

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

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

**SCRUTINY REPORT NO. 17**

**9 AUGUST 2002**



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

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

**MR BILL STEFANIAK MLA (CHAIR), MR JOHN HARGREAVES MLA,  
MS KERRIE TUCKER MLA**

**MR WAYNE BERRY, MLA  
SPEAKER  
LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY  
CANBERRA ACT 2601**

**DEAR MR SPEAKER**

**PLEASE FIND ENCLOSED A COPY OF REPORT No. 17 OF THE  
STANDING COMMITTEE ON LEGAL AFFAIRS (PERFORMING THE DUTIES  
OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION  
COMMITTEE). UNDER ITS RESOLUTION OF APPOINTMENT, THE  
COMMITTEE IS EMPOWERED TO SEND A REPORT TO YOU WHILE THE  
ASSEMBLY IS NOT SITTING SO THAT YOU MAY GIVE DIRECTIONS FOR ITS  
PRINTING, CIRCULATION AND PUBLICATION. I SEEK YOUR APPROVAL  
TO PRINT, PUBLISH AND CIRCULATE REPORT No. 17.**

**YOURS SINCERELY**

**BILL STEFANIAK MLA  
CHAIR**

**9 AUGUST 2002**

**APPROVED  
WAYNE BERRY MLA  
SPEAKER**

**9 AUGUST 2002**

## **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.

## **MEMBERS OF THE COMMITTEE**

**MR BILL STEFANIAK, MLA (CHAIR)**  
**MR JOHN HARGREAVES, MLA (DEPUTY CHAIR)**  
**MS KERRIE TUCKER, MLA**

---

**LEGAL ADVISER: MR PETER BAYNE**  
**SECRETARY: MR TOM DUNCAN**  
**(SCRUTINY OF BILLS AND SUBORDINATE**  
**LEGISLATION COMMITTEE)**  
**ASSISTANT SECRETARY: MS CELIA HARSDORF**  
**(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**

### Bill - No Comment

The Committee has examined the following Bill and offers no comment on it.

### **Appropriation Bill 2002-2003**

This is a Bill for an Act to appropriate moneys for the purposes of the Territory for the financial year beginning on 1 July 2002.

### Bills - Comment

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

### **Justice and Community Safety Legislation Amendment Bill 2002**

This is a Bill to amend various Acts that fall within the justice and community safety portfolio.

#### *Children and Young People Act 1999*

#### *Para 2(c)(iii) - review of administrative decisions*

Proposed new subsection 53A(6) contains a very strong privative clause to protect against judicial review a decision of the Chief Magistrate to assign or not to assign a matter to a particular magistrate to avoid a conflict of interest. A privative clause is a provision of a law that prevents a court from reviewing the validity or legality of a decision of another court or an administrative body where, apart from that clause, such review would be possible. In its comments on the Plant Diseases Bill later in this report, the Committee outlines the constitutional and functional objections to such clauses.

It is not uncommon to find privative clauses in legislation. The Committee's position is that whenever such a clause is proposed in a Bill, there should be specific justification which addresses the issue of why the persons who will not be able to challenge the particular judicial or administrative action should be deprived of a right that would otherwise be available.

The Explanatory Memorandum justifies the provision by pointing out that a party to the hearing before the assigned magistrate may still ask that magistrate to disqualify her or himself on the grounds of conflict of interest.

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

*Legal Practitioners Act 1970*

*Para 2(c)(iii) - review of administrative decisions*

Proposed new Part 12A, (see clause 24 of the Bill), regulates the practice of lawyers in connection with mortgages and managed investment schemes. It is noted that some administrative decisions under this scheme are not explicitly made subject to review. The decisions are those made:

- By the law society under proposed new para 147C(4)(c);
- By the attorney-General under proposed new para 147E(2)(b);
- By the law society under proposed new subsections 147H(2) to (5) inclusive; and
- By the law society under proposed new subsection 147L(1).

Some decisions of the law society are reviewable by the Administrative Appeals Tribunal (AAT) under section 198A of the *Legal Practitioners Act 1970*.

The Explanatory Memorandum does not address this issue, and while the committee does not suggest that every administrative decision should be subject to review by a body such as the AAT, the omission to provide for review, in particular where other decisions of the law society are reviewable, should be explained.

## **Magistrates Court (Refund of Fees) Amendment Bill 2002**

This Bill would amend the *Magistrates Court Act 1930* to provide that a fee payable on the lodgement of an application for a review of a decision by the Administrative Appeals Tribunal must be refunded if the application ends in the applicant's favour.

### Drafting point

The effect of proposed new subsection 248C(3) of the *Magistrates Court Act 1930* would appear to be that the registrar of the Administrative Appeals Tribunal must decide whether the application made by the applicant "ends in the applicant's favour". This may not be an easy matter to resolve. The Examples given in notes to the proposed provision suggest a very broad approach favourable to an applicant, but just what effect will be given to the provision by the registrar remains to be seen.

There is an alternative way of achieving the objective of the Bill that may be considered. A comparable provision is subreg 19(7) of the *Administrative Appeals Tribunal Regulations 1976* (Commonwealth), which provides:

- (7) A person who has paid an application fee is entitled to a refund of the fee if:
- ....
- (b) the Tribunal certifies that proceedings have terminated in a manner favourable to the applicant.

This provision employs the looser test of "terminated in a manner favourable to the applicant" which may be more consonant with the objective of the Bill as reflected in the Examples. Furthermore, by giving the power to the Tribunal it places it in the hands of the body best suited to apply the test to the facts of the case, and will achieve

a speedy and clear resolution of the issue of whether the applicant is entitled to a refund.

## Planning and Land Bill 2002

This Bill would provide an institutional framework for the planning and the development of land, by providing for the establishment of a number of bodies and offices; in particular the Planning and Land Authority, the Planning and Land Council, the office of Chief Planning Executive, the Land Development Agency, the Land Agency Board, and the office of Chief Executive Officer of the Land Development Agency. The Planning and Land Authority would assume responsibility for many of the functions managed under the *Land (Planning and Environment) Act 1991*. Many of the functions of the Authority would be performed by the Chief Planning Executive, who would constitute the Authority. The function of land development would be managed and, where appropriate, performed by the Land Development Agency.

### *Para 2(c)(i) – undue trespass on rights and liberties*

The Committee draws attention to clause 21. It provides:

- (1) The Executive may suspend the chief planning executive from duty—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity, ...; or
  - (c) [in the case of certain convictions].
  
- (2) The Minister must present to the Legislative Assembly a statement of the reasons for the suspension on the first sitting day after the day the chief planning executive is suspended.
  
- (3) If, within 7 sitting days after the day the statement is presented, the Legislative Assembly resolves to require the Executive to end the chief planning executive's appointment, the Executive must end the chief planning executive's appointment.
  
- (4) The chief planning executive's suspension ends—
  - (a) if the Minister does not comply with subsection (2)—at the end of the day the Minister should have presented to the Legislative Assembly the statement mentioned in that subsection; or
  - (b) if the Assembly does not pass a resolution mentioned in subsection (3) within the 7 sitting days—at the end of the 7th sitting day.
  
- (5) [Payment of salary while suspended].

