

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
(LEGISLATIVE SCRUTINY ROLE)

SCRUTINY REPORT 21

11 AUGUST 2014

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ROLE OF 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.

RESOLUTION OF APPOINTMENT

The Standing Committee on Justice and Community Safety when performing its legislative scrutiny role shall:

- (1) 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):
 - (a) is in accord with the general objects of the Act under which it is made;
 - (b) unduly trespasses on rights previously established by law;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
- (2) 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;
- (3) consider whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:
 - (a) unduly trespass on personal rights and liberties;
 - (b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) inappropriately delegate legislative powers; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
- (4) 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*;
- (5) 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.

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SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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

Disallowable Instrument DI2014-58 being the Territory Records (Advisory Council) Appointment 2014 (No. 1) made under section 44 of the *Territory Records Act 2002* appoints a specified person as a member of the Territory Records Advisory Council, representing organisations interested in public administration, governance or public accountability.

Disallowable Instrument DI2014-59 being the Territory Records (Advisory Council) Appointment 2014 (No. 2) made under section 44 of the *Territory Records Act 2002* appoints a specified person as a member of the Territory Records Advisory Council, representing professional organisations interested in records management and archives.

Disallowable Instrument DI2014-61 being the Territory Records (Advisory Council) Appointment 2014 (No. 3) made under section 44 of the *Territory Records Act 2002* appoints a specified person as a member of the Territory Records Advisory Council, representing organisations interested in public administration, governance or public accountability.

Disallowable Instrument DI2014-62 being the Territory Records (Advisory Council) Appointment 2014 (No. 4) made under section 44 of the *Territory Records Act 2002* appoints a specified person as a member of the Territory Records Advisory Council, representing professional organisations interested in records management and archives.

Disallowable Instrument DI2014-63 being the Territory Records (Advisory Council) Appointment 2014 (No. 5) made under section 45 of the *Territory Records Act 2002* appoints a specified person as a member of the Territory Records Advisory Council, representing entities interested in Aboriginal and Torres Strait Islander heritage.

Disallowable Instrument DI2014-64 being the Territory Records (Advisory Council) Appointment 2014 (No. 6) made under section 45 of the *Territory Records Act 2002* appoints a specified person as chairperson of the Territory Records Advisory Council, representing organisations interested in public administration, governance or public accountability.

Disallowable Instrument DI2014-65 being the Territory Records (Advisory Council) Appointment 2014 (No. 7) made under section 45 of the *Territory Records Act 2002* appoints a specified person as deputy chairperson of the Territory Records Advisory Council, representing professional organisations interested in records management and archives.

Disallowable Instrument DI2014-66 being the Public Sector Management Amendment Standards 2014 (No. 1) made under section 251 of the *Public Sector Management Act 1994* amends the Standards.

Disallowable Instrument DI2014-67 being the Electoral (Fees) Determination 2014 made under section 8 of the *Electoral Act 1992* revokes DI2013-269 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-69 being the Education (Government Schools Education Council) Appointment 2014 (No. 2) made under section 57 of the *Education Act 2004* appoints a specified person as a community member of the Government Schools Education Council.

Disallowable Instrument DI2014-70 being the Education (Government Schools Education Council) Appointment 2014 (No. 1) made under section 57 of the *Education Act 2004* appoints a specified person as a community member of the Government Schools Education Council.

Disallowable Instrument DI2014-71 being the Education (Non-Government Schools Education Council) Appointment 2014 (No. 2) made under section 109 of the *Education Act 2004* appoints a specified person as chair of the Non-government Schools Education Council.

Disallowable Instrument DI2014-72 being the Education (Non-Government Schools Education Council) Appointment 2014 (No. 3) made under section 109 of the *Education Act 2004* appoints a specified person as a community member of the Non-government Schools Education Council.

Disallowable Instrument DI2014-73 being the Building and Construction Industry Training Levy (Governing Board) Appointment 2014 (No. 3) made under section 7 of the *Building and Construction Industry Training Levy Act 1999* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member of the Building and Construction Industry Training Fund Board, representing the interests of employers in the building and construction industry.

Disallowable Instrument DI2014-74 being the Building and Construction Industry Training Levy (Governing Board) Appointment 2014 (No. 2) made under section 7 of the *Building and Construction Industry Training Levy Act 1999* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member of the Building and Construction Industry Training Fund Board, representing the interests of employers in the building and construction industry.

Disallowable Instrument DI2014-75 being the Building and Construction Industry Training Levy (Governing Board) Appointment 2014 (No. 4) made under section 7 of the *Building and Construction Industry Training Levy Act 1999* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member of the Building and Construction Industry Training Fund Board, representing the interests of employees in the building and construction industry.

Disallowable Instrument DI2014-77 being the Victims of Crime (Victims Advisory Board) Appointment 2014 (No. 1) made under section 22D of the *Victims of Crime Act 1994* appoints a specified person as a member of the Victims Advisory Board, representing the interests of victims services groups.

Disallowable Instrument DI2014-78 being the Victims of Crime (Victims Advisory Board) Appointment 2014 (No. 2) made under section 22D of the *Victims of Crime Act 1994* re-appoints a specified person as a member of the Victims Advisory Board, representing the interests of victims services groups.

Disallowable Instrument DI2014-79 being the Victims of Crime (Victims Advisory Board) Appointment 2014 (No. 3) made under section 22D of the *Victims of Crime Act 1994* appoints a specified person as a member of the Victims Advisory Board, representing the interests of victims services groups.

Disallowable Instrument DI2014-82 being the Victims of Crime (Victims Advisory Board) Appointment 2014 (No. 6) made under section 22D of the *Victims of Crime Act 1994* appoints a specified person as the lawyer member of the Victims Advisory Board.

Disallowable Instrument DI2014-83 being the Taxation Administration (Amounts Payable—Duty) Determination 2014 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2013-174 and determines the amount of duty payable under various provisions of the *Duties Act 1999*.

Disallowable Instrument DI2014-84 being the Taxation Administration (Amounts payable—Over 60s Home Bonus Scheme) Determination 2014 (No. 1) made under section 139 of the *Taxation Administration Act 1999* determines, for the purposes of the scheme, the eligibility criteria, amounts, conditions, method of calculation of duty payable and the time limit for applications.

Disallowable Instrument DI2014-85 being the Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2014 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2013-321 and DI2013-322 and determines, for the purposes of the scheme, the eligibility criteria, amounts, conditions, method of calculation of duty payable and the time limit for applications.

