



Legislative Assembly for the ACT

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

Scrutiny Report

23 AUGUST 2010

Report 26

TERMS OF REFERENCE

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

- (a) consider whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
 - (i) is in accord with the general objects of the Act under which it is made;
 - (ii) unduly trespasses on rights previously established by law;
 - (iii) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
- (b) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Committee;
- (c) consider whether the clauses of bills introduced into the Assembly:
 - (i) unduly trespass on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
- (d) report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*;
- (e) report to the Assembly on these or any related matter and if the Assembly is not sitting when the Committee is ready to report on bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

MEMBERS OF THE COMMITTEE

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

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

ROLE OF THE COMMITTEE

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

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SUBORDINATE LEGISLATION

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

Disallowable Instrument DI2010-107 being the Attorney General (Fees) Determination 2010 made under the Agents Act 2003, Associations Incorporation Act 1991, Births, Deaths and Marriages Registration Act 1997, Business Names Act 1963, Civil Law (Wrongs) Act 2002, Civil Partnerships Act 2008, Classification (Publications, Films and Computer Games) (Enforcement) Act 1995, Cooperatives Act 2002, Court Procedures Act 2004, Dangerous Substances Act 2004, Emergencies Act 2004, Freedom of Information Act 1989, Guardianship and Management of Property Act 1991, Hawkers Act 2003, Instruments Act 1933, Land Titles Act 1925, Liquor Act 1975, Machinery Act 1949, Partnership Act 1963, Pawnbrokers Act 1902, Prostitution Act 1992, Public Trustee Act 1985, Registration of Deeds Act 1957, Sale of Motor Vehicles Act 1977, Scaffolding and Lifts Act 1912, Second-hand Dealers Act 1906, Security Industry Act 2003, Trade Measurement (Administration) Act 1991, Workers Compensation Act 1951, Work Safety Act 2008 revokes DI2009-116 and determines fees payable for the purposes of the Acts.

Disallowable Instrument DI2010-109 being the Taxation Administration (Amounts Payable—Thresholds—Pensioner Duty Concession Scheme) Determination 2010 (No. 1) made under section 139 of the Taxation Administration Act 1999 revokes DI2009-245 and determines the property value threshold amounts applicable to the calculation of concessional duty for eligible property.

Disallowable Instrument DI2010-110 being the Taxation Administration (Amounts Payable—Eligibility—Pensioner Duty Concession Scheme) Determination 2010 (No. 1) made under section 139 of the Taxation Administration Act 1999 revokes DI2009-246 and determines, for the purposes of the scheme, the eligibility criteria, the conditions, the method of calculation of duty payable and the time limit for applications.

Disallowable Instrument DI2010-111 being the Taxation Administration (Amounts Payable—Thresholds—Home Buyer Concession Scheme) Determination 2010 (No. 1) made under section 139 of the Taxation Administration Act 1999 revokes DI2009-247 and determines the property value threshold amounts applicable to the calculation of concessional duty for eligible property.

Disallowable Instrument DI2010-112 being the Taxation Administration (Amounts Payable—Eligibility—Home Buyer Concession Scheme) Determination 2010 (No. 1) made under section 139 of the Taxation Administration Act 1999 revokes DI2009-244 and determines, for the purposes of the scheme, the income test and thresholds, the eligibility criteria, the conditions, the method of calculation of duty payable and the time limit for applications.

Disallowable Instrument DI2010-113 being the Animal Diseases (Fees) Determination 2010 (No. 1) made under section 88 of the Animal Diseases Act 2005 revokes DI2009-78 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-114 being the Animal Welfare (Fees) Determination 2010 (No. 1) made under section 110 of the Animal Welfare Act 1992 revokes DI2009-79 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-115 being the Domestic Animals (Fees) Determination 2010 (No. 1) made under section 144 of the *Domestic Animals Act 2000* revokes DI2009-81 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-116 being the Heritage (Register Fees) Determination 2010 (No. 1) made under section 120 of the *Heritage Act 2004* revokes DI2009-83 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-117 being the Stock (Fees) Determination 2010 (No. 1) made under section 68 of the *Stock Act 2005* revokes DI2009-84 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-118 being the Waste Minimisation (Landfill Fees) Determination 2010 (No. 1) made under section 45 of the *Waste Minimisation Act 2001* revokes DI2009-85 and DI2009-207 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-119 being the Canberra Institute of Technology (Advisory Council) Appointment 2010 (No. 1) made under section 31 of the *Canberra Institute of Technology Act 1987* appoints a specified person as a member of the Canberra Institute of Technology Advisory Council, representing the interests of industry or commerce.

Disallowable Instrument DI2010-120 being the Architects (Fees) Determination 2010 (No. 1) made under section 91 of the *Architects Act 2004* revokes DI2009-136 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-121 being the Building (Fees) Determination 2010 (No. 1) made under section 150 of the *Building Act 2004* revokes DI2009-138 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-122 being the Community Title (Fees) Determination 2010 (No. 1) made under section 96 of the *Community Title Act 2001* revokes DI2009-139 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-123 being the Construction Occupations Licensing (Fees) Determination 2010 (No. 1) made under section 127 of the *Construction Occupations (Licensing) Act 2004* revokes DI2009-129 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-126 being the Water and Sewerage (Fees) Determination 2010 (No. 1) made under section 45 of the *Water and Sewerage Act 2000* revokes DI2009-181 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-127 being the Surveyors (Fees) Determination 2010 (No. 1) made under section 80 of the *Surveyors Act 2007* revokes DI2009-142 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-128 being the Planning and Development (Fees) Determination 2010 (No. 1) made under section 424 of the *Planning and Development Act 2007* revokes DI2009-180 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-129 being the Unit Titles (Fees) Determination 2010 (No. 1) made under section 179 of the *Unit Titles Act 2001* revokes DI2009-143 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-130 being the Road Transport (General) (Pay Parking Area Fees) Determination 2010 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2009-150 and determines the relevant parking fees for pay parking areas in City, Woden, Tuggeranong, Belconnen, Deakin, Dickson, Manuka and Kingston.

Disallowable Instrument DI2010-131 being the Boxing Control (Fees) Determination 2010 (No. 1) made under section 20 of the *Boxing Control Act 1993* revokes DI1994-79 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-135 being the Civil Law (Wrongs) New South Wales Bar Association Scheme 2010 (No. 1) made under Schedule 4, section 4.10 of the *Civil Law (Wrongs) Act 2002* approves The New South Wales Bar Association Scheme.

Disallowable Instrument DI2010-136 being the Electoral (Fees) Determination 2010 made under section 8 of the *Electoral Act 1992* revokes DI2009-105 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-137 being the Public Sector Management Amendment Standards 2010 (No. 2) made under section 251 of the *Public Sector Management Act 1994* amends the Standards by omitting Part 8.1.

Disallowable Instrument DI2010-140 being the Public Place Names (Fyshwick) Determination 2010 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the names of three roads in the Division of Fyshwick.

Disallowable Instrument DI2010-144 being the Water Resources (Fees) Determination 2010 (No. 1) made under section 107 of the *Water Resources Act 2007* revokes DI2009-109 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-145 being the Clinical Waste (Fees) Determination 2010 (No. 1) made under section 40 of the *Clinical Waste Act 1990* revokes DI2009-80 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-146 being the Fisheries (Fees) Determination 2010 (No. 1) made under section 114 of the *Fisheries Act 2000* revokes DI2009-82 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-147 being the Environment Protection (Fees) Determination 2010 (No. 1) made under section 165 of the *Environment Protection Act 1997* revokes DI2009-209 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-148 being the Long Service Leave (Portable Schemes) Governing Board Appointment 2010 (No. 1) made under section 20 and paragraph 21(2)(b) of the *Long Service Leave (Portable Schemes) Act 2009* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member of the Long Service Leave (Portable Schemes) Governing Board, representing employee organisations.

Disallowable Instrument DI2010-149 being the Long Service Leave (Portable Schemes) Governing Board Appointment 2010 (No. 2) made under section 20 and paragraph 21(2)(a) of the *Long Service Leave (Portable Schemes) Act 2009* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member of the Long Service Leave (Portable Schemes) Governing Board, representing employer organisations.

Disallowable Instrument DI2010-150 being the Long Service Leave (Portable Schemes) Community Sector Employers' Levy Determination 2010 made under section 51 of the *Long Service Leave (Portable Schemes) Act 2009* determines the levy payable by employers for each quarter for the community sector industry.

Disallowable Instrument DI2010-151 being the Training and Tertiary Education (Fees) Determination 2010 made under section 111 of the *Training and Tertiary Education Act 2003* revokes DI2009-152 and determines the maximum fees payable for services provided by the ACT Accreditation and Registration Council.

Disallowable Instrument DI2010-152 being the Public Baths and Public Bathing (Active Leisure Centre Fees) Determination 2010 made under section 37 of the *Public Baths and Public Bathing Act 1956* revokes DI2009-151 and determines fees payable on pool admission, classes and swim school provided by the Active Leisure Centre.

