

Legislative Assembly for the Australian Capital Territory



Standing Committee on Justice and Community Safety

**(incorporating the duties of a
Scrutiny of Bills and Subordinate
Legislation Committee)**

**The electronic version of this report does not contain attachments,
these can be obtained from the committee office**

SCRUTINY REPORT NO. 10 OF 2000

26 June 2000

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

Bills - No Comment

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

Appropriation Bill 2000-2001

This is a Bill for an Act to appropriate money for the purposes of the Territory for the financial year commencing 1 July 2000, and for related purposes.

Appropriation Bill 1999-2000 (No 3)

This is a Bill for an Act to appropriate additional money for the Department of Urban Services and the Department of Justice and Community Safety for the year that began on 1 July 1999.

Duties Amendment Bill 2000 (No 2)

This Bill would amend the *Duties Act 1999* to the effect of reducing to \$20 the duty payable in respect of the establishment of a trust, the transfer of property from one superannuation fund to another, and the transfer to trustees or custodians of superannuation funds or trusts.

Financial Management Amendment Bill 2000 (No 2)

This Bill would amend the *Financial Management Act 1996* in order to permit government agencies to spend GST input tax credits received from the Australian Tax Office as reimbursement of GST paid on the purchase of goods and services. Agencies would also be authorised to pay to the ATO the revenue collected on their revenue items. Proposed new section 66A of the Act would empower the Treasurer to make financial management guidelines prescribing matters required or permitted to be prescribed under the Act.

Insurance Corporation Bill 2000

This is a Bill for an Act to establish the Australian capital Territory Insurance Corporation (ACTIC) as a body corporate. It would have various functions, including, in particular, to carry on the business of insurer of Territory risks, and to take out insurance of Territory risks with other entities. It would have the privileges and immunities of the Territory. The board of ACTIC would be comprised of 5 directors (appointed by the Minister), and a general manager, who would be appointed by the appointed directors. There is provision for the termination of the appointment of the appointed directors, and for the appointment of staff, and of consultants. The Minister may give written directions

to ACTIC about the exercise of its functions. The Minister must present a copy of such a direction to the Legislative Assembly. ACTIC must also provide information and certain reports to the Minister. The Minister may also give directions to Territory entities about what Territory risks must be insured with ACTIC.

Land (Planning and Environment) Amendment Bill 2000 (No 3)

This Bill would amend the *Land (Planning and Environment) Act 1991* to establish the office of the Chief Planner for the Australian Capital Territory, to be appointed by the Executive. The Chief Planner would constitute the Australian Capital Territory Planning Authority. There is also provision for the kinds of directions that the Minister may give to the Planning Authority, and that the Legislative Assembly may in this respect give to the Minister.

Land Titles Legislation Amendment Bill 2000

This Bill would in various ways amend the *Land Titles Act 1925* and the *Land Titles (Unit Titles) Act 1970*. Some matters affected are: the duty of the Registrar-General to publish notices concerning the replacement of grants and certificates of title; the ability of a mortgagor to apply to the Supreme Court for an order to sell the property; and the law relating to easements connected to land divided into unit titles.

The Committee commends the care taken in the Explanatory Memorandum to explain the provisions of the Bill.

Psychologists Amendment Bill 2000

This Bill would amend the *Psychologists Act 1994* to the effect that psychologists employed in the public sector are subject to the Act.

Bills - Comment

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

Goods and Services Tax (Temporary Transitional Provisions) Bill 2000

This is a Bill for an Act to make temporary transitional provisions in consequence of the introduction of the Goods and Services Tax (GST) by the Commonwealth. Clause 4 would have the effect that any price set by an Act or subordinate law will be increased by an amount that reflects the impact of the GST. Under subclause 5(1), the Executive may make regulations that may modify the operation of the proposed Act (except proposed subsection 5(1)), or of any other Act (other than certain specified laws) “with respect to any matter arising from, connected with or consequential on the introduction of the GST”.

Paragraph 2(c)(iv) – inappropriate delegation of legislative power

Subclause 5(1) is a wide power to modify by regulation almost the whole body of existing (and possibly future) legislation of the Territory.

