

Legislative Assembly for the Australian Capital Territory



Standing Committee on Justice and Community Safety

**(incorporating the duties of a
Scrutiny of Bills and Subordinate
Legislation Committee)**

SCRUTINY REPORT NO. 12 OF 2000

5 September 2000

Terms of reference

- (1) A Standing Committee on Justice and Community Safety be appointed (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee).
- (2) The Committee will consider whether:
 - (a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:
 - (i) meet the objectives of the Act under which it is made;
 - (ii) unduly trespass on rights previously established by law;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.
 - (b) the explanatory statement meets the technical or stylistic standards expected by the Committee.
 - (c) clauses of bills introduced in the Assembly:
 - (i) do not unduly trespass on personal rights and liberties;
 - (ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) do not 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) the explanatory memorandum meets the technical or stylistic standards expected by the Committee.
- (3) The Committee shall consist of four members.
- (4) 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 and circulation.
- (5) The Committee be provided with the necessary additional staff, facilities and resources.
- (6) The foregoing provisions of the resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Members of the Committee

Mr Paul Osborne, MLA (Chair)
Mr John Hargreaves, MLA (Deputy Chair)
Mr Trevor Kaine, MLA
Mr Harold Hird, MLA

Legal Adviser: Mr Peter Bayne
Acting Secretary: Mr Mark McRae
(Scrutiny of Bills and Subordinate
Legislation Committee)
Assistant Secretary: Ms Celia Harsdorf
(Scrutiny of Bills and Subordinate
Legislation Committee)

Role of the Committee

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

BILLS

Bills - No Comment

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

Electoral Amendment Bill 2000

This Bill would amend the Electoral Act 1992 to provide that Independent MLAs are required to disclose in their annual returns gifts for use solely or substantially for a purpose related to an MLA's position.

Land (Planning and Environment) Amendment Bill 2000 (No 4)

This Bill would amend the *Land (Planning and Environment) Act 1991* to repeal sections 184B and 187B to the effect that the current rate of Change of Use charge will continue at 75% of added value.

Poisons and Drugs Amendment Bill 2000

This Bill would amend the *Poisons and Drugs Act 1978* to increase the penalty for the unauthorised supply of anabolic steroids for human use, and to update the list of anabolic steroids in Schedule 1 of the Act.

Vocational Education and Training Amendment Bill 2000

This Bill would amend the *Vocational Education and Training Act 1995* to the effect that unauthorised persons will be prevented from advertising courses that have not been accredited by the ACT Accreditation and Registration Council.

Bills - Comment

The Committee has examined the following Bill and offers these comments.

Low-alcohol Liquor Subsidies Bill 2000

This is a Bill for an Act under which the Territory would pay subsidies on low-alcohol beer and wine in respect of sales by wholesale in the period 1 September 2000 and 30 June 2000. Low-alcohol beer is that which contains between 1.5% and 3.5% by volume ethyl alcohol, and low-alcohol wine that is undiluted and unadulterated and contains between 1.5% and 6.5% by volume ethyl alcohol. The subsidy payable is an amount equal to 12% of the wholesale value of the liquor. The subsidy is payable to a registered liquor supplier, and the supplier must pass on the benefit of the subsidy to the licensees to whom

the liquor is sold. The bill contains provisions for the regulation of the sale of low-alcohol beer and wine.

Paragraph 2 (c) (i) - undue trespass on personal rights and liberties

Requirements to provide information

In a number of provisions, the Bill would impose on a person a requirement to provide information in documentary or oral form to the Commissioner. By clause 40, such a person will commit an offence if they do not obey the relevant requirement, unless they have a “reasonable excuse” for not obeying. This scheme is commonly found in regulatory laws. In respect of the scheme in this Bill, the Committee has a number of comments.

1. There is no explicit provision to the effect that a person may claim legal professional privilege in relation to the requirement. Such provisions are commonly found in Territory laws; (see, for recent example, clause 59 of the *Gas Safety Bill 2000*). The concept of “reasonable excuse” may embrace a claim of this privilege (although the frequency of making explicit provision in this regard in other laws raises a slight doubt whether a court would read clause 40 of this Bill in this way). The matter can be set at rest by the inclusion in this Bill of a provision such as clause 59 of the *Gas Safety Bill 2000*, and, in any event, the Bill will be easier to follow if such provision is made.

2. There is in clause 39 explicit provision in regard to what is not a “reasonable excuse” in respect of a claim that to answer the question, or to provide the information, would tend to incriminate the person. Subclause 39(1) provides – as is common in regulatory laws – that this privilege cannot be claimed. Subclause 39(2) provides that the information or the answer given is not admissible in certain criminal proceedings.

Unlike many other such provisions however, (see, for recent example, subclause 58(2) of the *Gas Safety Bill 2000*), subclause 39(2) does not prohibit the use of the information or the answer given as a source for obtaining other information that may incriminate the person.

The Explanatory Memorandum does not provide a justification for this approach. The Committee draws this to the attention of the Legislative Assembly.

3. In relation to subclause 40(1), it is noted that it is not clear on which party – the person concerned or the informant/prosecutor – will fall the evidential and/or legal burden of proof in relation to whether the person had, or did not have, a “reasonable excuse”. A court might read subclause 40(1) so that the person (the defendant) had an evidential burden in this respect, while the informant/prosecutor had a legal burden (if the defendant discharged the evidential burden).

