

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON  
LEGAL AFFAIRS  
(PERFORMING THE DUTIES OF A SCRUTINY  
OF BILLS AND SUBORDINATE  
LEGISLATION COMMITTEE)**

**SCRUTINY REPORT NO. 2**

**19 FEBRUARY 2002**

## TERMS OF REFERENCE

- (1) The Standing Committee on Legal Affairs (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 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**

**MR BILL STEFANIAK, MLA (CHAIR)**  
**MR JOHN HARGREAVES, MLA (DEPUTY CHAIR)**  
**MS KERRIE TUCKER, MLA**

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**LEGAL ADVISER: MR PETER BAYNE**  
**SECRETARY: MR TOM DUNCAN**  
**(SCRUTINY OF BILLS AND SUBORDINATE**  
**LEGISLATION COMMITTEE)**  
**ASSISTANT SECRETARY: MS CELESTE ITALIANO**  
**(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.

#### **Appropriation Bill 2001-2002 (No 3)**

This is a Bill for an Act to appropriate additional money for the purposes of the Territory for the financial year that began on 1 July 2001.

#### **Crimes Amendment Bill 2001 (No 3)**

This Bill would amend the *Crimes Act 1900* to insert new offences relating to actions taken with intent to cause, or to threaten to cause, public alarm or economic loss.

#### **Land (Planning and Environment) Amendment Bill 2001 (No 4)**

This Bill would amend the *Land (Planning and Environment) Act 1991* to require that certain development applications to be accompanied by a survey certificate.

#### **Supreme Court Amendment Bill 2001**

This Bill would amend the *Supreme Court Act 1933* to make provision for a Court of appeal to hear appeals from the Supreme Court. It would also make consequential amendments to some other laws.

### Bills - Comment

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

#### **Crimes Amendment Bill 2001 (No 2)**

This Bill would amend the *Crimes Act 1900* to insert new offences relating to actions taken with intent to cause or to threaten to cause, public alarm.

#### *Para 2(c)(i) – undue trespass on rights and liberties*

The general point that underlies the comments that follow is that a law that penalises some action, and in particular provides for a heavy penalty, should be as clear as possible about what actions will constitute the offence. This is of considerable importance where persons who contemplate some legitimate activity, (such as an expression of a political position), will need to consider whether what they do will be in breach of the law. The comments that follow do not question the policy objective of the provisions of this Bill. Rather, they address the clarity of some of the provisions.

Proposed new section 140A provides:

#### 140A Acting with intent to cause public alarm

A person must not, with the intention of causing public alarm or anxiety—

- (a) do something that could endanger human life or health; or
- (b) do something that, in the circumstances in which it is done, a reasonable person would suspect could endanger human life or health (whether or not it could endanger human life or health).

Maximum penalty: imprisonment for 10 years.

The Committee notes that the essence of the offence is having an intention to cause “public alarm or anxiety”. If a person has this intention, it is then sufficient if the person does something as described in paragraphs (a) and (b). It appears that it is not necessary for the prosecution to prove that the person intended to cause public alarm or anxiety by acting in the ways described. The Committee does not raise any issue with this approach to the definition of the offence.

The more particular issues are:

- Does the word “public” qualify both the words “alarm” and “anxiety”?
- Would it be possible to provide some guidance as to how a court might assess whether the “public” suffered the alarm and anxiety? Does this embrace a section of the public? How is the issue of fact whether the public has suffered “alarm” or “anxiety” to be resolved?
- To what must the alarm and anxiety relate? In context, this would appear to be of something occurring that could, or could reasonably be suspected to, “endanger human life or health”. Could this be made clear?
- The offence would appear to cover a case where the human life or health that could be endangered was that of the person who had the intention to cause public alarm or anxiety. Is it desirable to penalise this sort of activity?
- On the other hand, the offence would not appear to cover a case where the person has the requisite intention, and *does* something that actually endangers human life or health. Proposed new section 140A speaks only of something that “could” endanger human life or health. Is this limitation intended?

Some of these queries also arise in relation to proposed new sections 140B and 140C.

The Committee draws these matters to the attention of the Assembly.

#### **Crimes (Abolition of Offence of Abortion) Bill 2001**

This Bill would amend the *Crimes Act 1900* by the repeal of sections 44, 45 and 46, and the insertion of a new section 44 to the effect that any rule of the common law that creates an offence in relation to procuring a woman’s miscarriage is abrogated.

Thus, the Bill would abolish the offences of

- Procuring own miscarriage (s 44)
- Procuring another’s miscarriage (s 45), and

Procuring drugs etc. to procure miscarriage (s 46)

*Para 2(c)(i) – undue trespass on rights and liberties*

This Bill raises very significant rights issues. It has been said “[a]bortion rights have been the most hotly-contested of all the new civil rights in the post-war era”: (D Robertson, *A Dictionary of Rights*). “In countries where a justiciable bill of rights exists, abortion has inevitably become a matter for intense legal conflict, because such lists of rights almost inevitably contain, explicitly or by implication, two core values which conflict in the case of abortion; there is, at the same time, a form of **right to life** applicable to the foetus, and also some version of a right to **privacy**, to self-determination or to the inviolability of the person on the part of the mother. Thus the courts have been forced into choosing between irreconcilable values ...”.

The question of how these values should be reflected in a law governing abortion is a matter for the Assembly. The Committee considers that the Assembly might be assisted by comments designed to do two things: (i) to sketch very briefly the current position in Australia, and (ii) to set out two contrasting ‘bill of rights’ approaches to answering the question.

### **The position in Australia**

At common law, the foetus is not regarded as a human being for the purposes of the law of homicide; this explains why there are statutory offences relating to child destruction. On the other hand, termination of a pregnancy was a misdemeanour if brought about after ‘quickening’ (or movement of the foetus in the womb). This time was regarded as occurring about half-way through a pregnancy. After some statutory reforms, the English law was consolidated in 1861, and the consolidation is reflected in existing sections 44 to 46 of the *Crimes Act 1900*. On their face, these provisions have the effect of outlawing abortion.

It has been the judiciary, by a process of interpretation of these provisions, that has “loosened the strictures of the law in favour of an extended right to obtain an abortion”: Model Criminal Code Officers Committee, *Model Criminal Code, Chapter 5, Non-fatal Offences Against the Person* (1998), at 155. There is debate about what these cases hold. A fair summation of the position in NSW, making a fundamental point, is in the judgment of Priestley JA in *CES v Superclinics (Australia) Pty Ltd* (1995) 38 NSWLR 47. His Honour said it was not correct to say that “to make an abortion lawful in New South Wales there must be an element of serious danger ... in terms of either the physical or mental well being of the [patient]” (ibid at 80). He said:

That, in my opinion, is not quite accurate, at least not in all cases. In the case of an abortion done by a legally qualified medical practitioner, if, notwithstanding that a court concluded there had objectively been no element of relevant serious danger, nevertheless the medical practitioner doing the abortion honestly believed on reasonable grounds that the operation was necessary to preserve the patient from serious danger to her life, or physical or mental health, it would not be right to say the abortion had been unlawful. In New South Wales, this has been the accepted view of the operation of s 83 of the *Crimes Act* since (at least) 1971: see *R v Wald*

(1971) 3 NSWDCR 25 at 29; and see also *K v Minister for Youth and Community Services* [1982] 1 NSWLR 311 at 318 (ibid).

