Legislative Assembly for the ACT

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
(performing the duties of a Scrutiny of Bills and
Subordinate Legislation Committee)

Scrutiny Report

30 MARCH 2009

Report 5

TERMS OF REFERENCE

The Standing Committee on Justice and Community Safety (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 Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*;

(e) report to the Assembly on these or any related matter and if the Assembly is not sitting when the Committee is ready to report on bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

MEMBERS OF THE COMMITTEE

Mrs Vicki Dunne , MLA (Chair)
Ms Mary Porter AM, MLA (Deputy Chair)
Ms Meredith Hunter, 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 comment on them:

EXHIBITION PARK CORPORATION REPEAL BILL 2009

This is a Bill for an Act to repeal the *Exhibition Park Corporation Act 1976*, and for related purposes.

FINANCIAL MANAGEMENT AMENDMENT BILL 2009

This Bill would amend the *Financial Management Act 1996* as a result of an Intergovernmental Agreement under which the Commonwealth Government will net GST administration costs from the Territory's monthly receipt of GST revenue.

UNIT TITLES AMENDMENT BILL 2009

The Unit Titles Amendment Bill 2009 would amend the commencement date, from 31 March 2009 to 1 July 2009, for the provisions of the *Unit Titles Amendment Act 2008 (No. 2)* relating to "implied warranties".

Bill—Comment

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

ANIMAL DISEASES AMENDMENT BILL 2009

This Bill would amend the *Animal Diseases Act* 2005 to clarify aspects of operation and to facilitate the management of future outbreaks of animal diseases in the Territory.

Do provisions of the Bill trespass unduly on personal rights and liberties? – term of reference (c)(i)
Report under section 38 of the *Human Rights Act 2004*

The extension of the power of an authorised person to enter premises and HRA section 12 (the right to privacy)

Explanation of the proposed amendment

Clause 19 proposes an amendment to section 66 of the Act. Some of its key provisions need to be grasped in order to understand the significance of the proposal. Subsection 66(1) of the Act states circumstances in which an authorised person may enter premises without a search warrant.[1] These are:

[1] The person may also enter premises "in accordance with a search warrant": paragraph 66(1)(d).

- "at any reasonable time", if the person "suspects, on reasonable grounds" that an animal, etc at the premises is, or the premises are, infected with a disease; **or** that entry "is necessary to prevent or control the spread of disease" (paragraph 66(1)(a)); or

- "at any reasonable time … premises that the public is entitled to use or that are open to the public" (paragraph 66(1)(b)); or

- "at any time" if the relevant occupier has consented to entry (paragraph 66(1)(c)); or

- "at any time … if the authorised person believes, on reasonable grounds, that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary" (paragraph 66(1)(e)).

Entry under either of paragraph 66(1)(a) or (b) "does not authorise entry into a part of premises that is being used only for residential purposes" (subsection 66(2)).

Subsection 66(8) partially defines the concept of "reasonable time" so that, for paragraph 66(1)(a), it includes "during normal business hours (see paragraph 66(8)(a)), and for paragraph 66(1)(b), it includes "when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money" (see paragraph 66(8)(b)).

By clause 19 of the Bill, it is proposed to insert into subsection 66(8) an additional paragraph, so that it would read:

> (8) In this section:
>
> ***at any reasonable time*** includes at any time—
>
> (c) for a vehicle, includes —
>
> (i) when the vehicle is in use on a road, or road related area or in another place to which the public has access; or
>
> (ii) if the vehicle is a trailer … .

The effect of this amendment would be that an authorised person could enter *at any time* a vehicle when it is on a road, etc **but only if, at that time,** the person holds a suspicion, based on reasonable grounds, of either of the matters stated in paragraph 66(1)(a) – as to which, see above.

<u>The right to privacy</u>

On its face, the amendment engages the right stated in paragraph 12(a) of the *Human Rights Act 2004* that "[e]veryone has the right – (a) not to not to have his or her privacy … interfered with unlawfully or arbitrarily"; … ".

