



Legislative Assembly for the ACT

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

Scrutiny Report

30 APRIL 2007

Report 40

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 Zed Seselja, MLA (Chair)
Ms Karin MacDonald, MLA (Deputy Chair)
Dr Deb Foskey, MLA

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.

BILLS:Bills—No comment

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

ELECTRICITY (GREENHOUSE GAS EMISSIONS) AMENDMENT BILL 2007

This Bill would amend the *Electricity (Greenhouse Gas Emissions) Act 2004* to extend the current Greenhouse Gas Abatement Scheme (GGAS) to 2020 unless and until a National Emissions Trading Scheme (NETS) is established.

HOLIDAYS (CANBERRA DAY) AMENDMENT BILL 2007
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This Bill would amend the *Holidays Act 1958* to change from 2008 the day that the Canberra Day public holiday is celebrated.

TERRITORY RECORDS AMENDMENT BILL 2007
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This Bill would amend the *Territory Records Act 2002* to provide for a new commencement date of 1 July 2008 for the commencement of the access provisions of the Act, and for a new review date of 1 July 2009 for the review of the operation of the Act.

Bills—Comment

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

TRAINING AND TERTIARY EDUCATION LEGISLATION AMENDMENT BILL 2007
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This Bill would repeal the *Vocational Education and Training Act 2003* and amend the *Tertiary Accreditation and Registration Act 2003* to incorporate into the latter Act certain provisions of the former that are required for the governance of apprenticeships in the ACT; to incorporate references to the National Protocols for Higher Education Approval Processes; and to allow for efficient, expert advice on the eligibility of an application for university status in the Territory.

Report under section 38 of the Human Rights Act 2004
Do any the clauses of the Bill “unduly trespass on personal rights and liberties”?

<p>Is proposed subsection 99A(5) of the <i>Tertiary Accreditation and Registration Act 2003</i>, which creates a power to enter premises without there being notice given to the employer in possession of the premises, a proportionate means of meeting the objective of the power, or does it “go too far” and amount to a disproportionate means?</p>

At the outset, it must be noticed that “[e]very unauthorized entry upon private property is a trespass, the right of a person in possession or entitled to possession of premises to exclude others from those premises being a fundamental common law right”: *Coco v The Queen* [1994] HCA 15 [8] per Mason CJ, Brennan, Gaudron and McHugh JJ. Whether this right is stated in the *Human Rights Act 2004* is debatable. It might in the circumstances of this proposed law be

seen as a dimension of the right to privacy in HRA paragraph 12(a) – “Everyone has the right – (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily” – but this is far from clear. At all events, the right stated in *Coco* is a common law right and one to which the Committee will have regard when it considers whether a provision of a Bill amounts to an undue trespass on personal rights and liberties.

It is first necessary to examine the extent of the power in question. By proposed subsection 99A(1), the chief executive is empowered to give an employer written notice that a person authorised by the chief executive proposes to visit the employer’s premises – noting that this is only a power to give a notice. By proposed subsection 99A(2), certain conditions, evidently designed to provide some protection to the employer, attach to the giving of the notice. Thus, the notice must:

- (a) state the address of the premises proposed to be visited; and
- (b) state the day and time of the proposed visit; and
- (c) state the purpose of the visit; and
- (d) be given to the employer at least 7 days before the day of the proposed visit.

By proposed subsection 99A(3), “[t]he day and time of the proposed visit must be a day and time when the employer normally conducts business on the premises”. The power to enter the premises is conferred by paragraph 99A(4)(a):

- (4) The authorised person, may on the day and at the time stated in the notice—
 - (a) enter the premises stated in the notice;

So far, while these provisions do trespass on the common law right of the possessor premises to exclude others from the premises, they also appear (i) designed to achieve a purpose – that is, checking on the progress under a training contract – that is compatible with some restriction of the employer’s right to possession of the premises, and (ii) to be reasonably adapted to achieving that purpose. Thus, on the face of it, the trespass is not ‘undue’.

The rights problem arises from proposed subsection 99A(5):

- (5) An authorised person may, in exceptional circumstances, do a thing mentioned in subsection (4) (a) to (d) without notice.

Example of exceptional circumstances

danger of injury to anyone’s health or safety.

A question arises as to whether it is possible to read the section in a way that, despite proposed subsection 99A(5), it does confer a power on the chief executive to authorise a person to enter an employer’s premises without notice. In what follows, the Committee is conscious that in *Coco* the High Court held that a power to derogate from the right to liberty must be conferred in explicit terms. The majority said:

Statutory authority to engage in what otherwise would be tortious conduct must be clearly expressed in unmistakable and unambiguous language. ... But the presumption is rebuttable and will be displaced if there is a clear implication that authority to enter or remain upon private property was intended. Such an implication may be made, in some circumstances, if it is necessary to prevent the statutory provisions from becoming

inoperative or meaningless. However, as Gaudron and McHugh JJ observed in *Plenty v Dillon* (1991) 171 CLR (1991) 171 at 654: "[I]nconvenience in carrying out an object authorized by legislation is not a ground for eroding fundamental common law rights".

The power to enter premises is very closely intertwined with the power of the chief executive to give an employer a written notice. While, if subsection 99A(5) is invoked, paragraph 99A(4)(a) might be read to say that "(4) The authorised person, may - (a) enter the premises", how - in the absence of a notice - does one know what are the premises, and who is the authorised person?

