

**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. 8

1 MAY 2002

TERMS OF REFERENCE

- (1) 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 CELESTE ITALIANO
(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 comment on them.

First Home Owner Grant Amendment Bill 2002

This Bill would amend the First Home Owner Grant Act 2000 to accommodate changes in Commonwealth government policy concerning eligibility for grants under the scheme.

Gaming Machine (Cap) Amendment Bill 2002

This Bill would amend the *Gaming Machine Act 1987* to change the expiry date of Division 2A from 30 June 2002 to 30 June 2003. This would maintain the restriction on the number of gaming machines permitted to be licensed for the additional year.

Territory Records Bill 2002

This is a Bill for an Act to regulate the keeping of and access to records of the Territory. It would state the obligations of agencies for the management of their records through a records management program for an agency; establish a mechanism for the approval and adoption of standards and codes; establish the position of the Director of Territory Records and a Territory Records Advisory Council; recognise that Territory records of enduring evidential, informational or historical value are to be preserved for future reference; and confer an entitlement to public access to those Territory records that have reached a certain age and are open for public access.

Bills - Comment

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

Discrimination Amendment Bill 2002

This Bill would amend the *Discrimination Act 1991* to add the concept of potential pregnancy to the list of personal attributes a person might have, and in respect of which they might suffer unlawful discrimination.

The effect of clause 6 of the Bill, amending section 7, would be that the Act would now apply to discrimination (as defined in section 8) on the ground of "potential pregnancy". Clause 5, which would insert a new section 5A, gives a non-exhaustive definition of "potential pregnancy". It would refer to certain facts about a woman, being that she is or may be capable of bearing children (section 5A(a)), or has expressed a desire to become pregnant (section 5A(b)), or is likely, or is perceived as being likely, to become pregnant (section 5A(c)). The effect of clause 8, which would insert a new subsection 23(2), would be to give greater scope to the policy of existing section 23 that it is unlawful for a person to discriminate against another person by

requesting or requiring information in connection with, or for the purpose of performing, an act that is or would be unlawful.

Comment on the Explanatory Memorandum

It is not easy to follow the explanation the proposed new subsection 23(2). It is said that "An example would be an employer who in an interview intended to ask a woman if she intended to become pregnant, but who did not intend to ask the same question to a man". First, subsection 23(2) does not fix on a person's intentions, but on what they in fact do; that is, to "request or require a person to provide information ...". The example probably intends to refer to a case where an employer asks a woman if she intended to become pregnant, etc.

Secondly, this is not a question that it would make any sense for an employer to ask a man, (and the same is true of all of the attributes in section 5A). The circumstances of an interview of a prospective male employee are different because the man cannot be asked whether as a woman, he has a desire to be pregnant. There would be no occasion for the man to be asked this question. Thus, the failure of an employer to ask a man about whether he has an attribute described in section 5A could never give rise to a breach of proposed subsection 23(2).

General Comment

There is a more general point which the Committee makes in the spirit of assisting the Assembly and the proponent of the Bill. The Explanatory Memorandum probably had in mind a case where a woman was asked whether she intended to become pregnant but where a man was not asked whether he intended to become a father. These two situations, (and others, such as where a man or a woman was asked whether they intended to adopt a child), could be embraced under a concept of 'potential parenthood'. Use of such a concept, rather than that of potential pregnancy, would also mean that the Bill would not in effect confer a preference on only some of the people who suffer discrimination due to their potential obligations to children. (That the Bill appears to do this raises a question of whether all persons would be treated equally.) Perhaps an amendment to existing paragraph 7(1)(e) "status as a parent or carer" could be amended to include the situation where that status was in potential only. In addition clause 5 of the Bill might be appropriately amended.

If this analysis is correct, there is a question about just when subsection 23(2) will apply. It appears it may apply where one prospective female employee is asked if she has a desire to be pregnant, but another is not. But an employer could circumvent this problem by simply asking the question of all prospective female employees.

