

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

**(INCORPORATING THE DUTIES OF A
SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)**

SCRUTINY REPORT NO. 12 OF 2001

17 AUGUST 2001

TERMS OF REFERENCE

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

MEMBERS OF THE COMMITTEE

MR PAUL OSBORNE, MLA (CHAIR)
MR JOHN HARGREAVES, MLA (DEPUTY CHAIR)
MR TREVOR KAINE, MLA
MR HAROLD HIRD, MLA

LEGAL ADVISER: MR PETER BAYNE
SECRETARY: MR TOM DUNCAN
(SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)
ASSISTANT SECRETARY: MS CELIA HARSDORF
(SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)

ROLE OF THE COMMITTEE

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

BILLS

Bills - No Comment

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

Building and Construction Industry Training Levy Amendment Bill 2001

This Bill would amend the *Building and Construction Industry Training Levy Act 1999* to the effect that the training levy will be payable in respect of work where that work is carried out on land other than where that work is done by the owner or an employee or agent of the owner.

Financial Management Amendment Bill 2001 (No 3)

This Bill would amend the *Financial Management Act 1996* to make amendments of a technical nature. The amendments relate to the borrowing and investment activities of Territory authorities; the definition of public money, the payment of interest to Territory authorities, the placing of loans, and the preparation of financial statements.

Legislative Assembly Broadcasting Bill 2001

This is a Bill for an Act to make provision for access to the broadcasting or recording for broadcast of the proceedings of the Legislative Assembly. The Act would repeal the *Legislative Assembly (Broadcasting of Proceedings) Act 1997*.

Magistrates Court Amendment Bill 2001

This Bill would amend the *Magistrates Court Act 1930* to permit the police to issue infringement notices for certain minor offences.

Parental Leave (Private Sector Employees) Amendment Bill 2001

This Bill would amend the *Parental Leave (Private Sector Employees) Act 1992* to extend its operation to certain casual employees, and to accommodate its application to a decision of the Full Bench of the Australian Industrial Relations Commission [PR9044631].

Pharmacy Amendment Bill 2001

This Bill would amend the *Pharmacy Act 1931* to allow companies to be registered as pharmacists under certain conditions.

Referendum Bill 2001

This is a Bill for an Act to make provision for a referendum to be held about issues relating to heroin dependency.

Road Transport (Public Passenger Services) Amendment Bill 2001

This Bill would amend the *Road Transport (Public Passenger Services) Act 2001* to introduce a regulatory regime for taxi services. Taxi services would be a further category of public transport services, and taxi service operators, and taxi network providers would need to be accredited.

Stock Amendment Bill 2001

This Bill would amend the *Stock Act 2001* to increase the coverage of material that may not be fed to a ruminant. The inclusion of certain mammalian products, poultry tissue and fishmeal would be banned.

Bills - Comment

The Committee has examined the following Bills and offers these comments on them.

Agents Amendment Bill 2001

This Bill would amend the *Agents Act 1968* to permit residential land to be used as the business premises of an agent, and to clarify provisions of the Act concerning claims for compensation.

Drafting point

It appears that proposed new subsection 71ZA(3) is not complete. On its face, at least a paragraph (c) has not been included.

Cooperatives Bill 2001

This is a Bill for an Act that would provide a scheme for the establishment, operation and regulation of cooperatives as mutual organisations controlled by their members. In relation to cooperatives, it deals their powers in general, fund-raising, takeover, merger, the duties of directors, and disclosure to and the duties of members.

Comment

The Committee notes that this Bill differs from the Cooperatives Bill 2000 in several respects and in relation to some of these matters the Bill has adopted comments made by the committee in its Report No 5 of 2000.

There do, however, remain some issues of general significance.

Paragraph 2 (c) (ii) – insufficiently defined administrative powers

The Bill would vest in the registrar of cooperatives (in particular), and also in the Minister and the Supreme Court, a large number of discretionary powers. Many of these discretionary powers are expressed in open-ended language that will permit a wide range of choice as to outcome in a particular case. It would be desirable to include in the Bill a power, vested in the holder of the particular power, to issue non-exhaustive and non-binding guidelines to indicate the circumstances in which the power may or may not be exercised.

The Committee notes a particular concern about subclause 305(1). This vests in the registrar an open-ended discretion to approve of the transfer the engagements of a cooperative to another cooperative. The registrar must not, however, give such approval unless the Minister has given approval to the registrar exercising this power. It is not apparent why the Minister should be involved. There is no similar provision in respect of the registrar's power to approve a merger (see clause 304), nor in respect of the many other powers of the registrar.

If there is seen to be a need for political intervention in relation to this particular power, it is not stated in the Explanatory Memorandum. The Explanatory Memorandum is, in relation to this clause, and many others in the Bill, very brief. In effect, provides no explanation of the provision. Of clause 305, it is said only that it “[p]rovides for a transfer of engagements by direction of the registrar”. This does not reveal the role of the Minister.

The Committee notes in particular that this comment about the inadequacy of the Explanatory Memorandum was made in relation to the Bill of 2000, and applies with equal force to the Cooperatives Bill 2001.

Paragraph 2 (c) (iii) – non-reviewable decisions affecting rights

The Committee notes that in this 2001 Bill consideration was given to providing for review by the Administrative Appeals Tribunal. The provisions are found in part 18.

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

Widely expressed offences

Clause 222(1) makes it an offence for an officer of a cooperative to fail “at all times [to] act honestly”. If the person does so “with intent to deceive or defraud”, the offence is aggravated. Thus, the concept of ‘acting dishonestly’ must encompass a wider range of conduct than is involved in the notion of ‘acting with intent to deceive or defraud’.

There will be room for debate as to what the duty to act honestly entails. It may be taken to require the officer to act in good faith, to not act maliciously, and not to seek to achieve some ulterior purpose. Given clause 223 (see below), it will probably be taken to exclude situations in which an officer simply fails to exercise the caution and diligence that would be expected of a person of ordinary prudence. But there may be

a lack of honesty where the officer fails to make inquiry of some matter such that he or she wilfully shuts their eyes to the matter; (see generally *Mid Density Developments Pty Ltd v Rockdale Municipal Council* (1993) 116 ALR 459 at 467-468).

The issue is whether it is appropriate to make such defaults by an officer of a cooperative the subject of a criminal penalty. While the immediate penalty may be small, the consequences for the reputation and future employment of the officer may be grave. There is an argument that such a broadly stated offence should be the basis for disciplinary action, and not the criminal law.

This general point applies with more force to the next provision.

Clause 223(1) makes it an offence for an officer of a cooperative to fail to “exercise the degree of care and diligence that a reasonable person in a like position in a cooperative would exercise in the cooperative’s circumstances”.

It is clear that clause 223 will embrace situations in which an officer fails to exercise the caution and diligence that would be expected of a person of ordinary prudence. The officer will be judged against the standards of a hypothetical reasonable person, and, furthermore, the court must place that person in a “like position” in some hypothetical cooperative. Thus, an officer may be found guilty of a criminal offence, carrying with it serious consequences for their future employment, in circumstances where the officer has not acted intentionally or with reckless disregard. As such, this provision runs counter to fundamental principles of criminal liability.

Again, the issue is whether such a broadly stated offence should be the basis for disciplinary action, and not the criminal law.

Mandatory penalty provision

Subclause 419(1) provides that an officer of a cooperative commits an offence where he or she accepts a commission, fee or reward in connection with a transaction of the cooperative. By subclause 419(2), the officer “is also liable to make good to the cooperative double the value or amount of the commission, fee or reward”.

