



Legislative Assembly for the ACT

STANDING COMMITTEE ON LEGAL AFFAIRS  
(performing the duties of a Scrutiny of Bills and  
Subordinate Legislation Committee)

## Scrutiny Report

23 JUNE 2008

**Report 56**

## **TERMS OF REFERENCE**

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

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

### ***Human Rights Act 2004***

Under section 38 of the Human Rights Act, this Committee must report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly.

## **MEMBERS OF THE COMMITTEE**

**Mr Bill Stefaniak, MLA (Chair)**  
**Ms Karin MacDonald, MLA (Deputy Chair)**  
**Dr Deb Foskey, MLA**

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**Legal Adviser (Bills): Mr Peter Bayne**  
**Legal Adviser (Subordinate Legislation): Mr Stephen Argument**  
**Secretary: Mr Max Kiermaier**  
**(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.

## SUBORDINATE LEGISLATION

### Disallowable Instruments—No comment

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

**Disallowable Instrument DI2008-65 being the Public Place Names (Dunlop) Determination 2008 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the name of water quality control pond No. 3 in the Division of Dunlop.**

**Disallowable Instrument DI2008-66 being the Domestic Animals (Fees) Determination 2008 (No. 1) made under section 144 of the *Domestic Animals Act 2000* revokes DI2007-157 and determines fees payable for the purposes of the Act.**

**Disallowable Instrument DI2008-69 being the Road Transport (General) (Application of Road Transport Legislation) Declaration 2008 (No. 5) made under section 13 of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to vehicles or drivers competing in a special stage of the 2008 Rally of Canberra Testing Sessions, the 2008 Rally of Canberra Media Day and the 2008 Rally of Canberra.**

**Disallowable Instrument DI2008-71 being the Heritage (Council Members) Appointment 2008 (No. 1) made under section 17 of the *Heritage Act 2004* appoints specified persons as members of the ACT Heritage Council.**

**Disallowable Instrument DI2008-75 being the Surveyors (Fees) Determination 2008 (No. 1) made under section 80 of the *Surveyors Act 2007* determines fees payable for the purposes of the Act.**

**Disallowable Instrument DI2008-76 being the Taxation Administration (Amounts payable—Eligibility—Home Buyer Concession Scheme) Determination 2008 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2006-265 and determines the income test and thresholds, eligibility criteria, conditions and method of calculation of duty payable.**

**Disallowable Instrument DI2008-77 being the Taxation Administration (Amounts and Rates—Payroll Tax) Determination 2008 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2006-86 and determines the monthly threshold for the payment of ACT payroll tax under the Payroll Tax Act 1987.**

**Disallowable Instrument DI2008-78 being the Taxation Administration (Amounts payable—Eligibility—Pensioner Duty Concession Scheme) Determination 2008 (No. 1) made under section 139 of the *Taxation Administration Act 1999* commences a three year moratorium on payment of the full amount of duty in relation to the grant or transfer of a crown lease.**

**Disallowable Instrument DI2008-79 being the Taxation Administration (Amounts payable—Thresholds—Pensioner Duty Concession Scheme) Determination 2008 (No. 1) made under section 139 of the *Taxation Administration Act 1999* determines the property value thresholds to be used for the purposes of the calculation of duty payable by an eligible pensioner under the Duties Act 1999.**

**Disallowable Instrument DI2008-80 being the Taxation Administration (Amounts payable—Thresholds—Home Buyer Concession Scheme) Determination 2008 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2007-313 and determines the property value thresholds to be used for the purposes of the calculation of duty payable by an eligible home buyer under the Duties Act 1999.**

**Disallowable Instrument DI2008-81 being the Training and Tertiary Education (Accreditation and Registration Council) Appointment 2008 (No. 1) made under subsection 12(2) of the *Training and Tertiary Education Act 2003* appoints a specified person to represent the higher education expertise position on the ACT Accreditation and Registration Council.**

**Disallowable Instrument DI2008-82 being the Training and Tertiary Education (Accreditation and Registration Council) Appointment 2008 (No. 2) made under subsection 12(2) of the *Training and Tertiary Education Act 2003* appoints a specified person to represent the vocational education and training expertise position on the ACT Accreditation and Registration Council.**

**Disallowable Instrument DI2008-83 being the Education (Government Schools Education Council) Appointment 2008 (No. 1) made under section 57 of the *Education Act 2004* appoints a specified person as a community member of the Government Schools Education Council.**

**Disallowable Instrument DI2008-84 being the Education (Government Schools Education Council) Appointment 2008 (No. 2) made under section 57 of the *Education Act 2004* appoints a specified person as a community member of the Government Schools Education Council.**

**Disallowable Instrument DI2008-85 being the Education (Government Schools Education Council) Appointment 2008 (No. 3) made under section 57 of the *Education Act 2004* appoints a specified person as a community member of the Government Schools Education Council.**

**Disallowable Instrument DI2008-86 being the Education (Government Schools Education Council) Appointment 2008 (No. 4) made under section 57 of the *Education Act 2004* appoints a specified person as a community member of the Government Schools Education Council.**

**Disallowable Instrument DI2008-88 being the Education (Non-Government Schools Education Council) Appointment 2008 (No. 1) made under section 109 of the *Education Act 2004* appoints a specified person as a chairperson of the Non-Government Schools Education Council.**