It might be said in response that all that is intended by subsection 99A(5) is that the authorised person may dispense with the requirement stated in paragraph 99A(4)(d). If so, then the word "notice" in subsection 99A(5) is not a reference to the written notice to which other parts of the section refer. If this is what is meant, then the Committee respectfully suggests that subsection 99A(5) be worded to reflect this intention.

However, if this is what is meant, a rights issue arises. While it may be argued that there will be "exceptional circumstances" such that an authorised person is justified in not giving to an employer at least 7 days advance warning (notice) of a proposed visit, there does not appear to be any reason why at the time the authorised person does visit he or she could not provide a written notice containing the information required by paragraphs 99A(2)(a), (b) and (c). In particular, paragraph 99A(2)(c) provides a valuable safeguard to the employer/possessor of premises. The stated purpose of the visit will have a direct bearing on the lawfulness of what may be done under the powers conferred by proposed paragraph 99A(4). The employer cannot be aware of whether any action is lawful unless he or she is aware of the stated purpose of the visit.

It might thus be argued that subsection 99A(5) "goes too far" and is *not* reasonably adapted to achieving the purpose of proposed section 99A, or, to put in other words, is a disproportionate means of achieving that purpose.

The Committee draws this matter to the attention of the Assembly.

Does proposed subsection 103A of the *Tertiary Accreditation and Registration Act 2003* authorise the chief executive to suspend or cancel the approval of, or amend, any approved training contract to which the employer is a party in circumstances where the employer is not able to claim the benefit of the common law privileges against selfincrimination and exposure to the imposition of a civil penalty, or the common law privilege in relation to client legal privilege (or legal professional privilege)?

(These common law rights are not explicitly recognised by the *Human Rights Act 2004*, but again, to some extent, each might be a dimension of the right to privacy.)

Again, there is a question about what proposed subsection 103A does provide. So far as relevant, it says:

103A Obstructing visits—chief executive

- (1) This section applies if the chief executive is satisfied that an employer—
 - (a) without reasonable excuse, obstructs or hinders a person entering premises or observing training ...; or

- (b) refuses to give information ... in response to a request under section 99A (4) (c); or
 - (c) refuses to produce a document ... in response to a request under section 99A (4) (d).
- (2) The chief executive may suspend or cancel the approval of, or amend, any approved training contract to which the employer is a party.

The provision does not explicitly provide that the employer may claim the benefit of the common law privileges against selfincrimination and exposure to the imposition of a civil penalty, or the common law privilege in relation to client legal privilege (or legal professional privilege). It might be said that the employer may do so by reason of subsections 170(1) and 171(1) of the *Legislation Act 2001*. These provisions state that an Act “must be interpreted to preserve” the relevant privileges. Each is a determinative provision (see subsections 170(3) and 171(3) respectively), and thus can be displaced only “expressly or by manifest contrary intention” (subsection 6(2)).

The problem here is that while paragraph 103A(1)(a) requires the chief executive to consider whether the employer has a “reasonable excuse” to obstruct or hinder a person, etc, this matter is on the face of it not relevant to the application of paragraphs 103A(1)(b) and (c). Given that the notion of a “reasonable excuse” in the context of provisions such as these latter paragraphs is often taken to permit the privileges to be claimed, the omission to qualify them in this way might be taken as a “manifest contrary intention” that an employer cannot claim the benefit of the common law privileges.

If this is the way paragraphs 103A(1)(b) and (c) are to be read, then the Committee considers that it is arguable that they amount to an undue trespass on personal rights and liberties. The Committee notes that in Territory law it is common practice to permit a person subject to an obligation to answer questions or to produce documents to be able to claim the benefit of the common law privileges.

The problem the Committee identifies might be addressed by following the common practice in such cases to append a Note to the relevant provisions (here proposed subsections 103A(1)(b) and (1)(c)) to refer to subsections 170(1) and 171(1) of the *Legislation Act 2001*, and thereby indicate that an employer may claim the benefit of the common law privileges.

The Committee draws this matter to the attention of the Assembly.

UTILITIES (ENERGY INDUSTRY LEVY) AMENDMENT BILL 2007

This Bill would amend the *Utilities Act 2000* to impose a levy (a tax) on energy utilities for the Territory to the end of its recovering its national and local regulatory financial obligations in relation to energy industry sectors.

Report under section 38 of the Human Rights Act 2004 Do any the clauses of the Bill “unduly trespass on personal rights and liberties”?

Should a Note be appended to proposed section 54J of the *Utilities Act 2000* to refer to subsections 170(1) and 171(1) of the *Legislation Act 2001*, and thereby indicate that an energy utility may claim the benefit of the common law privileges against selfincrimination and exposure to the imposition of a civil penalty, or the common law privilege in relation to client legal privilege (or legal professional privilege)?

In the words of the Explanatory Statement, proposed section 54J of the *Utilities Act 2000* “provides for an information collection power, under which the administrator may, by written notice, require a utility to give relevant information or documents that he or she reasonably requires for the performance of his or her duties under this part”. By subsection 54J(3), “[a]n energy utility commits an offence if the utility contravenes a requirement of a notice given to the utility ...”.

The provision does not explicitly provide that a utility may claim the benefit of the common law privileges against selfincrimination and exposure to the imposition of a civil penalty, or the common law privilege in relation to client legal privilege (or legal professional privilege), but by reason of subsections 170(1) and 171(1) of the *Legislation Act 2001*, it is likely the case that the utility could do so.

It is common practice in such cases to append a Note to the relevant provision (here proposed section 54J) to refer to subsections 170(1) and 171(1) of the *Legislation Act 2001*, and thereby indicate that an energy utility may claim the benefit of the common law privileges.

