



Legislative Assembly for the ACT

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

## Scrutiny Report

3 DECEMBER 2007

**Report 49**

## **TERMS OF REFERENCE**

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

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

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

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

## **MEMBERS OF THE COMMITTEE**

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

---

**Legal Adviser (Bills): Mr Peter Bayne**  
**Legal Adviser (Subordinate Legislation): Mr Stephen Argument**  
**Secretary: Mr Max Kiermaier**  
**(Scrutiny of Bills and Subordinate Legislation Committee)**  
**Assistant Secretary: Ms Anne Shannon**  
**(Scrutiny of Bills and Subordinate Legislation Committee)**

## **ROLE OF THE COMMITTEE**

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

**BILLS**Bills—No comment

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

<b>APPROPRIATION BILL 2007-2008 (NO. 2)</b>
---

This Bill would appropriate additional monies for the financial year 2007-2008.

<b>MENTAL HEALTH (TREATMENT AND CARE) AMENDMENT BILL 2007</b>
---

This Bill would amend the *Mental Health (Treatment and Care) Act 1994* to make technical amendments to better express the intention *the Act* in several sections where some confusion as to the intention has arisen.

<b>RESIDENTIAL TENANCIES AMENDMENT BILL 2007</b>
--

This Bill would amend the *Residential Tenancies Act 1997* to require that all advertisements for the lease of premises contain Energy Efficient Ratings.

<b>TERRITORY-OWNED CORPORATIONS AMENDMENT BILL 2007</b>
---

This Bill would amend the *Territory-owned Corporations Amendment Act 2006* to delay the default commencement date when Rhodium Asset Solutions Limited is removed from Schedule 1 of the *Territory-owned Corporations Act 1990* to 20 June 2008 or to a date prescribed by regulation.

Bills—Comment

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

<b>GOVERNMENT TRANSPARENCY LEGISLATION AMENDMENT BILL 2007</b>
--

This Bill would (1) amend the *Financial Management Act 1996* to require the publication of the Report of the Strategic and Functional Review of the ACT Public Sector and Services prepared by Mr Michael Costello for the ACT government in relation to the functional review of the ACT budget announced by the Chief Minister on 9 November 2005; (2) amend the *Administrative Appeals Tribunal Act 1989* to require the decision-maker to take all reasonable steps to assist the tribunal to make its decision in relation to the proceeding; (3) amend the *Freedom of Information Act 1989* to remove the ability of a decision-maker to issue a conclusive certificate to support a claim for exemption (from the duty to disclose a document under section 35 (Executive documents) and section 36 (internal working documents) of that Act; and (4) amend the *Law Officer Act 1992* to add the functions of the Attorney-General that of ensuring that litigation is started and conducted in accordance with proper standards and empowering the Attorney-General to issue model litigant guidelines.

**Report under section 38 of the *Human Rights Act 2004***  
***Has there been a trespass on personal rights and liberties?***

Would removal of the ability of a decision-maker to issue a conclusive certificate to support a claim for under section 35 (Executive documents) and section 36 (internal working documents) of the *Freedom of Information Act 1989* enhance HRA section 16 (freedom of expression) and/or paragraph 17(a) (right to take part in the conduct of public affairs)?

***Freedom of expression and freedom of information***

By amendment of the *Freedom of Information Act 1989* (FOIA), the Bill would remove the ability of a decision-maker to issue a conclusive certificate to support a claim for exemption (from the duty to disclose a document) under section 35 (Executive documents) and section 36 (internal working documents) of that Act.

A general account of FOIA and the role of a conclusive certificate in support a claim for exemption is in *Scrutiny Report No 36* of the *Sixth Assembly*, concerning the Freedom of Information Amendment Bill 2006. Only some key points are repeated here.

Section 10 of the FOI Act states that "every person has a legally enforceable right to obtain access" to documents of ministers, departments and agencies. This right does not however extend to matter in a document that is exempt from disclosure, and a number of provisions state what kinds of documents are exempt.

By subsection 35(1) of FOIA, certain kinds of "executive documents" are exempt; in particular, "a document that has been submitted to the Executive for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Executive"; "an official record of the Executive"; and "a document the disclosure of which would involve the disclosure of any deliberation or decision of the Executive ...". Under subsection 35(3), if the chief executive who has control of the administrative unit to which responsibility for the coordination of government administration signs a certificate certifying that a document is of a kind referred to in subsection 35(1), then that "establishes conclusively, subject to part 7 [concerning AAT review], that it is an exempt document of that kind".

By subsection 36(1) of FOIA, an "internal working document" (as defined) is exempt if its disclosure "would be contrary to the public interest". Under subsection 36(3), if the Minister signs a certificate to the effect that the disclosure of an internal working document "would be contrary to the public interest", then that establishes conclusively, subject to part 7 [concerning AAT review], that that is the case.

A decision-maker may claim exemption under either of subsection 35(1) or 36(1) even though there is no relevant conclusive certificate.

If an exemption is claimed by a decision-maker, the requester may seek review by the Administrative Appeals Tribunal (AAT), a body established by the *Administrative Appeals Tribunal Act 1989* (ACT). The AAT stands in the shoes of the decision-maker, and takes its own view – uninfluenced by the view of the agency decision-maker – as to whether the document falls within a category of exemption.

But the function of the AAT is very different where a conclusive certificate supports a claim that a document is exempt. An applicant can appeal to the AAT to seek review of a claim of exemption that is supported by a conclusive certificate, but the tribunal cannot overrule the claim. Rather, it may decide only whether there exist “reasonable grounds” for the claim. If the AAT determines that there are no reasonable grounds for the certificate, the Minister has a choice whether to maintain or revoke the certificate. If the certificate is maintained, notice must be provided to the applicant and tabled in Parliament.

It would thus enhance the right to information stated in section 10 of FOIA were there removed from FOIA the provisions for conclusive certificates to be issued to support claims exemption under either of subsection 35(1) or 36(1).

It may further be argued that removal would provide better protection to the right to freedom of expression stated in HRA section 16; (for more detail, see *Scrutiny Report No 36* of the *Sixth Assembly*). Section 16 provides:

**16 Freedom of expression**

- (1) Everyone has the right to hold opinions without interference.
- (2) Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.