**Disallowable Instrument DI2008-89 being the Education (Non-Government Schools Education Council) Appointment 2008 (No. 2) made under section 109 of the *Education Act 2004* appoints a specified person as a community member of the Non-Government Schools Education Council.**

**Disallowable Instrument DI2008-90 being the Financial Management (Budget Financial Statements) Guidelines 2008 made under section 133 of the *Financial Management Act 1996* prescribes the level of reporting required in the budget financial statements.**

**Disallowable Instrument DI2008-91 being the Education (Non-Government Schools Education Council) Appointment 2008 (No. 3) made under section 109 of the *Education Act 2004* appoints a specified person as a community member of the Non-Government Schools Education Council.**

**Disallowable Instrument DI2008-92 being the Education (Non-Government Schools Education Council) Appointment 2008 (No. 4) made under section 109 of the *Education Act 2004* appoints a specified person as a community member of the Non-Government Schools Education Council.**

**Disallowable Instrument DI2008-93** being the Education (Non-Government Schools Education Council) Appointment 2008 (No. 5) made under section 109 of the *Education Act 2004* appoints a specified person as an education member of the Non-Government Schools Education Council representing non-government school unions.

**Disallowable Instrument DI2008-94** being the Education (Non-Government Schools Education Council) Appointment 2008 (No. 6) made under section 109 of the *Education Act 2004* appoints a specified person as an education member of the Non-Government Schools Education Council representing Catholic schools.

**Disallowable Instrument DI2008-95** being the Education (Non-Government Schools Education Council) Appointment 2008 (No. 7) made under section 109 of the *Education Act 2004* appoints a specified person as an education member of the Non-Government Schools Education Council representing Catholic schools.

**Disallowable Instrument DI2008-96** being the Education (Non-Government Schools Education Council) Appointment 2008 (No. 8) made under section 109 of the *Education Act 2004* appoints a specified person as an education member of the Non-Government Schools Education Council representing Catholic schools.

**Disallowable Instrument DI2008-97** being the Public Place Names (Belconnen) Determination 2008 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the extension of the name "Kuringa Drive" in place of the name "Charnwood Road" in the district of Belconnen.

**Disallowable Instrument DI2008-98** being the Liquor Licensing Board Appointment 2008 made under section 12 of the *Liquor Act 1975* appoints a specified person as a member of the Liquor Licensing Board.

**Disallowable Instrument DI2008-103** being the Long Service Leave (Building and Construction Industry) Levy Determination 2008 made under subsection 47(1) of the *Long Service Leave (Building and Construction Industry) Act 1981* determines the levy payable by employers for each quarter.

**Disallowable Instrument DI2008-105** being the Road Transport (General) (Driver Licence and Related Fees) Determination 2008 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2007-176 and determines fees payable for the purposes of the Act.

**Disallowable Instrument DI2008-106** being the Road Transport (General) (Vehicle Registration and Related Fees) Determination 2008 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2007-320 and determines fees payable for the purposes of the Act.

**Disallowable Instrument DI2008-107** being the Road Transport (General) (Numberplate Fees) Determination 2008 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2007-177 and determines fees payable for the purposes of the Act.

**Disallowable Instrument DI2008-108** being the Road Transport (General) (Parking Permit Fees) Determination 2008 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2007-178 and determines fees payable for the purposes of the Act.

**Disallowable Instrument DI2008-109** being the Road Transport (General) (Refund Fee and Dishonoured Cheque Fee) Determination 2008 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2007-179 and determines fees payable for the purposes of the Act.

**Disallowable Instrument DI2008-110 being the Road Transport (General) (Public Passenger Services Licence and Accreditation Fees) Determination 2008 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2007-251 and determines fees payable for the purposes of the Act.**

**Disallowable Instrument DI2008-111 being the Waste Minimisation (Landfill Fees) Determination 2008 (No. 1) made under subsection 45(1) of the *Waste Minimisation Act 2001* revokes DI2007-144 and determines fees payable for the purposes of the Act.**

**Disallowable Instrument DI2008-112 being the Housing Assistance Public Rental Housing Assistance Program 2008 (No. 1) made under subsection 19(1) of the *Housing Assistance Act 2007* revokes DI2007-267 and determines the eligibility criteria for the forms of assistance available and the arrangements for making an application for assistance.**

**Disallowable Instrument DI2008-113 being the Attorney General (Fees) Amendment Determination 2008 (No. 1) made under section 18 of the *Civil Partnerships Act 2008* amends DI2007-131 and determines fees payable for the purposes of the Act.**

**Disallowable Instrument DI2008-114 being the Race and Sports Bookmaking (Sports Bookmaking Events) Determination 2008 (No. 1) made under subsection 20(1) of the *Race and Sports Bookmaking Act 2001* revokes DI2007-183 and determines the approved sports bookmaking events relating to national and international racing.**

**Disallowable Instrument DI2008-115 being the Race and Sports Bookmaking (Rules for Sports Bookmaking) Determination 2008 (No. 1) made under subsection 23(1) of the *Race and Sports Bookmaking Act 2001* revokes DI2007-182 and determines the rules for sports bookmaking.**

**Disallowable Instrument DI2008-117 being the Lotteries (Fees) Determination 2008 (No. 1) made under section 18A of the *Lotteries Act 1964* revokes DI2007-119 and determines fees payable for the purposes of the Act.**