It is also to be noted that under subclause 5(3), regulations may be expressed to take effect on a day earlier than the date they are notified in the Gazette, “but not earlier than the day this Act comes into operation”. In any such case, the effect of subclause 5(4) is to preclude the regulation from (i) having a prejudicial effect on the then existing rights of anyone (other than the Territory or a Territory authority); and (ii) from imposing liabilities on anyone (other than the Territory or a Territory authority) in relation to any act or omission before the date of the notification in the Gazette.

(The Committee notes that subclause 5(4) repeats what is provided for in section 7 of the *Subordinate Laws Act 1989*.)

This is therefore a wide “Henry 8th” clause, and it is for the Legislative Assembly to judge whether it is appropriate. The Presentation Speech points out that the Assembly will not sit between 29 June and 29 August, and will not, in that period, be able to consider any legislation necessary to deal with unexpected effects of the introduction of the GST. The power in subclause 5(1) is also limited in a number of ways:

- Before making any regulations, the Executive must consult with, and have regard to any recommendations of those Members of the Legislative Assembly who are available to be consulted;
- The Executive may only exercise this power prior the end of the 6th sitting day of the Legislative Assembly after the Act commences, or, if it is earlier, prior to 31 October 2000; and
- Proposed new section 5 will expire on 31 October 2000.

Leases (Commercial and Retail) Bill 2000

This is a Bill for an Act to regulate retail and commercial leases and licences, to provide for the resolution of disputes about such leases and licences, and to provide for a code of practice.

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

Freedom to contract and the right to property

In several respects, the clauses of the Bill will be a significant restriction on the ‘freedom to contract’ of the parties to the leases and similar arrangements that are governed by the Bill. Such freedom may be regarded as a dimension of the right to property. (This right is recognised by section 51(31) of the *Constitution of the Commonwealth of Australia*,

and in paragraph 23(1)(a) *Australian Capital Territory (Self- Government) Act 1988* (Commonwealth). It is also recognised in international law; see Article 17 of the *Universal Declaration of Rights*.)

It is of course accepted that consistent with this right, a legislature may regulate the exercise of the freedom to contract. A great deal of the statute book does so. The question in any particular case is whether the degree of restriction on the freedom is such that it may be said that there is, in terms of Article 17 of the *Universal Declaration of Rights*, an arbitrary deprivation of property.

The judgment to be made is one for the Legislative Assembly. In this context, the Committee draws attention to some aspects of this Bill.

- The provision concerning the minimum terms of leases in clause 5.
- The restriction in clause 12 on the entry on to leased premises – it is not clear whether the owner may lawfully enter for any other purpose (such as to inspect the condition of the premises).
- The restriction in clause 13 on the ability of the owner to choose a tenant.
- The very wide discretion in clause 46 of the proposed Tenancy Tribunal to make (or to decline to make) orders having regard to a wide range of matters.
- The very wide discretion in clause 64 of the Tribunal as to the kinds of orders it may make, including a power to “reopen a lease”.
- The power of the Minister in clause 79 to approve a “code of practice relating to leases”, which code, it appears, may govern matters such as the validity of terms of leases (subclause 8(1)), and the kinds of orders that may be made by the Tribunal (subclause 64(4)).

Standard of proof

The Committee notes that paragraph 16(2)(a) provides that the Tribunal may be satisfied of certain matters “on the balance of probabilities”. This would be the case if this provision were not made. The fact that it is raises a doubt as to the standard of proof to be employed with respect to other issues of fact to be determined by the Tribunal; (for example, under paragraph 26(c)).

In relation to subclause 16(2), it is very difficult to understand what paragraph 16(2)(a) means. Have some words been omitted?

Paragraph 2(c)(iv) – inappropriate delegation of legislative power

The great width of the power of the Minister in clause 79 to approve a “code of practice relating to leases” raises the question whether this is an inappropriate delegation of legislative power. On its face, it appears to be an extensive power to regulate leasing arrangements. It is difficult to read down the power because, as noted above, the code may govern matters such as the validity of terms of leases (subclause 8(1)), and the kinds of orders that may be made by the Tribunal (subclause 64(4)). There is no restriction on the power in terms that provisions of the code must be consistent with the proposed Act. Thus, it appears that the code may alter provisions such as those of clause 64. In this respect, clause 79 has the appearance of a “Henry 8th” clause.