Removal of provisions for conclusive certificates might also enhance the right stated in HRA paragraph 17(a):

**17 Taking part in public life**

Every citizen has the right, and is to have the opportunity, to—

- (a) take part in the conduct of public affairs, directly or through freely chosen representatives; ... .

There are writers on international human rights law who argue that:

[f]reedom of information has been recognized not only as crucial to participatory democracy, accountability and good governance, but also as a fundamental human right, protected under international and constitutional law. Authoritative statements and interpretations by a number of international bodies, including the United Nations (UN), the Organization of American States (OAS), the Council of Europe (COE) and the Commonwealth, as well as national developments in countries around the world, amply demonstrate this: T Mendel, “Freedom of Information: An Internationally protected Human Right”.<sup>1</sup>

The Australian FOI laws have been introduced on the basis that they will enhance democratic accountability.

---

<sup>1</sup> <http://www.juridicas.unam.mx/publica/rev/comlawj/cont/1/cts/cts3.htm>

On the other hand, HRA section 28 in effect allows that a law may derogate from an HRA right where the limitation or restriction pursues a legitimate objective, and there is a reasonable relationship of proportionality between the means employed and the objective sought to be realised.

In relation to the exemptions in subsection 35(1), it should be noted that the Australian common law has accorded great weight to maintaining the secrecy of certain kinds of government held information in the context of a claim by government that it should not be obliged to produce a document in the course of litigation. This is a context in which the courts give weight to the interests of the litigant seeking access. In the FOIA context, the interests of the requester are often less significant.

That disclosure of a document would prejudice the conduct of the “affairs of government at the highest level” has been recognised as a ground for a claim of immunity from production of the document in litigation: see *Sankey v Whitlam* (1978) 142 CLR 1 at 58 per Stephen J. In *Commonwealth v Northern Land Council* [1993] HCA 24 [6], a majority of the High Court accorded a high degree of protection to cabinet documents:

it has never been doubted that it is in the public interest that the deliberations of Cabinet should remain confidential in order that the members of Cabinet may exchange differing views and at the same time maintain the principle of collective responsibility for any decision which may be made.

Whether these lines of argument could be advanced to support use of a conclusive certificate in relation to a claim of exemption under subsection 36(1) will depend on the precise kind of internal working document in question. There may of course be other kinds of argument to support use of a conclusive certificate in this way.

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

## REGULATORY SERVICES LEGISLATION AMENDMENT BILL 2007

This Bill would amend a number of Acts which affect the operations and functions of the Office of Regulatory Services (ORS).

### **Report under section 38 of the *Human Rights Act 2004***

***Do any the clauses of the Bill “unduly trespass on personal rights and liberties”?***

***The right to privacy and the disclosure of a previous charge of a criminal offence***

*The Agents Act 2003*

In the light of the right to privacy and to reputation stated in HRA section 12, is it reasonable to require an applicant for a licence or for registration under the *Agents Act 2003* to provide a police certificate which in part will record whether the applicant has in the past been charged with an offence against the law of any Australian jurisdiction or of any other country?

The paucity of explanation in the Explanatory Statement of the clauses that would amend the *Agents Act 2003* make it difficult for the Committee to do other than raise generally a concern about some proposals.

A person who applies for a licence under this Act will, if the Bill is passed, be now required to accompany her or his application with “a police certificate dated not earlier than 2 months before the day the application is made for [the applicant and others]”: see clause 6 (amending section 29 of the Act). The nature of a certificate is stated in clause 17 (amending the Dictionary to the Act):

*police certificate*, for a person, means a written statement by the Australian Federal Police indicating—

- (a) whether, according to the records held by the Australian Federal Police, the person has been charged with, or convicted of, an offence against a law of—
  - (i) the Territory; or
  - (ii) the Commonwealth; or
  - (iii) a State; or
  - (iv) another country; and
- (b) if so—particulars of each offence.

*Note* A conviction does not include a spent conviction (see Spent Convictions Act 2000, s 16 (c) (i)).

The width of this definition means that the certificate will record the details of a *charge* against the person, irrespective of when and where the charge was laid, and of the outcome. It may well have been that the charge was withdrawn prior to any court proceeding.

It is hard to see the relevance of this information having regard to the grounds in section 27 on which a licence may be refused (even having regard to paragraph 27(1)(e), which provides that “(1) A person is disqualified from being licensed if the person ... (e) is licensed and has contravened, or is contravening, an order of the consumer and trader tribunal; ...”).

It should also be noted that while a conviction can be spent (and thus would not be recorded in the police certificate), the fact of a charge cannot. This is anomalous.

A similar issue arises with respect to clause 11 of the Bill, concerning an application for registration.

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

#### The Sale of Motor Vehicles Act 1977

A similar issue to that just identified arises with respect to clauses 39 and 56 of the Bill, concerning an application for a licence under the *Sale of Motor Vehicles Act 1977*.

#### ***The search and entry powers***

#### The Sale of Motor Vehicles Act 1977

The Bill would confer on officials a number of entry and search powers. The Committee does not consider that there is an issue of HRA compatibility, but reports generally on the issues that do arise.

By proposed section 70A of the Act, an inspector may enter premises without having obtained a warrant from a judicial officer. On the face of it, these provisions engage HRA section 12:

## 12 Privacy and reputation

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; .. .

This right might be modified in terms of the proportionality test that inheres in HRA section 28.

The right to privacy is also engaged by the proposals relating to the “general powers on entry to premises” of an inspector upon entry (section 70D); the power to seize things (section 70E), and the power to require a person to state their name and home address (section 70F).