**Disallowable Instrument DI2008-119 being the Independent Competition and Regulatory Commission (Water Abstraction Charge) Revocation 2008 (No. 1) made under section 4C of the *Independent Competition and Regulatory Commission Act 1997* revokes DI2003-332 which determined the water abstraction charge to be a statutory fee.**

#### Disallowable Instruments—Comment

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

##### *Minor drafting issue – Positive comment*

**Disallowable Instrument DI2008-67 being the Domestic Animals (Implanting Microchips in Dogs and Cats) Code of Practice 2008 (No. 1) made under section 16 of the *Domestic Animals Regulation 2001* approves the Code of Practice for Implanting Microchips in Dogs and Cats 2008.**

**Disallowable Instrument DI2008-68 being the Domestic Animals (Operation of Domestic Animals Registry Services) Code of Practice 2008 (No. 1) made under section 22 of the *Domestic Animals Regulation 2001* approves the Code of Practice for the Operation of Domestic Animals Registry Services 2008.**

**Disallowable Instrument DI2008-72 being the Domestic Animals (Operation of Domestic Animals Registry Services) Code of Practice 2008 (No. 2) made under section 22 of the *Domestic Animals Regulation 2001* revokes DI2008-68 and approves the Code of Practice for the Operation of Domestic Animals Registry Services 2008.**

**Disallowable Instrument DI2008-73 being the Domestic Animals (Implanting Microchips in Dogs and Cats) Code of Practice 2008 (No. 2) made under section 16 of the *Domestic Animals Regulation 2001* revokes DI2008-67 and approves the Code of Practice for Implanting Microchips in Dogs and Cats 2008.**

The Committee notes that the fourth of the instruments listed above revokes the first, a mere 2 days after the first instrument was made. The Committee also notes, however, that the Explanatory Statement to the second instrument contains the following explanation.

The instrument revokes Domestic Animals (Implanting Microchips in Dogs and Cats) Code of Practice 2008 (No 1), which due to an administrative error, was made before the Domestic Animals Amendment Regulation 2008 (No 1), which inserted new section 16 into the Domestic Animals Regulation 2001.

The third instrument listed revokes the second instrument listed, again, a mere 2 days after the second instrument was made. The Explanatory Statement to the third instrument contains a similar explanation to that already noted above in relation to the fourth instrument.

While it is unfortunate the administrative error was made, the Committee commends the fact that the Explanatory Statement to the second instrument is explicit about the fact that it is intended to correct the error.

*Minor drafting issue*

**Disallowable Instrument DI2008-70 being the Heritage (Council Deputy Chairperson) Appointment 2008 (No. 1) made under section 17 of the *Heritage Act 2004* appoints a specified person as deputy chairperson of the ACT Heritage Council.**

The Committee notes that, while this instrument appoints only one named person, the Explanatory Statement states that “[t]he appointees are not ACT Public Servants”.

*Minor drafting issue – Positive comment*

**Disallowable Instrument DI2008-74 being the Public Place Names (Franklin) Determination 2008 (No. 3) made under section 3 of the *Public Place Names Act 1989* determines the names of new roads in the Division of Franklin.**

**Disallowable Instrument DI2008-100 being the Public Place Names (Franklin) Determination 2008 (No. 4) made under section 3 of the *Public Place Names Act 1989* revokes DI2008-74 and determines the names of new roads in the Division of Franklin.**

The Committee notes that the second instrument listed above revokes the first instrument, a mere 8 days after the first instrument was made. The Committee also notes that the Explanatory Statement to the second instrument states:

This Instrument revokes DI2008-74 *Public Place Names (Franklin) Determination 2008 (No 3)*. The revocation was required because the plan identified two roads with the same name.

While it is unfortunate that the error was made, the Committee commends the fact that the Explanatory Statement to the second instrument is explicit about the fact that it is intended to correct the error.

*Determination of fees*

**Disallowable Instrument DI2008-104 being the Legal Profession (Barristers and Solicitors Practising Fees) Determination 2008 (No. 1) made under subsection 84(1) of the *Legal Profession Act 2006* revokes DI2007-107 and determines fees payable for the purposes of the Act.**



This instrument determines fees in relation to applications by barristers and solicitors for granting or renewal of practicing certificates. There is no indication in either the instrument or the Explanatory Statement to the instrument as to how the fees imposed by the instrument compare to the existing fees. Nor is there any explanation for any increases in fees. The Committee notes that it has previously pointed out that it is important that the Legislative Assembly, which has a supervisory role in relation to the setting of fees, be advised of the magnitude of fees increases and also the justification for increasing fees. In this context, the Committee commends to the Law Society Council the approach adopted (for example) in Disallowable Instrument DI2008-105.

