

**Legislative Assembly for the Australian Capital Territory**



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**Standing Committee on Justice and  
Community Safety**

**(incorporating the duties of a  
Scrutiny of Bills and Subordinate  
Legislation Committee)**

**SCRUTINY REPORT NO. 9 OF 1998**

**27 October 1998**

## **TERMS OF REFERENCE**

- (1) A Standing Committee on Justice and Community Safety be appointed (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee).
- (2) The Committee will consider whether:
  - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
    - (i) meet the objectives of the Act under which it is made;
    - (ii) unduly trespass on rights previously established by law;
    - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
    - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
  - (b) the explanatory statement meets the technical or stylistic standards expected by the Committee.
  - (c) clauses of bills introduced in the Assembly:
    - (i) do not unduly trespass on personal rights and liberties;
    - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
    - (iii) do not 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) the explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of four members.
- (4) 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 and circulation.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) The foregoing provisions of the resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

## **MEMBERS OF THE COMMITTEE**

**Mr Paul Osborne, MLA (Chair)**  
**Mr John Hargreaves, MLA (Deputy Chair)**  
**Mr Trevor Kaine, MLA**  
**Mr Harold Hird, MLA**

**Legal Advisor: Mr Peter Bayne**  
**Secretary: Mr Tom Duncan**  
**Assistant Secretary (Scrutiny of Bills and**  
**Subordinate Legislation): Ms Celia Harsdorf**

## **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.

#### **Children's Services (Amendment) Bill (No. 3) 1998**

This Bill would amend section 6 of the *Children's Services (Amendment) Act 1998* to provide that a child may not be committed to an institution under the new fine recovery scheme established by the *Magistrates Court (Amendment) Act 1998* until the Magistrate has considered a report by the Community Advocate about the circumstances of the child.

#### **Consumer Credit (Administration) (Amendment) Bill 1998**

This Bill would amend subsection 121(5) of the *Consumer Credit (Administration) Act 1996* to remove a reference to "civil proceedings" in that section. This would enable the Director of Consumer Affairs to make use of information obtained by a notice to produce in disciplinary proceedings in civil proceedings. Other proposed amendments would introduce certain civil penalties to enable a debtor to recover any amounts paid to a credit provider or a finance broker at a times when their licences are cancelled or suspended.

#### **Crimes (Amendment) Bill (No. 6) 1998**

This Bill would amend provisions of the *Crimes (Amendment) Bill (No. 3) Act 1998*, and in consequence make amendments to the *Crimes Act 1900*, in order to permit a Magistrate to make a community service order as an alternative to imprisonment in respect of an adult fine defaulter.

#### **Electricity (Amendment) Bill 1998**

This Bill would amend the *Electricity Act 1971* by amending section 33 and inserting new provisions to enable electricians to check their own work and 'self-certify' it having met certain standards. This would remove inspection by government. The electricians must however report the test results to government (and to the owner of the installation).

#### **Financial Management (Amendment) Bill 1998**

This Bill would amend the *Financial Management Act 1996* by the addition of sub-sections to section 11. The effect would be to state 4 principles of financial management, and to permit departure from any one of them in defined circumstances.

#### **Food (Amendment) Bill (No. 2) 1998**

This Bill would have the effect of delaying the implementation of amendments made by the *Food (Amendment) Act 1997* in relation to the sale of eggs.

#### **Magistrates Court (Amendment) Bill (No. 3) 1998**

This Bill would amend provisions of the *Magistrates Court (Amendment) Act 1998*, and in consequence make amendments to the *Magistrates Court Act 1930*. The former Act created a scheme for the enforcement of fines, which might ultimately lead to the imprisonment of an offender. There are several amendments to this scheme proposed, the most substantial of which is a proposed new section 154CA,

which would require the Registrar of the Magistrates Court to refer to the Court the issue of imprisoning a person. That Court could then decide on some punishment other than imprisonment

### **Statute Law Revision (Penalties) Bill 1998**

This Bill would amend a large number of provisions in Acts in force in the Territory. It will complete a review of penalties, a major objective of which was to produce uniformity across the law.