It might be that the amendment is unnecessary. The definition in existing subsection 66(8) is *not* exhaustive, and it could be argued that where the premises are a vehicle, entry at "any reasonable time" also embraces a situation where the vehicle is on a public road, etc. The amendment would make it plain that this is the case.

This might be thought to be a reasonable argument, so that the degree of interference with privacy is not arbitrary,[2] bearing in mind that given subsection 66(2), the person could not under paragraph 66(1)(a) enter any part of the vehicle that was being used only for residential purposes, (although the person could of course do so under 66(1)(e)).

The justification in the Explanatory Statement might be thought to be less convincing. It notes that:

> There is a risk that vehicles could contain infectious material and wittingly or unwittingly the driver could be spreading the disease. For this reason it has been argued that entry into a vehicle or a trailer in use on a public road at any time, for the purposes of inspection for infected animals or contaminated things, can be justified on the grounds that the circumstances are necessarily serious and urgent. This amendment reflects that interpretation of the existing provision and is intended to remove any uncertainty about its scope (page 5).

This explanation confuses the judgment that must be made under paragraph 66(1)(e) with that which must be made under paragraph 66(1)(a). It will be easier and more convincing for an authorised person to form a suspicion that "entry to the premises is necessary to prevent or control the spread of disease" paragraph 66(1)(a), rather than one that "the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary" (paragraph 66(1)(e)).

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

Comment on the Explanatory Statement

(1) There is a spelling error in the last line of the explanation of clause 5 – "compliments" should be "complements".

(2) There is a lack of clarity in the first full paragraph on page 4.

Paragraph 21(d) of the Act states that a declaration must state "the restrictions on entry to, leaving and movement within the area". The Explanatory Statement explains that the purpose of proposed sections 24A to 24C (see clause 13) is "to clarify that *restrictions on movement imposed* under a quarantine declaration made under section 21 of the principal Act, *can include the authorisation* of activities that are occurring within a quarantine area".

To say that "restrictions on movement" imposed under a declaration "can include the authorisation of activities" does not state the position very clearly. The restrictions on movement stated in a declaration will not in terms authorise any departure from the terms of the declaration. The Committee suggests that it would be clearer to follow the words proposed subsection 24A(1) and say that its purpose is to permit the Minister to "authorise entry to, leaving or movement within a quarantine area that would otherwise contravene a restriction stated in [a] quarantine declaration".

[2] Or that if it is, it is justifiable under HRA section 28.

ROADS AND PUBLIC PLACES AMENDMENT BILL 2009

This Bill would amend the *Roads and Public Places Act 1937* to provide for simplified means to remove abandoned vehicles from public places by government officers.

The Committee has no comment to make given its terms of reference, and it does not identify an issue arising under the *Human Rights Act 2004*, other than to say that the revised scheme for the removal and potential disposal of an abandoned vehicle improves on the protection of rights to property.

It has however detected some problems with the Explanatory Statement.

Comment on the Explanatory Statement

(1) The first sentence in the third paragraph in page 1 might be better expressed as "The roads and public places officer must wait two days after the registered operator has ***been given*** the notice before they can move the car. ***(see subsection 12E(3)).***"

(2) Similarly, the third sentence of the explanation of clause 5 on page 2 might be better expressed as "The registered operator then has two days from the time they ***been given*** the notice to remove the vehicle before a roads and public places officer can take action to remove it **(*see subsection 12E(4)(a)*)**".

The point underlying (1) and (2) is that the Act does not speak of a person "receiving" a notice, but of being given one.

(3) Clause 7 would repeal the existing section 12F and substitute a new provision, a critical difference being that the latter would *not* be a strict liability offence. This is commendable, but the explanation of why this change is made is obscure. The Explanatory Statement states:

> Although the offence in the current section 12F of the principal Act was a strict liability offence, the replacement offence is no longer one of strict liability, given that an element of the offence relies upon the defendant's belief. Invoking 'belief' introduces a mental aspect into the offence which would then be negated by the removal of any mental element to the offence, had the offence been one of strictly liability.