The Committee draws this matter to the attention of the Assembly.

SUBORDINATE LEGISLATION

Disallowable Instruments—No comment

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

Disallowable Instrument DI2007-52 being the Health (Fees) Determination 2007 (No. 1) made under section 192 of the *Health Act 1993* revokes DI2006-248 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2007-54 being the Tertiary Accreditation and Registration Council Appointment 2007 (No. 1) made under subsection 12(3) of the *Tertiary Accreditation and Registration Act 2003* appoints a specified person, with vocational education and training expertise position, to the ACT Accreditation and Registration Council.

Disallowable Instrument DI2007-55 being the Tertiary Accreditation and Registration Council Appointment 2007 (No. 2) made under subsection 12(3) of the *Tertiary Accreditation and Registration Act 2003* appoints a specified person, with vocational education and training expertise position, to the ACT Accreditation and Registration Council.

Disallowable Instrument DI2007-56 being the Tertiary Accreditation and Registration Council Appointment 2007 (No. 3) made under subsection 12(3) of the *Tertiary Accreditation and Registration Act 2003* appoints a specified person, representing the interests of providers of industry training advisory services, to the ACT Accreditation and Registration Council.

Disallowable Instrument DI2007-57 being the **Gambling and Racing Control (Governing Board) Appointment 2007 (No. 1)** made under sections 11 and 12 of the *Gambling and Racing Control Act 1999* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member and chair of the **Gambling and Racing Commission**.

Disallowable Instrument DI2007-58 being the **Long Service Leave (Contract Cleaning Industry) Levy Determination 2007** made under section 39B of the *Long Service Leave (Contract Cleaning Industry) Act 1999* determines the levy payable by employers for each quarter.

Disallowable Instrument DI2007-59 being the **Health Records (Privacy and Access) (Fees) Determination 2007 (No. 1)** made under section 34 of the *Health Records (Privacy and Access) Act 1997* revokes DI2006-135 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2007-60 being the **Occupational Health and Safety Council Appointment 2007 (No. 1)** made under paragraph 14(1)(a) of the *Occupational Health and Safety Act 1989* appoints specified persons as members of the **Occupational Health and Safety Council**.

Disallowable Instruments—Comment

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

Retrospective commencement

Disallowable Instrument DI2007-53 being the **Government Procurement Appointment 2007 (No. 1)** made under sections 12 and 13 of the *Government Procurement Act 2001* appointments specified persons as non-public employee members of the **ACT Government Procurement Board**.

This instrument re-appoints 2 existing (and named) members of the ACT Government Procurement Board. The appointments are back-dated to 1 January 2007. According to the Explanatory Statement, this is because the previous appointments expired on 31 December 2006.

Under the *Legislation Act 2001*, there is a general prohibition against legislative instruments commencing retrospectively. However, retrospective commencement is permitted if the retrospective operation is “non-prejudicial”. That concept is defined, in subsection 76(4) of the *Legislation Act*, as follows:

non-prejudicial provision means a provision that is not a prejudicial provision.

prejudicial provision means a provision that operates to the disadvantage of a person (other than the Territory or a territory authority or instrumentality) by—

- (a) adversely affecting the person’s rights; or
- (b) imposing liabilities on the person.

While it is unlikely that these retrospective appointments have a prejudicial effect on persons other than the Territory or a territory authority, it would be preferable if this was made clear in the Explanatory Statement. In this context, the Committee refers to its comments below in relation to Disallowable Instrument DI2007-63. The Committee seeks the Minister’s assurance that these retrospective appointments are non-prejudicial.

Is retrospective commencement required?

Disallowable Instrument DI2007-61 being the Duties (Stock Exchanges) Declaration 2007 (No. 1) made under section 252A of the *Duties Act 1999* revokes NI2001-78 and determines specified stock exchanges to be recognised stock exchanges for the purposes of the Act.

This instrument determines that 2 specified stock exchanges are “recognised stock exchanges” for the purposes of the *Duties Act 1999*. The Explanatory Statement to the instrument states:

Changes in this Determination

4. This instrument revokes the notifiable instrument which determines that the Bendigo Stock Exchange Limited and the Stock Exchange of Newcastle Limited are recognised stock exchanges.
5. On 1 March 2007 the following stock exchanges will be recognised stock exchanges for the purposes of the Duties Act:
 - Bendigo Stock Exchange Limited; and
 - National Stock Exchange of Australia Limited.
6. This change was required because the Stock Exchange of Newcastle Limited formally changed its name to the National Stock Exchange of Australia Limited as of 20 December 2006.

The Explanatory Statement indicates that the change made by the instrument was necessitated by a change of name on 20 December 2006. The instrument does not take effect, however, until 1 March 2007. The Committee is curious as to the effect of the name change in the intervening period. The Committee seeks the Minister’s advice as to whether the name change meant that, as of 20 December 2006, the Stock Exchange of Newcastle was no longer a “recognised” stock exchange. If that is the case, the Committee also seeks the Minister’s advice as to whether there were any legal consequences.

Minor typographical error

Disallowable Instrument DI2007-62 being the Public Health (Drinking Water) Code of Practice 2007 (No. 1) made under section 133 of the *Public Health Act 1997* revokes DI2000-86 and determines the Drinking Water Code of Practice 2007 to be a code of practice for the purposes of the Act.

The Committee notes that there is an incomplete reference to the empowering Act in the first line of the text of the Explanatory Statement to this instrument.