These doubts could be clarified by making explicit provision in the Bill in this regard.

4. The Committee considers that this law would be easier to read if those provisions that did impose on a person a requirement to provide information in documentary or oral form

to the Commissioner – such as clauses 12, 15, 31 and 32 – contained at their foot a note making a cross-reference to whatever ends up being in clauses 39 and 40.

A burden of proof matter

Clauses 42 and 43 contain provisions that appear to be unusual and it is not clear to the Committee how they will operate in practice.

Clause 42 is designed to penalise the making of false or misleading statements in a “subsidy statement” (as defined in subclause 42(4)). By subclause 42(3), it is an offence to make such a statement “recklessly or knowingly”. This conforms to the principle that the prosecution must establish that the defendant had the requisite *mens rea* - that is, an intention (or was at least reckless) in relation to the commission of the crime.

Subclause 42(1) abrogates this principle in that it is an offence to simply make such a statement. In the light of subclause 42(3), subclause 42(1) must mean that it contains no requirement of *mens rea*. In other words, it is an offence of strict liability. This situation is, however, qualified by subclause 42(2). It enables a person charged with an offence under subclause 42(1) to “adduce evidence” that the person did not know, or could not reasonably be expected to know, that the statement was false or misleading, or that they had no control over the relevant document.

Just what amounts to ‘adducing evidence’ is unclear. On its face, it means only that the person adduce some evidence – however slight in its weight - relevant to whether they did not know, etc. The concept of relevance, as employed in the *Evidence Act 1995* of the Commonwealth, (which applies in the Territory), is very wide. Under subsection 55(1) of that Act, “... evidence that is relevant in a proceeding is evidence that, if it were accepted, could rationally affect (directly or indirectly) the assessment of the probability of the existence of a fact in issue in the proceeding”. The weight – or probative value – of the evidence is a different matter. On this basis, a defendant could easily meet the need to adduce some evidence.

On the other hand, subclause 42(2) does not apply where the evidence adduced by the person (the defendant) is “rebutted” by the prosecution. Just what amounts to ‘rebutting’ the evidence adduced is also very unclear. It might mean only that the prosecution meets the evidence of the defendant with some relevant evidence. On this basis, the prosecution will be able to quite easily avoid the application of subclause 42(2). On the other hand, it may mean that once the defendant has adduced evidence in the relevant respect, the prosecution has a legal burden of disproof – that is, that it must satisfy the court beyond reasonable doubt (see subsection 141(1) of the *Evidence Act*) that the person did not know, etc.

These same issues arise under clause 43. The Explanatory Memorandum does not address these questions, and is not a clear statement of these provisions.

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

Paragraph 2 (c) (iii) - rights, liberties and/or obligations unduly dependent upon non-reviewable decisions

The provisions of the Bill create a number of discretionary powers the exercise of which could affect, in varying degrees, the interests of wholesalers and licensees. It is noted that the exercise of these powers

- is not subject to review (other than by the Ombudsman or judicial review); or
- is reviewable by the Commissioner for ACT Revenue (and the Committee notes that under subclause 53(2) such ‘internal’ review must be by some person other than the original decision-maker); or
- is are, after ‘internal’ review, reviewable by the Administrative Appeals Tribunal.

The Committee considers that this scheme provides an adequate system for review. It raises, however, a number of matters.

1. It is assumed by paragraph 16(h) that the Commissioner may, on registering an applicant for registration as a liquor supplier, impose conditions on the registration of the supplier. The Bill might be read this way, but it would make it easier to follow the law if a power to impose conditions was made explicit. This might be done by the addition of a subclause 15(6). If this were done, the purpose for which the discretion to impose conditions could be exercised could be stated.

2. It would assist the administration of the Act, and provide natural justice to a person affected, if, prior to an exercise of the discretions in paragraphs (a) and (b) of subclause 17, the Commissioner were required to give some notice to that person of the action the Commissioner intends to take. This same point applies in relation to subclause 18(2).

On the other hand, the Committee acknowledges that an exercise of these powers is subject to an internal review within the office of the Commissioner, and that reasons for the decision must be given (see clause 48). In these circumstances, it may be considered that the expeditious administration of this law, taken with the nature of the power, justifies the approach taken in the Bill.

The Committee notes that some laws (for example, see Part 4 of the *Surveyors Bill 2000*) do provide for a person who will be affected by an exercise of an administrative discretion to be given notice of the intention of the decision-maker to exercise the power, and an opportunity to respond. Apart from giving a large measure of natural justice to the person concerned, such provisions place the decision-maker in a position to make a better decision, which in turn may reduce the number of review applications against those decisions. On the other hand, such advance notice requirements do complicate the administration of a legislative scheme, and inhibit expeditious administrative action where that is necessary. The powers subject to Part 4 of the *Surveyors Bill 2000* are of far more consequence to the person affected than the powers than the powers in subclauses 17 and 18(2). In relation to these latter provisions the balance of fairness may lie in the way that Bill deals with this matter.