Disallowable Instrument DI2014-86 being the Civil Law (Wrongs) Professional Standards Council Appointment 2014 (No. 1) made under Schedule 4, section 4.38 of the *Civil Law (Wrongs) Act 2002* re-appoints a specified person as a member of the Professional Standards Council.

Disallowable Instrument DI2014-87 being the Official Visitor (Homelessness Services) Visit and Complaint Guidelines 2014 made under section 23 of the *Official Visitor Act 2012* makes the Official Visitor (Homelessness Services) Visit and Complaint Guidelines.

Disallowable Instrument DI2014-88 being the Road Transport (General) Vehicle Registration and Related Fees Determination 2014 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2013-57 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-89 being the Road Transport (General) Driver Licence and Related Fees Determination 2014 made under section 96 of the *Road Transport (General) Act 1999* revokes DI2013-58 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-90 being the Road Transport (General) Numberplate Fees Determination 2014 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2013-59 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-91 being the Road Transport (General) Refund and Dishonoured Payments Fees Determination 2014 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2013-60 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-92 being the Road Transport (General) Parking Permit Fees Determination 2014 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2013-61 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-93 being the Road Transport (General) Fees for Publications Determination 2014 (No. 2) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2014-6 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-94 being the Dangerous Goods (Road Transport) Fees and Charges Determination 2014 (No. 1) made under section 194 of the *Dangerous Goods (Road Transport) Act 2009* revokes DI2013-63 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-95 being the Education (Non-Government Schools Education Council) Appointment 2014 (No. 4) made under section 109 of the *Education Act 2004* appoints a specified person as an education member of the Non-government Schools Education Council, representing Catholic schools.

Disallowable Instrument DI2014-96 being the Education (Non-Government Schools Education Council) Appointment 2014 (No. 5) made under section 109 of the *Education Act 2004* appoints a specified person as an education member of the Non-government Schools Education Council, representing Catholic schools.

Disallowable Instrument DI2014-97 being the Planning and Development (Remission of Lease Variation Charges for Community Purpose—Childcare Services) Determination 2014 (No. 1) made under section 278B of the *Planning and Development Act 2007* revokes DI2011-319 and reduces the lease variation charge for certain lease variations, the purpose of which is for the provision of childcare services.

Disallowable Instrument DI2014-98 being the Civil Law (Wrongs) Law Society of Western Australia Scheme 2014 (No. 1) made under Schedule 4, section 4.10 of the *Civil Law (Wrongs) Act 2002* gives notice of the Western Australian Standards Council's approval of the Law Society of Western Australia Scheme.

Disallowable Instrument DI2014-99 being the Unlawful Gambling (Charitable Gaming Application Fees) Determination 2014 (No. 1) made under section 48 of the *Unlawful Gambling Act 2009* revokes DI2010-31 and determines the fee payable for a charitable organisation to apply to the ACT Gambling and Racing Commission for approval to conduct charitable gaming.

Disallowable Instrument DI2014-100 being the Race and Sports Bookmaking (Fees) Determination 2014 (No. 1) made under section 97 of the *Race and Sports Bookmaking Act 2001* revokes DI2013-142 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-101 being the Heritage (Council Member) Appointment 2014 (No. 1) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council, representing the property ownership, management and development sector.

Disallowable Instrument DI2014-102 being the Heritage (Council Member) Appointment 2014 (No. 2) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council, with expertise in the discipline of archaeology.

Disallowable Instrument DI2014-103 being the Heritage (Council Member) Appointment 2014 (No. 3) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council, with expertise in the discipline of history.

Disallowable Instrument DI2014-104 being the Heritage (Council Member) Appointment 2014 (No. 4) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council, with expertise in the discipline of object conservation.

Disallowable Instrument DI2014-105 being the Heritage (Council Member) Appointment 2014 (No. 5) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council, with expertise in the discipline of nature conservation.

Disallowable Instrument DI2014-106 being the Heritage (Council Member) Appointment 2014 (No. 6) made under section 17 of the *Heritage Act 2004* appoints a specified person as a member of the ACT Heritage Council, representing the Aboriginal community.

Disallowable Instrument DI2014-107 being the Electricity Feed-in (Large-scale Renewable Energy Generation) FiT Capacity Release Determination 2014 (No. 2) made under section 10 of the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* makes 1MW of capacity available for a large-scale community solar scheme.

Disallowable Instrument DI2014-108 being the Casino Control (Fees) Determination 2014 (No. 1) made under section 143 of the *Casino Control Act 2006* revokes DI2013-140 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-109 being the Gaming Machine (Fees) Determination 2014 (No. 1) made under section 177 of the *Gaming Machine Act 2004* revokes DI2013-141 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-110 being the Civil Law (Wrongs) (Fees) Determination 2014 made under section 222A of the *Civil Law (Wrongs) Act 2002* revokes DI2013-103 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-111 being the Civil Unions (Fees) Determination 2014 made under section 28 of the *Civil Unions Act 2012* revokes DI2013-104 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-112 being the Court Procedures (Fees) Determination 2014 (No. 2) made under section 13 of the *Court Procedures Act 2004* revokes DI2014-1 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-113 being the Firearms (Fees) Determination 2014 made under section 270 of the *Firearms Act 1996* revokes DI2013-111 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-114 being the Prostitution (Fees) Determination 2014 made under section 29 of the *Prostitution Act 1992* revokes DI2013-121 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-115 being the Public Trustee (Fees) Determination 2014 made under section 75 of the *Public Trustee Act 1985* revokes DI2013-122 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-116 being the Agents (Fees) Determination 2014 made under section 176 of the *Agents Act 2003* revokes DI2013-297 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-117 being the Associations Incorporation (Fees) Determination 2014 made under section 125 of the *Associations Incorporation Act 1991* revokes DI2013-101 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-118 being the Births, Deaths and Marriages Registration (Fees) Determination 2014 made under section 67 of the *Births, Deaths and Marriages Registration Act 1997* revokes DI2013-102 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-119 being the Classification (Publications, Films and Computer Games) (Enforcement) (Fees) Determination 2014 made under section 67 of the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* revokes DI2013-293 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-120 being the Cooperatives (Fees) Determination 2014 made under section 465 of the *Cooperatives Act 2002* revokes DI2013-106 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-121 being the Dangerous Substances (Fees) Determination 2014 made under section 221 of the *Dangerous Substances Act 2004* revokes DI2013-208 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-122 being the Emergencies (Fees) Determination 2014 made under section 201 of the *Emergencies Act 2004* revokes DI2013-109 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-123 being the Fair Trading (Motor Vehicle Repair Industry) (Fees) Determination 2014 made under section 55 of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* revokes DI2013-291 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-125 being the Guardianship and Management of Property (Fees) Determination 2014 made under section 75 of the *Guardianship and Management of Property Act 1991* revokes DI2013-113 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-127 being the Land Titles (Fees) Determination 2014 made under section 139 of the *Land Titles Act 1925* revokes DI2013-115 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-128 being the Liquor (Fees) Determination 2014 made under section 227 of the *Liquor Act 2010* revokes DI2013-116 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-129 being the Machinery (Fees) Determination 2014 made under section 5 of the *Machinery Act 1949* revokes DI2013-118 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-130 being the Partnership (Fees) Determination 2014 made under section 99 of the *Partnership Act 1963* revokes DI2013-119 and determines the fee payable for an application for registration as an incorporated limited partnership.