His Honour later added:

It is understandable that the plaintiff's unwanted pregnancy caused her concern and worry. It is also, in my opinion quite clear that the *Wald* doctrine does not make such concern and worry by themselves alone reasonable grounds for a medical practitioner to come to an honest and reasonable belief that not to interrupt the pregnancy would result in serious danger to a woman's physical or mental health. Those factors could have such a result, but that is not the same as saying they would have such a result, and it is belief in the latter situation for which, on this approach, there must be reasonable grounds for an abortion to be lawful. The distinction is an important one because it means the difference in New South Wales between abortion for all practical purposes being available on demand, and its only being lawfully available in the limited circumstances described in *Wald*.

(The judgment of Kirby A-CJ (ibid at 59-60) may make greater allowance for a lawful abortion; the judgment of Meagher AJ may state it more narrowly (ibid at 85-86)).

The Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General comments that this decision “leaves the non-statutory States (that is, all but South Australia and the Northern Territory) in a legal quagmire” (above, at 152).

The Committee said:

Procedural requirements (such as the requirement that the operations be performed in a public institution) aside, the test in South Australia may be summarised as follows: An abortion will be legal if:

1. The continuance of the pregnancy would involve greater risk to the life of the pregnant woman, or greater risk of injury to the physical or mental health of the pregnant woman, than if the pregnancy were terminated; *or*
2. there is a substantial risk that, if the pregnancy were not terminated, and the child were born to the pregnant woman, the child would suffer from such physical or mental abnormalities as to be seriously handicapped; *or*
3. the termination is immediately necessary to save the life, or prevent grave injury to the physical or mental health of the pregnant woman (ibid at 154).

The Northern Territory law is very similar, but less flexible in regard to the times at which an abortion may take place.

In 1998, Western Australia enacted a law in response to a crisis that arose after some doctors were proceeded against under laws similar to those that now apply in the ACT. As summarised by the Committee, “the general intention [of the WA law] is to provide that a woman has access to an abortion in the first 20 weeks of pregnancy subject to some quite detailed requirements of informed consent, and after that only where there is some personal crisis” (ibid at 154).

## Two contrasting approaches

It may assist the Assembly to state two contrasting approaches to the reconciliation of these conflicting rights. These are called here, on the one hand, the prevailing Western approach, and, on the other, the German approach.

On the first approach, there has as yet been little of concern from a rights perspective with a law that removes restrictions on abortion. Rather, the concern has been to ensure that any restriction on abortion is justified. This approach is illustrated by the decision of the Supreme Court of Canada in the *Morgentaler* case.

On the German approach, a law removing restrictions is a breach of the right to life and liberty of the foetus *unless* the extent of the removal can be justified. Here, the concern has been to ensure that any law that permits abortion can be justified.

The Committee does not offer a view as to which approach is appropriate. This brief overview is offered as a stimulus to debate on a law that raises very significant rights issues.

### *The prevailing Western approach*

The Canadian Charter provides: “7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” The case of *R v Morgentaler* [1988] 1 SCR 30 raised the question whether a law that restricted the ability of a woman to obtain an abortion breached this right.

Two judges (Dickson CJC and Lamer J) reasoned that the restrictive law was a violation of the security of the person of the woman because “state interference with bodily integrity and serious state-imposed psychological stress” was a breach of the security of the person of the woman”. They said – “Forcing a woman, by a threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman’s body and thus a violation of security of the person”.

They said too that the delay that would be occasioned in obtaining an abortion would be an infringement of the physical aspect of the right to security of the person. The harm to the psychological integrity of the woman was also an infringement of this right.

In relation to whether the restrictions were nevertheless “in accordance with the principles of fundamental justice”, these judges found that the law was not so consistent because the defences it allowed were “practically illusory”, and were in any event expressed in terms that allowed for wide variation in the application of the defence.

There remained the question whether the law could be justified under section 1 of the Charter, which provides: “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed

by law as can be demonstrably justified in a free and democratic society.” The law was said to be one to protect the “life and health” of the woman, and, from this perspective, the means chosen to protect the woman were not proportionate to this objective.

These judges made it plain that they were not addressing the issue of whether the rights of the foetus could be embraced within the notion of “right to life”. Nor did they address the issue of whether the state had an “interest in establishing criteria unrelated to the pregnant woman’s own priorities”.

Two other judges (Beetz and Estey JJ) took a similar approach, but said that Parliament did have an interest in protecting the foetus, and to this end could require the woman to obtain a “reliable, independent and medically sound opinion” that the woman’s life or health was in fact endangered. (These judges also said that that this state interest arose even if the right of the woman to have an abortion were seen as an aspect of her “right to liberty” in s 7 of the Charter).

Justice Wilson took a view much less sympathetic to any degree of state regulation. She also held that the ‘right to liberty’ in s 7 “guarantees to every individual a degree of personal autonomy over important decisions intimately affecting their private lives”. The decision of a woman to terminate her pregnancy fell within this class of decisions. It was a decision that had “profound psychological, economic and social consequences for the pregnant woman”. Thus, to place the decision in the hands of a committee, was a violation of that right to personal autonomy.

Wilson J also considered that the law breached the right in section 2 of the Charter: “Everyone has the following fundamental freedoms: (a) freedom of conscience ...”. A decision about whether to have an abortion was a decision for the mother, and no set of procedures justified its abrogation. Given this dual breach of the Charter, She said that the law could not, in terms of s 7, be “in accordance with the principles of fundamental justice”. She allowed, however, that a law regulating abortion might be justified under section 1 (see above). This led her to allow that a law might regulate abortion after the first trimester of pregnancy. Her reasoning was much less sympathetic to the notion that the foetus might have rights.

Two dissenting judges (McIntyre and Le Dain JJ) would have upheld the law. They said that the majority were in effect recognising a ‘right to abortion’, and that such a right was not one implicit in the terms of the Charter. In Canadian society, “there has always been clear recognition of a public interest in the protection of the unborn”. The right to an abortion was not included in the rights stated in s 7 of the Charter. This reasoning was to the effect that unless the Charter clearly conferred a right, the courts should defer to the judgment of the Parliament.

In other Western constitutional systems, the interests of the woman are expressed by the notion that restriction on abortion is an invasion of privacy. The decision whether to abort is within the sphere of intimate decision-making that the state must respect. This does not preclude some state regulation in the interest of the potential life of a viable foetus, but that degree of regulation must stop far short of the making abortion unlawful in all circumstances. This reasoning was adopted by Wilson J in the *v Morgentaler* case. It is exemplified in the decision of the Supreme Court of the USA

in *Roe v Wade* (1973) 410 US 113, in which the court struck down a law that prohibited abortion except to save the life of the mother. In subsequent decisions, the Supreme Court has retreated somewhat, and it is now recognised that from the beginning of pregnancy, the state has an interest in protecting the health of the woman and the life of the foetus that may become a person. (For example, the court has upheld laws that require the woman to be provided with information designed to encourage reflection before the decision to abort was taken.)

In the context of this Bill, it may be useful to add that it would appear that in most western constitutional systems where there is constitutional protection for the right to life and liberty, the removal of any restriction on the ability of a woman to obtain an abortion would not be unconstitutional, at least where there was a viable claim that abortion was necessary to protect the woman's life and health. 'Health' would probably be broadly understood to encompass psychological, familial, and emotional factors that may affect a woman's well being.

In countries such as Canada and the USA, what the courts have been concerned with are laws that inhibit unrestricted access to abortion. In general, one may say that restriction is justified only where it serves some other interest, (which may include that of the foetus), and the degree of regulation is a proportionate balancing of that other interest against the interest of the woman in her choice whether to bear the embryo to birth.

On the other hand, these courts have not been concerned with a law that decriminalised abortion, or provided for no restriction how an abortion might be obtained or conducted. The question whether such a law was valid has not been addressed. The Canadian judges were careful not to speak in terms that foreclosed this debate. It is, however, probably safe to say that in Canada and the USA, the approach to issues about abortion starts from a premise that the interests of the pregnant woman prevail over those of the foetus.