The Committee has reviewed these powers, and does not consider that any trespass on personal rights is undue, or that any provision is incompatible with the HRA. It has, in particular, noted that

- the premises that may be entered without warrant are those to which a licence relates (paragraph 70A(1)(a)), or those where the inspector suspects on reasonable grounds that a person is carrying on a business which should be licensed (paragraph 70A(1)(b));
- excepting entry pursuant to a warrant issued by a magistrate (Division 10A.3), the power to enter premises cannot, without the consent of the occupier, be exercised in relation to part of the premises used for residential purposes (subsection 70A(2));
- the power to require a person to state their name and home address may be exercised only where “the authorised officer believes, on reasonable grounds, that the person is committing or has just committed an offence against this Act” (subsection 70F(1));
- sections 170 and 171 of the Legislation Act will have the effect of preserving the application of the privilege against self incrimination and client legal privilege; and
- there are adequate protections in respect of minimising damage to property and for compensation in case of damage.

<b>ROAD TRANSPORT (THIRD-PARTY INSURANCE) BILL 2007</b>
---

This is a Bill for an Act to regulate the business of third-party insurance in relation to motor accidents.

### **Report under section 38 of the *Human Rights Act 2004***

***Do any the clauses of the Bill “unduly trespass on personal rights and liberties”?***

#### ***Reversal of burden of proof***

Subclause 17(1) would create an offence if using an uninsured motor vehicle on a road or road related area, and by subclause 17(3) it is a defence if the defendant establishes that he or she believed on reasonable grounds that the vehicle was an insured motor vehicle.

The Committee appreciates that subsection 17(3) ameliorates the effect of subsection 17(1). It is nevertheless a provision which requires the defendant to prove a matter going to her or his innocence of the crime charged, and moreover the defendant would carry a legal burden of proof in this regard. There is thus raised the issue of whether it derogates from the presumption of innocence stated in HRA subsection 22(1).

In this particular instance, the Committee is of the view that the provision pursues a legitimate objective and does so in a proportionate manner. The defendant is better placed than the prosecution to adduce evidence of and carry a legal burden of proof of whether he or she took reasonable steps.

***Vagueness of the concept of “directly relevant” imported into an offence provision***

Does the vagueness of the concept of “directly relevant” in paragraph 97(1)(a)(ii), which is imported into an offence provision in clause 104, mean that the latter is not compatible with one or both of HRA subsections 18(2) or 25(1)?

The Committee discussed the effect of HRA subsections 18(2) or 25(1) in relation to vaguely expressed offence provisions in *Scrutiny Report No 45* of the *Sixth Assembly*, concerning the Crimes (Street Offences) Amendment Bill 2007. It noted that HRA subsection 25(1) encompassed a principle of legal certainty, and quoted the European Court in the *Sunday Times* case:

a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail;

and that the Court went on to qualify:

[t]hose consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice.

Under clause 104, a person commits an offence if the person, being obliged to give a document or information does not give the document or information. One such obligation is stated in paragraph 97(1)(a)(ii), which requires a respondent for a motor accident claim to give to the claimant a copy of a document “directly relevant to a matter in issue in the motor accident claim”.

The concept of a piece of information being “directly” relevant to proof or disproof of a claim introduces a large element of vagueness into both the statement of obligation in paragraph 97(1)(a)(ii) and in the offence provision in clause 104. Two analogous situations are instructive. The law of evidence, governing what evidence is admissible in a court proceeding, does not attempt to distinguish between degrees of relevance of a piece of information (see sections 55 and 56 of the *Evidence Act 1995*). Under section 37 of the *Administrative Appeals Tribunal Act 1989*, a decision-maker must lodge with the tribunal a copy of a document considered by him or her to be relevant to the review of the decision.

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

*Qualification of the extent of client legal privilege*

Is it justifiable to displace client legal privilege where the communication is relevant to the claimant's rehabilitation?

Part 3.3 states a number of obligations to give documents and information, and clause 106 states that "[t]he documents and information given under this part are protected by the same privileges as if disclosed in a proceeding in the Supreme Court". This would encompass client legal privilege, and there is specific protection in subclause 101(1). Nevertheless, this privilege is qualified by the more specific provision in subclause 101(2):

- (2) However, an investigative report, medical report or report relevant to the claimant's rehabilitation must be given even though otherwise protected by client legal privilege.

The Explanatory Statement makes no reference to this qualification, and given the significant statutes as a common law right accorded to client legal privilege by the courts, the Committee considers that justification for its displacement should have been given.

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

**Report under section 38 of the *Human Rights Act 2004***

***Are rights, liberties and/or obligations made unduly dependent upon insufficiently defined administrative powers?***

***Wide discretionary powers***

Should the discretions in clauses 136, 177 and 194 be qualified?

As a matter of controlling administrative (or judicial) discretion, the Committee considers that where possible, its scope should be limited by means of the law spelling out the considerations relevant to the exercise of the power, or, at least by the insertion of a limit in terms that the repository of the power should have "reasonable grounds" for the exercise of the power.<sup>2</sup>

By clause 136, "[t]he court may ... dispense with the obligation to exchange mandatory final offers". There appears to be no reason why this could not be qualified by an obligation to dispense for "good reason", as is the case with the dispensation power in subclause 131(1).

On deciding under clause 177 an application by a corporation for a licence, the CTP regulator must consider various matters, and by subclause 177(3), "[t]he CTP regulator may consider anything else the CTP regulator considers appropriate for this Act". There appears to be no reason why this provision could not be qualified by an obligation to have "reasonable grounds" for taking into account some matter; compare to the analogous provision in subclause 187(1).

---

<sup>2</sup> See generally *Scrutiny Report No 45 of the 6th Assembly*, concerning the Legal profession Amendment Bill 2007. The executive has at times accepted that discretionary powers should be limited to the greatest extent possible, as is implicit in the amendments to the Public Health Act 1997 in the Health Legislation Amendment Bill 2006 (No 2) – see *Scrutiny Report No 34 of the 6th Assembly*. These amendments were apparently based on legal advice to the relevant Minister that unless a power vested in a Minister was qualified by provision that the Minister have "reasonable grounds" for taking action the law would not be HRA compatible.

In acting under subclause 194(1) to cancel a licence under clause 195, the CTP regulator may do so “for any reason the CTP regulator considers appropriate”. This is a draconian power, and there appears to be no reason why this provision could not be qualified by an obligation to have “reasonable grounds” for taking into account some matter.