Disallowable Instrument DI2010-153 being the Financial Management (Periodic and Annual Financial Statements) Guidelines 2010 made under section 133 of the *Financial Management Act 1996* prescribes the level of reporting required in the periodic and annual financial statements.

Disallowable Instrument DI2010-155 being the Cemeteries and Crematoria (Public Cemetery Fees) Determination 2010 (No. 1) made under section 49 of the *Cemeteries and Crematoria Act 2003* revokes DI2009-208 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2010-156 being the Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2010 (No. 1) made under subsection 10(3) of the *Legislative Assembly (Members' Staff) Act 1989* revokes DI2009-117 and determines the conditions under which Members may employ staff and engage consultants or contractors.

Disallowable Instrument DI2010-157 being the Legislative Assembly (Members' Staff) Speaker's Salary Cap Determination 2010 (No. 1) made under subsection 5(3) of the *Legislative Assembly (Members' Staff) Act 1989* revokes DI2009-118 and determines the conditions under which the Speaker may employ staff and engage consultants or contractors.

Disallowable Instrument DI2010-158 being the Road Transport (General) Application of Road Transport Legislation Declaration 2010 (No. 6) made under section 12 of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to a road or road related area that is a special stage of the 2010 PCD Engineering Mini Corsa Rally.

Disallowable Instrument DI2010-159 being the Crimes (Sentence Administration) (Sentence Administration Board) Appointment 2010 (No. 2) made under paragraph 174(1)(a) of the *Crimes (Sentence Administration) Act 2005* appoints a specified person, being judicially qualified, as chair of the Sentence Administration Board.

Disallowable Instrument DI2010-160 being the Crimes (Sentence Administration) (Sentence Administration Board) Appointment 2010 (No. 3) made under paragraph 174(1)(c) of the *Crimes (Sentence Administration) Act 2005* appoints a specified person as a non-judicial member of the Sentence Administration Board.

Disallowable Instrument DI2010-161 being the Crimes (Sentence Administration) (Sentence Administration Board) Appointment 2010 (No. 4) made under paragraph 174(1)(c) of the *Crimes (Sentence Administration) Act 2005* appoints a specified person as a non-judicial member of the Sentence Administration Board.

Disallowable Instrument DI2010-163 being the University of Canberra (Election of Staff and Student Members of Council) Statute 2010 made under section 42 of the *University of Canberra Act 1989* repeals DI2007-94 and DI2007-216 and approves the new Statute.

Disallowable Instrument DI2010-164 being the Public Sector Management Amendment Standards 2010 (No. 3) made under section 251 of the *Public Sector Management Act 1994* amends the Standards to support the operation of the Graduate Program in the ACT Public Service.

Disallowable Instrument DI2010-165 being the Public Place Names (Hall) Determination 2010 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the names of roads in the Division of Hall.

Disallowable Instrument DI2010-166 being the University of Canberra (Courses and Awards) Statute 2010 made under section 42 of the *University of Canberra Act 1989* repeals DI1995-173 and approves the new Statute.

Disallowable Instrument DI2010-167 being the University of Canberra (Election of Staff, Student and Professorial Members of Academic Board) Statute 2010 made under section 42 of the *University of Canberra Act 1989* regulates the election of the staff, student and professorial members of the Academic Board of the University.

Disallowable Instrument DI2010-168 being the Tree Protection (Advisory Panel) Appointment 2010 (No. 1) made under subsection 69(1) of the *Tree Protection Act 2005* appoints specified persons as members of the Tree Advisory Panel.

Disallowable Instrument DI2010-170 being the Utilities (Emergency Planning Code) Determination 2010 made under sections 59, 63 and 65 of the *Utilities Act 2000* repeals the Emergency Planning Code December 2000, which formed part of DI2000-369, and determines the Emergency Planning Code 2010.

Disallowable Instrument DI2010-171 being the Public Place Names (Molonglo Valley District) Determination 2010 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the names of two divisions in the Molonglo Valley District.

Disallowable Instrument DI2010-173 being the Planning and Development (Land Agency Board) Appointment 2010 (No. 1) made under section 42 of the *Planning and Development Act 2007* and section 79 of the *Financial Management Act 1996* appoints a specified person as chairman of the Land Agency Board.

Disallowable Instrument DI2010-174 being the Planning and Development (Land Agency Board) Appointment 2010 (No. 2) made under section 42 of the *Planning and Development Act 2007* and section 79 of the *Financial Management Act 1996* appoints a specified person as deputy chairman of the Land Agency Board.

Disallowable Instrument DI2010-175 being the Planning and Development (Land Agency Board) Appointment 2010 (No. 3) made under section 42 of the *Planning and Development Act 2007* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member of the Land Agency Board.

Disallowable Instruments—Comment

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

Drafting issue

Disallowable Instrument DI2010-100 being the University of Canberra (Statutes Interpretation) Statute 2010 made under section 42 of the *University of Canberra Act 1989* repeals DI1991-116 and approves a Statute that reflects updated terminology used within the University.

The Committee notes that section 5 of this instrument provides:

Application of Acts Interpretation Act

5.

- (1) To the extent that the *Acts Interpretation Act 1901* (Cth) does not apply to the statutes and rules of the University, that Act applies, and is taken to have applied, to such statutes and rules by force of this Statute as if such statutes and rules were rules, regulations or by-laws within the meaning of part XI of that Act.
- (2) Nothing in this statute prejudices or affects the application of the *Acts Interpretation Act 1901* to statutes and rules of the University.

The Committee seeks the Minister's advice as to what section 5 is intended to mean.

What does this instrument mean? / Inadequate Explanatory Statement

Disallowable Instrument DI2010-124 being the Electricity Safety (Fees) Determination 2010 (No. 1) made under section 64 of the *Electricity Safety Act 1971* revokes DI2009-178 and determines fees payable for the purposes of the Act.

The Committee notes that this instrument includes two sets of "notes for the schedule". The schedule referred to is evidently the schedule to the instrument that sets out the fees. The first set of "notes" are headed "For building of Class 1 and 10 when 10 is associated with class 1". It is not at all clear to the Committee what this means, even after referring back to the substantive provisions of the instrument and consulting the Explanatory Statement for the instrument.

The "notes" are in 3 columns, as set out below:

For building of Class 1 and 10 when 10 is associated with class 1

| Class | Item | Fee Multiplier |
|--------------------------|-------------------------|-----------------------|
| New Work | | |
| Main Switch Board | | |
| | Main SwitchBoard | 1 |
| | POS Incorporated in MSB | 0 |
| | POS Separate from MSB | 0 |
| | Meter Cubicle / Box | 0 |

Distribution Boards

| | |
|--------|---|
| 1st DB | 0 |
| > 1 DB | 0 |

Temporary Supply

| | |
|---------------------------------|---|
| At MSB | 0 |
| Pole mount or separate from MSB | 0 |

Co-Generation

| | |
|--------------------------------------|---|
| Control DB (where separate from MSB) | 1 |
| Per Type Per Location | 1 |
| Per Inverter > 1 | 1 |

Additions & Alterations

The Fee Multiplier as per New applies to work that is required to be inspected. Additions and Alterations work is on an algorithm that typically calls up 1 in 10 Certificates Of Electrical Safety to be inspected, unless defect notice issued then a higher rate of inspection applies. A fee will apply for all CES forms that require an inspection.

The second set of “notes” are headed “For building of Class 2 to 10) when 10 is not associated with class 1)”. The content of the “notes” are similar to the first set.

The Committee finds this instrument hard to understand. The Explanatory Statement simply does not assist. While the Committee accepts that the content of some instruments will, necessarily, be difficult to express in lay terms, this instrument simply makes no sense to the Committee. That being so, the Explanatory Statement is inadequate.

The Committee also wonders whether (for both sets of “notes”) words are missing from the first sentence of the “Additions & Alterations” class (ie “The Fee Multiplier as per New applies to work that is required to be inspected.”).

The Committee draws the attention of the Legislative Assembly to this instrument, as the explanatory statement associated with the instrument does not meets the technical or stylistic standards expected by the Committee.

Minor typographical error?

Disallowable Instrument DI2010-125 being the Gas Safety (Fees) Determination 2010 (No. 1) made under section 67 of the Gas Safety Act 2000 revokes DI2009-197 and determines fees payable for the purposes of the Act.

This instrument determines fees for the inspection of residential and commercial gasfitting work. Page 4 of the schedule to the instrument contains the following entry:

| | | |
|---------------------------------|----------|----------|
| 1st Reinspection fee | 180.00 | 186.00 |
| 2nd Reinspection fee | 360.00 | 372.00 |
| 3rd Reinspection fee | 720.00 | 744.00 |
| All subsequent reinspection fee | 1,440.00 | 1,488.00 |

The Committee assumes that the final item should refer to “all subsequent reinspection fees”.

Are these appointments valid?