In this context, the words “is liable” probably mean that the officer is under a legal obligation to make good double the value of the commission, etc (see *Stroud’s Judicial Dictionary* (4th ed, 1973)). As such, subclause 419(2) imposes, in effect, a mandatory civil penalty on the officer. A court would appear to have no discretion to require the officer to pay to the cooperative any amount lesser than double the value of the commission, etc.

Burden of proof and the protection of privileges in some offence provisions

Under clause 394, an inspector may require certain persons to appear before the inspector to answer questions, and to produce documents. Under subclause 398(1), it is an offence to fail to comply with such a requirement. This is qualified by subclause 398(5), whereby a person, as a matter of defence, may satisfy the court that he or she had a reasonable excuse for not complying with the relevant requirement.

A number of issues deserve comment.

The first is that the Explanatory Memorandum offers no justification reversing the onus of proof in relation to the issue of reasonable excuse. The Explanatory Memorandum does not even mention the matter.

The second relates to the onus of proof question. It is clear that under subclause 398(5), the onus is on the defendant to satisfy the court that he or she had a reasonable excuse. In contrast, subclause 398(3) provides that a person “must not without reasonable excuse obstruct or hinder an inspector ...”. Given the comparison to the wording of subclause 398(5), the result in relation to subclause 398(3) might be that a court would hold that the prosecution must, ultimately at least, negative the existence of a reasonable excuse on the part of the person charged. It is difficult to see why the Bill, within the one provision, deals with two similar situations differently.

The third comment is that the Bill does not deal very clearly with the issue of whether a person subject to a requirement of an inspector may claim legal professional privilege. This would normally be possible under a reasonable excuse provision, although, in a Bill of this kind, it is desirable that the matter be addressed specifically. Many non-lawyers who administer cooperatives will consult this law, and it should be plain to the non-lawyer what it means.

In this Bill, however, the situation is made more complex by the inclusion of clause 402. This provides that where the person subject to the requirement of an inspector is a legal practitioner, the person is entitled to refuse to comply with clauses 394 and 397 where to do so would require the person to disclose privileged communications made to the person. There is no objection to this provision, but legal professional privilege is a privilege of the client, not of the lawyer. The failure to deal specifically with a person who is a client may suggest that the Bill does not intend to enable the person to avail her or himself of the privilege where he or she is subject to the requirement of an inspector.

The points just made also arise in relation to the clauses 406, 408 and 409, concerning inquiries.

In these parts of the Bill, there are provisions dealing with the privilege against self-incrimination – see clauses 399 and 407. A person may be compelled to self-incriminate, and is given some protection. The scope of the protection does not, however, extend to a derivative use of the information compelled, and in this respect these provisions are deficient in the scope of the protection they afford to the privilege against self-incrimination. This is contrary to what appears to be the more usual [practice in the drafting of Territory laws. That is, it is more usual to find that a provision that abrogates the privilege against self-incrimination will then go on to prohibit a derivative use of the information compelled; see for example clause 85 of the Rehabilitation of Offenders (Interim) Bill 2001.

Crimes Amendment Bill 2001

This Bill would amend the *Crimes Act 1900* to extend the forms of communication that may amount to making contact with a person for the purposes of the definition of the offence of stalking to include the sending of electronic messages; and to insert a new offence that would cover two major activities: (i) use of electronic means to suggest to a young person that they take part in, or watch, activities of a sexual nature, and (ii) sending or making available pornographic material to a young person.

Comment

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

The offence of sending or making available pornographic material to a young person is one of absolute liability to the extent that it is not a defence that the defendant did not know that the recipient of the material was a young person.

The Committee notes that there is no justification offered for removing this defence, nor for why it might not be a defence that the defendant believed on reasonable grounds that the recipient of the material was not a young person.

Food Bill 2001

This is a Bill for an Act to regulate the sale of food for consumption.

Comment

On 3 November 2000, the Territory, through the Council of Australian Governments (COAG) signed the Intergovernmental Agreement on Food Regulation. By this agreement, the Territory agreed to observe the Food Standards Code, a revised version of which was made in February 2001. The Territory also agreed to enact in its law the Model Food Provisions.

This Committee was provide with a copy of the Model Food Provisions, and commented on them in Report No 13 of 2000.

Para (i) – undue trespass on personal rights and liberties

A broadly expressed criminal offence

Subclause 25 provides that a person must not “sell food if the food is not of the nature or substance demanded by the purchaser”. This lacks clarity. It is very vague, and it may be asked whether this is an appropriate standard against which to assess criminal liability. It also appears to be more in the nature of a consumer protection provision than one suited for the regulation of food quality.

The Explanatory Memorandum provides an example of its operation, but does not otherwise address the comment made in Report No 13 of 2000.

Knowing the law

Clause 27 creates offences by reference to provisions of another document – the Food Standard Code. This is defined in the *Australia New Zealand Food Authority Act 1991*. The relevant definition is:

"Australia New Zealand Food Standards Code" means the code published under the name "Food Standards Code" in the "Gazette" on 27 August 1987 together with any amendments of the standards in that code:

- (a) approved by the Council before this Act commenced and published in the "Gazette" as forming part of that code; or
- (b) made under this Act.

In this context, incorporation by reference may be unavoidable, but, given that the elements of the offence cannot be ascertained except by reference to the Food Standard Code, some justification is called for.

The Explanatory Memorandum provides examples of the operation of clause 27, but does not address the need to refer to the Food Standards Code.

Removal of defence of mistaken and reasonable belief

Clause 33 expressly provides that a defendant may not raise a defence that he or she had a mistaken but reasonable belief as to the facts that constituted an offence of a kind described in Division 3.3.

In Report No 13 of 2000, it was commented that such an inroad into the common law principle that *mens rea* is an element of a criminal offence and should be justified. The Explanatory Memorandum does not address this issue.

A power to require names and addresses

Clause 54 empowers an authorised officer to require a person to state the person's name and address in defined circumstances. These circumstances are that the officer finds a person committing an offence against the Act, or has reasonable grounds for believing that a person has just committed an offence against the Act.

In Report No 6 of 1999, the Committee noted some general principles that might be taken into account when evaluating such a provision. We repeat them here.

What personal rights and freedoms are implicated?

The common law recognised "the right of the individual to refuse to answer questions put to him by persons in authority": *Rice v Connolly* [1966] 2 QB 414 at 419. This may be regarded as a dimension of the "right to silence", or, more particularly, of the privilege against self-incrimination; see *Review of Commonwealth Criminal Law* (Fifth Interim Report, June 1991) at paras 8.1 and 8.8.

Today, this right might also be seen as a dimension of a right to privacy, in particular where the person questioned is not suspected of committing a crime.

When is it justifiable to impose on a person an obligation to provide their name and address?

There are statutory provisions that impose on a person an obligation to provide their name and address if a state official believes that the person might be able to assist in inquiries in relation to the commission of an offence. There is a general provision to this effect in section 349V of the *Crimes Act 1900*.

The ALRC noted that while “[s]tatutory power to require a person to furnish his name and address exists at present in most jurisdictions only in relation to traffic offences[, it] is nonetheless, a power which policemen need, and exercise in practice”: ALRC, *Criminal Investigation Report No 2*, 1975, at para 79. The Commission thus recommended:

The power to require a person to furnish his name and address, now available only in traffic cases, should be extended to situations where the policeman has reasonable grounds for believing that the person can assist him in relation to an offence which has been, may have been, or may be committed. The police officer should be required to specify the reason for which the person’s name and address is sought, and there should be a reciprocal right, in such a situation, for a citizen to demand and receive from the policeman particulars of his own identity: ALRC at para 322.

The Gibbs Committee approved of this general approach; see *Review of Commonwealth Criminal Law* (Fifth Interim Report, June 1991) at para 8.8.

