Legislative Assembly for the ACT

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

Scrutiny Report

15 JANUARY 2004

Report 42

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.

Members of the Committee

Mr Bill Stefaniak, MLA (Chair)
Mr John Hargreaves, MLA (Deputy Chair)
Ms Kerrie Tucker, MLA

Legal Adviser: Mr Peter Bayne
Secretary: Mr 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 - Comment

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

Human Rights Bill 2003

Introduction

In its overview of the Bill, the Explanatory Statement states:

> The main purpose of this Bill is to recognise fundamental civil and political rights in Territory law. In particular, the Bill ensures that, to the maximum extent possible, all Territory statutes and statutory instruments are interpreted in a way that respects and protects the human rights set out in Part 3 of the Bill.
>
> The Bill also promotes respect for and protection of human rights in the development of new law and increases transparency about the consideration of human rights in parliamentary procedures.

To this extent, the Committee unreservedly commends the Bill from the perspective that it would enhance the protection of personal rights and liberties.

There are, however, other elements of the Bill that raise for debate in the Assembly questions about whether those elements give, or would lead to, insufficient recognition of personal rights and liberties.

A key element in the bill is found in clauses 32 and 33. The Explanatory Statement describes them in these words:

> Clause 32 Declaration of incompatibility
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> Clause 32 (1) provides the Supreme Court with the power to issue a declaration of incompatibility if the Court is satisfied that a Territory law is not consistent with a human right. The power is only exercisable if the issue is raised for consideration during a proceeding being heard by the court.
>
> The purpose of the declaration is to draw to the attention of the Government and the Assembly a finding of incompatibility by the Court. This is an essential element in the interpretive and dialogue model upon which the Bill is based. To achieve this purpose clause 32 (2) requires that if the court makes a declaration of incompatibility the registrar of the court must promptly give a copy of the declaration to the Attorney General.
>
> Clause 32(3) provides that a declaration of incompatibility does not affect the validity, operation or enforcement of the law or the rights or obligations of anyone.

Clause 33 Attorney General's action on receiving declaration of incompatibility

Clause 33 applies if the Attorney General receives a copy of a declaration of incompatibility. Clause 33 (2) imposes an obligation upon the Attorney General to present a copy of the declaration to the Legislative Assembly within six sitting days after the day the Attorney General receives the copy. Clause 33 (3) requires the Attorney General to prepare a written response to the declaration and present it to the Legislative Assembly within six months of the day the declaration is presented. This clause does not bind the Government or the Assembly to amend the law in question.

Is the conferral of a limited judicial review function on the Supreme Court a basis for a concern that in this respect the Bill is an undue trespass on personal rights and liberties?

Under the Bill the Supreme Court of the Territory would have power, exercisable by the making of a declaration, to find that some law of the Territory is inconsistent with one or more of the rights stated in part 3 of the Bill. The effect of a declaration is however limited; subclause 32(3). This may nevertheless be spoken as of a judicial power of review.

What judicial review under a Bill of Rights involves

A Canadian writer has explained the general character of a rights challenge; (D Beatty, The Canadian Charter of Rights: Lessons and Laments, in G W Anderson, *Rights and Democracy* (1999)). Those challenging the law must first establish to the court the "interpretive [and] factual basis of the claim". That is, he, she (or it) must

- show "that the interest or activity for which protection is sought falls within one of the [guaranteed] rights and freedoms, and
- that the challenged law, etc "does limit or impinge on their constitutional rights as a matter of fact".

If these matters are made out, then the government (or other person of body defending the law) may nevertheless oppose the making of a declaration by showing either (or perhaps both) that

- the law is justified under an exception to the scope of the right as that exception is stated in the statement of the right; and/or

- the law is justified under the general exception to the scope of the right as stated in clause 28.

Clause 28 is critical.

28 Human rights may be limited

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

[Comment. There appears to be an area of doubt here as to how clause 28 relates to the specific exceptions that attach to some rights. This should perhaps be clarified.]

Clause 28 may require that the relevant law be shown to be "pursuing a pressing social objective, *and* that it is doing so by means of a policy instrument that impairs the rights involved (1) as little as possible (the test of rationality or necessity), and (2) in a way that is proportional with how the rights of others, in similar circumstances, have been treated elsewhere (the test of consistency and equality)" (D Beatty, above at 5-6).

To illustrate by example, suppose a law provided that

> A proprietor of premises that is a public place must not provide adult entertainment at the premises.

Suppose "adult entertainment" was defined to mean – "entertainment that a reasonable adult would consider inappropriate to be seen by a child because it involves nudity or a state of dress that offends against the standards of propriety generally accepted by reasonable adults".

(This is a practical example. Such a law has in the past been proposed in the Australian Capital Territory. There are many USA cases where such laws have been challenged on Bill of Rights grounds.)

There are at least two sorts of complex rights challenges that might be made to the 'validity' of such a law.

The first is whether the definition of "adult entertainment" is so wide that the law is invalid on a 'void for vagueness' ground. Courts of the United States have found that such a doctrine is inherent in the due process clauses of the constitutions of the federal and state governments. The primary rationale now offered by the American courts is that a vague law is invalid if it confers too much discretion on the police. To the same extent, such a law deprives the courts of their function in adjudging criminal guilt. The secondary rationale is that a vague law is objectionable because it does not give fair notice of just what kinds of conduct is prohibited by the law. The application of a 'void for vagueness' principle is of course an uncertain matter.

The basis for this line of argument under the Bill might lie in subclause 21(1), on the ground that the court could not properly apply the law, and/or that its function may be usurped by the prosecuting authorities.

The more obvious rights challenge is to allege that the law is an impermissible restriction on free speech. Subclause 16(2) of the Bill provides:

> (2) Everyone has the right to freedom of expression. …

A free speech claim is a basis on which some such laws have been found invalid by USA courts; an example is *Miller v City of South Bend* (1990) 904 F 2d 1081. To determine this question, the Territory Supreme Court would probably need to consider these sorts of issues.

- Whether some kinds of "adult entertainment" (such as nude dancing) are properly characterised as free speech?

The courts of the USA have taken speech to include nude dancing, and it would be open for the Supreme Court of the ACT to so find.

- What kinds of harms that might be caused by the speech content of "adult entertainment" would be recognised as harms that could outweigh the expressive value of the entertainment? (This question would arise in the application of clause 28.)

It is probable that the Supreme Court would find that the free speech clause did not forbid, for example, the prohibition of obscenity, or of various forms of hate speech. In the *Miller* case, which concerned nude dancing in a place of public entertainment, Judge Posner allowed that a plausible concern "is fear that striptease dancing in bars stimulates or facilitates prostitution" (ibid 1100). He recognised other kinds of interests that a legislature may take into account in regulating erotic dancing and nudity: "Hostility to public nudity may even be connected with concepts of dignity and equality that are central to our political and social institutions" (ibid 1104).

- Did those harms that the evidence established might be caused by the speech content of "adult entertainment" outweigh the expressive value of the entertainment? (This question would arise in the application of clause 28.)