#### Bills - Comment

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

### **Building (Amendment) Bill (No. 2) 1998**

This Bill would amend the *Building Act 1972* in ways which will substantially change the nature of the process for the supervision of building work. Under the proposed scheme, the owner of land on which it is proposed to carry out building work would appoint a person who is qualified in that respect as a certifier in relation to the work. The owner then applies to the certifier for building approval in relation to the work. Building work cannot commence until the owner notifies the certifier of the licensed builder who is to carry out the work. The certifier then notifies the Building Controller of the licensed builder. The certifier has a number of responsibilities in relation to the supervision of the building work and the obtaining of various consents. On the completion of the work, the certifier notifies the Building Controller, who may issue a certificate of occupancy. The relevant records in relation to the building work are held by the Building Controller and may be inspected by the public.

There are two critical changes. First, it would no longer be necessary for an owner of land to obtain a building permit. Secondly, the scheme links with that proposed to be introduced by the Construction Practitioners Registration Bill 1998 in that a person who is a registered construction practitioner under this latter Bill may be appointed as a certifier under the Building (Amendment) Bill (No. 2) 1998.

The Bill would also provide for the grant of owner builders' licences.

#### *Paragraph 2 (c) (iii) - non-reviewable decisions affecting rights, liberties and obligations*

The Committee draws attention to the absence of any provision for review of the exercise of the discretions in various provisions of those sections of the Act which would be inserted by the proposed Part III of the Act -

- subsection 34(1) - the certification of building approval;
- subsection 34A(1) - a decision based on a discretionary judgment as to whether the building would contravene the law by reason of the external design or siting of the building;
- subsection 35(4) - the refusal to amend a building plan;
- subsection 38A(6) - the giving of directions in relation to compliance with section 37;
- subsection 38A(10) - the giving of directions as to tests to be conducted by a builder; and
- section 39 - the giving of directions in relation to safety precautions.

### *Drafting point*

The Committee asks whether the word “approval” in clause 6 of the Bill should read “building approval”.

### **Construction Practitioners Registration Bill 1998**

This Bill would introduce a scheme for the registration of construction practitioners. Such persons might then - by other legislation and in relation to functions specified in other legislation - carry out functions (such as plan approval and inspections) which are currently performed by employees of the government.

The major elements of the scheme are:

- that there be categories of registration, and the qualifications relevant to each category, as set out in regulations;
- a requirement that an applicant for registration have appropriate insurance protection;
- rules to prevent a construction practitioner being placed in a conflict of interest;
- provision for annual renewal of a registration as a construction practitioner;
- the publication by the Chief Executive of a Code of Ethics to be observed by construction practitioners;
- a scheme for monitoring compliance by construction practitioners; and
- a scheme for discipline of construction practitioners.

The Bill would also amend the law concerning an action for damages arising out of certain building work (other than an action for damages for death or personal injury).

### Clause 10

#### *Paragraph 2 (c) (ii) - insufficiently defined administrative powers*

The Explanatory Memorandum states that “[r]egistration [as a construction practitioner] is renewed if the practitioner makes an annual return and provides evidence that he or she will be insured for the next year”. While this is clearly the purpose of clause 10, it is not very clear that this is its effect. The Committee considers that the scheme will be more readily understood if there is a clear statement of the term of a registration and provision made for an application for renewal. The objective of the provisions of clause 10 will then be more readily appreciated.

#### *Paragraph 2 (c) (iii) - non-reviewable decisions affecting rights, liberties and obligations*

It is also noted that there is no provision for review of an exercise of the power to refuse to renew.

### Clause 12

#### *Paragraph 2 (c)(v) - insufficient scrutiny of legislative power*

The Committee notes that the intent of subclause 12(3) of the Bill is to make clear that a Code of Ethics is a disallowable instrument. It is however noted that while subclause 12(2) speaks of the Chief Executive amending the Code “by instrument”, these words are not used in subclause 12(1), which speaks only of the Chief Executive causing a code to be published. Thus, one reading of subclause 12(3) is that it applies only to an amendment of the Code. This may not be the way a court would read the provision, but the matter could be clarified by adding the words “by instrument” at an appropriate place in subclause 12(1).