It is, however, critical to note that the ALRC linked its recommendations to the means it recommended for enforcing safeguards against an excess of the powers of the police. In this respect, it instanced “disciplinary action, the exclusionary rule, and the civil action for false imprisonment”: ALRC at para 81, footnote 107, and see too at para 204, and see paras 301-302.

The first of these reasons has much less force where the person exercising the power is not a police officer. In relation to the police, there is a distinct regime for making of complaints and discipline.

Diminution of the rights of defendant on a trial

Notwithstanding the provision in clause 138(3) that empowers a court to act in the interests of justice, clauses 138(1) and (2) are a substantial qualification on the rights of defendant to seek to resist a prosecution in the manner that is traditionally permitted to defendants.

The Committee drew attention to this issue in Report No 13 of 2000. The Explanatory Memorandum does not address this issue.

Rehabilitation of Offenders (Interim) Bill 2001

This is a Bill for an Act to make provision for the operation of home detention, parole and a Sentence Administration Board. There would be two forms of home detention: (i) in respect of persons sentenced to 18 months or less imprisonment or, in the case of juveniles, to 18 months or less detention in an institution; and (ii) persons on remand. Certain kinds of offenders are not eligible for home detention, and a court would decide whether to make an order in the light of certain principles stated in the law. The Sentence Administration Board would undertake sentence administration functions in relation to parole orders made by a court. The scheme of the Act would be that the court would determine the date from which a prisoner was eligible for parole. The Board would then, in certain conditions, make a parole order.

Comment

Para (i) – undue trespass on personal rights and liberties

A possible intrusion on the function of the sentencing court

A court would decide whether to make a home detention order in the light of certain principles that are stated clause 11. The court must also consider “the assessment report about the person”: paragraph 11(2)(a). Subclause 11(3) then provides that “[a] court may make a home detention order only if the assessment report about the person states that in the opinion of the person making the assessment, the person is suitable to serve the relevant sentence of imprisonment or remand by way of home detention”. On the other hand, and “for any reason it considers sufficient”, the court may decide not to make a home detention order despite the contents of the assessment report.

It thus appears that where the assessment report states that the person is not suitable to serve the relevant sentence of imprisonment or remand by way of home detention, the court cannot make the order. This result might be seen as objectionable on ‘rights’ grounds *if the function of sentencing is seen as an aspect of the judicial power*. It might be so viewed on the basis that the decision to sentence is one made after the court receives evidence, and applies to that evidence a body of principle established by judicial precedents. It might be argued that the judicial function should not be limited in this way by the opinion of the maker of an assessment report.

(The Bill provides in subclause 12(1) that it is the chief executive who makes the assessment report, but no doubt this function will be delegated. It is a matter for comment that the bill does not provide further for whom will make an assessment report.)

On the other hand, there are views that the sentencing function as an administrative function. One Australian judge said that “the sentencing process is more of an administrative function than a judicial one, particularly when it is remembered that what a judge decides to do with an accused may be substantially altered by a decision of prison authorities or by the government exercising the prerogative of mercy”: R M Eggleston, *Evidence, Proof and Probability* (2nd ed, 1983) at 128. Under this Bill, it should be noted that the Board may make a parole order that is earlier than the

eligibility date that has been fixed by the sentencing court; see subclause 52(2), which is discussed below.

There is a complication here that makes it difficult to take a clear view in this issue. Paragraph 11(2)(a) speaks of the court being required to consider an assessment report. But whether such a report comes into existence depends on whether the sentencing court requests such a report to be made: see subclause 33(1) – “If a court ...”. (The court may make the request only after it has imposed a sentence of a kind that would enable it to make a home detention order. That is, that the person has been sentenced to 18 months or less imprisonment or, in the case of juveniles, to 18 months or less detention in an institution, or, has been remanded into custody prior to trial.)

This difficulty might be dealt with were paragraph 11(2)(a) to read “(a) any relevant assessment report about the person”. The provision would not then give the impression that in every case the court will be required to consider an assessment report.

This would still, however, leave for consideration the issue of whether subclause 11(3) intrudes too much on the judicial role in sentencing.

Parole orders

The scheme of the Act would be that the court would determine the date from which a prisoner was eligible for parole. The Board would then, in certain conditions, make a parole order.

The Committee draws attention to clause 52. Subclause 52(1) provides that “If the board is satisfied that there are exceptional circumstances justifying the release on parole of a sentenced offender under this section, the board may make a written order directing the release of the offender on parole”. In certain circumstances, the release date may be earlier than the offender’s eligibility date as had been fixed by the sentencing court; see subclause 52(2).

Three points may be made.

First, when acting under clause 52, the Board is not bound by the principles found in division 3.3.3, and thus, in particular, need not take account of the views of the relevant victim(s). It is not apparent why this should be so.

Secondly, the phrase “exceptional circumstances” is undefined. This in itself may not be a problem, but consideration should be given to empowering, or even requiring, the Board to state in guidelines the kinds of factors it will take into account, even if this is a non-exhaustive statement.

Thirdly, the Board is *not* required *to consider* an application for a parole order under clause 52; see subclause 52(3). This reverses a fundamental proposition of administrative law that a body given a power, even if it is in the form of an unconfined discretion, is required as a matter of law to consider whether to exercise that power. It is not apparent why the Board should have the power to simply ignore an application made to it. Exercise of this power may give rise to a grievance on the

part of the offender, and create suspicion of some improper motive in cases where the Board does exercise the power.

Procedure of the Board

- Natural justice

Subclause 75(1) imposes on the Board an obligation to observe natural justice, but this may be qualified by what is provided for in subclause 75(2)(b). The latter requires that the proceedings of the Board not “be conducted in an adversarial manner”.

One problem here is that it is by no means clear just what would be an “an adversarial manner”. This not a phrase that has any settled or even reasonably clear meaning. It is arguable that it has certain core elements, such as the process of cross-examination. But on this basis, there is a problem lying in the fact that in some circumstances that might arise under the scheme in the Bill, observance of natural justice would require that the process of cross-examination be followed: see *R v Board of Visitors of Hull Prison* [1979] 1 WLR 1401.

It is not clear what is gained by the insertion of subclause 75(2)(b), and its inclusion may well have unintended consequences. At least, it is possible that it will generate dispute and litigation about the rights of an offender at a Board hearing.

- Privileges

There is no explicit provision dealing with the extent to which a person may claim legal professional privilege against a demand from the Board that the person disclose information.

- The obligation to give reasons

Where the Board revokes a parole order, there is no obligation to give reasons to the offender: see subclause 58(4). This may be compared to the decision of the Board to refuse to make an order: see paragraph 50(4)(c). It is not apparent why there should be different treatment.

Retrospective operation

There are two provision that appear to have a retrospective operation: see subclauses 31(8) and 32(4). The operation may be beneficial or neutral in terms of a person’s rights, but this is not apparent on the face of the provisions.

There should be justification for these provisions. The relevant parts of the Explanatory Memorandum do not address the question.

(iv) – inappropriate delegation of legislative power

Clause 40 provides that “The board may, by written order and in circumstances prescribed under the regulations, rescind a parole order at any time before the sentenced offender to whom the order relates is released under the order”.

On its face, this is a very important function of the board, and the issue is whether this subject matter should be left to regulations. Would it not be possible for at least the major principles that would govern an exercise of this power to be spelt out in the Bill?

Drafting points

Should subclause 14(2) include a reference to “any other entity” in order to parallel subclause 14(1)?

An understanding of clause 37 might be assisted were there to be a note referring the reader to the definition of “parole order” in the Dictionary to the Act.