A possible test here is whether the restriction on the "adult entertainment" was appropriate and adapted to serve the protection of that (or those) other value(s) that would be harmed by the particular entertainment. See above for how clause 28 might be applied. For example, the USA courts have allowed that "the geographical scope of a restriction on expressive activity bears on the reasonableness of the restriction" (ibid 1102). Thus, the courts have upheld laws that restrict erotic dancing and the like to particular areas of a city or other locality.

This apparently simple example reveals the complex nature of the issues of fact and law thrown up by a 'rights' challenge to a law.

A number of matters are apparent.

- Rights have an open texture that permit different people to have very different views about the core of what is signified by the rights, as well as about what might be implied.

- The difficulty is compounded by the fact that, in a particular context, more than one right will be regarded as relevant, and these rights will be in conflict. In other words, the rights will pull in different directions in relation to the issue of whether some law is or is not justified by a rights approach.

- Judicial disagreement will be commonplace. An instructive example is the decision of the NSW Court of Appeal in *Cachia v Hanes* (1991) 23 NSWLR 304. In the judgment of Kirby P there is a persuasive 'rights' policy based argument for the view that a litigant in person is entitled to be remunerated (via a costs order) for the time sent in preparing and conducting the case. In the judgment of Handley JA in this case there is an equally persuasive argument that this would be undesirable.

Should judges review the legality of laws against rights standards?

These matters raise the question whether the judiciary is suited to the evaluation of laws against the rights standards that would be stated in this Bill. This is not simply a question of judicial competence to make the judgements required. A rights issue is raised.

It may be argued that the vesting of a power of judicial review in the Supreme Court may have an adverse effect of the observance of rights in the community. This effect will derive from the fact that the exercise of the power of judicial review will undermine the independence of the judiciary.

This is particularly so given the attenuated form of judicial review proposed by this Bill.

The argument starts from the premise that the liberties and rights of the citizens are best protected if there is in the community widespread acceptance of the rule of law. That is, that disputes are best settled by reference to the law, and that it is the judges who determine what the laws mean. That is, that rule of law works because the citizenry accept that they should take their disputes to the courts (and not settle them by self-help) and then that they accept the verdict of the courts - whether or not they are parties to a dispute which has led to a court judgment.

It is then argued that the degree of this respect turns significantly on the extent to which the citizenry perceives the judiciary to be independent of the political branches of government. Judicial independence is not in this sense a function simply of their tenure of appointment and the extent to which their salaries are fixed (although these issues, settled in late 17th and then 18th century England are critical). Public perception of judicial independence turns on the extent to which the judges are seen by the citizenry to be doing things that are distinctly different to politicians. In particular, it is argued that judges should not become involved in the tasks of the legislature and the executive. In particular, they should have no role in determining what the law should be. That is seen as a legislative function the province of the elected parliamentarians. Nor should they give advice about the law.

It is also argued that critical to whether the public perceive the role of the judges to be distinctly different to that of the political branches of government is the manner in which judges give reasons for the way they decide disputes. It is argued that they need to employ a distinctive form of reasoning that is distinctly different to the way a politician or anyone else would reason about how to solve the dispute.

Why is it important that judges behave in these ways? It is that if they are seen to behave as politicians do, then they can be criticised as politicians are, and amenable to removal from office, as are politicians. (There are some who would argue that judges should thus be elected for terms of office.)

Thus, to the extent that judges do not play a distinctive role, and/or become involved in the work of the political branches of government, they undermine public respect for what they do in the exercise of their judicial functions. The central element of that function is of course to decide disputes by making orders binding on the parties. When public respect is undermined, the danger arises that respect for the rule of law is undermined. In turn, this has an adverse effect on the extent to which the rights of citizens are observed within the community.

The analysis just made accords with the theory applied by the High Court to determine if a non-judicial function vested in a "Chapter III judge" is compatible with the exercise by the judge of her or his judicial power. A Chapter III judge is one appointed to exercise the judicial power of the Commonwealth. This probably does not include a judge of the Supreme Court of the Territory. But the theory applied to assess incompatibility may be taken into account by the Legislative Assembly when it assesses whether a power given to the Supreme Court is one that would, by reason of being incompatible with the judicial power of the Supreme Court, lead to the result that the conferral of the non-judicial power amounts to an undue trespass on the rights and liberties of persons.

The High Court approach is founded on the fact that separation of powers theory applies so far as concerns the relationship between the judicial branch on the one hand, and the legislative and executive on the other. It is important to understand why this constitutional arrangement is seen to be desirable. The rationale is explicitly linked to the liberty of the citizen.

In *Wilson v Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 189 CLR 1 at 10ff the majority of the High Court said:

> The functions of the judicial branch are constitutionally separated from the functions of the Legislature and the Executive - the political branches of government …
>
> The functions of government are not separated because the powers of one branch could not be exercised effectively by the repository of the powers of another [11] branch. To the contrary, the separation of functions is designed to provide checks and balances on the exercise of power by the respective organs of government in which the powers are reposed.
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> Harrison Moore wrote that under the Australian Constitution there was, between legislative and executive power on the one hand and judicial power on the other, "a great cleavage". The function of the federal judicial branch is the quelling of justiciable controversies, whether between citizens (individual or corporate), between citizens and executive government (in civil and criminal matters) and between the various polities in the federation. This is discharged by ascertainment of facts, application of legal criteria and the exercise, where appropriate, of judicial

discretion. The result is promulgated in public and **implemented by binding orders**. [Emphasis added.] The institutional separation of the judicial power assists the public perception, central to the system of government as a whole, that these controversies have been quelled by judges acting independently of either of the other branches of government.

The separation of the judicial function from the other functions of government advances two constitutional objectives: the guarantee of liberty and, to that end, the independence of Ch III judges. In *R v Davison* [(1954) 90 CLR 353 at 380-381], Kitto J identified the conceptual basis of the Constitution's division of the functions of government:

> "It is well to remember that the framers of the Constitution, in distributing the functions of government amongst separate organs, were giving effect to a doctrine which was not a product of abstract reasoning alone, and was not based upon precise definitions of the terms employed. As an assertion of the two propositions that government is in its nature divisible into law-making, executive action and judicial decision, and that it is necessary for the protection of the individual liberty of the citizen that these three functions should be to some extent dispersed rather than concentrated in one set of hands, the doctrine of the separation of powers as developed in political philosophy was based upon observation of the experience of democratic states, and particularly upon [12] observation of the development and working of the system of government which had grown up in England."

In *R v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd* [(1970) 123 CLR 361 at 390-393], Windeyer J traced back the doctrine of separation of powers to Montesquieu's proposition that "there is no liberty if the judiciary power be not separated from the legislative and executive power". Blackstone adapted Montesquieu's proposition to the realities of the British Constitution, especially the law-making function of the Judiciary. Blackstone, as Brennan J has noted elsewhere, commended as a protection of liberty "the separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure, by the crown".

The separation of the judiciary is no mere theoretical construct. Blackstone rightly perceived that liberty is not secured merely by the creation of separate institutions, some judicial and some political, but also by separating the judges who constitute the judicial institutions from those who perform executive and legislative functions. ….

The separation of judicial function from the political functions of government is a further constitutional imperative that is designed to achieve the same end, not only by avoiding the occasions when political influence might affect judicial independence but by proscribing occasions that might sap public confidence in the independence of the Judiciary.