The Committee notes that the Code of Ethics may well have been a disallowable instrument by virtue of the operation of subsections 6(1) and (7) of the *Subordinate Laws Act 1989* (and having regard to the definition of “subordinate law” in section 14 of the *Interpretation Act 1967*), but does not cavil with the express provision in clause 12.

### Part III - Disciplinary Provisions

*Paragraph 2 (c) (i) - undue trespass on personal rights and liberties*

*Paragraph 2 (c) (ii) - insufficiently defined administrative powers*

The Committee draws attention to various matters in relation to the scheme for discipline under proposed Part III.

The wording of paragraph 20(a) suggests that the Chief Executive may issue a show cause notice to a construction practitioner merely on the ground that “the registration has been effected in error”. This may not have been intended and, on the face of it, is a harsh result.

There is a lack of clarity in relation to the procedure to be followed in a disciplinary matter.

Clause 20 speaks of the Chief Executive issuing a notice to the construction practitioner requiring him or her “to show cause why disciplinary action should not be taken in relation to him or her” on various grounds. By paragraph 22(1)(a) the notice “shall contain full particulars of the facts and circumstances on the basis of which the Chief Executive has formed the opinion that the ground or grounds specified in the notice exists or exist”. The Chief Executive must then specify a time within which the construction practitioner “may show cause why his or her registration should not be suspended or cancelled” (clause 22(1)(b)).

Ordinarily, a requirement to show cause is a requirement to appear as directed at a certain time and place and to present to the decision-maker reasons and considerations why the decision-maker should not take action which the decision-maker proposes to take in relation to the person to whom the show cause notice is directed. It is on the return of the show cause notice - that is, at the time and place as notified - that the decision-maker hears the reasons and considerations advanced by the person and, after that process, the decision-maker decides whether to exercise her or his powers.

It appears however that clause 22 envisages a very different procedure, and in this lies the potential for confusion.

By subclause 22(1) the construction practitioner must show cause within a certain time. By subclause 22(5) it is only after this time has expired that the Chief Executive “may fix a time and place for an inquiry into the proposed suspension or cancellation of the registration”. There are a number of problems here.

First, it is odd that an inquiry may be held after the construction practitioner has shown cause. As indicated above, the question whether a person has shown cause is usually decided after the hearing. It appears that the intention of clause 22 is that the requirement to show cause is in substance a requirement to state reasons why disciplinary action should not be taken. It is suggested that this be made clearer.

Secondly, while subclause 22(5) speaks of “proposed suspension or cancellation of registration”, there is no provision for any person to make such a proposal. It appears that the intention is to refer to a notice made issued under subclause 20(1), but this refers to “disciplinary action”. Again, this should be clarified.

Thirdly, while subclause 22(5) appears to give a discretion to the Chief Executive to “fix a time and place for an inquiry”, it may be that this is a duty to do so. That this is the appropriate reading is indicated by subclause 22(6), for it is to be noticed that the Chief Executive cannot be satisfied as indicated until “[a]fter the completion of an inquiry”; (see too the general principles stated in DC Pearce and R S Geddes, *Statutory Interpretation in Australia* (4th ed, 1996) at para 11.6.) This is a matter which should be clarified, given also that the Explanatory Memorandum states that an inquiry will (only) “normally” be held.

Fourthly, subclause 22(5) alludes to the fact that some persons other than the relevant construction practitioner may make representations “in relation to that suspension or cancellation”. The procedure for the making of representations should be stated. (There is another allusion to representations by others in subclause 22(7)).

Finally, there is nothing said as to the procedure on an inquiry, or as to who will conduct an inquiry. These matters would be governed by the common law relating to natural justice.

There may also be problems with clause 23. While subclause 23(1) is very broad - referring to “a decision which affects a registration” - it appears from paragraph 23(2)(e) that it may be intended to refer only to a decision to suspend or cancel a registration. This matter should also be clarified.

#### Part IV - Limitation of Liability

This Part of the Bill would amend the law concerning an action for damages arising out of certain building work (other than an action for damages for death or personal injury).

##### *Paragraph 2 (c) (i) - undue trespass on personal rights and liberties*

Given that the amendments proposed will have an affect on a person’s existing rights to recover damages for defective building work and the like, the Committee considers that the Explanatory Memorandum should spell out clearly by reference to the existing law just what effect the amendments proposed would have.