3. It has been noted that on the making of a reviewable decision the decision-maker must give “reasons for the decision” to the person affected (paragraph 48(3)(a)). This needs to be read with section 13C of the *Interpretation Act 1967* –

Content of statements of reasons for decisions

Where an Act requires a tribunal, body or person making a decision to give written reasons or the decision, whether the expression "reasons", "grounds" or any other expression is used, the instrument giving the reasons shall also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

On the other hand, subclause 54(2) requires the Commissioner (or delegate), on making a decision on an internal review, to "give an explanation for disallowing the objection or for allowing an objection in part only ...". It may be that section 13C of the *Interpretation Act 1967* applies to subclause 54(2).

To remove this doubt, and to use consistent language, it is suggested that the words "give reasons" be used in subclause 54(2).

Subordinate Legislation - No Comment

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

Subordinate Law 2000 No 26 being the Food Regulations Amendment made under the *Food Act 1992* amends the Principle Regulations by inserting new Part headings and new Parts and Dictionary.

Subordinate Law 2000 No 27 being the Interactive Gambling Regulations Amendment made under the *Interactive Gambling Act 1998* repeals regulation 1 and substitutes a new regulation 1 to name the regulations the *Interactive Gambling Regulations 1998*, repeals regulation 12 and substitutes a new regulation 12 and 12A to provide for the inter interactive gambling rates and provisions for tax credits in relation to the GST respectively.

Subordinate Law 2000 No 28 being the Road Transport (Offences) Regulations Amendment made under the *Road Transport (General) Act 1999* amends regulation 12 to remove the need to include identifying particulars from infringement notices involving a vehicle.

Subordinate Law 2000 No 29 being the Food Regulations Amendment made under the *Food Act 1992* amends regulation 4 to ensure that the exemption, from the licensing requirements of the *Food Act 1992*, for a milk vendor is maintained once the *Milk Authority Act 1971* is repealed.

Subordinate Law 2000 No 30 being the Smoke-free Areas (Enclosed Public Places) Regulations Amendment made under the *Smoke-free Areas (Enclosed Public Places) Act 1994* amends the regulations by repealing regulations 1 and 2 and replacing them with new regulations that rename the regulations in light of current drafting practices and adds a new regulation 6 and schedule to provide for prescribed places where is smoking allowed for the purposes of paragraph 5 (4) (b) of the Act. Two places are exempted.

Subordinate Law 2000 No 31 being the Environment Protection (Prescribed Activities) Regulations 2000 made under the *Environment Protection Act 1997* amends the regulations to give effect to a pollutant load based discharge licensing scheme in the ACT.

Subordinate Law 2000 No 32 being the Road Transport Legislation Regulations Amendment made under the *Road Transport (Driver Licensing) Act 1999* and *Road Transport (General) Act 1999* amends the Road Transport (Driver Licensing) Regulations 2000, the Road Transport (General) Regulations

2000 and the Road Transport (Offences) Regulations 2000 to incorporate the Road Ready Program that is being introduced by the Road Transport Authority.

Subordinate Law 2000 No 33 being the Road Transport Legislation Regulations Amendment made under the *Road Transport (General) Act 1999* and the *Road Transport (Safety and Traffic Management) Act 1999* amends the Road Transport (Safety and Traffic Management) Regulations 2000 to clarify the types of public buses that are permitted to use a bus zone and bus stop; and to amend the requirements that must appear on an image for a camera detected offence and to clarify the actual maintenance requirements for a digital camera detection device; and amends the Road Transport (Offences) Regulations 2000 by including three new offences which relate to public buses stopping at a bus zone or bus stop.

Subordinate Law 2000 No 34 being the Goods and Services Tax Consequential Regulations 2000 made under the *Goods and Services Tax (Temporary Transitional Provisions) Act 2000* amends the regulations by modifying subsection 58A (1) of the *Gaming Machine Act 1987* to correct the timing issue with regard to the adjustment of gaming machine taxes to account for the GST.

Determination No. 184 of 2000 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 79 of 2000 (notified in Gazette S6 on 29 February 2000) and determines the fees payable, as specified in the Schedule, for transactions relating to vehicle registration under the *Road Transport (Vehicle Registration) Regulations 2000*. This instrument also reflects that the charges in Part 2 of the Schedule to the *Road Transport Charges (Australian Capital Territory) Act 1993* of the Commonwealth were amended in May 2000 by the *Road Charges (Australian Capital Territory) Amendment Act 2000*, as specified on page 7 of the Schedule.

Determination No. 185 of 2000 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 78 of 2000 (notified in Gazette S6 on 29 February 2000) and determines the fees payable, as specified in the Schedule, in respect of the provisions of the *Road Transport (Driver Licensing) Regulations 2000* made under the *Road Transport (Driver Licensing) Act 1999*, in relation to driver licences.

Determination No. 186 of 2000 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 72 of 2000 (notified in Gazette S6 on 29 February 2000) and determines the fees payable, as specified in the Schedule, in respect of the provisions of the *Road Transport (Safety and Traffic Management) Regulations 2000* made under the *Road Transport (Safety and Traffic Management) Act 1999* in relation to the issuing of parking tickets from ticket machines located at the sites.