The Committee's concerns that the rights of the chief planning executive may be affected in an unacceptable way are based on the considerations that:

- There is no obligation on any person or body to accord any form of natural justice (procedural fairness) to the chief planning executive;

- The effect of an Assembly debate, even if in the end it did conclude in the passing of a resolution of dismissal, might well be to cause irreparable damage to the reputation of the chief planning executive in a situation where the executive would have no direct means of redress; and
- It will be very difficult, if not impossible, for the executive to challenge the validity of a resolution of dismissal. The courts are very reluctant to intervene in the internal management of a legislature, or more broadly in the exercise of its powers. Apart from considerations of 'separation of powers', it is very difficult for a court to make findings of fact about the reasons, or motives, of a deliberative body that is not obliged to give any reasons; see *Yates (Arthur) & Co Pty Ltd v Vegetable Seeds Committee* (1945) 72 CLR 37.

In addition, it is possible that, given this role of the Assembly, its Members might take a more particular interest in the personal qualities and fitness of the chief planning executive than they do in relation to other chief executives. The legitimacy of this interest could not be questioned by an argument that it is primarily a matter for the Minister to monitor. Of course, the Assembly has an interest in the performance of any chief (or other kind of) executive of a government body. But in relation to other executives, the Assembly might generally accept that issues of fitness for office were primarily a matter for the Minister.

The Committee notes a contrast with these provisions and the general scheme for the employment of executives in Territory government. Section 73 of the *Public Sector Management Act 1994* provides for the terms of early termination to be as stipulated in the contract of engagement made under section 72. Such a contract, if it did not provide for procedural fairness, would be likely to be read by a court as subjecting the terminating authority to the observance of natural justice when it acted to terminate the executive.

It is noted too that the removal of an 'independent' office-holder such as the Director of Public Prosecutions lies in the power of the Attorney-General; *Director of Public Prosecutions Act 1990*, section 28. See too section 115 of the *Discrimination Act 1991*, which provides that the Executive may terminate the appointment of the Discrimination Commissioner.

The scheme in the Bill may have been copied from, or inspired by, provisions of the *Public Sector Management Act 1994* concerning the Clerk of the Legislative Assembly. Section 50 of that Act makes provision for the suspension and removal from office of the Clerk that are similar to clause 21 of this Bill. It is, however, to be noted that the Clerk is appointed by the Executive on the advice of the appropriate standing committee of the Legislative Assembly; subsection 46(2). The Executive does not have an independent power of appointment. Moreover, the Clerk is not subject to direction by the Executive in relation to the performance of his or her duties (subsection 46(3)). In contrast, the Chief Planning Executive is appointed by the Executive, and is subject to its directions. While the "Executive ... may suspend the Clerk from office on the ground of misbehaviour or physical or mental incapacity", this can only be done "on the advice of the Speaker" (subsection 50(2)). By subsection 50(3), it is the Speaker who shall present a statement of the grounds of the suspension to the Assembly.

These provisions reflect the notion that the Clerk is in effect the servant of the Assembly, and it is appropriate that the Assembly have the power of removal. There is no requirement that the Clerk be accorded any natural justice, but in practice, Members of the Assembly would be likely to be fully apprised of the reasons for any advice given by the Clerk to the Executive to suspend the Clerk.

The provisions of the *Auditor-General Act 1996* concerning removal from office of the Auditor-General are analogous to those concerning the Speaker, although in this respect the Executive has some room for independent action. Clause 5 of Schedule 1 of the Act provides:

- (1) The Executive shall remove the auditor-general from office if the Legislative Assembly passes a resolution to the effect that the auditor-general should be removed from office on the ground of misbehaviour or physical or mental incapacity.
- (2) The Executive shall remove the auditor-general from office if the auditor-general becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.

Again, these provisions are justified by reason of the particular role of the auditor-general in relation to the Assembly.

The Explanatory Memorandum does not offer a justification for the need for a special regime in relation to the chief planning executive. The Committee draws this to the attention of the Assembly.

#### Drafting point

The Committee notes a contrast between two provisions that may not have been intended. Paragraph 11(1)(a) provides that

- (1) The Minister may give a written direction to the authority—
  - (a) about the general policies the authority must follow; or ... .

In contrast, subclause 51(1)(a) provides that

- (1) The Minister may give written directions to the land agency—
  - (a) about the general policies the land agency should follow; or
  - (b) the principles that are to govern the exercise of its functions.

This contrast suggests that the notion of "the general policies the land agency should follow" does not include "the principles that are to govern the exercise of its functions". It is very difficult to discern just where the difference lies. The matter is important because it is likely that the correct interpretation of para 11(1)(a) is that the power of the Minister does not extend to giving to the Planning and Land Authority directions about "the principles that are to govern the exercise of its functions".

Is this contrast intended? The Explanatory Memorandum does not advert to this matter.

## Plant Diseases Bill 2002

This is a Bill for an Act to control diseases and pests affecting plants. It would repeal the *Plant Diseases Act 1934* and the *Plant Diseases Regulations 1938*.

### *Para 2(c)(i) – undue trespass on rights and liberties*

The entry and search powers of inspectors in Part 4 of the Bill generally conform to provisions of this kind found in Territory laws. The Explanatory Memorandum summarises the extent of the powers of entry:

Clause 21 empowers an inspector to enter premises with consent, under a warrant, or in emergency situations where entry without warrant is justified. Non-residential premises may be entered at any reasonable time.

Clause 23 provides for entry by consent, and it is important to see that some provision is made towards ensuring that such consent is 'informed'. Paragraph 23(1)(b) provides that an inspector seeking entry by consent must

- (b) tell the occupier—
  - (i) the purpose of the entry; and
  - (ii) that anything found and seized under this part may be used in evidence in court; and
  - (iii) that consent may be refused.

The Committee notes that the inspector is *not obliged to tell the occupier anything about what the inspector may do in relation to the premises or anything on the premises*. This power is specified in subclause 26, and is quite extensive. An inspector may, in relation to the premises or anything on the premises:

- (a) inspect or examine;
- (b) take measurements or conduct tests;
- (c) take samples of or from anything on the premises;
- (d) take photographs, films, or audio, video or other recordings;
- (e) subject to section 28 (Power to seize things), seize a thing;
- (f) require the occupier, or a person on the premises, to give the inspector reasonable help to exercise a power under this part.

The extent of these powers is qualified by the words "for this Act" in subclause 26(1).

The power to seize things, specified in clause 28, is quite extensive, and, in particular, is related to whether the inspector thinks that an offence may have been committed.

It is arguable that a consent given by an occupier cannot be 'informed' unless that person is at least generally informed of the provisions in clauses 26 and 28.

It is difficult to see that an obligation to provide this information would cause administrative problems. A standard form notice could be prepared and given to the occupier, who would then acknowledge in writing that he or she had been given the notice; (cf subclause 23(2)).

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

*Para 2(c)(vi) - delegated legislative power insufficiently subject to parliamentary scrutiny*

In various ways, the Bill confers on the Minister a power to make declarations or orders that appear to be of a legislative character. Some of these instruments are disallowable by the Assembly; others are simply notifiable instruments.