The Committee's purpose in raising these points is simply to query just what is intended by the proposal to insert a new subsection 23(2). It may well be that the policy objective is covered by the existing section 23, which provides: "It is unlawful for a person to discriminate against another person by requesting or requiring information (whether by way of completing a form or otherwise) in connection with, or for the purpose of performing, an act that is or would be unlawful under any other provision of this Part or under Part V, VI or VII".

Gaming Machine (Women's Sports) Amendment Bill 2002

This Bill would amend the *Gaming Machine Act 1987* to affect the manner in which a licensed club may meet its obligation to make an annual community contribution. The effect would be to encourage clubs to make a contribution that would have the effect of benefiting or enhancing women's sport conducted in the Territory, or with participants based predominantly in the Territory.

Section 60G of the *Gaming Machine Act 1987* requires that a licensed club must make an annual community contribution as calculated in accordance with that section. The insertion of new subsections 60G(4) and (5) would vary the method of calculation. By subsection 60G(4), a club that contributed \$3 of "women's sport community contributions" would be taken to have contributed \$4 towards the amount it is required to pay in accordance with subsection 60G(1). By subsection 60G(5), "women's sport community contributions" means such contributions that the Commission is satisfied will have the effect stated in subsection 60B(1)(c) - that is, the effect of benefiting or enhancing women's sport conducted in the Territory, or with participants based predominantly in the Territory.

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

The Explanatory Memorandum makes it plain that the Bill is designed to encourage ACT licensed clubs to redress the situation that "women's sport is often left behind when it comes to securing the cash to fund operational needs, even at the elite level of sport". To this end, the scheme proposed provides explicitly for a preference to be accorded to participants in "women's sport". That involves a discrimination in the sense of according a preference to women as against men, and, secondly, to women who participate in sport as against people who participate in the other kinds of activities that might receive support from clubs making their annual contributions under section 60G of the Act.

The Explanatory Memorandum offers a justification for according this preference, and the Committee draws it to the attention of the Assembly. To assist debate, the Committee offers these comments.

At the outset, there does appear to be a conflict between the terms of the proposed law, which explicitly fix on sex as a category for the operation of the law, and the principle that all are entitled to the equal protection of the law. The principle is one that has, although not at all times, informed the development of the common law, and is stated in Article 7 of the Universal Declaration of Human Rights:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 26 of the International Covenant on Civil and Political Rights (ICCPR) provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

This law will encourage licensed clubs to make contributions in a way that will confer a benefit on certain women, to the detriment of others. No man could potentially benefit from the law. What is involved is the expenditure of funds. This does not take it out of the reach of the equal protection principle. "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination": President John F. Kennedy (1963), quoted in H Reamer, *Defining Recipients of Federal Financial Assistance Under the Nondiscrimination Statutes* (2000) 57 *Wash & Lee L. Rev.* 1355. The funds of licensed clubs are not taxpayer funds in a direct sense, but it is apparent that the community contributions are relevantly of the same kind as money spent from consolidated revenue. The obligation to make a contribution is in the nature of a tax, and, instead of collecting the money and then making a payment out of consolidated revenue, the law requires the licensed club to make the payment.

But the law might be justified under another principle stated in human rights instruments. Article 27 of the ICCPR states:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language

More particularly, Article 4.1 of the Convention on the Elimination of all forms of Discrimination against Women states.

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

(A similar policy is reflected in section 27 of the *Discrimination Act 1991*, although this provision might not cover the sort of case dealt with by the Bill.)

In thinking about whether the amendments proposed to 60G of the *Gaming Machine Act 1987* fall within the principle in Article 4.1 of the Convention, a number of matters might be taken into account:

- The importance of the objective of the law that makes the distinction on the grounds of sex. Is the objective a sufficiently important goal to warrant the breach of the equal protection principle?