Determination No. 192 of 2000 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 152 of 2000 (notified in Gazette S20 dated 8 June 2000) and determines the fee payable, as specified in the Schedule, in respect of the provisions of the *Road Transport (Safety and Traffic Management) Regulations 2000* made under the *Road Transport (Safety and Traffic Management) Act 1999* in relation to transactions relating to parking permits.

Determination No. 194 set outs a number of the fees and charges administered by the ACT Office of Fair Trading made under:

Section 90A of the *Sale of Motor Vehicles Act 1977* revokes Determination No. 147 of 1999 (notified in Gazette No. 26, dated 30 June 1999) and determines that the fees payable for the purposes of the Act are as set out in items 1 to 8 in the Schedule.

Section 140 of the *Consumer Credit (Administration) Act 1996* revokes Determination No. 146 of 1999 (notified in Gazette No. 26, dated 30 June 1999) and determines that the fees payable for the purposes of the Act are as set out in items 9 to 16 in the Schedule.

Subsection 12 (1) of the *Trade Measurement (Administration) Act 1991* revokes Determination No. 145 of 1999 (notified in Gazette No. 26, dated 30 June 1999) and determines that the fees payable for the purposes of the Act are as set out in items 17 to 47 in the Schedule.

Section 120A of the *Agents Act 1968* revokes so much of Determination No. 102 of 1999 (notified in Gazette S29, dated 4 June 1999) as deals with sections 41A and 54A of the Act and determines that the fees payable for the purposes of sections 41A and 54A of the Act are as set out in items 48 to 54 in the Schedule.

Section 120A of the *Agents Act 1968* revokes Determination No. 102 of 1999 (notified in Gazette S29, dated 4 June 1999) and determines that the fees payable for the purposes of sections 110 and subsections 93 (6) and 93 (11) of the Act are as set out in items 55 to 56 in the Schedule.

Section 179 of the *Liquor Act 1975* revokes Determination No. 96 of 2000 (notified in Gazette No. 11, dated 16 March 2000) and determines that the fees payable for the purposes of the Act are as set out in items 57 to 61 in the Schedule –

and administered by the ACT Office of Fair Trading.

Determination No. 195 of 2000 made under subsection 248A (1) of the *Magistrates Court Act 1930* revokes Determinations Nos 148 and 149 of 1999 and determines fees set out in the Schedule to be the fees payable, for the purposes of section 248B of the Act, in the magistrates court; the coroners court; the administrative appeals tribunal; the credit tribunal; the discrimination tribunal; the residential tenancies tribunal and the tenancy tribunal.

Determination No. 196 of 2000 made under subsection 37 (1) of the *Supreme Court Act 1933* revokes Determination No. 150 of 1999 and determines that the fees and charges set out in the Schedule to be the fees and charges payable for the purposes of section 37A of the Act.

Determination No. 197 of 2000 made under section 75 of the *Public Trustee Act 1985* revokes Determination No. 43 of 1990 and determines that the fees payable for the purposes of section 28 are as set out items 1 to 9 and items 11 to 24 of the Schedule and determines that the fee payable for the purposes of section 22 is set out in item 10 of the Schedule.

Determination No. 198 of 2000 made under section 118 of the *Adoption Act 1993* and the Adoption Regulations revokes Determination No. 156 of 1999 (notified in Gazette S38 dated 30 June 1999) and determines that the fees payable for the purposes of the Act are as set out in the Schedule.

Determination No. 199 of 2000 made under section 67 of the *Births, Deaths and Marriages Registration Act 1997* revokes Determination No. 161 of 1999 (notified in Gazette S38 dated 40 June 1999) and determines that the fees payable for the purposes of the Act are as set out in the Schedule.

Determination No. 200 of 2000 made under section 8 of the *Registration of Deeds Act 1957* revokes Determination No. 158 of 1999 (notified in Gazette S38 dated 40 June 1999) and determines that the fees payable for the purposes of the Act are as set out in the Schedule.

Determination No. 201 of 2000 made under section 37 of the *Instruments Act 1933* revokes Determination No. 160 of 1999 (notified in Gazette S38 dated 40 June 1999) and determines that the fees payable for the purposes of the Act are as set out in the Schedule.

Determination No. 202 of 2000 made under section 126 of the *Associations Incorporation Act 1991* revokes Determination No. 162 of 1999 and determines that the fees payable for the purposes of the Act, including fees for lodging for registration and searching documents, are as set out in the Schedule.

Determination No. 203 of 2000 made under subsection 139 (1) of the *Land Titles Act 1925* revokes Determination No. 157 of 1999 (notified in Gazette S38 dated 40 June 1999) and determines that the

fees payable for the purposes of the Act, including fees for lodging, registration and searching documents pertaining to land, are as set out in the Schedule.

Determination No. 204 of 2000 made under section 4A of the *Business Names Act 1963* revokes Determination No. 159 of 1999 (notified in Gazette S38 dated 40 June 1999) and determines that the fees payable for the purposes of the Act are as set out in the Schedule.

Determination No. 205 of 2000 made under section 42 of the *Taxation Administration Act 1999* is a declaration by the Commissioner to approve special arrangements in relation to registered ACT payroll taxpayers, to vary the required date for the lodging of payroll tax returns.