In this light, the High Court has articulated a doctrine designed to state when the vesting of a non-judicial power in a judge would be incompatible with the exercise by the judge of her or his judicial power. It is important to see that the rationale for this doctrine is the same as that which underpins separation of powers theory. In *Wilson* (at 15-16) the majority said that the purpose of the incompatibility doctrine

> is to protect effectively the independence of Ch III judges from the political branches of government as a guarantee of liberty and as a buttress to public confidence in the administration of justice by Ch III courts. …
>
> The capacity of Ch III judges to perform their judicial duties throughout the terms of their appointment independently of the political branches of government cannot be prejudiced by their appointment to non-judicial office or to perform non-judicial functions.

The majority in *Wilson* said (at 13):

> The separation of judicial functions from the political functions of government is not so rigid as to preclude the conferring on a Ch III judge with the judge's consent of certain kinds of non-judicial powers. The difficult question is to determine the dividing line between the kinds of non-judicial powers that can, and those that cannot, be so conferred. In *Grollo* [(1995) 184 CLR 348 at 376], McHugh J pointed to this difficulty:
>
> > "Clearly, a tension exists between complying with the principle of the separation of powers and vesting powers in federal judges as persona designata. If the separation of powers doctrine is to continue effectively as one of the bulwarks of liberty enacted by the Constitution, the incompatibility qualification on the persona designata doctrine is a necessity.

The majority in *Wilson* (at 14) approved of a statement by the majority in *Grollo* (at 365) that one kind of incompatibility "might consist in the performance of non-judicial functions of such a nature that public confidence in the integrity of the judiciary as an institution or in the capacity of the individual Judge to perform his or her judicial functions with integrity is diminished".

The non-judicial function which this Bill would confer on the Supreme Court of the Territory is the power in clause 28 to make a **non-binding** declaration of the invalidity of a Territory law. Whether such a power may be validly vested in the Supreme Court is not the point to which the Committee now draws attention. Rather, it is that it appears arguable that this power is incompatible with the judicial function of the Supreme Court, and given that the rationale for the incompatibility theory is the protection of the liberty of the citizen, there is an issue as to whether clause 28 is an undue trespass on personal rights and liberties.

The basis for this kind of argument is indicated by what the Consultative Committee said about the role of the Supreme Court under its proposals. (In this respect, the Bill follows the proposals.) The Consultative Committee said (*towards an ACT human rights act* (2003) at 4.33):

> … a Declaration of Incompatibility [under clause 28] is a sufficiently strong and appropriate enforcement mechanism to underpin the dialogue approach of the ACT *Human Rights Act*. Human rights issues may involve complex questions about morality and the allocation of public resources. … These are questions that should properly be finally resolved by the legislature, **with the assistance and advice of the judiciary** (emphasis added).

The Explanatory Statement accepts that the Bill is based on "the interpretive and dialogue model" (at 6).

It is, however, the conferral of that kind of role on the Supreme Court that is the basis for the argument - as explained above - that clause 28 might be seen as an undue trespass on personal rights and liberties.

What exacerbates the problem is the nature of the task the Supreme Court must perform when it gives assistance and advice to the legislature. Judicial review against rights standards will or may have two effects:

- it will, on the one hand, vest in the Supreme Court a power to impinge upon the range of choices open to the other branches in respect of a vast range of social, political and economic issues, and

- on the other, may thereby diminish to some extent the authority of the legislature and ultimately of the power of the citizenry to govern themselves.

As these matters became evident, there would be a diminution of respect for the judiciary in the eyes of the legislature, the executive and the citizenry. There would also be calls for vetting of judges who decide these cases in order to ascertain the extent to which they would exercise their power of review.

Even allowing for the limited scope of judicial review that is part of this dialogue model, there is a clear risk that judges will be seen to be part of the political process and not independent of it. This in turn may lead to disrespect for the judges, disrespect for their authority, and lack of legitimacy for their decisions.

For these sorts of reasons there are many judges with experience of the task of judicial review who say that this is not an appropriate judicial function.

The late Judge Learned Hand, a highly respected judge in the USA, said in 1959 that "[t]he answers to the questions that [Bills of Rights] raise demand the appraisal and balancing of human values which there are no scales to weigh" (quoted in P Brest, *Processes of Constitutional Decision-Making* (1975) 958).

It is also instructive to note what the Chief Justice of the Canadian Supreme Court has said concerning the first 10 years of the operation of the Canadian *Charter*.

> "We are having thrust upon us many policy issues of profound importance left unresolved by the other branches of government … Litigation is being substituted for politics; the judicial process for the political process" (quoted in Justice J C McPherson, "The Impact of the Canadian Charter of Rights and Freedoms on Executive and Judicial Behaviour" in G W Anderson, *Rights and Democracy* (1999) 125 at 136).

Justice McPherson, a Canadian trial judge, said this of his experience of cases where the Charter is invoked:

> "The traditional role of Canadian courts is one they inherited from the English courts, to interpret and apply the law. The *Charter* compels the courts to evaluate the law against the yardstick of the rights protected in the *Charter* and to not apply the law if it is found wanting" (ibid at 132).

He makes clear this task of evaluation requires the court to consider "the policy reasons underlying the challenged law" (ibid at 134), for it this that is the "overt and pronounced focus" of the material that is placed before the court.

Sir Gerard Brennan, a former Chief Justice of the High Court of the Commonwealth, has argued that to vest in the courts the function of review of legislation against rights standards would bring about "a massive constitutional change" which would evoke "a corresponding change in the judicial function and judicial method" (Sir Gerard Brennan, "The Impact of a Bill of Rights on the Role of the Judiciary: An Australian Response", paper delivered to the conference "Australia and Human Rights: Where To From Here?", ANU, July 1992, p 2). He said:

> "At the end of the litigating day, the translation of political, social and ethical values into legal principles must be articulated by the judge. He or she cannot avoid giving effect to his or her values in determining whether an impugned law or executive act is obnoxious to a Bill of Rights and unjustifiable in the collective interest" (ibid, p 15).

Judicial activism in rights protection

On the other hand, there are many academics and judges who are confident that the judges should find answers to these questions. There is throughout the report of the Consultative Committee - ***towards an ACT human rights act*** **(2003) -** a justification of its proposals, and the Scrutiny Committee means no disservice by not repeating them here.

The Committee recommends to the members of the Assembly that the report be carefully studied. In particular , the Committee recommends that members of the Assembly refer to the following paragraphs in the report:

2.76-2.85; 2.90-2.108; 3.30-3.55; 4.1-4.7; and 4.29-4.52.

One such Australian judge who considers that there is an appropriate judicial method to apply a bill of rights is Mr Justice Kirby of the High Court of Australia. He is an advocate of judicial activism in the application of human rights concepts in those situations where judges have "inescapable opportunities for choice, decision and judgment" in the application of statute and common law ((1988) 62 *Australian Law Journal* at 530). Of course, a Bill of Rights would greatly expand those opportunities.