- Whether the law will achieve its objective. A law that breaches equal protection may be more easily justified to the extent that it achieves its purpose. The mischief aimed at by the law is the fact that women's sporting teams are left behind when it comes to securing cash for operational needs. Will this law remedy that situation, so that women's teams will catch up to men's teams?
- What steps will be taken to ensure that the law will be repealed once the objective is fulfilled? In Article 4 -- there is stated a principle recognised in the way courts and international bodies have understood the justification for affirmative action. The law must be a temporary measure which will end as soon as the objective is fulfilled. A law that breaches equal protection may be more easily justified to the extent that it may be seen that there is some means for this limit to be achieved.
- Another principle is that the law must not be contrary to the wishes of the group (women's sporting bodies) that will benefit.

It may also assist to have regard to this statement of the broad outlines of the debate over whether affirmative action is justified. It is from D Pannick, *Sex Discrimination Law* (1985) 314. It might be added that an affirmative action program might fix on some characteristic other than race or sex, such as disability.

Those who approve of [affirmative action] point out that one does not remedy past discrimination by adopting a neutral attitude prohibiting such discrimination in the future. The continuing effects of past discrimination will ensure that the disadvantages suffered by the victims of earlier prejudice make them now unable to compete on genuinely equal terms for the resources and opportunities offered by society. Proponents of affirmative action stress that race and sex discrimination are offensive not because they adopt the criteria of race and sex but because they assert hostility to persons by reason of their race or sex. Affirmative action implies no such hostility. Its motive, and its effect, are to assist those who are disadvantaged. It does this by way of beneficial measures which are aimed at helping persons of a particular race or sex where that group, is, as a whole, disadvantaged compared with other groups. The advocates of affirmative action stress that the law against discrimination should seek to ensure equal treatment through equal achievement by different races and sexes. Opponents of affirmative action emphasize the problem of deciding which groups are to benefit (and to what extent), the error of assuming that each member of the disadvantaged group will need or deserve assistance at all (or to a greater extent than [others] who would have received the relevant benefit but for the affirmative action), and the stigma involved in marking out a group, defined by race, colour, or sex, as requiring affirmative action in its favour to enable it to compete for resources on genuinely equal terms.

(ii) rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers

The view of the Commission as to what kinds of contributions will have the effect of benefiting or enhancing women's sport conducted in the Territory is of critical significance. The phrase "the commission is satisfied" accords a very wide discretion to the Commission, the exercise of which will have a substantial benefit for some and

lead to a detriment to others. There is no provision in the Bill for any review of a decision by the Commission, nor for any procedure whereby the Commission may publish guidelines as to how it will arrive at the necessary state of satisfaction.

Comment on Explanatory Memorandum

It is said that the Bill has "no financial implications for the Territory, as it would be contained within the statutory community contributions required to be made by the clubs under the Act". Presumably the word "it" does not refer to the amendment made by the Bill, but to the contributions by clubs that will qualify under subsection 60G(5).

The Committee notes that while there will be financial implications for the Territory, considered as a governmental entity, there may, it appears, be implications for the amount of money that will, in any year, be spent by licensed clubs as community contributions. To illustrate, if it happened that every licensed club contributed all of the money it is required to make under subsection 60G(1) in the form of "women's sport community contributions", would not the effect be that the total amount contributed by all clubs would be 25% less than would be the case were every club to make no such contributions? This is not likely to occur, but to the extent that any sum of money is contributed in the form of "women's sport community contributions", there will be some reduction in the total of what would otherwise be made available as contributions to the community.

In addition, it may be guessed that by providing an incentive to contribute to women's sport will have some adverse financial effect on the particular persons and bodies that might otherwise have received financial support from licensed clubs.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Subordinate Law 2002 No. 2 being the Road Transport Legislation Amendment Regulations 2002 made under the *Road Transport (General) Act 1999* and *Road Transport (Public Passenger Services) Act 2001*.

Subordinate Law No. 5 being the Road Transport (Public Passenger Services) Repeal Regulations 2002 made under the *Road Transport (Public Passenger Services) Act 2001*.