It is noted that the code is a disallowable instrument (clause 80).

This Bill would amend section 38 of the *Mental Health (Treatment and Care) Act 1994* in order to permit a doctor or mental health worker to detain a person who has voluntarily attended the relevant mental health facility.

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

A personal liberty issue is necessarily raised where a law permits the detention of a person who has not committed, or is not on reasonable grounds suspected of having committed a crime. The Committee notes that the Presentation Speech carefully explains that this amendment to section 38 of the *Mental Health (Treatment and Care) Act 1994* is addressed to the case where it is apparent that a person who has voluntarily attended the relevant mental health facility is a person who, were he or she not within the facility, is in such a state that they should be detained. The criteria for involuntary detention are not changed, and the need for review by a doctor remains.

Victims of Crime (Financial Assistance) Amendment Bill 2000

This Bill would amend the *Victims of Crime (Financial Assistance) Act 1983* to make provision in respect of the kinds of awards that may be made by a Magistrates Court, and the categories of persons who may make application for an award. In many respects, the Bill seeks to reverse the effect of the *Victims of Crime (Financial Assistance) Amendment Act 1999*.

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

The Committee commends the thorough and clear explanation of the Bill in the Explanatory Memorandum. The Committee does not see any major rights issue, but considers it desirable to identify some of the main provisions in order to assist debate. This outline is not a substitute for the Explanatory Memorandum.

The kinds of awards that may be made

Under the Act, a person who is a primary victim of a crime who has, as a result, sustained an injury, may apply to the Magistrates Court for an award of financial assistance. Section 10 states the kinds of awards that may be made by the court. For present purposes, the most significant are the awards of lump sum compensation. “Special assistance” by way of reasonable compensation for pain and suffering of no more than \$50,000 may be awarded to specified categories of persons who qualify as a primary victim; (paragraphs 10(1)(e) and (f)). These categories are police and ambulance officers, firefighters, and those injured as a result of certain sexual offences. In relation to any other primary victim, “special assistance” in an amount of \$30,000 may be awarded; (paragraph 10(1)(d)).

Clause 5 of the Bill would delete paragraphs 10(1)(d), (e) and (f) of the Act and insert a new paragraph 10(1)(d). This would enable the court to award “special assistance” of no more than \$50,000 by way of reasonable compensation for pain and suffering to a primary victim who suffers a “serious injury”.

Under the Act as it stands, an award under paragraph 10(1)(d) may be made only where the person has suffered “an extremely serious injury”. (This limitation does not apply to persons who fall into the categories stated in paragraphs 10(1)(e) and (f)). The amendments proposed would also have the effect that a claimant under the proposed new paragraph 10(1)(d) would need to show that he or she had suffered a “serious injury”, as that term would be defined in the proposed new section 11 (see clause 6 of the Bill).

Comment: There appears to be here a proposed reduction in the scope of the entitlements of a primary victim who is within the categories of stated in paragraphs 10(1)(e) and (f) of the Act.

There is a proposal in paragraph 5(c) of the Bill to extend to all claimants an obligation to seek assistance from the victims services scheme, or from a body that has made an arrangement under that scheme. This proposal would remove the currently applicable different treatment of persons within the categories of stated in paragraphs 10(1)(e) and (f), on the one hand, from other categories of claimants on the other.

The Bill would also extend the range of benefits under an award as currently provided for in paragraphs 10(1)(a) to recognise the value of unpaid domestic work or childcare. Clause 7 of the Bill is designed to introduce a more flexible approach where the claimant may make a workers compensation claim.

Other amendments

Many of the remaining provisions of the Bill are consequential on the amendments outlined above.