Those that are merely notifiable are:

- A declaration that a thing is a disease (clause 5)
- A declaration that an animal is an insect (clause 6)
- A declaration of places of entry and quarantine stations (clause 9)

Those that are disallowable by the Assembly are:

- A prohibition of the introduction into the Territory of plants, insects, diseases and pests (clause 8)
- A declaration of a quarantine area (clause 10)
- A declaration of an area subject to importation restriction (clause 12)
- A declaration of notifiable diseases and pests (clause 15)

There is no indication in the Explanatory Memorandum as to why the actions of the Minister in the first group - clauses 5, 6 and 9 - are treated differently to those in the second group - clauses 10, 12 and 15. If the Assembly is to have the power of disallowance in respect of the second group, why is this not so in respect of the first group?

*Para 2(c)(iii) - decisions affecting rights, liberties and/or obligations not subject to review*

### Restricting access to the courts to challenge administrative action

#### Clause 17

This Bill contains a strong exclusion of judicial review provision in clause 17. In relation to three specific powers of the Minister under Part 3, (see clauses 10, 12, and 13), it is provided in clause 17 that the decision

- "(a) may not be challenged or called into question in any court; and
- (b) is not subject to prohibition, mandamus or injunction in any court."

Such provisions are rarely found in laws conferring administrative powers, and need to be clearly justified. The Explanatory Memorandum says of this provision:

Clause 17 limits the rights of people affected by quarantine declarations, and orders used to support such declarations to challenge those declarations or orders in Court. This provision is necessary to prevent persons taking such action from hampering the ability of the Government to respond to a plant disease or pest

outbreak. In the event of such an outbreak, it will be necessary to take strict measures to control it, and efforts to challenge those measures in Court will likely compromise the desired outcome of controlling spread of the disease and its ultimate eradication.

It should also be noted that a declaration of a quarantine area (clause 10) is a disallowable instrument, as is a declaration of an area subject to importation restriction (clause 12). On the other hand, an order for the destruction or treatment of plants, etc under clause 13 is not a disallowable instrument. It is noted that the power in clause 13 is not legislative in character, and thus might not be expected to be subject to disallowance by the Assembly.

The Assembly needs to address the issue of whether there is sufficient justification for clause 17. The following remarks may assist.

The courts have long regarded as a fundamental common law right the ability of a citizen to have access to the courts of the land to challenge some administrative action on the ground that it is invalid. The notion of this right flows from the proposition that in Anglo-Australian law, "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen" (A V Dicey, *Law of the Constitution* (9<sup>th</sup> ed, 1952) 193. The point made by Dicey was that, in contrast to some European systems of law, the English common law, and the principles reflected in legislation over time, sets its face against a policy that would have that a person's legal action against the state must be litigated in administrative tribunals that were distinct from the ordinary courts. English law also adopted the policy that whether the person obtained a remedy against the state should not be judged according to a body of law that did not apply in ordinary litigation. The principle stated by Dicey applies with as much, if not more force, where a law seeks to protect the acts of a state official from challenge on the ground of illegality. In this case, the person has no remedy in law at all.

The courts commonly speak of statutory provisions that restrict or remove the ability of a citizen to have access to the courts to challenge the acts of a state official as involving a derogation from "the ordinary rights of individuals": *Australian National Airlines Commission v Newman* (1987) 162 CLR 466 at 417. The courts have adopted a policy of giving a strict construction to such provisions, so as to limit the extent to which they do restrict these rights (*ibid*). In so doing, the courts have in effect presumed that the legislature would not derogate from these rights. In this way, the courts can maintain that they are giving effect to the purpose of the relevant statute; (see *Puntoriero v Water Administration Ministerial Corporation* (1999) 199 CLR 575 at 594, per Kirby J).

In *Puntoriero*, Kirby J noted a more functional rationale for the policy of the courts. He said:

Obviously, to deny legal rights to a person which that person would otherwise enjoy, ostensibly because of some wider social purpose which appeals to the legislature, in effect obliges that person to underwrite (at its economic cost) the achievement of such objectives deemed beneficial to many. In particular circumstances, such deprivation of rights may constitute an effective acquisition of

property from the person affected [*Attrill v Richmond River Shire Council* (1995) 38 NSWLR 545 at 551; *Georgiadis v Australian and Overseas Telecommunications Corporation* (1994) 179 CLR 297; *New South Wales v McMullin* (1997) 73 FCR 246; cf *Wik Peoples v Queensland* (1996) 187 CLR 1 at 155, 185, 247-249; *Newcrest Mining (WA) Ltd v The Commonwealth* (1997) 190 CLR 513 at 660-661]. Even where such a course is constitutionally unimpeachable, it does not seem unreasonable to insist that Parliament should be clear as to its purpose in enacting legislation having such potentially drastic and unjust consequences.

Applied to the parliamentary context where the desirability of a provision restricting access to the courts is in question, this suggests that those who sponsor the Bill should articulate clearly just "wider social purpose" justifies a restriction on the right of a person to seek a remedy against a state official from the ordinary courts.

The Assembly must also be conscious that in some circumstances, a restriction on a person's ability to challenge some administrative action, or in some other way to resort to the courts for vindication of a legal right, may amount to "an effective acquisition of property from the person affected". This principle has been applied to invalidate a Territory law (see *Frank v Australian Capital Territory*, Supreme Court of the Act, 15 May 2001). It is not suggested that the principle applies in relation to clause 17 of this Bill.

#### Clause 44

In addition to clause 17, by clause 44, decisions of the Minister under Part 3 are not to be subject to review by the Supreme Court under the *Administrative Decisions (Judicial Review) Act 1989*. This kind of exclusion of judicial review provision does not, however, affect other similar remedies that might be obtained from the Supreme Court. The Explanatory Memorandum does not attempt to justify clause 44, and in the light of clause 17, there is an issue as to whether clause 44 is necessary. While it may be of limited effect, as a provision that excludes judicial review, clause 44 should be specifically justified. It is on its face a deprivation of an important right.

## **Revenue Legislation Amendment Bill 2002**

This is a Bill for an Act to amend the *Payroll Tax Act 1987* and the *Rates and Land Tax Act 1926* to implement revenue measures announced in the Budget 200-2003.

*Para 2(c)(i) – undue trespass on rights and liberties*Retrospective operation of the law

Part 2 of the Bill, affecting the *Payroll Tax Act 1987*, will be taken to have commenced on 1 July 2002. Some of the provisions of this Part will have an affect on the tax liability of some persons.

It is to be noted however that the fact that these changes would be made was announced on 25 June 2002. Whether this is sufficient to justify the giving of a retrospective operation to Part 2 is a matter for the Assembly. The technique adopted is common in respect of changes to the taxation law. Its justification is said to lie in the need to prevent persons taking unfair advantage of knowledge of proposed changes to the tax law, and/or to enable persons to arrange their affairs to deal with the proposed change.

On the other hand, the technique is sometimes criticised as 'legislation by press release'. The problem is said to lie in the fact that persons in the community will expect the law to change and will order their affairs accordingly, with the result that the Assembly is thus placed in a position where if it does not pass the Bill, it will be said to have disappointed those who relied in the change being made. If this is so, and the Assembly feels obliged to pass the Bill, the result is that the executive has in effect been able to change the law without Assembly approval.

One issue of fact here is whether the announcement on 25 June 2002 was made in such a way as to apprise those who will be affected by the retrospective change of the fact that the change would be made.

The Committee draws these matters to the attention of the Assembly.

