

**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. 19

20 SEPTEMBER 2002



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

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(PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND
SUBORDINATE LEGISLATION COMMITTEE)**

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

**MR WAYNE BERRY, MLA
SPEAKER
LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
CANBERRA ACT 2601**

DEAR MR SPEAKER

**PLEASE FIND ENCLOSED A COPY OF REPORT NO. 19 OF THE
STANDING COMMITTEE ON LEGAL AFFAIRS (PERFORMING THE DUTIES
OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION
COMMITTEE). UNDER ITS RESOLUTION OF APPOINTMENT, THE
COMMITTEE IS EMPOWERED TO SEND A REPORT TO YOU WHILE THE
ASSEMBLY IS NOT SITTING SO THAT YOU MAY GIVE DIRECTIONS FOR ITS
PRINTING, CIRCULATION AND PUBLICATION. I SEEK YOUR APPROVAL
TO PRINT, PUBLISH AND CIRCULATE REPORT NO. 19.**

YOURS SINCERELY

**BILL STEFANIAK MLA
CHAIR**

SEPTEMBER 2002

**APPROVED
WAYNE BERRY MLA
SPEAKER**

SEPTEMBER 2002

TERMS OF REFERENCE

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

LEGAL ADVISER: MR PETER BAYNE
SECRETARY: MR TOM DUNCAN
(SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)
ASSISTANT SECRETARY: MS CELIA HARSDORF
(SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)

ROLE OF THE COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

BILLS

Bills - No Comment

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

Community Referendum Bill 2002

This is a Bill to provide a mechanism for electors of the Australian Capital Territory to initiate changes to ACT laws.

Electoral Amendment Bill 2002

This is a Bill to amend the *Electoral Act 1992* to provide for the timing of a redistribution after the ordinary election held on 20 October 2001.

Mental Health (Treatment and Care) Amendment Bill 2002

This is a Bill to amend the *Mental Health (Treatment and Care) Act 1994* to permit an order of the Mental Health Tribunal to be stayed until an appeal to the Supreme Court is heard and decided.

Workers Compensation Supplementation Fund Amendment Bill 2002

This is a Bill to amend the *Workers Compensation Supplementation Fund Act 1980* to provide for the collection of a surcharge on workers compensation premiums over the course of a year, rather than on an annual basis.

Bills - Comment

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

Introduction

Three of the Bills under review would have the effect, in various ways, of reducing the ability of a person who is injured through the negligence of another to recover damages according to the existing common law of negligence. The general rights problem raised by each of the Bills needs to be outlined at the outset. The three Bills referred to are:

Adventure Activities (Liability) Bill 2002 Civil Law (Wrongs) Bill 2002, and Injuries Compensation Framework Bill 2002

A person who suffers injury - and in particular personal injury - may face a significant change in their lifestyle. If they cannot work they may lose all their income, and the consequent effect on them and their family may be severe. The result may be that their only future income support, and only

means of finding a place to live, will be under some welfare scheme. Personal injury may also affect the person's quality of life in many ways. Even if they retain their pre-injury mobility, they may be in pain when undertaking some activities. Disfigurement and the like may affect their personal life.

A person who suffers an injury will not in many circumstances be able to recover compensation from another person, or from some body funded by government. A person struck by lightning will generally not be able to recover compensation, for in most circumstances no human agency has been involved in bringing about the injury, or exposing the injured person to the risk of that injury. An English expert estimates that 80% of incapacities are not compensable: see P Atiyah, *The Damages Lottery* (1997) at 100.

Over time, there have evolved certain common law remedies for an injured person. The basic rule is that where P (plaintiff) is injured as a result of the negligence of D (defendant), P may recover compensation from D. P must therefore prove that D was under a duty to take care for the safety of P; that D failed to take such care as was reasonable in the circumstances; and that this failure to take care was the cause of P's injuries.

The basic rule governing the extent of compensation is that the damages - the monetary sum - awarded should, so far as possible, place P in the same position as he or she would have been if D had not negligently injured P. This requires a court to anticipate the losses P will suffer over time. For example, the court will assess the income that P would have earned through P's working in some form of employment over the remainder of P's working life.

In the absence of a 'national insurance scheme', these principles are the basis on which persons may recover compensation. Over time, the common law remedies have generally been added to by legislation. In some circumstances, the injured person may recover compensation even though he or she cannot prove that some other person caused their injury through negligence. This is usually achieved by requiring certain types of persons - such as employers - to take out insurance to cover themselves against liability for certain kinds of claims - such as claims by employees injured while working for the employers. The law then makes the person insured liable to compensate the person injured irrespective of whether the employer was negligent by reference to some other matters - such as that the injury to an employee occurred simply when the employee was in the course of their employment, or that the injury arose out of something the employee was doing at work. The examples given describe of course the scheme for worker's compensation that has existed for a long time. These schemes are quite complex, and incorporate 'fail-safe' devices to cover the case where the person who is liable has failed to take out insurance. Such schemes usually 'cap' the amounts that may be obtained by the injured person. They are still, however, far more generous than what would be available to the injured person from a welfare support scheme.

Such schemes can produce anomalous results. A worker playing sport during a meal break, in particular where the employer sanctions such activity, can recover if struck by lightning while on the playing field. The same person could not generally recover any compensation if the injury occurred out of work hours and on an occasion completely unrelated to their work.

The existing law concerning rights to recover compensation - whether at common law or under some statutory extension - may be considered to be 'rights' such that a restriction of them is a matter that the Committee should address and make report to the Legislative Assembly. In a fundamental and functional sense, it could be said that the rights to compensation are rights to property. In particular, for many people their only source of income is their labour.

The Assembly may be aware that when changes to ACT law affect the ability of a person to maintain an action for recovery of compensation, there may be an issue as to whether the law should also provide just terms compensation for removal of the ability to sue. (A legal case raising this issue is currently before the courts). This legal restraint on the legislative power of the Assembly derives from section 23(1)(a) of the *Australian Capital Territory (Self-Government) Act 1988*, which provides that the Assembly has no power to make laws with respect to "the acquisition of property except on just terms". While these Bills do not raise this issue, the Assembly must, however, always be conscious of this limitation on its power.

In particular, it should be appreciated that to remove existing rights to compensation may well have the effect of reducing to poverty some people who would otherwise have had the means to be compensated.

Of course, it may be said that we can all take out some form of personal accident insurance to cover against the risk of being injured. On the other hand, it may also be said that those who engage in activity that may cause injury may take out insurance to cover against liability.

These comments are designed only to draw to the attention of the Assembly the fact that laws that reduce the existing rights to compensation will have an effect on rights. The issue is whether there is a countervailing justification for the reduction.

Adventure Activities (Liability) Bill 2002

This is a Bill for an Act to regulate compensation payable in relation to the death or injury of people taking part in certain adventure activities.