Subordinate Legislation - No Comment

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

Subordinate Law 2001 No 18 being the Gas Safety Regulations 2001 made under the *Gas Safety Act 2000* prescribes certain matters required under the Act. The regulations establish the responsibilities for persons doing or supervising gasfitting work on consumer piping systems. They also establish notification and compliance procedures, including the placing of compliance indicators, the issuance of compliance certificate and immediate notification in the event of a consumer piping system being unsafe. The regulations are transferred from the gasfitting requirements set out under the Gas Supply Regulations which is repealed on the enactment of the Act.

Subordinate Law 2001 No 19 being the Dangerous Goods Regulations Amendment made under the *Dangerous Goods Act 1975* amends subregulation 93 (6) of the *Dangerous Goods Regulations 1978* to provide for a restriction upon the amount of shop good fireworks that may be received under a permit. From 1 July 2001 the permit will reduce the amounts stored from 1000kg to 50kg.

Subordinate Law 2001 No 20 being the Road Transport (Offences) Regulations 2001 made under the *Road Transport (General) Act 1999* replaces the *Road Transport (Offences) Regulations 2001* and increases infringement notice penalties for some traffic offences to maintain parity with NSW penalties for similar offences.

Subordinate Law 2001 No 21 being the Building Regulations Amendment made under the *Building Act 1972* amends the *Building Regulations 1972* to give exemption from the requirements of the Act to civil engineering works, such as bridges and dams, and to masts for purposes such as electricity transmission and

telecommunications. A further group of structures is exempted which include street light poles, playground equipment and some fences. In addition to these new exemptions, other works constructed on unleased land, such as structures up to 2 square metres in area and 1.8 metres high, will be covered by the older exemptions made under section 6AA of the Act that appear in regulation 4 of the principal regulations.

Subordinate Law 2001 No 23 being the Supreme Court Rules Amendment made under section 36 of the *Supreme Court Act 1933* amends orders 61 and 61A to enable the Master of Registrar to exercise the power of the Court under certain provisions of the *Corporations Law Rules 2000*.

Subordinate Law 2001 No 24 being the Waste Minimisation Regulations 2001 made under the *Waste Minimisation Act 2001* makes provisions in relation to the storage, collection and disposal of waste.

Subordinate Law 2001 No 25 being the Crimes (Forensic Procedures) Regulations Amendment made under the *Crimes (Forensic Procedures) Act 2000* amends the *Crimes (Forensic Procedures) Regulations 2000* to facilitate participation by the ACT in the national DNA database which forms part of the new CrimTrac system, by giving formal recognition to equivalent legislation in other participating jurisdictions dealing with forensic procedures and the DNA database.

Subordinate Law 2001 No 26 being the Animal Welfare Regulations 2001 made under the *Animal Welfare Act 1992* allows for provisions:

- identified in the *Animal Welfare Amendment Act 2000* to be enacted;
- to enact recommendations agreed to by the National Consultative Committee on Animal Welfare (NCCAW); and
- to enact recommendations agreed to by the Agricultural Resource Management Council of Australia and New Zealand (ARMCANZ).

Determination No. 112 of 2001 made under subsection 115 (1) of the *Road Transport (General) Act 1999* revokes Determination No. 223 of 2000 (notified in Gazette S31, on 29 June 2000) and determines that the maximum taxi fares payable for the purposes of the Act shall be as set out in the Schedule.

Determination No. 113 of 2001 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 140 of 2000 (notified in Gazette S20 on 8 June 2000) and determines the fee payable in respect of the provisions of the *Road Transport (Safety and Traffic Management) Act 1999* in relation to vehicle impounding and seizure and speed/reliability tests shall be the fee specified in the Schedule for that provision.

Determination No. 114 of 2001 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 192 of 2000 (notified in Gazette S25 on 20 June 2000) and determines the fee payable in respect of the provisions of the *Road Transport (Safety and Traffic Management) Regulations 2000* made under the *Road Transport (Safety and Traffic Management) Act 1999* in relation to parking permits shall be the fee specified in the Schedule for that provision.

Determination No. 115 of 2001 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 1 of 2001 (notified in Gazette No. 4 on 25 January 2001) and determines that the fee payable in respect of the provisions of the *Road Transport (Vehicle Registration) Regulations 2000* made under the *Road Transport (Vehicle Registration) Act 1999* in relation to number plates shall be the fee specified in the Schedule for that provision.

Determination No. 116 of 2001 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 185 of 2000 (notified in Gazette S25 on 20 June 2000) and determines the fees payable in respect of the provisions of the *Road Transport (Driver Licensing) Regulations 2000* made under the *Road Transport (Driver Licensing) Act 1999* in relation to driver licences shall be the fee (including the Commonwealth Goods and Services Tax where applicable) specified in the Schedule for that provision.

Determination No. 117 of 2001 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 73 of 2000 (notified in Gazette S6 on 29 February 2000) and determines the fee payable in respect of the section of the *Road Transport (Dimensions and Mass) Act 1990* specified in the attached Schedule shall be the fee specified in the Schedule for that section; and where a vehicle is a vehicle of a kind referred to in Part 3 of the Schedule to the *Road Transport Charges (Australian Capital Territory) Act 1993* (Cwlth) the charges in that Schedule shall apply.

Determination No. 118 of 2001 made under section 116 of the *Unit Titles Act 1970* revokes Determination No. 162 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act, in relation to residential and commercial developments, shall be in accordance with the Schedule.

Determination No. 119 of 2001 made under section 45A of the *Plumbers, Drainers and Gasfitters Board Act 1982* revokes Determination No. 164 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act, in relation to plumbers, drainers and gasfitters licences, shall be in accordance with the Schedule.

Determination No. 121 of 2001 made under section 287 of the *Land (Planning and Environment) Act 1991* revokes determinations No. 165 of 2000 (notified in Gazette S20 on 9 June 2000) and Determination No. 104 of 2001 (notified in Gazette S30 on 25 June 2001) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 123 of 2001 made under section 104 of the *Electricity Act 1971* revokes Determination No. 166 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 124 of 2001 made under section 30 of the *Construction Practitioners Registration Act 1998* revokes Determination No. 179 of 2000

(notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 125 of 2001 made under section 65 of the *Building Act 1972* revokes Determination No. 231 of 2000 (notified in Gazette S29 on 30 June 2000) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 126 of 2001 made under section 39B of the *Architects Act 1959* revokes Determination No. 168 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act, in relation to the registration of architects, shall be in accordance with the Schedule.

Determination No. 127 of 2001 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 73 of 2000 (notified in Gazette S6 on 29 February 2000) and determines the fees payable in respect of the section of the *Road Transport (Dimensions and Mass) Act 1990* specified in the attached Schedule shall be the fee specified in the Schedule for that section; and where a vehicle is a vehicle of a kind referred to in Part 3 of the Schedule to the *Road Transport Charges (Australian Capital Territory) Act 1993* Cwlth) the charges in that Schedule shall apply.

Determination No. 128 of 2001 made under section 9A of the *Roads and Public Places Act 1937* revokes Determination No. 144 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act, in relation to road carriageway and footpath, driveway and gutter opening permits, shall be in accordance with the Schedule.

Determination No. 130 of 2001 made under section 12A of the *Dangerous Goods Act 1984* revokes Determination No. 160 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 132 of 2001 made under section 27C of the *Workers' Compensation Act 1951* revokes Determination No. 155 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act, in relation to applications to be an approved insurer or an exempt employer, shall be in accordance with the Schedule.

Determination No. 133 of 2001 made under section 6B of the *Scaffolding and Lifts Act 1957* revokes Determination No. 156 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 134 of 2001 made under section 96A of the *Occupational Health and Safety Act 1989* revokes Determination No. 358 of 2000 (notified in Gazette No. 50 on 14 December 2000) and determines that the fees for the purposes of the Act, in relation to certificates of competency and accreditation of competency assessors, shall be in accordance with the Schedule.