Subordinate Legislation - No Comment

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

**Subordinate Law 2002 No 12 being the Road Transport (Third-Party Insurance) Amendment Regulations 2002 made under the *Road Transport (General) Act 1999* amends the principal Regulations by revising the maximum compulsory third-party premiums that can be charged for the various premium classes.**

**Subordinate Law 2002 No 13 being the Births, Deaths and Marriages Registration Amendment Regulations 2002 made under the *Births, Deaths and Marriages Registration Act 1997* amends the principal Regulations to include in regulation 8 laws of Tasmania and Western Australia about change of sex so as to provide for recognition in the ACT of change of sex documents issued under those laws.**

**Subordinate Law 2002 No 14** being the **Food Amendment Regulations 2002** made under the *Food Act 2001* modifies the **Food Regulations 2002** to allow the food business to be taken as registered until the day when the licence, issued under the previous Act, would have expired if the new Act had not commenced.

**Subordinate Law 2002 No 17** being the **Road Transport (Offences) Amendment Regulations 2002 (No 1)** made under the sections 23 and 233 of the *Road Transport (General) Act 1999* amends the **Road Transport (Offences) Regulations 2001** to increase infringement notice penalties for some traffic offences to maintain parity with NSW penalties for similar offences.

**Disallowable Instrument DI 2002—46** being the **Animal Diseases Declaration of Endemic Stock Disease Quarantine Area 2002 (No 2)** made under subsection 23 (1) of the *Animal Diseases Act 1993* declares land depicted in the diagram to be an endemic stock diseases quarantine area in relation to Footrot in sheep.

**Disallowable Instrument DI 2002—51** being the **Road Transport (Safety and Traffic Management) Declaration of Parking Authority 2002** made under regulation 75A (2) of the **Road Transport (Safety and Traffic Management) Regulations 2002** declares Screensound Australia as a Parking Authority, which enables the organisation to establish and operate a ticket parking scheme within its boundaries.

**Disallowable Instrument DI 2002—52** being the **Road Transport (General) (Registration Fees) Determination 2002** made under section 96 of the *Road Transport (General) Act 1999* revokes Instrument No. 249 of 2001 (Gazette S62, dated 27 August 2001) and determines fees payable in respect of the provisions of the **Road Transport (Vehicle Regulations) Regulations 2000** made under the *Road Transport (Vehicle Registration) Act 1999* in relation to vehicle registration shall be the fee (including the Commonwealth Goods and Services Tax where applicable) specified in the Schedule for that provision.

**Disallowable Instrument DI 2002—53** being the **Road Transport (General) (Driver Licence Fees) Determination 2002** made under section 96 of the *Road Transport (General) Act 1999* revokes Instrument No. 116 of 2001 (Gazette S34, dated 20 June 2001) and determines fees payable in respect of the provisions of the **Road Transport (Driver Licensing) Regulations 2000** made under the *Road Transport (Driver Licensing) Act 1999* in relation to driver licences shall be the fee (including the Commonwealth Goods and Services Tax where applicable) specified in the Schedule for that provision.

**Disallowable Instrument DI 2002—54** being the **Road Transport (General) Declaration that the road transport legislation does not apply to vehicles or persons - 2002** made under section 13 of the *Road Transport (General) Act 1999* relates to the GMC 400 V8 Supercar Race and a number of support races conducted on a road circuit in the Parliamentary Triangle from 7 June 2002 to 9 June 2002.

**Disallowable Instrument DI 2002—55** being the **Public Place Names 2002, No: 6** made under section 3 of the *Public Place Names Act 1989* determines the names, origins and significance of new street names in the Division of Kingston.

**Disallowable Instrument DI 2002—62** being the **ACTION Authority Transfer of Assets, Rights and Liabilities 2002** made under section 36 (1) of the *ACTION Authority Act 2001* declares that the assets, rights and liabilities are transferred from the Department of Urban Services to the ACTION Authority.

**Disallowable Instrument DI 2002—63** being the **Building (ACT Appendix to the Building Code of Australia) Determination 2002** made under section 24 (2) of the *Building Act 1972* determines the Schedule to this instrument to be the Australian Capital Territory Appendix to the Building Code of Australia.

**Disallowable Instrument DI 2002—67** being the **Road Transport (Public Passenger Services) Maximum Fares for Regular Route Services Determination 2002** made under section 23 of the *Road Transport (Public Passenger Services) Act 2001* revokes Determination No. 148 of 2001 (notified in Gazette S38, dated 27 June 2001 and made under the *Motor Omnibus Services Act 1955* – repealed on 1 December 2001) and determines the maximum fares payable on regular route services provided by ACTION authority as specified in the Schedule.

**Disallowable Instrument DI 2002—70** being the **Road Transport (Public Passenger Services) Maximum Fares for Taxi Services Determination 2002** made under section 60 of the *Road Transport (Public Passenger Services) Act 2001* revokes Determination No. 112 of 2001 (notified in Gazette No. 25, dated 21 June 2001 and made under the *Road Transport (General) Act 1999*) and determines that the maximum fares relating to hiring or using a taxi is as specified in the Schedule.

**Disallowable Instrument DI 2002—87** being the **Road Transport (General) (Parking Meter Fees) Revocation and Determination 2002** made under section 96 of the *Road Transport (General) Act 1999*, revokes Determination No. 69 of 2000 (notified in Gazette S6, dated 29 February 2000) and determines the fee payable, as specified in the Schedule, in respect of the provisions of the **Road Transport (Safety and Traffic Management) Regulations 2000** made under the *Road Transport (Safety and Traffic Management) Act 1999* in relation to parking meters in the areas of Territory Land shall be the amount specified in the Schedule for the particular area of Territory Land.

**Disallowable Instrument DI 2002—88** being the **Road Transport (General) (Numberplate Fees) Determination 2002** made under section 96 of the *Road Transport (General) Act 1999*, revokes Determination No. 115 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fee payable in respect of the provisions of the **Road Transport (Vehicle Registration) Regulations 2000** made under the *Road Transport (Vehicle Registration) Act 1999* in relation to number plates shall be the fee specified in the Schedule for that provision.

**Disallowable Instrument DI 2002—93** being the **Road Transport (Public Passenger Services) Maximum Fares for Taxi Services Determination 2002 (No. 2)** made under section 60 of the *Road Transport (Public Passenger Services) Act 2001* revokes Determination DI 2002—70 (notified on 25 June 2001) and determines that the maximum fares relating to hiring or using a taxi is as specified in the Schedule.

### Subordinate Legislation - Comment

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

**Subordinate Law 2002 No 11 being the Custodial Escorts Regulations 2002 made under the *Custodial Escorts Act 1998* prescribes the guidelines under which escort officers (custodial officers) can perform searches.**

The Committee has noted the provisions concerning the conduct of bodily searches and is satisfied that they adequately protect the interests of the person to be searched.

It notes that by clause 7 items that are perishable or items that are considered might pose a risk to the health or safety of any person may be destroyed or disposed with the consent of the administrator for the purposes of the *Custodial Escorts Act 1998*, (who is the Administrator under the *Remand Centres Act 1976*). The Committee notes that there is no provision for any compensation to be payable to the owner of such items. The Explanatory Statement makes no reference to this issue. The Committee draws this to the attention of the Assembly.