Positive comment – Retrospective commencement explained in Explanatory Statement

Disallowable Instrument DI2007-63 being the Domestic Violence Agencies (Council) Appointment 2007 made under section 6 of the *Domestic Violence Agencies Act 1986* appoints specified persons as chairperson, domestic violence project coordinator, non-English speaking background representative and community members of the Domestic Violence Prevention Council.

This instrument appoints various named persons as members of the Domestic Violence Prevention Council. The instrument is expressly given a retrospective effect, to 1 December 2006. The Explanatory Statement states:

Each appointment is retrospective to 1 December 2006 due to the previous council appointments expiring on 30 November 2006 and the Council continuing to hold meetings. No member of the public is prejudiced by making these appointments retrospective.

While it is not ideal that a council continue to meet, despite the fact that the appointments of its members have expired, it is appropriate that the Explanatory Statement to this instrument addresses the need for retrospective operation and also states that there is no issue with prejudicial operation.

Subordinate Laws—Comment

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

"Henry VIII" clause - Delayed commencement

Subordinate Law SL2007-4 being the Legal Profession Amendment Regulation 2007 (No. 1) made under the *Legal Profession Act 2006* changes the commencement dates of Part 3.1 and Part 3.2 of the Act to allow the legal profession adequate opportunity to implement the new trust account management and costs disclosure requirements.

The Explanatory Statement to this instrument states:

The *Legal Profession Act 2006* (the Act) provides for the regulation of legal practice in the ACT and facilitates the regulation of legal practice on a national basis, in conjunction with the National Legal Profession Model Laws Project. The project involved the development of a model Legal Profession Bill and model Legal Profession Regulations.

The Legal Profession Regulation 2006 commenced on 1 July 2006. Numerous provisions of the model Legal Profession Regulations were not implemented at that time, either because certain policy matters had not been settled or because the commencement of certain relevant parts of the Act was postponed to a later date.

The provisions relating to that postponement are found in Chapter 10 of the Act. Within that Chapter, section 605 deals with the operation of Part 3.1 of the Act, which relates to trust money and controlled money. Sections 606 to 608 deal with the operation of Part 3.2 of the Act, which relates to costs, and in particular to costs disclosure.

This amending regulation changes the date of commencement of Part 3.1 the Act from 1 April 2007 to 1 July 2007, and the date of commencement of Part 3.2 from 1 May 2007 to 1 July 2007, to allow the ACT legal profession adequate opportunity to effectively implement the new trust account management and costs disclosure requirements in the Act.

The Committee notes that this subordinate law has a similar effect to the Legal Profession Amendment Regulation 2006, which the Committee commented on in its *Scrutiny Report No 37* of the *Sixth Assembly*. Like the earlier subordinate law, this subordinate law relies on a "Henry VIII" clause, in that the effect of the subordinate law is to amend a primary law, ie the Legal Profession Act. The clause in question is section 618 of the Legal Profession Act, which provides:

618 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

- (2) A regulation may modify this part to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything in another territory law.

As in the earlier case, the Committee notes that, while law-making by "Henry VIII" clause is generally to be disapproved of, this particular exercise has been expressly authorised by the Legislative Assembly.

As in the earlier case, a further issue is the fact that the effect of this subordinate law is to delay the commencement of various provisions, in circumstances where the provisions' commencement has previously been explicitly provided for in the primary legislation.

The Committee notes, however, that (as in the earlier case) the delay in commencement is relatively slight. In this case, the delay in the commencement of the various provisions is from 1 April 2007 and 1 May 2007 (respectively) to 1 July 2007. The same reason is given for the delay in this case as was given in relation to the delay in the earlier case - ie to allow the ACT legal profession adequate opportunity to implement the new requirements.

The Committee hopes that no further delays will be required.

REGULATORY IMPACT STATEMENT

There is no matter for comment in this report.

GOVERNMENT RESPONSES

The Committee has received responses from:

- The Minister for the Territory and Municipal Services, dated 13 March 2007, in relation to comments made in Scrutiny Report 37 concerning the Animal Welfare Legislation Amendment Bill 2006.
- The Minister for Planning, dated 15 March 2007, in relation to comments made in Scrutiny Report 37 concerning the Planning and Development Bill 2006.
- The Minister for Housing, dated 31 March 2007, in relation to comments made in Scrutiny Report 37 concerning the Housing Assistance Bill 2006.
- The Treasurer, dated 5 April 2007, in relation to comments made in Scrutiny Report 39 concerning Disallowable Instrument DI2007-40, being the Exhibition Park Corporation Board Appointment 2007 (No. 1).
- The Minister for Health, dated 7 April 2007, in relation to comments made in Scrutiny Report 38 concerning Disallowable Instrument DI2007-23, being the Health Professionals (Chiropractors and Osteopaths Board) Appointment 2007 (No. 1).