The problem is that proposed section 12F does not speak of a person holding a belief of any kind. The reference might be to the word "fails" in proposed paragraph 12(c). This paragraph states as an element of the offence that "the person fails to tell the chief executive [of certain matters]". Perhaps what is suggested is that a person cannot fail to do something (as against simply omitting to do it) unless they have turned their mind to the obligation and then refrained from discharging it.

SUBORDINATE LEGISLATION

Disallowable Instruments—No comment

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

Disallowable Instrument DI2009-18 being the Health Professionals (ACT Nursing and Midwifery Board) Appointment 2009 (No. 1) made under section 5, clause 3.9 of Schedule 3 and clause 4.7 of Schedule 4 of the *Health Professionals Regulation 2004* **appoints a specified person as acting president of the ACT Nursing and Midwifery Board.**

Disallowable Instrument DI2009-19 being the Planning and Development (Fees) Determination 2009 (No. 1) made under section 424 of the *Planning and Development Act 2007* **determines fees payable for the purposes of the Act.**

Disallowable Instrument DI2009-20 being the Road Transport (General) (Application of Road Transport Legislation) Declaration 2009 (No. 1) made under section 13 of the *Road Transport (General) Act 1999* **declares that the road transport legislation does not apply to vehicles for drivers participating in a special stage of the 2009 Rally of Canberra.**

Disallowable Instrument DI2009-21 being the Utilities (Electricity Retail) Licence Conditions Direction 2009 made under section 19 of the *Utilities Act 2000* **revokes DI2008-10 and directs the Independent and Regulatory Commission to give effect to the ACT GreenPower Scheme.**

Disallowable Instrument DI2009-23 being the Utilities (Electricity Feed-in Code) Determination 2009 made under section 63 of the *Utilities Act 2000* **approves the Electricity Feed-in Code.**

Disallowable Instrument DI2009-25 being the Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2009 (No. 1) made under subsection 21(1) of the *Race and Sports Bookmaking Act 2001* **revokes DI2008-248 and provides for a new ACTTAB Limited sub-agency at the Magpies City Club.**

Disallowable Instruments—Comment

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

Positive comment

Disallowable Instrument DI2009-24 being the Road Transport (Public Passenger Services) Regular Route Services Maximum Fares Determination 2009 (No. 1) made under section 23 of the *Road Transport (Public Passenger Services) Act 2001* **revokes DI2008-235 and determines the maximum fares payable on ACTION regular route services.**

The Committee notes that this instrument has a retrospective commencement. The Explanatory Statement for the instrument states:

> This instrument is taken to have commenced on 1 January 2009 (in line with the National Agreement). As no provision of the instrument operates to the disadvantage of any person other than the Territory, section 76 of the *Legislation Act 2001* permits the instrument to commence retrospectively.

The Committee notes that the inclusion of this statement makes it clear that the retrospective commencement is not in conflict with section 76 of the *Legislation Act 2001*. The Committee commends the inclusion of such statements in Explanatory Statements for instruments with retrospective commencement.

Subordinate Law—No comment

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

Subordinate Law SL2009-8 (including a regulatory impact statement) being the Planning and Development Amendment Regulation 2009 (No. 2) made under the *Planning and Development Act 2007* **adds exemptions from the requirement to obtain development approvals for specified building work on existing school sites.**

Subordinate Law—Comment

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

Exemptions from development approval process

Subordinate Law SL2009-3 being the Planning and Development Amendment Regulation 2009 (No. 1) made under the *Planning and Development Act 2007* **increases the types of development that are exempt from requiring a development approval.**

This subordinate law amends the *Planning and Development Regulation 2008*, by adding to the list of development applications that are exempt from the development approval process. Exemptions are currently provided by section 20 of the Planning Development Regulation, which states that a development that complies with Schedule 1 of that Regulation does not require development approval. This subordinate law adds to the exemptions that are set out in Schedule 1.

