



Legislative Assembly for the ACT

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

Scrutiny Report

12 NOVEMBER 2007

Report 47

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:

DUTIES AMENDMENT BILL 2007

This Bill would amend the *Duties Act 1999* to provide greater certainty regarding the duty payable on long-term leases.

PUBLIC HOSPITAL BOARD BILL 2007
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This is a Bill for an Act to establish a Public Hospital Board, to oversee the application of the health budget in respect of public hospitals in the territory; to advise and make recommendations to the Minister in relation to these; to review public hospital services; to inquire and report to the Minister on matters referred to the Board by the Minister and to provide any other functions given to it by the Minister.

UTILITIES (NETWORK FACILITIES TAX) REPEAL BILL 2007
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This Bill would repeal the Utilities (Network Facilities Tax) Act 2006.

Bill—Comment

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

GAMING MACHINE AMENDMENT BILL 2007 (NO 2)
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This Bill would amend the *Gaming Machine Act 2004*, and make consequential amendments to the *Casino Control Act 2006* and the *Gaming Machine Regulation 2004* for various purposes, including: to reform the community contributions scheme by providing an incentive to gaming machine licensees to increase expenditure to assist with the funding of problem gambling; to change to the criteria for the award of a gaming licence or of various approvals to engage in activities associated with gaming; and to create offences of strict liability concerning signs advertising gaming and the display of gaming machines to public view.

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

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

Strict liability offences

<p>Clauses 16 and 17 of the Bill would create two strict liability offences, one by substantial re-enactment of the current section 152 of the Act, and the second by insertion of a new section 152A. The issue under the Human Rights Act 2004 (HRA) is whether, in each case, the provision is a justifiable derogation of the right to liberty and security (HRA subsection 18(1)) and/or of presumption of innocence (HRA subsection 22(1)).</p>

The current section 152 of the Act creates an offence where a licensee displays, or causes to be displayed, an external sign advertising gaming machines or promoting a gambling activity on the licensed premises. As amended, section 152 would no longer include the words “or causes to be displayed”: see clause 16.

Proposed section 152A would create an offence where gaming machines, or any peripheral equipment for a gaming machine, are visible from outside licensed premises.

Both would be strict liability offences: see clause 17.

The Explanatory Statement offers this justification:

Strict liability offences generally arise in a regulatory context In particular, a licensee is expected, due to his or her professional involvement in the industry, to know what the requirements of the law are, therefore the mental, or fault, element can justifiably be excluded.

This rationale is relevant in the gaming machine industry where there is a potential effect on the government’s gambling harm minimisation strategies and, as a consequence, the potential effect, if the provision is not observed, on problem gambling by the general public, justifies the categorisation of strict liability for the offence by licensees for gaming machines, or any peripheral equipment for a gaming machine, being visible from outside licensed premises.

Subclause 2(2) of the Bill provides that section 17 would commence 6 months after the Act’s notification day. The Explanatory Statement notes that this is “to provide licensees with adequate time to comply with the new requirements”.

The Committee notes that the maximum penalty in relation to both sections 152 and 152A is 50 penalty points.

The Committee does not consider that either clause 16 or 17 is incompatible with the Human Rights Act, but draws the matter to the attention of the Assembly.

SUBORDINATE LEGISLATION

Disallowable Instruments—No comment

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

Disallowable Instrument DI2007-224 being the Radiation Protection (Fees) Determination 2007 (No. 1) made under section 120 of the *Radiation Protection Act 2006* determines fees payable for the purposes of the Act.

Disallowable Instrument DI2007-225 being the Road Transport (General) (Application of Road Transport Legislation) Declaration 2007 (No. 3) made under section 13 of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to vehicles or drivers participating in the timed special (competitive) stages of the 2007 Snap-On Tools Fyshwick Rallysprint (Brindabella Motor Sport Club).

Disallowable Instrument DI2007-226 being the Land (Planning and Environment) Criteria for Direct Grant Lease to Community Organisation (Educational Establishment—Forde) Amendment Determination 2007 (No. 1) made under section 163 of the *Land (Planning and Environment) Act 1991* amends DI2007-186 to clarify the original inaccurate reference to the proposed applicant.