#### Rights of review

##### *Paragraph 2 (c) (iii) - non-reviewable decisions affecting rights, liberties and obligations*

The Committee draws attention to the absence of any provision for review of the exercise of the discretions found in various provisions of the Bill:

- subclause 10(2) - in relation to renewal;
- paragraphs 22(6)(vi), (vii) and (viii) - in relation to penalties imposed on a disciplinary proceeding; and
- subclause 24(2) - in relation to the removal of a condition imposed on a disciplinary proceeding under paragraph 22(6)(v).

In this last matter, it is to be noted that the imposition of the condition is reviewable (see paragraph 28(1)(h)).



## **Domestic Violence (Amendment) Bill (No. 2) 1998**

This Bill would amend the *Domestic Violence Act 1986* to provide for the making of an “emergency protection order” against a person (referred to the Bill as a respondent) in relation to another relevant person (referred to the Bill as the “aggrieved person”). By subclause 19F(1) orders may be made by a judicial officer only:

- if the time (presumably at which the order is made) is outside the sitting hours of the Magistrates Court;
- on application by an authorised police officer (being a sergeant or above, or the officer in charge of a police station); and
- if the judicial officer “is satisfied” that the respondent “has engaged in conduct that gives reasonable grounds for believing that the respondent might, unless restrained, physically injure the aggrieved person”, and “it is not practicable to arrest, or there are no grounds for arresting, the respondent”.

Subclause 19F(2) specifies the kinds of orders which may be made by an emergency protection order. These include the kinds of orders which may be made under section 9 of the Act.

There are provisions governing procedures on an application for an emergency protection order and on the making of an emergency protection order.

While an application may be made only by an authorised police officer as defined, clause 19G provides that any police officer who deals with an incident “in which the conduct of a person and the other circumstances appear to constitute the grounds’ for an order “shall inform an authorised police officer”. If the latter decides not to seek an emergency protection order, he or she shall make a record of that decision and of the reasons therefor.

An emergency protection order is of limited duration (clause 19H), and may be revoked by an order of the Magistrates Court (clause 19L).

### *Paragraph 2 (c) (i) - undue trespass on personal rights and liberties*

The Committee has acknowledged in other reports to the Legislative Assembly that there is much room for disagreement as to how the *Domestic Violence Act 1986* may be viewed from a rights perspective. It sees its function as one of drawing to the attention of the Assembly aspects of Bills which may be seen as raising the issue of whether there has been an “undue trespass on personal rights and liberties”. It is for the Assembly to take a view on whether there has been any such ‘trespass’.

### Clauses 19F and 19I - the procedures on the making of an emergency protection order

While it is clear that the person who might be the respondent to an emergency protection order will be identified to the judicial officer, there is no provision for that person to be given any opportunity to be heard by the judicial officer on the issue of whether the emergency protection order should be made. Given the nature of the orders which may be made by an emergency protection order, and more general effects of such an order (such as those on the reputation of the respondent), it would be expected that the judicial officer is bound to accord natural justice to the respondent. It is clear that under the law this obligation may be excluded only if a statute makes express provision to this effect, or if the exclusion of an obligation to observe natural justice is necessarily to be implied in the relevant legislative scheme.

There are no words of express exclusion in the Bill, and it is not clear that exclusion of natural justice is necessarily to be implied. There would not appear to be any insuperable reason why, in particular circumstances, the person who might be the respondent to an emergency protection order might not be given an opportunity to be heard by the judicial officer.

It is suggested that the Bill make clear just what is intended in this regard. If exclusion of natural justice is intended, the Explanatory Memorandum should provide some justification for this policy in this context.

#### Clause 19J - detention of the person against whom the order is sought

By clause 19K, an emergency protection order must be served personally on the respondent by a police officer “as soon as reasonably possible”. Clause 19J permits the detention of the person against whom the order is sought in order, it appears, to facilitate this process.

Subclause 19J(1) provides -

“Where it is proposed to apply for an emergency protection order, a police officer may

- (a) where appropriate, remove the person to another place, and
- (b) detain the person until the application for the order has been dealt with and any order served on the person”.

