determination 2009 made under subsection 136(2) of the *Building Act 2004* revokes previous ACT appendices to the Building Code and makes new appendices for both the 2008 and 2009 editions.

This instrument determines a new ACT Appendix to the Building Code of Australia – 2008 and 2009 editions. It does so by applying the published versions of those editions (which include an ACT Appendix), subject to 2 variations that are set out in the instrument.

Section 6 of the instrument dis-applies section 47 (5) of the *Legislation Act 2001* in relation to the instrument. Subsection 47 (5) provides:

- (5) If a law of another jurisdiction or an instrument is applied as in force at a particular time, the text of the law or instrument (as in force at that time) is taken to be a notifiable instrument made under the relevant instrument by the entity authorised or required to make the relevant instrument.

The effect of subsection 47 (5) of the Legislation Act is that, where material external to an instrument is “incorporated by reference”, there is an obligation to publish that external material on the ACT Legislation Register (ie as a result of the external material being a “notifiable instrument”). Section 6 of the instrument removes the requirement to publish the external material, thereby denying the general public the opportunity to examine the material that is incorporated by reference.

The Committee notes that the Building Code of Australia is published by the Australian Building Codes Board. It is a commercial publication. The 2008 and 2009 editions are currently available at a (special) price of \$365.

The dis-application of subsection 47 (5) of the Legislation Act, together with the significant cost of purchasing the relevant editions of the Building Code of Australia, means that the accessibility of the material that this instrument incorporates by reference is significantly limited. Though not stated, the explanation for this is, presumably, that the relevant material has a significant commercial value to its publishers.

The Committee notes, however, that the accessibility issue is assisted by section 7 of the instrument, which states:

7 Access to referenced documents

A copy of the Australian Capital Territory Appendix to the Building Code of Australia is available for inspection by members of the public between 9am and 4.30pm on business days at the ACT Planning and Land Authority shopfront, Dame Patty Menzies House, 16 Challis Street, Dickson. Australian Standards are available from <http://infostore.saiglobal.com/store/>.

Any material that is available from the website that is mentioned is generally available only on the payment of a fee.

That said, the Committee notes that, as a result of section 7, members of the public who wish to examine the material that is incorporated by reference have the ability to access that material. While this is not ideal, the Committee makes no further comment on the relevant provisions.

Finally, the Committee notes that there is a minor typographical error in subsection 4 (1) of the instrument (“section 5.; and”).

Incorporation of material by reference?

Disallowable Instrument DI2009-27 being the Road Transport (Dimensions and Mass) 6.5 Tonnes Single Steer Axle Exemption Notice 2009 made under section 31A of the Road Transport (Dimensions and Mass) Act 1990 exempts compliant vehicles from the mass requirements of the Act in respect of the steer axle mass of the vehicle.

Disallowable Instrument DI2009-28 being the Road Transport (Dimensions and Mass) B-Double, 4.6 Metre High Vehicle and 14.5 Metre Long Bus Exemption Notice 2009 (No. 1) made under section 31A of the *Road Transport (Dimensions and Mass) Act 1990* exempts specified compliant vehicles from the requirements of sections 9 and 24 of the Act and compliant drivers from paragraph 31A(1) of the Act.

The instruments referred to above are made under section 31A of the *Road Transport (Dimensions and Mass) Act 1990*, which allows the Minister to exempt vehicles from requirements of that Act. Part 2 of Schedule 2 of the first instrument provides (in part):

This Notice exempts a heavy vehicle, which is fitted with –

- (a) an engine complying with the emission control requirements of ADR 80/01 or a later version; and
- (b) a Front Under-run Protection Device that complies with the United Nations Economic Commission for Europe (UN ECE) Regulation No. 93; and
- (c) a cabin that complies with UN ECE Regulation No. 29 –

from the mass limit of 6.0 tonnes on its steer axle set out in Schedule 2 of the Road Transport (Dimension and Mass) (Mass Limits of Vehicles or Combinations) Determination 2006 (No1) (DI2006-119);

provided that –

- i. the mass limit on that steer axle is not more than 6.5 tonnes; and
- ii. the vehicle has appropriately rated tyres, axle, and suspension to allow 6.5 tonnes on its steer axle; and
- iii. the vehicle is not a twin-steer heavy vehicle, bus or coach; and
- iv. the driving compartment of the heavy vehicle contains a copy of this exemption notice; and
- v. compliance with ADR 80/01 is verified by an Approval Plate that is affixed on the vehicle cabin and in the proximity of the vehicle CPA (Compliance) plate/label, except where the vehicle is fitted with a Compliance Plate dated January 2008, or later (in which case it will be accepted as complying with ADR 80/01).