Disallowable Instruments—Comment

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

Is retrospective action required? / Minor drafting issue

Disallowable Instrument DI2007-227 being the Animal Diseases (Exotic Disease Quarantine Area) Declaration 2007 (No. 3) made under subsection 19(1) of the *Animal Diseases Act 2005* revokes DI2007-209 and declares the entire area of the ACT to be an Exotic Disease Quarantine area applying to horses, mules, donkeys and other animals in the equine family, or products of these animals.

In its *Scrutiny Report No 46* of the *Sixth Assembly*, the Committee raised some issues in relation to the *Animal Diseases (Exotic Disease Quarantine Area) Declaration 2007 (No. 1)* and the *Animal Diseases (Exotic Disease Quarantine Area) Declaration 2007 (No. 2)*, being DI2007-206 and DI2007-209, respectively. The declarations relate to the Equine Influenza outbreak. The Committee noted that, as it was concerned that the possible invalidity of the declarations might undermine the national efforts to contain the Equine Influenza outbreak, it had written to the Minister on 24 September 2007, drawing the Minister’s attention to the issues that the Committee had identified.

The Committee also noted that, on 27 September 2007, the Minister made the *Animal Diseases (Exotic Disease Quarantine Area) Declaration 2007 (No 3)*. The Committee noted that this latest declaration does not contain the deficiencies identified in the two previous declarations, discussed above. As this instrument has now been tabled, it is formally within the Committee’s remit.

The Committee assumes that, though there is no mention of the issues raised by the Committee (or of the Committee raising those concerns with the Minister), the declaration has been re-made in order to ensure that it is valid. The Committee notes, however, that the declaration is prospective in operation. This being so, the Committee assumes that there is no requirement to validate any actions taken under the previous (arguably invalid) declarations.

The Committee notes that there is a typographical error in the first line of the second paragraph of the Explanatory Statement to the declaration.

Minor drafting issue

Disallowable Instrument DI2007-228 being the Pest Plants and Animals (Pest Plants) Declaration 2007 (No. 1) made under section 7 of the *Pest Plants and Animals Act 2005* revokes DI2005-256 and declares specified plants to be pest plants in the ACT.

The Committee notes that all but one of the species of pest plants mentioned in Schedule 1 of this instrument is italicised. The exception is the reference to “*senecio madagascariensis*”. The Committee assumes that this is a typographical error.

Subordinate Laws – No Comment

The Committee has examined the following subordinate law and offers no comment on it:

Subordinate Law SL2007-24 being the Environment Protection Amendment Regulation 2007 (No. 1) made under the *Environment Protection Act 1997* updates specific clauses in the *Environment Protection Regulation 2005* relating to noise.

Subordinate Laws—Comment

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

Positive comment—Strict liability offences

Subordinate Law SL2007-23 being the Dangerous Substances (General) Amendment Regulation 2007 (No. 1) made under the *Dangerous Substances Act 2004* provides for an asbestos-specific management and control regime for non-residential premises.

The Committee notes that this subordinate law contains a number of strict liability offences. The Committee also notes, with approval, that the Explanatory Statement to the subordinate law provides an explanation as to why it is necessary for strict liability to apply to the offences and also provides information in relation to the defences that are nevertheless available. The Committee also notes that the magnitude of the penalties that are provided for in relation to the offences is within the threshold that the Committee has indicated that it prefers to see in relation to strict liability offences.

Accessibility of legislation

Subordinate Law SL2007-25 being the Civil Law (Wrongs) Amendment Regulation 2007 (No. 1) made under the *Civil Law (Wrongs) Act 2002* prescribes the statement "Liability limited by a scheme approved under the Civil Law (Wrongs) Act 2002, sch 4 (Professional Standards)" and determines the print size and typeface in which the statement must appear.

This subordinate law is made under subsection 4.29(3) of Schedule 4 of the *Civil Law (Wrongs) Act 2002*. It relies on the power in subsection 4.29(1) of Schedule 4, which imposes an obligation on professionals in their promotional documentation to notify their clients that their occupational liability is limited. Subsection 4.29(3) allows a particular form of notification to be prescribed.

