

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

SCRUTINY REPORT 7

13 MAY 2013

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ROLE OF COMMITTEE

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

RESOLUTION OF APPOINTMENT

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

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

TABLE OF CONTENTS

| | |
|-------------------------------------|----------|
| SUBORDINATE LEGISLATION | 1 |
| DISALLOWABLE INSTRUMENTS—NO COMMENT | 1 |
| DISALLOWABLE INSTRUMENT—COMMENT | 2 |
| SUBORDINATE LAW—NO COMMENT | 2 |
| SUBORDINATE LAWS—COMMENT | 2 |
| OUTSTANDING RESPONSES | 5 |

SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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

Disallowable Instrument DI2013-35 being the Independent Competition and Regulatory Commission (Regulated Water and Sewerage Services) Terms of Reference Amendment Determination 2013 made under sections 15 and 16 of the *Independent Competition and Regulatory Commission Act 1997* amends the Terms of Reference contained in DI2011-287 by changing the final reporting date to 12 June 2013.

Disallowable Instrument DI2013-36 being the Public Place Names (Griffith) Determination 2013 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the name of a public park in the Division of Griffith.

Disallowable Instrument DI2013-37 being the Public Place Names (Ngunnawal) Determination 2013 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the name of new roads in the Division of Ngunnawal.

Disallowable Instrument DI2013-38 being the Public Place Names (Macgregor) Determination 2013 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the name of a road in the Division of Macgregor.

Disallowable Instrument DI2013-39 being the Public Place Names (Belconnen District) Determination 2013 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the name of a bridge in the District of Belconnen.

Disallowable Instrument DI2013-40 being the Financial Management (Credit Facility) Approval 2013 (No. 1) made under subsection 59(5) of the *Financial Management Act 1996* approves a credit facility for the University of Canberra from the Territory Banking Account.

Disallowable Instrument DI2013-41 being the Financial Management (Directorates) Guidelines 2013 made under section 133 of the *Financial Management Act 1996* revokes DI2012-63 and prescribes certain directorates for the purposes of the Act.

Disallowable Instrument DI2013-42 being the Public Place Names (Majura District) Determination 2013 (No. 1) made under section 3 of the *Public Places Names Act 1989* determines the name of a public viewing platform in the District of Majura.

Disallowable Instrument DI2013-43 being the Health (National Health Funding Pool and Administration) Appointment 2013 (No. 1) made under section 8 of the *Health (National Health Funding Pool and Administration) Act 2013* appoints an individual agreed to by all members of the Standing Council on Health to the office of Administrator.

Disallowable Instrument DI2013-44 being the Water Resources Environmental Flow Guidelines 2013 made under section 12 of the *Water Resources Act 2007* revokes DI2006-13 and approves the environmental flow requirements needed to maintain aquatic ecosystems.

DISALLOWABLE INSTRUMENT—COMMENT

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

Issues arising from explanatory statement

Disallowable Instrument DI2013-45 being the Education (Government Schools Education Council) Appointment 2013 (No. 2) made under section 57 of the *Education Act 2004* revokes DI2013-26 and appoints an individual to the position of education member on the Government Schools Education Council.

This instrument appoints a specified person as an education member of the Government Schools Education Council. Section 4 of the instrument revokes a previous instrument—DI2013-26—which appointed the same specified person to the Council.

The explanatory statement for this instrument states:

This instrument revokes DI2013-26 to rectify an invalid appointment as a result of not fulfilling requirements of S210 of the *Legislation Act 2001*.

Section 210 of the *Legislation Act 2001* provides:

210 Resignation of appointment

- (1) An appointment ends if the appointee resigns by signed notice of resignation given to the appointer.
- (2) However, if the appointer is the Executive, the notice of resignation may be given to a Minister.

It is not clear to the Committee what the statement in the explanatory statement means, nor how section 210 of the *Legislation Act* applies to this instrument.

The Committee would be grateful if the Minister could provide further information on this issue.