By subclause 19J(2), a person shall not be detained under this section for longer than 4 hours”.

It must be noted that the procedure for the making of an emergency protection order may be commenced even though there are no grounds to arrest the proposed respondent. (The Presentation Speech makes clear that where a criminal offence has occurred, the appropriate response of the police is to arrest and charge the alleged offender.)

It is to be noted that this clause makes no provision in relation to matters such as:

- the grounds for a removal or a detention;
- the place and the circumstances under which a person may be detained;
- the rights of a person in detention, including matters such as the right to contact a lawyer or a friend, or to have any conversations with a police officer recorded; or
- means for a decision to detain to be challenged.

In many respects, the position of a person detained under clause 19J compares unfavourably with a person charged with a criminal offence.

It may be argued that this is only a procedure in aid of a civil process. Whether that is a substantially accurate way of seeing the situation, it is to be noted on the other hand that it is extraordinary to use police powers of detention to aid the civil process, and, secondly, that statements made by the proposed respondent in detention might well be a basis for criminal charges.

In respect of clause 19J, the Committee draws attention to Article 9 of the International Covenant on Civil and Political Rights -

## *Article 9*

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

...

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

### *Comments on the Explanatory Memorandum*

There are indications that the Explanatory Memorandum was prepared in relation to some other draft of this Bill. This is apparent from the Explanatory Memorandum comments on clause 19J of the Bill. That clause is not limited to circumstances where “an emergency protection order is being sought against a person”, and there is no specification in the clause of the locations at which a person may be placed in detention.

It is also apparent that the Explanatory Memorandum comments on clause 4 do not match up with the provisions of the Bill to which they are said to relate.

### Subordinate Legislation - No Comment

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

**Subordinate Law No. 23 of 1998 being the Supreme Court Rules (Amendment) made under section 36 of the *Supreme Court Act 1933* amends Order 32 Rule 1 of the Supreme Court Rules to enlarge the power of the Court to order that a document be amended.**

**Subordinate Law No. 30 of 1998 being the Insurance Levy Regulations made under the *Insurance Levy Act 1998* prescribes matters relating to the assessable portion of a premium as required by section 5 of the Act, and prescribes matters relating to the annual return of a general insurer.**

**Subordinate Law No. 31 of 1998 being the Interactive Gambling Regulations made under section 148 of the *Interactive Gambling Act 1998* make provision for a number of matters, including what will be “regulated interactive gambling equipment” in relation to the definition of that term in section 3; the kinds of evidence for the purposes of subsection 16(2); the ways of providing funds for the purposes of paragraph 18(b); the time during which interactive gambling tax must be paid (subsection 83(2); the information to be provided for the calculation of interactive gambling tax under paragraph 84(a); other information for the purpose of paragraph 84(b); and for certain other matters.**

**Determination No. 116 of 1998 made under subsection 67(1) of the *Births, Deaths and Marriages Registration Act 1997* determines fees payable for various services provided under the Act in relation to access to and searches of the Register.**

**Determination No. 117 of 1998 made under section 132 of the *Casino Control Act 1988* revokes Determination No. 112 of 1997 and determines fees payable for various purposes of the Act in relation to licences under the Act.**

Determination No. 185 of 1998 made under subsection 9(1) of the *Parole Act 1976* appoints a specified person as the Chairperson of the Parole Board of the ACT and appoints other persons as members of that Board.

Determination No. 186 of 1998 made under section 44A of the *Tobacco Licensing Act 1984* revokes Determination No. 208 of 1996 and determines fees payable for the purposes of the Act in relation to licence fees payable under the Act.

Determination No. 187 of 1998 made under subsections 3(2), 5(1) and 26(1) of the *Subsidies (Liquor and Diesel) Act 1998* sets a rate for the subsidy for the supply of low-alcohol liquor and diesel in the Territory, and defines low-alcohol liquor for the purposes of the Act.

Determination No. 198 of 1998 made under subsection 9(1) of the *Bookmakers Act 1985* appoints persons as members of the Bookmakers Licensing Committee.

Determination No. 199 of 1998 made under section 10 of the *Bookmakers Act 1985* appoints a person as Chairperson of the Bookmakers Licensing Committee.