Disallowable Instrument DI2010-132 being the Medicines, Poisons and Therapeutic Goods (Medicines Advisory Committee) Appointment 2010 (No. 1) made under section 194 of the *Medicines, Poisons and Therapeutic Goods Act 2008* appoints specified persons as chair and members of the Medicines Advisory Committee.

This instrument appoints 3 specified persons to the Medicines Advisory Committee. The formal part of the instrument indicates that it is made under section 194 of the *Medicines, Poisons and Therapeutic Goods Act 2008*. However, the Explanatory Statement for the instrument (correctly) refers to section 635 of the *Medicines, Poisons and Therapeutic Goods Regulation 2008* as the legislative provision under which the appointments are made. Section 635 provides:

635 Medicines advisory committee—membership

- (1) The medicines advisory committee consists of the following members appointed by the Minister:

- (a) a chair;
- (b) 2 other members.

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

Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) A person is not eligible for appointment to the medicines advisory committee unless the person is a doctor.

Note *Doctor* does not include an intern doctor (see dict).

- (3) The medicines advisory committee must include—

- (a) at least 1 member who has had experience in the teaching or practice of psychiatry; and
- (b) 1 member nominated by the Australian Capital Territory Branch of the Australian Medical Association.

- (4) The instrument appointing, or evidencing the appointment of, a medicines advisory committee member must state whether the person is appointed as the chair, or as another member, of the committee.

Each of the persons appointed are identified in the instrument as doctors. This would indicate that the subsection 635(2) requirement is met.

As to the other requirements, the Explanatory Statement states:

The Minister has consulted with the Royal Australian College of Psychiatrists, the Australian Medical Association and the Office of Multicultural Affairs on the appointments.

Though it is by no means a foregone conclusion, it may be assumed from the above statement that one of the named persons is the nominee Australian Capital Territory Branch of the Australian Medical Association. (It is not clear to the Committee why the Office of Multicultural Affairs has been consulted.) There is no indication, however, as to whether at least one of the persons appointed has had experience in the teaching or practice of psychiatry, as required by paragraph 635(3)(a).

The Committee notes that it is a mandatory requirement that at least one member of the Medicines Advisory Committee have had experience in the teaching or practice of psychiatry. The Committee considers that it (and the Legislative Assembly) is entitled to expect that the Explanatory Statement for this instrument should indicate that this requirement has been met. As the Committee has consistently indicated, this can hardly be considered to be an onerous requirement.

Positive comment

Disallowable Instrument DI2010-133 being the Taxation Administration (Amounts Payable—Motor Vehicle Duty) Determination 2010 (No. 2) made under section 139 of the Taxation Administration Act 1999 revokes DI2010-32 and determines the duty payable on the application to register a motor vehicle.

The Committee notes that this instrument, which determines amounts payable in relation to applications to register motor vehicles, revokes and replaces DI2010-32. The Committee notes that it commented on the earlier instrument in *Scrutiny Report No 22 of the 7th Assembly*. In that report, the Committee noted that subsection 47(6) of the *Legislation Act 2001* was disapplied in relation to the instrument but that no explanation was provided as to why this was necessary.

The Committee notes with approval that the Explanatory Statement for this instrument contains the following statement:

10. This instrument specifies that section 47(6) of the *Legislation Act 2001* does not apply to the Green Vehicle Guide. That section would require the text of the Green Vehicle Guide to be remade as a new Notifiable Instrument every time the Green Vehicle Guide is amended, which is as frequent as 2-3 times per week, whenever a new vehicle model becomes available for sale. The displacement of that section will ensure that the Green Vehicle Guide can be applied automatically for the purposes of this instrument when it is amended by the Commonwealth without the requirement to continually remake it as a Notifiable Instrument.

Positive comment

Disallowable Instrument DI2010-138 being the Public Place Names (Bonner) Determination 2010 (No. 2) made under section 3 of the Public Place Names Act 1989 revokes DI2010-81 and determines the names of new roads in the Division of Bonner.

Disallowable Instrument DI2010-139 being the Public Place Names (Macgregor) Determination 2010 (No. 2) made under section 3 of the Public Place Names Act 1989 revokes DI2010-88 and determines the names of four roads in the Division of Macgregor.

The Committee notes that the first of the instruments listed above revokes and re-makes DI2010-81, which was made on 19 May 2010 (and which the Committee commented on in its *Scrutiny Report No. 24 of the 7th Assembly*). Given that the earlier instrument is being revoked and re-made so soon, the Committee generally prefers to see an explanation as to why this has been necessary.

The Committee notes with approval that the Explanatory Statement for this instrument contains the following explanation:

DI2010-81 is revoked as it incorrectly renamed Numiari Street, Jackomos Street and O'Shane Street originally notified in DI2009-6.

Similarly, the Committee notes that the second instrument revokes and re-makes DI2010-88, which was made on 29 May 2010.

The Committee notes with approval that the Explanatory Statement for this instrument contains the following explanation:

DI2010-88 is revoked as it incorrectly renamed John Holt Street originally notified in DI2008-274.

Minor drafting issue / Positive comment

Disallowable Instrument DI2010-141 being the Attorney General (Fees) Amendment Determination 2010 (No. 1) made under the *Emergencies Act 2004*, *Firearms Act 1996*, *Freedom of Information Act 1989*, *Guardianship and Management of Property Act 1991*, *Public Trustee Act 1985* amends DI2010-141 and determines fees payable for the purposes of the *Firearms Act*.

The Committee notes that this instrument amends DI2010-107 (which is mentioned above). The Committee notes that, despite the fact that, in fact, the amendments made by the instrument relate only to the 4 Acts mentioned above, the formal part of the instrument (and the Explanatory Statement) refers to all 31 Acts in relation to which the amended instrument determines fees. The Committee considers that it is not necessary to refer to all 31 Acts and notes that the entry for the instrument on the ACT Legislation Register also refers only to the five instruments mentioned above.

The Committee notes with approval that the following explanation is provided for amending (on 29 June 2010) an instrument that was only made on 22 June 2010:

This instrument amends the Attorney General (Fees) Determination 2010 (DI2010 107) to:

- Incorporate the fees under the *Firearms Act 1996* into this instrument;
- Correct the original instrument (to remove an annual fee which is no longer intended to be charged and correct a spelling mistake); and
- Include additional explanatory material in the instrument.

The first amendment brings fees determined under the *Firearms Act 1996* into this instrument and provides indexation increases from 1998-99, when the fees were last set, to 2010-11.

The second amendment removes the first year annual AFANP Maintenance Fee. It retains the maintenance fee per quarter in item 284 which was increased to a level similar to the New South Wales Fire Brigade fee for a similar service in DI2010-107. The amendment also corrects a spelling error in item 400.

Additional explanatory notes have been included at the end of schedule 2 under General Explanatory Notes: A. Overview of increases in fees and charges.

Explanatory notes are provided through out the amending instrument and beneath each matter for which a fee or charge has been determined.

Positive comment

Disallowable Instrument DI2010-142 being the Health (Fees) Determination 2010 (No. 2) made under section 192 of the *Health Act 1993* revokes DI2010-86 and determines fees payable for the purposes of the Act.

The Committee notes that this instrument (made on 28 June 2010) revokes and re-makes DI2010-86, which was made on 18 May 2010. Given that the instrument is being re-made so soon after being made, the Committee considers that it is appropriate that there be an explanation provided.

The Committee notes with approval that the Explanatory Statement for the instrument contains the following explanation:

The Determination comes into effect on 1 July 2010 and reproduces Determination DI2010-86 except for:

- Updates to definitions where appropriate;
- Inclusion of Section 8 (HIV Medication for Medicare Ineligible Patients);
- Items on Attachment A, which have increased by the Wage Price Index of 3.5% (subject to rounding);
- Items on Attachment B, which have increased by the National Consumer Price Index of 2.9% (subject to rounding);
- Items on Attachment C, which have been deleted.
- Items on Attachment D, which have increased by other factors as outlined in the attachment;
- Item L (Audiometry), which has moved from Item U and Item U (Other Community Health & Acute Support Fees), which has moved from Item V; and
- the date of effect.

Drafting error

Disallowable Instrument DI2010-143 being the Nature Conservation (Fees) Determination 2010 (No. 2) made under section 139 of the *Nature Conservation Act 1980* revokes DI2010-8 and determines fees payable for the purposes of the Act.

The Committee notes that the formal part of this instrument indicates that it is made under section 88 of the *Nature Conservation Act 1980*. The Committee also notes, however, that (as indicated in the Explanatory Statement) the power to determine fees is, in fact, contained in section 139 of the *Nature Conservation Act*.

Drafting issue

Disallowable Instrument DI2010-154 being the Dangerous Goods (Road Transport) Fees and Charges Determination 2010 (No. 3) made under section 194 of the *Dangerous Goods (Road Transport) Act 2009* revokes DI2010-41 and DI2010-79 and determines fees payable for the purposes of the Act.