- The Minister for Health, dated 16 April 2007, in relation to comments made in Scrutiny Report 38 concerning the following Disallowable Instruments:
 - DI2007-12 being the Health Professionals (Fees) Determination 2007 (No. 1);
 - DI2007-13 being the Health Professionals (Fees) Determination 2007 (No. 2);
 - DI2007-14 being the Health Professionals (Fees) Determination 2007 (No. 3);
 - DI2007-15 being the Health Professionals (Fees) Determination 2007 (No. 4);
 - DI2007-16 being the Health Professionals (Fees) Determination 2007 (No. 5);
 - DI2007-17 being the Health Professionals (Fees) Determination 2007 (No. 6);
 - DI2007-18 being the Health Professionals (Fees) Determination 2007 (No. 7);
 - DI2007-19 being the Health Professionals (Fees) Determination 2007 (No. 8);
 - DI2007-20 being the Health Professionals (Fees) Determination 2007 (No. 9);
 - DI2007-21 being the Mental Health (Treatment and Care) (Official Visitors) Appointment 2007 (No. 1); and
 - DI2007-22 being the Mental Health (Treatment and Care) (Official Visitors) Appointment 2007 (No. 2).
- The Minister for the Territory and Municipal Services, dated 16 April 2007, in relation to comments made in Scrutiny Report 38 concerning the following Disallowable Instruments and Subordinate Law:
 - DI2006-269 being the Road Transport (Driver Licensing) Driving Instruction Code of Practice 2006 (No. 1);
 - DI2007-30 being the Nature Conservation (Flora and Fauna Committee) Appointment 2007 (No. 1); and
 - SL2007-54 being the Gungahlin Drive Extension Authorisation Amendment Regulation 2006 (No. 1).
- The Attorney-General, dated 19 April 2007, in relation to comments made in Scrutiny Report 38 concerning Disallowable Instrument DI2007-37, being the Civil Law (Wrongs) Professional Standards Council Appointment 2007 (No. 1).
- The Attorney-General, dated 19 April 2007, in relation to comments made in Scrutiny Report 38 concerning Disallowable Instrument DI2007-25, being the Legal Profession (Disciplinary Tribunal) Appointment 2007 (No. 1).

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

Karin MacDonald, MLA
Acting Chair

April 2007

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

REPORTS—2004-2005–2006–2007

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)
Disallowable Instrument DI2005-1 – Emergencies (Strategic Bushfire Management
Plan) 2005
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 DI2005-127 – Emergencies (Fees and Charges 2005/2006) Determination 2005 (No 1)
 Disallowable Instrument DI2005-133 – Emergencies (Bushfire Council Members) Appointment 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)

Bills/Subordinate Legislation

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)

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

Corrections Management Bill 2006

Report 38, dated 26 February 2007

Disallowable Instrument DI2007-27 - Land (Planning and Environment) Criteria for the Direct Grant of a Crown Lease for the National Zoo and Aquarium Determination 2007

Disallowable Instrument DI2007-28 - Public Place Names (Belconnen) Determination 2007 (No. 1)

Subordinate Law SL2006-53 - Gas Safety Amendment Regulation 2006 (No. 1)

Subordinate Law SL2006-56 - Freedom of Information Amendment Regulation 2006 (No. 1)

Report 39, dated 12 March 2006

Disallowable Instrument DI2007-41 - Health Professionals (Fees) Determination 2007 (No. 10)



John Hargreaves MLA

MINISTER FOR TERRITORY AND MUNICIPAL SERVICES
MINISTER FOR ENVIRONMENT AND SUSTAINABILITY
MINISTER FOR HOUSING
MINISTER FOR MULTICULTURAL AFFAIRS

Member for Brindabella

Mr Zed Seselja MLA
Chair
Scrutiny of Bills Committee
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Seselja,

I am writing to you in response to the Scrutiny of Bills Committee comments on the Animal Welfare Legislation Amendment Bill 2006 (the Bill) as set out in Scrutiny Report No. 37 of 12 February 2007. I note that comments are directed at the Committee's reporting obligations under section 38 of the *Human Rights Act 2004* (HRA).

The Committee is concerned that the authority to make some decisions may not be confined sufficiently, for example - to grant or not grant a licence. Alternative drafting options are suggested.

The Committee is also concerned that 'a decision to refuse to renew [a licence] might have nothing to do with how the licensee has operated as such. Nor need it be based on the interests of animal welfare'.

Section 27(2) of the Bill outlines the considerations that must be taken into account by the authority when making a decision about a licence application. This includes the applicant's experience and competency in caring for and handling animals and whether the applicant has been convicted or found guilty of an animal welfare offence.

The licensing provisions in the Bill were drafted after considerable discussion with Parliamentary Counsel's Office and in consultation with the Human Rights Policy and Legislation Branch at the Department of Justice and Community Safety (JACS). A Human Rights Compatibility Statement has been provided for the Bill in its entirety. Consequently, I am confident that the exercise of power provisions and the scope for judicial review adequately accommodate the requirements of the HRA.

To the extent that licensing decisions may involve determinations that affect the rights and obligations of individuals, it is my view that the provisions are consistent with the right to an impartial and fair hearing as expressed in 21(1) of the HRA.

- The relevant powers in the Bill must be exercised in a manner that is compatible with the objects and purposes of the Act. This includes the promotion of animal welfare, prevention of animal cruelty and compliance with codes of practice. Although this is not specifically defined as noted by the Committee, it is a requirement.
- Section 26 of the *Administrative Appeals Tribunal Act 1989* gives a person affected by a decision the right to obtain reasons for the decision. Decisions would be subject to review on their merits by the Administrative Appeals Tribunal. This satisfies the requirement for review by an independent and impartial tribunal with full jurisdiction and renders the whole decision making process compatible with subsection 21(1) HRA.
- Section 30 of the HRA deals with interpretation of laws and human rights. This provision states that '*decision-makers, courts and tribunals must interpret and apply legislation in a manner that is consistent with the HRA so far as it is possible to do so*'. As previously discussed, the licensing provisions in the Bill were drafted to ensure that decision-making powers in the Bill would be consistent with the HRA.

Finally, the Committee notes that the Explanatory Statement adverts to the fact that the Bill would create strict liability offences, but does not name them and that the Committee sees no particular difficulty from a rights perspective with the strict liability provisions.