The Explanatory Memorandum does not explain the scheme, and a short explanation is necessary. The core provisions are in clause 19. An "adventure activity" for the scheme is such an activity that has been approved as such (by the Minister), and has been conducted by an approved operator. A person who dies or is injured while taking part in such an activity "is not entitled to recover damages in a proceeding in relation to the death or injury" (subclause 19(2), and presumably the reference is to

some other person where the relevant person has died). Other provisions of the Bill then qualify this prohibition.

The Bill (see in particular clauses 28 and 29) then does provide a scheme for a person injured while taking part in an (approved) “adventure activity” to recover some compensation. The person may make a claim only in respect of a serious injury, but not where the insurer notifies the person that the degree of their impairment is less than 30%. In making a claim, the person must follow a certain procedure. Provisions of the Act regulate the amount that may be awarded in respect of economic loss.

It is important to note that a person conducting an “adventure activity” is not obliged to seek approval from the Minister. Where, however, they do not do so, their liability will be assessed according to the law as it applies apart from the scheme in the Bill. Such an operator might find it difficult to obtain insurance against liability, and if they do, their premiums would probably be higher. On the other hand, a person conducting an approved “adventure activity” might find it harder to attract custom if there is a non-approved operator in competition.

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

See the introductory comments above.

This scheme would greatly curtail the existing rights of a person injured through the negligence of an adventure activity operator. It will also affect the person’s rights under a contract with the operator. (It should, however, be noted first that subclause 19(2), could not prevail over inconsistent Commonwealth laws, such as the *Trade Practices Act 1974*, nor could it affect the operation of State laws. In this way, clause 19 gives a misleading impression of what would be its effect.)

Para 2(c)(iii) - review of administrative decisions

Paragraph 28(2)(a) provides that “the injured person may not bring a proceeding under this part if the insurer has notified the injured person that – (a) the degree of impairment of the injured person is less than 30%; ...”.

It is not clear how an injured person could challenge any such notification. The notification appears to have the effect that the injured person could not recover any damages.

Paragraph 28(3)(b) permits the displacement of para 28(2)(a) where, on the application of the injured person, a court gives leave to bring a proceeding. Notwithstanding subclause 28(5), which merely states that the court must not grant leave unless satisfied the injury is a serious injury, no guidance is given to the court as to the basis on which the discretion in 28(3)(b) might be exercised.

Para 2(c)(iv)- inappropriate delegation of legislative power

The Committee draws attention to the effect of subclause 18(1), which is that “the AMA guides” are incorporated into ACT law. The reference is to “the American Medical Association’s Guides to the Evaluation of Permanent Impairment (4th edition) (other than chapter 15)”. There is a further incorporation of some 1997 Clinical Guidelines prepared by the Medical Panel (Psychiatry) Melbourne, Victoria October 1997 and published in the Victorian Government Gazette (see subclause 18(4)).

Civil Law (Wrongs) Bill 2002

This Bill would consolidate and re-enact various reforms to the law of torts that have been made over a long period; would make some further reforms to tort law; and make other technical and procedural changes.

The Explanatory Memorandum

The Explanatory Memorandum to this bill does not conform to what has generally been the detail and explanation given in other Explanatory Memorandums. This Explanatory Memorandum does not attempt to explain the provisions clause by clause, and in cases where some explanation of how the law might work, there is none.

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

The modification of liability in negligence

See the introductory comments above. The Committee notes again that while existing rights to sue in negligence are important rights, as a matter of policy there may well be a case to diminish this right in some respect. In other words the issue will be whether the trespass on this right is undue.

In a number of ways, the provisions of the Bill would curtail the existing rights of a person injured through the negligence of another to recover compensation.

Good Samaritan provisions. The provisions of Part 2.1 would have the effect that the person injured could not recover damages where the person causing the injury was:

- A "good Samaritan", being
 - (a) a person who, acting without expectation of payment or other consideration, comes to the aid of a person who is in apparent need of emergency medical assistance; or
 - (b) a medically qualified person who, acting without expectation of payment or other consideration, gives advice by telephone or another form of telecommunication about the treatment of a person who is in apparent need of emergency medical assistance; AND

- Where that person acted (or failed to act) "honestly and without recklessness in assisting, or giving advice about the assistance to be given to, a person in apparent need of emergency medical assistance".

Of course the person injured might recover compensation of some kind in some way, such as if they carried their own 'first-party' insurance, or if their injury was covered by workers compensation law, but the effect of the provision in Part 2.1 is that in the circumstances described, the person cannot recover damages in negligence from the "good Samaritan".

Volunteers. Part 2.2 of the Bill provides protection against civil liability to "volunteers". The Explanatory Memorandum summarises the provisions of Part 2.2, but it does not attempt to provide examples of how the scheme would operate. If examples are pursued, it seems apparent that the scheme may have a very wide effect, and afford protection to many people who, in ordinary usage, would not be regarded as volunteers.

A person (a "volunteer") who

- carries out work,
- for a purpose described in clause 7
- on a voluntary basis

is protected against civil liability "for an act done or omission made honestly and without recklessness while carrying out community work for a community organisation" (subclause 8(1)). (There are certain limitations to this protection: see subclause 8(2)).

One matter to be noted is that these amendments would not cover a person who volunteered her or his labour or services as a 'sole volunteer'. These amendments will protect only those volunteers who carry out work for a community organisation.

There is no limit to what kinds of bodies may be community organizations. This concept is defined simply to mean "an entity that directs or coordinates the carrying out of community work by volunteers" (clause 6).

It is to be noted that the purposes described in para 7(1)(a) include "sport, recreation and amusement", and "a political purpose". There is a very broad category in subpara 7(1)(a)(viii):

"(viii) protecting or promoting the common interests of the community generally or a particular section of the community".

It is also to be noted that these categories may be extended by the Minister making a regulation to that effect under para 7(1)(b). (This raised a question as to whether it is, in such a critical respect, appropriate to delegate legislative power to the Minister.)

(There are certain limitations on what activity may qualify as "community work": see subclause 7(2)).

The great breadth of the purposes described in para 7(1)(a) raises the issue of what will constitute "work" for any one or more of those purposes. It is apparent that it is

not intended that the person receive any remuneration for what he or she does. In this context, "work" may mean any kind of activity that furthers the purpose of the relevant "community organisation".

Thus a person engaged in work for a "political purpose", on behalf of an organisation that directed or coordinated the carrying out of that work, might not be liable where her or his work causes some damage to another - such as might occur where a street demonstration causes a loss of business, or some physical damage, to persons of property - so long as the act was done "honestly and without recklessness".

The protection afforded by subclause 8(1) might also apply where (on behalf of an organisation, etc) a person engaged in work for the purpose of recreation - say the playing of some organised game in a park - injured another - say a passing stranger enjoying the park - by an act done "honestly and without recklessness".

It is noted that the civil liability to the injured person that would be borne by the volunteer apart from the operation of the provisions just described is, subject to some exceptions, shifted to a "community organisation". It is far from clear whether that would be an adequate substitute. One particular concern is what is to occur if the relevant "community organisation" is not insured against liability?