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

### *Aspects of the scheme of licensing of a CTP insurer*

The CTP regulator may issue a licence to a corporation for a CTP insurer licence to carry on business as a CTP insurer (clause 177). The licence is subject to specified conditions (clause 178), and to any decided upon for inclusion by the CTP regulator (paragraph 178(2)(b)). The CTP regulator may

- under subclause 178(4) amend or revoke a condition attached to a CTP insurer licence;
- under clause 186 suspend a licence under clauses 187 or 188;
- under subclause 191(2), “instead of suspending the insurer’s licence - (a) impose a civil penalty on the insurer of not more than \$50,000; or (b) issue a letter of censure to the insurer”;
- under subclause 194(1), cancel a licence under clause 195 or 196; and
- under clause 198, transfer a licence to another insurer.

Some rights issues arise under this scheme.

### *Qualification of the scope of discretion*

See the comments above concerning the power of the CTP regulator under subclause 194(1) to cancel a licence under clause 195.

### *Provision for natural justice*

Should there be specific provision for natural justice in relation to certain powers of the CTP regulator?

As a matter of common law, the exercise of an administrative power that could affect adversely the interest of some person must (subject to statutory exclusion) be exercised in accord with the dictates of natural justice (or procedural fairness). While a court will generally not read a statutory scheme so that in any respect natural justice is excluded, it is desirable as a matter of enhancing rights protection that a statute spells out the obligation. In two cases, this Bill does make specific provision; that is, in respect of the exercise of the power of the CTP regulator:

- under paragraph 191(2)(a), to impose a civil penalty (see subclauses 191(4) and (5)); and
- under clause 194 to cancel a licence (see subclause 195(3)).

On the other hand, no specific obligation to afford natural justice attaches to a decision of the CTP regulator:

- under subclause 178(4) to amend or revoke a condition attached to a CTP insurer licence;
- under clause 186 to suspend a licence under clauses 187 or 188; or
- under subclause 198, to transfer an insurer’s CTP policies to another insurer under section 199.

The Committee considers that the right to natural justice of the licensee would be better protected were the exercise of these last three mentioned powers conditioned on the regulator affording natural justice in the same manner as is provided for in subclause 195(3) – that is, “the CTP regulator must give the licensed insurer an opportunity to make written submissions about the reasons for the [proposed action]”.

***The power of the CTP regulator to impose a civil penalty on the insurer of not more than \$50,000***

Is the power of the CTP regulator to impose a civil penalty on the insurer of not more than \$50,000 HRA compatible?

While the Explanatory Statement does not refer to the issue, the Committee considers that the conferral by paragraph 191(2)(a) on the CTP regulator of a power to impose a civil penalty on the insurer of not more than \$50,000 raises a substantial and complex rights issue.

It is to be noted that before imposing a civil penalty, the CTP regulator must refer the matter to the civil penalty and censure committee for advice and consider any such advice (subclause 191(4)). The committee “must give the licensed insurer an opportunity to make written submissions about the alleged contravention, but is not required to conduct a hearing into the matter” (subclause 191(5)). The committee consists of the CTP regulator, a nominee of the Insurance Council of Australia Ltd, and another member nominated jointly by the regulator and the council (clause 192).

At least two HRA provisions appear to be engaged, being:

**21 Fair trial**

- (1) Everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing;

and

**22 Rights in criminal proceedings**

...

- (2) Anyone charged with a criminal offence is entitled to the following minimum guarantees, equally with everyone else:

[here follow paragraphs (a) to (i)].

On the face of it, at least one issue arising under HRA subsection 21(1) is whether the process before the civil penalty and censure committee may be said to be “fair” and involve a “public hearing”.

The issue arising under HRA section 22(2) is whether the process for imposing a “civil penalty” may be described as a “criminal proceeding”. If the case-law concerning the European Convention on Human Rights is followed, the statutory description cannot govern the classification issue. In short, the question is whether as a matter of substance, what is involved is a criminal penalty.<sup>3</sup>

The Committee considers that the Minister should provide the Assembly with analysis addressing these rights issues so that it may be more confident that conferral on the CTP regulator of a power to impose a civil penalty is HRA compatible.

### ***The search and entry powers***

Chapter 5 of the Bill would confer on officials a number of entry and search powers, accompanied by powers to seize items. The Committee does not consider that there is an issue of HRA compatibility.

## SENTENCING LEGISLATION AMENDMENT BILL 2007

This Bill would amend the *Crimes Act 1900* and other Acts to (1) increase the maximum penalties attaching to a range of serious crimes; (2) to create a new offence of carjacking; (3) to empower the Court of Appeal to give a guideline judgment on its own initiative or at the request of the Attorney-General and to require a court to have regard to any relevant guideline judgment; and (4) to fix standard non-parole periods in relation to a range of serious crimes and to provide a structure for the making of decisions by sentencing courts about non-parole periods.

### **Report under section 38 of the *Human Rights Act 2004***

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

Would the penalties proposed to be attached to the commission of the various offences created or affected by this Bill be a proportionate penalty?

This issue can be put in two alternative ways:<sup>4</sup>

- whether the punishment is so disproportionate to the crime that it is in breach of HRA paragraph 10(1)(b), which provides that no-one may be “punished in a cruel, inhuman or degrading way”; or
- whether the punishment is so disproportionate to the crime that it is in breach of HRA section 18(1), which provides that “[e]veryone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained”. The argument might be that a deprivation of liberty pursuant to a disproportionate sentence is “arbitrary”.

The amendments to the *Crimes Act 1900* that propose increases over existing maximum penalties for the various offences affected by the Bill are set out in clauses 3 to 49 – for example, the maximum penalty in respect of sexual assault in the first degree would be increased from 17 to 25 years (clause 24). Given that the sentencing court has a discretion to fix a lower penalty, the critical question in either case might be posed in this way: supposing the worst case where a person commits the relevant crime, would the imposition of the penalty proposed by the Bill be

<sup>3</sup> See generally, See B Emmerson, A Ashworth and A McDonald, *Human Rights and Criminal Justice* (2nd ed, 2007) ch 4.