He likens the task of the judge in protecting human rights to "a teacher of the community" (ibid at 526). He allows that judges will not "always give the 'right' answers on such questions" and that an answer given at one point of time may be different to that given at another. But he says,

> There is no getting away from the fact that, in important decisions on human rights, the courts have frequently cut the Gordian knot where the legislature and the executive have lamentably failed to do so. It is in this sense that, by its dialogue with the people and the other branches of government, the courts can become a kind of "political conscience" of the community which they serve (ibid 526-527).

Two allied issues

1. The effect of clause 32 (reading subclauses 32(2) and (3) together) is to vest a non-judicial power in the Supreme Court of the Territory. The power is non-judicial because a declaration of incompatibility does not affect "the rights or obligations of anyone" paragraph 32(3)b)). This is quite the reverse of what is taken to be the hallmark of an exercise of judicial power - that is, that it does affect the rights or obligations of someone.

An issue that arises is whether it is competent for the Legislative Assembly to vest such a non-judicial power in the Supreme Court. This is a very complex matter that is not pursued here. One way to pursue the issue is to ask whether the *Kable* doctrine has the result that the Supreme Court cannot be vested with non-judicial powers that are incompatible with the exercise by the Court of the judicial review power of the Commonwealth; see D Clark, *Principles of Australian Public Law* (2003) 86ff.

Secondly, the matter might be argued in terms of the ambit of the power to make laws that has been conferred on the Legislative Assembly by the *Australian Capital Territory (Self-Government) Act 1988*. It might be argued that in this power there is an implicit limit to the effect that it would not be exercised so as to confer on the Supreme Court a non-judicial power the exercise of which would be incompatible with the exercise by it of judicial power.

Whether or not there is any constitutional problem with clause 32, it underlines the point that this power is not one that traditionally has been thought appropriate to confer on a court.

2 The second point to note is that it is likely that there may not be any avenue of appeal from a decision of the Supreme Court acting under clause 32 to any federal court (including in particular the High Court). This is because the exercise of the power in clause 32 does not involve the adjudication of a matter, and/or that there is not involved an exercise of judicial power.

Moreover, it may well be that no person holding office as a Federal Court judge could sit on an ACT court - whether the Supreme Court or the Court of Appeal - when that court was called on to exercise the power in clause 32 or to hear an appeal against the exercise of that power. This would be so on the basis that the Federal Court judge would be involved in the exercise of non-judicial power incompatible with her or his office as a Federal Court judge; see the *Wilson* case (above).

Are any of the rights stated in Part 3 of the Bill a matter of concern from a human rights perspective?

It is clear that the exercise by person A of her or his rights can impinge on the rights of person B. The provisions of clause 22 of the Bill, which state several "Rights in criminal proceedings", point to the problem. This clause states several rights of the accused who is charged with a criminal offence. There is undoubtedly a public interest in the accused having a fair trial. It has also been judicially recognised that the public interest also embraces the interest of the public as a whole that the guilty are convicted. On some trials, such as those where the accused is charged with sexual assault, it is also allowed that the complainant has an interest - which may be fairly seen as a personal right - in how the trial is conducted.

Much could be said about the detail of clause 22 from the perspective of the rights of the public and of those who undoubtedly are or who claim to be victims of the crime with which the accused is charged. The queries posed below are simply indicative of the general issue.

- Does the right of the accused "to examine prosecution witnesses" (paragraph 22(2)(g)) afford to an unrepresented accused an unrestricted right to cross-examine a prosecution witness - say where the witness is the complainant of a sexual offence? (And see how this right is buttressed by the right in paragraph 22(2)(d) for the accused "to defend himself or herself personally".) More generally, what effect does this right have on the rape-shield laws and those laws that govern how the complainant of a sexual offence may be examined on the trial?
- Does the right of the accused "to have legal assistance provided to him or her, if the interests of justice require that the assistance be provided, and to have the legal assistance provided without payment if he or she cannot afford to pay for the assistance" (paragraph 22(2)(f)) mean that the trial must be stopped if someone does not provide that legal assistance?
- Does the right of the accused " not to be compelled to testify against himself or herself or to confess guilt" mean that on the trial itself, the accused may give evidence, and then refuse on cross-examination to answer any questions that would tend to implicate her or him in the commission of the offence charged?

The selection of the rights for recognition

The Committee acknowledges that clause 7 provides:

> 7 Rights apart from Act
>
> This Act is not exhaustive of the rights an individual may have under domestic or international law.

It also notes that in the Explanatory Statement it is stated:

> The purpose of this clause is to ensure the Act is not misused for the purpose of limiting a right a person may have on the basis that the right is not recognised in this Bill or is recognised to a lesser extent.

It is nevertheless the case that the rights recognised in this Bill have a different status in law. They provide a standard against which may be measured the compatibility of an ACT law with a protected right. The effect of a Supreme Court declaration of incompatibility is to cause the government of the day to take certain steps in the Assembly, but it is apparent that the fact of the declaration will place political pressure on the government to amend the law to remove the incompatibility.

It is thus of relevance from a rights protection perspective to ask why it is that other rights have not been recognised by the Bill. At least two different sorts of questions can be raised.

The Consultative Committee (above, at 5.32) saw an inextricable link between civil and political rights (some of which have been stated in Part 3 of the Bill) and economic, social and cultural rights. Its recommendation that rights of the latter kind be stated in the Bill was based on a view that they were "indivisible" from rights of the former kind. By its recommendations, it hoped that "the simplistic distinctions often drawn between economic, social and cultural rights on the one hand and civil and political rights on the other will be seen to have no substance".

The Bill proceeds on there being a sensible division between the two kinds of rights. A more particular concern for some will be that recommendations in the Consultative Committee report for recognition of a right to self-determination, and rights of minorities, may fail to accord sufficient rights recognition for the indigenous community.

From another and quire different perspective, a matter of concern is the omission of any recognition of the civil right of protection of property. This right is recognised in Article 17 of the Universal Declaration of Human Rights (the foundational document of the international human rights framework):

> Article 17
>
> 1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

The Universal Declaration of Human Rights has a status at least commensurate with that of the ICCPR and the ICESCR - the two international human rights treaties that inspired the recommendations of the Consultative Committee (see above at 2.25). Even if the decision to omit reference to the ICESCR rights in the Bill is justified, the omission of a recognition of a right to property is harder to justify, given that it is clearly a civil right. The Explanatory Statement (at 4) acknowledges the primacy of the Universal Declaration.

In addition, our legal and constitutional tradition attaches great significance to the right to property. In one case, a judge observed that

> there is a wealth of authority establishing that there is a common law right recognised in this country protecting citizens from invasions of their private rights to property and possessions. Indeed, the whole history of the law is fundamentally based on the law of trespass and the protection of citizens from interference by unlawful seizure or removal of that citizen's property by force or without the consent [of] the citizen: (see *Police v Carbone* (Supreme Court of South Australia, 26 March 1997).

The Committee appreciates that some aspects of a right to property have a higher status in the law of the Territory than a right stated in this Bill. Under paragraph 23(1)(a) of the *Australian Capital Territory (Self-Government) Act 1988* "the Assembly has no power to make laws with respect to: (a) the acquisition of property otherwise than on just terms; …".

This right is, however, narrower than the broader right to property stated in Article 17 of the Universal Declaration of Human Rights.