SUBORDINATE LAW—NO COMMENT

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

Subordinate Law SL2013-7 being the Road Transport (Alcohol and Drugs) Amendment Regulation 2013 (No. 1) made under section 7 of the *Road Transport (Alcohol and Drugs) Act 1977* prescribes the Alcolizer 5 Series as an alcohol screening device for the purposes of the Act.

SUBORDINATE LAWS—COMMENT

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

Minor drafting issue

Subordinate Law SL2013-6 being the Building (General) Amendment Regulation 2013 (No. 1) made under the *Building Act 2004* prescribes for further exemptions from the Act in relation to the Narrabundah Long Stay Park.

The Committee notes that the explanatory statement for this subordinate law states:

Historically, the Act and its predecessors in function have been complimented by regulations that have prescribed types of buildings or building work that are exempt from all or part of the Act.

The Committee assumes that the above extract is intended to indicate that the Act and its predecessors in function have been **complemented** by regulations.

This comment does not require a response from the Minister.

Strict liability offence

Subordinate Law SL2013-8 being the Food Amendment Regulation 2013 (No. 1) made under the *Food Act 2001* provides for specific requirements on training qualifications and notification of food safety supervisors.

The Committee notes that this subordinate law provides for a new strict liability offence. New section 19 of the *Food Regulation 2002*, inserted by section 5 of this subordinate law, provides:

Section 50 of this subordinate law provides (in part):

19 Food safety supervisor must hold valid statement of attainment for food safety training courses—Act, s 152 (2) (e)

- (1) This section applies to a registered food business that is required to have a food safety supervisor.

Note The Act, s 117, sets out when a registered food business must have a food safety supervisor.

- (2) The proprietor of the business commits an offence if the food safety supervisor—
- (a) does not hold a statement of attainment for an approved food safety training course; or
 - (b) holds a statement of attainment for an approved food safety training course, but the statement is more than 5 years old.

Maximum penalty: 20 penalty units.

Note The chief health officer must make guidelines for the approval of a food safety training course—see the Act, s 119.

- (3) An offence against this section is a strict liability offence.
- (4) The proprietor of a registered food business must keep a copy of the food safety supervisor's current statement of attainment at the food business premises.

New subsection 19(3) creates a strict liability offence.

The Committee notes that the explanatory statement for this subordinate law states:

It is proposed that this offence be strict liability. In the ACT food safety regulatory regime, initiatives are designed to ensure that serious public health risks from unsafe food practices are managed appropriately by a food business. The food safety supervisor scheme has the same intention. Strict liability offences are commonly used to ensure the integrity of regulatory schemes. Strict liability offences are considered to engage the presumption of innocence, and the prosecution has to prove, beyond a reasonable doubt, that the person is guilty. With strict liability offences only the physical element of the offence needs to be proved. In designing a strict liability offence, it is desirable that the defendant can be reasonably expected to be aware of the requirements of the law. It is considered that this type of offence is appropriate for ensuring adequately trained food safety supervisors across ACT food businesses. The maximum penalty for this offence is 20 penalty units.

The Committee notes that this addresses the Committee's requirements in relation to strict liability offences, as set out in its document titled *Subordinate Legislation—Technical and Stylistic Standards: Tips/Traps* (available at http://www.parliament.act.gov.au/_data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards.pdf). Those requirements are that the explanatory statement for a subordinate law that includes an offence that involves strict or absolute liability expressly identify:

- the reasons a particular offence needs to be one of strict liability; and
- the defences to the relevant offence that are available, despite it being one of strict or absolute liability.

This comment does not require a response from the Minister.

Steve Dospot MLA
Chair

13 May 2013

OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

Report 2, dated 4 February 2013

Directors Liability Legislation Amendment Bill 2012

Report 3, dated 25 February 2013

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

Report 5, dated 4 April 2013

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2013

Report 6, dated 2 May 2013

Community Housing Providers National Law (ACT) Bill 2013