Disallowable Instrument DI2014-131 being the Pawnbrokers (Fees) Determination 2014 made under section 27 of the *Pawnbrokers Act 1902* revokes DI2013-295 and determines the fee payable for a licence.

Disallowable Instrument DI2014-132 being the Registration of Deeds (Fees) Determination 2014 made under section 8 of the *Registration of Deeds Act 1957* revokes DI2013-123 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-133 being the Retirement Villages (Fees) Determination 2014 made under section 262 of the *Retirement Villages Act 2012* revokes DI2013-124 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-134 being the Sale of Motor Vehicles (Fees) Determination 2014 made under section 91 of the *Sale of Motor Vehicles Act 1977* revokes DI2013-298 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-135 being the Scaffolding and Lifts (Fees) Determination 2014 made under section 21 of the *Scaffolding and Lifts Act 1912* revokes DI2013-117 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-136 being the Second-hand Dealers (Fees) Determination 2014 made under section 17 of the *Second-hand Dealers Act 1906* revokes DI2013-296 and determines the fee payable for a licence.

Disallowable Instrument DI2014-137 being the Security Industry (Fees) Determination 2014 made under section 50 of the *Security Industry Act 2003* revokes DI2013-127 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-138 being the Unit Titles (Management) (Fees) Determination 2014 made under section 119 of the *Unit Titles (Management) Act 2011* revokes DI2013-128 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-139 being the Work Health and Safety (Fees) Determination 2014 made under section 278 of the *Work Health and Safety Act 2011* revokes DI2013-129 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-140 being the Workers Compensation (Fees) Determination 2014 made under section 221 of the *Workers Compensation Act 1951* revokes DI2013-130 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-141 being the Public Health (Chief Health Officer) Appointment 2014 (No. 1) made under section 7 of the *Public Health Act 1997* repeals DI2011-112 and appoints a specified person as the Chief Health Officer.

Disallowable Instrument DI2014-142 being the Road Transport (General) (Pay Parking Area Fees) Determination 2014 made under section 96 of the *Road Transport (General) Act 1999* repeals DI2012-256 and determines relevant parking fees for Territory-operated pay parking areas.

Disallowable Instrument DI2014-143 being the Planning and Development (Land Agency Board) Appointment 2014 (No. 1) made under section 42 of the *Planning and Development Act 2007* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member of the Land Agency Board.

Disallowable Instrument DI2014-144 being the Lotteries (Fees) Determination 2014 (No. 1) made under section 18A of the *Lotteries Act 1964* revokes DI2013-164 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-146 being the Utilities (Electricity Network Capital Contribution Code) Revocation 2014 made under section 59 of the *Utilities Act 2000* and section 46 of the *Legislation Act 2001* repeals DI2012-162.

Disallowable Instrument DI2014-147 being the Road Transport (Public Passenger Services) Maximum Fares for Taxi Services Determination 2014 (No. 2) made under section 60 of the *Road Transport (Public Passenger Services) Act 2001* revokes DI2014-31 and determines the maximum fares relating to the hiring or use of a taxi.

Disallowable Instrument DI2014-148 being the Health (Fees) Determination 2014 (No. 3) made under section 192 of the *Health Act 1993* revokes DI2014-25 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-149 being the Architects (Fees) Determination 2014 (No. 1) made under section 91 of the *Architects Act 2004* revokes DI2013-147 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-150 being the Building (Fees) Determination 2014 (No. 1) made under section 150 of the *Building Act 2004* revokes DI2013-148 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-151 being the Clinical Waste (Fees) Determination 2014 (No. 1) made under section 40 of the *Clinical Waste Act 1990* revokes DI2013-149 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-152 being the Community Title (Fees) Determination 2014 (No. 1) made under section 96 of the *Community Title Act 2001* revokes DI2013-150 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-153 being the Construction Occupations Licensing (Fees) Determination 2014 (No. 1) made under section 127 of the *Construction Occupations (Licensing) Act 2004* revokes DI2013-151 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-154 being the Electricity Safety (Fees) Determination 2014 (No. 1) made under section 64 of the *Electricity Safety Act 1971* revokes DI2013-152 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-155 being the Environment Protection (Fees) Determination 2014 (No. 1) made under section 165 of the *Environment Protection Act 1997* revokes DI2013-153 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-156 being the Fisheries (Fees) Determination 2014 (No. 1) made under section 114 of the *Fisheries Act 2000* revokes DI2013-154 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-157 being the Gas Safety (Fees) Determination 2014 (No. 1) made under section 67 of the *Gas Safety Act 2000* revokes DI2013-155 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-158 being the Heritage (Register Fees) Determination 2014 (No. 1) made under section 120 of the *Heritage Act 2004* revokes DI2013-156 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-159 being the Legislative Assembly (Members' Staff) Speaker's Salary Cap Determination 2014 (No. 1) made under subsections 5(3) and 17(4) of the *Legislative Assembly (Members' Staff) Act 1989* revokes DI2013-186 and determines the conditions under which the Speaker may employ staff and engage consultants or contractors, including the interim annual salary allocation, for the 2014-2015 financial year.

Disallowable Instrument DI2014-160 being the Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2014 (No. 1) made under subsections 10(3) and 20(4) of the *Legislative Assembly (Members' Staff) Act 1989* revokes DI2013-185 and determines the conditions under which Members may employ staff and engage consultants or contractors, including interim annual salary allocations, for the 2014-2015 financial year.