The Minister "may" give directions to "community organisations" about "the taking out of insurance", (subclause 11(1)), but there is no apparent sanction for non-compliance, even if there is a direction in place. Under clause 10, the Territory may assume liability of community organisations and of volunteers, but it has no obligation to do so.

Damages: general exclusions and limitations about damages.

Clause 34: Exclusion of liability if conduct an offence

Clause 34 provides:

- (1) Liability for damages is excluded if the court—
 - (a) is satisfied beyond reasonable doubt that the accident happened while the injured person was engaged in conduct that is an indictable offence; and
 - (b) is satisfied on the balance of probabilities that the injured person's conduct contributed materially to the risk of injury.

- (2) Despite this exclusion, the court may award damages in a particular case if satisfied that—
 - (a) the circumstances of the case are exceptional; and
 - (b) in the circumstances of the case, the exclusion would operate harshly and unjustly.

There may well be debate as to whether this provision affects the rights of the person engaged in the conduct, and, if so, whether there would be any undue trespass on those rights. The Committee notes that the Explanatory Memorandum does not attempt to illustrate how this provision might work by giving examples. It considers

that debate in the Assembly would be assisted if illustrations of how clause 34 would and would not operate to deprive a person of compensation.

There is another rights dimension to clause 34. The requirement that the court deciding on civil liability be "satisfied beyond reasonable doubt that the accident happened while the injured person was engaged in conduct that is an indictable offence" raises a number of issues:

- Would the law of evidence applicable to a criminal proceeding - which in its essentials is designed to give protection to the rights of an accused - apply in his instance?
- Would it be necessary (it would appear not) for the civil court to be of a kind that would have jurisdiction to determine whether the person committed the relevant indictable offence?
- How could it be determined what kind(s) of indictable offence(s) were to be considered?
- Should the person be given some particulars of the relevant indictable offence(s) before the civil trial commences?
- Would a finding of the civil court that the person had committed indictable offence be to their prejudice were they to be charged with that offence?

Clause 38: Damages for loss of earnings

Clause 38 in part provides:

(1) In assessing damages for loss of earnings in relation to a claim, the court must disregard earnings above the limit mentioned in subsection (2).

(2) The limit is 3 times average weekly earnings a week.

This provision appears to state a general rule about the extent of damages for loss of earnings. It is a fundamental reform of the law of damages, and while it may well be desirable as a matter of policy, the Committee notes that it does not appear to be referred to at all in the Explanatory Memorandum.

Occupiers liability

Part 8.1 (clause 101) replaces the common law principles about recovery of damages from occupiers of land where a person is injured on the land. This provision appears to state the common law as it is currently understood in Australia, and does not represent either an extension or a diminution of liability.

There is always a danger that legislative provisions that state the effect of the common law will, in time, state the law in a way that in effect leaves it 'behind' the common law. This raises a rights issue to the extent that the result may well be to complicate the law where in a particular action the law of another Australian jurisdiction that has adhered to the common law might potentially apply to the situation. This would raise a 'conflicts of law' issue that would be costly to resolve.

The costs of resort to court

Part 11.1 of the Bill would enact a scheme the purposes of which is "to enable a court or tribunal to refer matters for neutral evaluation" (subclause 125(1)).

One issue with schemes that require parties to divert time and costs into neutral evaluation is that it may simply impose on them costs that they (or one of them), cannot afford to bear. In turn, this might lead to abandonment of claims that, if they were allowed to proceed through the relevant tribunal or court, could be afforded.

The more general point here is that when a tribunal or a court requires parties to conduct themselves in certain ways, the effect is often to impose costs on the parties. Yet the tribunal or court is not accountable for those costs, and the "who pays" question is a very real one. If it is the parties, then some of them may not be able to afford the extra cost, and thus may be forced to abandon, or compromise, their claims.

Para 2(c)(iv)- inappropriate delegation of legislative power

There is a limited Henry 8th provision in clause 161. The Committee does not see a major issue here, but any such provision should be justified.

Drafting point

The reference in subclause 120(1) to section 121 should perhaps be to section 122.

Injuries Compensation Framework Bill 2002

This is a Bill to institute a 'no-fault' system in respect of certain kinds of injuries.

The Explanatory Memorandum

The Explanatory Memorandum to this Bill does not conform to what has generally been the detail and explanation given in other Explanatory Memorandums. This Explanatory Memorandum does not attempt to explain the provisions clause by clause, and in cases where some explanation of how the law might work, there is none.

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

See the introductory comments above. In broad terms, a number of rights issues are raised.

Limitation to injuries on commercial premises. It is not clear why the scheme is limited in this way. Its effect is to set up/create a scheme that will benefit only certain classes of persons, where there is no apparent justification for so doing.

Penalty provisions. Some exclusions from compensation (see in particular clause 55, concerning losses related to HIV infection or AIDS) require justification, and raise some significant rights issues.

Common law remedies. It is far from clear from Part 16 just how the Bill would affect common law claims.

Procedure for payment of compensation. The provisions of Part 17 appear to be an ouster of the jurisdiction of the courts. It is hard to follow how an appeal would get to the Magistrates Court under clause 160.

Prostitution Amendment Bill 2002

This Bill would amend the *Prostitution Act 1992* to introduce new offence provisions and to extend the registration notice requirements of the Act.

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

Clause 26 of this Bill would insert a new subsection 19(7A) in the *Spent Convictions Act 2000* (Cth) to the effect that section 16 of that act would not apply to a notice or police report under Part 2 of the *Prostitution Act 1992*. The Explanatory Memorandum explains that the purpose of this clause is to ensure that persons with past serious criminal offences must, despite the general rule stated in section 16, disclose all their previous criminal convictions when applying for registration of a brothel or escort agency.

Paragraph 16(a) of the *Spent Convictions Act 2000* (Cth) provides that “If a conviction of a person is spent – (a) the person is not required to disclose information about the spent conviction to anyone: ...”. (This Act permits a law of the ACT to derogate from its provisions.)

The principles of the *Spent Convictions Act 2000* (Cth) are regarded as important protections of the privacy of persons, and the Committee draws the derogation from the principle in para 16(a) to the attention of the Assembly, noting the explanation given in the Explanatory Memorandum.

Subordinate Legislation - No Comment

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

Subordinate Law SL2002—15 being the Domestic Animals Amendment Regulations 2002 (No 1) made under the *Domestic Animals Act 2000* amends Schedule 1 of the Domestic Animals Regulations 2001 to add to the list of offences under the Act that can be proceeded with by way of infringement notice the offence of taking a dog into a prohibited area.

Subordinate Law SL2002—16 being the Supreme Court Amendment Rules 2002 (No 1) made under section 36 of the *Supreme Court Act 1933* amends the Supreme Court Rules by amending and inserting new rules.