Disallowable Instrument No. 19 being the Taxis, Restricted Taxis, Private Hire Cars and Restricted Hire Vehicles Fees Determination 2002 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 76 of 2000, Determination No. 212 of 2001 and Determination No. 288 of 2001 and determines fees payable.

Disallowable Instrument No. 21 of 2002 being the Community Title (Fees) Determination 2002 made under section 96 of the *Community Title Act 2001* determines fees for services provided.

Disallowable Instrument No. 22 made under subsection 13(1) of the *Road Transport (General) Act 1999* exempts vehicles, persons or animals from road transport legislation.

Disallowable Instrument No. 23 made under section 7 of the *Public Health Act 1997* appoints a certain person to the position of Chief Health Officer until 1 March 2007.

Other instruments

Variation to the Territory Plan No. 158 changes the policies in the Territory Plan that apply to Group Centres. Before the Committee was a document of approval of this variation made by the Executive in accordance with paragraph 26 (1) (a) of the *Land (Planning and Environment) Act 1991*.

Variation to the Territory Plan No. 176 incorporates new policies in the Territory Plan that apply to land use. Before the Committee was a document of approval of this variation made by the Executive in accordance with paragraph 26 (1) (a) of the *Land (Planning and Environment) Act 1991*.

Subordinate Legislation - Comment

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

Subordinate Law No. 3 being the Road Transport (Public Passenger Services) Regulations 2002 made under the *Road Transport (Public Passenger Services) Act 2001*.

Subordinate Law 2002 No. 4 being the Community Title Regulations 2002 made under section 98 of the *Community Title Act 2001*.

Disallowable Instrument No. 12 made under sub-regulation 81(1) of the Road Transport (Public Passenger Services) Regulations 2002 approves Taxi Network Performance Standards as set out in the Schedule.

Disallowable Instrument No. 18 made under the Road Transport (Public Passenger Services) Regulations 2002 approves Taximeter Standards as set out in the Schedule.

Disallowable Instrument No. 20 made under subsection 12(1) of the *Road Transport (General) Act 1999* declares that road transport legislation does not apply to the roads and road related areas used by a vehicle participating in rally car testing in remote forest areas in the ACT, between 9am and 5pm on 28th February 2002, as part of preparation arrangements for competing in the Subaru Rally of Canberra.

Are Regulatory Impact Statements required?

The Committee queries whether the above subordinate legislation should have been accompanied by Regulatory Impact Statements when they were tabled in the Assembly.

A Regulatory Impact Statement is required if the subordinate legislation is likely to impose appreciable costs on the community or part of the community. The Committee seeks confirmation that Regulatory Impact Statements were not required in these instances.

Disallowable Instrument No. 24 made under section 3 of the *Public Place Names Act 1989* revokes Instrument No. 101 of 31 May 2001 and determines street nomenclature in the Division of O'Connor.

Reference to non-existent provision

The Committee notes that the very helpful explanatory statement to the above disallowable instrument contains a reference to section 27 of the *Interpretation Act 1967*. A check on the Legislation Register reveals that section 27 does not exist. It is possible that this power of delegation has now been picked up by the *Legislation Act 2001*.

GOVERNMENT RESPONSES

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

- Disallowable Instruments Nos. 330 and 331 of 2001 in Report No. 2;
- Appointments to the Racing Appeals Tribunal in Report No. 2;
- Subordinate Laws Nos 40, 44, and 45 and Disallowable Instruments Nos 291, 315 in Report No. 2;
- Subordinate Law No. 49 and Disallowable Instruments Nos 4 and 7 of 2002 in Report No. 4;
- Duties Amendment Bill 2002 in Report No. 7.

Copies of the responses are attached.

The Committee thanks the respective Ministers for their helpful responses.

INTERSTATE AGREEMENTS

There is no matter for comment in this report.