Determination No. 201 of 1998 made under subsection 139(1) of the *Land Titles Act 1925* revokes Determination No. 202 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 202 of 1998 made under section 126 of the *Associations Incorporation Act 1991* revokes Determination No. 203 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 203 of 1998 made under section 4A of the *Business Names Act 1963* revokes Determination No. 204 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 204 of 1998 made under section 8 of the *Registration of Deeds Act 1957* revokes Determination No. 206 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 205 of 1998 made under regulation 31 of the *Adoption Regulations* revokes Determination No. 207 of 1997 and determines fees payable for the purposes of regulation 24(3)(b).

Determination No. 206 of 1998 made under section 67 of the *Births, Deaths and Marriages Registration Act 1997* revokes Determinations Nos 116 and 151 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 207 of 1998 made under section 37 of the *Instruments Act 1933* revokes Determination No. 205 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 209 of 1998 made under subsection 39C(1) of the *Bookmakers Act 1985* amends Determination No. 236 of 1997, being rules relating to sports betting, to allow licensed sports bookmakers to offer spread betting services on the outcome of political elections.

Determination No. 213 of 1998 made under paragraph 7(1)(e) and subsection 7(3) of the *Legal Aid Act 1977* appoints a specified person as a Commissioner of the Legal Aid Commission of the ACT.

Determination No. 214 of 1998 made under subsection 161(5) of the *Land (Planning and Environment) Act 1991* determines the criteria for the direct grant of a Crown lease under paragraph 161(1)(b) of the Act to the Canberra District Rugby League Football Club. The lease relates to Block 6 Section 30 Division of Braddon.

Determination No. 215 of 1998 made under subsection 161(5) of the *Land (Planning and Environment) Act 1991* determines the criteria for the direct grant of a Crown lease under paragraph

**161(1)(b) of the Act to the ACT Leagues Club Limited. The lease relates to Block 5 Section 30 Division of Braddon.**

**Determination No. 216 of 1998 made under paragraph 30(1)(c) of the *Canberra Institute of Technology Act 1987* appoints a specified person as a member of Canberra Institute of Technology Advisory Council.**

**Determination No. 217 of 1998 made under paragraph 30(1)(c) of the *Canberra Institute of Technology Act 1987* appoints a specified person as a member of Canberra Institute of Technology Advisory Council.**

**Determination No. 218 of 1998 made under paragraph 30(1)(b) of the *Canberra Institute of Technology Act 1987* appoints a specified person as Deputy Chairperson of Canberra Institute of Technology Advisory Council.**

**Determination No. 219 of 1998 made under section 12A of the *Dangerous Goods Act 1984* revokes Determination No. 104 of 1997 and determines fees payable for the purposes of the Act.**

**Determination No. 220 of 1998 made under subsection 161(5) of the *Land (Planning and Environment) Act 1991* revokes Determination No. 10 of 1993 and specifies the criteria for the direct grant of a Crown lease for the purposes of self care units for aged persons accommodation.**

**Determination No. 222 of 1998 made under subsection 87(1) of the *Occupational Health and Safety Act 1989* is an approval of the Code of Practice 'ACT Construction Industry Amenities'.**

**Determination No. 223 of 1998 made under section 44 of the *Electricity Supply Act 1998* determines fees payable for the purposes of section 43 of the Act.**

**Determination No. 224 of 1998 made under section 85 of the *Dentists Act 1931* determines fees payable for various purposes of the Act.**

**Determination No. 225 of 1998 made under subsection 163(4) of the *Land (Planning and Environment) Act 1991* specifies the criteria for the grant of a lease over Section 20 Gungahlin for the purposes of an educational establishment to be conducted by the Anglican Diocese of Canberra and Goulburn.**

**Determination No. 226 of 1998 made under section 145 of the *Interactive Gambling Act 1998* determines fees payable for various purposes of the Act.**

**Determination No. 227 of 1998 made under section 99 of the *Taxation (Administration) Act 1987* revokes Determination No. 38 of 1997 and determines various matters in connection with the imposition of stamp duty.**