This subordinate law prescribes the statement:

“Liability limited by a scheme approved under the *Civil Law (Wrongs) Act 2002*, sch 4 (Professional Standards)”

It also prescribes that the statement “must be printed in a size not less than the face measurement of Times New Roman typeface in 8 point.” The Explanatory Statement to the subordinate law states:

This size ensures that consumers will readily observe the statement and also not take up too much space on business correspondence.

This means that, if printed in accordance with the minimum requirements, the statement will appear as follows:

Liability limited by a scheme approved under the *Civil Law (Wrongs) Act 2002*, sch 4 (Professional Standards)

While the Committee appreciates the need to impose this sort of requirement with the effect on business correspondence in mind, it wonders about the effectiveness of such fine print in making clients of professionals aware of the limitation on the relevant professionals’ occupational liability.

Magnitude of increase in maximum fees?

Subordinate Law SL2007-26 being the Road Transport (Third-Party Insurance) Amendment Regulation 2007 (No. 1) made under section 233 of the *Road Transport (General) Act 1999* revises the maximum premiums that can be charged by an authorised insurer for various premium classes for CTP policies taking effect on or after 1 November 2007.

This subordinate law amends the *Road Transport (Third-Party Insurance) Regulation 2000* by revising the maximum premiums that can be charged by an authorised insurer for the various premium classes for compulsory third party (CTP) insurance policies. It is made under section 214 of the *Road Transport (General) Act 1999*, which prohibits an authorised insurer from charging a higher premium for a CTP policy than the maximum premium prescribed by regulation for the policy.

Schedule 1 of this subordinate law sets out various new maximum premiums, by reference to various premium categories. The Explanatory Statement to the subordinate law states:

The premiums set out in Schedule 1 to the amending regulation have been developed following a peer review by Cumpston Sarjeant Pty Ltd, an independent actuary engaged by the Government to ensure that the interests of the ACT community are protected, of insurer proposals in relation to premiums.

Revenue/Cost Implications

The Government retains no premium revenue. Accordingly, there are no revenue implications. There are cost implications. ACT agencies will pay CTP premiums in accordance with Schedule 1 for registered vehicles that carry CTP insurance.

The Committee notes, however, that there is no indication as to the magnitude of any increase in the maximum level of premium, nor as to the reasons for any increase. Nor does it indicate whether any new maximum levels of fees are introduced by the subordinate law. The Committee's brief examination of the maximum levels of premiums that previously existed indicates that the increases in maximum levels are significant. This being so, the Committee considers that it would have been appropriate for the Explanatory Statement to have provided an explanation of the increases in maximum fee levels and the basis of those increases (other than simply by reference to the peer review).

REGULATORY IMPACT STATEMENT

There is no matter for comment in this report.

GOVERNMENT RESPONSES

The Committee has received responses from:

- The Chief Minister, dated 15 October 2007, in relation to comments made in Scrutiny Report 45 concerning Disallowable Instrument DI2007-198, being the Public Sector Management Amendment Standards 2007 (No. 7).
- The Attorney-General, dated 15 October 2007, in relation to comments made in Scrutiny Report 45 concerning the Electoral Legislation Amendment Bill 2007.

- The Minister for Health, dated 29 October 2007, in relation to comments made in Scrutiny Report 45 concerning Subordinate Law SL2007-21, being the Radiation Protection Amendment Regulation 2007 (No. 1).

The Committee wishes to thank the Chief Minister, the Attorney-General and the Minister for Health for their helpful responses.

CORRESPONDENCE

Letter from Professor Stephen Parker, Vice-Chancellor, University of Canberra, dated 1 November 2007, in relation to comments made in Scrutiny Report 46 concerning the accessibility of University of Canberra statutes.