Disallowable Instrument DI2014-161 being the Nature Conservation (Fees) Determination 2014 (No. 2) made under section 139 of the *Nature Conservation Act 1980* revokes DI2014-2 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-162 being the Planning and Development (Fees) Determination 2014 (No. 1) made under section 424 of the *Planning and Development Act 2007* revokes DI2013-158 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-163 being the Surveyors (Fees) Determination 2014 (No. 1) made under section 80 of the *Surveyors Act 2007* revokes DI2013-159 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-164 being the Unit Titles (Fees) Determination 2014 (No. 1) made under section 179 of the *Unit Titles Act 2001* revokes DI2013-160 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-165 being the Water and Sewerage (Fees) Determination 2014 (No. 1) made under section 45 of the *Water and Sewerage Act 2000* revokes DI2013-161 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-166 being the Water Resources (Fees) Determination 2014 (No. 1) made under section 107 of the *Water Resources Act 2007* revokes DI2013-198 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-167 being the Animal Diseases (Fees) Determination 2014 (No. 1) made under section 88 of the *Animal Diseases Act 2005* revokes DI2013-75 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-168 being the Animal Welfare (Fees) Determination 2014 (No. 1) made under section 110 of the *Animal Welfare Act 1992* revokes DI2013-64 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-169 being the Domestic Animals (Fees) Determination 2014 (No. 1) made under section 144 of the *Domestic Animals Act 2000* revokes DI2013-65 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-170 being the Stock (Fees) Determination 2014 (No. 1) made under section 68 of the *Stock Act 2005* revokes DI2013-67 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-171 being the Stock (Levy) Determination 2014 (No. 1) made under section 6 of the *Stock Act 2005* revokes DI2013-68 and determines the number of animals making up a stock unit and the levy amount per stock unit.

Disallowable Instrument DI2014-172 being the Stock (Minimum Stock Levy) Determination 2014 (No. 1) made under section 7A of the *Stock Act 2005* revokes DI2013-299 and determines the minimum stock levy for landholdings.

Disallowable Instrument DI2014-173 being the Waste Minimisation (Landfill Fees) Determination 2014 (No. 1) made under section 45 of the *Waste Minimisation Act 2001* revokes DI2013-66 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-174 being the Tree Protection (Fees) Determination 2014 (No. 1) made under section 109 of the *Tree Protection Act 2005* revokes DI2013-69 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-175 being the Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2014 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2013-319 and DI2013-320 and determines, for the purposes of the Scheme, the income test and thresholds, eligibility criteria, determination of amounts, conditions, method of calculation of duty payable and time limit for applications.

Disallowable Instrument DI2014-176 being the Taxation Administration (Amounts Payable—Land Rent) Determination 2014 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2013-245 and determines the standard percentage, discount percentage, relevant percentage and income threshold amount for the purposes of the *Land Rent Act 2008*.

Disallowable Instrument DI2014-177 being the Taxation Administration (Objection Fees) Determination 2014 (No. 1) made under section 139A of the *Taxation Administration Act 1999* revokes DI2006-103 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-178 being the First Home Owner Grant (Objection Fees) Determination 2014 (No. 1) made under section 54 of the *First Home Owner Grant Act 2000* revokes DI2006-136 and determines the fee to accompany an objection to any decision of the Commissioner for ACT Revenue.

Disallowable Instrument DI2014-179 being the Rates, Land Tax and Land Rent (Certificate and Statement Fees) Determination 2014 (No. 1) made under section 78 of the *Rates Act 2004*, section 43 of the *Land Tax Act 2004* and section 32 of the *Land Rent Act 2008* revokes DI2013-180, DI2013-181 and DI2013-182 and determines the fee for the provision of a certificate of rates, land tax and other charges and a statement of amounts payable and payments made.

Disallowable Instrument DI2014-180 being the Taxation Administration (Amounts and Rates—Payroll Tax) Determination 2014 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2012-103 and determines the threshold for the payment of ACT payroll tax.

Disallowable Instrument DI2014-181 being the Taxation Administration (Land Tax) Determination 2014 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2013-178 and determines the rates for the calculation of land tax for residential land for the purposes of the *Land Tax Act 2004*.

Disallowable Instrument DI2014-182 being the Taxation Administration (Rates—Fire and Emergency Services Levy) Determination 2014 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2013-177 and determines new amounts for the calculation of the fire and emergency services levy for the purposes of the *Rates Act 2004*.

Disallowable Instrument DI2014-183 being the Rates (Deferral) Determination 2014 (No. 1) made under section 46 of the *Rates Act 2004* revokes DI2013-82 and determines the income, asset and equity requirements that form the eligibility criteria for the rates deferral scheme.

Disallowable Instrument DI2014-184 being the Taxation Administration (Rates—Rebate Cap) Determination 2014 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2013-176 and determines the rebate cap for the purposes of the Act.

Disallowable Instrument DI2014-185 being the Taxation Administration (Rates) Determination 2014 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2013-175 and determines variable rating factors for the calculation of rates payable for the purposes of the *Rates Act 2004*.

Disallowable Instrument DI2014-186 being the Taxation Administration (Amounts Payable—Duty) Determination 2014 (No. 2) made under section 139 of the *Taxation Administration Act 1999* revokes DI2014-83 and determines the amount of duty payable under various provisions of the *Duties Act 1999*.

Disallowable Instrument DI2014-187 being the Public Unleased Land (Fees) Determination 2014 (No. 1) made under section 130 of the *Public Unleased Land Act 2013* revokes DI2013-194 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-188 being the Cemeteries and Crematoria (Public Cemetery Fees) Determination 2014 (No. 1) made under section 49 of the *Cemeteries and Crematoria Act 2003* revokes DI2013-165 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-189 being the Civil Law (Wrongs) Western Australian Bar Association Scheme 2014 (No. 1) made under section 4.10, Schedule 4 of the *Civil Law (Wrongs) Act 2002* gives notice of the Western Australian Professional Standards Council's approval of the Western Australian Bar Association Scheme.

Disallowable Instrument DI2014-190 being the Disability Services (Specialist Disability Service Types) Declaration 2014 (No. 1) made under section 4 of the *Disability Services Act 1991* declares specified types of services to be specialist disability services.

Disallowable Instrument DI2014-191 being the Disability Services Approved Standard 2014 (No. 1) made under section 5A of the *Disability Services Act 1991* sets out the approved national standards which specialist disability services providers must deliver.

Disallowable Instrument DI2014-193 being the Public Baths and Public Bathing (Active Leisure Centre Fees) Determination 2014 made under section 37 of the *Public Baths and Public Bathing Act 1956* revokes DI2013-193 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-194 being the Legal Profession (Solicitors Practising Fees) Determination 2014 made under section 84 of the *Legal Profession Act 2006* revokes DI2013-55 and determines fees payable for applications for the grant or renewal of a restricted or unrestricted practising certificate.