#### Subordinate Laws—No comment

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

**Subordinate Law SL2008-19 being the Magistrates Court (Domestic Animals Infringement Notices) Amendment Regulation 2008 (No. 1) made under the *Magistrates Court Act 1930* enables infringement notices to be issued for prescribed offences under the *Domestic Animals Act 2000* and the *Domestic Animals Regulation 2001*.**

**Subordinate Law SL2008-20 being the Crimes (Sentencing) Amendment Regulation 2008 (No. 1) made under paragraph 136(4)(h) of the *Crimes (Sentencing) Act 2005* prescribes the Aboriginal Justice Centre and the Intensive Treatment Support Services as criminal justice entities.**

**Subordinate Law SL2008-21 being the Dangerous Substances (Explosives) Amendment Regulation 2008 (No. 1), including a regulatory impact statement made under the *Dangerous Substances Act 2004* amends the consumer fireworks regime under the *Dangerous Substances (Explosives) Regulation 2004*.**

#### Subordinate Law—Comment

The Committee has examined the following subordinate law and offers these comments on it:

##### *Strict liability offences*

**Subordinate Law SL2008-18 being the Domestic Animals Amendment Regulation 2008 (No. 1) made under the *Domestic Animals Act 2000* amends the *Domestic Animals Regulation 2001* to bring the Territory's microchipping procedures and regulations into line with industry best practice and legislation elsewhere, particularly Victoria and New South Wales.**

This subordinate law inserts 8 provisions into the *Domestic Animals Regulation 2001* that create strict liability offences:

- new section 6A - keeping of more than 4 dogs on unlicensed premises;
  - new section 11 - selling or supplying fake microchips;
  - new section 15 - microchips to be planted only by authorised people (2 offences);
  - new section 17 - requirement to scan for microchips;
  - new section 18 - operating a domestic animals registry service without a licence;
  - new section 20 - failing to provide information;
  - new section 21 - failing to notify of suspension, cancellation or discontinuation of licence;
- and

- new section 22 - failing to comply with code of practice.

As noted in *Scrutiny Report No 2* of the *Sixth Assembly*, strict liability offences are a recurring issue for the Committee. In *Scrutiny Report No 2* (at pp 5-8), the Committee set out a general statement of its concerns, as it had to the Fifth Assembly. The Committee also referred (at p 9) to principles endorsed by the Senate Standing Committee for the Scrutiny of Bills in relation to strict liability offences

In particular, the Committee noted that, in its *Scrutiny Report No 38* of the *Fifth Assembly*, it had proposed that where a provision of a bill (or of a subordinate law) proposes to create an offence of strict or absolute liability (or an offence which contains an element of strict or absolute liability), the Explanatory Statement should address the issues of:

- why a fault element (or guilty mind) is not required, and, if it be the case, explanation of why absolute rather than strict liability is stipulated;
- whether, in the case of an offence of strict liability, a defendant should nevertheless be able to rely on some defence, such as having taken reasonable steps to avoid liability, in addition to the defence of reasonable mistake of fact allowed by section 36 of the *Criminal Code 2002*.

In *Scrutiny Report No 38* of the *Fifth Assembly*, the Committee went on to say:

The Committee accepts that it is not appropriate in every case for an Explanatory Statement to state why a particular offence is one of strict (or absolute) liability. It nevertheless thinks that it should be possible to provide a general statement of philosophy about when there is justified some diminution of the fundamental principle that an accused must be shown by the prosecution to have intended to commit the crime charged.

There will also be some cases where a particular justification is called for, such as where imprisonment is a possible penalty.

The Committee notes that the Explanatory Statement accompanying this subordinate law addresses neither of the issues that the Committee requires to be addressed when strict liability offences are created. As a result, the Committee draws the Legislative Assembly's attention to this subordinate law, on the basis that it may be considered to trespass unduly on rights previously established by law, contrary to principle (a) (ii) of the Committee's terms of reference.

## REGULATORY IMPACT STATEMENT

**Subordinate Law SL2008-21 being the Dangerous Substances (Explosives) Amendment Regulation 2008 (No. 1), including a regulatory impact statement made under the Dangerous Substances Act 2004 amends the consumer fireworks regime under the Dangerous Substances (Explosives) Regulation 2004.**

The Committee notes that this subordinate law is accompanied by a regulatory impact statement. Section 35 of the *Legislation Act 2001* sets out the requirements for the content of regulatory impact statements. It provides (in part):

### 35 Content of regulatory impact statements

A regulatory impact statement for a proposed subordinate law or disallowable instrument (the *proposed law*) must include the following information about the proposed law in clear and precise language:

.....

- (h) a brief assessment of the consistency of the proposed law with the scrutiny committee principles and, if it is inconsistent with the principles, the reasons for the inconsistency.

The Committee notes that the regulatory impact statement does not in any way address the consistency of the relevant subordinate law with the scrutiny committee principles. As a result, the Committee draws the Legislative Assembly's attention to this regulatory impact statement, under principle (b) of the Committee's terms of reference, on the basis that it does not meet the technical or stylistic standards expected by the Committee.

## **GOVERNMENT RESPONSES**

The Committee has received responses from:

- The Minister for Police and Emergency Services, dated 5 June 2008, in relation to comments made in Scrutiny Report 54 concerning the Firearms Amendment Bill 2008.
- The Chief Minister, dated 16 June 2008, in relation to comments made in Scrutiny Report 54 concerning Aboriginal and Torres Strait Islander Elected Body Bill 2008.

The Committee wishes to thank the Chief Minister and the Minister for Police and Emergency Services for their helpful responses.