Subordinate Law SL2002—18 being the Low-alcohol Liquor Subsidies (Expiry) Regulations 2002 made under the *Low-alcohol Liquor Subsidies Act 2000* provides for the expiry of section 5 (1) of the Act on 30 June 2002. A National Excise

Concession Scheme for Low-alcohol Beer commenced on 1 July 2002 and replaces the various State/Territory schemes. Under the national scheme, low-alcohol beer is defined as having an alcohol content of 3% per volume of less. Liquor wholesales will no longer need to lodge periodic rebate claims for their sales in individual jurisdictions.

Subordinate Law SL2002—19 being the Leases (Commercial and Retail) Regulations 2002 made under the *Leases (Commercial and Retail) Act 2001* prescribes types of premises for the purposes of the Act; prescribes specific leases excluded under the Act; and establishes a number of standard provisions for the purposes of the Act.

Subordinate Law SL2002—20 being the Workers Compensation Regulations 2002 made under the *Workers Compensation Act 1951* provides for modern methods of medical assessment, rehabilitation and dispute resolution. The Regulations also provide for the approval of appropriate insurers, self-insurers and rehabilitation providers.

Subordinate Law SL2002—21 being the Workers Compensation Rules 2002 made under the *Workers Compensation Act 1951* repeals the Workers' Compensation Rules made in 1938 and replaces them with the Workers Compensation Rules 2002 which reflect the changes in the recent amendments to the Workers Compensation Act and regulations. Matters coming before the court will now come by way of application. Where disputes arise the parties will be brought together early by the court at a Case Management Meeting where the court will encourage the parties to settle the matter. Should the parties fail to settle the matter at a Case Management Meeting, the court will ensure the prompt settlement of a dispute by arbitration.

Subordinate Law SL2002—22 being the Electoral Amendment Regulations 2002 (No 1) made under the *Electoral Act 1992* inserts a new regulation 5 which names the ActewAGL retail partnership as a prescribed entity under section 67 of the Act.

Disallowable Instrument DI 2002—57 being the Government Procurement (Approved Procurement Units) Guideline 2002 (No 1) made under section 7 (1) of the *Government Procurement Act 2001* makes a procurement guideline prescribing policies and practices that must be observed in the procurement of goods, services and works.

Disallowable Instrument DI 2002—58 being the **Government Procurement (Principles) Guideline 2002 (No 2)** made under section 7 (1) of the *Government Procurement Act 2001* makes a procurement guideline prescribing policies and practices that must be observed in the procurement of goods, services and works.

Disallowable Instrument DI 2002—59 being the **Rates & Land Tax (Objection Fees) Determination 2002** made under section 36 of the *Rates and Land Tax Act 1926* revokes Determination No. 176 of 1999 (notified in Gazette No. 28, dated 14 July 1999) and determines for the purposes of sections 22GE(1), 22GE(1A), 22GV (2), 28C(2) and 30(2) of the Act that the fee to accompany an application to object to an assessment, decision or determination regarding land tax shall be \$50 and applies on and from 1 July 2002. The objection fee for the purpose of section 29 (1) has been reduced from \$50 to \$20.

Disallowable Instrument DI 2002—60 being the **Financial Management Amendment Guidelines 2002** made under section 67 of the *Financial Management Act 1996* amends the Financial Management Guidelines made on 18 December 2001.

Disallowable Instrument DI 2002—61 being the **University of Canberra Act 1989 Courses and Awards Amendment Statute 2002** made under sections 40 and 42 of the *University of Canberra Act 1989* amends the Courses and Awards Statute 1995 to add new awards arising from the accreditation of new courses and re-accreditation of existing courses in 2001 and 2002.

Disallowable Instrument DI 2002—64 being the **Vocational Education and Training (Fees) Determination 2002 (No 1)** made under section 67 of the *Vocational Education and Training Act 1995* revokes Determination No. 166 of 2001 (notified in Gazette S40, dated 29 June 2001) and determines fees for the purpose of the Act.

Disallowable Instrument DI 2002—65 being the **Adoption (Fees) Determination 2002 (No 1)** made under section 118 of the *Adoption Act 1993* revokes Determination No. 162 of 2001 (notified in Gazette S40, dated 29 June 2001) and determines the adoption fees payable for the purpose of the Act.

Disallowable Instrument DI 2002—66 being the **Taxation Administration (Payroll tax provisions) Approved Special Arrangements 2002 (No 1)** made under section 42 of the *Taxation Administration Act 1999* extends the time by which the employers must lodge a return for June 2003 from 7 July 2003 to 31 July 2003. The returns now also incorporate the 2002-2003 annual reconciliation.

Disallowable Instrument DI 2002—68 being the **Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2002 (No 2)** made under section 21 (1) of the *Race and Sports Bookmaking Act 2001* determines the ACTTAB Ltd agencies set out in the Schedule to be sports bookmaking venues.

Disallowable Instrument DI 2002—69 being the Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2002 (No 3) made under section 21 (1) of the *Race and Sports Bookmaking Act 2001* approves the areas within a 1 metre radius of any selling terminal, owned and operated by ACTTAB Limited and located within the places identified in the attached schedule. A selling terminal is defined as a SELPOS or AMTOTE AT 1000 selling terminal.

Disallowable Instrument DI 2002—90 being the Duties Determination 2002 (No 1) made under section 4 (2) of the *Duties Act 1999* revokes Determination No. 248 of 2001 (notified in Gazette S61, dated 23 August 2001) and determines the following Territory authorities or agents of the Territory are liable to duty:

- **ACTEW Corporation Limited**
- **ACTEW Distribution Limited**
- **ACTEW Retail Limited**
- **ACTEW Investments Pty Limited**
- **ACTEW China Pty Limited**
- **ACT Forests**
- **ACTION Authority**
- **ACTTAB Limited**
- **Australian International Hotel School**
- **Canberra Cultural Facilities Corporation**
- **Canberra Tourism and Events Corporation**
- **CIT Solutions**
- **Exhibition Park in Canberra**
- **Gungahlin Development Authority**
- **InTACT**
- **Totalcare Industries Limited**
- **Kingston Foreshore Development Authority**
- **Stadiums Authority**
- **Cityscape Services**
- **Canberra Public Cemeteries Trust**
- **Yarralumla Nursery**

Disallowable Instrument DI 2002—91 being the Road Transport (General) – Declaration that the road transport legislation does not apply to certain roads and road related areas 2002 (No. 4) made under section 12 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 2002 Dell Classic Stages Rally on 29 June 2002.

Disallowable Instrument DI 2002—92 being the Electoral Act – Combined Determination of Fees 2002 made under section 8 of the *Electoral Act 1992* revokes Determination No. 150 of 2001 (notified in Gazette No. 26, dated 28 June 2001) and DI2002—45 (notified in the Legislation Register on 21 May 2002) and determines fees which have been increased to take account of increased costs particularly salary and CPI increases.

Disallowable Instrument DI 2002—94 being the **Taxation Administration (Amounts payable – Payroll Tax) Determination 2002 (No 1)** made under section 139 of the *Taxation Administration Act 1999* revokes **Determination No. 190 of 2000** (notified in No. 25, dated 22 June 2000) and determines the annual wages threshold above which an employer is required to pay payroll tax at \$1,250,000 for 2002-2003 and future financial years. It also determines the monthly amount above which an employer must lodge a return at \$104,166.67.

