

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. 3 OF 2001

6 MARCH 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
ACTING SECRETARY: MR MARK MCRAE
(SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)
ASSISTANT SECRETARY: MS CELIA HARSDORF
(SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)

ROLE OF THE COMMITTEE

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

BILLS

Bill - No Comment

The Committee has examined the following Bill and offers no comment on it.

Government Procurement Bill 2001

This is a bill for a *Government Procurement Act 2000*. It would create an Australian Capital Territory Procurements Board to give advice to the government in relation to the procurement activities of government. In particular, the Board may issue guidelines in relation to matters such as the policies and practices that must, or may be observed, or the procedures that must or may be followed, in relation to procurement. A Territory entity must comply with these guidelines. The Minister has a wide power to give binding directions to the Board.

Subordinate Legislation - No Comment

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

Subordinate Law 2001 No 4 being the Construction Practitioners Registration Regulations Amendment made under the *Construction Practitioners Registration Act 1998* amends the Principal Regulations by making changes sought by the Insurance Council of Australia to ensure that the type of insurance required for practitioners registered as building surveyors and plumbing plan certifiers was able to be offered.

Determination No. 379 of 2000 made under section 24 of the *Building Act 1972* revokes Instrument No. 212 of 2000 (notified in Gazette No. 27, dated 6 July 2000) and adopts the provisions of the 1996 edition of the Building Code of Australia including Amendments 1 to 8.

Determination No. 9 of 2001 made under subsection 3 (2) of the *Agents Act 1968* declares that paragraph 47C (c) of the Act (which provides that a person has the prescribed qualifications if the person has a qualification set out in the Schedule) does not apply to a person who has successfully completed a course designated as Certificate 111 Tourism (International) Retail Travel Sales, accredited by the Australian National Training Authority and conducted by a registered training organisation.

Determination No. 17 of 2001 made under section 4 of the *Public Place Names Act 1989* determines the names, origins and significance of a number of streets in the Division of Conder.

Determination No. 18 of 2001 made under subsection 14 (1) of the *Territory Superannuation Provision Protection Act 2000* authorises the payment of the amount of \$119,000,000 received by the Territory from ACTEW Corporation Limited on 6 December 2000 into a superannuation banking account.

Determination No. 19 of 2001 made under section 40A of the *Dog Control Act 1975* determines the fees for the initial registration of a dog within the boundaries of Exhibition Park in Canberra for the period of 23 February 2001 to 25 February 2001 inclusive. It temporarily replaces determination No. 173 of 2000 within the stated area and for the stated period.

Determination No. 20 of 2001 made under section 67 of the *Vocational Education and Training Act 1995* determines fees payable in relation to the industry training program for the purposes of the Act.

Subordinate Legislation - Comment

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

Determination No. 10 of 2001 made under section 11 of the *Health and Community Care Services Act 1996* appoints specified persons to be the Chair and member of the Health and Community Care Service Board for a period of four years from 15 February 2001.

One instrument for two separate appointments?

The Committee notes that two appointments to the Health and Community Care Service Board which have been signed separately by the Minister have been made under the one instrument.

Determination No. 11 of 2001 made under sections 36 and 37 of the *Children and Young People Act 1999* appoints a specified person to be the Chairperson of the Childrens Services Council until 30 November 2003.

Determination No. 12 of 2001 made under section 36 of the *Children and Young People Act 1999* appoints a specified person to be a member of the Childrens Services Council until 30 November 2003.

Determination No. 13 of 2001 made under section 36 of the *Children and Young People Act 1999* appoints a specified person to be a member of the Childrens Services Council until 30 November 2003.

Determination No. 14 of 2001 made under section 36 of the *Children and Young People Act 1999* appoints a specified person to be a member of the Childrens Services Council until 30 November 2003.

Determination No. 15 of 2001 made under section 36 of the *Children and Young People Act 1999* appoints a specified person to be a member of the Childrens Services Council until 30 November 2003.

Determination No. 16 of 2001 made under section 36 of the *Children and Young People Act 1999* appoints a specified person to be a member of the Childrens Services Council until 30 November 2003.

Are these instruments disallowable?

The Committee is concerned that the explanatory statements for the above instruments of appointment give 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*.

INTERSTATE AGREEMENTS

There is no matter for comment in this report.

GOVERNMENT RESPONSES

The Committee has received a response in relation to comments made concerning:

- Road Transport (Safety and Traffic Management) Amendment Bill 2000 (Report No. 1 of 2001) (Minister for Urban Services – 26 February 2001)

A copy of the response is attached.

The Committee thanks the Minister for Urban Services for his helpful response.

John Hargreaves, MLA
Deputy Chair

March 2001