Compatibility statements accompanying Bills

The Committee notes that under sub-clause 37, the Attorney-General must prepare a compatibility statement in respect only of a bill presented to the Legislative Assembly by a Minister. Thus, when the Assembly comes to debate a bill presented by a non-executive Member, it will not necessarily have the benefit a statement from the person presenting the bill, which addresses the question of whether any provisions of the bill might be incompatible with a provision of Part 3 of the *Human Rights Act 2004* (should this be enacted).

The role of the Scrutiny Committee

Clause 38 of the Bill provides that a standing committee, appointed by the Speaker or the standing committee responsible for consideration of legal issues, is to report to the Legislative Assembly about human rights issues raised by Bills presented to the Assembly.

This adopts a recommendation of the Consultative Committee (above, at 4.19ff).

Standing Committee on Legal Affairs

4.19 In addition to the Attorney-General's Statement of Compatibility, the legislature should also have a role in pre-enactment scrutiny. The advantage of this procedure, provided it is properly resourced, is the provision of advice to the legislature by a body that is completely independent from the executive.

4.20 The United Kingdom legislature has established a Joint Committee on Human Rights charged with scrutinising all legislation after introduction and prior to passage, to consider compliance with the Human Rights Act. The New Zealand legislature has not established such a procedure and this is acknowledged as a weakness in the protection provided under the New Zealand *Bill of Rights Act*.

4.21 The ACT Legislative Assembly has established a Standing Committee on Legal Affairs that performs the duties of a scrutiny of Bills and subordinate legislation committee. The current terms of reference of the Committee are as follows:

….

4.22 The Standing Committee on Legal Affairs already considers a number of 'rights' issues. The Consultative Committee notes that the Standing Committee does comment on human rights and international law issues from time to time. Rather than duplicate the work of the existing Committee, particularly given the size of the ACT Legislative Assembly, the Consultative Committee considers that the terms of reference of the Standing Committee on Legal Affairs could be redrafted to require it to consider whether or not a Bill complies with the *Human Rights Act*. In order to be effective, the Standing Committee would need to be properly resourced to provide such advice.

The Consultative Committee noted that this Scrutiny Committee (technically, the Standing Committee on Legal Affairs (Performing the Duties of a Scrutiny of Bills and Subordinate Legislation Committee)) has commented on human rights and international law issues from time to time.

This has become a very significant part of the work of the Committee (and of its legal adviser). It is now quite common for a rights analysis of proposed provisions of a Bill to proceed by reference to a relevant provision of the ICCPR, or of some constitutional Charter or Bill of rights. The Committee may take a somewhat broader view than the Consultative Committee has in mind. In particular, the Scrutiny Committee has found valuable guidance as to the issues presented by a particular provision in the commentaries and case-law concerning bills of rights in common law countries, such as Canada, New Zealand and the USA. In more recent reports, there is more reference to case-law from the United Kingdom courts, as they give domestic application to the European Convention.

Material relating to these common law jurisdictions is more readily accessible than material directly concerning the European Convention, and to the various organs of the United Nations. The common law material is more accessible in terms of physical access. Various journals and up-date services concerning these jurisdictions are available

and very comprehensive text books are now emerging. This material is also more accessible in that it is written against the common law background, which background is of course the foundation of the Australian legal tradition. The common law courts also produce judgments which are more readable and discursive than the often truncated opinions of the European courts.

The Scrutiny Committee does not see its recent approaches as inconsistent with anything proposed in the Consultative Committee report or by the Explanatory Statement. Recent illustrations of the Scrutiny Committee approach may be seen in:

- Report 36, concerning provisions of the *Evidence (Miscellaneous Provisions) Amendment Bill 2003* -- where in dealing with closed court provisions there was reference to article 14 of the ICCPR, and Australian common law; in dealing with evidence to be given outside the court-room, to law on the New Zealand Bill of Rights and the USA Constitution; in dealing with the rape-shield provisions, to Australian common law and the law on the Canadian Charter; in dealing with counselling communications, to Australian common law; and in dealing with issues about criminal intent to the Canadian Charter.

- Report 38, where in a lengthy general comment on the rights aspects of strict liability offences, there was reference to Australian common law; to the law on the Canadian Charter; and to a report of the Senate Committee on Scrutiny of Bills.

- Report 39, concerning provisions of the *Australian Crime Commission (ACT) Bill 2003*, and in particular provisions for compulsory investigation independent of a criminal charge, there was reference to Australian common law, earlier Reports of the Scrutiny Committee, a submission of the Law Council of Australia to the Senate Committee, to a recommendation of the Consultative Committee, to the law concerning the Fifth Amendment to the Constitution of the USA, and to Article 14 of the ICCPR.

This eclectic approach is designed to find that analysis (or analyses) of the particular rights issue thrown up by the provision of the Bill under consideration by the Scrutiny Committee that will be of the most assistance to the Assembly when it considers the relevant Bill. Of course, finding the relevant material is a matter of time and skill.

Alongside this expanded conception of the sources of rights analysis, the Committee has continued to act under its terms of reference in accord with the more traditional and long-established framework. (Even in this respect, the Committee has tended to take a more particular focus on the way administrative discretions are conferred on decision-makers.)

There is now an issue as to whether the Scrutiny Committee is " properly resourced" for its work. It is an issue that will be more sharply raised if the Bill is passed into law and clause 38 enacted as part of the Act. Just how this might be achieved, and just how resources might be deployed, is a matter for consideration.

The Scrutiny Committee endorses the view of the Consultative Committee that it is essential that there be a vehicle for "the provision of advice to the legislature by a body that is completely independent from the executive", and the Scrutiny Committee considers that it can, with advice, undertake that task.

If the system envisaged by the Bill is enacted into law, it is clear that a number of Territory bodies will have a keen and constant interest in tracking developments in human rights law. In the core of the executive branch of government, Attorney-General's officers, and the Office of Parliamentary Counsel will need to assess the impact Part 3 of the proposed Act might have on legislation; the Scrutiny Committee will have a similar interest; and in the office of the Human Rights Commissioner there will be a broad focus that will encompass this particular focus.

In a critical sense, these bodies will work independently of each other, but there will be a need for contact of various kinds from time to time. One particular matter might be mentioned. It was noted above that finding material relevant to a commentary on the rights aspects of Bills is a matter of time and skill. The task is becoming more complex as Bills of Rights proliferate the common law world, and as international material becomes more accessible. A key to efficient and effective research is access to the books, journals and up-date services that track the judicial implementation of as Bills of Rights. In this, the Territory bodies identified above have a common interest, and could well collaborate in collecting library material, identifying Internet data bases, and in producing a regular guide to research material and developments of particular significance. That guide could then be circulated at least in ACT judicial and legal circles.