Disallowable Instrument DI 2002—95 being the **Taxation Administration (Amounts payable – Duty) Determination 2002 (No 1)** made under section 139 of the *Taxation Administration Act 1999* revokes **Determination No. 245 of 2001** (notified in S61, dated 23 August 2001) and determines under section 139 of the *Taxation Administration Act 1999* the rates of duty payable under various provisions of the *Duties Act 1999* by specifying:

- the ranges of dutiable amounts of dutiable transactions and the corresponding rates of duty payable for each range;
- the ranges of cost or unencumbered value of a lease and the corresponding rates of duty payable for each cost or unencumbered value range; and
- the rates of duty payable on certain other specified dutiable transactions.

Disallowable Instrument DI 2002—96 being the **National Exhibition Centre Trust Appointment 2002 (No. 1)** made under section 8 of the *National Exhibition Centre Trust Act 1976* reappoints specified persons as Chairperson and member and appoints a specified person as a member of the National Exhibition Centre Trust until 18 June 2005.

Disallowable Instrument DI 2002—97 being the **Health and Community Care Services – Determination of Fees (Annual Review) 2002** made under section 32 of the *Health and Community Care Services Act 1996* revokes **Determination of Fees and Charges DI2002—40** (notified in the Legislation Register on 13 May 2002) and determines the fees and charges for or in connection with the provision of health and community care services.

Disallowable Instrument DI 2002—98 being the **Emergency Services (Determination of Fees and Charges for 2002/2003 – 2002 (No 1)** made under section 79 of the *Emergency Management Act 1999* revokes **Determination No. 106 of 2001** (notified in Gazette No. 24, dated 14 June 2001) and determines that the fees payable by a person for a service identified in items 1 to 4 of the schedule of the determination is payable to the ACT.

Disallowable Instrument DI 2002—100 being the **Dentists Act 1931 – Determination of Fees 2002** made under section 85 of the *Dentists Act 1931* revokes **Determination No. 102 of 2001** (notified in Gazette No. 22, dated 31 May 2001) and determines new fees for the annual renewal fee, the initial registration fee, the mutual recognition fee, and the entitlement to re-registration fee for dentists, specialist dentists, and dental hygienists.

Disallowable Instrument DI 2002—102 being the ACTION Authority (Appointments) 2002 (No. 1) made under section 11 and section 12 of the ACTION Authority Act 2001 appoints specific persons to be the Chairperson and Directors of the ACTION Authority Board of Management for the period 1 July 2002 to 30 June 2005.

Disallowable Instrument DI 2002—117 being the Road Transport (Safety and Traffic Management) Declaration of Parking Authority 2002 Canberra International Airport made under regulation 75A (2) of the Road Transport (Safety and Traffic Management) Regulations 2000 approves the Canberra International Airport within the district of Majura to be a Parking Authority.

Disallowable Instrument DI 2002—118 being the Duties (Guidelines – Insurance Exempt from Duty) Determination 2002 (No 1) made under section 201A of the Duties Act 1999 determines the guidelines to provide exemption from duty imposed by part 8.2 on a premium, or part of a premium, for public liability insurance or other general insurance prescribed by these guidelines.

Disallowable Instrument DI 2002—119 being the Gaming Machine (Guidelines for Approving Community Contributions – Women’s Sports) 2002 (No 1) made under section 60B (2) of the Gaming Machine Act 1987 makes the guidelines for approving women’s sport community contributions as set out in the Schedule.

Disallowable Instrument DI 2002—121 being the Arrangements for the Employment of Staff and the Engagement of Consultants and Contractors by Members 2002 made under sections 10 (2) and 20 (3) of the Legislative Assembly (Members’ Staff) Act 1989 revokes DI 2001—335 (notified in the Legislation Register on 2 November 2001) and provides arrangements and conditions under which Members may employ staff and engage consultants or contractors for the period 1 July 2002 to 30 June 2003 inclusive.

Disallowable Instrument DI 2002—122 being the Arrangements for the Employment of Staff and the Engagement of Consultants and Contractors by the Speaker 2002 made under sections 5 (2) and 17 (3) of the Legislative Assembly (Members’ Staff) Act 1989 revokes DI 2001—338 (notified in the Legislation Register on 6 December 2001) and provides arrangements and conditions under which the Speaker may employ staff and engage consultants or contractors for the period 1 July 2002 to 30 June 2003 inclusive.

Disallowable Instrument DI 2002—123 being the Terms and Conditions of Employment of Staff of Members Pursuant to section 11 (2) made under section 11 (2) of the Legislative Assembly (Members’ Staff) Act 1989 revokes Determination No. 51 of 2001 (notified in Gazette S15, dated 27 March 2001) and determines a new set of terms and conditions which provide for the payment to all employees of an extra duty/electoral allowance in place of the discretionary payment of overtime and time off in lieu of extra hours worked.

Disallowable Instrument DI 2002—124 being the Terms and Conditions of Employment of Staff of Office-Holders Pursuant to section 6 (2) made under section 6 (2) of the *Legislative Assembly (Members' Staff) Act 1989* revokes Determination No. 50 of 2001 (notified in Gazette S15, dated 27 March 2001) and determines a new set of terms and conditions which provide for the payment to all employees of an extra duty/electoral allowance in place of the discretionary payment of overtime and time off in lieu of extra hours worked.

Disallowable Instrument DI 2002—125 being the Terms and Conditions of Employment of Staff of the Speaker Pursuant to Section 6 (2) made under section 6 (2) of the *Legislative Assembly (Members' Staff) Act 1989* revokes DI 2001—333 of 2001 (notified in the Legislation Register on 6 December 2001) and determines a new set of terms and conditions which provide for the payment of an extra duty/electoral allowance in place of the payment of overtime and time off in lieu of extra hours worked.

Disallowable Instrument DI 2002—126 being the Attorney-General (Determination of Fees and Charges for 2002/2003 – 2002 (No 1) made under the *Agents Act 1968, Consumer Credit (Administration) Act 1996, Liquor Act 1975, Sale of Motor Vehicles Act 1977, Trade Measurement (Administration) Act 1991, Classification (Publications, Films and Computer Games) (Enforcement) Act 1995, Prostitution Act 1992, Second-hand Dealers Act 1906, Public Trustees Act 1985, Adoption Act 1993, Associations Incorporation Act 1991, Business Names Act 1963, Births, Deaths and Marriages Registration Act 1997, Instruments Act 1933, Land Titles Act 1925, Registration of Deeds Act 1957, Magistrates Court Act 1930, Supreme Court Act 1933* revokes Determination No. 105 of 2001 (notified in Gazette No. 24, dated 14 June 2001) and determines that the fees payable for the purposes of the Act are as specified in Schedule 2.