There is an argument that this may involve a trespass on rights previously established by law, contrary to principle (a)(ii) of the Committee's terms of reference. The basis for such an argument would be that, under the law existing prior to the enactment of this subordinate law, the relevant developments would have been required to go through the development approval process. This, in turn, would have required public notification of the proposals and would have opened the developments up to the third party appeal process. That being the case, there is an argument that potential third party appeal applicants have been denied an existing "right" (ie to appeal). If this is the case, there is also the argument that this makes the "rights" of those potential third party appeal applicants unduly dependent on non-reviewable decisions, contrary to principle (a)(iii) of the Committee's terms of reference.

The Committee notes that the Explanatory Statement for this subordinate law contains a detailed explanation for why the further exemptions are justified. This explanation includes the following overview:

> Most development in the ACT requires a development approval (DA). Some types of development do not require a DA. Development that does not require approval is "DA exempt" development. Often, where a change to an approved development is required, the development approval must be changed with a development approval amendment. Timing can be a critical issue in development and changes to development.

The *Planning and Development Amendment Regulation 2009 (No 1)* (the amending regulation) increases the types of development that are exempt from requiring a development approval, that is, DA exempt development. The amending regulation also increases the types of change that can be made to an approved development without requiring development approval amendment. The amending regulation achieves this by extending the time frame/circumstances in which currently exempt development can be built. The amending regulation does this by:

1. ***permitting minor changes to DA exempt development*** at the start or during construction even if the development (because of the change) would otherwise cease to be exempt. The change must, itself, be DA exempt;

2. ***permitting minor changes to a development authorised by a development approval*** at the start or during construction even if the change is contrary to the development approval of the main development. The change must, itself, be DA exempt. The change must not contravene any conditions of the development approval; and

3. ***providing the planning and land authority with discretion*** to declare that specified low impact changes to a DA exempt single dwelling, on new residential land, can be made without development approval notwithstanding that the changes are non-compliant with DA exemption requirements.

The amending regulation applies to development applications currently being processed and to any development currently being constructed under the *Planning and Development Act 2007* (the Act). This ensures homeowners and builders can immediately realise the benefits of the amending regulation. Most development in the ACT requires a development approval (DA). Some types of development do not require a DA. Development that does not require approval is "DA exempt" development. Often, where a change to an approved development is required, the development approval must be changed with a development approval amendment. Timing can be a critical issue in development and changes to development.

It is a matter for the Legislative Assembly as to whether the explanations provided by the Explanatory Statement are sufficient to justify the limitation of the rights of persons who might otherwise make third party appeals. On their face, however, the Committee considers the impact of the further exemptions to be relatively minor and, therefore, the potential impact on potential third party appeals to be also minor.

REGULATORY IMPACT STATEMENT

The Committee has considered the regulatory impact statement accompanying the following subordinate law and makes no comments on it:

Subordinate Law SL2009-8 (including a regulatory impact statement) being the Planning and Development Amendment Regulation 2009 (No. 2) made under the *Planning and Development Act 2007* **adds exemptions from the requirement to obtain development approvals for specified building work on existing school sites.**

GOVERNMENT RESPONSES

The Committee has received responses from:

- The Treasurer, dated 23 March 2009, in relation to comments made in Scrutiny Report 2 concerning Subordinate Law SL2008-37, being the Road Transport (Third-Party Insurance) Regulation 2008.
- The Minister for Children and Young People, dated 25 March 2009, in relation to comments made in Scrutiny Report 2 concerning Disallowable Instrument DI2008-231, being the Children and Young People (Visiting Conditions) Declaration 2008.

The Committee wishes to thank the Treasurer and the Minister for Children and Young People for their helpful responses.