Though not defined in the first instrument, it is apparent (from a reference in the Explanatory Statement to the instrument) that “ADR 80/01” refers to Australian Design Rule 80/01.

Both the first and the second instruments also refer to the requirements of “UN ECE Regulation No. 29” and “UN ECE Regulation No. 93”.

It appears to the Committee that the effect of the references to ADR 80/01, UN ECE Regulation No. 29 and UN ECE Regulation No. 93 is to incorporate the requirements of those documents by reference (albeit as an alternative form of compliance). That being so, the Committee would appreciate the Minister’s advice as to how (if at all) section 47 of the *Legislation Act 2001* (which deals with the incorporation of material by reference) applies in relation to these instruments.

What is the effect of the gap in the appointments?

Disallowable Instrument DI2009-29 being the Civil Law (Wrongs) Professional Standards Council Appointment 2009 (No. 1) made under Schedule 4, section 4.38 of the *Civil Law (Wrongs) Act 2002* appoints specified persons as members of the Professional Standards Council.

The Committee notes that this instrument appoints 9 named persons as members of the Professional Standards Council. It also appoints one named person as the deputy of one of the 9 named persons. The appointments of 3 of the persons appointed as members are expressed to commence on the day after the notification of the instrument and to end on 30 June 2011. The appointments of the remaining 6 persons appointed as members are expressed to commence on the day after the notification of the instrument and to end on 31 December 2011.

In relation to the 3 persons appointed as members, the Explanatory Statement to the instrument states:

The appointments of [the 9 persons appointed as members] on [sic] the ACT Council expired on 31 December 2008.

The instrument was notified on 12 March 2009. As a result, the appointments operate from 13 March 2009. The Committee seeks the Minister's advice as to the position of the 9 members in the period between the expiration of their appointments (ie on 31 December 2008) and their re-appointment, by this instrument.

Subordinate Law—No comment

The Committee has examined the following subordinate law and offers no comments on it:

Subordinate Law SL2009-4 being the Children and Young People (Transitional Provisions) Regulation 2009 made under the *Children and Young People Act 2008* enables the provisions of Chapter 10 of the *Children and Young People Act 1999*, concerning the employment of children and young people, to continue until the provisions of Chapter 21 of the Act commence in July 2009.

Subordinate Law SL2009-5 being the Drugs of Dependence Regulation 2009 made under the *Drugs of Dependence Act 1989* revokes SL2005-3 and determines specified substances as drugs of dependence and prohibited substances for the purposes of the Act.

Subordinate Law SL2009-6 being the Road Transport Legislation Amendment Regulation 2009 (No. 1) made under the *Road Transport (Driver Licensing) Act 1999*, *Road Transport (General) Act 1999*, *Road Transport (Safety and Traffic Management) Act 1999*, *Road Transport (Vehicle Registration) Act 1999* determines miscellaneous technical amendments to clarify ambiguities, correct errors or otherwise improve the operation of the road transport legislation.

Subordinate Law SL2009-7 being the Road Transport (Safety and Traffic Management) Amendment Regulation 2009 (No. 1) made under the *Road Transport (Safety and Traffic Management) Act 1999* provides for the inclusion of two additional traffic offence detection devices.

REGULATORY IMPACT STATEMENTS

There is no matter for comment in this report.