#### *Other documents*

**Variation to the Territory Plan No. 66 enables three additional places to be added to the Heritage Places Register. Before the Committee was a document of approval of this variation made by the Executive pursuant to paragraph 26(1)(a) of the *Land Act*. The additional places are:**

**Lennox House Complex;  
the Uniting Church, Reid; and  
the Tharwa Bridge.**

**Variation to the Territory Plan No. 79 enables seven additional places to be added to the Heritage Places Register. Before the Committee was a document of approval of this variation made by the Executive pursuant to paragraph 26(1)(a) of the *Land Act*. The additional places are**

**Aboriginal Rock Art Sites in Namadgi National Park;  
Cuppacumbalong Woolshed Complex, Paddys River;  
Duntroon Dairy, Campbell;  
Duntroon Woolshed, Pialligo;  
Gungahleen School (formerly Stone Hut School), Lyneham;  
Manuka Swimming Pool, Griffith; and  
Tocumwal Housing Precinct, O'Connor.**

#### Subordinate Legislation - Comment

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

**Determination No. 200 of 1998 made under the *Health and Community Care Services Act 1996* revokes Determination No. 135 of 1997 and determines fees payable for various purposes of the Act.**

The Explanatory Memorandum helpfully explains how this determination varies from that which is revoked, and is to be commended in this respect. However, neither it or the text of Determination No. 200 of 1998 indicate the source of authority for Determination No. 200.

**Determination No. 210 of 1998 made under subsection 5(1) of the *Health Professions Boards (Procedures) Act 1981* appoints a specified person as a member of the Podiatrists Board of the ACT.**

There is no Explanatory Memorandum and no other indication that there has been consultation in accordance with the *Statutory Appointments Act 1994*.

**Determination No. 211 of 1998 made under subsection 5(2) of the *Health Professions Boards (Procedures) Act 1981* appoints a specified person as a member of the Psychologists Board of the ACT.**

There is no Explanatory Memorandum and no other indication that there has been consultation in accordance with the *Statutory Appointments Act 1994*.

**Determination No. 212 of 1998 made under subsection 5(1) of the *Health Professions Boards (Procedures) Act 1981* appoints a specified person as a member of the Medical Board of the ACT.**

There is no Explanatory Memorandum and no other indication that there has been consultation in accordance with the *Statutory Appointments Act 1994*.

**Determination No. 221 of 1998 made under the *Radiation Act 1983* revokes Determination No. 230 of 1997 and determines fees payable for various purposes of the Act.**

Neither the Explanatory Memorandum or the text of Determination No. 221 of 1998 indicate the source of authority for Determination No. 221.

## **GOVERNMENT RESPONSES**

The Committee has received responses in relation to comments made concerning:

- Health (Amendment) Bill 1998 (Report No. 5 of 1998).
- Crimes (Amendment) Bill (No. 5) 1998 (Report No. 8 of 1998).
- Determination No. 148 of 1998 made under the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994* (Report No. 6 of 1998).
- Determination No. 149 of 1998 made under the *Adoption Act 1993* (Report No. 6 of 1998).
- Determinations made under the *Rates and Land Tax Act 1926* (Report No. 8 of 1998).
- Determinations Nos 5 and 6 of 1998 made under the *Nature Conservation Act 1980* (Report No. 8 of 1998).
- Determinations Nos 8, 9 and 10 of 1998 made under the *Building Act 1972* (Report No. 8 of 1998).
- Variations to the Territory Plan Nos 91 and 93 made under the *Land (Planning and Environment) Act 1991* (Report No. 8 of 1998).
- Subordinate Law No. 29 of 1998 being the Mediation Regulations made under section 13 of the *Mediation Act 1997* (Report No. 8 of 1998).
- Determination No. 152 of 1998 made under the *Liquor Act 1975*. (Report No. 6 of 1998).
- Subordinate Law No. 8 of 1998 being the Bushfire Regulations (Amendment) made under the *Bushfire Act 1936* (Report No. 6 of 1998).

Copies of the responses are attached.

The Committee thanks the Chief Minister, the Attorney-General, the Minister for Urban Services, the Minister for Education and the Minister for Health and Community Care for their helpful responses.

Paul Osborne  
Chair

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