<sup>4</sup> See B Emmerson, A Ashworth and A McDonald, *Human Rights and Criminal Justice* (2nd ed, 2007) 670-671.

justified? If the answer is “no”, then it is arguable that the proposed higher penalty is not HRA compatible.

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

Would the measure of inflexibility that would be introduced in relation to the fixing on non-parole periods be a proportionate penalty?

Under existing subsection 65(2) of the *Crimes (Sentencing) Act 2005* a court must set a nonparole period during which the offender is not eligible to be released on parole. (Such periods must also be set under section 66.)

Clause 53 of the Bill would insert provision for standard non-parole periods in relation to various serious offences, and by proposed subsection 65A(2):

- (2) The court must set the standard nonparole period as the nonparole period for the offence unless the court considers that there are reasons for setting a nonparole period for the offence that is longer or shorter than the standard nonparole period.

The court must also have regard to specified aggravating and mitigating circumstances (subsections 65A(3)-(5)).

Given that the sentencing court retains a discretion to depart from the standard non-parole periods, there is less force in an argument that these provisions are disproportionate on the basis that they set minimum penalties.

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

## VICTIMS OF CRIME AMENDMENT BILL 2007

This Bill would amend the *Victims of Crime Act 1994* to provide that an adult who is convicted of an offence (except parking offences) and who is ordered by a court to pay a fine, is, in addition, liable to pay the Territory a victims services levy of \$10, unless the court is satisfied in the circumstances of the case that paying the levy is likely to cause undue hardship.

### **Report under section 38 of the *Human Rights Act 2004***

The Explanatory Statement states that “[the] revenue raised via this levy will fund enhanced services for victims of crime in the ACT”, and it notes that the funds collected “are separate from any compensation which an offender is ordered to pay by the Courts under the *Victims of Crime (Financial Assistance) Act 1983*”.

It is also said that “[this] Bill is informed by human rights’ principles as they stand at the time of the Bill’s introduction to the Assembly”. This is not further elaborated. Compensation to the victim of a crime might perhaps be seen as an enhancement of HRA subsection 18(1)’s guarantee of the right to “security of the person”.

## SUBORDINATE LEGISLATION

### Disallowable Instruments—No comment

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

**Disallowable Instrument DI2007-255** being the **Utilities Exemption 2007 (No. 2)** made under section 22 of the *Utilities Act 2000* exempts a specified water services provider from the requirement for a licence in relation to the provision of a utility service.

**Disallowable Instrument DI2007-256** being the **Architects Board Appointment 2007 (No. 2)** made under subsection 70(2) of the *Architects Act 2004* appoints specified persons as the "registered architect" member, the "member nominated by a representative body" and the "commercial lawyer" member of the Australian Capital Territory Architects Board.

**Disallowable Instrument DI2007-261** being the **Children and Young People (Places of Detention) Health and Wellbeing Standing Order 2007 (No. 2)** made under section 403 of the *Children and Young People Act 1999* revokes DI2007-5 and determines the minimum permanent standards, relating to health and wellbeing services, to be met by all staff when carrying out their duties at Quamby Detention Centre.

**Disallowable Instrument DI2007-264** being the **Children and Young People (Places of Detention) Use of Force Standing Order 2007 (No. 2)** made under section 403 of the *Children and Young People Act 1999* revokes DI2007-9 and determines the minimum permanent standards, relating to the use of force, to be met by all staff when carrying out their duties at Quamby Detention Centre.

**Disallowable Instrument DI2007-266** being the **Housing Assistance Rental Bonds Housing Assistance Program 2007 (No. 1)** made under subsection 19(1) of the *Housing Assistance Act 2007* determines the eligibility criteria and the arrangements under which rental bond assistance may be granted to an eligible applicant.

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

### Disallowable Instruments—Comment

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

*Are these instruments made under the right provisions?*

**Disallowable Instrument DI2007-252** being the **Canberra Institute of Technology Advisory Council Appointment 2007 (No. 4)** made under section 30 of the *Canberra Institute of Technology Act 1987* appoints a specified person as the member with skills in and knowledge of vocational education and training to the Canberra Institute of Technology Advisory Council.

**Disallowable Instrument DI2007-253** being the **Canberra Institute of Technology Advisory Council Appointment 2007 (No. 5)** made under section 30 of the *Canberra Institute of Technology Act 1987* appoints a specified person as the member representing the CIT student body to the Canberra Institute of Technology Advisory Council.

**Disallowable Instrument DI2007-254 being the Canberra Institute of Technology Advisory Council Appointment 2007 (No. 6) made under section 30 of the *Canberra Institute of Technology Act 1987* appoints a specified person as chairperson of the Canberra Institute of Technology Advisory Council.**

The first two instruments listed above appoint named persons as members of the Canberra Institute of Technology Advisory Council. The third instrument appoints a named person as chairperson of the Advisory Council. Each instrument indicates that it is made under section 30 of the *Canberra Institute of Technology Act 1987*. Section 30 provides:

**30 Council members**

The council has 12 members.

The Committee considers that this is not the source of the power to make the appointments in question. Rather, the Committee considers that the appointments are, in fact, more appropriately made under sections 31 and 32 of the Act, which provide:

**31 Appointment of council members**

- (1) The Minister may appoint the council members.

*Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) The Minister must ensure that there is always—
- (a) 1 member who represents an organisation that represents the teaching staff; and
  - (b) 1 member who represents the student body; and
  - (c) 7 members who represent the interests of industry and commerce; and
  - (d) 2 members, not representing the interests of industry or commerce, who have experience and knowledge relevant to the functions of the council; and
  - (e) 1 member who has skills in and knowledge of vocational education and training.
- (3) The Minister must not appoint the director as a member.
- (4) In deciding whether to appoint a person as a member, the Minister must have regard to the desirability of ensuring that there is a balance of skills, expertise and gender among the council members.
- (5) The Minister must not appoint a member for longer than 3 years.
- Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).
- (6) The conditions of appointment of a member are the conditions agreed between the Minister and the member subject to any determination under the *Remuneration Tribunal Act 1995*.