The Committee notes that section 3 of this instrument provides:

3 Revocations

- (a) Disallowable instrument DI2010-79, *Dangerous Goods (Road Transport) Fees and Charges Determination 2010 (No 2)*, is revoked.
- (b) Disallowable instrument DI2010-41, *Dangerous Goods (Road Transport) Fees and Charges Determination 2010 (No 1)*, is revoked.

The Explanatory Statement states:

This instrument replaces the *Dangerous Goods (Road Transport) Fees and Charges Determination 2010 (No 2)* DI2010-79, which is expressed to commence on 1 July 2010, because it has incorrect section references in it.

The Committee notes that DI2010-41 was revoked by section 3 of DI2010-79. That being so, the Committee seeks the Minister's advice as to why paragraph 3(b) of the current instrument is required (if at all).

Minor typographical error

Disallowable Instrument DI2010-162 being the Canberra Institute of Technology (Advisory Council) Appointment 2010 (No. 2) made under section 31 of the *Canberra Institute of Technology Act 1987* appoints a specified person as a member of the Canberra Institute of Technology Advisory Council, representing students.

The Committee notes that there is a minor typographical error in the Explanatory Statement for this instrument ("The appointee is not a public servant").

Drafting issue

Disallowable Instrument DI2010-169 being the University of Canberra (Academic Board) Amendment Statute 2010 made under section 42 of the *University of Canberra Act 1989* amends the Statute to facilitate the creation of a new statute and rules governing the three categories of members elected to the Board.

The Committee notes that section 4 of this instrument amends section 4 of the *University of Canberra (Academic Board) Statute 1990*. It provides:

Amendment of Section 4 of the Principal Statute

4. Subsection 4(2), 4(3) and 4(4)

- 4.1 Omit the existing subsection 4(2).
- 4.2 Omit the existing subsection 4(3).
- 4.3 Omit the existing subsection 4(4) and substitute the following:
 - 4.4 The office of a member of the Board referred to in paragraph 3(1)(j) becomes vacant if the member:
 - a) dies; or
 - b) resigns from the Board; or
 - c) the Council revokes the member's appointment.

The Committee simply notes that the amendment replaces a provision named "4(4)" with a provision named "4.4". The Committee also notes, however, that the amended version of the University of Canberra (Academic Board) Statute that appears on the University of Canberra website has inserted the new provision as subsection **4(4)**.

Drafting issue

Disallowable Instrument DI2010-172 being the Civil Law (Wrongs) Professional Standards Council Appointment Amendment 2010 (No. 1) made under Schedule 4, sections 4.38 and 4.39 of the *Civil Law (Wrongs) Act 2002* amends DI2009-29 by appointing a new Western Australian nominee and a deputy chair to the ACT Council due to the resignation of the previous Western Australian nominee and deputy chair.

The Committee notes that the effect of this instrument is to appoint specified persons as the Deputy Chair and as the Western Australian nominee on the Professional Standards Council. The appointments are made because an existing member (who was also the Deputy Chair) resigned with effect from 31 December 2009.

The Committee notes that, rather than simply make new instruments of appointment, this instrument amends an earlier instrument of appointment, DI2009-29, replacing certain names. While the Committee does not necessarily question the validity of this approach, the Committee seeks the Minister's advice as to why this approach was taken in this particular case.

Subordinate Laws—No comment

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

Subordinate Law SL2010-23 being the Civil Partnerships Regulation 2010 made under the *Civil Partnerships Act 2008* identifies corresponding legislation in New South Wales, Victoria and Tasmania to enable relationships registered under corresponding legislation to be treated as civil partnerships under ACT law.

Subordinate Law SL2010-24 being the Court Procedures Amendment Rules 2010 (No. 1) made under section 7 of the *Court Procedures Act 2004* makes minor amendments to rules 605 and 608 to clarify what is a discoverable document and what is to be included in a list of documents.

Subordinate Law SL2010-25 being the Health Practitioner Regulation National Law (ACT) (Transitional Provisions) Regulation 2010 made under the *Health Practitioner Regulation National Law (ACT) Act 2010* enables the Act to apply to commenced matters involving a complaint or notification about people registered by a registration body.

Subordinate Law SL2010-26 being the Legal Aid Regulation 2010 made under the *Legal Aid Act 1977* prescribes the value of contracts that may be entered into by the Legal Aid Commission without Ministerial approval.

Subordinate Law SL2010-30 being the Magistrates Court (Lakes Infringement Notices) Amendment Regulation 2010 (No. 1) made under the *Magistrates Court Act 1930* expands the number of offences for which an infringement notice may be issued by including another 17 infringement notice offences and penalties in the *Magistrates Court (Lakes Infringement Notices) Regulation 2004*.

Subordinate Laws—Comment

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

Human rights issue

Subordinate Law SL2010-27 being the Crimes (Child Sex Offenders) Amendment Regulation 2010 (No. 1) made under the *Crimes (Child Sex Offenders) Act 2005* prescribes a series of entities to ensure that any disclosures made from the Register to the entities are made in accordance with the Act.

The Committee notes that this subordinate law prescribes “entities” for subparagraph 118(1)(b)(i) of the *Crimes (Child Sex Offenders) Act 2005*. Section 118 provides (in part):

118 Access to child sex offenders register restricted

- (1) The chief police officer must ensure—
 - (a) that the child sex offenders register, or a part of the register, is only accessed by people who are authorised by the chief police officer or under a regulation; and
 - (b) that personal information in the child sex offenders register is only disclosed by a person with access to the register, or the relevant part of the register—
 - (i) for law enforcement functions or activities and then only to an entity prescribed by regulation; or
 - (ii) as otherwise required or authorised by a regulation or under an Act or other law.

The overall effect of section 118 is to limit access to the Child Sex Offenders Register, subject to certain exceptions. This subordinate law activates those exceptions, by specifying various entities - including the chief executive of the Department of Justice and Community Safety, the Director of Public Prosecutions (or similar person under Commonwealth or State law), the Attorney-General for the Territory, the Commonwealth or a State - to whom personal information from the Register may be disclosed (for law enforcement functions or activities).

The Committee notes that, as this disclosure of personal information engages the right to privacy, it is appropriate that the Explanatory Statement address human rights issues raised by the subordinate law:

Impact on Human Rights:

The disclosure of personal information engages the right to privacy contained in section 12 of the *Human Rights Act 2004*, which states that “Everyone has the right not to have his or her privacy . . . interfered with unlawfully or arbitrarily”.

However, the right to privacy is not an absolute right. It is a qualified right, which means that while the right can first be asserted, permissible restrictions to that right can be applied where it can be shown that it is necessary in a democratic society to do so and if there is a legal basis for such an interference. Indeed, there are many instances where the needs of a democratic society naturally affect the right to privacy.

This is one such instance. Prescribing the entities that personal information contained on the Register can be disclosed to ensures that the disclosure does not happen unlawfully, or arbitrarily.

The Committee makes no further comment on the subordinate law.

Strict liability offences

Subordinate Law SL2010-28 being the Road Transport Legislation Amendment Regulation 2010 (No. 3) made under the Road Transport (Driver Licensing) Act 1999, Road Transport (General) Act 1999 and Road Transport (Mass Dimensions and Loading) Act 2009 provides for the accreditation of heavy vehicle driver assessors.

The Committee notes that this subordinate law inserts the following new strict liability offences into the *Road Transport (Driver Licensing) Regulation 2000*:

- section 108 - failure to display driving instructor's certificate of accreditation - 5 penalty units;
- section 108A - failure to display heavy vehicle driver assessor certificate of accreditation - 5 penalty units;
- section 108B - failure of examiner to produce certificate of accreditation, on request by police officer or authorised person - 5 penalty units;
- section 115 - failure of instructor or assessor to hold insurance - 20 penalty units.

The Committee notes that the Explanatory Statement for this subordinate law, after setting out some legal background to the issue of offences of strict liability, states:

Having regard to the matters considered above, it is considered that the strict liability offences in the amending regulation impose reasonable and proportionate limitations on the presumption of innocence in section 22 (1) of the of the Human Rights Act. The offences are essentially of a regulatory nature and are directed at categories of people who should know the legal obligations under which they practise. The defence of mistake of fact is available to a defendant charged with a strict liability offence. The defence only imposes an evidential burden, as opposed to a legal or 'persuasive' burden, on the defendant: the defendant need only present or point to evidence which suggests that there is a 'reasonable possibility' that he or she acted under a mistake of fact (see the Criminal Code, section 58 (4) and (7)). If the defendant discharges this onus, the burden is then put back on the prosecution to disprove beyond reasonable doubt that the defendant did not act under a mistake of fact (see the Criminal Code, section 56 (2)). The use of strict liability offences will substantially assist in protecting the efficiency and integrity of the regulatory regime under the *Road Transport (Driver Licensing) Regulation 2000*.

The Committee notes with approval that the Explanatory Statement therefore addresses the two issues that the Committee prefers to see addressed in relation to strict liability offences - the justification for an offence being one of strict liability and the defences that are nevertheless available to a person charged with a strict liability offence. The Committee also notes that the highest penalty provided for is 20 penalty units, which is within the ceiling that the Committee believes should apply in relation to offences of strict liability.