The Explanatory Statement provides a detailed description on the use of strict liability offences and how they work. Although the Explanatory Statement does not name all of the strict liability offences in the Bill, it provides a descriptive rationale as to how people who have some relationship with animals (for example - part of their employment) can be affected.

This approach is consistent with that adopted in the Explanatory Statement for the *Animal Diseases Regulation 2006*, where, in Report No. 30 of 2006, the Committee commented that it met the standard that the Committee has consistently set in relation to strict liability offences in subordinate legislation.

In conclusion, it is my view that the Animal Welfare Legislation Amendment Bill 2006 is consistent to a high degree with the provisions of the *Human Rights Act 2004*. I trust that this information satisfies the Committee's concerns and I thank you for raising these matters with me.

Yours sincerely,


John Hargreaves MLA
Minister for Territory and Municipal Services

13 March 2007



Simon Corbell MLA

ATTORNEY GENERAL
MINISTER FOR PLANNING
MINISTER FOR POLICE AND EMERGENCY SERVICES

MEMBER FOR MOLONGLO

Mr Zed Seselja MLA
Chair
Standing Committee on Legal Affairs
ACT Legislative Assembly
London Circuit
Canberra ACT 2601

Dear Mr Seselja

I am writing in response to the comments made by the Standing Committee on Legal Affairs in Scrutiny Report 37 on the Planning and Development Bill 2006. I have considered the Report and provide the following comments in response.

Subclause 65(2) (draft plan variations) and s21 (1) of the *Human Rights Act 2004*

Subclause 65(2) enables the ACT Planning and Land Authority, at its discretion, to not make part of a draft plan variation or any background papers publicly available during consultation on draft plan variations. This subclause duplicates the current provision in the *Land (Planning and Environment) Act 1991* (Section 19B).

This provision is rarely used, as generally it is the practice to make public all parts of a draft plan variation. The provision, however, does enable the protection of information that may be of a confidential nature, or, if published, place property or lives at risk. Another example of where this provision could be used is to protect information that, if published, could lead to the destruction of certain values associated with the land the subject of the plan variation, for example, the disclosure of a site of significance to Aboriginal people or a site with high conservation values.

In relation to the Committee's concerns about the failure to make public certain information when consulting on a draft plan variation being incompatible with s21(1) of the *Human Rights Act*, that section deals with the adjudication of people's rights in trials and hearings. Further, clause 404 of the Bill also allows for the non-disclosure, on application, of comments made on draft plan variations.

To address concerns raised as to the breadth of the discretion, criteria will be incorporated into subclause 65(2) to guide decisions not to disclose information. The new provision will require the Planning and Land Authority to publish the relevant information in all cases unless it is satisfied that one of the criteria for non-disclosure applies.

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Subclause 374(3) and s 21(1) of the *Human Rights Act*

Subclause 374(3) gives the Supreme Court power to grant an injunction to restrain a person from contravening a controlled activity order or prohibition notice. The Committee has raised whether the wide discretion granted to the Supreme Court may be incompatible with s 21(1) of the *Human Rights Act*.

Courts are frequently given a wide legislative power to grant injunctions. For example, section 62 of the *Court Procedures Act 2004* which states the court may grant an injunction (interlocutory or otherwise) on the conditions the court considers appropriate if the court considers it appropriate to do so (Section 62 was substituted under the *Justice and Community Safety Legislation Amendment Act 2006* which has a HRA compatibility statement). Other recent examples include s79 of the *Occupational Health and Safety Amendment Act 2004* and s128 of the *Environment Protection Act 1997*.

Whilst such legislation suggests that the courts have wide powers to grant injunctions, the discretion to grant an injunction must be exercised by the courts according to principle. It is not an unguided discretion and must be exercised judicially and not capriciously. In granting an injunction, the trial judge must take into account the applicable legal principles in exercising his discretion. See for instance *ABC v O'Neill* [2006] HCA 46.

The jurisdiction of a court to permit the grant of an injunction is not at large. There must be established a legal or equitable right to an injunction. It was held, by majority, in the High Court decision of *ABC v Lenah Meats Pty Ltd* (2001) 208 CLR 1999, that the grant of an injunction still required the existence of an underlying cause of action that could ground final relief.

Further, subclause 374(4) of the Bill establishes parameters for the grant of the injunction under subclause (3). Moreover, subclause 374(3), when read in conjunction with subclause 374(1) requires the Court, before granting an injunction, to find that the relevant person is contravening or proposes to contravene a controlled activity order or prohibition notice.

In all these circumstances, I do not consider it necessary to make any amendment to subclause 374(3) of the Bill.

Clause 412 - Minister's capacity to issue guidelines in respect of Minister's powers; should it extend to other provisions in the Bill

I do not consider it necessary to extend clause 412 to other provisions of the Bill. One of the major goals of the planning system reform project is to restrict the use of guidelines in the operation of the planning system to provide greater certainty and transparency in the operation of that system. Matters that are currently found in various guidelines will now be located in codes (which form part of the Territory Plan), regulations and other instruments.

Clause 23 - suspension of the Chief Planning Executive and possible incompatibility with the *Human Rights Act*

I have noted the comments in Scrutiny Report 37, however I do not consider it necessary to amend this clause, for the reasons outlined in the Government's response to the report of the Planning and Environment Committee on the *Planning and Development Bill 2006*.