Bill Stefaniak, MLA  
Chair

June 2008

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

**REPORTS—2004-2005–2006–2007–2008**

**OUTSTANDING RESPONSES**

**Bills/Subordinate Legislation**

**Report 1, dated 9 December 2004**

Disallowable Instrument DI2004-230 – Legislative Assembly (Members' Staff)  
Members' Hiring Arrangements Approval 2004 (No 1)  
Disallowable Instrument DI2004-231 – Legislative Assembly (Members' Staff) Office-  
holders' Hiring Arrangements Approval 2004 (No 1)

**Report 4, dated 7 March 2005**

Disallowable Instrument DI2004-269 – Public Place Names (Gungahlin)  
Determination 2004 (No 4)  
Disallowable Instrument DI2004-270 – Utilities (Electricity Restriction Scheme)  
Approval 2004 (No 1)  
Land (Planning and Environment) (Unit Developments) Amendment Bill 2005 (**PMB**)  
Subordinate Law SL2004-61 – Utilities (Electricity Restrictions) Regulations 2004

**Report 6, dated 4 April 2005**

Disallowable Instrument DI2005-20 – Public Place Names (Dunlop) Determination  
2005 (No 1)  
Disallowable Instrument DI2005-22 – Public Place Names (Watson) Determination  
2005 (No 1)  
Disallowable Instrument DI2005-23 – Public Place Names (Bruce) Determination  
2005 (No 1)  
Long Service Leave Amendment Bill 2005 (**Passed 6.05.05**)

**Report 10, dated 2 May 2005**

Crimes Amendment Bill 2005 (**PMB**)

**Report 12, dated 27 June 2005**

Disallowable Instrument DI2005-73 – Utilities (Gas Restriction Scheme) Approval  
2005 (No 1)

**Report 14, dated 15 August 2005**

Sentencing and Corrections Reform Amendment Bill 2005 (**PMB**)

## **Bills/Subordinate Legislation**

### **Report 15, dated 22 August 2005**

Disallowable Instrument DI2005-124 – Public Place Names (Belconnen) Determination 2005 (No 2)  
 Disallowable Instrument DI2005-138 – Planning and Land Council Appointment 2005 (No 1)  
 Disallowable Instrument DI2005-139 – Planning and Land Council Appointments 2005 (No 2)  
 Disallowable Instrument DI2005-140 – Planning and Land Council Appointments 2005 (No 3)  
 Disallowable Instrument DI2005-170 – Public Places Names (Watson) Determination 2005 (No 2)  
 Disallowable Instrument DI2005-171 – Public Places Names (Mitchell) Determination 2005 (No 1)  
 Hotel School (Repeal) Bill 2005  
 Subordinate Law SL2005-15 – Periodic Detention Amendment Regulation 2005 (No 1)

### **Report 16, dated 19 September**

Civil Law (Wrongs) Amendment Bill 2005 (PMB)

### **Report 18, dated 14 November 2005**

Guardianship and Management of Property Amendment Bill 2005 (PMB)

### **Report 19, dated 21 November 2005**

Disallowable Instrument DI2005-239 - Utilities (Water Restrictions Scheme) Approval 2005 (No 1)

### **Report 25, dated 8 May 2006**

Registration of Relationships Bill 2006 (PMB)  
 Terrorism (Preventative Detention) Bill 2006 (PMB)

### **Report 28, dated 7 August 2006**

Public Interest Disclosure Bill 2006

### **Report 30, dated 21 August 2006**

Disallowable Instrument DI2006-154 - Architects (Fees) Determination 2006 (No. 1)  
 Disallowable Instrument DI2006-156 - Community Title (Fees) Determination 2006 (No. 1)  
 Disallowable Instrument DI2006-157 - Construction Occupations Licensing (Fees) Determination 2006 (No. 1)  
 Disallowable Instrument DI2006-158 - Electricity Safety (Fees) Determination 2006 (No. 1)  
 Disallowable Instrument DI2006-159 - Land (Planning and Environment) (Fees) Determination 2006 (No. 1)  
 Disallowable Instrument DI2006-160 - Surveyors (Fees) Determination 2006 (No. 1)  
 Disallowable Instrument DI2006-161 - Unit Titles (Fees) Determination 2006 (No. 1)

## **Bills/Subordinate Legislation**

Disallowable Instrument DI2006-162 - Water and Sewerage (Fees) Determination 2006 (No. 1)

Education (School Closures Moratorium) Amendment Bill 2006 (PMB)

Education Amendment Bill 2006 (No. 3)

### **Report 34, dated 13 November 2006**

Disallowable Instrument DI2006-212 - Utilities (Water Restriction Scheme) Approval 2006 (No. 1)

### **Report 36, dated 11 December 2006**

Crimes Amendment Bill 2006 (PMB)

Road Transport (Safety and Traffic Management) Amendment Bill 2006 (No. 2)

### **Report 37, dated 12 February 2007**

Civil Partnerships Bill 2006

### **Report 43, dated 13 August 2007**

Disallowable Instrument DI2007-105 - Public Place Names (Forde) Determination 2007 (No. 1)

Subordinate Law SL2007-10 - Legal Profession Amendment Regulation 2007 (No. 2)

Subordinate Law SL2007-11 - Powers of Attorney Regulation 2007 (No. 2)

### **Report 44, dated 27 August 2007**

Disallowable Instrument DI2007-175 - Road Transport (General) (Vehicle Registration and Related Fees) Determination 2007 (No. 1)

Disallowable Instrument DI2007-176 - Road Transport (General) (Driver Licence and Related Fees) Determination 2007 (No. 1)

Disallowable Instrument DI2007-177 - Road Transport (General) (Numberplate Fees) Determination 2007 (No. 1)