The transitional provisions

The effect of proposed new Part 5A of the Act - see clause 13 of the Bill – is well explained in the Explanatory Memorandum. It is designed to negate the retrospective effect of the *Victims of Crime (Financial Assistance) Amendment Act 1999*. Clause 13 would itself have a retrospective effect. It is, however, beneficial in that respect, and there is no rights objection on this ground.

Victims of Crime (Financial Assistance) Amendment Bill 2000 (No 2)

This Bill would amend subsection 68(1) of the *Victims of Crime (Financial Assistance) Act 1983* to prescribe that the levy payable by a person convicted on or after 1 July 2000 of a certain kind of offence shall be \$50. The current amount is \$30. The proposed new subsection 68(1) would apply regardless of when the offence was committed.

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

It may be argued that the proposed amendment is retrospective in the sense that it increases the extent of the liability of a person convicted of an offence on or after 1 July 2000 beyond the extent of that liability as it was when the offence was committed. This kind of basis for finding that the Bill would have a retrospective effect is recognised, for example, in Article 7(1) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. This provides in part that there shall not be imposed a “heavier penalty ... than the one that was applicable at the time the criminal offence was committed”.

The Legislative Assembly is not of course bound to take this view of the matter. The *European Convention* does not apply in Australia. It is, however, sometimes referred to by judges as a source for statements of the content of rights. On the other hand, it should be noted that Article 14.7 of the *International Covenant on Civil and Political Rights* appears to be narrower in its scope of application; see text below. Australian courts more frequently cite the ICCPR.

Assuming that the proposed amendment is seen to be retrospective, the issue then is whether this is objectionable from a rights perspective. The aspect of the Bill that makes this a difficult issue is that the measure proposed by amendment of subsection 68(1) *might* be – although not necessarily should be – characterised as a law that would impose a double punishment.

The comments that follow are provided to assist Members to look at the Bill from a rights perspective.

The common law principle against double punishment is an aspect of the broader notion that a person should not be exposed to ‘double jeopardy’.

In *Pearce v The Queen* [1998] HCA 57, at para 10, McHugh, Hayne and Callinan JJ of the High Court said:

If there is a single rationale for the rule or rules that are described as the rule against double jeopardy, it is that described by Black J in *Green v United States* (355 US 184 at 187-188 (1957)):

"The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty."

In *Pearce*, Kirby J touched briefly on the long-standing nature of the concept. He stated:

It has been said that the principle that a person should not twice be placed in jeopardy for the same matter is a cardinal rule lying "[a]t the foundation of criminal law". The

rule has been explained as arising from a basic repugnance against the exercise of the state's power to put an accused person in repeated peril of criminal punishment.

Legal relief against double jeopardy was known to the laws of ancient Greece and Rome. It was also known to ecclesiastical law. In the Old Testament writings of the prophet Nahum, it is recorded:

"What do ye imagine against the Lord? he will make an utter end: affliction shall not rise up the second time...Though I have afflicted thee, I will afflict thee no more."

[Kirby J cited I Nahum 9, 12 (King James Version), and added that "St Jerome drew from this the rule that God does not punish twice for the same act. See *Bartkus v Illinois* 359 US 121 at 152 (1959) per Black J.]

In the law of England, the origins of the rule are sometimes traced to the conflict in the late 12th Century between the civil and ecclesiastical powers represented, respectively, by King Henry II and Archbishop Thomas à Becket (*Pearce*, at paras 73-75, citations omitted).

Kirby J cited its recognition in the rules of universal human rights, noting Article 14.7 of the *International Covenant on Civil and Political Rights*:

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

The principle against double punishment is recognised in Australian law. In *Pearce*, Gummow J said that "the principles involved in the notion of 'double jeopardy' also apply at the stage of sentencing. They find expression in the rule of practice, 'if not a rule of law', against duplication of penalty for what is substantially the same act: (*R v Hoar* (1981) 148 CLR 32 at 38)" (*Pearce* at para 68). In that case, Gibbs CJ, Mason, Aickin and Brennan JJ stated that there is "a practice, if not a rule of law, that a person should not be twice punished for what is substantially the same act" (ibid). The notion is part of the broader idea that 'no one should be punished twice for the same offence' (reflected in the legal maxim *nemo debet bis puniri pro uno delicto*).