The Committee notes and commends provisions in the regulations that provide that bodily searches must be conducted by a person of the same sex as the person to be searched, and not conducted in the presence of persons of the opposite sex. It notes that the application of these provisions could give rise to difficulty in the case of transgender persons. The issues of how a person's sex is to be determined, and the weight to be given to the identification made by that person, are matters that may call for a legislative response that deals with the various contexts in which this sort of issue can arise.

**Disallowable Instrument DI 2002—56 being the Land (Planning and Environment) ACT Heritage Council Appointments 2002 (No. 1) made under section 97 (1) (b) of the *Land (Planning and Environment) Act 1991* appoints specified persons as members of the ACT Heritage Council for periods of two and three years with effect from the date of notification (19 June 2002).**

*Is this instrument disallowable?*

The Committee notes that the explanatory statement gives no indication as to whether or not the persons appointed as members are public servants. An instrument appointing a public servant is not a disallowable instrument under section 227 (2) (b) of the *Legislation Act 2001*.

*Missing attachments*

The above instrument specifies that resumes of each appointee's background is attached to the instrument. The Committee notes that there are no attachments to this instrument.

*No confirmation by relevant Committee of agreement to the above appointments*

The Committee also notes no indication has been given in the explanatory statement as to whether the required consultation in relation to these appointments has taken place with the relevant Committee in accordance with section 228 of the *Legislation Act 2001*.

**Disallowable Instrument DI 2002—71 being the Roads and Public Places (Fees) Revocation and Determination 2002 (No 1) made under section 9A of the *Roads and Public Places Act 1937* revokes Determination No. 129 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines fees for the purposes of the Act shall be in accordance with the Schedule.**

**Disallowable Instrument DI 2002—72 being the Roads and Public Places (Fees) Revocation and Determination 2002 (No 2) made under section 9A of the *Roads and Public Places Act 1937* revokes Determination No. 128 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines fees for the purposes of the Act shall be in accordance with the Schedule.**

**Disallowable Instrument DI 2002—73 being the Roads Transport (General) (Fees) Revocation and Determination 2002 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 127 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines the fees payable in respect of the section of the *Road Transport (Dimensions and Mass) Act 1990* specified in the attached Schedule shall be the fee specified in the Schedule for that section; and where a vehicle is a vehicle of a kind referred to in Part 3 of the Schedule to the *Road Transport Charges (Australian Capital Territory) Act 1993* Cwlth) the charges in that Schedule shall apply.**

**Disallowable Instrument DI 2002—74 being the Hawkers (Fees) Revocation and Determination 2002 made under section 28 of the *Hawkers Act 1936* revokes Determination No. 147 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.**

**Disallowable Instrument DI 2002—75 being the Roads and Public Places (Fees) Revocation and Determination 2002 (No 3) made under section 9A of the *Roads and Public Places Act 1937* revokes Determination No. 146 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees for the purposes of the Act, in relation to permits for placement of objects for outdoor cafes, shall be in accordance with the Schedule.**

**Disallowable Instrument DI 2002—76 being the Water Resources (Fees) Revocation and Determination 2002 made under section 78 of the *Water Resources Act 1998* revokes Determination No. 144 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees payable for the purpose of**

those sections are as specified in the Schedule in Column 1 and described in Column 2 shall be those fees specified in Column 4. These fees are to be paid as described in Column 5.

**Disallowable Instrument DI 2002—77** being the **Stock (Fees) Revocation and Determination 2002 (No 1)** made under section 42 of the *Stock Act 1991* revokes Determination No. 137 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees payable for the purposes of the Act shall be in accordance with the Schedule.

**Disallowable Instrument DI 2002—78** being the **Stock (Fees) Revocation and Determination 2002 (No 2)** made under section 42 of the *Stock Act 1991* revokes Determination No. 137 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees payable for the purposes of the Act shall be in accordance with the Schedule.

**Disallowable Instrument DI 2002—79** being the **Pounds (Fees) Revocation and Determination 2002** made under section 7 of the *Pounds Act 1928* revokes Determination No. 145 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees payable for the purposes of the Act shall be in accordance with the Schedule.

**Disallowable Instrument DI 2002—80** being the **Nature Conservation (Fees) Revocation and Determination 2002** made under section 83A of the *Nature Conservation Act 1980* revokes Determination No. 143 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees payable for the purposes of the Act shall be in accordance with the Schedule.

**Disallowable Instrument DI 2002—81** being the **Lakes (Fees) Revocation and Determination 2002** made under section 54 of the *Lakes Act 1976* revokes Determination No. 140 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees payable for the purposes of the Act, in relation to the granting of a permit to use a power boat in the Molonglo River, shall be in accordance with the Schedule.

**Disallowable Instrument DI 2002—82** being the **Environment Protection (Fees) Revocation and Determination 2002** made under section 165 of the *Environment Protection Act 1997* revokes Determination No. 136 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees payable for the purposes of the Act shall be in accordance with the Schedules.

**Disallowable Instrument DI 2002—83** being the **Domestic Animals (Fees) Revocation and Determination 2002** made under section 144 of the *Domestic Animals Act 2000* revokes Determinations Nos 149 and 212 of 2001 (notified in Gazette S35, dated 21 June 2001 and Gazette No 32, dated 9 August 2001) and determines the fees payable for the purposes of the Act shall be in accordance with the Schedule.

**Disallowable Instrument DI 2002—84** being the **Animal Welfare (Fees) Revocation and Determination 2002** made under section 110 of the *Animal Welfare Act 1992* revokes Determination No. 141 of 2001 (notified in Gazette S34,

dated 20 June 2001) and determines that the fees payable for the purposes of the Act, in relation to licences to use or breed an animal for the purpose of research or teaching; a circus permit; and commercial and private trapping permits, shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—85 being the Animal Diseases (Fees) Revocation and Determination 2002 made under section 63 of the *Animal Diseases Act 1993* revokes Determination No. 142 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fees payable for the purposes of the Act, in relation to the provision of emergency tail tags, shall be in accordance with the Schedule.

Disallowable Instrument DI 2002—86 being the Road Transport (General) (Parking Permit Fees) Revocation and Determination 2002 made under section 96 of the *Road Transport (General) Act 1999*, revokes Determination No. 114 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines the fee payable in respect of the provisions of the Road Transport (Safety and Traffic Management) Regulations 2000 made under the *Road Transport (Safety and Traffic Management) Act 1999* in relation to parking permits shall be the fee specified in the Schedule for that provision.

Disallowable Instrument DI 2002—89 being the Road Transport (General) (Vehicle Impounding and Seizure/Speed Tests) Revocation and Determination 2002 made under section 96 of the *Road Transport (General) Act 1999*, revokes Determination No. 113 of 2001 (notified in Gazette S34, dated 20 June 2001) and determines that the fee payable in respect of the provisions of the *Road Transport (Safety and Traffic Management) Act 1999* in relation to vehicle impounding and seizure and speed/reliability tests shall be the fee specified in the Schedule for that provision.

#### *Missing explanatory statements*

Unfortunately, there were no explanatory statements attached to the above Disallowable Instruments.

#### Comment on explanatory statements

The Committee notes that in many recent determinations explanatory statements which were previously issued as separate documents to the instrument have now been incorporated into the one document. Moreover, the explanations just list the old fee. The purpose of explanatory statements was recently set out in a Queensland Scrutiny of Legislation Committee Report entitled “Report to Parliament on the Committee’s Monitoring of the Operation of the Explanatory Notes System” (Report No. 18, dated August 2001). The report sets out a number of functions that such information provides, and they are as follows:

- Firstly, they provide additional information to Members of Parliament in relation to the legislation concerned. This enables members to better comprehend the nature and effects of the legislation, and enhances the quality of Parliamentary debate.