The Committee makes no further comment on this subordinate law.

Strict liability offences

Subordinate Law SL2010-29 being the Radiation Protection (Tanning Units) Amendment Regulation 2010 (No. 1) made under the Radiation Protection Act 2006 makes amendments to the Radiation Protection Regulation 2007 modelled on proposed amendments to the National Directory for Radiation Protection.

The Committee notes that this subordinate law inserts the following new strict liability offences into the *Radiation Protection Regulation 2007*:

- section 26 - solarium operator must not make representation that use of tanning unit will result in non-cosmetic benefit or that there is no risk to health from use of a tanning unit - 10 penalty units;

- section 27 - solarium operator must not make representation that the operator can provide a greater frequency of tanning sessions than allowed by the Radiation Protection Regulation - 10 penalty units.

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

APPLICATION OF STRICT LIABILITY

This Regulation contains strict liability offences. Strict liability is usually employed where it is necessary to ensure the integrity of a regulatory scheme, such as those relating to public health and safety, the environment and the protection of the revenue. The control of non-ionising radiation sources requires offences that are generally at the lower end of the range of criminal conduct. These offences are contained in Division 4.4.

Professionals that deal with regulated radiation sources, be it ionising or non-ionising, can reasonably be expected to be aware of their duties and obligations. As such, strict liability offences are more readily justified when a defendant can reasonably be expected, because of his or her professional involvement, to be aware of the requirements of the law. A defendant's frame of mind for some regulatory offences is irrelevant, unless some knowledge or intention ought to be required to commit a particular offence. The mistake of fact defence expressly applies to strict liability as do other defences in part 2.3 of the *Criminal Code 2002*.

Penalties for strict liability offences should not exceed more than 50 penalty units or include a term of imprisonment. The offences in Division 4.4 have a maximum penalty of 10 penalty units. This is the highest penalty level that section 122(3) of *Radiation Protection Act 2006* permits to be included in the Regulation.

The Committee notes with approval that the Explanatory Statement therefore addresses the two issues that the Committee prefers to see addressed in relation to strict liability offences - the justification for an offence being one of strict liability and the defences that are nevertheless available to a person charged with a strict liability offence. The Committee also notes that the highest penalty provided for is 10 penalty units, which is within the ceiling that the Committee believes should apply in relation to offences of strict liability.

The Committee makes no further comment on this subordinate law.

GOVERNMENT RESPONSES

The Committee has received responses from

- The Attorney-General, dated 11 August 2010, in relation to comments made in Scrutiny Reports 2, 3, 8, 10, 11, 12, 15, 17, 19 and 20 concerning:
 - DI2008-221, being the Emergencies (Bushfire Council Members) Appointment 2008 (No. 2);
 - DI2008-222, being the Emergencies (Bushfire Council Members) Appointment 2008 (No. 3);
 - Freedom of Information Amendment Bill 2008 (No. 2);
 - SL2008-55, being the Firearms Regulation 2008;

- DI2009-86, being the Legal Aid (Commissioner—Bar Association Nominee) Appointment 2009;
 - SL2008-25, being the Criminal Code Amendment Regulation 2009 (No. 1);
 - SL2009-34, being the Agents Amendment Regulation 2009 (No. 1);
 - Crimes (Assumed Identities) Bill 2009;
 - DI2009-211, being the Emergencies (Strategic Bushfire Management Plan for the ACT) 2009;
 - SL2009-48, being the Crimes (Sentencing) Amendment Regulation 2009 (No. 1);
 - Civil Partnerships Amendment Bill 2009 (No. 2);
 - DI2009-235, being the Attorney General (Fees) Amendment Determination 2009 (No. 5); and
 - SL2009-56, being the Court Procedures Amendment Rules 2009 (No. 3).
- The Treasurer, dated 12 August 2010, in relation to comments made in Scrutiny Report 24 concerning the Territory-owned Corporations Amendment Bill 2010.
 - The Minister for Planning, dated 16 August 2010, in relation to comments in Scrutiny Report 25 concerning the Construction Occupations Legislation Amendment Bill 2010.
 - The Attorney-General, dated 16 August 2010, in relation to comments made in Scrutiny Report 25 concerning the Victims of Crime Amendment Bill 2010.
 - The Attorney-General, dated 18 August 2010, in relation to comments made in Scrutiny Report 25 concerning the Security Industry Amendment Bill 2010.
 - The Minister for Territory and Municipal Services, dated 19 August 2010, in relation to comments made in Scrutiny Report 25 concerning proposed Government amendments to the Litter (Shopping Trolleys) Amendment Bill 2010.

The Committee wishes to thank the Attorney-General, the Treasurer, the Minister for Planning and the Minister for Territory and Municipal Services for their helpful responses.

Vicki Dunne, MLA
Chair

August 2010

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

REPORTS—2008-2009-2010

OUTSTANDING RESPONSES

Bills/Subordinate Legislation

Report 1, dated 10 December 2008

Development Application (Block 20 Section 23 Hume) Assessment Facilitation Bill
2008

Report 2, dated 4 February 2009

Education Amendment Bill 2008 (PMB)

Report 8, dated 22 June 2009

Disallowable Instrument DI2009-75 - Utilities (Consumer Protection Code)
Determination 2009

Report 10, dated 10 August 2009

Disallowable Instrument DI2009-93 - Utilities (Grant of Licence Application Fee)
Determination 2009 (No. 2)

Report 11, dated 24 August 2009

Disallowable Instrument DI2009-104 - Government Procurement Appointment 2009
(No. 1)

Report 12, dated 14 September 2009

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

Report 14, dated 9 November 2009

Building and Construction Industry (Security of Payment) Bill 2009
Disallowable Instrument DI2009-58 - Heritage (Council Chairperson) Appointment
2009 (No. 1)

Report 18, dated 1 February 2010

Planning and Development (Notifications and Review) Amendment Bill 2009 (PMB)

Report 19, dated 22 February 2010

Education (Suspensions) Amendment Bill 2010 (PMB)

Bills/Subordinate Legislation

Report 22, dated 27 April 2010

Infrastructure Canberra Bill 2010 (PMB)

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

Report 24, dated 28 June 2010

Disallowable Instrument DI2010-62 - Government Procurement Appointment 2010 (No. 1)

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

Disallowable Instrument DI2010-84 - Animal Welfare (Animals Used on Film Sets) Code of Practice 2010

Disallowable Instrument DI2010-85 - Animal Welfare (Welfare of Dogs in the ACT) Code of Practice 2010

Disallowable Instrument DI2010-87 - Blood Donation (Transmittable Diseases) Blood Donor Form 2010 (No. 1)

Disallowable Instrument DI2010-89 - Animal Welfare (Welfare of Poultry: Non-Commercial) Code of Practice 2010

Disallowable Instrument DI2010-97 - Betting (ACTTAB Limited) Payments to Territory Determination 2010 (No. 1)

Disallowable Instrument DI2010-98 - Betting (ACTTAB Limited) Payments to Territory Determination 2010 (No. 2)

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

Report 25, dated 9 August 2010

Liquor Bill 2010

Road Transport (Drink Driving) Legislation Amendment Bill 2010



Simon Corbell MLA

ATTORNEY GENERAL

MINISTER FOR THE ENVIRONMENT, CLIMATE CHANGE AND WATER

MINISTER FOR ENERGY

MINISTER FOR POLICE AND EMERGENCY SERVICES

MEMBER FOR MOLONGLO

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

I refer to Scrutiny of Bill Report No. 25 of 9 August 2010 and in particular the appendix to that report setting out outstanding responses.

I welcome the Standing Committee on Justice and Community Safety's recent restructure of its reports that indicate whether a response is expected on a particular comment. I would ask that the Committee further consider the introduction of a new category within its reports entitled 'comment – no response required'. This would further clarify the Committee's expectations about response to the comments it makes, allowing for efficiency in the committee process. Many of the reports currently listed with outstanding responses would likely fall into the category of not requiring a response.

Please note that this letter replaces my earlier correspondence of 23 June 2010 in which there was some confusion over what was in fact still outstanding. After discussion between your support staff and the Department, this replacement letter should now correctly cover off outstanding reports.

Report 2 (4 February 2009)

Emergencies (Bushfire Council Members) Appointment 2008 (No. 2) (DI2008-221) – I note the Committee's comments. I have asked my Department to consider including the requested statement in future appointments that are made as disallowable instruments.

Emergencies (Bushfire Council Members) Appointment 2008 (No. 3) (DI2008-222) – I note the Committee's comments. I have asked my Department to consider including the requested statement in future appointments that are made as disallowable instruments.

Freedom of Information Amendment Bill 2008 (No 2) – I note that this Bill was negated by the Assembly on 11 February 2009, and so no response is required to the comments on this Bill. I

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further note that the Freedom of Information Amendment Bill 2008, which you presented to the Assembly on 10 December 2008, was passed with Government amendments on 11 February 2009.