Article 7(1) of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* states the principle in clear terms. It provides in part that there shall not be imposed a "heavier penalty ... than the one that was applicable at the time the criminal offence was committed". In *Welch v United Kingdom* (1995) 20 EHHR 247, the European Court on Human Rights has considered the question of what may amount to a penalty. It said regard should be had to these matters:

- Whether it followed a criminal conviction. This is a matter largely of looking for any connection between the fact of the conviction and the taking of the measure.

In relation to this Bill, there is a clear link between the conviction of a person of an offence, and her or his obligation to pay the levy.

- The nature and purpose of the measure in question – taking into account matters such as whether its purpose is punitive, or has some other purpose, such as to prevent the commission of a crime, or to make restoration to some other person. (There is a difficulty here in that prevention of crime is an aim of punishment.)

In relation to this Bill, there is an argument that the purpose of the measure is to create a fund from which the victims of crime may be restored, to some extent, to the position they were in before they became a victim.

- The severity of the measure.

In relation to this Bill, the amount of the levy is quite small and does not in substance bear the character of a punishment.

Subordinate Legislation - No Comment

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

Subordinate Law 2000 No 20 being the Periodic Detention Regulations Amendment made under the *Periodic Detention Act 1995* enables the Periodic Detention Centre (PDC) to change urinalysis service providers. Only an analyst accredited by the National Association of Testing Authorities will be able to conduct urinalysis for the PDC.

Subordinate Law 2000 No 22 being the Road Transport Legislation Amendment Regulations made under the *Road Transport (General) Act 1999* and the *Road Transport (Vehicle Registration) Act 1999* makes amendments to the Road Transport (Offences) Regulations 2000 to allow for the ability of the Road Transport Authority to issue and serve infringement notices for traffic, parking and dimensions and mass notices relating to offences that arise under the old legislation prior to 1 March 2000 and to allow for the insertion of three (3) demerit points for negligent driving; and makes amendments to the Road Transport (Vehicle Registration) Regulations 2000 in relation to vehicle inspection.

Determination No. 120 of 2000 made under subsection 9 (2) of the *Agents Act 1968* appoints a specified person to be a member of the Agents Board of the Australian Capital Territory until 31 December 2000 from date of gazettal (4 May 2000).

Determination No. 123 of 2000 made under section 12A of the *Dangerous Goods Act 1984* determines fees for the purposes of applications for licenses and permits authorising the sale and purchase of shopgoods fireworks, issued under the *Dangerous Goods Act 1975* (NSW) and regulations in accordance with the Schedule.

Determination No. 124 of 2000 made under section 214A of the *Duties Act 1999* determines guidelines to apply from 1 March 2000 for obtaining a licensed motor vehicle dealer's authorisation enabling continuation of the exemption provided under section 214 of the Act, subject to approval.

Determination No. 125 of 2000 made under section 331 of the *Children and Young People Act 1999* provides for a transition period until the start of the 2001 school year to enable all Family Day Care Schemes to reduce numbers of children that may be cared for to 7 before a licence as a child care centre is required.

Determination No. 126 of 2000 made under paragraph 30 (2) (d) of the *Canberra Institute of Technology Act 1987* appoints a specified person as a member of the Canberra Institute of Technology Advisory Council until 31 December 2003.

Determination No. 127 of 2000 made under paragraph 30 (2) (a) of the *Canberra Institute of Technology Act 1987* appoints a specified person as a member of the Canberra Institute of Technology Advisory Council until 31 December 2001.

Determination No. 128 of 2000 made under paragraph 40 (h) of the *Vocational Education and Training Act 1995* appoints a specified person to be a member of the Vocational Education and Training Authority until 31 December 2003.

Determination No. 130 of 2000 made under subsection 178 (3) of the *Land (Planning and Environment) Act 1991* specifies criteria for the authorisation of a refund to a lessee upon the surrender or termination of a lease of Territory land under section 163 of the Act.