Vicki Dunne, MLA
Chair

March 2009

JUSTICE AND COMMUNITY SAFETY—STANDING COMMITTEE (PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE)

REPORTS—2008-2009

OUTSTANDING RESPONSES

Bills/Subordinate Legislation

Report 1, dated 10 December 2008

Development Application (Block 20 Section 23 Hume) Assessment Facilitation Bill 2008

Report 2, dated 4 February 2009

Disallowable Instrument DI2008-213 - Health Professionals (Medical Radiation Scientists Board) Appointment 2008 (No. 2)

Disallowable Instrument DI2008-221 - Emergencies (Bushfire Council Members) Appointment 2008 (No. 2)

Disallowable Instrument DI2008-222 - Emergencies (Bushfire Council Members) Appointment 2008 (No. 3)

Education Amendment Bill 2008 (PMB)

Freedom of Information Amendment Bill 2008 (No. 2)

Report 3, dated 23 February 2009

Disallowable Instrument DI2008-281 - Children and Young People (Family Group Conference) Standards 2008 (No. 1)

Disallowable Instrument DI2009-3 - Public Place Names (Casey) Determination 2009 (No. 1)

Subordinate Law SL2008-55 - Firearms Regulation 2008

Report 4, dated 23 March 2009

Disallowable Instrument DI2009-15 - Crimes (Sentence Administration) (Sentence Administration Board) Appointment 2009 (No. 1)

First Home Owner Grant Amendment Bill 2009

Subordinate Law SL2008-49 - Territory-owned Corporations Regulation 2008 (No. 2)

Katy Gallagher MLA

DEPUTY CHIEF MINISTER

TREASURER
MINISTER FOR HEALTH
MINISTER FOR COMMUNITY SERVICES
MINISTER FOR WOMEN

MEMBER FOR MOLONGLO

Ms Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
C/- Scrutiny Committee Secretary
ACT Legislative Assembly

Dear Ms Dunne

I am writing in response to comments in the Scrutiny of Bills Report No 2 of 2 February 2009 in relation to the *Road Transport (Third-Party Insurance) Regulation 2008* (SL2008-37) (the Regulation) regarding the nature of a strict liability offence under section 13 of the Regulation. The Committee was particularly concerned that the Explanatory Statement and Regulatory Impact Statement (RIS) accompanying the Regulation did not make reference to or justify the strict liability offence applied by section 13 and that such an offence *may* trespass unduly on rights previously established by law.

I have considered the Committee's comments and offer the following comments. The strict liability provision under section 13 has been in existence since the commencement of the former compulsory third-party scheme in 1948 and was carried over to the new regulation in the interests of continuity. As such, this provision does not infringe on any rights previously established by law and is therefore considered to be consistent with the scrutiny principles of the Committee. The RIS made no mention of this provision as it simply continued existing law in relation to the strict liability offence under section 13 of the Regulation.

In light of the Committee drawing attention to this provision, I have now considered whether it is necessary to continue applying the strict liability offence in this case.

The offence in section 13 applies to the situation where a person fails to pay any additional CTP premium as a result of section 12. Section 12 deals with a change in the construction or use of a vehicle during its period of registration that would have the effect of requiring a higher CTP premium than the original CTP policy obtained on registration of the vehicle. The premiums charged for a CTP policy are payable through the registration process to the Road Traffic Authority (RTA). Therefore, the only cases where the additional premium under section 12 may

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

not be paid would be if the change of construction or use was not registered with the RTA. As such, section 13 could only be effectively enforced in the event of a motor accident where the change in construction or use would become evident.

Section 168 of the new *Road Transport (Third-Party Insurance) Act 2008* (the Act) provides a modernised solution, addressing conduct that would otherwise be captured by section 13 while still preserving a motor accident victim's right to compensation. In the event of a motor accident, section 168 allows the CTP insurer to recover costs reasonably incurred in the claim up to the value of $2000 if the insured person deliberately avoided paying their full premium (including any additional premium payable under section 12). Given that this provision allows a commercial solution to be pursued by an insurer who may not have received their full premium, it is not necessary to make it an absolute offence to which an automatic $2000 penalty would apply.