Disallowable Instrument DI 2002—127 being the ACT Fire Brigade (Determination of Fees and Charges for 2002/2003) – 2002 (No 1) made under regulation 6 of the Fire Brigade Regulations revokes all previous determinations of fees and charges made under the Regulation and determines that the fees payable by a person for a service identified in items 1 to 35 of the schedule of this determination is payable to the ACT.

Disallowable Instrument DI 2002—132 being the Public Place Names 2002, No: 10 (Street Nomenclature – Nicholls) made under section 3 of the *Public Place Names Act 1989* determines the name, origin and significance of a new street name in the Division of Nicholls.

Disallowable Instrument DI 2002—133 being the Public Place Names 2002, No: 7 (Street Nomenclature – Nicholls) made under section 3 of the *Public Place Names Act 1989* revokes Determination No. 286 of 2000 (notified in Gazette No. 35, dated 31 August 2000) and determines the name, origin and significance of a new street name in the Division of Nicholls.

Disallowable Instrument DI 2002—134 being the **Public Place Names 2002, No: 8 (Street Nomenclature – Dunlop)** made under section 3 of the *Public Place Names Act 1989* determines the names, origins and significance of new street names in the Division of Dunlop.

Disallowable Instrument DI 2002—135 being the **Public Place Names 2002, No: 12 (Street Nomenclature – Amaroo)** made under section 3 of the *Public Place Names Act 1989* determines the names, origins and significance of new street names in the Division of Amaroo.

Disallowable Instrument DI 2002—136 being the **Nature Conservation Declaration of Protected and Exempt Flora and Fauna 2002 (No. 1)** made under section 17 of the *Nature Conservation Act 1980* revokes all previous determinations made under section 17 and declares the species listed in:

- Schedule 1 to be protected fish and protected invertebrates;
- Schedule 2 to be exempt animals;
- Schedule 3 to be protected native plants; and
- Schedule 4 to be protected native animals.

Disallowable Instrument DI 2002—139 being the **Public Sector Management Amendment Standards 2002 (No 2)** made under section 251 of the *Public Sector Management Act 1994* approves the amending of the Management Standard made by Instrument 1/1994, as subsequently amended. It clarifies the existing requirement for reports to be provided to the Chief Executive by making it a responsibility of the employee, as part of their conditions of employment, to supply the report or agree to its release from the medical provider in accordance with the *Health Records (Privacy and Access) Act 1997*.

Disallowable Instrument DI2002—141 being the **Road Transport (General) (Registration Fees) Determination 2002** made under section 96 of the *Road Transport (General) Act 1999* revokes **Disallowable Instrument DI 2002—52** (notified in the Legislation Register on 3 June 2002) and determines fees payable for light vehicles in relation to vehicle registration as specified in the schedule.

Disallowable Instrument DI2002—143 being the **Gungahlin Development Authority Appointment 2002 (No 2)** made under section 14 (2) of the *Gungahlin Development Authority Act 1996* appoints specified persons as part time members of the Gungahlin Development Authority from 15 July 2002 until 1 July 2003.

Disallowable Instrument DI2002—145 being the **Gas Safety (Codes of Practice) Determination 2002** made under section 65 of the *Gas Safety Act 2000* approves two codes of practice in relation to industrial and commercial gas-fired appliances and gas installations.

Disallowable Instrument DI2002—146 being the **Instrument of Appointment to the Stadiums Authority 2002 (No 1)** made under section 11 of the *Stadiums Authority Act 2000* reappoints a specified person as a member of the Stadiums Authority effective 1 July 2002 until 30 June 2003 inclusive.

Disallowable Instrument DI2002—147 being the Instrument of Appointment to the Stadiums Authority 2002 (No 2) made under section 11 of the *Stadiums Authority Act 2000* reappoints a specified person as a member of the Stadiums Authority effective 1 July 2002 until 30 June 2003 inclusive.

Disallowable Instrument DI2002—148 being the Instrument of Appointment to the Stadiums Authority 2002 (No 3) made under section 11 of the *Stadiums Authority Act 2000* reappoints a specified person as a member of the Stadiums Authority effective 1 July 2002 until 30 June 2004 inclusive.

Disallowable Instrument DI2002—149 being the Road Transport (Safety and Traffic Management) Declaration of Parking Authority 2002 – Lend Lease Retail (Woden Plaza) made under regulation 75A (2) of the Road Transport (Safety and Traffic Management) Regulations 2000 approves Lend Lease Retail (Woden Plaza), block 9, section 17 as a Parking Authority within the suburb of Phillip.

Disallowable Instrument DI2002—150 being the Race and Sports Bookmaking (Sports Bookmaking Venues) Determination and Directions for Operation 2002 (No 1) made under sections 21 and 22 of the *Race and Sports Bookmaking Act 2001* determines as a sports bookmaking venue Unit 8, 26-28 Winchcombe Court, Mitchell and gives directions for the operation of this sports bookmaking venue.

Disallowable Instrument DI 2002—151 being the Public Place Names 2002, No: 15 (Street Nomenclature – Dunlop) made under section 3 of the *Public Place Names Act 1989* revokes Disallowable Instrument DI 2002—134 (notified in the Legislation Register on 4 July 2002) and determines the names, origins and significance of new street names in the Division of Dunlop.

Disallowable Instrument DI 2002—152 being the Public Sector Management Amendment Standards 2002 (No 3) made under section 251 of the *Public Sector Management Act 1994* approves the amending of the Management Standard made by Instrument 1/1994, as subsequently amended, to make a new Part 5 in Standard 7 to establish a Joint Council.

Disallowable Instrument DI2002—153 being the Road Transport (Safety and Traffic Management) Declaration of Parking Authority 2002 – ACT Strata Management Services (McKay Gardens Professional Centre Turner and 28 Challis Street Dickson made under regulation 75A (2) of the Road Transport (Safety and Traffic Management) Regulations 2000 approves ACT Strata Management Services McKay Gardens Professional Centre Turner and 28 Challis Street Dickson as a Parking Authority to enable the organisation to establish and operate a ticket parking scheme within its boundaries.

Disallowable Instrument DI2002—154 being the Financial Management Guidelines 2002 made under section 67 of the *Financial Management Act 1996* updates the Financial Management Guidelines 2001 and the Financial Management (Amendment) Guidelines 2002 by amending the credit rating limitations that previously applied to debt instruments; amending the list of

prescribed investments; and inserting a number of new sections which prescribe the control mechanisms and state the circumstances under which the use of derivatives will be allowed by fund managers, to ensure that the Territory investments are made within appropriate investment strategies.

Disallowable Instrument DI2002—155 being the **Superannuation Management Guidelines 2002** made under section 16 of the *Territory Superannuation Provision Protection Act 2002* replaces the **Superannuation Management Guidelines 2000** by amending the credit rating limitations that previously applied to debt instruments; amending the list of prescribed investments; and inserting a number of new sections which prescribe the control mechanisms and state the circumstances under which the use of derivatives will be allowed by fund managers, to ensure that the Territory investments are made within appropriate investment strategies.