Zed Seselja, MLA
Chair

November 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 DI2007-205 - Canberra Institute of Technology (Fees)
Determination 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)
Disallowable Instrument DI2007-215 - University of Canberra (Election of Council
Members by Graduates) Repeal Statute 2007
Disallowable Instrument DI2007-216 - University of Canberra (Election of Student
Members of Council) Statute 2007
Disallowable Instrument DI2007-217 - University of Canberra (University Seal) Statute
2007
Disallowable Instrument DI2007-218 - University of Canberra (Academic Board)
Amendment Statute 2007 (No. 1)
Disallowable Instrument DI2007-223 - Public Place Names (Coree District)
Determination 2007 (No. 1)



Jon Stanhope MLA

CHIEF MINISTER

TREASURER MINISTER FOR BUSINESS AND ECONOMIC DEVELOPMENT

MINISTER FOR INDIGENOUS AFFAIRS

MINISTER FOR THE ENVIRONMENT, WATER AND CLIMATE CHANGE MINISTER FOR THE ARTS

MEMBER FOR GINNINDERRA

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

Dear Mr Seselja

I refer to the comments about Disallowable Instrument DI2007-198 in the Scrutiny of Bills Report 45 of 24 September 2007. The Committee sought advice that the instrument, which came into effect on 10 August 2007, involved no prejudicial retrospectivity.

Disallowable Instrument DI2007-198 amended subsection 42(1) and section 593 of the Public Sector Management Standards. These provisions relate to the application of section 42 and Division 8.5.2 respectively, both of which came into effect on 1 July 2006. The amendment reduced the application of section 42 and Division 8.5.2 by extending the class of people to whom these provisions do not apply.

I am able to advise that no staff who were excluded from the operation of section 42 and Division 8.5.2 by Disallowable Instrument DI2007-198 were subject to the operation of those provisions between 1 July 2006 and 10 August 2007. The operation and application of subsection 42(1) and section 593 will be contemporary and not retrospective. As such I am able to advise that the instrument involves no prejudicial retrospectivity.

Thank you for raising this matter with me. I agree with the Committee that it is important that Explanatory Statements to Disallowable Instruments with retrospective application should indicate whether there has been prejudicial retrospectivity.

Yours sincerely

Jon Stanhope MLA
Chief Minister

15 OCT 2007

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0104 Fax (02) 6205 0433 Email stanhope@act.gov.au



Simon Corbell MLA

ATTORNEY GENERAL
MINISTER FOR POLICE AND EMERGENCY SERVICES

MEMBER FOR MOLONGLO

Mr Zed Seselja MLA
Chair
Scrutiny of Bills and Subordinate Legislation Committee
Standing Committee on Legal Affairs
ACT Legislation Assembly
London Circuit
CANBERRA ACT 2601

Dear Mr Seselja

I refer to the Scrutiny of Bills Committee Report No. 45 – 24 September 2007 where the Committee provided comments relating to the Electoral Legislation Amendment Bill 2007.

The following is offered in response to the issues raised:

Is a person's privacy arbitrarily interfered with where the law permits the registration of a political party that includes the name of a particular living person in circumstances where use of the person's name does not suggest that there is a connection between the party and the person?

The purpose of this provision is to ensure that voters are not misled by party names. In principal the use and publication of a person's name, along with a statement about their connection or disconnection with a political party may well engage the right to privacy however any limitations imposed on that right in this way would be justifiable under section 28 of the *Human Rights Act 2004*. The provision serves a legitimate purpose, in terms of supporting freedom of expression and association. It is rationally connected to that objective in that it enables the registration of party names that contain personal names and it engages the right to privacy to a minimal amount as consent is required if the party name suggests an association between the person and the party.

It is unlikely an action would lie in defamation for merely using or appropriating a name, without ridiculing a person or confusing or misleading the public. A name, even a name and a likeness, can be used without giving rise to defamation.¹

¹ Dockrell v Dougall (1899) 80 LT 556 and Tolley v J S Fry and Sons Ltd [1030] 1 KB 467 at 478
ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0000 Fax (02) 6205 0535 Email corbell@act.gov.au

Would the removal of the facility for non-party groups to be listed on ballot papers be a denial of the equal protection of the law (HRA subsection 8(3)) to those independent candidates who wished to be grouped on a particular list on the ballot paper, and/or would this removal be an undue trespass on 'common law' rights of those candidates?

The current provision allowing the facility of non-party groups to be listed on ballot papers is a creature of statute. Non-party group candidates are no longer expected to have any connection with each other beyond a desire to be listed in their own column.

Removal of non-party groups has been a recommendation of the ACT Electoral Commission since the 2001 election.

Removal of non-party groups will give voters a clearer picture of the backgrounds of candidates by more clearly delineating independent and non-party candidates from candidates representing registered political parties or ballot groups. Individual candidates have available to them, the same methods followed by political parties, if they are like minded to register political parties.