Determination No. 206 of 2000 made under paragraph 55 (1) (a) of the *Bookmakers Act 1985* revokes Determination No. 242 of 1997 (notified in Gazette S334 dated 31 October 1997) and determines that the fee for the purposes of subsection 29 (1) of the Act is 1% of turnover less the GST credit.

Determination No. 207 of 2000 made under paragraph 55 (1) (a) of the *Bookmakers Act 1985* revokes Determination No. 255 of 1998 (notified in Gazette S207 dated 27 November 1998) and provides for a GST credit against the monthly sports betting fee.

Determination No. 208 of 2000 made under subsection 248A (1) of the *Magistrates Court Act 1930* amends Determination No. 195 of 2000 and is a supplementary determination of fees and charges applicable in the lower courts and tribunals to ensure that fees can be charged in cases where no amount is in dispute.

Determination No. 210 of 2000 made under section 132 of the *Casino Control Act 1988* revokes Determination No. 116 of 1999 (notified in Gazette S33, dated 23 June 1999) and determines that the fees payable for the purposes of the Act are as set out in the Schedule.

Determination No. 211 of 2000 made under section 66 of the *Gaming Machine Act 1987* revokes Determinations Nos 154 of 1999 (notified in Gazette S38, dated 30 June 1999); 171 of 1999; 172 of 1999 and 173 of 1999 (notified in Gazette No. 28, dated 14 July 1999) and determines that the fees payable for the purposes of the Act are as set out in the Schedule.

Determination No. 212 of 2000 made under section 24 of the *Building Act 1972* revokes Determination No. 30 of 2000 (notified in Gazette No. 6 dated 10 February 2000) and adopts the provisions of the 1996 edition of the Building Code of Australia including Amendments 1 to 7.

Determination No. 213 of 2000 made under section 32 of the *Health and Community Care Services Act 1996* revokes Determination No. 187 of 1999 (notified in Gazette No. 31 on 4 August 1999) and determines fee and charges payable for the purposes of the Act as specified in the Schedule.

Determination No. 214 of 2000 made under section 118 of the *Adoption Act 1993* revokes Determination No. 169 of 1999 (notified in Gazette S42 of 7 July 1999) and determines fees payable for the purposes of the Act.

Determination No. 215 of 2000 made under section 41 of the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994* revokes Determination No. 168 of 1999 (notified in Gazette S42 of 7 July 1999) and determines fees for the purposes of the Act.

Determination No. 216 of 2000 made under section 67 of the *Vocational Education and Training Act 1995* revokes Determination No. 167 of 1999 (notified in Gazette S42 of 7 July 1999) and determines fees for the purposes of the Act.

Determination No. 217 of 2000 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 8 (1) (a) of the *Medical Practitioners Act 1930* appoints a

specified person to be a member of the Medical Board of the ACT for a period commencing 6 July 2000 to and including 5 June 2003.

Determination No. 218 of 2000 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 8 (1) (a) of the *Medical Practitioners Act 1930* appoints a specified person to be Chairperson of the Medical Board of the ACT for a period commencing 6 July 2000 to and including 5 June 2003.

Determination No. 219 of 2000 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 8 (1) (a) of the *Medical Practitioners Act 1930* appoints a specified person to be a member of the Medical Board of the ACT for a period commencing 6 July 2000 to and including 5 June 2003.

Determination No. 220 of 2000 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 8 (1) (a) of the *Medical Practitioners Act 1930* appoints a specified person to be a member of the Medical Board of the ACT for a period commencing 6 July 2000 to and including 5 June 2003.

Determination No. 222 of 2000 made under 16A of the *Casino Control Act 1988* revokes Determination No. 167 of 1994 (notified in Gazette S312 on 30 December 1994) and determines the tax rate as a proportion of commission-based player profit the same (ie 10%) but allows a credit for the GST liability payable.

Determination No. 223 of 2000 made under subsection 115 (1) of the *Road Transport (General) Act 1999* revokes Determination No. 115 of 2000 (notified in Gazette No. 16 of 20 April 2000) and determines the maximum taxi fares payable as set out in the Schedule.

Determination No. 224 of 2000 made under section 16 of the *Casino Control Act 1988* revokes Determination No. 166 of 1994 (notified in Gazette S312 on 30 December 1994) and determines the rate of tax payable by the casino licensee as a proportion of general gaming profit the same (ie 20%) but allows a credit for the GST liability payable.

Determination No. 226 of 2000 made under section 12 of the *Kingston Foreshore Development Authority Act 1999* appoints a specified person as Chairperson of the Kingston Foreshore Development Authority (KFDA) Board, effective from 7 July 2000 to 6 July 2003.

Determination No. 227 of 2000 made under section 11 of the *Kingston Foreshore Development Authority Act 1999* appoints specified persons as members of the Kingston foreshore Development Authority (KFDA) Board, effective from 7 July 2000 to 6 July 2003.

Determination No. 228 of 2000 made under section 145 of the *Interactive Gambling Act 1998* revokes Determination No. 226 of 1998 (notified in Gazette S200 on 8 October 1998) and determines a scale of fees in relation to an application for an interactive gambling licence.

Determination No. 229 of 2000 made under section 12 of the *Housing Assistance Act 1987* is a variation to the Public Rental Housing Assistance Program.