(The sources for this analysis are the report in *R v Morgentaler* [1988] 1 SCR 30 and commentaries on the case. In relation to USA law, see J A Barron and C T Dienes, *Constitutional Law* (4<sup>th</sup> ed, 1999).

### *The German approach*

The Basic Law of Germany states: "Everybody has the right to life and bodily integrity", and it allows that "these rights may only be restricted by or pursuant to law". In what is called the *First Abortion decision*, the Federal Constitutional Court reasoned through a number of steps to a conclusion that this provision cast on the state an obligation to take measures to protect the foetus.

The first step is that the term "everybody" includes the unborn human being. The court said "Life in the meaning of the chronological existence of a human exists, according to scientific findings, at least from the beginning of the 14<sup>th</sup> day after conception ...".

Second, while the foetus may not hold individual subjective rights against the state, the Basic Law contained an objective value judgment in favour of the protection of

the unborn child's right to life. This required the state to protect and promote that life, including from intrusion from third parties.

Third, notwithstanding that pregnancy is part of the woman's intimate sphere, which itself is constitutionally protected, and she has a right to the free development of her personality, including her autonomy to decide against parenthood, the embryo is not simply part of the woman's body. Abortion does not remain within the private area of life. In the reconciliation of these competing interests, the protection of the life of the foetus must be given priority.

Fourth, the state must take steps to discourage the pregnant woman who wishes to have an abortion, and, in the end, the legislator is under an obligation to use the criminal law as a means of protecting the developing life. But the court also allowed that some other state action might be just as effective as the criminal sanction in preventing abortions.

Finally, the court added a significant qualification. It allowed that the legislator could refrain from using the means of criminal punishment in cases where the woman's refusal to be forced to sacrifice her own values was a "respectable decision of conscience". There were circumstances where the woman could not be expected to carry the child to birth. One such was where, in particular, abortion was necessary to avert a danger to the woman's life, or to serious impairment of her health. In such cases, the woman's "right to life and bodily integrity" prevailed. The Court went much further, and allowed, for example, that abortion to avert social hardship might be justified.

In the *Second Abortion decision*, the court adhered to its view that the state had a positive obligation to afford protection to the unborn child, but was prepared to leave more scope to the legislator to formulate the appropriate degree of protection, so long as minimal requirements were met. There was much less emphasis on criminal punishment: "It accords with the respect owed to a woman and expectant mother that the state does not try to win women over not to evade their maternal tasks by a general threat of punishment, but by individual counselling and an appeal to their responsibility for the unborn life, by economic and social support and by particular information referring thereto".

In the end, the German court will accept a law regulating abortion that is in its approach similar to the kinds of laws that have been adopted in countries such as Canada and the USA.

But the distinctive character of the German approach has been to insist that there must be some state regulation in order for the rights of the foetus to be protected. This regulation would probably require provision to the woman of information concerning what an abortion involves, and, more generally, that she participates in a state-regulated counselling process. On the other hand, the court has said that the state has an obligation to assist the mother after the birth of the child.

(The sources for this analysis are S Michalowski and L Woods, *German Constitutional Law: The Protection of Civil Liberties* (1999), and G L Neuman,

“*Casey in the Mirror: Abortion, Abuse and the Right to Protection in the United States and Germany*” (1995) 43 *American Journal of Comparative Law* 273.)

### **Health Regulation (Maternal Health Information) Repeal Bill 2001**

This Bill would repeal the *Health Regulation (Maternal Health Information) Act 1998*.

*Para 2(c)(i) – undue trespass on rights and liberties*

The Assembly may be assisted in its consideration of this bill by the discussion above of the Crimes (Abolition of Offence of Abortion) Bill 2001.

### **Land (Planning and Environment) Legislation Amendment Bill 2001**

This Bill would amend the *Land (Planning and Environment) Regulations* to remove the restriction on third party appeal rights in relation to development applications for the erection or alteration of single houses where those applications are notified to adjoining leaseholders.

*Para 2(c)(i) – undue trespass on rights and liberties*

The Committee notes that the transitional provision provides that the existing restrictions on third party appeal rights will apply to development applications lodged before the commencement of the Act that would be come into effect if this Bill were passed. This accommodates any concern that might otherwise exist that the Act would act retrospectively to some person’s disadvantage.

### **Supreme Court Amendment Bill 2001 (No 2)**

This Bill would amend the Supreme Court Act 1933 to introduce a scheme whereby the Court of appeal might, on the application of the Director of Public Prosecutions, set aside an acquittal and order a new trial.

*Para 2(c)(i) – undue trespass on rights and liberties*

In its Report No 10 of 2001, the previous committee made extensive comment on a similar proposal that was contained in the Crimes Legislation Amendment Bill 2001. This Committee notes that Report.

## **SUBORDINATE LEGISLATION**

The coming into effect of the *Legislation Act 2001* on 14 September 2001 has had a beneficial effect on the manners of description of delegated legislation made by persons so authorised under laws of the Territory. Most such law, and in particular that which is considered by the Committee, will be styled as either a Subordinate Law 2002 No 1, etc, or as a Disallowable Instrument DI2002 – 1, etc.

An appropriate form for the heading of a Disallowable Instrument is exemplified by a number of such laws considered by the Committee. Illustrative is Disallowable Instrument DI2001 – 336. It provides an informative title, states that it is Disallowable Instrument DI2001 – 336, and indicates that it is made under a particular statutory provision, being, of course, the source of power to make the law.

The Committee commends this manner of styling a Disallowable Instrument. It has been noted, however, that several of the laws that might be styled in this way have not. Many are prepared in ways that reflect the position prior to 14 September 2001. In future reports, the Committee will draw attention to any such deficiency.

#### Subordinate Legislation - No Comment

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

**Subordinate Law 2001 No 27 being the Liquor Regulations Amendment made under the *Liquor Act 1975* amends the Liquor Regulations by restricting the sale of beer in glass bottles between 12 noon and 11 p.m. on 31 December 2001, with the intention of reducing the potential for injury resulting from broken glass during the New Year celebration.**

**Subordinate Law 2001 No. 28 being the Utility Networks (Public Safety) Regulations 2001 made under the *Utilities Act 2000* provides a framework for regulating activities and the placement of structures that threaten public safety and the safe and efficient operation of electricity, water and sewerage, and gas networks.**

**Subordinate Law 2001 No 29 being the Fisheries Regulations 2001 made under the *Fisheries Act 2000* prescribes a number of matters related to the machinery of the Act.**

**Subordinate Law 2001 No 30 being the Domestic Animals Regulations Amendment made under the *Domestic Animals Act 2000* amends the Principal Regulations by substituting a new Schedule 1 – Offences and penalties which details all offences that may be subject to an infringement notice.**

**Subordinate Law 2001 No 31 being the Race and Sports Bookmaking Regulations 2001 made under the *Race and Sports Bookmaking Act 2001* makes regulations pursuant to the Act.**

**Subordinate Law 2001 No 32 being the Road Transport (Safety and Traffic Management) Regulations Amendment 2001 made under the *Road Transport (Safety and Traffic Management) Act 1999* amends the Principal Regulations to strengthen the provisions of Australian Road Rule 266 for ACT purposes, to make a requirement that passengers travelling in a motor vehicle, who are at least one year old but under 16 years old, must be restrained in suitable approved child restraints; provide for the evidentiary certification of a speedometer on a police vehicle used to obtain a speeding conviction; and to allow for the recording of images taken by an approved camera detection device**

by other mediums, as well as the existing WORM disks, as a consequence of amendments contained in the *Road Transport Legislation Amendment Act 2001*.