- Secondly, once a bill has become an Act or “significant” subordinate legislation has been tabled in Parliament, the Explanatory Notes become a source of additional information to all users of the legislation.
- Finally, in interpreting the provisions of an Act or subordinate legislation, regard can be had to the Explanatory Notes in certain situations. The principle such situation is where the legislation is ambiguous or obscure.

The Committee is of the view that detailed explanatory statements benefit both those affected by the law and Members of the Assembly.

## **INTERSTATE AGREEMENTS**

### **National Excise Scheme for Low Alcohol Beer**

The Committee has received a letter dated 12 June 2002 from the Treasurer advising that, on behalf of the ACT, he has agreed to the Intergovernmental Agreement to implement a National Excise Scheme for Low Alcohol Beer. The Scheme will replace the various State/Territory schemes with a nationally uniform and administratively efficient concession in the excise rate on low alcohol beer.

The Commonwealth will gazette a tariff notice to implement the excise reductions for low alcohol beer in advance of the date of commencement of the national scheme.

The Committee thanks the Treasurer for his letter (copy attached).

### **Commonwealth and States and Territories Agreement on Terrorism and Multi-Jurisdictional Crime, 5 April 2002**

The Committee has received a letter dated 19 July 2002 from the Acting Chief Minister advising that the Commonwealth and States and Territories reached agreement on terrorism and multi-jurisdictional crime, entitled *Commonwealth and States and Territories Agreement on Terrorism and Multi-Jurisdictional Crime, 5 April 2002*.

The Committee thanks the Acting Chief Minister for his letter (copy attached).

## **REGULATORY IMPACT STATEMENTS**

There is no matter for comment in this report.

## GOVERNMENT RESPONSES

The Committee has received responses from:

- The Minister for Industrial Relations, dated 25 June 2002, in relation to comments in Scrutiny Report No. 15 of 2002 regarding the Workers Compensation (Acts of Terrorism) Amendment Bill 2002 (the Terrorism Bill). The Committee thanks the Minister and notes that in response to the comments made in the Report he has proposed an amendment to the Bill.
- The Minister for Urban Services, dated 23 July 2002, in relation to comments in Scrutiny Report No. 15 of 2002 regarding Disallowable Instruments DI2002—39 – *Road Transport Act 1999* and DI2002—38 – *Commissioner for the Environment Act 1993*. The Committee thanks the Minister for his response.
- The Minister for Planning, dated 1 August 2002, in relation to comments in Report No. 16 of 2002 regarding Disallowable Instruments DI2002—43 and DI2002—44 *Public Place Names Act 1989* and DI2002—50 – *Building Act 1972*. The Committee thanks the Minister for his response.

Copies of the responses are attached.

Bill Stefaniak MLA  
Chair

9 August 2002



## Ted Quinlan MLA

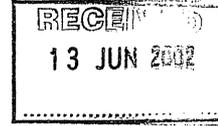
DEPUTY CHIEF MINISTER

TREASURER MINISTER FOR ECONOMIC DEVELOPMENT, BUSINESS AND TOURISM

MINISTER FOR SPORT, RACING AND GAMING MINISTER FOR POLICE, EMERGENCY SERVICES AND CORRECTIONS

MEMBER FOR MOLONGLO

Mr Bill Stefaniak MLA  
Chair - Standing Committee on Legal Affairs  
ACT Legislative Assembly  
CANBERRA ACT 2601



Dear Mr Stefaniak *Bill*

On 24 April 2002, I advised you about the proposed National Excise Scheme for Low Alcohol Beer to commence from 1 July 2002. This advice was in accordance with the *Administration (Interstate Agreements) Act 1997*.

The proposed national scheme will replace the various State/Territory schemes with a nationally uniform and administratively efficient concession in the excise rate on low alcohol beer. Under the national scheme, liquor wholesalers will no longer need to lodge rebate claims in individual jurisdictions.

The Commonwealth will gazette a tariff notice to implement the excise reductions for low alcohol beer in advance of the date of commencement of the national scheme.

From 2002-03, States/Territories will financially contribute to the scheme by way of a Commonwealth deduction from each jurisdiction's Budget Balancing Assistance (BBA) under the Guaranteed Minimum Amount (GMA) in accordance with the current Intergovernmental Agreement. The estimated financial contribution from the ACT under the national scheme in 2002-03 is \$1m, equivalent to the estimated low alcohol subsidies to be paid under the ACT scheme in 2001-02.

In accordance with the terms of the *Administration (Interstate Agreements) Act 1997*, I now advise that the Intergovernmental Agreement to implement a National Excise Concession Scheme for Low Alcohol Beer has been signed by myself on behalf of the ACT.

Should you wish to have more information on the scheme, Mrs Pham from the Department of Treasury is available to brief you as required. Her telephone number is 6207 6411.

Yours sincerely

*Ted Quinlan*  
12.6 2002  
Ted Quinlan MLA  
Treasurer

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601  
Phone (02) 6205 0001 Fax (02) 6205 0135



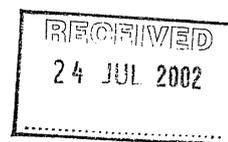
## Ted Quinlan MLA

DEPUTY CHIEF MINISTER

TREASURER MINISTER FOR ECONOMIC DEVELOPMENT, BUSINESS AND TOURISM  
 MINISTER FOR SPORT, RACING AND GAMING MINISTER FOR POLICE, EMERGENCY SERVICES AND  
 CORRECTIONS

MEMBER FOR MOLONGLO

Mr Bill Stefaniak MLA  
 Chair  
 Committee for Legal Affairs  
 ACT Legislative Assembly  
 London Circuit



Dear Mr Stefaniak

You will recall that, on 5 April 2002, the Chief Minister, Mr Jon Stanhope MLA met with the Prime Minister and the Leaders of the other States and Territories at the Summit on Transnational Crime and Terrorism.

With regard to the *Administration (Interstate Agreements) Act 1997*, I am writing to advise you that the Commonwealth and States and Territories reached agreement on terrorism and multi-jurisdictional crime, called the *Commonwealth and States and Territories Agreement on Terrorism and Multi-Jurisdictional Crime, 5 April 2002* (the *Agreement*). A copy of the *Agreement* is attached for your information (Attachment A).

You will see that, among other initiatives, the *Agreement* includes undertakings to:

- '...take whatever action is necessary to ensure that terrorists can be prosecuted under the criminal law, including a reference to power of specific jointly agreed legislation...', (it should be noted that this reference to power is applicable only to the States);
- ensure 'that all jurisdictions will review their legislation and counter-terrorism arrangements to make sure that they are sufficiently strong';
- '...reform laws relating to money laundering...';
- '...legislate through model laws for all jurisdictions and mutual recognition for a national set of powers for cross-border investigations...';
- '...modernise the criminal law by legislating in the priority areas of model forensic procedures (during 2002), model computer offences (during 2002), model serious drug offences (during 2003); and
- '...replace the National Crime Authority with an Australian Crime Commission...' which would require the amendment of ACT legislation governing the operations of the National Crime Authority.