Determination No. 230 of 2000 made under section 80 of the *Energy and Water Act 1988* revokes Determination No. 154 of 2000 (notified in Gazette S20, dated 8 June 2000) and determines fees payable for the purposes of the Act in accordance with the schedule.

Determination No. 231 of 2000 made under section 65 of the *Building Act 1972* revokes Determination No. 167 of 2000 (notified in Gazette S20, dated 8 June 2000) and determines fees for the purposes of the Act in accordance with the Schedule.

Determination No. 232 of 2000 made under section 58A of the *Gaming Machine Act 1987* determines the rate of GST Credit and the rate of GST Refund payable for the purposes of the Act.

Determination No. 233 of 2000 made under section 11 of the *Stadiums Authority Act 2000* appoints a specified person as a member of the Board of the Stadiums Authority until 30 June 2001.

Determination No. 234 of 2000 made under section 11 of the *Stadiums Authority Act 2000* appoints a specified person as a member of the Board of the Stadiums Authority until 30 June 2001.

Determination No. 235 of 2000 made under section 11 of the *Stadiums Authority Act 2000* appoints a specified person as a member of the Board of the Stadiums Authority until 30 June 2001.

Determination No. 236 of 2000 made under section 12 of the *Stadiums Authority Act 2000* appoints a specified person as Chairman of the Board of the Stadiums Authority until 30 June 2002.

Determination No. 238 of 2000 made under subsection 12 (1) of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to certain roads and road related areas that are to be used by rally cars competing in the ACT leg of the London to Sydney Marathon 2000 car rally.

Determination No. 239 of 2000 made under subsection 10 (2) of the *Legislative Assembly (Members' Staff) Act 1989* is an arrangement approved by the Chief Minister of staff salary allocations for the employment of staff of Members of the Legislative Assembly for the 2000-2001 financial year.

Determination No. 241 of 2000 made under section 4 of the *Public Place Names Act 1989* determines the name of a certain public place in the Division of Campbell.

Determination No. 242 of 2000 made under section 55 of the *Optometrists Act 1956* revokes Determination No. 72 of 1997 (notified in Gazette S106 dated 18 April 1997) and Determination No. 119 of 2000 (notified in Gazette No. 18, dated 4 May 2000) and determines that the fees payable for the purposes of the Act shall be as specified in the Schedule.

Determination No. 243 of 2000 being the Financial Management Guidelines 2000 made under the *Financial Management Act 1996* provides for: the repeal of previous Financial Management Guidelines and the commencement of the *Financial Management Guidelines 2000*; those administrative units that are to be regarded as Departments for the purposes of section 3 of the Act for the period preceding and after the commencement of the guideline; and the investments prescribed under section 38.

Determination No. 244 of 2000 made under subsection 22 (3) of the *Rates and Land Tax Act 1926* revokes Determination No. 3 of 2000 (notified in Gazette S2, dated 14 January 2000) and determines that the rate of interest to be charged on unpaid rates and land tax for the purposes of subsection 22 (3) shall be 14.00 percent per annum.

Determination No. 245 of 2000 made under the section 23 of the *Rates and Land Rent (Relief) Act 1970* revokes Determination No. 4 of 2000 (notified in Gazette S2, dated 14 January 2000) and determines the rate of interest for the purposes of subsection 23 (1) in relation to amounts deferred as a result of a deferment under section 3, at 6.3 percent per annum; and in relation to amounts unpaid after the date of revocation of a deferment, at 14.00 percent per annum as from 16 July 2000.

Determination No. 246 of 2000 made under section 28B of the *Rates and Land Tax Act 1926* revokes Determination No. 29 of 2000 (notified in Gazette No. 6, dated 10 February 2000) and determines the rate of interest payable on overpaid rates and land tax for the purposes of paragraph 28B (1) (a) shall be 6.3 percent per annum.

Determination No. 247 of 2000 made under subsection 73 (1) of the *Dental Technicians and Dental Prosthetists Registration Act 1988* revokes all previous determinations of fees and determines fees payable for the purposes of the Act shall be as specified in the Schedule.

Determination No. 248 of 2000 made under section 165 of the *Environment Protection Act 1997* revokes Determination No. 129 of 1999 (notified in Gazette S37, dated 30 June 1999) and Determination No. 107 of 2000 (notified in Gazette No. 13, dated 30 March 2000) and determines fees payable shall be as specified in Schedules 1, 2 and 3.

Determination No. 249 of 2000 made under section 8 of the *Electoral Act 1992* revokes Determinations Nos 19 of 1995, 160 of 1995, 161 of 1995, 191 of 1996, 108 of 1997 and 109 of 1997 and determines that the fees payable for the purposes of the Act are as set out in the Schedule.

Determination No. 250 of 2000 made under subsection 7 (3) of the *Legal Aid Act 1977* appoints a specified person to be a part-time Commissioner of the Legal Aid Commission (A.C.T.) for the period of three years commencing 27 July 2000.

Determination No. 256 of 2000 made under section 4 of the *Public Place Names Act 1989* determines the name of a certain street in the Division of Russell.

Determination No. 257 of 2000 made under section 4 of the *Public Place Names Act 1989* determines the name of a certain street in the Division of Pialligo.