Determination No. 135 of 2001 made under section 4A of the *Machinery Act 1949* revokes Determination No. 157 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 137 of 2001 made under section 42 of the *Stock Act 1991* revokes Determination No. 169 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 138 of 2001 made under section 65 of the *Gas Safety Act 2000* determines that the fees payable for the purposes of the Act, in relation to lodgment of a Certificate of Compliance, shall be in accordance with the Schedule.

Determination No. 139 of 2001 made under section 13 of the *Stock Act 1991* revokes Determination No. 178 of 2000 (notified in Gazette S20 on 8 June 2001), determines that the fees payable for the purposes of the Act shall be in accordance with the Schedule, in relation to the levy for one stock unit and determines that:

- one (1) stock unit represents one (1) small stock;
- ten (10) stock units represent one (1) large stock.

Determination No. 140 of 2001 made under section 5A of the *Lakes Act 1976* revokes Determination No. 172 (notified in Gazette S20 on 8 June 2000) and determines that the fees payable for the purposes of the Act, in relation to the granting of a permit to use a power boat in the Molonglo River, shall be in accordance with the Schedule.

Determination No. 141 of 2001 made under section 110 of the *Animal Welfare Act 1992* revokes Determination No. 174 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees payable for the purposes of the Act, in relation to licences to use or breed an animal for the purpose of research or teaching; a circus permit; and commercial and private trapping permits, shall be in accordance with the Schedule.

Determination No. 142 of 2001 made under section 63 of the *Animal Diseases Act 1993* revokes Determination No. 175 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees payable for the purposes of the Act, in relation to the provision of emergency tail tags, shall be in accordance with the Schedule.

Determination No. 143 of 2001 made under section 83A of the *Nature Conservation Act 1980* revokes Determination No. 171 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees payable for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 144 of 2001 made under section 78 of the *Water Resources Act 1998* revokes Determination No. 203 of 1999 (notified in Gazette S51 on 27 August 1999); Determination No. 116 of 2000 (notified in Gazette No. 17 on 27

April 2000) and Determination No. 176 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees payable for the purpose of those sections specified in the Schedule in Column 1 and described in Column 2 shall be those fees specified in Column 4. These fees are to be paid as described in Column 5.

Determination No. 145 of 2001 made under section 7 of the *Pounds Act 1928* revokes Determination No. 170 of 2000 (notified in Gazette S20 on 8 June 2000) that the fees payable for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 146 of 2001 made under sections 9A of the *Roads and Public Places Act 1937* revokes Determination No. 146 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act, in relation to permits in relation to placement of objects for outdoor cafes, shall be in accordance with the Schedule.

Determination No. 147 of 2001 made under section 27B of the *Hawkers Act 1936* revokes Determination No. 159 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act, in relation to hawkers' licences and permits, shall be in accordance with the Schedule.

Determination No. 148 of 2001 made under section 4 of the *Motor Omnibus Services Act 1955* revokes Determination No. 181 of 2000 (notified in Gazette No. 23 on 8 June 2000) and determines that the charges for travel in a motor omnibus shall be as specified in the Schedule.

Determination No. 149 of 2001 made under section 144 of the *Domestic Animals Act 2000* determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 150 of 2001 made under section 8 of the *Electoral Act 1992* revokes Determination No. 249 of 2000, determines that the fees payable for the purposes of the Act are as set out in the Schedule and further determines that the fees payable for the purposes of the Act in item 17 may be exempted or refunded by the Electoral Commissioner where the copies are to be used for educational purposes.

Determination No. 151 of 2001 made under section 139 of the *Taxation Administration Act 1999* revokes the determination made under section 30 (3) and 31 (2) of the *Duties (Consequential and Transitional Provisions) Act 1999* by notice (notified in Gazette No. 43 on 27 October 1999) and determines the rates of duty payable under various provisions of the *Duties Act 1999*.

Determination No. 152 of 2001 made under subsection 22 (3) of the *Rates and Land Tax Act 1926* revokes (from 16 July 2001) Determination No. 380 of 2000 (notified in Gazette No. 2 on 11 January 2001) and determines the interest rate to be charged on unpaid rates and land tax for the purposes of subsection 22 (3) shall be 12.89 percent per annum.

Determination No. 153 of 2001 made under section 28B of the *Rates and Land Tax Act 1926* revokes (from 16 July 2001) **Determination No. 382 of 2000** (notified in Gazette No. 2 on 11 January 2001) and determines the interest rate payable on overpaid rates and land tax for the purpose of paragraph 28B (1) (a) to be 4.89 percent per annum.

Determination No. 154 of 2001 made under section 23 of the *Rates and Land Rent (Relief) Act 1970* revokes (from 16 July 2001) **Determination No. 3 of 2001** (notified in Gazette No. 2 on 11 January 2001) and determines the rate of interest for the purposes of subsection 23 (1) in relation to amounts deferred as the result of a deferment under section 3, at 4.89 percent per annum; and in relation to amounts unpaid after the date of revocation of a deferment, at 12.89 percent per annum.

Determination No. 155 of 2001 made under section 75 of the *Public Trustee Act 1985* revokes **Determination No. 20 of 1991** (notified in Gazette No. 20 on 22 May 1991) and **Determination No. 32 of 1997** (notified in Gazette S27 on 29 January 1997) and under section 5 of the *Subordinate Laws Act 1989* and section 75 of the *Public Trustee Act 1985* amends **Determination of fees and charges for 2001/2002** – Attorney-General by inserting items 88.1 and 88.2 after item 88 and before item 89 in the Schedule.

Determination No. 157 of 2000 made under section 287 of the *Land (Planning and Environment) Act 1991* amends **Determination No. 121 of 2001** (notified in Gazette S34 on 20 June 2001) by:

- After the words “This Instrument commences on 1 July 2001”, adding the words “and, in respect of changes by the *Supplementary Determination of Fees for the Land (Planning and Environment) Act 1991*, on the date that the *Supplementary Determination* comes into effect.
- In the Schedule, under “Section 226” insert a new fee: “Section 226: Lease Variation to vary a lease, to vary the development rights of a lease, to vary the gross floor area of a lease, to add land to a lease, to excise land from a lease, to payout the land rent portion of a lease: 1278.00”.

This fee was included in the 2001-01 fee schedule at the amount of \$1250 but was initially omitted from the 2001-02 fee determination in error.

Determination No. 158 of 2001 made under subsection 45 (1) of the *Waste Minimisation Act 2001* determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

Determination No. 160 of 2001 made under subsection 12 (1) of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to the roads and road related areas used when vehicles are competing in the timed special (ie competitive) stages of the DELL Classic Stages Rally on 30 June 2001. The timed competitive stages are located in ACT forest areas. All competing vehicles are road registered and compulsory third part (CTP) insured.

Determination No. 161 of 2001 made under subsection 6 (2) of the *Legislative Assembly (Member’s Staff) Act 1989* varies **Determination No. 50 of 2001** by

amending the attachment to Schedule 2 to bring the arrangements for authorising employment contracts for the Speaker's staff into line with that of Members.

Determination No. 162 of 2001 made under section 118 of the *Adoption Act 1993* revokes Determination No. 214 of 2000 (notified in Gazette S47 on 27 June 2000) and determines that the fees payable for the purposes of the Act are as set out in the Schedule.

Determination No. 166 of 2001 made under section 67 of the *Vocational Education and Training Act 1995* revokes Determination No. 216 of 2000 (notified in Gazette S27 on 27 June 2000) and determines that the fees payable for the purposes of the Act are as set out in the Schedule.

