

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. 8 OF 1999

19 August 1999

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 Advisor: Mr Peter Bayne
Secretary: Mr Tom Duncan
Assistant Secretary (Scrutiny of Bills and
Subordinate Legislation): Ms Celia Harsdorf

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.

Building (Amendment) Bill 1999

This Bill would amend the *Building Act 1972* in order, primarily, to create a scheme under which the Commonwealth, the Territory, or persons holding land under a lease or a tenancy from those governments, may apply for and obtain a certificate of regularisation in respect of a building on the land. This kind of certificate would be issued by the building controller if satisfied of various matters, including, in particular, the structural soundness of the building and the provision of safety measures in case of fire. In key respects, this scheme parallels the scheme for certificates of occupancy in relation to other kinds of buildings designed for occupancy. It is introduced in order to enable the Commonwealth to sell land and buildings which did not, when built, need to comply with relevant building standards, and which could not meet the current standards.

This Bill would amend the principal Act to make amendments of a minor nature in relation to the recycling of structural waste, and statutory insurance for residential building work.

Children and Young People (Consequential Amendments) Bill 1999

This is a Bill to amend certain Acts in consequence of the enactment of the Children and Young People Bill 1999.

Fair Trading (Fuel Prices) (Amendment) Bill 1999

This Bill would amend the *Fair Trading (Fuel Prices) Act 1993* in order to provide that all transfers of fuel over 2000 litres in the Territory be done on a temperature converted basis.

Financial Management (Amendment) Bill 1999

This Bill would amend the *Financial Management Act 1996* by inserting new subsections to section 11 of the Act. These new provisions state certain principles of responsible fiscal management which must be observed in the preparation of a budget for the Territory. It is also stated that the Executive may depart from these principles, but only on a temporary basis. Where a departure is made, the Treasurer must make a report to the Legislative Assembly.

Occupational Health and Safety (Amendment) Bill (No 2) 1999

This Bill would amend the *Occupational Health and Safety Act 1989* to establish a statutory authority – being the Occupational Health and Safety Commissioner – to have responsibility for occupational health and safety matters in the Territory.

Bills - Comment

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

Children and Young People Bill 1999

This is a Bill for a new Act to deal with several aspects of the law relating to children and young people (being persons under the age of 18). It replaces the *Children's Services Act 1986*, which would be repealed. Some parts of that earlier Act are, in effect, retained without significant amendment in the Bill. There is, however, significant change made in the area of child protection law. The Bill is based on the notion that the primary responsibility for children and young people rests with the parents and other family. The notion of 'parental responsibility' is introduced. Where decision-making by state officials is necessary, the primary guiding principle is the best interests of the child. The attempt is made to reduce the area for government intervention, and a major step in this direction is the introduction of family group conferencing designed to promote a family based outcome. There are provisions which require identification of a child as indigenous, and then special provisions to be applicable in such cases. There are provisions for mandatory reporting of child abuse. The Bill incorporates much of the existing scheme concerning the Children's Court. The Bill contains a scheme for child care licensing which adopts a new approach in this area.

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

A law dealing with the rights of children and their family is one which necessarily impinges on these rights. The Committee has not attempted to review the substance of this bill against any formulation of those rights. This task would be well beyond the competence of the Committee in the time available, and it is in any event noted that the reform process began in January 1997, and has involved extensive consultation. There are, however, some more particular issues, involving other rights, upon which the Committee makes comment.

Equality before the law

Clause 11 of the Bill states a number of principles to guide decision-making under the provisions of the Bill. Paragraph 11(1)(a) states that "the best interests of the child or young person should be the paramount consideration"; paragraph 11(1)(b) states that "the primary responsibility for providing care and protection for the child or young person should lie with his or her parents and other family members"; and paragraph 11(1)(c) states that "high priority should be given to supporting family members, in cooperation with them, to care for and protect the child or young person ...". Placement of the child with a family member is stated to be a consideration of greater significance to other options (paragraph 11(1)(f)).

By clause 12, however, the application of the best interests principle requires a decision-maker, as a first step, to make a racial classification. That is, the decision-maker "finds out whether the child or young person is indigenous". This is a person who is an Aboriginal or Torres Strait Islander. An Aboriginal "is a descendant of the indigenous inhabitants of Australia" (and who regards her or himself as such, or, if the person is a child or young person, is so regarded by a parent or kin.)

A number of consequences follow on a finding that the child or young person is indigenous, including an obligation to apply the indigenous placement principle as stated in clause 14. One of the effects of this principle is that a decision-maker is obliged to give a higher priority to placement of the child with an indigenous carer than to placement of the child with a member of the child's non-indigenous family. (Given the provisions of clause 14, the indigenous carer would not be a member of the child's family or a member of the relevant indigenous community.)