**32 Appointment of chair and deputy chair**

- (1) The Minister may appoint a council member as chair of the council and another member as deputy chair of the council.

- (2) However, the Minister must not appoint a member of staff as chair or deputy chair.
- (3) The Minister must try to ensure that the council always has a chair and a deputy chair.

The Committee notes that section 212 of the *Legislation Act 2001* probably operates to ensure that the fact that these appointments are (arguably) made under the incorrect section does not operate to invalidate either the appointments or actions taken by the appointees in question. It provides:

**212 Appointment not affected by defect etc**

An appointment, or anything done under an appointment, is not invalid only because of a defect or irregularity in or in relation to the appointment.

Nevertheless, it is preferable that appointments are made by reference to the correct empowering provision and it is undesirable that provisions such as section 212 may need to be relied upon in order to “save” what might otherwise be invalid appointments.

*Minor typographical errors*

**Disallowable Instrument DI2007-251 being the Road Transport (General) Public Passenger Services Licence and Accreditation Fee Determination 2007 (No. 1) made under section 96 of the Road Transport (General) Act 1999 revokes DI2005-27, DI2006-121 and DI2006-126 and determines fees payable for the purposes of the Act.**

**Disallowable Instrument DI2007-257 being the Road Transport (Public Passenger Services) Maximum Fares for Taxi Services Determination 2007 (No. 2) made under section 60 of the Road Transport (Public Passenger Services) Act 2001 revokes DI2007-130 and determines the maximum fares relating to hiring or using a taxi.**

**Disallowable Instrument DI2007-290 being the Roads and Public Places (Fees) Determination 2007 (No. 2) made under section 9A of the Roads and Public Places Act 1937 revokes DI2007-159 and determines fees payable for the purposes of the Act.**

The Committee notes that there is a minor typographical error (“Register”) in the second dot-point in paragraph 2 of the first instrument. The Committee also notes that the instrument refers to the “ACT Government Legislation Register”, while the Register itself indicates that it is the “ACT Legislation Register”.

The Committee notes that these errors are repeated in paragraph 2 of the second instrument and paragraph 3 of the third instrument.

*Under what power is this instrument made? / Are some human rights subject to no limitations?*

**Disallowable Instrument DI2007-258 being the Children and Young People (Places of Detention) Admission and Classification Standing Order 2007 (No. 2) made under section 403 of the Children and Young People Act 1999 revokes DI2007-4 and determines the minimum permanent standards, relating to admission and classification, to be met by all staff when carrying out their duties at Quamby Detention Centre.**

**Disallowable Instrument DI2007-259 being the Children and Young People (Places of Detention) Search Standing Order 2007 (No. 1) made under section 403 of the Children and Young People Act 1999 revokes DI2005-167 and determines the minimum permanent standards, relating to search procedures, to be met by all staff when carrying out their duties at Quamby Detention Centre.**

**Disallowable Instrument DI2007-260 being the Children and Young People (Places of Detention) Provision of Information, Review of Decisions and Complaints Standing Order 2007 (No. 2) made under section 403 of the *Children and Young People Act 1999* revokes DI2007-1 and determines the minimum permanent standards, relating to the provision of information and review of decisions and complaints, to be met by all staff when carrying out their duties at Quamby Detention Centre.**

**Disallowable Instrument DI2007-262 being the Children and Young People (Places of Detention) Visits, Phone Calls and Correspondence Standing Order 2007 (No. 2) made under section 403 of the *Children and Young People Act 1999* revokes DI2007-6 and determines the minimum permanent standards, relating to visits, phone calls and correspondence, to be met by all staff when carrying out their duties at Quamby Detention Centre.**

**Disallowable Instrument DI2007-263 being the Children and Young People (Places of Detention) Safety and Security Standing Order 2007 (No. 2) made under section 403 of the *Children and Young People Act 1999* revokes DI2007-7 and determines the minimum permanent standards, relating to safety, security and therapeutic interventions, to be met by all staff when carrying out their duties at Quamby Detention Centre.**

The first instrument listed above states that it is made under section 403 of the *Children and Young People Act 1999*, which provides:

**403 Standing order-making power**

- (1) The Minister may make standing orders for this Act.
- (2) The standing orders may make provision in relation to the following at or in relation to places of detention:
  - (a) safety, management and good order (including security);
  - (b) welfare, health and safety;
  - (c) powers of search, including of anyone entering, leaving or inside a place of detention;
  - (d) use of force;
  - (e) personal property;
  - (f) education;
  - (g) visits;
  - (h) mail and phone calls;
  - (i) medical care and examinations;
  - (j) use of technology, including video surveillance and other monitoring devices;
  - (k) discipline, including penalties and the withdrawal of entitlements;
  - (l) behaviour management strategies;
  - (m) anything else prescribed by regulation.
- (3) To remove any doubt, the *Listening Devices Act 1992* does not apply in relation to the use of video surveillance or other monitoring devices in accordance with a standing order.
- (4) A standing order is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

*Note 2* Exempt provisions are not required to be notified.

The first instrument states that it is the “Admission and Classification Standing Order”. It is not clear which of the matters referred to in subsection 403 (2) that “admission and classification” relates to. Nothing is relevantly prescribed (for the purposes of paragraph 403 (2) (m)) in the *Children and Young People Regulation 2000*. The Committee seeks the Minister’s advice as to the basis on which this instrument is made.

The second instrument is the “Provision of Information, Review of Decisions and Complaints Standing Order”. Again, it is not clear which of the matters referred to in subsection 403 (2) of the Act that “provision of information” and “review of decisions and complaints” relate to. Nothing is relevantly prescribed (for the purposes of paragraph 403 (2) (m)) in the *Children and Young People Regulation*. The Committee seeks the Minister’s advice as to the basis on which this instrument is made.

The Committee also notes that the Explanatory Statement to the first instrument contains the following statement:

Although all rights in the HR Act are universal and fundamental in nature, some rights are absolute for example, s.10 (Protection from Torture and Cruel, Inhuman or Degrading Treatment). This right is not subject to any limitation, and all of the Standing Orders reflect this.