Subordinate Law 2001 No 33 being the Workers Compensation Regulations Amendment made under the *Workers' Compensation Act 1951* prescribes a maximum workers' compensation premium for the group training companies in the building and construction industry. A sunset clause provides for the date of expiration of this provision 2 years after commencement.

Subordinate Law 2001 No 34 being the Legislation Regulations 2001 made under the *Legislation Act 2001* prescribes requirements about the contents of requests for notification of registrable instruments under the Act and who is the appropriate person to request the notification.

Subordinate Law 2001 No 35 being the Land (Planning and Environment) Regulations Amendment made under the *Land (Planning and Environment) Act 1991* sets out prescribed circumstances under sections 184C and 187C of the Act and further provides for the Minister to give policy directions for determining remissions of the change of use charge in the prescribed circumstances.

Subordinate Law 2001 No 36 being the Public Place Names Regulations 2001 made under the *Public Place Names Act 1989* provides that the Aboriginal and Torres Strait Islander Commission is a prescribed entity.

Subordinate Law 2001 No 37 being the Tobacco Regulations Amendment made under the *Tobacco Act 1927* incorporates a number of provisions relating to point-of-sale tobacco health warning notices which were previously listed in section 22 of the Act.

Subordinate Law 2001 No 38 being the Transplantation and Anatomy Regulations 2001 made under the *Transplantation and Anatomy Act 1978* allows Intensive Care Specialists to determine brain death of a person on life support in the same manner as specialist neurologists and neurosurgeons under subsection 30 (b) of the Act. For the purpose of the regulations, Intensive Care Specialists must possess one of the following qualifications: (a) Fellow of the Royal Australasian College of Physicians, Intensive Care (FRACP (Intensive Care)); or (b) Fellow of the Faculty of Intensive Care, Australian and New Zealand College of Anaesthetists (FFICANZCA).

Subordinate Law 2001 No 39 being the Rehabilitation of Offenders (Interim) Regulations 2001 made under the *Rehabilitation of Offenders (Interim) Act 2001* prescribe the standard conditions for people subject to Home Detention and Parole Orders.

Determination No. 208 of 2001 made under subsection 7 (3) of the *Legal Aid Act 1977* appoints a specified person to be President of the Legal Aid Commission (A.C.T.) for three years commencing 9 August 2001.

Determination No. 209 of 2001 made under section 38 of the *Stadiums Authority Act 2000* provides for the Stadiums Authority to have formal possession of the

assets and liabilities of the Bruce Property Trust to complement its operational responsibility for the Stadium.

Determination No. 212 of 2001 made under section 144 of the *Domestic Animals Act 2000* determines that fees for the purposes of the Act shall be in accordance with the Schedule and are in addition to those in Instrument No. 149 of 2001.

Determination No. 215 of 2001 made under section 4 of the *Public Places Names Act 1989* amends a notice published in Commonwealth Gazette No. 52 of 21 July 1960 by including additional extension details of Flemington Road in the Division of Lyneham, Mitchell, Gungahlin and the District of Gungahlin.

Determination No. 238 of 2001 made under subsection 12 (1) of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to the roads or road related areas used or impinged on by any competing vehicle participating in a 'green' special stage of the Caltex Airport Starmart Rally on 18 August 2001.

Determination No. 239 of 2001 made under section 16 of the *Hotel School Act 1996* appoints a specified person as an alternate member of the Hotel School Board of the Australian Capital Territory until 15 April 2004.

Determination No. 240 of 2001 made under subsection 73 (1) of the *Dental Technicians and Dental Prosthetists Registration Act 1988* revokes all previous determinations of fees payable under the Act and determines fees in accordance with the Schedule.

Determination No. 241 of 2001 made under section 4 of the *Public Place Names Act 1989* determines public place nomenclature in the Division of Charnwood.

Determination No. 242 of 2001 made under subsection 3 (1) of the *Justices of the Peace Act 1989* appoints specified persons to be Justices of the Peace.

Determination No. 243 of 2001 made under subsection 32 (1) of the *Road Transport (General) Act 1999* issues the guidelines (*see* Schedule 1) for withdrawal of infringement notices that have been issued under the provisions of the Road Transport legislation listed in Schedule 2.

Determination No. 244 of 2001 made under regulation 57 of the Road Transport (Taxi Services) Regulations 2000 approves the taxi network accreditation standards to commence from 1 November 2001.

Determination No. 245 of 2001 made under section 139 of the *Taxation Administration Act 1999* revokes Instrument No. 151 of 2001 (notified in Gazette No. 26 on 28 June 2001) and determines the rates of duty payable under various provisions of the *Duties Act 1999*.

Determination No. 246 of 2001 made under section 232 of the *Duties Act 1999* revokes Instrument No. 193 of 2001 (notified in Gazette No. 30 on 26 July 2001) and determines the exemption guidelines for corporate reconstructions.

**Determination No. 247 of 2001 made under subsection 115G (1) of the *Duties Act 1999* determines exemption guidelines for certain voluntary transfers made under the *Financial Sector (Transfers of Business) Act 1999* (Cwlth) to take effect from the date of commencement of the *Duties Amendment Act 2001 (No 2)*.**

**Determination No. 248 of 2001 made under subsection 4 (2) of the *Duties Act 1999* determines the liability for payment of duty by Territory authorities or agents of the Territory to take effect from the date of commencement of the *Duties Amendment Act 2001 (No 2)*.**

**Determination No. 249 of 2001 made under section 96 of the *Road Transport (General) Act 1999* revokes Instrument No. 99 of 2001 (notified in Gazette S27 on 21 May 2001) and determines the fees payable, as specified in the Schedule, for transactions relating to vehicle registration under the *Road Transport (Vehicle Registration) Regulations 2000*.**

**Determination No. 250 of 2001 made under section 11 of the *Stadiums Authority Act 2000* appoints a specified person as a member of the Stadiums Authority Board for the period 1 July 2001 to 30 June 2002 inclusive.**

**Determination No. 251 of 2001 made under section 11 of the *Stadiums Authority Act 2000* appoints a specified person as a member of the Stadiums Authority Board for the period 1 July 2001 to 30 June 2002 inclusive.**

**Determination No. 252 of 2001 made under section 11 of the *Stadiums Authority Act 2000* appoints a specified person as a member of the Stadiums Authority Board for the period 1 July 2001 to 30 June 2002 inclusive.**

**Determination No. 253 of 2001 made under section 6 of the *Architects Act 1959* appoints specified persons to be the Chairperson and members of the Architects Board of the ACT.**

**Disallowable Instrument No. 254 of 2001 made under section 46 of the *Poisons and Drugs Act 1978* modifies the drugs and poisons standard current on 1 September 2001 by withdrawing entries listed in the attachment to the instrument.**

**Determination No. 255 of 2001 made under subsection 8 (2) of the *Radiation Act 1983* appoints a specified person to be a member of the Radiation Council for three years commencing 6 September 2001.**

**Determination No. 256 of 2001 made under section 10 of the *Long Service Leave (Cleaning, Building and Property Services) Act 1999* appoints a specified person to be a member of the Long Service Leave (Cleaning, Building and Property Services) Board commencing 6 September 2001 until 14 July 2003.**

**Determination No. 257 of 2001 made under section 11 of the *Long Service Leave (Cleaning, Building and Property Services) Act 1999* appoints a specified person**

to be an acting member of the Long Service Leave (Cleaning, Building and Property Services) Board commencing 6 September 2001 until 14 July 2003.