Disallowable Instrument DI2007-178 - Road Transport (General) (Parking Permit Fees) Determination 2007 (No. 1)

Disallowable Instrument DI2007-179 - Road Transport (General) (Refund Fee and Dishonoured Cheque Fee) Determination 2007 (No. 1)

Subordinate Law SL2007-12 - Powers of Attorney Amendment Regulation 2007 (No. 1)

### **Report 45, dated 24 September 2007**

Crimes (Street Offences) Amendment Bill 2007 (PMB)

Legal Profession Amendment Bill 2007

Subordinate Law SL2007-20 - Road Transport (Safety and Traffic Management) Amendment Regulation 2007 (No. 1)

### **Report 47, dated 12 November 2007**

Disallowable Instrument DI2007-228 - Pest Plants and Animals (Pest Plants) Declaration 2007 (No. 1)

## **Bills/Subordinate Legislation**

### **Report 49, dated 3 December 2007**

Government Transparency Legislation Amendment Bill 2007 (PMB)  
 Sentencing Legislation Amendment Bill 2007 (PMB)  
 Subordinate Law SL2007-34 - Crimes (Sentence Administration) Amendment  
 Regulation 2007 (No. 2)  
 Victims of Crime Amendment Bill 2007

### **Report 50, dated 4 February 2008**

Children and Young People Amendment Bill 2007 (PMB)  
 Government Transparency Legislation Amendment Bill 2007 [No. 2] (PMB)  
 Long Service Leave (Private Sector) Bill 2007 (PMB)

### **Report 51, dated 3 March 2008**

Crimes Amendment Bill 2008  
 Disallowable Instrument DI2007-298 - Land (Planning and Environment) (Plan of  
 Management for Urban Open Space and Public Access Sportsgrounds in the  
 Gungahlin Region) Approval 2007  
 Disallowable Instrument DI2007-307 - Road Transport (Public Passenger Services)  
 Maximum Fares Determination 2007 (No. 1)  
 Subordinate Law SL2007-36 - Occupational Health and Safety (General) Regulation  
 2007, including a Regulatory Impact Statement

### **Report 52, dated 31 March 2008**

Disallowable Instrument DI2008-19 - Domestic Violence Agencies (Project Coordinator)  
 Appointment 2008 (No. 1)

### **Report 53, dated 7 April 2008**

Classification (Publications, Films and Computer Games) (Enforcement) Amendment  
 Bill 2008  
 Disallowable Instrument DI2008-20 - Territory Records (Advisory Council)  
 Appointment 2008 (No. 1)  
 Disallowable Instrument DI2008-23 - Long Service Leave (Building and Construction  
 Industry) Governing Board Appointment 2008 (No. 3)  
 Disallowable Instrument DI2008-24 - Long Service Leave (Building and Construction  
 Industry) Governing Board Appointment 2008 (No. 4)  
 Disallowable Instrument DI2008-25 - Emergencies (Bushfire Council Members)  
 Appointment 2008

### **Report 54, dated 5 May 2008**

Crimes (Forensic Procedures) Amendment Bill 2008  
 Protection of Public Participation Bill 2008 (PMB)

<b>Bills/Subordinate Legislation</b>
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Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Bill 2008 (PMB)
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Subordinate Law SL2008-10 - Magistrates Court (Building Infringement Notices) Regulation 2008
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Subordinate Law SL2008-8 - Planning and Development Amendment Regulation 2008 (No. 1), including a regulatory impact statement
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<b><u>Report 55, dated 10 June 2008</u></b>
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ACT Civil and Administrative Tribunal Bill 2008
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Disallowable Instrument DI2008-48 - Health Professionals (Pharmacy Board) Appointment 2008 (No. 2)
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Disallowable Instrument DI2008-49 - Health Professionals (Dental Technicians and Dental Prosthetists Board) Appointment 2008 (No. 1)
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Disallowable Instrument DI2008-50 - Cultural Facilities Corporation (Governing Board) Appointment 2008 (No. 1)
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Disallowable Instrument DI2008-54 - Legal Profession (Bar Council Fees) Determination 2008 (No. 1)
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Disallowable Instrument DI2008-57 - Planning and Development (Fees) Determination 2008 (No. 3)
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Disallowable Instrument DI2008-58 - Major Events Security Declaration 2008 (No. 1)
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Disallowable Instrument DI2008-59 - Major Events Security Declaration 2008 (No. 2)
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Housing Assistance Amendment Bill 2008
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Projects of Territory Importance Bill 2008
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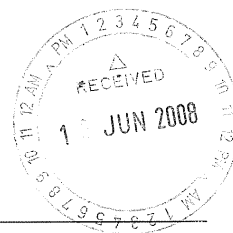
Waste Minimisation (Container Recovery) Amendment Bill 2008 (PMB)
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**Simon Corbell** MLA

ATTORNEY GENERAL  
MINISTER FOR POLICE AND EMERGENCY SERVICES



MEMBER FOR MOLONGLO

Mr Bill Stefaniak MLA  
Chair  
Standing Committee on Legal Affairs  
ACT Legislative Assembly Committee Office  
GPO Box 1020  
CANBERRA ACT 2601

Dear Mr Stefaniak

Thank you for your Scrutiny of Bills Report No. 54 of 5 May 2008. I offer the following response in relation to the Committee's comments on the Firearms Amendment Bill 2008.