Disallowable Instrument DI2002—156 being the **Environment Protection Declaration of non-application of section 48 2002 (No. 1)** made under section 48 (6) of the *Environment Protection Act 1997* exempts the **Environment Protection Authority** from advertising applications from **ACT Workcover** in relation to burning fireworks seized under the *Dangerous Goods Act 1975*.

Disallowable Instrument DI2002—157 being the **Road Transport (General) – Declaration that the road transport legislation does not apply to certain roads and road related areas 2002 (No 5)** made under section 12 of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to the roads and road related areas used when vehicles are competing in the timed special (ie competitive) stages of the **2002 Light Car Club of Canberra Classic Rally** on 17 August 2002.

Disallowable Instrument DI2002—158 being the **Radiation Council Appointment 2002 (No 1)** made under section 8 (2) of the *Radiation Act 1983* appoints a specified person to be a member of the **Radiation Council** for a period of three years from 22 August 2002 for a period of three years.

Subordinate Legislation - Comment

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

Disallowable Instrument DI 2002—99 being the **Machinery (Fees) Revocation and Determination 2002** made under section 5 of the *Machinery Act 1949* revokes **Determination No. 135 of 2001** (notified in Gazette S34, dated 20 June 2001) and determines that the fees for the purposes of the Act shall be in accordance with the **Schedule**.

Disallowable Instrument DI 2002—102 being the Architects (Fees) Revocation and Determination 2002 made under section 40 of the *Architects Act 1959* revokes Determination No. 126 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees for the purpose of the Act shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—103 being the Building (Fees) Revocation 2002 made under section 108 of the *Building Act 1972* revokes Determination No. 125 of 2001 (notified in Gazette S34, dated 20 June 2001) in accordance with the Schedule.

Disallowable Instrument DI 2002—104 being the Building (Fees) Determination 2002 made under section 108 of the *Building Act 1972* determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—105 being the Community Title (Fees) Determination and Revocation 2002 made under section 96 of the *Community Title Act 2001* revokes DI 2002—21 (notified in the Legislation Register on 8 March 2002) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—106 being the Construction Practitioners Registration (Fees) Determination and Revocation 2002 made under section 30 of the *Construction Practitioners Registration Act 1998* revokes Determination No. 124 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—109 being the Water and Sewerage (Fees) Revocation 2002 made under section 45 of the *Water and Sewerage Act 2000* revokes Determination No. 122 of 2001 (notified in Gazette S34, dated 20 June 2001) in accordance with the Schedule.

Disallowable Instrument DI 2002—110 being the Water and Sewerage (Fees) Determination 2002 made under section 45 of the *Water and Sewerage Act 2000* determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—111 being the Land (Planning and Environment) (Fees) Revocation 2002 made under section 287 of the *Land (Planning and Environment) Act 1991* revokes Determination No. 121 of 2001 (notified in Gazette S34, dated 20 June 2001) in accordance with the Schedule.

Disallowable Instrument DI 2002—112 being the Land (Planning and Environment) (Fees) Determination 2002 made under section 287 of the *Land (Planning and Environment) Act 1991* determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—113 being the Surveyors (Fees) Revocation 2002 made under section 52A of the *Surveyors Act 2001* revokes Determination No. 120 of 2001 (notified in Gazette S34, dated 20 June 2001) in accordance with the Schedule.

Disallowable Instrument DI 2002—114 being the Surveyors (Fees) Determination 2002 made under section 46 of the *Surveyors Act 2001* determines that the fees for the purposes of the Act, in relation to surveyors registration, shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—115 being the Unit Titles (Fees) Revocation 2002 made under section 116 of the *Unit Titles Act 2001* revokes Determination No. 118 of 2001 (notified in Gazette S34, dated 20 June 2001) in accordance with the Schedule.

Disallowable Instrument DI 2002—116 being the Unit Titles (Fees) Determination 2002 made under section 179 of the *Unit Titles Act 2001* determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—120 being the Plumbers, Drainers and Gasfitters Board (Fees) Revocation and Determination 2002 made under section 46 of the *Plumbers, Drainers and Gasfitters Board Act 1982* revokes Determination No. 119 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—128 being the Scaffolding and Lifts (Fees) Revocation and Determination 2002 made under section 21 of the *Scaffolding and Lifts Act 1912* revokes Determination No. 133 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—129 being the Occupational Health and Safety (Fees) Revocation and Determination 2002 made under section 96A of the *Occupational Health and Safety Act 1989* revokes Determination No. 134 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—130 being the Workers' Compensation (Fees) Revocation and Determination 2002 made under section 28 of the *Workers' Compensation Act 1951* revokes Determination No. 132 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—131 being the Dangerous Goods (Fees) Revocation and Determination 2002 made under section 46 of the *Dangerous Goods Act 1975* revokes Determinations Nos 130 and 131 of 2001 (notified in Gazette S34, dated 20 June 2001 and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Missing explanatory statements

Unfortunately, there were no explanatory statements attached to the above disallowable instruments. Please see the Committee's comments on explanatory statements in Scrutiny Report No. 17 of 2002 and at the end of this report in relation to the Government's response on this issue.

Disallowable Instrument DI2002—107 being the Electricity (Fees) Revocation 2002 made pursuant to section 128 of the *Electricity Act 1971* revokes Determination No. 123 of 2001 (notified in Gazette S34, dated 20 June 2001) in accordance with the Schedule.

Disallowable Instrument DI2002—108 being the Electricity (Fees) Determination 2002 made pursuant to section 128 of the *Electricity Act 1971* determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Instrument made under non-existent Act
Missing explanatory statements

The Committee draws attention to the two above disallowable instruments were inaccurately made pursuant to section 128 of the *Electricity Act 1971*. The Act was renamed the *Electricity Safety Act 1971* by the *Utilities (Consequential Provisions) Act 2000* on 20 December 2000.

The Committee also notes the absence of explanatory statements to these instruments. Please see the Committee's comments on explanatory statements in Scrutiny Report No. 17 of 2002 and at the end of this report in relation to the Government's response on this issue.

Disallowable Instrument DI2002—144 being the Cultural Facilities Corporation Appointment 2002 made under section 11 (1) of the *Cultural Facilities Corporation Act 2001* appoints a specified person as the Chair of the Cultural Facilities Corporation until 1 July 2005.

Incorrect Act citation

The Committee notes that this disallowable instrument has been made pursuant to section 11 (1) of the *Cultural Facilities Corporation Act 2001*. This instrument appears to have an incorrect Act citation, perhaps it should have been made under the *Cultural Facilities Corporation Act 1997*.

Disallowable Instrument DI 2002—137 being the Agents Act 1968 – Board Appointments 2002 (No. 1) made under section 9 (2) of the *Agents Act 1968* appoints specified persons as members of the Agents Board of the ACT from 1 July 2002 until 1 November 2002 inclusive.