Therefore, I consider that the offence created under section 13 is no longer necessary in the new scheme and propose to repeal the entire section.

I trust these comments assist the Committee and address its concerns.

Yours sincerely

K. Gallagher

Katy Gallagher MLA
Treasurer

23.3.09

Andrew Barr MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR CHILDREN AND YOUNG PEOPLE
MINISTER FOR PLANNING
MINISTER FOR TOURISM, SPORT AND RECREATION

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mrs Dunne

Thank you for your Scrutiny Report of 3 February 2009. I offer the following response in relation to the Committee's comments about *Children and Young People (Visiting Conditions) Declaration 2008* (DI2008-231) ('the declaration').

The declaration is made under the *Children and Young People Act 2008* ('the Act') which allows the Chief Executive to declare conditions that apply in relation to visits to a detention place. The Act outlines minimum entitlements for young detainees to visits, phone calls and mail. The Act also provides authority for the Chief Executive to restrict visits, phone calls and mail in prescribed circumstances, including circumstances in which the Chief Executive suspects that the visit, phone call or mail may undermine security or good order at a detention place or cause harm to a young detainee.

I draw to the attention of the Committee that *Children and Young People (Visits, Phone Calls and Correspondence) Policy and Procedures 2008 (No 1)* (Notifiable Instrument NI2008-384) provides guidance to staff to facilitate visits, phone calls and correspondence for young detainees in accordance with their statutory entitlements. It also outlines procedures for staff to restrict these entitlements in necessary circumstances. The declaration should be read and understood within this legislative and policy context.

The Committee raises issues regarding mechanisms for review and appeal of decisions made under, or in relation to, the instrument. As identified by the Committee, these decisions are not reviewable decisions within the scope of chapter 24 of the Act. The *Children and Young People (Provision of Information, Review of Decisions and Complaints) Policy and Procedures 2008 (No 1)* (Notifiable

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0011 Fax (02) 6205 0157 Email barr@act.gov.au

Instrument NI2008-391) provides for internal review of decisions on the initiative of an administrator or at the request of a person affected by an administrative decision, including a young detainee, family member, significant person or visitor.

The Committee seeks my advice as to whether the only avenue of review for a person who is denied approval or upon whom a condition is imposed with which they do not agree (or, indeed, of any decision under this instrument) is under the *Administrative Decisions (Judicial Review) Act 1989* ('AD (JR) Act'). As outlined in the *Children and Young People (Provision of Information, Review of Decisions and Complaints) Policy and Procedures 2008 (No 1)* (Notifiable Instrument NI2008-391), the AD (JR) Act provides a mechanism for external review of administrative decisions made under Territory laws. It is the primary mechanism for external review of administrative decisions made under the criminal matters chapters of the Act (chapters 4 to 9), with the exception of certain disciplinary decisions taken against young detainees under chapters 8 and 9.

As noted by the Committee, the *Children and Young People (Provision of Information, Review of Decisions and Complaints) Policy and Procedures 2008 (No 1)* (Notifiable Instrument NI2008-391) requires that all reasonable assistance is provided by staff to a young detainee who wishes to apply for external review of any administrative decision. The Committee seeks my advice as to what "all reasonable assistance" would encompass. This would include, but is not limited to, facilitating contact for a young detainee with a legal representative or support person/s, assistance in preparing a written application and allowing a young detainee to have access to facilities to seek a review, such as a telephone and writing materials. Additional assistance, of course, may be required for young detainees with special needs and this would be provided by staff.

I trust that the above comments clarify the issues raised and I thank the Committee for its comments.

Yours sincerely

Andrew Barr MLA
Minister for Children and Young People

25 MAR 2009