Determination No. 258 of 2001 made under paragraph 9A (2) (a) of the *Payroll Tax Act 1987* approves exemption from payroll tax to employers for the training of a person employed for the first time in an industry or occupation and receiving training for work in that industry or occupation.

Determination No. 259 of 2001 made under section 65 of the *Race and Sports Bookmaking Act 2001* determines the rates of tax for race and sports bookmaking.

Determination No. 260 of 2001 made under subsection 97 (1) of the *Race and Sports Bookmaking Act 2001* determines fees for the purposes of the Act.

Determination No. 261 of 2001 made under subsection 20 (1) of the *Race and Sports Bookmaking Act 2001* determines the events to be sports bookmaking events.

Determination No. 262 of 2001 made under subsection 23 (1) of the *Race and Sports Bookmaking Act 2001* determines the rules for sports bookmaking.

Determination No. 263 of 2001 made under subsection 22 (1) of the *Race and Sports Bookmaking Act 2001* makes directions for the operation of a sports bookmaking venue.

Determination No. 264 of 2001 made under subsection 21 (1) of the *Race and Sports Bookmaking Act 2001* determines the Winning Post Bar and Betting Ring to be a sports bookmaking venue.

Determination No. 265 of 2001 made under subsection 21 (1) of the *Race and Sports Bookmaking Act 2001* determines the Manuka Oval to be a sports bookmaking venue.

Determination No. 266 of 2001 made under subsection 21 (1) of the *Race and Sports Bookmaking Act 2001* determines the Acton Stand of the Canberra Racecourse to be a sports bookmaking venue.

Determination No. 267 of 2001 made under subsection 21 (1) of the *Race and Sports Bookmaking Act 2001* determines Bruce Stadium to be a sports bookmaking venue.

Determination No. 268 of 2001 made under subsection 21 (1) of the *Race and Sports Bookmaking Act 2001* determines the Bicentennial Room of the Canberra Racecourse to be a sports bookmaking venue.

Determination No. 269 of 2001 made under subsection 21 (1) of the *Race and Sports Bookmaking Act 2001* determines ACTTAB Limited Agencies to be a sports bookmaking venue.

**Determination No. 270 of 2001 made under subsection 21 (1) of the *Race and Sports Bookmaking Act 2001* determines ACTTAB Limited Sub-Agencies to be a sports bookmaking venue.**

**Determination No. 271 of 2001 made under subsection 21 (1) of the *Race and Sports Bookmaking Act 2001* determines ACTTAB Limited On-course Outlets to be a sports bookmaking venue.**

**Determination No. 272 of 2001 made under subsection 21 (1) of the *Race and Sports Bookmaking Act 2001* determines the ACTTAB Limited Caravan to be a sports bookmaking venue.**

**Determination No. 273 of 2001 made under subsection 21 (1) of the *Race and Sports Bookmaking Act 2001* determines the ACTTAB Limited Telebet Call Centre to be a sports bookmaking venue.**

**Disallowable Instrument No. 274 of 2001 made under section 4 of the *Public Place Names Act 1989* omits a street in the Division of City.**

**Disallowable Instrument No. 275 of 2001 made under section 4 of the *Public Place Names Act 1989* determines public place nomenclature in the Division of Watson.**

**Disallowable Instrument No. 276 of 2001 made under section 4 of the *Public Place Names Act 1989* determines public place nomenclature in the Division of Campbell.**

**Disallowable Instrument No. 277 of 2001 made under sections 28, 31, 48 and 50 of the *Radiation Act 1983* revokes Determination No. 289 of 2000 (notified in Gazette No. 35, dated 31 August 2000) and determines fees for various purposes of the Act to take effect on 1 October 2001.**

**Disallowable Instrument No. 278 of 2001 made under section 116 of the *Unit Titles Act 1970* revokes Determination No. 118 of 2001 (notified in S34, dated 20 June 2001).**

**Disallowable Instrument No. 279 of 2001 made under section 180 of the *Unit Titles Act 2001* determines the fees for the purposes of the Act in accordance with the Schedule.**

**Determination No. 280 of 2001 made under section 38 of the *Surveyors Act 2001* revokes the Survey Practice Directions 1996 issued by the Surveyors Board of the Australian Capital Territory on 20 December 1996 and approves the ACT Survey Practice Directions 2001.**

**Disallowable Instrument No. 281 of 2001 made under section 8 of the *Long Service Leave (Building and Construction Industry) Act 1981* appoints a specified person as Chairperson of the Long Service Leave (Building and Construction Industry) Board from 11 September 2001 until 27 February 2003.**

**Disallowable Instrument No. 282 of 2001 made under section 9 of the *Long Service Leave (Building and Construction Industry) Act 1981* appoints a specified person as an Acting Member of the Long Service Leave (Building and Construction Industry) Board from 11 September 2001 until 23 September 2004.**

**Disallowable Instrument No. 283 of 2001 made under section 8 of the *Long Service Leave (Building and Construction Industry) Act 1981* appoints a specified person as a Member of the Long Service Leave (Building and Construction Industry) Board from 11 September 2001 until 23 September 2004.**

**Disallowable Instrument No. 284 of 2001 made under section 8 of the *Long Service Leave (Building and Construction Industry) Act 1981* appoints a specified person as a Member of the Long Service Leave (Building and Construction Industry) Board from 11 September 2001 until 23 September 2004.**

**Disallowable Instrument No. 285 of 2001 made under section 9 of the *Long Service Leave (Building and Construction Industry) Act 1981* appoints a specified person as an Acting Member of the Long Service Leave (Building and Construction Industry) Board from 11 September 2001 until 23 September 2004.**

**Disallowable Instrument No. 286 of 2001 made under subsection 4 (2) of the *Mediation Act 1997* varies the Declaration of Approved Agencies made by Instrument No. 64 of 2000.**

**Disallowable Instrument No. 287 of 2001 made under sections 5 and 9 of the *Plumbers, Drainers and Gasfitters Board 1982* appoints specified persons to be members and deputy members of the Plumbers, Drainers and Gasfitters Board of the ACT for a period of three years from 13 September 2001.**

**Disallowable Instrument No. 288 of 2001 made under section 96 of the *Road Transport (General) Act 1999* determines that the fee payable for a taxi network authority in accordance with subregulation 57 (1) of the Road Transport (Taxi Services) Regulations 2000 made under the Act shall be six hundred dollars; and further determines that the annual fee payable for a taxi network authority issues in accordance with sub-regulation 57 (2) of the Road Transport (Taxi Services) Regulations 2000 shall be calculated on the basis of one hundred dollars for each taxi belonging to the network at the time the annual fee is to be paid.**

**Disallowable Instrument No. 289 of 2001 made under subsection 12 (1) of the *Construction Practitioners Registration Act 1998* makes a code of ethics to be observed by registered construction practitioners.**

**Disallowable Instrument No. 290 of 2001 made under section 4 of the *Public Place Names Act 1989* determines street nomenclature in the Division of Gungahlin.**

**Disallowable Instrument No. 293 of 2001 made under section 65 of the *Gas Safety Act 2000* revokes Determination No 138 of 2001 (notified in Gazette S34, dated 20 June 2001).**

**Disallowable Instrument No. 294 of 2001 made under section 165 of the *Environment Protection Act 1997* determines fees for the authorisation of sterilisation of clinical waste.**

**Disallowable Instrument No. 295 of 2001 made under paragraph 21 (1) (a) of the *Animal Diseases Act 1993* revokes Instrument No. 249 of 1997 and declares certain animals to be stock for the purposes of the Act.**