Determination No. 169 of 2001 made under subsection 10 (2) of the *Legislative Assembly (Members' Staff) Act 1989* is an arrangement approved by the Chief Minister of staff salary allocations for the employment of staff of Members of the Legislative Assembly for the period 21 June 2001 to 19 June 2002. This Instrument also enables Members, with the written agreement of the Chief Minister, to employ staff outside these allocations in some circumstances.

Determination No. 170 of 2001 made under subsection 5 (2) of the *Legislative Assembly (Members' Staff) Act 1989* is an arrangement approved by the Chief Minister of staff salary allocations for the employment of staff of the Speaker of the Legislative Assembly for the period 21 June 2001 to 19 June 2002. This Instrument also enables the Speaker, with the written agreement of the Chief Minister, to employ staff outside these allocations in some circumstances.

Determination No. 172 of 2001 made under section 4 of the *Public Place Names Act 1989* determines the name, origin and significance of the new division of Bonner in the District of Gungahlin.

Determination No. 173 of 2001 made under paragraph 204 (a) of the *Land (Planning and Environment) Act 1991* approves the Plan of Management of Canberra's Urban Lakes and Ponds.

Determination No. 183 of 2001 being the Public Health Risk (Health Care Facilities) Declaration 2001 made under section 18 of the *Public Health Act 1997* declares the operation, management or control of a business, charity or service, upon whose premises a prescribed medical procedure is carried out and/or over night patient stays are provided a public health risk activity. The operation of an aged care facility is specifically exempt from the requirement of this declaration.

Determination No. 184 of 2001 being the Public Health Risk (Infection Control) Declaration Amendment 2001 made under section 18 of the *Public Health Act 1997* specifically excludes health care facilities from the requirement to hold an Infection Control licence.

Determination No. 185 of 2001 made under section 133 of the *Public Health Act 1997* repeals Determination No. 94 of 1995 which approved the Skin Penetration

Procedures Code of Practice made under the *Skin Penetration Procedures Act 1994* (repealed).

Determination No. 186 of 2001 made under section 137 of the *Public Health Act 1997* determines that the fees payable for the licensing of the licensable public health risk activity – operation of an Infection Control Business are as set out in the Schedule.

Determination No. 187 of 2001 made under section 133 of the *Public Health Act 1997* determines the ACT Health Care Facilities Code of Practice 2001 to be a Code of Practice for the operation, management or control of a business, charity or service that is a health care facility for the purposes of the Act and commences on 30 days from the day it is notified in the Gazette (19 July 2001).

Determination No. 188 of 2001 made under section 137 of the *Public Health Act 1997* determines that the fees payable for the licensing of the licensable public health risk activity – the operation of a Health Care Facility - are as set out in the Schedule.

Determination No. 189 of 2001 made under subsection 3 (2) of the *Agents Act 1968* declares that the provisions of the Act do not apply to Koomarri Association ACT Incorporated to the extent that it carries on the business of an employment agent in respect of disabled persons.

Determination No. 190 of 2001 made under subsection 97 (1) of the *Land (Planning and Environment) Act 1991* appoints a specified person to be a member and Deputy Chairperson of the ACT Heritage Council for a period of two years from 19 July 2001.

Determination No. 191 of 2001 made under section 4 of the *Motor Omnibus Services Act 1955* revokes Determination No. 148 of 2001 (notified in Gazette S38 on 27 June 2001) and determines that the charges for travel in a motor omnibus shall be as specified in the Schedule.

Determination No. 192 of 2001 made under section 42 of the *Taxation Administration Act 1999* is a declaration notice by the Commissioner to approve special arrangements in relation to registered ACT payroll taxpayers to submit their June 2002 return by 31 July 2002 instead of 7 July 2002.

Determination No. 193 of 2001 made under section 232 of the *Duties Act 1999* revokes determination No. 90 of 1999 (notified in Gazette No. 21 on 26 May 1999) and determines the exemption guidelines for corporate reconstructions which applies retrospectively from 4 June 2001.

Determination No. 199 of 2001 made under subsection 22 (1) of the *Tree Protection (Interim Scheme) 2001* appoints a specified person to advise the Conservator of Flora and Fauna from 26 July 2001 for one year about the exercise of functions under part 3 of the Act.

Determination No. 201 of 2001 made under section 32 of the *Health and Community Care Services Act 1996* revokes Determination No. 110 of 2001 (notified in Gazette No. 24 on 14 June 2001) and determines fees and charges for the purposes of the Act as specified in the Schedule to the determination to take effect from 25 July 2001.

Determination No. 202 of 2001 made under subsection 12 (1) of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to the roads or road related when vehicles are competing in the timed special (ie competitive) stages of the Wizard Home Loans Rally on 28 July 2001. The timed competitive stages are located in ACT forest areas and all competing vehicles are road registered and compulsory third party insured.

Determination No. 203 of 2001 made under sections 61 and 65 of the *Utilities Act 2000* approves variations to the Contestable Work Accreditation Code.

Determination No. 204 of 2001 made under paragraph 254 (1) (b) of the *Land (Planning and Environment) Act 1991* revokes Instrument No. 120 of 1999 (notified in Gazette No. 26 on 30 June 1999) and declares that the plants described in schedule one to be pest plants in the Australian Capital Territory.

Determination No. 210 of 2001 made under subsection 163 (4) of the *Land (Planning and Environment) Act 1991* revokes Determination No. 131 of 2000 (notified in Gazette No. 20 on 18 May 2000) and specifies the criteria for the direct grant of a Crown lease to community organisations.

Determination No. 211 of 2001 made under subsection 161 (5) of the *Land (Planning and Environment) Act 1991* revokes Determination No. 220 of 1998 (notified in Gazette No. 38 on 23 September 1998) and specifies the criteria for the direct grant of a Crown lease for the purposes of older persons' accommodation.

Determination No. 214 of 2001 made under subsection 7 (1) of the *Government Procurement Act 2001* is a procurement guideline prescribing policies and practices that must be observed in the procurement of goods, services and works.

Determination No. 223 of 2001 made under subsection 161 (5) of the *Land (Planning and Environment) Act 1991* establishes criteria for the direct grant of a Crown lease to community organisations proposing to add land to an existing lease granted for the purposes of an educational establishment that is capable of being transferred.

Determination No. 224 of 2001 made under subsection 171A (2) of the *Land (Planning and Environment) Act 1991* revokes Instrument No. 87 of 2001 and determines the maximum term of a rural lease, and the conditions subject to which the Executive shall grant a further rural lease.

Subordinate Legislation - Comment

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

Determination No. 120 of 2001 made under section 52A of the *Surveyors Act 2000* revokes Determination No. 163 of 2000 (notified in Gazette S20, on 8 June 2000) and determines fees for the purposes of the Act, in accordance with the Schedule, in relation to surveyors registration.

Incorrect reference to Act title and section

The Committee draws attention to what appears to be two incorrect references in the determination. The determination of fees has been made pursuant to section 52A of the *Surveyors Act 2000*. Perhaps the determination of fees should have been made pursuant to section 46 of the *Surveyors Act 2001*?

Determination No. 122 of 2001 made under section 80 of the *Water and Sewerage Act 2000* revokes Determination No. 230 of 2000 (made under section 80 of the repealed *Energy and Water Act 1988*) (notified in Gazette S29 on 30 June 2000) and determines fees for the purposes of the Act in accordance with the Schedule.

Determination made under incorrect section

The Committee draws attention to what appears to be an incorrect reference in the determination to section 80 of the Act as the section under which the Minister may determine fees. Section 80 may refer to section 80 of the repealed *Energy and Water Act 1988*. Perhaps section 45 is the section under which the Minister may determine fees?