Report 3 (23 February 2009)

Firearms Regulation 2008 (SL2008-55) – The Committee has commented that the Explanatory Statement to the Regulation does not address the availability of defences to an offence. The Committee further noted in its comments that the Regulation states that Chapter 2 of the *Criminal Code 2002*, which relates to general defences for offences, applies to the Regulation.

I note the Committee's concerns with the Regulation.

Report 8 (22 June 2009)

Legal Aid (Commissioner – Bar Association Nominee) Appointment 2009 (DI2009-86) – The Committee's comments on this appointment relate to the fact that the Explanatory Statement does not mention that the nominee was chosen from a panel of not less than 3 people nominated by the ACT Bar Association or that the nominee is not a public servant. In the absence of these express terms in the Explanatory Statement, the Committee states that it must assume this to be the case.

I confirm with the Committee that it is correct in assuming that the nominated Commissioner was chosen from a panel of not less than 3 people nominated by the council of the ACT Bar Association, and that the nominated Commissioner is not a public servant.

I thank the Committee for its comments on this appointment.

Report 10 (10 August 2009)

Criminal Code Amendment Regulation 2009 (No 1) (SL2009-25) – The Committee's comments on this Regulation relate to the use of a 'Henry VIII clause', whereby subordinate legislation amends the primary legislation. I note that in its comments, the Committee noted that the Legislative Assembly has explicitly authorised this particular exercise of legislative power, thereby addressing its own concern with this piece of subordinate legislation. Indeed, the Committee concluded its comments by stating that 'As a result, the Committee makes no further comment on this subordinate law'.

Report 11 (24 August 2009)

Agents Amendment Regulation 2009 (No. 1) (SL2009-34) – I note the Committee's comments.

Report 12 (14 September 2009)

Crimes (Assumed Identities) Bill 2009 – I addressed the Committee's comments on this Bill during the debate on the Bill. The Committee may refer to my comments in Hansard of 17 September 2009. I note that the Bill was subsequently passed by the Assembly on that day.

Report 15 (16 November 2009)

Emergencies (Strategic Bushfire Management Plan for the ACT) 2009 (DI 2009-211) – I note the Committee's comments. To the extent allowable under the *Legislation Act 2001*, I have asked my Department to correct any typographical errors. I have also asked that an Explanatory Statement be prepared and notified on the Legislation Register.

Crimes (Sentencing) Amendment Regulation 2009 (SL2009-48) – The Committee's report discusses whether prescribing the Canberra Rape Crisis Centre and the Domestic Violence Crisis Centre as 'criminal justice entities' to allow for information exchange, pursuant to section 136 of the *Crimes (Sentencing) Act 2005*, would interfere with the privacy rights of the person to whom the information relates.

I note that a response is not required to the Committee's comments on this Regulation. In its discussion on the right to privacy and by using extracts from the Explanatory Statement, the Committee resolves its concerns and concludes by stating that 'the Committee makes no further comment on this subordinate law, as it appears to the Committee that, to the extent that this subordinate law interferes with any existing rights to privacy, it does not do so unduly'.

Report 17 (9 December 2009)

Civil Partnerships Amendment Bill 2009 (No 2) – I addressed the Committee's comments on this Bill during the debate on the Bill. The Committee may refer to my comments in Hansard of 10 December 2009. I note that the Bill was subsequently passed by the Assembly on that day.

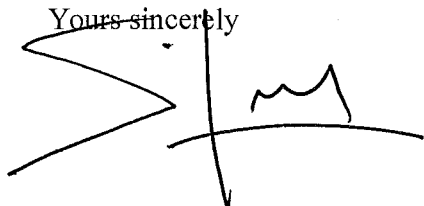
Report 19 (22 February 2010)

Attorney General (Fees) Amendment Determination 2009 (No. 5) (DI 2009-235) – I note the Committee's comments.

Report 20 (15 March 2010)

Court Procedures Amendment Rules 2009 (No 3) (SL2009-56) – A response to the Committee's comments is currently being prepared in consultation with the Rules Advisory Committee, and will be provided in due course.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Simon Corbell', written over a horizontal line.

Simon Corbell MLA
Attorney General

11.8.10



Katy Gallagher MLA

DEPUTY CHIEF MINISTER

TREASURER

MINISTER FOR HEALTH

MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
C/- Scrutiny Committee Secretary
ACT Legislative Assembly
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Dear ~~Mrs Dunne~~ ^{Vicki}

I am writing in response to comments in the Scrutiny Report No 24 of 28 June 2010 in relation to the Territory-owned Corporations Amendment Bill 2010, which raised a number of issues in relation to the engagement with, and proportional displacement of privacy principles enshrined in the *Human Right Act 2004*.

You would be aware of the comments made by all parties that spoke on the second reading of the Bill, and in particular that it was recognised across the members of all sides of the Assembly, that the public benefit of transparency and accountability could only be reasonably ensured through the overriding of those privacy principles, and that the effect of this Bill is such that it is no more onerous than the regime that currently applies to publicly listed companies.

I consider the issues raised in the scrutiny report have been adequately addressed during the debate of this Bill on 29 June 2010, which was subsequently passed by the ACT Legislative Assembly with unanimous support.

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

Yours sincerely

Katy Gallagher MLA
Treasurer

12/8/10

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Andrew Barr MLA

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

MEMBER FOR MOLONGLO

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

Dear Mrs Dunne

I refer to Scrutiny Report No. 25 of 9 August 2010 and the Committee's comments regarding the Construction Occupations Legislation Amendment Bill.

I acknowledge the Committee's comments with regards to the application of Human Rights Act subsection 21(1) to the proposed section 52A provisions. These provisions would allow the Construction Occupations Registrar (the Registrar) to suspend a licence where an issue of public safety has been identified. The matters raised by the Committee should be considered in conjunction with the operation of the suspension and the administrative decision-making process in place for the Registrar to consider representations from affected licensees.

As proposed, any suspension issued will be of a temporary nature and expires automatically after 3 months (s53(5)) if not otherwise revoked. If a longer term suspension or other major disciplinary action is required, which is likely for serious incidents that would result in suspension, then an application must still be made to ACAT for the matter to be heard.

A decision not to revoke a suspension is a reviewable decision (COLA Regulation - Schedule 4 s13). Although the Scrutiny Report suggests that the licensee is not afforded any opportunity to be heard on the matter, this is not entirely representative of the administrative processes applied to decisions of this nature.

Although there is no formal internal review process outlined in the legislation for this, or any other automatic suspension ground, the legislation requires that the Registrar must revoke a suspension if the cause of the automatic suspension no longer exists (s53(2)), or may revoke if satisfied that the circumstances do not pose a greater risk from using the construction services than if the thing had not happened (s53(3)).

If not explicitly in the legislation, the Registrar would be obliged to consider information from various sources in making such a decision, including any representations from the affected licensee demonstrating why a suspension should be

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lifted. In addition, under proposed subsection 52A (3), the Registrar can give a licensee an opportunity to continue work to rectify the problem. As noted, if a licensee does not agree with a refusal to revoke he or she is able to apply to ACAT for a review of the decision.

I do not agree that the proposed automatic suspension provisions in the Bill unduly trespass on personal rights and liberties. The salient aspect of the Committee's comments is the application of general personal rights and liberties to licensing arrangements. As the 2010 ACT Government Response to the Standing Committee on Legal Affairs of the Sixth Legislative Assembly Strict and Absolute Liability Offence stated, case law such as the Supreme Court of Canada's 1991 judgement of *R. v. Wholesale Travel Group Inc* on licensing issues finds that:

"The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should, as part of the burden of responsible conduct attending participation in the regulated field, be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere. Foremost among these implied terms is an undertaking that the conduct of the regulated actor will comply with and maintain a certain minimum standard of care."

The grant of a licence does create legitimate expectation for fairness in administrative decision-making. However, neither a legitimate expectation nor the grant of a licence compels a substantive right. A licensee cannot act unfettered by the requirements of the licence or detrimentally impact on public health and safety in the course of the work the licence permits the practitioner to undertake.

The proposed suspension can only be made on issues of public safety and relates only to those matters that present a significant risk. It is not for all matters associated with a licence. When considering the other automatic suspension provisions in the Construction Occupations (Licensing) Act 2004 (COLA), it should be noted that these relate largely to "consumer protection" issues and there is no requirement for review or notification in these instances as it is linked to the eligibility to hold a licence.


The primary reason for licensing of construction occupations is to protect public health and safety. This can be seen by the genesis of many occupations as reflected in the COLA's operational Acts (e.g. Electricity Safety Act, Gas Safety Act). Eligibility for a licence is linked to a practitioner demonstrating sufficient technical competency to maintain minimum health and safety requirements, not only insurance and other consumer-related issues.

I believe it is important that public health or safety risks are given equal if not greater weight than individual financial risk, and that an equal obligation to temporarily suspend a licence on public safety grounds should not be included in the legislation. Unlike other automatic suspension grounds, the Registrar must exercise reasonableness in making the decision to suspend a licence.