SUBORDINATE LEGISLATION

Subordinate Legislation - No Comment

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

Disallowable Instrument DI2003-310 being the Road Transport (General) Declaration that the road transport legislation does not apply to certain roads and road related areas 2003 (No. 10) made under section 12(3) of the *Road Transport (General) Act* 1999 **declares that the road transport legislation does not apply to the ACT roads and road related areas used when vehicles are competing in the ACT timed special stages of the Brindabella Motor Sport Club 2003 Rallye Des Femmes.**

Disallowable Instrument DI2003-315 being the Legislative Assembly (Members' Staff) Speaker's Salary Cap Determination 2003 (No 1) made under sections 5(2) and 17(3) of the *Legislative Assembly (Members' Staff) Act 1989* **revokes Disallowable Instrument DI2003-186 and determines new conditions to enable the implementation of a certified agreement.**

Disallowable Instrument DI2003-316 being the Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2003 (No 1) made under sections 10 (2) and 20 (3) of the *Legislative Assembly (Members' Staff) Act 1989* **revokes Disallowable Instrument DI2003-183 and determines new conditions to enable the implementation of a certified agreement.**

Disallowable Instrument DI2003-317 being the Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 2003 (No 1) made under sections 10(2) and 20(3) of the *Legislative Assembly (Members' Staff) Act 1989* **revokes Disallowable Instruments DI1999-178 and DI2002-209 and provide for a simplified employment agreement.**

Disallowable Instrument DI2003-318 being the Legislative Assembly (Members' Staff) Office-holders' Hiring Arrangements Approval 2003 (No 1) made under sections 5(2) and 17(3) of the *Legislative Assembly (Members' Staff) Act 1989* **revokes Disallowable Instruments DI1999-177, DI2002-210 and DI2002-211 and provides for a simplified employment agreement.**

Disallowable Instrument DI2003-320 being the Public Rental Housing Assistance Program Amendment 2003 (No 2) made under section 12 of the *Housing Assistance Act 1987* **enables the Commissioner to grant additional rent concessions to tenants or other occupants of public housing who go into residential rehabilitation or respite care.**

Disallowable Instrument DI2003-321 being the Rental Bonds Housing Assistance Program Amendment 2003 (No 1) made under section 12 of the *Housing Assistance Act 1987* **increases the qualifying income criteria for single person and larger households and makes additional provision to assist disadvantaged groups.**

Subordinate Legislation - Comment

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

Retrospectivity:

Disallowable Instrument DI2003-311 being the University of Canberra Council Appointment 2003 (No. 1) made under section 11(1)(d) of the *University of Canberra Act 1989* **appoints a specified person as a member of the Council of the University of Canberra**.

Disallowable Instrument DI2003-312 being the University of Canberra Council Appointment 2003 (No. 2) made under section 11(1)(d) *University of Canberra Act 1989* **appoints a specified person as a member of the Council of the University of Canberra**.

The Committee notes that the above instruments state that the appointments commence on 1 December 2003. However, the instruments were not notified on the Legislation Register until 4 December 2003.

What is the effect of the period from the instruments taking effect until notification?

The effect of the period between these instruments taking effect and their notification in the Legislation Register needs to be considered.

There is no mention in the explanatory statements of the possible effect of section 76 of the *Legislation Act 2001* on any occurrences decided during the relevant period of retrospectivity.

The possible effect of section 76 of the *Legislation Act 2001* appears to be of particular relevance to this instrument. It provides as follows:

"76 Non–prejudicial provision may commence retrospectively (SLA s 7)

(1) A statutory instrument may provide that a non-prejudicial provision of the instrument commences retrospectively.

(2) This section applies to a non-prejudicial provision of a statutory instrument only if the instrument clearly indicates that the provision is to commence retrospectively.

Example

the instrument provides that a non-prejudicial provision is 'taken to have commenced' at an earlier date or time

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

(3) This section is a determinative provision.

Note See s 5 for the meaning of determinative provisions, and s 6 for their displacement.

(4) In this section:

non-prejudicial provision means a provision that does not operate to the disadvantage of a person (other than the Territory or a Territory authority or instrumentality) by—

(a) adversely affecting the person's rights; or

(b) imposing liabilities on the person.".

Confirmation is sought 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.

Retrospectivity:

Disallowable Instrument DI2003-313 being the Health – Determination of Interest Charge 2003-04 (No 1) made under section 37 of the *Health Act 1993* **revokes Disallowable Instrument DI2003-37 and determines the level of interest charged on the aggregate amount of fees and charges unpaid after the due date**.

The Committee notes that the above instrument states that the determination takes effect from 1 December 2003. However, the instrument was not notified on the Legislation Register until 2 December 2003.

The effect of the period between this instrument taking effect and its notification in the Legislation Register needs to be considered and, as with the above, the possible effect of section 76 of the *Legislation Act 2001* on the instrument.

Confirmation is therefore sought 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.

The Committee also wishes to point out that instrument refers to the *Health Act 1993*, section 37 (Determination of Fees and Interest). Perhaps the correct reference should be section 37 (Payment of Fees and Interest) as indicated on the Explanatory Statement attached to the instrument.

INTERSTATE AGREEMENTS

There is no matter for comment in this report.

REGULATORY IMPACT STATEMENTS

There is no matter for comment in this report.

GOVERNMENT RESPONSES

The Committee has received responses in relation to comments from:

- The Attorney-General, dated 18 December 2003, in relation to comments in Scrutiny Report No 38 regarding Disallowable Instrument DI2003-242 being the Justices of the Peace – Appointment of Justices of the Peace 2003 (No 1).
- The Minister for Planning, dated 13 November 2003, in relation to comments in Scrutiny Report No 38 regarding the following Disallowable Instruments:
  - DI2003-163 being the Architects (Fees) Revocation and Determination 2003;
  - DI2003-157 being the Surveyors (Fees) Determination 2003;
  - DI2003-156 being the Unit Titles (Fees) Determination 2003;
  - DI2003-252 being the Land (Planning and Environment) Exemption 2003; and
  - DI2003-254 being the Land (Planning and Environment) Determination of Matters to be taken into Consideration – Grant of a Further Rural Lease (No 2) – 2003.

The Committee thanks the Attorney-General and the Minister for Planning for their helpful responses.

Bill Stefaniak MLA
Chair

January 2004

Jon Stanhope MLA
CHIEF MINISTER
ATTORNEY GENERAL MINISTER FOR THE ENVIRONMENT
MINISTER FOR COMMUNITY AFFAIRS
MEMBER FOR GINNINDERRA

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

Dear Mr Stefaniak

I refer to the comments on disallowable instrument DI2003-242 as mentioned in Scrutiny Report No. 38 of the Standing Committee on Legal Affairs.

Checking by my officers has indicated that a number of people appointed as Justices of the Peace by the instrument are ACT public servants. As the committee has pointed out, such appointees are not subject to a disallowance process. Officers will in future avoid including such people in a disallowable instrument. I am advised that the inclusion of such people on the instrument does not vitiate their appointment.

Yours sincerely

Jon Stanhope MLA
Attorney General

18 DEC 2003

ACT LEGISLATIVE ASSEMBLY
London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0104 Fax (02) 6205 0433

Simon Corbell MLA

MINISTER FOR PLANNING MINISTER FOR HEALTH

MEMBER FOR MOLONGLO

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

Dear Mr Stefaniak

Thank you for Scrutiny Report No. 38 which commented on incorrect references in a number of Disallowable Instruments. The following comments are provided in relation to the Instruments that are within my Planning portfolio.