Determination No. 258 of 2000 made under subsection 63 (2) of the *Community and Health Services Complaints Act 1993* appoints a specified person to be Chairperson of the Community and Health Rights Advisory Council for a period of three years from 3 August 2000.

Determination No. 259 of 2000 made under subsection 63 (2) of the *Community and Health Services Complaints Act 1993* appoints a specified person to be a member of the Community and Health Rights Advisory Council for a period of three years from 3 August 2000.

Determination No. 260 of 2000 made under subsection 63 (2) of the Community and Health Services Complaints Act 1993 appoints a specified person to be a member of the Community and Health Rights Advisory Council for a period of two years from 3 August 2000.

Determination No. 261 of 2000 made under subsection 63 (2) of the Community and Health Services Complaints Act 1993 appoints a specified person to be a member of the Community and Health Rights Advisory Council for a period of two years from 3 August 2000.

Determination No. 262 of 2000 made under subsection 63 (2) of the Community and Health Services Complaints Act 1993 appoints a specified person to be a member of the Community and Health Rights Advisory Council for a period of three years from 3 August 2000.

Determination No. 263 of 2000 made under subsection 63 (2) of the Community and Health Services Complaints Act 1993 appoints a specified person to be a member of the Community and Health Rights Advisory Council for a period of two years from 3 August 2000.

Determination No. 264 of 2000 made under subsection 63 (2) of the Community and Health Services Complaints Act 1993 appoints a specified person to be a member of the Community and Health Rights Advisory Council for a period of three years from 3 August 2000.

Determination No. 265 of 2000 made under subsection 63 (2) of the Community and Health Services Complaints Act 1993 appoints a specified person to be a member of the Community and Health Rights Advisory Council for a period of two years from 3 August 2000.

Determination No. 266 of 2000 made under section 4 of the *Public Place Names Act 1989* determines the names of certain streets in the Division of Nicholls.

Determination No. 267 of 2000 made under section 4 of the *Public Place Names Act 1989* determines the names of certain streets in the Division of Gordon.

Determination No. 270 of 2000 made under section 54 of the *Chiropractors and Osteopaths Act 1983* revokes Determination No. 188 of 1998 (notified in Gazette S184, dated 10 August 1998) and determines fees payable for the purposes of the Act in accordance with the Schedule.

Determination No. 271 of 2000 made under section 57 of the *Pharmacy Act 1931* revokes Determination No. 205 of 1999 (notified in Gazette No. 36, dated 8 September 1999) and determines fees payable for the purposes of the Act in accordance with the Schedule.

Determination No. 272 of 2000 being the Public Health Risk (Boarding Houses (No. 2) Declaration 2000 made under section 18 of the *Public Health Act 1997* revokes Determination No. 7 of 2000 (notified in Gazette S2, dated 14 January 2000) and declares the management or control of boarding houses in which more than two boarders are lodged for payment to be a public health risk activity and specifically excludes hospitals from the definition of a boarding house.

Determination No. 273 of 2000 made under section 13 (A) of the *Parole Act 1976* appoints a specified person as Acting Chairperson of the Parole Board of the Australian Capital Territory for a period of three years from 10 August 2000.

Determination No. 274 of 2000 made under subsection 12 (1) of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to certain roads and road related areas that are to be used by a single rally car to conduct rally testing.

Determination No. 275 of 2000 made under paragraph 5 (2) of the *Health Professions Boards (Procedures) Act 1989* and section 6 of the *Dentists Act 1931* appoints a specified person to be a member of the Dental Board of the ACT for a period of 12 months or until the completion of the hearing of an inquiry conducted by the Dental Board concerning a registered dentist.

Determination No. 276 of 2000 made under section 12 of the *Poisons Act 1933* revokes all previous declarations in force under section 12 and declares the substances specified in Schedule 4 of the drugs and poisons standard to be restricted substances.

Determination No. 277 of 2000 made under section 67 of the *Tobacco Act 1927* determines fees payable for the purposes of the Act in relation to wholesale tobacco merchants' licences and retail tobacconists' licences.

Subordinate Legislation - Comment

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

Determination No. 193 of 2000 made under the *Taxation Administration Act 1999* revokes the rate previously specified as the market rate component of interest payable and sets the new rate at 6% per annum by order under paragraph 26 (2) (b).

Incorrect gazettal as disallowable instrument

The Committee notes that this determination was incorrectly published in the Gazette as a disallowable instrument. Subsection 26 (2) of the *Taxation Administration Act 1999* empowers to Minister to specify the market rate component by order published in the Gazette.

Determination No. 221 of 2000 made under section 25A of the *Occupational Health and Safety Act 1989* appoints a specified person to be the ACT Occupational Health and Safety Commissioner for a period of three years.

Is this instrument disallowable?

The Committee notes that this appointment was made by a member of the Executive and therefore does not appear to be a disallowable instrument under section 5 of the *Statutory Appointments Act 1994*.

Determination No. 225 of 2000 made under section 14 of the *Kingston Foreshore Development Authority Act 1999* appoints a specified person as the public servant member of the Kingston Foreshore Development Authority (KFDA) Board, effective from 7 July 2000 to 6 July 2003.

Is this instrument disallowable?