Determination No. 129 of 2001 made under section 9A of the *Roads and Public Places Act 1937* revokes Determination No. 144 of 2000 (notified in Gazette S20 on 8 June 2000) and determines fees for the purposes of the Act, for the use of unleased land, subject to a licence agreement, in accordance with the Schedule.

Possible incorrect determinations revoked

The Committee notes that Determination No. 129 of 2001 revokes Determination No. 144 of 2000. Determination No. 144 of 2000 determines fees for road carriageway and footpath, driveway and gutter opening permits and has been revoked by Determination No. 128 of 2001 (notified in Gazette S34 on 20 June 2001). Perhaps this determination should have revoked Determination No. 145 of 2000 which determines fees for the use of unleased land?

Determination No. 131 of 2001 made under section 12A of the *Dangerous Goods Act 1984* revokes Determination No. 160 of 2000 (notified in Gazette S20 on 8 June 2000) and determines that the fees for the purposes of the Act shall be in accordance with the Schedule.

The Committee notes that Determination No. 131 of 2001 revokes Determination No. 160 of 2000. Determination No. 160 of 2000 was revoked by Determination No. 130 of 2001 (notified in Gazette S34 on 20 June 2001). Perhaps this determination should have revoked Determination No 158 of 2000?

Determination No. 136 of 2001 made under section 165 of the *Environment Protection Act 1997* revokes Determination No. 129 of 1999 (notified in Gazette S37 on 30 June 1999) and Determination No. 107 of 2000 (notified in Gazette No. 13 on 30 March 2000) and determines that the fees payable for the purposes of the Act shall be in accordance with Schedules 1, 2 and 3, and paragraphs 69 (2) (e) (i) and 76 (2) (e) (i), section 83 and Division 1 of Part XIII.

The Committee notes that Determination No. 136 of 2001 revokes Determinations Nos 129 of 1999 and 107 of 2000 which were revoked by Determination No. 248 of 2000 (notified in Gazette No. 29 on 20 July 2000). Perhaps it is Determination No. 248 of 2000 which should have been revoked?

Determination No. 159 of 2001 made under section 3F of the *Building and Services Act 1924* revokes Determination No. 161 of 2000 (notified in Gazette S20 on 8 June 2000).

The Committee notes that Determination No. 159 of 2001 revokes Determination No. 161 of 2000. Determination No. 161 of 2000 was revoked by Determination No. 280 of 2000 (notified in Gazette No. 34 on 24 August 2000). Perhaps it is Determination No. 280 of 2000 which should have been revoked?

Determination No. 156 of 2001 made under section 16 of the *Hotel School Act 1996* appoints specified persons and Members and an alternate member of the Hotel School Board of the Australian Capital Territory until 27 February 2002.

Determination No. 163 of 2001 made under subsection 5B (1) of the *Bushfire Act 1936* revokes any earlier appointments and appoints specified persons as members of the ACT Bushfire Council for a three year period from 5 July 2001.

Determination No. 164 of 2001 made under subsections 9 (2) and 10 (1) of the *Agents Act 1968* appoints a specified person to be a member and Chair of the Agents Board of the Australian Capital Territory from 5 July 2001 until 30 June 2002.

Determination No. 165 of 2001 made under subsection 9 (2) of the *Agents Act 1968* appoints specified persons to be members of the Agents Board of the Australian Capital Territory from 5 July 2001 until 30 June 2002.

Determination No. 171 of 2001 made under section 174 of the *Utilities Act 2000* appoints specified persons as Chair, Deputy Chair and members of the Essential Services Consumer Council until 30 June 2004.

Determination No. 174 of 2001 made under paragraph 11 (1) (b) of the *University of Canberra Act 1989* appoints a specified person as a member of the Council of the University of Canberra for a period of four years commencing 12 July 2001.

Determination No. 175 of 2001 made under paragraph 11 (1) (b) of the *University of Canberra Act 1989* appoints a specified person as a member of the Council of the University of Canberra for a period of two years commencing 12 July 2001.

Determination No. 176 of 2001 made under paragraph 11 (1) (b) of the *University of Canberra Act 1989* appoints a specified person as a member of the Council of the University of Canberra for a period of two years commencing 12 July 2001.

Determination No. 177 of 2001 made under paragraph 11 (1) (b) of the *University of Canberra Act 1989* appoints a specified person as a member of the Council of the University of Canberra for a period of two years commencing 12 July 2001.

Determination No. 178 of 2001 made under paragraph 11 (1) (b) of the *University of Canberra Act 1989* appoints a specified person as a member of the Council of the University of Canberra for a period of two years commencing 12 July 2001.

Determination No. 179 of 2001 made under paragraph 11 (1) (b) of the *University of Canberra Act 1989* appoints a specified person as a member of the Council of the University of Canberra for a period of four years commencing 12 July 2001.

Determination No. 180 of 2001 made under paragraph 11 (1) (b) of the *University of Canberra Act 1989* appoints a specified person as a member of the Council of the University of Canberra for a period of four years commencing 12 July 2001.

Determination No. 181 of 2001 made under section 174 of the *Utilities Act 2000* appoints a specified person as a member of the Essential Services Consumer Council until 30 June 2004.

Determination No. 194 of 2001 made under subsection 5 (2) of the *Health Professions Boards (Procedures) Act 1981* and the *Podiatrists Act 1994* appoints a specified person to be Chairperson of the Podiatrists Board of the ACT from 26 July 2001 for a period of three years.

Determination No. 195 of 2001 made under subsection 5 (2) of the *Health Professions Boards (Procedures) Act 1981* and the *Podiatrists Act 1994* appoints a specified person to a member of the Podiatrists Board of the ACT from 26 July 2001 for a period of three years.

Determination No. 196 of 2001 made under subsection 5 (2) of the *Health Professions Boards (Procedures) Act 1981* and the *Podiatrists Act 1994* appoints a specified person to a member of the Podiatrists Board of the ACT from 26 July 2001 for a period of three years.

Determination No. 197 of 2001 made under subsection 5 (2) of the *Health Professions Boards (Procedures) Act 1981* and the *Podiatrists Act 1994* appoints a

specified person to a member of the Podiatrists Board of the ACT from 26 July 2001 for a period of three years.

Determination No. 198 of 2001 made under subsection 5 (2) of the *Health Professions Boards (Procedures) Act 1981* and the *Podiatrists Act 1994* appoints a specified person to a member of the Podiatrists Board of the ACT from 26 July 2001 for a period of three years.

Determination No. 205 of 2001 made under subsection 9 (1) of the *Parole Act 1976* appoints a specified person as a member of the Parole Board of the Australian Capital Territory for a period of three years commencing 27 July 2001.

Determination No. 206 of 2001 made under subsection 9 (1) of the *Parole Act 1976* appoints specified persons as the Chairperson and as a member of the Parole Board of the Australian Capital Territory for a period of three years commencing 27 July 2001.

Are these instruments disallowable?

The Committee notes that the explanatory statements to the above appointments gives no indication as to whether or not the persons appointed as members are public servants. An instrument appointing a public servant is not a disallowable instrument under paragraph 6 (a) of the *Statutory Appointments Act 1994*.

Determination No. 167 of 2001 made under section 41 of the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994* revokes Determination No. 215 of 2000 (notified in Gazette S27, dated 27 June 2000).

Possible inaccurate gazettal notification

The Committee notes that the above instrument has been gazetted as a “determination of fees”, however the determination appears to “revoke fees”. The explanatory statement advises the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994* is being repealed and fees which were previously charged under that Act will be brought under the *Vocational Education and Training Act 1995*.

Determination No. 168 of 2001 made under subsection 60B (3) of the *Gaming Machine Act 1987* approves the guidelines for approving community contributions as set out in the schedule.