The Committee is curious as to the basis on which this statement is made. The Committee notes that section 10 of the *Human Rights Act 2004* provides:

**10 Protection from torture and cruel, inhuman or degrading treatment etc**

- (1) No-one may be—
  - (a) tortured; or
  - (b) treated or punished in a cruel, inhuman or degrading way.
- (2) No-one may be subjected to medical or scientific experimentation or treatment without his or her free consent.

Section 28 of the Human Rights Act then deals with limitations on human rights:

**28 Human rights may be limited**

Human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society.

While the Committee accepts that torture, etc is abhorrent, the Committee seeks the Minister’s advice as to the basis of the statement made in the Explanatory Statement that the human right protected by section 10 of the Human Rights Act is not subject to any limitation (despite what is set out in section 28 of the Human Rights Act).

The Committee notes that the same statement appears in the Explanatory Statements accompanying DI2007-259, DI2007-260, DI2007-262 and DI2007-263.

*Under what provisions are these instruments made? / Minor typographical error*

**Disallowable Instrument DI2007-265 being the Land (Planning and Environment) Criteria for Direct Grant of a Lease to Dytin Pty Ltd Determination 2007 made under subsection 161(7) of the Land (Planning and Environment) Act 1991 establishes criteria for the direct grant of a lease to Dytin Pty Ltd.**

**Disallowable Instrument DI2007-288 being the Land (Planning and Environment) Criteria for Direct Grant of a Lease (Single Residence Leases) Determination 2007 (No. 1) made under section 161 of the *Land (Planning and Environment) Act 1991* determines the criteria for the direct grant of a residential lease for a single dwelling.**

The Committee notes that both of these instruments are direct grants of leases. The first instrument states that it is made under subsection 161 (7) of the *Land (Planning and Environment) Act 1991*. The second instrument simply states that it is made under “section 161”. The Committee notes that section 161 of the Land (Planning and Environment) Act provides (in part);

**161 Granting of leases**

- (1) The planning and land authority may grant a lease by—
  - (a) auction; or
  - (b) tender; or
  - (c) ballot; or
  - (d) direct grant.

*Note* A fee may be determined under s 287 for this section.
- (2) A lease granted under this section may include provisions—
  - (a) requiring the lessee to develop the land comprised in the lease, or any unleased territory land, in a specified way; or
  - (b) requiring the lessee to give security for the performance of any of his or her obligations under the lease.
- (3) The planning and land authority may restrict the people eligible for the grant of a lease under subsection (1) (a), (b) or (c) by specifying, in the relevant notice of auction, tender or ballot, a class of people eligible or ineligible for the grant of a lease under the auction, tender or ballot.
- (4) If, under a restriction imposed under subsection (3), only 1 person is eligible for the grant of a lease under subsection (1) (a), (b) or (c), the planning and land authority may grant a lease to that person under subsection (1) (d) without auctioning the lease, calling tenders or conducting a ballot.
- (5) A lease granted under subsection (1) (d) must be granted subject to the provisions that are agreed between the planning and land authority and the applicant for the lease.
- (6) The planning and land authority must not grant a lease of territory land under subsection (1) (d) otherwise than in accordance with criteria specified under subsection (7).
- (7) The Executive may, for this section, in writing—
  - (a) specify criteria for the granting of leases under subsection (1) (d); or
  - (b) amend or revoke criteria so specified.
- (8) An instrument under subsection (7) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

The Committee considers that, for each of the instruments referred to above, the power that is being exercised (by disallowable instrument) is the power to specify criteria for the direct granting of (in each case) a particular lease. That being so, it is unclear why the second instrument does not refer to subsection 161 (7) of the Land (Planning and Environment) Act as the empowering provision. The Committee seeks the Minister's clarification as to whether, in fact, the second instrument is also made under subsection 161 (7).

The Committee notes that there is a minor typographical error (“Lease”) in the first sentence of the Explanatory Statement to the first instrument.

### Subordinate Laws—Comment

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

*“Henry VIII” clauses / Differences in approach / Non-sequential numbering / Minor typographical error*

**Subordinate Law SL2007-34 being the Crimes (Sentence Administration) Amendment Regulation 2007 (No. 2) made under the *Crimes (Sentence Administration) Act 2005* resolves a potential legal contradiction identified in the report of the Human Rights Commission into ACT corrections facilities.**

**Subordinate Law SL2007-35 being the Environment Protection Amendment Regulation 2007 (No. 2) made under the *Environment Protection Act 1997* lowers the underground fuel storage tank capacity of active service stations to 50m<sup>2</sup> to enable authorisation of these service stations by the Environment Protection Authority.**

The Committee notes that both of these subordinate laws amend the primary legislation under which they are made. As a result, these subordinate laws are examples of law-making by reference to a “Henry VIII” clause. While the Committee notes that this sort of law-making is generally not to be encouraged, it also notes that, in each case, the relevant Act explicitly authorises the making of such regulations. As a result, the Legislative Assembly has authorised the law-making evidenced by these subordinate laws.

That said, the Committee notes that there are some peculiarities about the approach of the two subordinate laws. First, the Committee notes that a Note to section 3 of SL2007-35 states that the power to amend the relevant Act by regulation is provided for in a named section of the relevant Act. The equivalent provision of SL2007-34 contains no such Note. The Committee is curious as to the reason for the different approach and (in relation to SL2007-34) seeks the Minister's advice as to why there is a difference in approach.

The Committee notes that SL2007-34 is also slightly different in its approach to SL2007-35, in the sense that, while SL2007-35 amends the Act under which it is made (which is the “normal” approach under a “Henry VIII” clause), SL2007-35 amends the *Crimes (Sentence Administration) Regulation 2006* by inserting a new section 6 into that Regulation that, in turn, provides that the relevant Act is amended as set out in (new) Schedule 2 of the Regulation. Schedule 2 is *also* inserted into the Regulation by SL2007-34. The Committee is perplexed as to why this approach was taken, as it seems unduly complicated. As the Committee is not assisted on this matter by the Explanatory Statement to the subordinate law, the Committee seeks the Minister's advice as to why this particular approach was taken to implementing the amendment.