Disallowable Instrument DI 2002—138 being the Agents Act 1968 – Board Appointments 2002 (No. 2) made under section 9 (2) of the *Agents Act 1968* appoints a specified person as Chair of the Agents Board of the ACT from 1 July 2002 until 1 November 2002 inclusive.

Disallowable Instrument DI2002—142 being the Gungahlin Development Authority Appointment 2002 (No 1) made under section 14 (2) of the *Gungahlin Development Authority Act 1996* appoints specified persons as the Deputy Chair and part time members of the Gungahlin Development Authority from March 2002 until 1 September 2002.

Are these instruments disallowable?

The Committee queries whether the above appointments are disallowable instruments. They are for six months or less and do not appear, from the explanatory statements, to be for appointments of persons to act in the positions for a 2nd or subsequent consecutive period. Section 227 (2) (b) of the *Legislation Act 2001* is relevant and provides as follows:

Appointments – Assembly consultation

227 Application of div. 19.3.3 (SAA s4 (1), s 6)

“(2) However, this division does not apply to an appointment of—
 (b) a person to act in a statutory position for no longer than six months unless the appointment is of a person to act in the position for a 2nd or subsequent consecutive period; ...”

Disallowable Instrument DI2002—140 being the Waste Minimisation (Fees) Revocation and Determination 2002 made under section 45 (1) of the *Waste Minimisation Act 2001* revokes Determination No 158 of 2001 (Notified in Gazette S34, dated 20 June 2001) and determines that the fees payable for the purposes of the Act shall be in accordance with the Schedule.

Incorrect reference to Gazette notification

The above Disallowable Instrument revokes Determination No. 158 notified in Gazette S34 of 20 June 2001. The Committee notes that Determination No. 158 was in fact notified in Gazette S39 on 28 June 2001. It is perhaps a small matter, however the Committee is of the view it could lead to confusion.

INTERSTATE AGREEMENTS

There is no matter for comment in this report.

REGULATORY IMPACT STATEMENTS

There is no matter for comment in this report.

GOVERNMENT RESPONSES

The Committee has received responses in relation to comments from:

- The Minister for Health, dated 9 August 2002, in relation to comments in Scrutiny Report No. 15 regarding Disallowable Instrument DI2002-41 being the Interest Charge Determination 2002 (No 2) made under the *Health and Community Care Services Act 1996*.
- The Acting Minister for Urban Services, dated 4 September 2002, in relation to comments in Scrutiny Report No. 17 regarding Disallowable Instruments DI2002-71 to DI2002-86 (inclusive) and DI2002-89.

Copies of the responses are attached.

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

In relation to the matter raised previously by the committee about the need for separate explanatory statements, the Committee stands by its view that it is desirable to have separate statements rather than amalgamate the two documents into one.

The Committee considers that the ability of constituents to understand the law is enhanced by having a system whereby each determination is accompanied by a separate explanatory statement.

Although the Minister has indicated in his response that the Department of Justice and Community Safety has agreed to the new process, no consultation was made with this Committee on the matter. As one of the Committee's terms of reference is to: "consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylist standards expected by the Committee" the Committee considers that such consultation would have been beneficial.

Bill Stefaniak MLA
Chair

September 2002

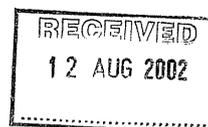


Jon Stanhope MLA

CHIEF MINISTER

ATTORNEY GENERAL MINISTER FOR HEALTH MINISTER FOR COMMUNITY AFFAIRS MINISTER FOR WOMEN

MEMBER FOR GINNINDERRA



Mr Bill Stefaniak MLA
Chair
Standing Committee on Legal Affairs
London Circuit
CANBERRA ACT 2601

Dear Mr Stefaniak

Thank you for your Scrutiny of Bills Report No. 16 of 2002. I offer the following response in relation to the matters raised by your Committee.

Disallowable Instrument DI2002-41 being the Interest Charge Determination 2002 (No.2) made under section 33 of the Health and Community Care Services Act 1996 revokes disallowable instrument DI2002-15 dated 31 January 2002 which was notified on the Legislation Register on 7 February 2002 and sets a minimum amount on which interest is payable.

The Committee queries why, given that disallowable instruments are numbered sequentially, the above disallowable instrument includes an extra numbering system.

The inclusion of a number (eg No 2) is mainly to make the instrument more accessible to members of the public by giving it a unique and meaningful name. It is also to satisfy the requirements of the *Legislation Regulations 2001*, regulation 4 (2) (f) (Requirements for notification of registerable instruments etc). The *Legislation Regulations 2001*, regulation 4 (2) (f) and (3) effectively require registerable instruments like DI2002-41 to have a unique name that includes the year the instrument is made. Often, several instruments are made under the same authorising provision in a year and, in these cases, the inclusion of numbers in their names is a convenient and meaningful way of distinguishing one from another. This approach is also consistent with current drafting practice for Acts and subordinate laws. The inclusion is not part of an extra numbering system - it is part of a unique and meaningful name.

Under the *Legislation Act 2001*, section 59, registerable instruments (including disallowable instruments) must be numbered as nearly as practicable in the order in which they are notified under the Act. Different serial numbers and letters are used to distinguish the different kinds of instruments. For example, this year's subordinate laws are numbered SL2002-##, disallowable instruments are numbered DI2002-##, and so on. These 'notification numbers' provide a unique point of reference for each instrument, but are not designed for searching an instrument by subject or title.

ACT LEGISLATIVE ASSEMBLY

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The *Legislation Act 2002*, section 60 also gives the Parliamentary Counsel a limited power to correct the name of an instrument before notifying it.

I trust the above allays your Committee's concerns.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jon Stanhope', written in a cursive style.

Jon Stanhope MLA
Minister for Health

09 AUG 2002



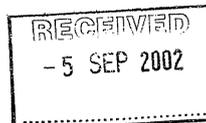
Jon Stanhope MLA

CHIEF MINISTER

ATTORNEY GENERAL MINISTER FOR HEALTH MINISTER FOR COMMUNITY AFFAIRS
MINISTER FOR WOMEN

MEMBER FOR GINNINDERRA

Mr Bill Stefaniak MLA
Chair
Standing Committee on Legal Affairs
London Circuit
CANBERRA ACT 2601



Dear Mr Stefaniak *Bill*

Thank you for your Scrutiny of Bills Report No.17 of 2002. I offer the following response in relation to the matters raised by your Committee, on behalf of Mr Wood, who is currently overseas on business.

A response on the issues raised in relation to the Plant Diseases Bill 2002 was provided on 20 August 2002.

Disallowable Instruments DI 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 89

Missing Explanatory Statements

In the past, a separate Explanatory Statement was provided with fee determinations that also included a list of the previous year's fees. This resulted in the majority of the information being duplicated. Current practice is to incorporate the Explanatory Statement into the Disallowable Instrument, which reduces the duplication whilst still providing all relevant information. This process has been agreed with the Department of Justice and Community Safety.

Yours sincerely

Jon Stanhope MLA
A/g Minister for Urban Services
7/9/02

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