***Amendment to the schedule of prohibited weapons by regulation***

Clause 8, subsection 4AB (3) allows the schedule setting out prohibited firearms to be amended by regulation. The Committee has asked the government to identify the reasons why this provision is necessary.

This power has been included to enable items to be added, amended or removed from the list in a timely manner where they emerge as, or diminish in, posing significant risk to public safety. The desire to ensure proper scrutiny of legislation must be weighed against the Executive's duty to attend to risks to community safety in a timely fashion. Public and parliamentary scrutiny of the exercise of this power is not compromised as any regulation amending the schedule is able to be disallowed by the Legislative Assembly.

***Offence — prohibited person not to be involved in firearms dealing business***

The Explanatory Statement is in error in relation to the burden imposed on a defendant in relation to the question of whether they knew that the person involved in the firearms dealer business was a prohibited person. As the Committee correctly identifies, the defendant bears a legal burden in relation to the defence not an evidential burden as stated. The government will provide a revised Explanatory Statement to correct this error.

The offences in section 66E are critical to reduce the risk of unlawful diversion of firearms from the legal market. Firearms dealers are linchpins in the tracking of and reporting on the trade in firearms and as a result have access to sensitive information on those transactions.

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The special responsibility placed on firearms dealers as a result of their activities calls for an exceptional regulatory framework. Firearms dealers are therefore required to satisfy themselves, with a high degree of certainty, that people in their employ are not prohibited persons. The Bill provides a capacity for dealers to seek a statement from the Firearms Registrar that a prospective employee is not a prohibited person.

The imposition of a legal burden of proof for the defence in section 66E(3) is recognition of the fact the information to be relied on is in the specific knowledge of the accused. The attachment of a legal burden is specific to the defence enunciated in subsection (3) with any defences raised in respect of other elements of the offence carrying an evidential burden. Whilst the approach in subsection (3) engages the presumption of innocence in the *Human Rights Act 2004* (22(1))(HRA), the government considers the limitation is justifiable in the circumstances.

The defence in subsection (3) is not the only defence available to the offender. It is a defence provision that addresses the fact that dealers are in a position to check all prospective employees under the HRA.

#### ***Offences — defacing, altering and removing identification marks***

The Committee has drawn the Assembly's attention to the imposition of a legal burden of proof for the defence in subsection 102(3). The implementation of provisions relating to the defacing of serial numbers is one of the core action items of the National Firearm Trafficking Policy Agreement. The highly controlled and regulated nature of the firearms industry rests on the ability of law enforcement agencies to accurately track each and every transaction of a particular firearm.

Firearms whose serial numbers have been defaced or removed are highly sought after by criminal syndicates as the ability to effectively trace the possession of the firearms is compromised. The capacity for a person to approach the firearms registrar with a firearm with a serial number that has been interfered with previously is recognition of the fact that there is movement of firearms from the black market to the legal market.

The community is aware that firearms are highly regulated and serial numbers are used to track and monitor their movement. Where a licensee comes into contact with a firearm, it is incumbent on them to bring the fact of the state of the serial number to the attention of the Firearms Registrar to allow him to consider whether to issue a new serial number to that firearm.

In the circumstances the government considers the limitation on the presumption of innocence requiring a defendant to prove the matters of defence to a degree that satisfies the balance of probabilities is justifiable.

#### ***Offence — contravention of condition by licensee***

The government agrees that it is critically important that the criminal law offers members of the community certainty to the greatest extent possible. I do not believe that in this instance the provision falls short of the required standard of precision.

The full court of the Supreme Court of Canada (*R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606) described the issue of vagueness in legislation. It described the central consideration in the following terms:

"a law must not be so devoid of precision in its content that a conviction will automatically flow from the decision to prosecute. The threshold for finding a law vague is relatively high. The factors to be considered include (a) the need for flexibility and the interpretative role of the courts; (b) the impossibility of achieving absolute certainty, a standard of intelligibility being more appropriate, and (c) the possibility that many varying judicial interpretations of a given disposition may exist and perhaps coexist."

In this instance, the effect of the phrase 'reasonable in all the circumstances' is not to cast uncertainty and doubt on the circumstances in which a person can be said to have contravened a licence condition. Instead, subsection (3) is couched in a way that recognises the potentially wide range of circumstances that could be construed as reasonable for refusing a police officer entry to premises to inspect facilities.

The government considers it is appropriate to leave it open to a court to consider all the circumstances that might go to construing a refusal of entry reasonable.

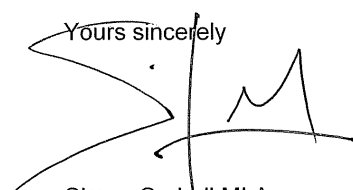
***Right to life and the exclusion of a need for personal protection as a genuine reason to obtain an adult firearms licence***

The government agrees with the Committee that the question of whether an Australian Court would construe the 'right to life' as guaranteeing a right to carry a firearm is one of conjecture.

Historically, article 7 of the Bill of Rights 1689, part of the inherited law of the Territory, provided "that the subjects which are protestants may have arms for their defence suitable to their conditions and as allowed by law". However in NSW Parliamentary Research Paper 10/96 'a right to bear arms in NSW?' the Paper's author, Mr Gareth Griffith, opined that as far as the modern gun control debate is concerned, Article 7 of the Bill of Rights was little more than an historical curiosity. Certainly the elimination of the need to secure one's personal protection as a genuine reason for gun ownership was clearly recognised at the time of the Australasian Police Ministers' Council 1996 National Firearms Agreement.