The Standing Committee found references to non-existent provisions, and an incorrect reference to a provision, relating to Disallowable Instruments numbered DI2003-163 (*Architects Act 1959*), DI2003-157 (*Surveyors Act 2001*), DI2003-156 (*Unit Titles Act 2001*), DI2003-252 (*Land (Planning and Environment) Act 1991*) and DI2003-254 (*Land (Planning and Environment) Act 1991).*

These errors have been examined and new Disallowable Instruments (for DI2003-163, DI2003-157, DI2003-156, DI2003-252), to correct the references to the legislation, have been prepared for notification on the ACT Legislation Register. It is noted that four of these errors were the result of not referring to renumbered provisions in the legislation that was republished.

Following advice from the Parliamentary Counsel, Disallowable Instrument No. DI2003-254, which is the subject of a Disallowance Motion in the Assembly, will be rectified by way of a further Instrument amending the existing Instrument. The incorrect reference to the Act in Attachment 1 was an oversight resulting from the renumbering of the particular provision following the republication of the Land Act on 1 July 2003.

A further amendment has been made to paragraph 3 (c) of Attachment 1 of the Instrument to correct the reference to ACT Planning and Land Authority-owned improvements for the amount determined by the Territory; this paragraph should read Territory-owned improvements for the amount determined by ACT Planning and Land Authority (this was part of the *Planning and Land (Consequential Amendments) Act 2002*).

ACT LEGISLATIVE ASSEMBLY

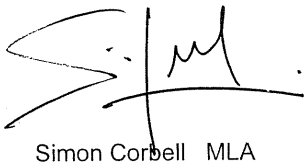
London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601

Phone (02) 6205 0000 Fax (02) 6205 0535

I have asked the Planning and Land Authority to ensure that all Disallowable Instruments are checked thoroughly, and, where appropriate, examined by the Government Solicitor's Office before they are provided for notification on the Legislation Register.

I appreciate the Committee's advice on these matters.

Yours sincerely



Simon Corbell MLA
Minister for Planning

13-11-03

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

RESPONSES

Bills/Subordinate Legislation	Responses received – Scrutiny Report No.
REPORTS – 2001-2003	
Report No. 1, dated 12 December 2001	
Nil	
Report No. 2, dated 19 February 2002	
Crimes Amendment Bill 2001 (No. 2) **(PMB)**	
Act citation: Crimes Amendment Act 2002 **(Passed 5.3.02)**…….	**No. 5**
Crimes (Abolition of Offence of Abortion) Bill 2001 **(PMB)**……..	
Health Regulation (Maternal Health Information) Repeal Bill 2001 **(PMB)**……	
Land (Planning and Environment) Legislation Amendment Bill 2001 **(PMB)**……	
Supreme Court Amendment Bill 2001 (No. 2) **(PMB)**……..	
Subordinate Law No 40 –Building Regulations Amendment…….	**No. 8**
Subordinate Law No 41 – Building and Construction Industry Training Levy Regulations 2001……	
Subordinate Law No 42 – Crimes Regulations 2001……..	
Subordinate Law No 43 – Dangerous Goods Regulations Amendment	
Subordinate Law No 44 – Road Transport (Driver Licensing) Regulations Amendment……	**No. 8**
Subordinate Law No 45 – Road Transport (Public Passenger Services Regulations 2002……	**No. 8**
Subordinate Law No 46 – Road Transport Amendment Regulations 2001……	
Subordinate Law No 47 – Maternal Health Information Regulations Repeal 2001……	**No. 10**
Health Professions Board (Procedures) Act – Determination No 221 of 2001……..	**No. 10**

Bills/Subordinate Legislation	Responses received – Scrutiny Report No.
Health Professions Board (Procedures) Act – Determination Nos. 216-220, 222, 225 to 237 of 2001…….	**No. 10**
Independent Pricing and Regulatory Commission Act - Determination No. 291 of 2001…….	**No. 8**
Legislative Assembly (Members' Staff) Act - Determination No. 292 of 2001…….	**No. 23**
Residential Tenancies Act – Determination Nos. 301 to 304 of 2001….	
Rehabilitation of Offenders (Interim) Act 2001 - Determination No. 305 of 2001…….	
Commissioner for the Environment Act - Determination No. 315 of 2001…….	**No. 8**
Psychologists Act - Determination No. 318 of 2001……..	**No. 10**
Auditor-General Act – Determination No. 323 of 2001…….	
Drugs of Dependence Act – Determination No. 328 of 2001……	**No. 10**
National Exhibition Centre Trust Act - Determination Nos. 330 and 331 of 2001…….	**No. 8**
Appointment to the Racing Tribunal……..	**No. 8**
Report No. 3, dated 21 February 2002	
Rehabilitation of Offenders (Interim) Amendment Bill 2002 **(Passed 21.2.02)**…….	
Report No. 4, dated 5 March 2002	
Inquiries Amendment Bill 2002 **(PMB)**…….	
Gene Technology Bill 2002 **(Passed 27.11.03)** ……	**No. 12**
Legislation Amendment Bill 2002 **(Passed 15.4.02)**…….	**No. 9**
Subordinate Law No 49 – Road Transport (Offences) Regulations 2001…….	**No. 8**
Road Transport (Safety and Traffic Management) Regulations 2000 – Disallowable Instrument No 4……..	**No. 8**
Road Transport (Driver Licensing) Regulations 2000 – Disallowable Instrument No 7……..	**No. 8**
Health and Community Care Services Act – Determinations Nos 5 and 15…….	
Report No. 5, dated 5 March 2002	
Nil	

Bills/Subordinate Legislation	Responses received – Scrutiny Report No.
Report No. 6, dated 7 March 2002	
Nil	
Report No. 7, dated 27 March 2002	
Drugs of Dependence Amendment Bill 2002 **(Passed 14.5.02)**…….	**No. 10**
Duties Amendment Bill 2002 **(Passed 11.4.02)**……	**No. 8**
Fair Trading Amendment Bill 2002 **(PMB) (Passed 29.08.02)**…….	
Subordinate Law 2002 No 1 – Radiation Regulations 2002……..	**No. 10**
Report No. 8, dated 1 May 2002	
Discrimination Amendment Bill 2002 **(PMB) (Passed 5.6.02)…**……	
Gaming Machine (Women's Sports) Amendment Bill 2002 **(Passed 4.6.02)**…….…….	**No. 10**
Subordinate Law No. 3 – Road Transport (Public Passenger Services) Regulations 2002…….	**No. 15**
Subordinate Law No. 4 – Community Title Regulations 2002……..	**No. 15**
Road Transport (Public Passenger Services) Regulations 2002 – Disallowable Instruments Nos 12 and 18……..	**No. 15**
Road Transport (General) Act – Disallowable Instrument No. 20…….	**No. 15**
Public Place Names Act – Disallowable Instrument No. 24……..	**No. 15 (No. 32)**
Report No. 9, dated 7 May 2002	
Nil	
Report No. 10, dated 14 May 2002	
Building Amendment Bill 2002 **(Passed 16.5.02)**…….	**No. 16**
Report No. 11, dated 14 May 2002	
Nil	
Report No. 12, dated 16 May 2002	
Justices of the Peace Act – Disallowable Instrument No. 25…….	
Residential Tenancies Act – Disallowable Instrument No. 26…….	