Missing explanatory statement

Unfortunately, there was no explanatory statement attached to this Instrument.

Determination No. 182 of 2001 made under section 24 of the *Building Act 1972* revokes Instrument No. 379 of 2000 (notified in Gazette No. 2 on 11 January

2001) and adopts the Building code and the Australian Capital Territory Appendix included in the Building Code including amendments 1 to 9.

Missing attachment

The Committee notes that the above instrument specifies that the Building Code and the Australian Capital Territory Appendix are all attached to the instrument. Unfortunately the attachment to this instrument appears to be missing.

Section 25 of the Act states:

- “The Minister shall publish in—
- (a) the Gazette; and
 - (b) a daily newspaper published and circulating in the Territory;
- notice of the preparation of the building code and each amendment to it.”.

The Committee notes that the instrument does not publish the amendments as required by the Act. Perhaps this matter could be clarified.

Determination No. 200 of 2001 made under section 7 of the *Surveyors Act 2001* appoints a specified person to the Commissioner for Surveys for five years from 26 July 2001.

Another missing attachment

The Committee notes that the explanatory statement for the above instrument states that the terms and conditions of the appointment are attached. Again unfortunately there was no attachment to this instrument.

Determination No. 207 of 2001 made under section 11 of the *Government Procurement Act 2001* appoints a public employee member to be Chairperson, three non public employee members and three public employee members to the Government Procurement Board for the period 1 August 2001 to 15 July 2004

Separation of appointments into notices and disallowable instruments

The Committee notes that Instrument No. 207 of 2001 appoints both public employees and non public employees to the Government Procurement Board. As the appointment of a public servant is not a disallowable instrument under paragraph 6 (a) of the *Statutory Appointments Act 1994* it would be preferable for appointments to be separated into notices for public servants and disallowable instruments for non public servants.

Determination No. 213 of 2001 made under section 96 of the *Road Transport (General) Act 1999* revokes Determination No. 262 of 1999 (made under the *Motor Traffic Act 1936*) (Gazette No. 46 on 17 November 1999) and determines

fees payable for the issue of a restricted taxi operator's licence for a wheelchair accessible taxi.

Possible incorrect instrument Number gazetted

The Committee notes the gazettal of an incorrect instrument number in relation to the above determination. Perhaps the instrument number should be No. 213 of 2001 not No. 212 of 2001 as gazetted in Gazette S54, dated 6 August 2001.

Notices - Incorrect manner of gazettal

Utilities Act – Notice of exemption made under section 22 of the *Utilities Act 2000* and notified in Gazette No 28, dated 12 July 2001.

The Committee draws attention to the manner of gazettal of the above notice.

Section 22 (3) the Utilities Act states:

“An exemption is a disallowable instrument for the *Subordinate Laws Act 1989*.”

It appears that this notice of exemption is a disallowable instrument for the purposes of section 10 of the *Subordinate Law Act 1989* and was therefore required to be notified in the Gazette as a disallowable instrument and tabled in the Legislative Assembly.

Utilities Act – Approves the Electricity Networks Capital Contribution Code under section 58 of the *Utilities Act 2000* and notified in Gazette S40, dated 29 June 2001.

Utilities Act – Approves the Gas Networks Capital Contribution Code under section 58 of the *Utilities Act 2000* and notified in Gazette No 28, dated 12 July 2001.

The Committee also draws attention to the manner of gazettal of the above notices.

Subsection 62 (3) of the Utilities Act states:

“Each of the following is a disallowable instrument for the *Subordinate Laws Act 1989*—

(a) an industry code approved under section 58;”.

It appears that these approvals of an industry code are disallowable instruments for the purposes of section 10 of the *Subordinate Law Act 1989* and were therefore required to be notified in the Gazette as disallowable instruments and tabled in the Legislative Assembly.

Independent Competition and Regulatory Commission Act – Notice of appointment of specified persons to the Independent Competition and Regulatory Commission for a period of 5 years from date of notification in the Gazette. The appointment was made under Schedule 1 of the *Independent*

Competition and Regulatory Commission Act 1997 and notified in Gazette S40, dated 29 June 2001.

The Committee again draws attention to the manner of gazettal of the above notice. The explanatory statement to the notice clearly states that the “appointments are disallowable by the ACT Legislative Assembly”. It appears that this notice of appointment is a disallowable instrument for the purposes of section 10 of the *Subordinate Law Act 1989* and was therefore required to be notified in the Gazette as a disallowable instrument and tabled in the Legislative Assembly.

Bushfire Act – Notice of appointment made under subsection 5B (2) of the Bushfire Act 1936 of Chairperson of the Australian Capital Territory Bushfire Council from the date of notification in the Gazette (26 July 2001) until and including 4 July 2004.

Again the Committee draws attention to the manner of gazettal of the above notice. It appears that this notice of appointment is a disallowable instrument for the purposes of section 10 of the *Subordinate Law Act 1989* and was therefore required to be notified in the Gazette as a disallowable instrument and tabled in the Legislative Assembly.

Instrument of approval of codes of practice pursuant to subsection 69 (2) of the Gas Safety Act 2000 as listed in the Schedule (notified in Gazette No. 31 on 2 August 2001).

The Committee draws attention to the manner of gazettal of the above instrument of approval of codes of practice.

Subsection 60 (2) of the Gas Safety Act states:

“(4) An approval notice under subsection (2) is a disallowable instrument”.

This instrument of approval of codes of practice was therefore required to be notified in the Gazette as a disallowable instrument and tabled in the Legislative Assembly.

Comment on explanatory statements

The Committee notes that in many recent determinations explanatory statements which were previously issued as separate documents to the instrument have now been incorporated into the one document. Moreover, the explanations just list the old fee. The purpose of explanatory statements was recently set out in a Queensland Scrutiny of Legislation Committee Report entitled “Report to Parliament on the Committee’s Monitoring of the Operation of the Explanatory Notes System” (Report No. 18, dated August 2001). The report sets out a number of functions that such information provides, and they are as follows:

- Firstly, they provide additional information to Members of Parliament in relation to the legislation concerned. This enables members to better comprehend the nature and effects of the legislation, and enhances the quality of Parliamentary debate.

- Secondly, once a bill has become an Act or “significant” subordinate legislation has been tabled in Parliament, the Explanatory Notes become a source of additional information to all users of the legislation.
- Finally, in interpreting the provisions of an Act or subordinate legislation, regard can be had to the Explanatory Notes in certain situations. The principle such situation is where the legislation is ambiguous or obscure.

The Committee is of the view that detailed explanatory statements benefit both those affected by the law and Members of the Assembly.

INTERSTATE AGREEMENTS

There is no matter for comment in this report.

REGULATORY IMPACT STATEMENTS

The Committee notes that since the commencement of the *Subordinate Laws Amendment Act 2000* on 21 June 2001 no regulatory impact statements (RIS) have been presented with subordinate legislation. Nor have any regulation impact statement exemption instruments been presented (exemption instruments are disallowable instruments).

The Committee assumes that the reason for the lack of RIS documents is that none of the subordinate legislation made since 21 June 2001 meets the criteria as set out in section 9D of the Act, namely that the subordinate law is likely to impose appreciable costs on the community, or a part of the community, or that the exemptions set out in section 9F of the Act apply.

As is the practice in other scrutiny committees in other jurisdictions, it is the intention of this Committee to monitor RIS's. The Committee intends to seek to amend its terms of reference at the next available opportunity to enable this task to be performed.

GOVERNMENT RESPONSES

There are no Government responses in this report. However, two Government responses that were inadvertently omitted from the last report are attached.

Paul Osborne, MLA
Chair

August 2001