GOVERNMENT RESPONSES

The Committee has received responses from:

- The Treasurer, dated 31 March 2009, in relation to comments made in Scrutiny Report 4 concerning the First Home Owner Grant Amendment Bill 2009.
- The Minister for Planning, undated, in relation to comments made in Scrutiny Report 3 concerning Disallowable Instrument DI2009-3, being the Public Place Names (Casey) Determination 2009 (No. 1).
- The Minister for Children and Young People, undated, in relation to comments made in Scrutiny Report 3 concerning Disallowable Instrument DI2008-281, being the Children and Young People (Family Group Conference) Standards 2008 (No. 1).
- The Minister for Transport, dated 7 April 2009, in relation to comments made in Scrutiny Report 5 concerning the Roads and Public Places Amendment Bill 2009.

The Committee wishes to thank the Treasurer, the Minister for Planning, the Minister for Children and Young People and the Minister for Transport for their helpful responses.

Mary Porter AM, MLA
Deputy Chair

May 2009

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

REPORTS—2008-2009

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

Disallowable Instrument DI2008-213 - Health Professionals (Medical Radiation Scientists Board) Appointment 2008 (No. 2)
Disallowable Instrument DI2008-221 - Emergencies (Bushfire Council Members) Appointment 2008 (No. 2)
Disallowable Instrument DI2008-222 - Emergencies (Bushfire Council Members) Appointment 2008 (No. 3)
Education Amendment Bill 2008 (PMB)
Freedom of Information Amendment Bill 2008 (No. 2)

Report 3, dated 23 February 2009

Subordinate Law SL2008-55 - Firearms Regulation 2008

Report 4, dated 23 March 2009

Disallowable Instrument DI2009-15 - Crimes (Sentence Administration) (Sentence Administration Board) Appointment 2009 (No. 1)
Subordinate Law SL2008-49 - Territory-owned Corporations Regulation 2008 (No. 2)

Report 5, dated 30 March 2009

Animal Diseases Amendment Bill 2009
Subordinate Law SL2009-3 - Planning and Development Amendment Regulation 2009 (No. 1)



Katy Gallagher MLA

DEPUTY CHIEF MINISTER

TREASURER

MINISTER FOR HEALTH

MINISTER FOR COMMUNITY SERVICES

MINISTER FOR WOMEN

MEMBER FOR MOLONGLO

Ms Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
C/- Scrutiny Committee Secretary
ACT Legislative Assembly

Dear Ms Dunne

I am writing in response to comments by the Standing Committee on Justice and Community Safety Scrutiny of Bills Report No 4 of 23 March 2009 in relation to the *First Home Owner Grant Amendment Bill 2009*.

The main purpose of the *First Home Owner Grant Amendment Bill 2009* (the bill) is to implement the legislative framework necessary for the efficient administration of the Australian Government's First Home Owner Boost Scheme.

Because every avoidance issue that may arise in relation to the bill cannot be anticipated, the bill makes provision for the Executive to make transitional regulations to deal quickly with unanticipated issues, including those that may arise during the implementation phase. Accordingly, when an issue is identified, a transitional regulation may be made to apply prospectively to ensure that avoidance does not occur notwithstanding any legislative deficiency.

The Committee has acknowledged circumstances in which the delegation of legislative power may be useful, for example, as would apply to the implementation of the arrangements provided by the bill. The transitional regulations are subject to disallowance by the Assembly, and it is for the Assembly to decide whether or such a degree of supervision is adequate.

Importantly, any transitional regulations made under section 24F will expire on 1 July 2013. This is considered to be an appropriate timeframe as it enables scrutiny by the Assembly while also providing for unanticipated issues to be dealt with in subordinate legislation. The timeframe allows for any issue dealt with by regulation to be put to the Assembly as an amendment to the *First Home Owner Grant Act 2000*.

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

In relation to the committee's recommendations regarding the inclusion of the words 'reasonable grounds' in subsection 24C (5), and the omission of the words 'another territory law' in subsections 24F (2), and 24F (3); I agree with those recommendations. Amendments to the *First Home Owner Grant Amendment Bill 2009* that implement those recommendations were passed by the Legislative Assembly on 24 March 2009.