Disallowable Instrument DI2014-195 being the Animal Welfare (Australian Code for the Care and Use of Animals for Scientific Purposes) Code of Practice 2014 (No. 1) made under section 22 of the *Animal Welfare Act 1992* revokes DI2005-188 and approves the Australian code for the care and use of animals for scientific purposes, 8th Edition 2013.

Disallowable Instrument DI2014-196 being the Training and Tertiary Education (Fees) Determination 2014 made under section 111 of the *Training and Tertiary Education Act 2003* revokes DI2013-192 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-197 being the Juries (Payment) Determination 2014 made under section 51 of the *Juries Act 1967* revokes DI2013-171 and determines payments made to jurors for the purposes of the Act.

Disallowable Instrument DI2014-198 being the Road Transport (Safety and Traffic Management) Parking Authority Declaration 2014 (No. 1) made under subsection 75A(2) of the *Road Transport (Safety and Traffic Management) Regulation 2000* repeals DI2009-123 and declares Coles Group Property Developments Limited to be a parking authority for the area Block 21, Section 30 in the suburb of Dickson.

Disallowable Instrument DI2014-199 being the Adoption (Fees) Determination 2014 (No. 1) made under section 118 of the *Adoption Act 1993* revokes DI2013-200 and determines the maximum fees payable for services provided by the ACT Adoptions Unit.

Disallowable Instrument DI2014-200 being the Working With Vulnerable People Background Checking (Fees) Determination 2014 (No. 1) made under section 68 of the *Working with Vulnerable People (Background Checking) Act 2011* revokes DI2012-177 and determines the maximum fees for services provided by the Working With Vulnerable People Screening Unit.

Disallowable Instrument DI2014-201 being the Planning and Development (Remission of Lease Variation Charges) Determination 2014 (No. 1) made under section 278F of the *Planning and Development Act 2007* repeals DI2011-197 and determines a remission of 55% of the lease variation charge is applicable for certain types of codified charges to increase the number of dwellings or the gross floor area.

Disallowable Instrument DI2014-202 being the Legal Aid (Commissioner—Bar Association Nominee) Appointment 2014 made under subsection 7(3) of the *Legal Aid Act 1977* appoints a specified person, a nominee of the ACT Bar Association, as a part-time member of the Board of the Legal Aid Commission.

Disallowable Instrument DI2014-219 being the Road Transport (Safety and Traffic Management) Parking Authority Declaration 2014 (No. 2) made under subsection 75A(2) of the *Road Transport (Safety and Traffic Management) Regulation 2000* declares Construction Control One Pty Limited and Junstamp Pty Ltd to be a parking authority for the area Block 22, Section 21 (Mode 3) in the suburb of Braddon.

Disallowable Instrument DI2014-220 being the Road Transport (General) Vehicle Registration and Related Fees Determination 2014 (No. 2) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2014-88 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-221 being the Environment Protection (Consultation on Application for Environmental Authorisation) Declaration 2014 made under section 48 of the *Environment Protection Act 1997* declares that section 48 of the Act does not apply to specified prescribed activity carried out by Irwin & Harthshorn Pty Ltd.

Disallowable Instrument DI2014-222 being the Civil Law (Wrongs) Institute of Chartered Accountants in Australia Professional Standards Scheme (ACT) 2014 (No. 1) made under Schedule 4, section 4.10 of the *Civil Law (Wrongs) Act 2002* gives notice of the ACT Professional Standards Council's approval of the Institute of Chartered Accountants in Australia Professional Standards Scheme (ACT).

Disallowable Instrument DI2014-223 being the Architects Board Appointment 2014 (No. 2) made under subsection 70(2) of the *Architects Act 2004* appoints a specified person to the Australian Capital Territory Architects Board as the commercial lawyer member.

DISALLOWABLE INSTRUMENTS—COMMENT

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

Drafting issue

Disallowable Instrument DI2014-68 being the ACT Teacher Quality Institute Board Appointment 2014 (No. 2) made under Division 3.2, paragraph 15(2)(a) of the *ACT Teacher Quality Institute Act 2010* appoints a specified person as chair of the ACT Teacher Quality Institute Board.

This instrument, which appoints a specified person as chair of the ACT Quality Institute Board, indicates that it is made under paragraph 15(2)(a) of the *ACT Teacher Quality Institute Act 2010*. Section 15 of that Act provides (in part):

15 Institute board members

- (1) The institute board has at least 12, but not more than 14, members.
- (2) The institute board must include the following members:
 - (a) a chair;

Note The chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

The Committee notes that neither the instrument nor the Explanatory Statement for the instrument refers to section 79 of the *Financial Management Act 1996*.

However, the Committee notes that section 40 of the Legislation Act 2001 provides:

40 Presumption of validity

It is presumed, unless the contrary is proved, that all conditions and steps required for the making of a statutory instrument have been satisfied and carried out.

In addition, section 212 of the Legislation Act provides:

212 Appointment not affected by defect etc

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

Finally, the Committee notes that there is a power to make the relevant appointment, even if another provision has been referred to, and that the law generally allows such actions to stand, as long as there is the power to take the action (see Pearce and Argument, *Delegated legislation in Australia*, 4th edition, at paras [13.20] to [13.24]).

This comment does not require a response from the Minister.

Minor drafting issue

Disallowable Instrument DI2014-76 being the Building and Construction Industry Training Levy (Governing Board) Appointment 2014 (No. 5) made under section 7 of the *Building and Construction Industry Training Levy Act 1999* and section 79 of the *Financial Management Act 1996* appoints a specified person as chair of the Building and Construction Industry Training Fund Board.

This instrument appoints a specified person as chair of the Building and Construction Industry Training Fund Board. The instrument (correctly) indicates that it is made under section 7 of the *Building and Construction Industry Training Levy Act 1999* and section 79 of the *Financial Management Act 1996*. However, the Committee notes that the Explanatory Statement for the instrument incorrectly indicates that it is made under section 78 of the *Financial Management Act*, rather than section 79.

This comment does not require a response from the Minister.

Are these appointments validly made?

Disallowable Instrument DI2014-80 being the Victims of Crime (Victims Advisory Board) Appointment 2014 (No. 4) made under section 22D of the *Victims of Crime Act 1994* appoints a specified person as a member of the Victims Advisory Board, representing the interests of Indigenous communities.