As this correspondence will become extrinsic material and can therefore be used in the interpretation of the legislation I do not believe that further explanation is required in the Explanatory Statement. The provisions are also integrated with existing automatic suspension provisions, which have been addressed in previous explanatory statements.

I would like to thank the Committee for its consideration of this item of legislation.

Yours sincerely


Andrew Barr MLA
Minister for Planning

16 AUG 2010



Simon Corbell MLA

ATTORNEY GENERAL

MINISTER FOR THE ENVIRONMENT, CLIMATE CHANGE AND WATER

MINISTER FOR ENERGY

MINISTER FOR POLICE AND EMERGENCY SERVICES

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
Legislative Assembly
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Dear Mrs Dunne

I note the Standing Committee on Justice and Community Safety (the Committee) has released Scrutiny Report No.25 (the Report) containing comments on the Victims of Crime Amendment Bill 2010 (the Bill). I offer the following response to those comments.

The Committee suggests an amendment to the proposed subsection 29(4) of the Bill to address the issue of a possible conflict with the principle that in a trial all relevant evidence is admissible, which principle may be seen as a component of the right to a fair trial under section 21(1) of the *Human Rights Act 2004 (the HRA)*. The Committee recommends that this issue could be avoided were subsection 29(4) to be amended with the additional wording "or any other law applying in the territory". I agree with the Committee's recommendation and have asked my Department to arrange for an Assembly amendment to be prepared before debate of the Bill.

The Committee suggests that proposed part 4A of the Bill, which provides for the creation of a Victims Advisory Board and provides that I must appoint "1 person who, in the Minister's opinion, represents the interests of indigenous communities", enlivens the right in the HRA subsection 8(3) whereby "everyone is equal before the law and is entitled to the equal protection of the law without discrimination". In particular the Committee has questioned why either this right is not limited, or if it is, how that limitation is justified under section 28 of the HRA.

I am satisfied that clause 13 does not limit the right to equality before the law and equal protection, provided by section 8(3), and therefore requires no justification as proportionate under section 28 of the HRA, for three main reasons.

First, according to authoritative human rights law commentary, the equality of the law part of Article 26 is not directed at legislation, but solely at its enforcement (M. Nowak, *UN Covenant on Civil and Political Rights - CCPR Commentary*, 2nd revised edition, 2005, p. 606). That is, the right affords protection exclusively against judges and administrators acting arbitrarily in the enforcement of laws (T. Opsahl, 'Equality in Human Rights Law, with particular reference to article 26 of the International Covenant on Civil and Political Rights', in M. Nowack et al (eds), *Progress in the Spirit of Human Rights*, Festschrift (FS) Felix Ermacora et al, 1988, p. 51).

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Second, equal treatment does not mean identical treatment for all groups. As stated in United Nations Doc. A/2929, 61(§ 179) "The provision was intended to ensure equality, not identity, of treatment, and would not preclude reasonable differentiations between individuals or groups of individuals".

Third, according to the Human Rights Committee decision in the *Broeks and Zwaan-de Vries* cases, the equal protection part of Article 26 "does not make all differences of treatment discriminatory. A differentiation based on reasonable and objective criteria does not amount to prohibited discrimination within the meaning of Article 26" (Nos. 172, 182/1984, § 12-15). These cases were on statutes providing for unemployment benefits. Importantly, they have not been overruled and continue to be cited as the precedents on the equality of the law part of Article 26 in authoritative commentaries.

While acknowledging some deficiencies within criminal justice data, the ACT Aboriginal and Torres Strait Islander community are approximately five times more likely to be affected by physical violence than the non-Indigenous population¹, however only 2% of Victims Support ACT clients are Indigenous². The Victims of Crime Coordinator, in her report on Aboriginal and Torres Strait Islander victims of family violence titled "We Don't Shoot Our Wounded..." recommended that the community and Government in the ACT should work together to ensure "that the voices of Aboriginal and Torres Strait Islander victims of family violence continue to be heard". Given the above, I believe the limitation would be justified under section 28 of the HRA if justification were necessary.

The Committee asked a number of questions in relation to the proposed new section 12 of the Bill. In respect of the word 'agency', the Committee is correct in assuming this term covers ACT Policing and the Director of Public Prosecutions. The proposed new section 12(1) uses the words 'an agency involved in the administration of justice'. The term 'administration of justice' is defined in the dictionary of the current Victims of Crime Act 1994 to include 'the provision of police services'.

Secondly, the Committee questions whether the word 'could' in subsection 12(2) means that an agency is obliged to disclose information to the Commissioner where it could as a matter of law do so? Information disclosed to the Commissioner, with the victims consent, would need to be provided in accordance with any other law which governs the information. For example, if the information related to a young person, the agency concerned would only be able to provide the information in accordance with legislation governing children and young people.

Thirdly, the Committee queries whether there are any limitations on the Commissioner's ability to pass on the information to the victim who raised the concern, as per subsection 12(1). The agency providing the information, which it could have given to the victim directly, to the Commissioner must do so with the victim's consent and within any other legislative requirements. Therefore, no limitations are envisaged on the information being passed onto the victim by the Commissioner.

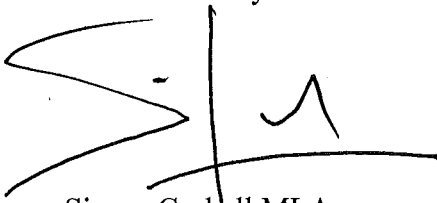
Finally, the Committee queries whether the proposed subsection 12(5) is necessary. This subsection provides the Commissioner the discretion to not refer a formal complaint until they have had the opportunity to attempt to resolve the complaint with the agency concerned, or if the complaint is minor in nature. The point of subsection 12(3) is to provide an alternative avenue for victims of crime to make a formal complaint directly to a complaints entity, that is, without having to go to the Victims of Crime Commissioner first. It is acknowledged that not all victims of crime will engage in the services provided by the Victims of Crime Commissioner. They may have chosen to have no service support assisting them, or to be supported through another service entity. This contrasts with subsection 12(5) as this section refers to concerns or complaints raised directly with the Commissioner and allows that position to have some discretion as to the complaints they referred on.

¹ Source: Social and Cultural Profile of Aboriginal and Torres Strait Islander people in the ACT (2004)

² Source: Victim Support ACT, 2008/09 Annual Report.

I thank the Committee for its comments and trust that my response addresses the Committee's concerns.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a vertical line and a small flourish.

Simon Corbell MLA
Attorney General

16.8.10



Simon Corbell MLA

ATTORNEY GENERAL

MINISTER FOR THE ENVIRONMENT, CLIMATE CHANGE AND WATER

MINISTER FOR ENERGY

MINISTER FOR POLICE AND EMERGENCY SERVICES

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Mrs Dunne

I note the Standing Committee on Justice and Community Safety (the Committee) has released Scrutiny Report No.25 (the Report) containing comments on the Security Industry Amendment Bill 2010 (the Bill). I offer the following response to those comments.

The committee suggests that requiring an applicant for an employee security licence to obtain information about their workplace rights and responsibilities from representatives of a registered organisation before they can be issued with a licence engages the right to privacy in Paragraph 12(a) of the *Human Rights Act 2004* (HRA). The committee goes on to comment that the Explanatory Statement of the Bill does not comment on whether there are “any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve”, therefore addressing the requirements of HRA section 28.

I have considered alternative means to achieve the purpose of ensuring that security workers are able to access up-to-date, accurate information about their entitlements, rights and obligations under legislation in force in the ACT. The first two models, summarised below, have been canvassed with stakeholders and dismissed for sound policy reasons. The third model is that which has been reflected in the Bill that is before the Legislative Assembly.

Model 1: Employers providing workplace information

I have considered this option but am concerned that there is likely to be a conflict of interest in employers providing information about workers’ rights to their employees. I am concerned that adopting this model would mean that while other employees in most other industries have the opportunity to receive information from those best placed to provide it, security industry workers may not be afforded the same opportunity.

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Model 2: Security industry trainers providing workplace information

If this model were adopted, a training package would first need to be created and then added as a component to the national curriculum for the training packages. These packages would include the Certificate II in Security Operations, Certificate III in Security Operations and Certificate IV in Security and Risk Management. This would require national accreditation in accordance with the Australian Quality Training Framework 2007, which could take several years. In addition, when security industry employees were finally able to access this information through accredited trainers, they would have to pay for it, unlike members of other industries who currently receive information free of charge.

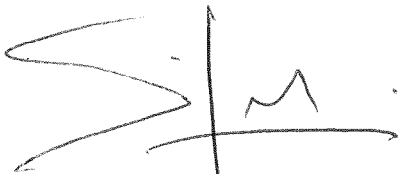
Model 3: Registered Organisation representatives providing workplace information

The Commonwealth *Fair Work Act 2009* clearly acknowledges the expertise that registered organisations have in educating employees about their workplace entitlements and mandates them as the most appropriate provider. This national law gives registered employee representatives the right to enter the workplace for discussions on these very topics.