**Determination No. 296 of 2001 made under section 19 of the *Utilities Act 2000* gives a direction to the Independent Competition and Regulatory Commission to ensure that gas retailers and distribution networks operating in the ACT must participate in the Gas Market Company's gas market scheme or another scheme which the Commission deems to be equivalent, which comes into operation on 31 December 2001.**

**Disallowable Instrument No. 297 of 2001 made under subsection 226 (6) of the *Land (Planning and Environment) Act 1991* exempts certain developments from the requirement to provide a survey certificate with an application as specified in Schedule 1.**

**Disallowable Instrument No. 298 of 2001 made under paragraph 204 (a) of the *Land (Planning and Environment) Act 1991* approves the plan of management for the Lower Molonglo River Corridor.**

**Disallowable Instrument No. 299 of 2001 made under section 21 of the *Nature Conservation Act 1980* revokes Determination No. 192 of 1998 and declares that specified species, or community, to be vulnerable or endangered.**

**Disallowable Instrument No. 300 of 2001 made under section 12A of the *Roads and Public Places Act 1937* revokes Instrument No. 225 of 1999 and determines the Code of Practice in respect of the placement and keeping of movable signs in public places.**

**Disallowable Instrument No. 306 of 2001 made under subsection 30 (5) of the *Canberra Institute of Technology Act 1987* appoints a specified person to be Deputy Chairperson of the Canberra Institute of Technology Advisory Council until 31 July 2004.**

**Disallowable Instrument No. 307 of 2001 made under subsection 30 (5) of the *Canberra Institute of Technology Act 1987* appoints a specified person to be a member of the Canberra Institute of Technology Advisory Council until 31 July 2004.**

**Determination No. 308 of 2001 made under subsection 42 of the *Vocational Education and Training Act 1995* appoints a specified person as a member of the Accreditation and Registration Council until 31 December 2003.**

**Determination No. 309 of 2001** made under subsection 42 of the *Vocational Education and Training Act 1995* appoints a specified person as a member of the Accreditation and Registration Council until 31 December 2003.

**Disallowable Instrument No. 310 of 2001** made under section 64 of the *Building Act 1972* determines that the fee for the purpose of the Act shall be in accordance with the Schedule.

**Disallowable Instrument No. 311 of 2001** made under regulations 14AB and 15DB of the *Land (Planning and Environment) Regulations* establishes policy directions for determining remissions to be given of change of use charges.

**Disallowable Instrument No. 312 of 2001** made under section 4 of the *Public Place Names Act 1989* determines street nomenclature in the Division of Gordon.

**Disallowable Instrument No. 313 of 2001** made under subsection 4 (1) of the *Mediation Act 1997* varies the Declaration of Standards of Competency made by Instrument No. 65 of 2000 by adding that the standards of competency required for the registration of a person under section 5 do not apply to judicial officers or other officers of ACT courts.

**Disallowable Instrument No. 314 of 2001** made under section 251 of the *Public Sector Management Act 1994* approves the revoking and making of the Management Standards made by Instrument 1/1994 as subsequently amended, as set out in Schedule A to this Instrument.

**Disallowable Instrument No. 316 of 2001** made under section 4 of the *Public Place Names Act 1989* determines street nomenclature in the Division of Nicholls.

**Disallowable Instrument No. 317 of 2001** made under section 8 of the *National Exhibition Centre Trust Act 1976* appoints a specified person as a member of the National Exhibition Centre Trust until 9 September 2004.

**Disallowable Instrument No. 319** made under section 17 of the *Hotel School Act 1996* appoints a specified person as chairperson of the Board of Management of the Australian International Hotel School until 27 February 2003.

**Disallowable Instrument No. 320** made under subsection 21(1) of the *Race and Sports Bookmaking Act 2001* determines ACTTAB Limited agencies to be sports bookmaking venues.

**Disallowable Instrument No. 321** made under subsection 21(1) of the *Race and Sports Bookmaking Act 2001* determines ACTTAB Limited Sub-Agencies to be sports bookmaking venues.

**Determination No. 322 of 2001** made under section 4 of the *Public Place Names Act 1989* determines street nomenclature in the Division of Banks.

**Disallowable Instrument No. 324** made under subsection 21(1) of the *Tree Protection (Interim Scheme) Act 2001* appoints a specified person to advise the

**Conservator of Flora and Fauna from 10 October 2001 for one year about the exercise of functions under part 3 of the Act.**

**Disallowable Instrument No. 325 of 2001 made under section 4 of the *Public Place Names Act 1989* determines street nomenclature in the Division of Dunlop.**

**Disallowable Instrument No. 326 made under section 40 of the *University of Canberra Act 1989* amends the Courses and Awards Statute 1995 by adding new awards arising from the accreditation of new courses and the re-accreditation of existing courses in 2001.**

**Disallowable Instrument No. 327 made under section 96 of the *Road Transport (General) Act 1999* determines a system of fees for the accreditation of people to operate bus services.**

**Disallowable Instrument No. 329 of 2001 made under section 4 of the *Public Place Names Act 1989* determines street nomenclature in the Division of Gungahlin.**

**Disallowable Instrument No. 332 of 2001 made under section 4 of the *Public Place Names Act 1989* amends Determination No. 266 of 2000 by omitting a street name in the Division of Nicholls and inserting another in its place.**

**Disallowable Instrument No. 333 made under the *Legislative Assembly (Members' Staff) Act 1989* revokes Determinations Nos. 65 and 66 of 1998 and outlines the terms and conditions of employment of staff of the Speaker.**

**Disallowable Instrument No. 334 made under subsection 12(1) of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to certain roads or road related areas used or impinged on by any competing vehicle participating in a 'green' special stage of the 2001 AcTiles National Capital Rally on 27 October 2001.**

**Disallowable Instrument No. 336 made under subsection 12(1) of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to the roads or road related areas used or impinged on by any competing vehicle participating in a 'green' special stage of the 2001 Wizard Home Loans Rally on 24 November 2001.**

**Disallowable Instrument No. 337 made under section 4 of the *Public Place Names Act 1989* revokes Determination No. 322 of 2001 and determines street nomenclature in the Division of Banks.**

**Disallowable Instrument No. 338 of the *Legislative Assembly (Members' Staff) Act 1989* revokes Determination No. 170 of 2001 and outlines arrangements for the engagement of consultants and contractors by the Speaker of the Legislative Assembly.**

**Disallowable Instrument No. 339 made under subsection 12(1) of the *Road Transport (General) Act 1999* declares that the road transport legislation does not**

apply to the roads or road related areas used or impinged on by any competing vehicle participating in a ‘green’ special stage of the 2001 Rallye des Femmes on 8 December 2001.

Disallowable Instrument No. 340 of 2001 made under subsection 4 (2) of the *Mediation Act 1997* varies the Declaration of Approved Agencies made by Determination No. 286 of 2001.

Public Sector Management Standard No 4 of 2001 made under section 251 of the *Public Sector Management Act 1994* provides authority for the payment of ACT public servants for work performed as members of curriculum and assessment panels established by the Board of Senior Secondary Studies pursuant to section 5 of the *Board of Senior Secondary Studies Act 1997*.

#### Subordinate Legislation - Comment

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

Subordinate Law 2001 No 40 being the Building Regulations Amendment made under the *Building Act 1972* amends the Principal Regulations to deal with the effect of requirements for builders in the aftermath of the collapse of HIH Insurance. The amending regulations modify the process of obtaining insurance by allowing the builder to provide proof of insurance not before work begins but instead before the building certifier issues a certificate of completion for the building work. The modification will only apply if the builder owns the land when work begins.