Disallowable Instrument DI2014-81 being the Victims of Crime (Victims Advisory Board) Appointment 2014 (No. 5) made under section 22D of the *Victims of Crime Act 1994* appoints a specified person as a member of the Victims Advisory Board, representing the interests of Indigenous communities.

Each of the instruments mentioned above appoints a specified person as an indigenous communities' member of the Victims Advisory Board. The membership of the Board is provided for by section 22C of the *Victims of Crime Act 1994*, which provides:

22C Membership of board

- (1) The board consists of—
 - (a) the director-general; and
 - (b) the commissioner; and
 - (c) the members (the appointed members) appointed under section 22D.
- (2) The director-general may delegate his or her functions under this Act to a public servant.

Section 22D then provides (in part):

22D Appointed members of board

- (1) The Minister **must** appoint the following members of the board:
 - (a) a representative of each of the following entities:
 - (i) the DPP;
 - (ii) the Australian Federal Police;
 - (iii) ACT courts;
 - (iv) the administrative unit allocated responsibility for the administration of corrective services;
 - (v) the administrative unit allocated responsibility for the administration of youth justice;
 - (vi) the administrative unit allocated responsibility for restorative justice;
 - (b) 3 people who, in the Minister's opinion, represent the interests of victims services groups;
 - (c) 1 person who, in the Minister's opinion, represents the interests of indigenous communities;
 - (d) 1 person who is a lawyer. **[emphasis added]**

The Committee notes the use of must in the provision above.

As already indicated, each of the instruments mentioned above appoints a person to represent the interests of indigenous communities. That being so, it is not clear to the Committee how the appointments are in accordance with section 22D of the Act.

In making this comment, the Committee notes that the Explanatory Statements for each of the instruments states:

Section 22F(2) provides the appointed member holds the position on terms not provided by the Act or another territory law that are decided by the Minister. The functions of this appointment will be performed by two people.

While that may be the case, it is not clear how this is authorised by the relevant Act (or any other Act).

The Committee seeks the Minister’s advice as to how the appointments made by the instruments mentioned above relate to the power given by section 22D of the *Victims of Crime Act 1994*.

Determination of fees

Disallowable Instrument DI2014-124 being the Freedom of Information (Fees) Determination 2014 made under section 80 of the *Freedom of Information Act 1989* revokes DI2013-112 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2014-126 being the Hawkers (Fees) Determination 2014 made under section 45 of the *Hawkers Act 2003* revokes DI2013-294 and determines fees payable for the purposes of the Act.

The Committee notes that, for this report, it has examined numerous instruments that set fees for the 2014-15 financial year. The Committee also notes that, over many years, it has taken a keen interest in fees instruments. As the Committee stated in its document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps* (available http://www.parliament.act.gov.au/__data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards.pdf), the Committee stated:

FEES DETERMINATIONS

The Committee prefers that instruments that determine fees indicate (either in the instrument itself or in the Explanatory Statement) the amount of the “old” fee, the amount of the new fee, any percentage increase and also the reason for any increase (eg an adjustment based on the CPI). Given the importance of fees to the administration of the ACT, it assists the Committee (and the Legislative Assembly) if fees determinations expressly identify the magnitude of any fees increases.

The Committee also prefers that fees determinations expressly address the mandatory requirements of subsection 56(5) of the *Legislation Act 2001*, which provides that a fees determination must provide:

- by whom the fee is payable; and
- to whom the fee is to be paid

The Committee is pleased to note that, for all the fees determinations that it has examined for this report, these requirements appear to have been met. However, the Committee has previously queried instruments that provide different explanations for fees increases in the same financial year. For this report the Committee queries the different explanations provided in relation to the two instruments mentioned above (which are indicative of the issue that the Committee has identified). Both of the instruments were made by the Attorney-General.

For the first instrument mentioned above, the Explanatory Statement states:

Fees in the 2014-15 Financial Year have been generally increased from fees in the previous Financial Year by an indexation of 3%.

For the second instrument mentioned above, the Explanatory Statement states:

Fees in the 2014-15 Financial Year have been generally increased from fees in the previous Financial Year by an indexation of 4% and rounded to an appropriate value.

The Committee can identify no basis for the use of a 3% indexation figure in one case and a 4% indexation figure in the other.

The Committee seeks the Attorney-General's advice as to the basis for the difference in indexation amount for the two instruments mentioned above.

Minor drafting issue

Disallowable Instrument DI2014-145 being the Racing Appeals Tribunal Appointment 2014 (No. 1) made under section 40 and Schedule 1, section 1.1 of the *Racing Act 1999* revokes DI2011-196 and appoints a specified person as deputy president of the Racing Appeals Tribunal.

This instrument appoints a specified person as the deputy president of the Racing Appeals Tribunal. The Committee notes that the formal parts of the instrument (and the Explanatory Statement) indicate that it is made under "subsection 40" of the *Racing Act 1999*. However, the Committee also notes that the text of the Explanatory Statement correctly identifies subsection 40(1) as the empowering provision for the instrument.

This comment does not require a response from the Minister.

Accessibility / drafting issue

Disallowable Instrument DI2014-192 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 1) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 1 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to eligibility for participation.

Disallowable Instrument DI2014-203 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 2) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 2 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to disputes about eligibility.

Disallowable Instrument DI2014-204 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 3) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 3 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to disputes about motor accident injury.

Disallowable Instrument DI2014-205 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 4) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 4 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to disputes about participants' treatment and care needs.

Disallowable Instrument DI2014-206 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 5) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 5 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to treatment, rehabilitation and care needs assessment.

Disallowable Instrument DI2014-207 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 6) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 6 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to reasonable and necessary decision making in the Scheme.

Disallowable Instrument DI2014-208 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 7) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 7 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to treatment and rehabilitation services.

Disallowable Instrument DI2014-209 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 8) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 8 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to attendant care services.

Disallowable Instrument DI2014-210 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 9) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 9 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to education support services.

Disallowable Instrument DI2014-211 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 10) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 10 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to respite services.

Disallowable Instrument DI2014-212 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 11) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 11 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to residents living overseas.

Disallowable Instrument DI2014-213 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 12) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 12 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to modifications to a motor vehicle.

Disallowable Instrument DI2014-214 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 13) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 13 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to requests for equipment.

Disallowable Instrument DI2014-215 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 14) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 14 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to home modifications.

Disallowable Instrument DI2014-216 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 15) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 15 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to prostheses.

Disallowable Instrument DI2014-217 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 16) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 16 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to vocational rehabilitation services.