The current ability of candidates to form non-party groups is more likely to confuse than to inform voters.

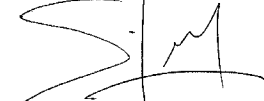
Does the proposal in clause 57 of the Bill to insert new section 220 and 221 of the Electoral Act to regulate the obligations of a person who is not a party, candidate or associated entity, concerning her or his expenditure for political purposes derogate from the citizen's rights to take part in the conduct of public affairs as stated in HRA paragraph 17(a) and, if so, is this derogation justifiable under HRA section 28?

People other than parties, candidates and associated entities are already required to submit returns detailing expenditure under the Electoral Act. People taking part in elections, for example, by placing advertisements about a particular issue, are required to provide returns detailing electoral expenditure and, if this electoral expenditure has been paid for with donations of over \$1,500, details of the donor. These amendments simply bring the provisions into line with other provisions relating to disclosure by increasing the threshold from \$1,000 to \$1,500 and simplifying the information that needs to be provided.

These amendments remove confusion and make it easier for disclosure requirements to be satisfied. They should offer no discouragement in the participation of citizens in the conduct of public affairs and are designed to complement and ensure complete financial disclosure with the aim of maintaining transparency in elections.

Thank you for raising these matters with me.

Yours sincerely



Simon Corbell MLA
Attorney General

15 OCT 2007



Katy Gallagher MLA
DEPUTY CHIEF MINISTER
MINISTER FOR HEALTH
MINISTER FOR CHILDREN AND YOUNG PEOPLE
MINISTER FOR DISABILITY AND COMMUNITY SERVICES
MINISTER FOR WOMEN

MEMBER FOR MOLONGLO

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


Dear Mr Seselja

Thank you for the Standing Committee on Legal Affairs' comments on Subordinate Law SL2007-21, Radiation Protection Amendment Regulation 2007 (No. 1), in Report No. 45, dated 24 September 2007.

The Committee commented on the retrospective operation of the Regulation, and has asked for confirmation the Regulation does not have any prejudicial effect on individual's rights. The Committee observed that there is no information in the explanatory statement in relation to prejudicial retrospectivity.

Page 4 of the Explanatory Statement, available on the Legislation Register, advises that "the transitional provisions inserted have no adverse affect on any person's rights. Furthermore, the transitional provisions do not impose any liabilities.". As the Explanatory Statement directly addresses section 76 of the *Legislation Act 2001*, I trust the Committee's concerns have been addressed.

Yours sincerely


Katy Gallagher MLA
Minister for Health
29/10/07

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0840 Fax (02) 6205 3030 Email: gallagher@act.gov.au

1 November 2007

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

Dear Mr Seselja

I refer to the Scrutiny of Bills Report No. 46 dated 15 October 2007 and the comments in the report concerning the accessibility of University of Canberra statutes. The Committee stated that it was unacceptable that repealed statutes were not available on the University's web site to facilitate comparison between new statutes and repealed statutes.

I am writing to advise that the University has established a new site to provide access to both repealed statutes and rules and to amending statutes and rules. The amending statutes and rules fall within the same category as the repealed instruments. Once the principal instrument is amended the amending instrument is not available for review. The new site includes all repealed and amending statutes and rules from the beginning of 2007. Our initial intention is to retain electronic copies of all instruments on the site for at least five years. Paper copies of all statutes and rules are already retained in the University's registry in accordance with the requirements of the Territory Records Act 2002.

The new site is part of the University's web site, UC Online, and the URL is:
<http://www.canberra.edu.au/university/about/legislation/repealed-or-amending-statutes-and-rules>

I trust this meets the needs of the Committee and facilitates greater access to the statutes and rules of the university.

Yours sincerely



Professor Stephen Parker
Vice-Chancellor

cc Mr Andrew Barr MLA, Minister for Education and Training

T +61 (0)2 6201 5000
F +61 (0)2 6201 5036
E stephen.parker@canberra.edu.au
W www.canberra.edu.au

Postal Address:
University of Canberra ACT 2601 Australia
Location:
University Drive Bruce ACT

Australian Government Higher Education Registered
Provider Number ICRICOS: 00212K