It is the government's opinion that in our society the threat to the right to life is all the greater if a more permissive regulatory scheme leads to a significant increase in the ownership of firearms. This threat significantly outweighs the risk of infringing on a person's real or perceived right to own a firearm.

I trust that this information addresses the concerns raised by the Committee.

Yours sincerely  


Simon Corbell MLA  
Minister for Police and Emergency Services  
- 5 JUN 2008



**Jon Stanhope** MLA

CHIEF MINISTER

TREASURER

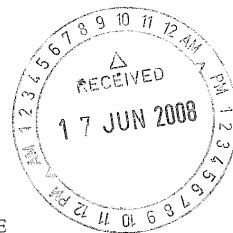
MINISTER FOR BUSINESS AND ECONOMIC DEVELOPMENT

MINISTER FOR INDIGENOUS AFFAIRS

MINISTER FOR THE ENVIRONMENT, WATER AND CLIMATE CHANGE

MINISTER FOR THE ARTS

MEMBER FOR GINNINDERRA



Mr Bill Stefaniak MLA  
Chair  
Standing Committee on Legal Affairs  
(Scrutiny of Bills and Subordinate Legislation Committee)  
Legislative Assembly  
GPO Box 1020  
CANBERRA ACT 2601

Dear Mr Stefaniak *Bill*

I refer to Scrutiny of Bills Report No. 54 of 5 May 2008 and provide the following response in relation to matters raised by the Standing Committee on Legal Affairs performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee on the Aboriginal and Torres Strait Islander Elected Body Bill 2008.

In essence, the Committee raised the following two issues in relation to the Aboriginal and Torres Strait Islander Elected Body Bill 2008:

- (a) would the creation of the Elected Body be incompatible with the provision in subsection 8(2) of the Human Rights Act 2004 (HRA) that "(2) Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind", and if so, is that incompatibility justifiable under HRA section 28 which requires that any limitation or restriction of rights must pursue a legitimate objective and there must be a reasonable relationship of proportionality between the means employed and the objective sought to be realised; and
- (b) the reference to consultation with the United Ngunnawal Elders Council in paragraph 8(i) seems unnecessary (but potentially confusing) given the Elected Body's general obligation to consult with the Council with respect to the exercise of all its functions stated in clause 9.

### **Rights Issue**

Section 8 HRA imports the international law concept of equality, which requires equality in fact, as well as formal equality in law - substantive rather than just formal equality.

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As you are aware, not all differential treatment constitutes unlawful discrimination. The standard in section 8 HRA is not infringed by such treatment as long as it is based on objective and rational criteria and is intended to achieve a legitimate outcome. For example, a program to meet the particular needs of a group of people may be necessary to ensure those people enjoy the same benefits or life chances as others. This would be an example where different treatment is not unlawful discrimination because it is aimed at achieving equality in substance.

The notion of substantive equality is different to a 'special measure' which is generally limited in time. Substantive equality recognises that some people have characteristics, which are permanent and can only be addressed by recognising those fundamental differences.

The creation of the Elected Body is based on objective and rational criteria and is intended to achieve a legitimate outcome for a group of people and, therefore, it can be argued that its creation is justified under section 28 HRA.

The Elected Body is one mechanism that aims to address significant levels of disadvantage of the Aboriginal People and Torres Strait Islanders living in the ACT, particularly in relation to health, justice and education outcomes.

There is extensive evidence supporting the statement that is contained in the objects section of the Aboriginal and Torres Strait Islander Elected Body Bill 2008 and, therefore, the incompatibility with subsection 8(2) HRA is justified under section 28 HRA. By way of background reading on the extent of Indigenous disadvantage in the ACT, I commend to Committee members the 2007 Overcoming Indigenous Disadvantage Report prepared by the Productivity Commission and the Health of Aboriginal and Torres Strait Islander People in the ACT 2000-2005 Report produced by the Population Health Research Centre in August 2007.

The disadvantage may not be as stark or visible in the ACT as it is in some other jurisdictions, but it is real and enduring and it is our collective responsibility to address the disadvantage that is faced by Aboriginal and Torres Strait Islander people living in the ACT.

#### **Consultation with United Ngunnawal Elders Council**

The United Ngunnawal Elders Council is a significant Indigenous body providing advice to the ACT Government relating to 'connection to land' issues in the ACT. The Council is made up of a representative nominated by each of the 12 Ngunnawal families in the ACT region (known as 'Ngunnawal country').

Matters relating to 'connection to land' that are brought to the attention of the Elected Body will be referred to the Council for advice.

A drafting comment was made about paragraph 8(i) that it seems unnecessary (but potentially confusing) given the Elected Body's general obligation to consult with the Council with respect to all its functions stated in clause 9.

The purpose of repeating the requirement to consult with the Council in the Aboriginal and Torres Strait Islander Elected Body Bill 2008 is to emphasise the importance of the traditional owners in this process particularly in relation to 'connection to land' issues.

I trust that this information addresses the concerns raised by the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jon Stanhope'.

Jon Stanhope MLA  
Chief Minister

16 June 2008