Disallowable Instrument DI2014-218 being the Lifetime Care and Support (Catastrophic Injuries) Guidelines 2014 (No. 17) made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* makes Part 17 of the Lifetime Care and Support (Catastrophic Injuries) Guidelines relating to approved providers of attendant care services.

Each of the instruments mentioned above is made under section 93 of the Lifetime Care and Support (Catastrophic Injuries) Act 2014. That section provides:

93 LTCS guidelines

- (1) The LTCS commissioner may make LTCS guidelines about any matter required or permitted by this Act to be included in the guidelines.

Note The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see Legislation Act, s 46).

- (2) The LTCS guidelines may make provision in relation to any matter required or permitted by this Act.
- (3) The LTCS guidelines may apply, adopt or incorporate an instrument, as in force from time to time.
 - Note* A reference to an instrument includes a reference to a provision of an instrument (see Legislation Act, s 14 (2)).
- (4) The Legislation Act, section 47 (5) and (6) does not apply to an instrument mentioned in subsection (3).
 - Note* An instrument applied, adopted or incorporated by the LTCS guidelines does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)).
- (5) An LTCS guideline is a disallowable instrument.
 - Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

The Committee notes that each of the 17 instruments mentioned above makes a separate Part of the Lifetime Care and Support (Catastrophic Injuries) Guidelines. The instruments have effect from various dates, between 1 and 11 July 2014. However, the Committee can identify no reason for making the Guidelines in 17 separate instruments, rather than in one instrument, which would presumably make the Guidelines far more accessible to readers.

In addition, the Committee notes that DI2014-203 (which makes Part 2 of the Guidelines), DI2014-204 (which makes Part 3 of the Guidelines) and DI2014-205 (which makes Part 4 of the Guidelines) each contain an “Appendix A” that defines various terms for the purposes of the relevant Part. The various appendices contain different definitions of various terms— such as assessor, certificate and dispute. While the Committee accepts that it is not unusual for definitions to apply only to a particular Part (or, even, a particular provision), the Committee also notes that there is a potential for confusion.

Further, the Committee notes that there is even a difference in the definition of **days** for the purposes of the three Parts in question. Appendix A of DI2014-203 defines **days** as follows:

Days is a reference to the number of working days and not calendar days.

Appendix A of DI2014-204 and Appendix A of DI2014-205 define **days** as follows:

Days is a reference to the number of working days.

There is no apparent reason for the use of different definitions for the different Parts.

The Committee seeks the Minister’s advice as to why the Lifetime Care and Support (Catastrophic Injuries) Guidelines have been made in 17 separate Parts and, in particular, seeks the Minister’s advice as to why the Guidelines could not have been made in a single instrument. The Committee also seeks the Minister’s advice as to the rationale for defining “days” differently in Parts 2 and 3 to Part 4 of the Guidelines.

SUBORDINATE LAWS—NO COMMENT

The Committee has examined the following subordinate laws and offers no comment on them:

Subordinate Law SL2014-7 being the Public Baths and Public Bathing Amendment Regulation 2014 (No. 1) made under the *Public Baths and Public Bathing Act 1956* amends section 3 of the Public Baths and Public Bathing Regulation to remove the Macquarie and Phillip Swimming Pools and declares the baths located in the Lakeside Leisure Centre and Gungahlin Leisure Centre as public baths for the purposes of the Act.

Subordinate Law SL2014-9 being the Court Procedures Amendment Rules 2014 (No. 2) made under section 7 of the *Court Procedures Act 2004* amends the Court Procedures Rules.

Subordinate Law SL2014-10 being the Work Health and Safety Amendment Regulation 2014 (No. 1) made under the *Work Health and Safety Act 2011* provides protection for workers who may be exposed to asbestos whilst carrying out work for a person conducting a business or undertaking by providing mandatory asbestos awareness training.

Subordinate Law SL2014-11 being the Road Transport (Safety and Traffic Management) Amendment Regulation 2014 (No. 2) made under the *Road Transport (Safety and Traffic Management) Act 1999* makes amendments to the Road Transport (Safety and Traffic Management) Regulation relating to E-payment for parking, replacement of cameras and traffic offence detection devices.

Subordinate Law SL2014-12 being the Disability Services Regulation 2014 made under section 12 of the *Disability Services Act 1991* sets out requirements for compliance by a specialist disability service provider with standards made under section 11 of the Disability Services Act.

Subordinate Law SL2014-15 being the Taxation Administration Amendment Regulation 2014 (No. 1) made under the *Taxation Administration Act 1999* amends the Taxation Administration Regulation to allow the Commissioner for Revenue to release ratepayer information to the Head of the Asbestos Response Taskforce enabling relevant correspondence to be personally addressed to home owners affected by loose-fill asbestos insulation.

SUBORDINATE LAWS—COMMENT

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

Human rights issues

Subordinate Law SL2014-8 being the Road Transport Legislation Amendment Regulation 2014 (No. 2) made under the *Road Transport (Driver Licensing) Act 1999* and *Road Transport (General) Act 1999* amends road transport legislation to support the introduction of an ACT alcohol interlock program.

The Committee notes that, according to the Explanatory Statement, this subordinate law “makes amendments to road transport legislation—primarily the *Road Transport (Driver Licensing) Regulation 2000* (the driver licensing regulation)—to support the introduction of an effective ACT alcohol interlock program”. An alcohol ignition interlock is a breath test device that prevents a vehicle from operating, or continuing to operate, if the driver has a specified concentration of alcohol in his or her breath. Such a program, intended for use in relation to high-risk drink driving offenders, was implemented in the ACT by the *Road Transport Legislation Amendment Act 2013 (No 2)*.

The Explanatory Statement for this subordinate law states that the key changes made by the subordinate law:

- reduce, from two to one, the number of positive breath samples an interlock driver may provide in the last three months of their interlock period (the demonstration period), provided that no breath sample in the demonstration period is for a blood alcohol concentration of 0.02 grams or more of alcohol in 210L of breath;
- clarify that if an interlock driver fails to provide a breath sample in accordance with the requirements for random breath samples, this will constitute a program breach in the demonstration period;
- clarify that a person can only nominate a vehicle to be fitted with an interlock if the person is the registered operator of the vehicle or has the agreement of any other registered operator of the vehicle;
- restrict the requirement for approval of an interlock device to compliance with the relevant Australian standard for such devices;
- remove provisions that allow New South Wales (NSW) interlock providers to fit and maintain interlocks for the ACT program without further approval from the Road Transport Authority (RTA);
- make a driver convicted or found guilty of refusing a breath or blood alcohol screening test or analysis, who is not a habitual offender, subject to the mandatory interlock licence condition provisions;
- amend the offences relating to fitting interlocks without approval so that they do not apply to interlocks fitted for private or commercial purposes;
- remove offence provisions relating to interlock installers or service providers providing interlock data and information about removal of interlocks and complying with conditions of approval;
- provide that a person who is subject to the mandatory interlock licence provisions who has not been assessed by the court alcohol and drug assessment service (CADAS), can be ordered by the Magistrates Court to undergo such an assessment and that the court can order the person's driver licence be suspended pending the person complying with the order;
- enable a person with an interlock condition on an interstate licence, who moves to the ACT, to be issued with an ACT probationary licence with an interlock condition.