Enforcement powers-appointment of inspectors

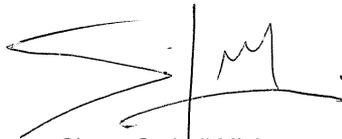
After considering the Committee's comments, I intend to amend the Bill so that it is clear that an inspector must be an employee of the ACT Government.

Strict liability offences and the presumption of innocence

After considering the Committee's comments, I intend to amend the Bill's Explanatory Statement to more comprehensively address why a due diligence defence is not considered necessary for other strict liability offences in the Bill. Attached is a draft excerpt of the proposed reworded Explanatory Statement.

Finally, I would like to thank the Committee for its timely comments on the Planning and Development Bill 2006. These comments have greatly assisted in the review of the Bill prior to debate in the Assembly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Corbell', written over a vertical line that serves as a separator between the signature and the typed name below.

Simon Corbell MLA
Minister for Planning

15-3-07



John Hargreaves MLA

MINISTER FOR TERRITORY AND MUNICIPAL SERVICES
MINISTER FOR ENVIRONMENT AND SUSTAINABILITY
MINISTER FOR HOUSING
MINISTER FOR MULTICULTURAL AFFAIRS

Member for Brindabella

Mr Zed Seselja
Chair
Standing Committee on Legal Affairs
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Dear Mr  Seselja

I am writing to you with regard to the Committee's Scrutiny Report of 12 February 2007, and the comments it contained in relation to the *Housing Assistance Bill 2006*.

The ACT Government notes the Committee's discussion of the right to freedom of expression (including the right to receive information), versus the right to privacy. The intention of Government in presenting the Bill in the form currently drafted is to ensure the privacy of tenants and community organisations providing crisis services.

In examining clauses 28 and 29,

The Committee has suggested that exempting "protected information" from release is appropriate in balancing the individual's right to privacy with the public's right to receive information about Government activity.

The Government thanks the Committee for its views but cannot reconcile them with what is said about clause 6AA which relates to a specific class of protected information.

Various people, including Members of the Opposition, have requested access to lists of housing assistance property addresses. I have no doubt that if that information was released, the privacy of the residents at those addresses would be invaded. It is to protect those residents' privacy that the Government has taken the extra precaution of specifically exempting the information from release.

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With regard to the Committee's comments on clauses 102 to 104, I agree that they could possibly be interpreted to diminish a person's rights where a case or application is being considered across a period of time during which both Acts are in effect. I have therefore asked that amendments be drafted to clarify these matters.

I thank the Standing Committee for bringing these matters to the Government's attention.

Yours sincerely


John Hargreaves MLA
Minister for Housing
3/ March 2007



Jon Stanhope MLA

CHIEF MINISTER

TREASURER MINISTER FOR BUSINESS AND ECONOMIC DEVELOPMENT
MINISTER FOR INDIGENOUS AFFAIRS MINISTER FOR THE ARTS

MEMBER FOR GINNINDERRA

Mr Zed Seselja MLA
Chair
Standing Committee on Legal Affairs
C/- Scrutiny Committee Secretary
ACT Legislative Assembly
Civic Square, London Circuit
CANBERRA ACT 2601

Dear Mr Seselja 

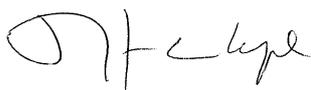
I am writing in response to comments in the Scrutiny of Bills Report No. 39 of 12 March 2007 in relation to Disallowable Instrument DI2007-40.

I confirm that Disallowable Instrument DI2007-40 should have referred to Part 78 (2) of the *Financial Management Act 1996* that provides the relevant legal authority to appoint members to the Exhibition Park Corporation (EPC) Board.

I would also like to take this opportunity to advise the Committee that Ms Hilary Russell has since advised Government that she is unable to continue with her appointment to the EPC Board and that the Government is considering appointing a suitable replacement.

Disallowable Instrument DI2007-40 will be revoked as part of the EPC Board appointments process when filling the vacancy left by Ms Russell.

Yours sincerely



Jon Stanhope MLA
Treasurer

- 5 APR 2007

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Katy Gallagher MLA

DEPUTY CHIEF MINISTER

MINISTER FOR HEALTH MINISTER FOR CHILDREN AND YOUTH
MINISTER FOR DISABILITY AND COMMUNITY SERVICES MINISTER FOR WOMEN

MEMBER FOR MOLONGLO

Mr Zed Seselja MLA
Chair
Standing Committee on Legal Affairs
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr. ~~Seselja~~ *Zed*

The Standing Committee on Legal Affairs, in Scrutiny Report 38 of 26 February 2007, commented on the DI 2007-23, being the Health Professionals (Chiropractors and Osteopaths Board) Appointment 2007 (No. 1) made under the *Health Professionals Act 2004* and the *Health Professionals Regulation 2004*.

The Committee noted that the explanatory statement to the instrument referred to the *Health Professionals Regulations 2004* instead of the *Health Professionals Regulation 2004*. This was a typographical error. The Instrument did not contain the same typographical error but the explanatory statement should have referred to the legislation title correctly. Greater attention to detail will be provided in future.

The Committee noted that the appointments made in the instrument fulfilled the requirements of the Regulation but that the Committee would be assisted if the explanatory statement provided more detail. The explanatory statement was consistent with those that had been provided with previous appointments to health professions boards but more detail will be provided with future appointments.

I have noted the findings of the Committee for this Disallowable Instrument and am grateful for its advice.