REGULATORY IMPACT STATEMENTS

The Committee has received no regulatory impact statements, however, it has made comments under subordinate legislation regarding the absence of regulatory impact statements.

Bill Stefaniak MLA
Chair

1 May 2002



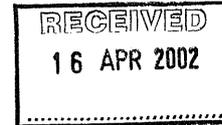
Ted Quinlan MLA

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
Scrutiny of Bills and Subordinate Legislation Committee
GPO Box 1020
CANBERRA ACT 2601



Dear Mr Stefaniak

I am writing in response to comments in the Scrutiny of Bills Report No.2 of 2002 concerning Disallowable Instrument No.330 of 2001 and No.331 of 2001.

Your committee noted that the explanatory statements gave no indication as to whether or not the persons appointed as members of the National Exhibition Trust are public servants.

I confirm that the persons appointed were not public servants.

Disallowable Instrument No.330 confirms the re-appointment of Ms Rosemary Walsh as a member of the National Exhibition Trust until 31 October 2004. Ms Walsh was the former Director of Government Coordination and retired from the Public Service on 29 October 1999.

Disallowable Instrument No. 331 confirms the appointment of Mr Zeke Ezra as a member of the National Exhibition Trust until 31 August 2004. Mr Ezra is the Managing Director of Duesburys.

Yours sincerely

Ted Quinlan MLA
Treasurer

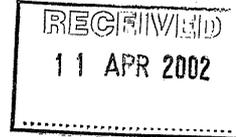
15.4.02.



Bill Wood MLA

MINISTER FOR URBAN SERVICES MINISTER FOR THE ARTS

MEMBER FOR BRINDABELLA



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

Dear Mr *Bill* Stefaniak

Thank you for your Scrutiny of Bills Report No.2 of 2002. I offer the following response in relation to the matters raised by your Committee.

Report No. 2

- Subordinate Law 2001 No. 40** *Building Regulations Amendment;*
Subordinate Law 2001 No. 44 *Road Transport (Driver Licensing) Regulations Amendment*
Subordinate Law 2001 No. 45 *Road Transport (Public Passenger Services) Regulations 2001*

The Committee notes that Subordinate Laws 40, 44 and 45 did not have an identifying SL number on their Explanatory Statements. The Department agrees that the Explanatory Statements for the above Subordinate Laws should include the relevant SL Number. The provision of this number is the responsibility of the Chief Minister's Department. Discussions between DUS, CMD and PCO have resulted in a change to CMD's procedures with all future explanatory statements to include SL numbers.

Disallowable Instrument No. 291 of 2001 – *Independent Pricing and Regulatory Commission Act 1977*

Determination No 291 has been made under the Independent Pricing and Regulatory Commission Act 1977 rather than the Independent Competition and Regulatory Commission Act 1997.

A new determination under the Independent Competition and Regulatory Commissions Act 1997 will be forwarded by the Department.

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Disallowable Instrument No. 315 of 2001 – Commissioner for the Environment Act 1993.

The Committee notes that the instrument appoints a Commissioner for the Environment for a period of six months, however the explanatory statement states that the appointment is a reappointment for a further 18 months. The Department has been advised that an incorrect version of the disallowable instrument was inadvertently tabled by Parliamentary Counsel. The Department is preparing a new Disallowable Instrument and legislation to validate any actions by the Commissioner for the Environment since the expiration of his previous appointment on 15 December 2001.

Report No. 4

- **Subordinate Law 2002 No. 49 - Road Transport (Offences) Regulations 2002;**

The Committee notes that Subordinate Law 49 did not have an identifying SL number on its Explanatory Statement. The Department agrees that the Explanatory Statements for the above Subordinate Laws should include the relevant SL Number. The provision of this number is the responsibility of the Chief Minister's Department. Discussions between DUS, CMD and PCO have resulted in a change to CMD's procedures with all future explanatory statements to include SL numbers.

