

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
(LEGISLATIVE SCRUTINY ROLE)

SCRUTINY REPORT 25

27 OCTOBER 2014

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ROLE OF 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.

RESOLUTION OF APPOINTMENT

The Standing Committee on Justice and Community Safety when performing its legislative scrutiny role shall:

- (1) 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):
 - (a) is in accord with the general objects of the Act under which it is made;
 - (b) unduly trespasses on rights previously established by law;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
- (2) 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;
- (3) consider whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:
 - (a) unduly trespass on personal rights and liberties;
 - (b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) inappropriately delegate legislative powers; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
- (4) 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*;
- (5) 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.

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SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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

Disallowable Instrument DI2014-246 being the University of Canberra Council Appointment 2014 (No. 1) made under section 11 of the *University of Canberra Act 1989* appoints a specified person as a member of the University of Canberra Council.

Disallowable Instrument DI2014-247 being the University of Canberra Council Appointment 2014 (No. 2) made under section 11 of the *University of Canberra Act 1989* appoints a specified person as a member of the University of Canberra Council.

Disallowable Instrument DI2014-248 being the Energy Efficiency (Cost of Living) Improvement (Priority Household Target) Determination 2014 (No. 1) made under section 8 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* determines the priority household target for the compliance period 1 January to 31 December 2015.

Disallowable Instrument DI2014-250 being the Public Place Names (Bonner) Amendment Determination 2014 (No. 1) made under section 3 of the *Public Place Names Act 1989* amends DI2010-200 by omitting the public place name entry relating to Peter Coppin Street and inserting new and correct biographical details.

Disallowable Instrument DI2014-251 being the Emergencies (Strategic Bushfire Management Plan for the ACT) 2014 (No. 1) made under section 72 of the *Emergencies Act 2004* revokes DI2009-211 and determines the Strategic Bushfire Management Plan 2014-2019.

DISALLOWABLE INSTRUMENT—COMMENT

The Committee has examined the following disallowable instrument and offers these comments on it:

IS THIS A DISALLOWABLE INSTRUMENT?

Disallowable Instrument DI2014-249 being the Health (Local Hospital Network Council—Deputy Chair) Appointment 2014 (No. 1) made under section 18 of the *Health Act 1993* re-appoints a specified person as deputy chair of the ACT Local Hospital Network Council.

This instrument appoints a specified person as Deputy Chair of the ACT Local Hospital Network Council. The appointment is made under section 18 of the *Health Act 1993*, which provides:

18 Chair and deputy chair

- (1) The Minister must appoint—
 - (a) a member to be chair; and
 - (b) another member to be deputy chair.

- (2) An appointment under subsection (1) ends if the appointee is no longer a member.

The Explanatory Statement for the instrument states:

This instrument re-appoints [the specified person], an existing member of the ACT Local Hospital Network Council, as the Deputy Chair, commencing on the day after notification for a term of two years.

The Explanatory Statement also states that it is a disallowable instrument. However, the Committee notes that there is no indication as to whether or not, in fact, the appointment *should* be made by disallowable instrument. While the explanatory statement *states* that this is a disallowable instrument, under section 229 of the *Legislation Act 2001*, the Committee notes that, as a result of section 227 of the Legislation Act, section 229 only applies to appointments of persons *other than* public servants. It is for this reason that the Committee has consistently maintained that instruments of appointment should clearly state that the appointee is not a public servant, in order to make clear that, in fact, the appointment should be made by way of disallowable instrument. In its document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps* (available at http://www.parliament.act.gov.au/in-committees/standing_committees/justice_and_community_safety_legislative_scrutiny_role), the Committee stated:

Under paragraph 227(2)(a) of the *Legislation Act 2001*, an instrument of appointment is not disallowable if it appoints a public servant. As a result, it assists the Committee (and the Legislative Assembly), if the Explanatory Statement for an instrument of appointment contains a statement to the effect that “the person appointed is not a public servant”.

There is no such statement here.

While it might be argued that it should be assumed that, given that the person here is being *re-appointed*, the person was not a public servant when appointed and is not a public servant now. But that situation might have changed. The person might have *become* a public servant in the meantime. As a result, it is preferable that the person’s non-public servant status be addressed, even in the case of a re-appointment.

As the Committee has consistently pointed out, this is not an onerous requirement.

The Committee draws the Legislative Assembly’s attention to this instrument under principle (2) of the Committee’s terms of reference, on the basis that the explanatory statement for the instrument does not meet the technical or stylistic standards expected by the Committee.

Further, the Committee would be grateful if the Minister could confirm that the person re-appointed by this instrument is not a public servant.

SUBORDINATE LAWS—NO COMMENT

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

Subordinate Law SL2014-23 being the Medicines, Poisons and Therapeutic Goods Amendment Regulation 2014 (No. 1) made under the Medicines, Poisons and Therapeutic Goods Act 2008 amends the *Medicines, Poisons and Therapeutic Goods Regulation 2008*.

GOVERNMENT RESPONSE

The Committee has received a response from the Acting Minister for the Environment, dated 23 October 2014, in relation to comments made in Scrutiny Report 24 concerning the Environment Protection Amendment Bill 2014 ([attached](#)).

Steve Doszpot MLA
Chair

October 2014

OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

Report 3, dated 25 February 2013

Disallowable Instrument DI2013-5—Road Transport (Third-Party Insurance) Early Payment Guidelines 2013 (No. 1)

Report 20, dated 31 July 2014

Red Tape Reduction Legislation Amendment Bill 2014
Utilities (Technical Regulation) Bill 2014

Report 23, dated 22 September 2014

Disallowable Instrument DI2014-230 - Education (Government Schools Education Council)
Appointment 2014 (No. 3)
Disallowable Instrument DI2014-231 - Education (Government Schools Education Council)
Appointment 2014 (No. 4)

Report 24, dated 14 October 2014

Nature Conservation Bill 2014



Mick Gentleman MLA

MINISTER FOR PLANNING
MINISTER FOR COMMUNITY SERVICES
MINISTER FOR WORKPLACE SAFETY AND INDUSTRIAL RELATIONS
MINISTER FOR CHILDREN AND YOUNG PEOPLE
MINISTER FOR AGEING

MEMBER FOR BRINDABELLA

Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety
(Legislative Scrutiny Role)
GPO Box 1020
CANBERRA ACT 2601

Dear Chair

I refer to *Scrutiny Report 24* of 14 October 2014 by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), and specifically to the Standing Committee's recommendations regarding the Environment Protection Amendment Bill 2014. The Committee queried proposed section 136K, and in particular it being a strict liability offence.

Proposed Part 14A (Enforceable undertakings), which includes section 136K, is an important introduction to the Territory's environmental laws, which provides an alternative to criminal prosecutions for an offence against division 15.1 of the *Environment Protection Act 1997*.

Section 136K creates an offence if a person fails to take all reasonable steps to comply with a court order. This follows having entered voluntarily into an enforceable undertaking and the court being satisfied that the undertaking has been contravened. It is limited to specific circumstances.

Based on the Committee's query of the appropriateness of proposed section 136K being a strict liability offence, the Environment Protection Authority has reconsidered the section.

As a result, the Government has decided not to progress this section as a strict liability offence. The Minister for the Environment will move a Government amendment to this section removing the subsection deeming the offence to be strict liability. The relevant parts of the Explanatory Statement will be amended in line with this decision.

I thank the Committee for drawing this matter to the attention of the Government.

Yours sincerely

Mick Gentleman MLA
Acting Minister for the Environment
October 2014

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