Yours sincerely

Katy Gallagher
Katy Gallagher MLA
Minister for Health
21417

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Katy Gallagher MLA

DEPUTY CHIEF MINISTER

MINISTER FOR HEALTH MINISTER FOR CHILDREN AND YOUTH
MINISTER FOR DISABILITY AND COMMUNITY SERVICES MINISTER FOR WOMEN

MEMBER FOR MOLONGLO

Mr Zed Seselja MLA
Chair
Standing Committee on Legal Affairs
Legislative Assembly for the Australian Capital Territory
GPO Box 1020
CANBERRA ACT 2601

Dear Mr *Zed* Seselja

I am writing in response to the Standing Committee on Legal Affairs Report No 38 tabled in the Legislative Assembly on 26 February 2007.

I have noted the Committee's comments on Disallowable Instruments DI2007-12 – DI 2007-20 made pursuant to the *Health Professional Act 2004* that contain minor typographical errors. I wish to assure the members of the committee that in future all care will be taken when preparing instruments of this nature.

I also note the findings of the Committee for Disallowable Instruments DI2007-21 and DI2007-22 relating to appointments of Mental Health Official Visitors. I wish to assure the members that the proper checks had been performed and that future explanatory statements will include relevant information relating to eligibility requirements.

Yours sincerely

Katy Gallagher MLA
Minister for Health

16 APR 2007

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John Hargreaves MLA

MINISTER FOR TERRITORY AND MUNICIPAL SERVICES

MINISTER FOR ENVIRONMENT AND SUSTAINABILITY

MINISTER FOR HOUSING

MINISTER FOR MULTICULTURAL AFFAIRS

Member for Brindabella

Mr Zed Seselja MLA
Chair
Standing Committee on Legal Affairs
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mr  Seselja

Thank you for your Scrutiny of Bills Report No. 38 dated 26 February 2007. I offer the following response in relation to the matters raised by your Committee.

The report 38 dated 26 February 2007 contained comments in relation to the Road Transport (Driver Licensing) Regulation 2000 (DI 2006-269); the Nature Conservation Act 1980 (DI 2007-30); and the Gungahlin Drive Extension Authorisation Act 2004 (SL 2006-54).

Disallowable Instrument 2006-269 (DI2006-269)

With regard to the Committee's comments about referring to section "6 1" instead of "6.1" and the errant quotation mark, the comments are noted and all efforts will be made by the Department of Territory and Municipal Services (TAMS) for this mistake not to be made in future.

In respect of the comment about identifying the nature of the amendment, on rereading the current and repealed Disallowable Instruments in conjunction with the Explanatory Statement it is acknowledged the change is not adequately explained. TAMS will endeavour to improve the clarity of Explanatory Statements in the future.

Disallowable Instrument DI 2007-30 Nature Conservation (Flora and Fauna Committee) Appointment 2007 (No.1)

The Scrutiny of Bill Committee has queried the January appointments in terms of non-compliance with the prescribed seven members. The Committee also refers to the previous Instrument of appointment (2004) which again resulted in only six members.

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It is, of course, desirable to have a full complement of seven members on the committee. However, there will be times when it is not possible to do so. Vacancies will naturally arise through the life of any committee. In the case of the Flora and Fauna Committee, this is recognised in section 25 of the Nature Conservation Act 1980, which states that the quorum of the committee is a majority of members for the time being. In addition, section 199(5) of the Legislation Act 2001 states that the exercise of functions by a body is not effected only because of vacancies in the body's membership.

***Subordinate Law SL2006-54 - Gungahlin Drive Extension Authorisation
Amendment Regulation 2006 (No.1)***

The Committee's comments have been noted.

Yours sincerely


John Hargreaves MLA
Minister for Territory and Municipal Services
6 April 2007



Simon Corbell MLA

ATTORNEY GENERAL
MINISTER FOR PLANNING
MINISTER FOR POLICE AND EMERGENCY SERVICES

MEMBER FOR MOLONGLO

Mr Zed Seselja MLA
Chair
Standing Committee on Legal Affairs Performing the Duties
of Scrutiny of Bills and Subordinate Legislation Committee
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Seselja

Thank you for your Scrutiny of Bills Report No. 38 of 26 February 2007. I offer the following response in relation to Disallowable Instrument DI2007-37, *Civil Law (Wrongs) Professional Standards Council Appointment 2007 (No.1)*. This instrument is made under Schedule 4, section 4.38 of the *Civil Law (Wrongs) Act 2002* and appoints specified persons as members of the Professional Standards Council.

I note the committee's comment about the meaning of a particular paragraph in the explanatory statement to the instrument. The paragraph states that all states and territories have agreed to appoint the same eleven members to their Professional Standards Councils. The councils will comprise one member nominated by each of the states and territories and the Commonwealth, with the exception of NSW and Victoria who will nominate two.

The committee sought clarification as to why the instrument appointed three persons, if the Australian Capital Territory can only nominate one member. The committee suggested that the reason why the instrument appointed three persons was that the appointment included persons who had been nominated by other jurisdictions. I am advised that this is the correct interpretation of this paragraph in the explanatory statement to the instrument.

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

Yours sincerely

Simon Corbell MLA
Attorney General

19.4.07

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Simon Corbell MLA

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MEMBER FOR MOLONGLO

Mr Zed Seselja MLA
Chair
Standing Committee on Legal Affairs
Performing the duties of Scrutiny of Bills Committee
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Seselja

I am writing with regard to your committee's comment on the Legal Profession (Disciplinary Tribunal) Appointment 2007 (No. 1) (DI2007-25).

I thank the committee for its approval of the approach taken with the Explanatory Statement.

Yours sincerely,

Simon Corbell MLA
Attorney General

19.4.07

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