Bills/Subordinate Legislation	Responses received – Scrutiny Report No.
Report No. 13, dated 29 May 2002	
Cemeteries and Crematoria Bill 2002…….	**No. 15**
Duties (Insurance Exemptions) Amendment Bill 2002……..	**No. 15**
Road Transport Legislation Amendment Bill 2002…….	**No. 16**
Report No. 14, dated 4 June 2002	
Statute Law Amendment Bill 2002 **(Passed 29.08.02)**…….	**No. 15**
Report No. 15, dated 20 June 2002	
Workers Compensation (Acts of Terrorism) Amendment Bill 2002….	**No. 17**
Remuneration Tribunal Act – Disallowable Instrument No. 34…….	**No. 23**
Hotel School Act – Disallowable Instrument No. 35…….	**No. 18**
Road Transport Act – Disallowable Instrument No. 39…….	**No. 17**
Commissioner for the Environment Act No. 38…….	**No. 17**
Report No. 16, dated 25 June 2002	
Maternal Health Legislation Amendment Bill 2002 **(PMB)**…….	
Medical Practitioners (Maternal Health) Amendment Bill 2002 **(Passed 21.08.02**) **(PMB)**……	
Health and Community Care Services Act –	
Disallowable Instrument No. 41…….	**No. 19**
Public Place Names Act –	
Disallowable Instrument No. 43…….	**No. 17**
Disallowable Instrument No. 44…….	**No. 17**
Building Act – Disallowable Instrument No. 50…….	**No. 17**
Report No. 17, dated 9August 2002	
Justice and Community Safety Legislation Amendment Bill 2002 **(Passed 22.08.02)**…….	
Magistrates Court (Refund of Fees) Amendment Bill 2002 (**Passed 25.09.02)**……	
Planning and Land Bill 2002 **(Passed 12.12.02)**…….	**No. 20**
Plant Diseases Bill 2002 **(Passed 12.11.02)**……..	**No. 18**
Revenue Legislation Amendment Bill 2002 **(Passed 22.08.02)** …….	**No. 18**
Subordinate Law 2002 No. 11 – Custodial Escorts Regulations 2002...	

Bills/Subordinate Legislation	Responses received – Scrutiny Report No.
Land (Planning and Environment) ACT Heritage Council Appointments 2002 (No 1) - DI 2002-56……..	**No. 20**
Roads and Public Places (Fees) Revocation and Determination 2002 (No 1) - DI 2002—71…….	**No. 19**
Roads and Public Places (Fees) Revocation and Determination 2002 (No 2) - DI 2002—72…….	**No. 19**
Roads Transport (General) (Fees) Revocation and Determination 2002 – DI2002—73…….	**No. 19**
Hawker (Fees) Revocation and Determination 2002 – DI2002-74….	**No. 19**
Roads and Public Places (Fees) Revocation and Determination 2002 (No 3) – DI2002-75…….	**No. 19**
Water Resources (Fees) Revocation and Determination 2002 – DI2002-76……..	**No. 19**
Stock (Fees) Revocation and Determination 2002 (No 1) – DI2002-77	**No. 19**
Stock (Fees) Revocation and Determination 2002 (No 2) – DI2002-78	**No. 19**
Pounds (Fees) Revocation and Determination 2002 – DI2002-79…….	**No. 19**
Nature Conservation (Fees) Revocation and Determination 2002 – DI2002-80……..	**No. 19**
Lakes (Fees) Revocation and Determination 2002 – DI2002-81…….	**No. 19**
Environment Protection (Fees) Revocation and Determination 2002 – DI2002-82……..	**No. 19**
Domestic Animals (Fees) Revocation and Determination 2002 – DI2002-83……..	**No. 19**
Animal Welfare (Fees) Revocation and Determination 2002 – DI2002-84……..	**No. 19**
Animal Diseases (Fees) Revocation and Determination 2002 – DI2002-85……..	**No. 19**
Road Transport (General) (Parking Permit Fees) Revocation and Determination 2002 – DI2002-86……..	**No. 19**
Road Transport (General) (Vehicle Impounding and Seizure/Speed Tests) Revocation and Determination 2002 – DI2002-89…….	**No. 19**
<u>Report No. 18, dated 27August 2002</u>	
Cooperatives Bill 2002…**(Passed 19.11.02)**……	**No 22**
<u>Report No. 19, dated 20 September 2002</u>	
Adventure Activities (Liability) Bill 2002 **(PMB)**	
Civil Law (Wrongs) Bill 2002 **(Passed 26.09.02)**	**No. 20**

Bills/Subordinate Legislation	Responses received – Scrutiny Report No.
Injuries Compensation Framework Bill 2002 **(PMB)**	
Prostitution Amendment Bill 2002 **(Passed 24.09.02)**	
Disallowable Instrument DI 2002—99 being the Machinery (Fees) Revocation and Determination 2002	
Disallowable Instrument DI 2002—102 being the Architects (Fees) Revocation and Determination 2002	**No. 22**
Disallowable Instrument DI 2002—103 being the Building (Fees) Revocation 2002	**No. 22**
Disallowable Instrument DI 2002—104 being the Building (Fees) Determination 2002	**No. 22**
Disallowable Instrument DI 2002—105 being the Community Title (Fees) Determination and Revocation 2002	**No. 22**
Disallowable Instrument DI 2002—106 being the Construction Practitioners Registration (Fees) Determination and Revocation 2002	**No. 22**
Disallowable Instrument DI 2002—109 being the Water and Sewerage (Fees) Revocation 2002	**No. 22**
Disallowable Instrument DI 2002—110 being the Water and Sewerage (Fees) Determination 2002	**No. 22**
Disallowable Instrument DI 2002—111 being the Land (Planning and Environment) (Fees) Revocation 2002	**No. 22**
Disallowable Instrument DI 2002—112 being the Land (Planning and Environment) (Fees) Determination 2002	**No. 22**
Disallowable Instrument DI 2002—113 being the Surveyors (Fees) Revocation 2002	**No. 22**
Disallowable Instrument DI 2002—114 being the Surveyors (Fees) Determination 2002	**No. 22**
Disallowable Instrument DI 2002—115 being the Unit Titles (Fees) Revocation 2002	**No. 22**
Disallowable Instrument DI 2002—116 being the Unit Titles (Fees) Determination 2002	**No. 22**
Disallowable Instrument DI 2002—120 being the Plumbers, Drainers and Gasfitters Board (Fees) Revocation and Determination 2002	
Disallowable Instrument DI 2002—128 being the Scaffolding and Lifts (Fees) Revocation and Determination 2002	
Disallowable Instrument DI 2002—129 being the Occupational Health and Safety (Fees) Revocation and Determination 2002	
Disallowable Instrument DI 2002—130 being the Workers' Compensation (Fees) Revocation and Determination 2002	

Bills/Subordinate Legislation	Responses received – Scrutiny Report No.
Disallowable Instrument DI 2002—131 being the Dangerous Goods (Fees) Revocation and Determination 2002	
Disallowable Instrument DI2002—107 being the Electricity (Fees) Revocation 2002	**No. 22**
Disallowable Instrument DI2002—108 being the Electricity (Fees) Determination 2002	**No. 22**
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