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

Yours sincerely


Katy Gallagher MLA
Treasurer
31.3.09



Andrew Barr MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR CHILDREN AND YOUNG PEOPLE
MINISTER FOR PLANNING
MINISTER FOR TOURISM, SPORT AND RECREATION

MEMBER FOR MOLONGLO

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

Dear Mrs Dunne

Thank you for the Scrutiny of Bills and Subordinate Legislation Committee Report No 3 of 2009 that contains comments on Disallowable Instrument DI2009-3 being the Public Place Names (Casey) Determination 2009 (No. 1) made under section 3 of the *Public Place Names Act 1989* which revokes DI2008-304 and determines the names of new roads in the Division of Casey relating to street naming in Casey.

In this report the Committee commended the fact that the Explanatory Statement was unambiguous in its explanation and noted, however, that the named place was actually Therkelsen Lane, rather than Therkelsen Street.

In light of the Committee's report and recent problems with a number of disallowable instruments, all related staff met to discuss how to reduce the possibility of future mistakes. This meeting raised all staff's awareness of the importance of attention to detail in relation to this work.

Additionally, Mr Peter Phillips, Place Names Officer, met with the staff of the secretariat for your Committee in an effort to better understand its work and what to look out for.

With this and other measures that have been put in place it is hoped that future problems will be very rare. I would like to thank the committee for its comments.

Yours sincerely


Andrew Barr MLA
Minister for Planning

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0011 Fax (02) 6205 0157 Email barr@act.gov.au



Andrew Barr MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR CHILDREN AND YOUNG PEOPLE
MINISTER FOR PLANNING
MINISTER FOR TOURISM, SPORT AND RECREATION

MEMBER FOR MOLONGLO

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

Dear Mrs Dunne

I am writing with regard to the Standing Committee on Justice and Community Safety Scrutiny Report No. 3 dated 23 February 2009, which comments on DI 2008-281 Children and Young People (Family Group Conference) Standards 2008.

The Committee has correctly highlighted the mistake in Section 11.1 of the Family Group Conference Standards where the word "of" has been included. The inclusion is a mistake which was unfortunately not picked up in the drafting process. The word "of" will be removed.

I would like to thank the Committee for drawing this to my attention and I will endeavour to ensure similar errors do not occur in the future.

Yours sincerely

Andrew Barr
Andrew Barr MLA
Minister for Children and Young People

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0011 Fax (02) 6205 0157 Email barr@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 INDIGENOUS AFFAIRS MINISTER FOR THE ARTS AND HERITAGE

MEMBER FOR GINNINDERRA

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

Dear Mrs Dunne ^{Vicki}

I refer to your Committee's comments in relation to the *Roads and Public Places Amendment Bill 2009* (the Bill) contained in its Scrutiny Report No 5 of 30 March 2009.

I note that the Committee had no comments in relation to the Bill and confined its comments to the Explanatory Statement to the Bill. The Committee made three comments in relation to the Explanatory Statement, the first two of these recommended changes to paragraphs on pages 1 and 2 of the Statement, which provided background information in relation to the waiting period before a roads and public places officer can arrange for an abandoned registered vehicle to be removed. I agree that these changes will improve the Statement and I have arranged for a Revised Explanatory Statement to be prepared adopting these changes.

The Committee's third comment related to the absence of strict liability in the offence in proposed section 12F. The proposed section would make it an offence for a person to fail to provide information about an abandoned vehicle. The person has to have been given a notice under section 12EA about a vehicle that has been moved to a government retention area. The person commits an offence if they are not the owner of the vehicle and they fail, within 7 days, to provide the name and address of any person they believe to be the owner.

I respectfully disagree with the Committee's view that "proposed section 12F does not speak of a person holding a belief of any kind." An aspect of the offence – in new subsection 12F(c)(ii) – includes the requirement to establish whether the person concerned believed another person was the owner of the vehicle. This introduces a mental aspect to the offence, albeit not one that could be characterised as a "fault element". Nevertheless I consider that the application of strict liability

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0104 Fax (02) 6205 0433 Email stanhope@act.gov.au

(that is, the exclusion of fault or other “intent-based” elements) would be inappropriate in this instance. I have arranged for these aspects of the Explanatory Statement also to be clarified in the Revised Explanatory Statement.

I thank the committee for their comments.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jon Stanhope', with a stylized flourish at the end.

Jon Stanhope MLA
Minister for Transport

- 7 APR 2009