- **Disallowable Instrument No. 4 of 2002 – Road Transport (Safety and Traffic Management) Regulations 2000; and**
- **Disallowable Instrument No. 7 of 2002 – Road Transport (Drivers Licensing) Regulations 2000.**

The Committee notes that the explanatory statements to the above Disallowable Instruments are entitled differently to the Disallowable Instruments themselves. The Department notes this and will ensure closer monitoring of explanatory statements.

Yours sincerely



Bill Wood MLA
Minister for Urban Services

8/4/02



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

Dear Mr Stefaniak 

I am writing in response to the "Standing Committee on Legal Affairs (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee), Scrutiny Report No. 2 of 19 February 2002".

On page 26 of the report, under the title "Appointments to the Racing Appeals Tribunal", the Committee draws attention to the gazettal of appointments to that Tribunal and notes that "the appointments appear to be disallowable instruments under section 4 of the Statutory Appointments Act 1994" but that they "were notified in Gazette S68, dated 7 September 2001 as notices of appointments".

I have noted the Committee's comments and agree with the view expressed.

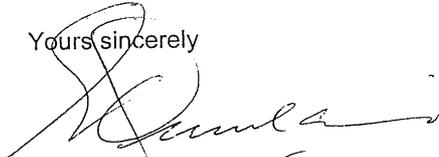
I have been advised that the previous Government approved the proposed appointments of six members and three assessors to the Racing Appeals Tribunal on 13 August 2001. The Standing Committee on Finance and Public Administration advised that it had no objection to the proposed appointments.

These appointments were then signed by the then Treasurer, Mr Gary Humphries MLA, on 30 August 2001, and notified in Gazette No.S68, on 7 September 2001. As noted by your Committee, the Gazettal notices were incorrectly made as notices of appointment rather than as disallowable instruments.

This error was brought to the attention of the Chief Minister, Mr Jon Stanhope MLA. Mr Stanhope subsequently presented the notices of appointment of the President, Deputy President, members and assessors of the Racing Appeals Tribunal to the Legislative Assembly on 12 November 2001.

I trust this information addresses your concerns.

Yours sincerely



Ted Quinlan MLA 15.4.02

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 CORRECTIONS

MEMBER FOR MOLONGLO

Mr Bill Stefaniak MLA
 Chair
 Scrutiny of Bills and Subordinate Legislation Committee
 GPO Box 1020
 CANBERRA ACT 2601

Dear Mr Stefaniak 

I am writing in response to the comments in the Scrutiny of Bills Report No 7 of 2002 concerning the Duties Amendment Bill 2002.

Your Committee noted that clause 2 of the Bill provides for a retrospective commencement date with insufficient justification and that a statement assessing the extent to which a retrospective law might adversely affect the rights or expectations of persons should be provided.

When the *Duties Act 1999* (the Duties Act) commenced on 1 March 1999 the exemption from duty for reinsurance was inadvertently left out. Reinsurance is exempt from duty in all jurisdictions as duty has already been paid on the original contract of insurance.

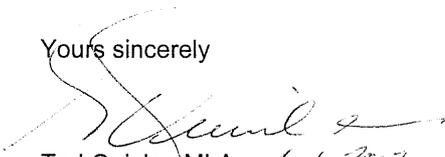
The retrospective amendment brings the legislation into line with the situation that existed before 1 March 1999. Taxpayers have not paid duty for reinsurance as they assumed the exemption had continued and this amendment confirms that position.

The amendment does not adversely affect taxpayers but confirms a beneficial exemption they were intended to have. Since no duty has been collected for reinsurance, taxpayers cannot claim a reassessment or refund.

There would be an adverse effect on taxpayers if the Bill were not retrospective to the date the exemption was omitted from the Duties Act, as there would then be a requirement to assess duty on all contracts of reinsurance taken out since 1 March 1999, leading to double duty imposed on taxpayers.

I trust that the above explanation addresses the Committee's concern.

Yours sincerely



Ted Quinlan MLA 4.4.2002
 Treasurer

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