Subordinate Law 2001 No 41 being the Building and Construction Industry Training Levy Regulations 2001 made under the *Building and Construction Industry Training Levy Act 1999* define a “qualified” valuer” for the purposes of the Act.

Subordinate Law 2001 No 42 being the Crimes Regulations 2001 made under the *Crimes Act 1900* narrow the definition of “knife” for the purposes of the Act; and provide greater flexibility, in appropriate circumstances, as to the signage which a retailer of knives must display about the prohibition on the sale of knives to persons under 16.

Subordinate Law 2001 No 43 being the Dangerous Goods Regulations Amendment made under the *Dangerous Goods Act 1975* amends the Principal Regulations to change the reference in the definition of “public vehicle” which is consequential to the *Road Transport (Public Passenger Services) Act 2001*.

Subordinate Law 2001 No 44 being the Road Transport (Driver Licensing) Regulations Amendment made under the *Road Transport (Driver Licensing) Act 1999* amends the Principal Regulations to ensure that overseas licence holders with a public vehicle driver endorsement and who wish to drive public passenger vehicles in the ACT, are required to apply for a public vehicle licence in the same way as ACT licence holders. The provisions also give recognition to

interstate public vehicle driver ‘authorities’, in addition to interstate public vehicle licences.

**Subordinate Law 2001 No 45 being the Road Transport (Public Passenger Services) Regulations 2001 made under the *Road Transport (Public Passenger Services) Act 2001* assist in providing for the consistent administration and enforcement of a bus operator accreditation system primarily aimed at safety and service delivery standards of benefit to the community.**

**Subordinate Law 2001 No 46 being the Road Transport Amendment Regulations 2001 made under the *Road Transport (General) Act 1999* amends the Principal Regulations to provide for the Public Passenger Services legislation in relation to reviewable decisions; refunds and dishonoured payments; and offence short titles and infringement penalty amounts.**

To which Subordinate Law do the explanatory statements refer?

The Committee notes that the explanatory statements for the above regulations identify the Regulations by name only. The Committee feels there is a need for these statements to identify the number of the Subordinate Law to which they refer.

**Subordinate Law 2001 No. 47 being the Maternal Health Information Regulations Repeal 2001 made under the *Health Regulation (Maternal Health Information) Act 1998* repeals the Maternal Health Information Regulations 1999 which removes from the pamphlet provided to women consideration abortion foetal pictures and descriptions.**

Is a Regulatory Impact Statement required?

The Committee queries whether the above subordinate legislation should have been accompanied by a Regulatory Impact Statement when it was tabled in the Assembly.

This issue is the subject of a general comment below.

A Regulatory Impact Statement is required if the Subordinate Law is likely to impose appreciable costs on the community or part of the community. The Committee seeks confirmation that a Regulatory Impact Statement was not required in this instance.

**Determination No. 221 of 2001 made under subsection 5 (1) of the *Health Professions Board (Procedures) Act 1981*, section 7 of the *Medical Act 1931* and paragraph 8 (1) (a) of the *Medical Practitioners Act 1931* appoints a specified person to be a member of the Medical Board of the ACT from 16 August 2001 until 30 June 2002.**

No consultation with relevant Committee

The Committee notes that the above Instrument gives no indication in the explanatory statement as to whether the required consultation in relation to this appointment has taken place with the relevant Committee.

Confusion in relation to which Acts the instrument is made under

The above instrument is headed “Health Professions Boards (Procedures) Act 1981 and Medical Act 1931”. The appointment is then made under the *Health Professions Boards (Procedures) Act 1981* and the *Medical Practitioners Act 1931*. Perhaps this Act should be the *Medical Practitioners Act 1930*? The Committee also questions the existence of the *Medical Act 1931*?

**Determination No. 216 of 2001 made under paragraph 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Dentists Act 1931* appoints a specified person to be Chairperson of the Dental Board of the ACT from 16 August 2001 until 30 June 2002.**

**Determination No. 217 of 2001 made under paragraph 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Dentists Act 1931* appoints a specified person to be a member of the Dental Board of the ACT from 16 August 2001 until 30 June 2002.**

**Determination No. 218 of 2001 made under paragraph 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Dentists Act 1931* appoints a specified person to be a member of the Dental Board of the ACT from 16 August 2001 until 30 June 2002.**

**Determination No. 219 of 2001 made under paragraph 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Dentists Act 1931* appoints a specified person to be a member of the Dental Board of the ACT from 16 August 2001 until 30 June 2002.**

**Determination No. 220 of 2001 made under subsection 5 (1) of the *Health Professions Board (Procedures) Act 1981* and paragraph 6 (2) (b) of the *Chiropractors and Osteopaths Act 1983* appoints a specified person to be a member of the Chiropractors and Osteopaths Board of the ACT from 16 August 2001 until 30 June 2002.**

**Determination No. 222 of 2001 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 7 (1) (a) of the *Optometrists Act 1956* appoints a specified person to be Chairperson of the Optometrists Board from 16 August 2001 until 30 June 2002.**

**Determination No. 225 of 2001 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 7 (1) (a) of the *Optometrists Act 1956* appoints a specified person to be a member of the Optometrists Board from 16 August 2001 until 30 June 2002.**

**Determination No. 226 of 2001 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Physiotherapists Act 1977* appoints a specified person to be Chairperson of the Physiotherapists Board from 16 August 2001 until 30 June 2002.**

**Determination No. 227 of 2001 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Physiotherapists Act 1977* appoints a specified person to be a member of the Physiotherapists Board from 16 August 2001 until 30 June 2002.**

**Determination No. 228 of 2001 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Physiotherapists Act 1977* appoints a specified person to be a member of the Physiotherapists Board from 16 August 2001 until 30 June 2002.**

**Determination No. 229 of 2001 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Physiotherapists Act 1977* appoints a specified person to be a member of the Physiotherapists Board from 16 August 2001 until 30 June 2002.**

**Determination No. 230 of 2001 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Physiotherapists Act 1977* appoints a specified person to be a member of the Physiotherapists Board from 16 August 2001 until 30 June 2002.**

**Determination No. 231 of 2001 made under subsection 5 (2) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 6 (1) (a) of the *Pharmacy Act 1931* appoints a specified person to be Chairperson of the Pharmacy Board of the Act from 16 August 2001 until 30 June 2002.**

**Determination No. 232 of 2001 made under subsection 5 (2) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 6 (1) (a) of the *Pharmacy Act 1931* appoints a specified person to be a member of the Pharmacy Board of the Act from 16 August 2001 until 30 June 2002.**

**Determination No. 233 of 2001 made under subsection 5 (2) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 6 (1) (a) of the *Pharmacy Act 1931* appoints a specified person to be a member of the Pharmacy Board of the Act from 16 August 2001 until 30 June 2002.**

**Determination No. 234 of 2001 made under subsection 5 (2) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 6 (1) (a) of the *Pharmacy Act 1931* appoints a specified person to be a member of the Pharmacy Board of the Act from 16 August 2001 until 30 June 2002.**

**Determination No. 235 of 2001 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Veterinary Surgeons Act 1965* appoints a specified person to be Chairperson of the Veterinary Surgeons Board from 16 August 2001 until 30 June 2002.**

**Determination No. 236 of 2001 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Veterinary Surgeons Act 1965* appoints a specified person to be a member of the Veterinary Surgeons Board from 16 August 2001 until 30 June 2002.**

**Determination No. 237 of 2001 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and section 6 of the *Veterinary Surgeons Act 1965* appoints a specified person to be a member of the Veterinary Surgeons Board from 16 August 2001 until 30 June 2002.**

No consultation with relevant Committees

The Committee notes that the above Instruments give no indication in the explanatory statements as to whether the required consultation in relation to these appointments has taken place with the relevant Committees.