Determination No. 131 of 2000 made under subsection 163 (4) of the *Land (Planning and Environment) Act 1991* revokes Determination No. 22 of 1992 and specifies criteria for the direct grant of Crown leases to community organisations.

Determination No. 132 of 2000 made under subsection 163 (4) of the *Land (Planning and Environment) Act 1991* specifies the criteria for the direct grant of Crown leases to community organisations for the purposes of an educational establishment.

Determination No. 143 of 2000 made under paragraph 104 (a) of the *Land (Planning and Environment) Act 1991* approves the Plan of Management for Inner Canberra's Urban Parks and Sportsgrounds and the Plan of Management for Tuggeranong's Urban Parks and Sportsgrounds.

Subordinate Legislation - Comment

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

Incorrect reference to section number

Determination No. 119 of 2000 made under section 57 of the *Optometrists Act 1956* determines revokes Determination No. 72 of 1997 and determines the fees payable under the Act in accordance with the Schedule.

The Committee draws attention to what appears to be an incorrect reference in the determination to section 57 of the Act as the section under which the Minister may determine fees. Section 57 in fact makes provision for the Executive to make regulations for the purposes of the Act. Perhaps this should read section 55?

Are these instruments disallowable?

Determination No. 121 of 2000 made under subsection 8 (2) of the *Radiation Act 1983* appoints a specified person to be a member of the Radiation Council for a period of three years from date of gazettal (11 May 2000).

Determination No. 122 of 2000 made under subsection 8 (2) of the *Radiation Act 1983* appoints a specified person to be a member of the Radiation Council for a period of three years from date of gazettal (11 May 2000).

The Committee notes that the explanatory statements 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*.

Under which Act is the instrument made?

Determination No. 129 of 2000 made under regulation 118 of the Road Transport (Driver Licensing) Regulations 2000 approves the code of practice for accredited driving instructors specified in the Schedule.

This instrument is made under the Road Transport (Driver Licensing) Regulations, however it would be helpful if future instruments could indicate under which Act a regulation is made, although the Committee notes that the attached Code of Practice indicates the authority for the Code comes under the *Road Transport (Driver Licensing) Act*.

Incorrect title of regulation in explanatory statement

Subordinate Law 2000 No 21 being the Road Transport (Safety and Traffic Management) Regulations Amendment made under the *Road Transport (General) Act 1999* and the *Road Transport (Safety and Traffic Management) Act 1999* makes an amendment to the Road Transport (Safety and Traffic Management) Regulations 2000 to allow for changes to Australian Road Road 248 to allow for a bicycle rider to use a marked foot crossing if authorised by a traffic control device and makes an amendment to the Road Transport (Offences) Regulations 2000 to allow for the deletion of item 257.4 as the offence for this short description was removed by resolution of the Legislative Assembly on 30 March 2000 and the insertion of a short description offence for regulation 23A which creates an offence for a rider not to give way to a pedestrian on a marked foot crossing.

The Committee notes the explanatory statement is an explanatory statement for the Road Transport (Safety and Traffic Management) Regulations Amendment, however it has been incorrectly entitled the Road Transport Legislation Amendment Regulations Amendment.

INTERSTATE AGREEMENTS

There is no matter for comment in this report.

GOVERNMENT RESPONSES

The Committee has received responses in relation to comments made concerning:

- Fisheries Bill 2000 (Report No. 6 of 2000)
- Independent Prices and Regulatory Commission Act - Determination No. 67 of 2000 (Report No. 6 of 2000)
- Land (Planning and Environment) Act – Determinations Nos 99 and 100 (Report No. 6 of 2000)
- Subsidies (Liquor and Diesel) Repeal Bill 2000 (Report No. 7 of 2000).

- Parole Act – Determination No. 97 of 2000 (Report No. 6 of 2000).
- Road Transport (General) Act – Road Transport Offences Regulations – Determination No. 113 of 2000 (Report No. 7 of 2000).

Copies of the responses are attached.

The Committee thanks the Attorney-General, Treasurer and the Minister for Urban Services for their helpful responses.

Paul Osborne, MLA
Chair

June 2000