A further issue with SL2007-34 is that it inserts a new section 6 into the Regulations. The Committee notes, however, that there is no section 5, which means that section 4 is followed by section 6. While the Committee appreciates that the Parliamentary Counsel's Office administers complicated (and generally sensible) rules in relation to the numbering of legislation, the Committee seeks the Minister's advice as to why this particular approach to numbering has been adopted in this case.

Finally, the Committee notes that the Explanatory Statement to SL2007-34 states:

**Clause 4 — New section 6**

Clause 4 inserts new section 6 into the *Crimes (Sentence Administration) Regulation 2006*. New section 6 invokes the regulation making power in chapter 17, section 611 of the *Crimes (Sentence Administration) Act 2005* to modify the transitional arrangements in the *Crimes (Sentence Administration) Act 2005*. The modifications are set out in schedule 2 of clause 5 (discussed below).

The Committee notes that the final sentence above is not strictly correct. Clause 5 inserts a new Schedule 2 into the Regulations. While the substantive amendments made by this subordinate law (ie the amendments to the relevant Act) are, in fact, set out in Schedule 2, it is not correctly referred to as Schedule 2 of clause 5.

**REGULATORY IMPACT STATEMENT**

There is no matter for comment in this report.

Zed Seselja, MLA  
Chair

December 2007

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

**REPORTS—2004-2005–2006–2007**

**OUTSTANDING RESPONSES**

**Bills/Subordinate Legislation**

**Report 1, dated 9 December 2004**

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

**Report 4, dated 7 March 2005**

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

**Report 6, dated 4 April 2005**

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

**Report 10, dated 2 May 2005**

Crimes Amendment Bill 2005 (**PMB**)

**Report 12, dated 27 June 2005**

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

**Report 14, dated 15 August 2005**

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

## **Bills/Subordinate Legislation**

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

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

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

Civil Law (Wrongs) Amendment Bill 2005 (PMB)

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

Guardianship and Management of Property Amendment Bill 2005 (PMB)

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

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

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

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

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

Public Interest Disclosure Bill 2006

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

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

## **Bills/Subordinate Legislation**

Disallowable Instrument DI2006-161 - Unit Titles (Fees) Determination 2006 (No. 1)  
Disallowable Instrument DI2006-162 - Water and Sewerage (Fees) Determination 2006 (No. 1)  
Education (School Closures Moratorium) Amendment Bill 2006 (**PMB**)  
Education Amendment Bill 2006 (No. 3)

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

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

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

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

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

Civil Partnerships Bill 2006

### **Report 38, dated 26 February 2007**

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

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

Disallowable Instrument DI2007-105 - Public Place Names (Forde) Determination 2007 (No. 1)  
Disallowable Instrument DI2007-107 - Legal Profession (Barristers and Solicitors Practising Fees) Determination 2007 (No. 1)  
Subordinate Law SL2007-10 - Legal Profession Amendment Regulation 2007 (No. 2)  
Subordinate Law SL2007-11 - Powers of Attorney Regulation 2007 (No. 2)

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

Disallowable Instrument DI2007-120 - Civil Law (Wrongs) Professional Standards Council Appointment 2007 (No. 2)  
Disallowable Instrument DI2007-131 - Attorney General (Fees) Determination 2007  
Disallowable Instrument DI2007-175 - Road Transport (General) (Vehicle Registration and Related Fees) Determination 2007 (No. 1)  
Disallowable Instrument DI2007-176 - Road Transport (General) (Driver Licence and Related Fees) Determination 2007 (No. 1)  
Disallowable Instrument DI2007-177 - Road Transport (General) (Numberplate Fees) Determination 2007 (No. 1)  
Disallowable Instrument DI2007-178 - Road Transport (General) (Parking Permit Fees) Determination 2007 (No. 1)  
Disallowable Instrument DI2007-179 - Road Transport (General) (Refund Fee and Dishonoured Cheque Fee) Determination 2007 (No. 1)  
Subordinate Law SL2007-12 - Powers of Attorney Amendment Regulation 2007 (No. 1)

## **Bills/Subordinate Legislation**

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

Crimes (Street Offences) Amendment Bill 2007 (PMB)  
Legal Profession Amendment Bill 2007  
Subordinate Law SL2007-20 - Road Transport (Safety and Traffic Management)  
Amendment Regulation 2007 (No. 1)

### **Report 46, dated 15 October 2007**

Disallowable Instrument DI2007-206 - Animal Diseases (Exotic Disease Quarantine Area) Declaration 2007 (No. 1)  
Disallowable Instrument DI2007-209 - Animal Diseases (Exotic Disease Quarantine Area) Declaration 2007 (No. 2)

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

Disallowable Instrument DI2007-227 - Animal Diseases (Exotic Disease Quarantine Area) Declaration 2007 (No. 3)  
Disallowable Instrument DI2007-228 - Pest Plants and Animals (Pest Plants) Declaration 2007 (No. 1)  
Subordinate Law SL2007-25 - Civil Law (Wrongs) Amendment Regulation 2007 (No. 1)  
Subordinate Law SL2007-26 - Road Transport (Third-Party Insurance) Amendment Regulation 2007 (No. 1)

### **Report 48, dated 19 November 2007**

Disallowable Instrument DI2007-229 - Residential Tenancies Tribunal Appointment 2007 (No. 1)  
Disallowable Instrument DI2007-230 - Residential Tenancies Tribunal Appointment 2007 (No. 2)  
Disallowable Instrument DI2007-231 - Civil Law (Wrongs) Professional Standards Council Appointment 2007 (No. 3)  
Disallowable Instrument DI2007-232 - Racing Appeals Tribunal Appointment 2007 (No. 2)  
Disallowable Instrument DI2007-238 - Road Transport (General) (Application of Road Transport Legislation) Declaration 2007 (No. 4)  
Subordinate Law SL2007-31 - Legal Profession (Solicitors) Rules 2007  
Subordinate Law SL2007-33 - Poisons Amendment Regulation 2007 (No. 1)