**Disallowable Instrument No. 291 of 2001 made under sections 15 and 16 of the *Independent Pricing and Regulatory Commission Act 1977* is a reference to the Independent Pricing and Regulatory Commission to conduct an investigation into the determination of prices for taxi services within the Territory from 1 July 2002 and for the requirements in relation to the conduct of the investigation.**

Determination made under incorrect Act

The Committee notes that Determination No. 291 of 2001 has been made under an incorrect Act. The Committee also notes that earlier this year it commented on Determination No. 65 of 2001 which was also made under the *Independent Pricing and Regulatory Commission Act 1997*. In March 2000 the *Independent Pricing and Regulatory Commission Act 1997* was renamed the *Independent Competition and Regulatory Commission Act 1997* following the enactment of the *Independent Competition and Regulatory Commission Amendment Act 2000*. The Committee therefore queries the validity of this Determination.

**Disallowable Instrument No. 292 of 2001 made under subsection 13A (4) of the *Legislative Assembly (Members' Staff) Act 1989* determines reintegration assessment arrangements involving the Commissioner for Public Administration in relation to officers. These arrangements replace procedures involving the Commonwealth Merit Protection Commissioner.**

**Disallowable Instrument No. 305 of 2001 made under section 68 of the *Rehabilitation of Offenders (Interim) Act 2001* appoints a specified person as a Deputy Chairperson of the Sentence Administration Board of the Australian Capital Territory for three years.**

**Disallowable Instrument No. 318 of 2001 made under section 7 of the *Psychologists Act 1994* appoints specified persons to be Chairperson and members of the Psychologists Board for three years from 8 October 2001.**

To which Instruments do the explanatory statements refer?

The Committee is concerned at the number of instruments which do not include identifying Determination numbers on the explanatory statements. Should the documents become separated a missing Determination number could lead to identification problems.

**Disallowable Instrument No. 301 of 2001 made under subsection 112 (1) of the *Residential Tenancies Act 1997* appoints a specified person as President of the Residential Tenancies Tribunal from 26 November 2001 until 25 November 2004.**

**Disallowable Instrument No. 302 of 2001 made under subsection 113 (1) of the *Residential Tenancies Act 1997* appoints a specified person as Acting President of the Residential Tenancies Tribunal from 26 November 2001 until 25 November 2004.**

**Disallowable Instrument No. 303 of 2001 made under subsection 112 (5) of the *Residential Tenancies Act 1997* appoints a specified person to be a member of the Residential Tenancies Tribunal from 26 November 2001 until 25 November 2004.**

**Disallowable Instrument No. 304 of 2001 made under subsection 112 (5) of the *Residential Tenancies Act 1997* appoints a specified person to be a member of the Residential Tenancies Tribunal from 26 November 2001 until 25 November 2004.**

To which Instruments do the explanatory statements refer?

The Committee is concerned at the number of instruments which do not include identifying Determination numbers on the explanatory statements. Should the documents become separated a missing Determination number could lead to identification problems.

No consultation with relevant Committee

The Committee notes no indication has been given in the explanatory statements as to whether the required consultation in relation to these appointments has taken place with the relevant Committee.

**Disallowable Instrument No. 315 of 2001 made under subsection 4 (1) of the *Commissioner for the Environment Act 1993* appoints a specified person as Commissioner for the Environment for the period of six months commencing from 15 December 2001 and under subsection 4 (2) determines the terms and conditions under which the Commissioner holds office.**

Is the appointment for six months or 18 months?

The Committee notes that the above instrument appoints a Commissioner for the Environment for a period of six months, however the explanatory statement states that the appointment is a reappointment for a further 18 months from the conclusion of his current term on 15 December 2001.

**Disallowable Instrument No. 323 made under clause 6 of the Schedule to the *Auditor-General Act 1996* appoints a specified person to act as Auditor-General for the period 14 September 2001 to 13 September 2002.**

No explanatory statement

The Committee notes that no explanatory statement has been provided with the above instrument. As indicated previously the Committee considers that explanatory statements are necessary to explain to both Members and the general public details of the operation of the relevant law. Explanatory statements are also useful in determining whether the relevant committee has been consulted pursuant to the *Statutory Appointments Act 1996*.

**Disallowable Instrument No. 328 made under subsection 193B(1) of the *Drugs of Dependence Act 1989* specifies the procedures for the handling, preservation and destruction of cannabis.**

No explanatory statement

The Committee notes that no explanatory statement has been provided with the above instrument. As indicate previously the Committee considers that explanatory statements are necessary to explain to both Members and the general public details of the operation of the relevant law.

**Disallowable Instrument No. 330 of 2001 made under section 8 of the *National Exhibition Centre Trust Act 1976* appoints a specified person as a member of the National Exhibition Centre Trust until 31 October 2004.**

**Disallowable Instrument No. 331 of 2001 made under section 8 of the *National Exhibition Centre Trust Act 1976* appoints a specified person as a member of the National Exhibition Centre Trust until 31 August 2004.**

Are these instruments disallowable?

The Committee notes that the explanatory statements give no indication as to whether or not the persons appointed as members are public servants. An instrument appointing a public servant is not a disallowable instrument under paragraph 6 (a) of the *Statutory Appointments Act 1994*.

**Appointments to the Racing Appeals Tribunal**

**Appointments made under subsection 40 (2) and subsection 42 (4) of the *Racing Act 1999* of specified persons as President, Deputy President, members and assessors of the Racing Appeals Tribunal for a period of three years commencing 7 September 2001.**

Possible incorrect manner of gazettal

The Committee draws attention to the manner of gazettal of these appointments. The appointments appear to be disallowable instruments under section 4 of the *Statutory Appointments Act 1994*, however were notified in Gazette S68, dated 7 September 2001 as notices of appointments.

## **REGULATORY IMPACT STATEMENTS**

Section 34(1) of the *Legislation Act 2001* provides that if a proposed subordinate law or disallowable instrument is “likely to impose appreciable costs on the community, or a part of the community”, then, before the proposed law is made, the relevant Minister must “arrange for a regulatory impact statement to be prepared for the proposed law”.

By section 37, where an RIS has been prepared and the proposed law has been made, the RIS “must be presented to the Legislative Assembly with the subordinate law or disallowable instrument”.

The Committee notes that the administering Minister may exempt a proposed law from these requirements, (section 34), and that, under section 36, an RIS is not necessary in various exceptional circumstances.

These obligations came into effect on the 14 September 2001, the date of commencement of the Act, The Committee notes that section 33 provides that the Minister who administers the *Legislation Act* “may” issue guidelines to assist a determination whether a proposed law would ‘impose appreciable costs, etc’. These guidelines must be made within 6 months after the commencement of section 33. The Committee takes the view that the obligations imposed by section 34 and other relevant provisions arise whether or not guidelines have been made.

Against this background, the Committee notes that a number of the subordinate laws or disallowable instruments considered by the Committee were made after 14 September 2001. In no instance is there any indication in the relevant Explanatory Memorandum as to whether consideration was given to the need to comply with the provisions of the Act concerning preparation of an RIS. This would involve consideration of whether an obligation arose, including, where relevant, reference to any exemption, or to any reason why an exception applies.

The Committee considers that an Explanatory Memorandum should address these issues in relation to a subordinate law or a disallowable instrument that has been tabled in the Assembly, or is proposed to be tabled.

## **INTERSTATE AGREEMENTS**

There is no matter for comment in this report.

## **GOVERNMENT RESPONSES**

There is no matter for comment in this report.

Bill Stefaniak MLA  
Chair

19 February 2002