The Committee notes that pages 2 to 4 of the Explanatory Statement provide a detailed analysis of the human rights implications of the amendments made by this subordinate law.

This comment does not require a response from the Minister.

Disapplication of subsection 47(6) of the Legislation Act 2001

Subordinate Law SL2014-13 being the Animal Welfare Amendment Regulation 2014 (No. 1) made under the Animal Welfare Act 1992 amends the *Animal Welfare Regulation 2001* by amending the definition of "code" to mean the "Australian code of practice for the care and use of animals for scientific purposes".

This subordinate law makes amendments to the *Animal Welfare Regulation 2001*. Prior to the amendments made by this subordinate law, subsection 7(1) of the *Animal Welfare Regulation* provided:

7 Animal ethics committees—Act, s 50 and dict

- (1) An animal ethics committee established in accordance with the code is an animal ethics committee for the Act.

Note Code is defined in the dictionary.

The dictionary to the regulation provided:

code means the *Australian code of practice for the care and use of animals for scientific purposes*, 7th Edition, 2004 published by the National Health and Medical Research Council.

Section 4 of this subordinate law omits the note to subsection 7(1). Section 5 then inserts the following 2 new subsections into section 7:

(5) The Legislation Act, section 47 (6) does not apply to the code.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A A notifiable instrument must be notified under the Legislation Act.

(6) In this section:

code means the *Australian code of practice for the care and use of animals for scientific purposes*, published by the National Health and Medical Research Council, as in force from time to time.

Note The code may be accessed at www.nhmrc.gov.au.

As indicated by note 1 above, the disapplication of subsection 47(6) of the *Legislation Act 2001* means that the Code is not a notifiable instrument for the Legislation Act. This means that there is no requirement to publish the Code on the ACT Legislation Register, nor is there a requirement to publish any amendments to the Code on the Register.

The Explanatory Statement for this subordinate law states:

Clause 5 New section 7 (5) and (6)

New section 7 (5) specifies that section 47 (6) of the *Legislation Act 2001* does not apply to the Australian Code of Practice. That section would require the text of the Australian Code of Practice to be remade as a new Disallowable Instrument every time the Australian Code of Practice is amended. The displacement of that section will ensure that the Australian Code of Practice can be applied automatically when it is amended by the National Health and Medical Research Council without the requirement to continually remake it as a Disallowable Instrument.

New section 7 (6) provides the definition of **code**. In this regulation **Code** means “*the Australian code of practice for the care and use of animals for scientific purposes, published by the National Health and Medical Research Council, as in force from time to time to be adopted*”.

The Committee notes that it would normally expect to see a more detailed explanation of why it is necessary to disapply subsection 47(6) of the Legislation Act. This is because the intention of section 47 of the Legislation Act—and particularly the provisions relating to notifiable instrument—is to ensure access by users to instruments that are incorporated by reference. However, the Committee also notes that an internet address is provided for the instrument in question—the Code—and also notes that the instrument appears to be readily available (without cost) at the internet address.

This comment does not require a response from the Minister.

Human rights issues

Subordinate Law SL2014-14 being the Crimes (Child Sex Offenders) Amendment Regulation 2014 (No. 1) made under the Crimes (Child Sex Offenders) Act 2005 prescribes the Director-General of the Territory and Municipal Services Directorate as an entity that can receive information from the Crimes Sex Offenders Register.

The Committee notes that, according to the Explanatory Statement, this subordinate law amends the *Crimes (Child Sex Offenders) Regulation 2005*

... to prescribe the Director-General of the Territory and Municipal Services Directorate (TAMS) as an entity that can receive information from the [Child Sex Offenders] Register.

The Explanatory Statement goes on to state:

TAMS has responsibility for a number of functions where issues relating to the safety and protection of children may arise. This amendment will contribute to the purpose of the Act and will allow relevant information to be shared in a timely and appropriate manner with TAMS where necessary.

The Explanatory Statement recognises that the amendment made by the subordinate law engages the right to privacy set out in section 12 of the *Human Rights Act 2004*. The Explanatory Statement goes on to state:

However, the right to privacy is a qualified right and section 28 of the Human Rights Act provides legislative recognition that human rights may be limited in certain circumstances. Limitations on the right to privacy can be applied where it can be shown that it is necessary in a free and democratic society to do so and if there is a legal basis for such interference.

On balance and considering the factors outlined in section 28, the limitation on the right to privacy is justified in this instance. Allowing access to the Director-General of TAMS in certain circumstances is appropriate and will support the purposes of the Act. The purposes of preventing registrable offenders from engaging in conduct that poses a risk to the lives or sexual safety of children, and reducing the likelihood that they will reoffend, are important and necessary. The limitation on the right to privacy related to the disclosure of personal information on the register is justified and reasonable for this purpose.

Additionally, the engagement of the right is limited as the information sharing provisions are restricted and controlled by the Act. Prescribing the entities that can receive information from the register ensures that the disclosure does not happen unlawfully, or arbitrarily, and provides a stringent framework within which information sharing entities must operate. This is the least restrictive means of supporting the purposes of the Act and the efficient and effective operation of the register.

For these reasons, the amendment is a proportionate limitation on the right to privacy.

The Committee draws this explanation to the attention of the Legislative Assembly.

This comment does not require a response from the Minister.

Steve Doszpot MLA
Chair

11 August 2014

OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

Report 3, dated 25 February 2013

Disallowable Instrument DI2013-5—Road Transport (Third-Party Insurance) Early Payment Guidelines 2013 (No. 1)

Report 20, dated 29 July 2014

Education and Care Services National Amendment Regulations 2014

Gas Safety Legislation Amendment Bill 2014

Red Tape Reduction Legislation Amendment Bill 2014

Utilities (Technical Regulation) Bill 2014