You will appreciate that, prior to the Summit, it was unclear what features the *Agreement* would contain. Further, until ACT Government officials fully considered the final *Agreement*, it was unclear what actions regarding ACT legislation would be required. It

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601

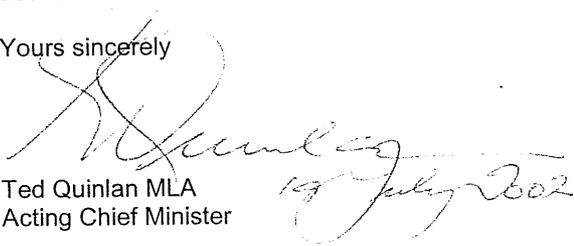
Phone (02) 6205 0001 Fax (02) 6205 0135

is now clear that some new legislation plus amendments to existing legislation may be required in order to fulfil our obligations under the *Agreement*.

The Chief Minister will advise you of any further progress in the implementation of the *Agreement*. With respect to this, it is worth noting that the ACT has already implemented the model forensic procedures laws, and that the Government intends to introduce legislation to adopt the model computer offences early in the Spring 2002 sittings.

Officials from the Chief Minister's Department and the Department of Justice and Community Safety are available to provide you with a further briefing should you so desire.

Yours sincerely

  
Ted Quinlan MLA  
Acting Chief Minister

19 July 2002

**COMMONWEALTH AND STATES AND TERRITORIES AGREEMENT ON  
TERRORISM AND MULTI-JURISDICTIONAL CRIME, 5 APRIL 2002**

The Prime Minister and State and Territory Leaders agreed that a new national framework is needed to meet the new challenges of combatting terrorism and multi-jurisdictional crime. The attacks in the United States on 11 September last year indicated that previous assumptions about the nature and potential scale of terrorism are no longer valid. In addition, they noted that international and organised criminal groups did not respect state or national borders, and their activities could also result in major harm to all Australians. They recognised the importance of effective cooperation between the jurisdictions, and the need to build on arrangements that are currently in place in adding elements to national arrangements that will respond quickly and effectively to these challenges.

In relation to terrorism, Leaders agreed:

1. The Commonwealth to have responsibility for "national terrorist situations", to include attacks on Commonwealth targets, multi-jurisdictional attacks, threats against civil aviation and those involving chemical, biological, radiological and nuclear materials.
2. The Commonwealth will consult and seek the agreement of affected States and Territories before a national terrorist situation is declared and States and Territories agree not to withhold unreasonably such agreement.
3. To take whatever action is necessary to ensure that terrorists can be prosecuted under the criminal law, including a reference of power of specific, jointly agreed legislation, including roll back provisions to ensure that the new Commonwealth law does not override State law where that is not intended and to come into effect by 31 October 2002. The Commonwealth will have power to amend the new Commonwealth legislation in accordance with provisions similar to those which apply under Corporations arrangements. Any amendment will require consultation with and agreement of States and Territories.
4. That all jurisdictions will review their legislation and counter-terrorism arrangements to make sure that they are sufficiently strong.
5. That the Commonwealth and States and Territories will continue to:
  - (i) improve Australia's anti-terrorist intelligence capacity and to develop effective means for sharing intelligence.
  - (ii) significantly upgrade the central coordination capacity so that the operational arms of the Commonwealth and the States and Territories can obtain the information and strategic advice necessary to respond rapidly and effectively.
6. The existing Standing Advisory Committee on Commonwealth/State Cooperation for Protection Against Violence (SAC-PAV) will also be reconstituted as the National Counter-Terrorism Committee with a broader mandate to cover prevention and consequence management issues and with Ministerial oversight arrangements.

In relation to Organised Crime, Leaders agreed:

7. To strengthen the fight against organised crime it is agreed to replace the National Crime Authority (NCA) with an Australian Crime Commission (ACC) that builds on the

important features of the NCA for effective national law enforcement operation in partnerships with State and Territory police forces whilst removing the current barriers to its effectiveness.

8. The ACC to be focussed on criminal intelligence collection and establishment of national intelligence priorities.
9. The ACC to have access to taskforce investigative capability to give effect to its intelligence functions and to support its overall operations. The ACC to include the Office of Strategic Crime Assessments and the Australian Bureau of Criminal Intelligence.
10. The Board of the ACC to include representatives from all States and Territories. Ministerial oversight will be retained by having the Board report to an Intergovernmental Committee of State and Commonwealth Ministers.
11. To streamline the process for obtaining investigation references.
12. The ACC will retain the capacity to use coercive powers and to investigate criminal activity of national significance;
13. Other details to be settled by mutual agreement with the new body to come into operation by 31 December 2002.

In relation to arrangements for dealing with multi-jurisdictional crime, Leaders agreed:

14. To reform the laws relating to money laundering, including a possible reference of powers to the Commonwealth if necessary, for effective offences.
15. To legislate through model laws for all jurisdictions and mutual recognition for a national set of powers for cross-border investigations covering controlled operations and assumed identities legislation; electronic surveillance devices; and witness anonymity. Legislation to be settled within 12 months.
16. To legislate and develop administrative arrangements to allow investigations by the Australian Federal police into State offences incidental to multi-jurisdictional crime.
17. To modernise the criminal law by legislating in the priority areas of model forensic procedures (during 2002), model computer offences (during 2002), model serious drug offences (during 2003).
18. To ensure adequate access to radio-frequency spectrum for an effective inter-operability between national security, police and emergency services agencies.
19. To enhance capacity in each jurisdiction for the collection and processing of samples to create DNA profiles, and the uploading of profiles onto the national DNA database.
20. To undertake as a matter of priority work in the following areas of law enforcement: control over the illegal importation of criminal contraband specifically illicit drugs and firearms; extradition between States; recognition of expert evidence (such as drug analysis certificates); firearms trafficking; identity fraud; vehicle rebirthing; gangs; and cyber crime. The purpose of this work is to ensure elimination of administrative and legal barriers in pursuit of criminals operating in more than one jurisdiction.

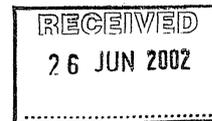


## Simon Corbell MLA

MINISTER FOR EDUCATION, YOUTH AND FAMILY SERVICES  
 MINISTER FOR PLANNING MINISTER FOR INDUSTRIAL  
 RELATIONS

MEMBER FOR MOLONGLO

Mr Bill Stefaniak MLA  
 Chair  
 Standing Committee on Legal Affairs  
 Legislative Assembly  
 Canberra ACT 2601



Dear Mr <sup>Bill</sup> Stefaniak

I refer to the Committee's Scrutiny Report No. 15, issued on 20 June 2002, and the comments contained in the report regarding the Workers Compensation (Acts of Terrorism) Amendment Bill 2002 (the Terrorism Bill).

The report identified a potential inappropriate delegation of legislative power in proposed section 30G of the Terrorism Bill. As introduced, this provision would have allowed the Territory Government to make regulations imposing a levy on workers' compensation insurers to meet costs associated with the establishment of a temporary fund to cover workers' compensation liabilities arising from acts of terrorism.

I will be moving a Government amendment to the Bill to set a maximum cap on the levy that can be imposed by regulations at 10% of workers' compensation premiums collected by the insurer. A copy of the draft Government amendment is attached.