The Committee notes that the person appointed as a member is a public servant. An instrument appointing a public servant is not a disallowable instrument under paragraph 6 (a) of the *Statutory Appointments Act 1994*.

Determination No. 209 of 2000 made under section 79 of the *Emergency Management Act 1999* revokes Determination No. 144 of 1999 and determines that the fees payable for the purposes of the Act are as set out in the Schedule.

Under which Act was Determination No. 144 of 1999 made?

The Committee notes the Determination revokes Determination No. 144 of 1999, but gives no indication as to the name of the Act under which Determination No. 144 of 1999 was made.

Determination No. 240 of 2000 made under subsection 5 (2) of the *Legislative Assembly (Members' Staff) Act 1989* is an arrangement approved by the Chief Minister of staff salary allocations for the employment of staff of the Speaker of the Legislative Assembly for the 2000-2001 financial year.

Incorrect title of instrument

The Committee notes that Determination No. 240 of 2000 is entitled "Arrangements for the employment of staff of Members pursuant to section 5 (2)". This title is incorrect as the instrument is an arrangement for the employment of staff of an office-holder pursuant to Part II of the Act.

Determination No. 251 of 2000 made under section 10 of the *Long Service Leave (Cleaning, Building and Property Services) Act 1999* appoints a specified person as Chairperson of the Long Service Leave (Cleaning, Building and Property Services) Board for a period of 3 years commencing 14 July 2000.

Determination No. 252 of 2000 made under section 10 of the *Long Service Leave (Cleaning, Building and Property Services) Act 1999* appoints a specified person as a member of the Long Service Leave (Cleaning, Building and Property Services) Board for a period of 3 years commencing 14 July 2000.

Determination No. 253 of 2000 made under section 11 of the *Long Service Leave (Cleaning, Building and Property Services) Act 1999* appoints a specified person as an acting member of the Long Service Leave (Cleaning, Building and Property Services) Board for a period of 3 years commencing 14 July 2000.

Determination No. 254 of 2000 made under section 11 of the *Long Service Leave (Cleaning, Building and Property Services) Act 1999* appoints a specified person as an acting member of the Long Service Leave (Cleaning, Building and Property Services) Board for a period of 3 years commencing 14 July 2000.

Determination No. 255 of 2000 made under section 10 of the *Long Service Leave (Cleaning, Building and Property Services) Act 1999* appoints a specified person as a member of the Long Service Leave (Cleaning, Building and Property Services) Board for a period of 3 years commencing 14 July 2000.

Retrospectivity and section 7 of the *Subordinate Laws Act 1989*

The Committee notes that Determinations Nos 251 to 255 of 2000 (inclusive) appoint specified persons to be a Chairperson, members and acting Members of the Long Service Leave (Cleaning, Building and Property Services) Board, appeared in the Gazette on 27 July 2000 to take effect from 14 July 2000.

Determination No. 268 of 2000 made under section 11 of the *Health and Community Care Services Act 1996* appoints a specified person to be the Deputy Chair of the Health and Community Care Service Board from 23 July 2000 until 27 January 2003.

Determination No. 269 of 2000 made under section 11 of the *Health and Community Care Services Act 1996* appoints a specified person to be a member of the Health and Community Care Service Board from 23 July 2000 until 27 January 2003.

Retrospectivity and section 7 of the *Subordinate Laws Act 1989*

The Committee notes that Determinations Nos 268 and 269 of 2000 appoint specified persons to be Deputy Chair and a member of the Health and Community Care Service Board appeared in the Gazette on 3 August 2000 to take effect from 23 July 2000.

Comment

In the above cases there is a gap in time between the date on which the instruments purport to come into effect and the date of gazettal of the instruments. To this extent, the instruments purport to be retrospective.

There is, however, no mention in the explanatory statements of the possible effect of section 7 of the *Subordinate Laws Act 1989* on any occurrences decided during the relevant period of retrospectivity.

The possible effect of section 7 of the *Subordinate Laws Act 1989* appears to be of particular relevance to these appointments. It provides as follows:

“7. A subordinate law shall not be expressed to take effect from a date before the date of its notification in the *Gazette* where, if the law so took effect –

- (a) the rights of a person (other than the Territory or a Territory authority) existing at the date of notification would be affected in a manner prejudicial to that person; or
- (b) liabilities would be imposed on a person (other than the Territory or a Territory authority) in respect of any act or omission before the date of notification;

and where any subordinate law contains a provision in contravention of this subsection, that provision is void and of no effect.”

In the case of these instruments, the Committee considers that the Assembly should be advised that no person’s rights have been prejudicially affected, nor any liabilities imposed on any person (other than the Territory or a Territory Authority), during the relevant period of retrospectivity.

Commencement notice

Public Health (Miscellaneous Provisions) Act 1997

The Committee notes a commencement notice fixing 1 August 2000 as the date of commencement of PART II of the Act was published in Gazette No. 32, dated 10 August 2000. A further notice of commencement was published in Gazette No. 33, dated 17 August 2000 fixing 28 August 2000 as the date of commencement of PART II. The Committee notes the absence of an explanatory statement and questions the different dates of commencement of Part II of this Act.

INTERSTATE AGREEMENTS

There is no matter for comment in this report.

Paul Osborne, MLA
Chair

5 September 2000