I am convinced that it is appropriate for union representatives from registered organisations to provide information about the rights and responsibilities of security industry employees as allowed by the Commonwealth *Fair Work Act 2009*, whether the employees are union members or not.

I thank the Committee for their consideration of this bill.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Simon Corbell', written over a horizontal line.

Simon Corbell MLA
Attorney General

18.8.10



Jon Stanhope MLA

CHIEF MINISTER

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

MEMBER FOR GINNINDERRA

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

Dear Mrs Dunne

I refer to the Standing Committee on Justice and Community Safety's Scrutiny Report No 25 of 9 August 2010, and in particular the comments made on the Government's amendments to the Litter (Shopping Trolleys) Amendment Bill 2010 (the Bill). I welcome the opportunity to respond to the Committee's comments on these amendments.

- 1. The Committee notes that sometimes the relevant provision draws attention to the fact the burden is evidential, and at other times it does not. There is a possibility that a reader will be confused as to the legal position by the absence of a reference where it would be applicable.*

The Committee recommends that the Minister respond to this last point.

I accept the Committee's view that there is a possibility that a reader may be confused about the nature of the burden of proof within the Bill. The Government intends all the burdens in its amendments to be evidential burdens. I have therefore clarified the Government amendments to explicitly state where an evidential burden exists on a defendant. In particular, I have inserted a note below section 24D(5) to clarify that the defendant has an evidential burden in relation to proving that a direction given by an authorised person or police officer is 'harsh or unreasonable in the circumstances'.

- 2. Where ... a person is charged with an offence under subsection 24D(3), it appears that he or she may argue that the particular direction in question is invalid on the basis that it was 'harsh or unreasonable in the circumstances' for the authorised person or police officer to have given the direction. Then, if the court finds the direction invalid, there is no basis for the prosecution.*

The Committee calls for the Minister to clarify whether this result could occur, and more generally, the object of subsection 24D(5).

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The Committee is correct in its assumption that the intent of section 24D(5) is to remove the basis for a prosecution if the court finds a direction invalid because it is 'harsh or unreasonable in the circumstances'.

The object of section 24D(5) is to prevent an authorised person or police officer from giving a written direction to a person to return a shopping trolley in circumstances where it will cause undue hardship or distress to that person if they were to have to immediately comply with the direction.

I envisage that section 24D(5) would cover situations where, for example, a parent with young children has removed a shopping trolley from a retailer's premises. Section 24D(5) operates to prevent an authorised person or police officer from giving the 'harsh or unreasonable' direction that the parent leave their children on their own in a car in order to return the trolley. Instead, an authorised person or police officer would have the option of issuing a direction that the parent return the shopping trolley within a specified reasonable period of time.

3. *Where a regulation prescribes a particular retailer (or a class thereof), the person(s) prescribed cannot commit an offence under section 24FA. There are no criteria stated to limit or guide the exercise of this power. This [is] a wide dispensing power, and there is thus raised the question whether there is an inappropriate delegation of legislative power in that the Executive may, by way of regulation, dispense with the operation of the Act in favour of specified retailers.*

...

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

Section 24FA(3)(c) allows a retailer prescribed by regulation to be exempted from committing the offence contained within section 24FA(1), namely, failing to keep an identified shopping trolley within the retailer's shopping centre precinct. An example is given for section 24FA(3)(c), that of a small retailer.

The Government believes that the regulation-making power contained within section 24FA(3)(c) is appropriate and justifiable. The object of section 24FA(3)(c) is to allow the Executive to exclude a retailer or class of retailers from the operation of section 24FA, where it is equitable to do so, or where that retailer would face a disproportionate burden with complying with section 24FA.

Section 24FA(3)(c) does not bestow upon the Executive an unconfined discretion to exempt retailers from prosecution under section 24FA. Any exemptions must be exercised in light of the objects of the *Litter Act 2004*, stated in section 6 of that Act, and the ordinary principles of administrative law.

As the Committee has noted, the Assembly may disallow any regulation made under section 24FA(3)(c): see section 65 of the *Legislation Act 2001*.

4. *In many (if not all) cases where a trolley is left in a place outside a shopping centre precinct, the retailer will have committed the offence under section 24FA of having failed to keep the trolley within the relevant precinct. The point of section*

24FB may be to give the retailer an opportunity of at least 2 days duration to avoid prosecution under section 24FA.

The Committee recommends that the Minister clarify the purpose of section 24FB.

The purpose of section 24FB is to establish an alternative scheme to prosecution to better ensure that abandoned shopping trolleys are removed from areas outside of shopping centres. This scheme involves the Chief Executive of the Department of Territory and Municipal Services giving retailers at least two days' notice of a 'shopping trolley collection day', whereby the Department will arrange for sweeps of particular areas to remove any abandoned trolleys found in those areas.

Any abandoned shopping trolleys discovered during a shopping trolley collection will be removed to a retention area. Retailers may collect shopping trolleys from the retention area after paying the relevant fee.

The object of section 24FB is not to provide a retailer with two days to avoid prosecution for an offence under section 24FA. Despite the alternative scheme created by section 24FB, the Government amendments still create an overarching offence of failing to keep a shopping trolley within a shopping centre precinct, in section 24FA.

While in allowing a shopping trolley to be removed from a shopping centre precinct, the retailer would be committing an offence under section 24FA, the purpose of section 24FB is to encourage retailers to actually collect their trolleys before they are discovered, impounded and destroyed by the Government.

The Government will clarify its amendments to better demonstrate that sections 24FA and 24FB can work in isolation.

5. *It is not clear to the Committee how section 24FC operates in conjunction with the offence under section 24FA of having failed to keep the trolley within the relevant precinct ... Does this mean that a retailer could be prosecuted under section 24FA in circumstances where the retailer had not been given a notice? ... [Will] a retailer who has breached ... section 24FA ... always have an opportunity to avoid prosecution by complying within 24 hours with a removal notice? Paragraph [24FC(4)(d)(ii)] appears to suggest that this is what is intended.*

The Committee recommends that the Minister clarify the purpose of section 24FC and how it will operate in conjunction with the offence provision in section 24FA.

The Committee is correct in assuming that a retailer could be prosecuted under section 24FA despite not having been issued with a removal notice under section 24FC. The issuing of a removal notice is not a precondition of the offence in section 24FA; rather section 24FA establishes the overarching offence of a retailer's failure to keep a shopping trolley within a shopping centre precinct.

Section 24FC establishes a procedure for the collection of individual abandoned shopping trolleys that an authorised person or police officer locates outside of a shopping trolley collection sweep. As a matter of practice, the Government would prefer to use the mechanism in section 24FC to address the problem of the misuse of shopping trolleys. The Government does, however, feel that it is important to establish

an offence of failing to keep a shopping trolley within a retailer's shopping centre precinct.

The Government will clarify its amendments to reinforce this point.

6. *There are some matters for clarification: (i) what range of persons may be authorised to be a 'trolley collector'?; (ii) what range of persons may be appointed to be 'an authorised person'?; and (iii) is it intended that removal under subsection 24G(4) cannot be by a trolley collector?*
- (i) The Government envisages that it will engage contractors to perform the duties of 'trolley collectors'. These contractors will remove any shopping trolleys located outside a shopping centre precinct to a retention area after a collection day notice has been issued under section 24FB or a removal notice has been issued under section 24FC. Authorised people under the *Litter Act 2004* will also have the power to remove trolleys to a retention area.
- (ii) Section 14 of the *Litter Act 2004* states that 'The chief executive may appoint a public servant as an authorised person for this Act'. Thus far, the Chief Executive of the Department of Territory and Municipal Services has exercised this power to appoint the occupants of 145 public service positions as authorised people under the Litter Act; please see the *Litter (Authorised People – Parks Conservation and Lands) Appointment 2008 (No 1)* (NI2008-258), *Litter (Authorised People – Land Development Agency) Appointment 2008 (No 1)* (NI2008-512) and *Litter (Authorised People – Environment Protection and Heritage) Appointment 2008 (No 2)* (NI2008-523). In practice, the Government envisages that only the city ranger positions appointed in NI2008-523 would exercise the powers to deal with shopping trolleys contained within the Private Member's Bill and the Government amendments to it.
- (iii) The Committee is correct in assuming that it is intended that removal of a shopping trolley under section 24G(4) cannot be by a trolley collector. The Government considers that the power to determine whether a trolley should be removed due to the factors outlined in sections 24G(4)(a) and (b) should only be exercised by officers appointed as authorised people under the Litter Act, or by police officers. It is worth noting that the power to issue a direction to return a shopping trolley (section 24D), or a removal notice (section 24FC) can similarly only be exercised by an authorised person or a police officer, and not by a trolley collector.

I trust that the above responses address the Committee's comments in relation to the Government amendments to the Bill, and I thank the Committee for its constructive observations.

Yours sincerely



Jon Stanhope MLA
Minister for Territory and Municipal Services

19 AUG 2010