The Parliamentary Counsel's Office and the Department of Justice and Community Safety have advised that this amendment will avoid an inappropriate delegation of legislative power, because the maximum tax that can be imposed on insurers will be established by the primary legislation passed by the Assembly.

It would be possible for regulations to be made imposing a lower rate of the levy on insurers (for instance, if the workers' compensation costs associated with a future terrorist act were not high enough to warrant a 10% levy on insurers). However, the regulations could not impose a higher levy on insurers.

It is necessary to have some flexibility built into the legislation regarding the rate of any levy imposed on insurers, because the operation of the temporary reinsurance fund established by the legislation is entirely contingent on the occurrence of an act of terrorism in the future. The extent of liabilities arising from a future act is naturally very difficult to predict.

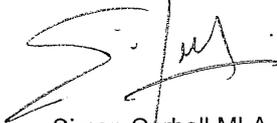
ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601  
 Phone (02) 6205 0000 Fax (02) 6205 0535

2.

I hope this information addresses the Committee's concerns about the Terrorism Bill.

Yours sincerely



Simon Corbell MLA

25-6-02

**Australian Capital Territory  
Legislative Assembly**

**Workers Compensation (Acts of Terrorism)  
Amendment Bill 2002**

Amendments to be moved by the Minister for Industrial Relations

---

**1**

**Clause 4**

**Proposed new section 30G (3)**

**Page 8, line 9—**

*insert*

- (3) However, the regulations must not impose a levy for a period that is—
- (a) for an approved insurer—more than 10% of the premiums received by the insurer in relation to compulsory insurance policies issued by the insurer that begin during the period; and
  - (b) for a self-insurer—more than 10% of the estimated premium that would have been payable by the self-insurer for a compulsory insurance policy obtained by the self-insurer that began at the beginning of the period.



## Simon Corbell MLA

MINISTER FOR EDUCATION, YOUTH AND FAMILY SERVICES  
 MINISTER FOR PLANNING MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO

Mr Bill Stefaniak MLA  
 Chair  
 Standing Committee on Legal Affairs  
 London Circuit  
 CANBERRA ACT 2601

  
 Dear Mr Stefaniak

Thank you for your Scrutiny of Bills Report No: 16 of 2002. I offer the following response in relation to the matters raised by your Committee.

- **Disallowable Instrument DI2002-43 – *Public Place Names Act 1989*;**
- **Disallowable Instrument DI2002-44 – *Public Place Names Act 1989*;**

The Committee queries why, given that disallowable instruments are numbered sequentially, the above disallowable instruments include an extra numbering system. For example, the name of DI2002-43 is the *Public Place Names Nomenclature 2002, No. 5*.

The inclusion of a number (eg No 5) is mainly to make the instrument more accessible to members of the public by giving it a unique and meaningful name. It is also to satisfy the requirements of the *Legislation Regulations 2001*, regulation 4 (2) (f) (Requirements for notification of registerable instruments etc). The *Legislation Regulations 2001*, regulation 4 (2) (f) and (3) effectively require registerable instruments like DI2002-43 and DI2002-44 to have a unique name that includes the year the instrument is made. Often, several instruments are made under the same authorising provision in a year and, in these cases, the inclusion of numbers in their names is a convenient and meaningful way of distinguishing one from another. This approach is also consistent with current drafting practice for Acts and subordinate laws. The inclusion is not part of an extra numbering system - it is part of a unique and meaningful name.

### ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601  
 Phone (02) 6205 0005 Fax (02) 6205 0585

Under the *Legislation Act 2001*, section 59, registerable instruments (including disallowable instruments) must be numbered as nearly as practicable in the order in which they are notified under the Act. Different serial numbers and letters are used to distinguish the different kinds of instruments. For example, this year's subordinate laws are numbered SL2002-##, disallowable instruments are numbered DI2002-##, and so on. These 'notification numbers' provide a unique point of reference for each instrument, but are not designed for searching an instrument by subject or title.

The *Legislation Act 2002*, section 60 also gives the Parliamentary Counsel a limited power to correct the name of an instrument before notifying it.

- **Disallowable Instrument DI2002-50 – *Building Act 1972*.**

The Committee has identified that the explanatory statement to the above disallowable instrument is in fact the same as the explanatory statement to disallowable instrument DI2002-49. This was an oversight and a revised explanatory statement for DI2002-50 has been prepared and provided to Parliamentary Counsel for inclusion on the Legislation Register.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Corbett', with a large, sweeping flourish extending from the end of the signature.

Simon Corbett MLA  
Minister for Planning

1.8.02

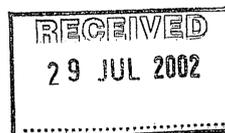


## Bill Wood MLA

MINISTER FOR URBAN SERVICES MINISTER FOR THE ARTS  
MINISTER FOR DISABILITY, HOUSING AND COMMUNITY SERVICES

MEMBER FOR BRINDABELLA

Mr Bill Stefaniak MLA  
Chair  
Standing Committee on Legal Affairs  
London Circuit  
CANBERRA ACT 2601



Dear Mr <sup>Bill</sup> Stefaniak

Thank you for your Scrutiny of Bills Report No.15 of 2002. I offer the following response in relation to the matters raised by your Committee.

- **Disallowable Instrument DI2002-39 - *Road Transport Act 1999*;**

The Committee queries why, given that disallowable instruments are numbered sequentially, the above disallowable instrument includes an extra numbering system. For example, the name of DI2002-39 is the *Road Transport (General) - Declaration that the road transport legislation does not apply to certain roads and road related areas 2002 (No. 3)*.

The inclusion of a number (eg No 3) is mainly to make the instrument more accessible to members of the public by giving it a unique and meaningful name. It is also to satisfy the requirements of the *Legislation Regulations 2001*, regulation 4 (2) (f) (Requirements for notification of registerable instruments etc). The *Legislation Regulations 2001*, regulation 4 (2) (f) and (3) effectively require registerable instruments like DI2002-39 to have a unique name that includes the year the instrument is made. Often, several instruments are made under the same authorising provision in a year and, in these cases, the inclusion of numbers in their names is a convenient and meaningful way of distinguishing one from another. This approach is also consistent with current drafting practice for Acts and subordinate laws. The inclusion is not part of an extra numbering system - it is part of a unique and meaningful name.

Under the *Legislation Act 2001*, section 59, registerable instruments (including disallowable instruments) must be numbered as nearly as practicable in the order in which they are notified under the Act. Different serial numbers and letters are used to distinguish the different kinds of instruments. For example, this year's subordinate laws are numbered SL2002-##, disallowable instruments are numbered DI2002-##, and so on. These 'notification numbers' provide a unique point of reference for each instrument, but are not designed for searching an instrument by subject or title.

### ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601  
Phone (02) 6205 0005 Fax (02) 6205 0294

The *Legislation Act 2002*, section 60 also gives the Parliamentary Counsel a limited power to correct the name of an instrument before notifying it.

- **Disallowable Instrument DI2002-38 – *Commissioner for the Environment Act 1993*;**

The Committee queries whether the above appointment requires referral to the relevant standing committee. The former Standing Committee on Planning and Urban Services considered the appointment.

Yours sincerely

A handwritten signature in cursive script that reads "Bill Wood".

Bill Wood MLA  
Minister for Urban Services

22.7.02