In this respect the Bill qualifies some of the basic principles stated in clause 11. It also places the child's non-indigenous family in a much less favourable position than the indigenous family. It is, on its face, a racial discrimination.

The Committee considers that such provisions require justification. All that is stated in the Explanatory Memorandum is that this provision follows the 1997 *Report of the National Inquiry into the Separation of Aboriginal or Torres Strait Islander Children from their Families*. It is not said how these provisions carry into effect any recommendation of this Report, nor, if the provisions may be said to have this effect, how they may be justified in terms of the principle that there should not be discrimination on the basis of race. Nor is there explanation of the further statement that these provisions are consistent with Territory law concerning the welfare of children and young persons.

The Committee appreciates that this is an issue of great difficulty. The matter may have little practical effect where the families of both parents of a child are indigenous. But this is increasingly not the case.

Privacy law

There is a reference in paragraph 41(1)(f) to a "privacy law". This concept is not well-understood, and it far from clear just what is meant.

Open justice

It is a basic principle of the system of the administration of justice that the proceedings of courts be open to the public. This may be viewed as a protection of the rights of parties. This principle is seriously qualified by clause 59. Nevertheless, this provision is commonly found in laws governing Children's Courts, and the committee does not raise a question about this provision.

Fair trial

(a) Restrictions on access to evidence

At a number of points, the Bill provides that certain information is not to be subject to disclosure through compulsory process in a court proceeding. Such provision raises a problem which may be illustrated by reference to clause 157. This requires certain classes of persons (such as doctors, and school-teachers) to report to the chief executive the name of a child which that person reasonably suspects of suffering sexual abuse or non-accidental physical injury, and the grounds for that person's suspicion. By clause 161, that report is not admissible in evidence in any court or tribunal proceeding. There are exceptions, but they would not cover the situation in which a person charged with a criminal offence sought access to the report in order to adduce evidence which supported the innocence of that person.

To deny a party to a legal proceeding the use of the usual processes of compulsory disclosure by others of evidence which is relevant to the case of that party may be viewed as a denial of an element of a fair trial. This denial is of particular significance where the party is accused of a crime. There is a case to argue that provisions such as clause 161 should not apply to evidence sought to be adduced by a defendant on a criminal trial; (compare to section 123 of the *Evidence Act 1995* (Commonwealth), concerning displacement of client legal privilege in these circumstances.)

This issue arises with respect to other provisions of the Bill, such as clauses 178 and 349.

(b) Displacement of the rules of evidence

By subclause 287(1), in proceedings under Part 3 of Chapter 7 of the Bill, "the court is not bound by the rules of evidence, but may inform itself of a matter in any manner that it considers appropriate". By subclause 287(2), it is further stated that the court "may admit and act on hearsay evidence".

Such provisions are common, and are often thought to be an antidote to legalism in court proceedings. They do, however, raise issues about whether the parties to those proceedings receive a fair trial. In *Re Pochi and Minister for Immigration and Ethnic Affairs* (1979) 2 ALD 33 at 41, Brennan J said that:

To depart from the rules of evidence is to put aside a system which is calculated to produce a body of proof which has rational probative force, as Evatt J. pointed out, though in a dissenting judgment, in *The King v. War Pensions Entitlement Appeals Tribunal; ex parte Bott* (1933) 50 C.L.R.228 at p.256:

"Some stress has been laid by the present respondents upon the provision that the Tribunal is not, in the hearing of appeals, 'bound by any rules of evidence.' Neither it is. But this does not mean that all rules of evidence may be ignored as of no account. After all, they represent the attempt made, through many generations, to evolve a method of inquiry best calculated to prevent error and elicit truth. No tribunal can, without grave danger of injustice, set them on one side and resort to methods of inquiry which necessarily advantage one party and necessarily disadvantage the opposing party. In other words, although rules of evidence, as such, do not bind, every attempt must be made to administer 'substantial justice.'"

The courts have a particular concern with displacement of the rules governing the reception of hearsay evidence. (These rules have, in any event, been considerably relaxed by the *Evidence Act 1995*.) In a recent case in the Supreme Court of the Territory, Higgins J pointed to

the general risk inherent in drawing an inference of factual truth from untested out-of-court statements by unseen declarants. ... [G]enerally, to rely on such statements as representing the truth is not only unsafe but also unfair as against parties who were not present when the declarations were made. This is particularly so when the truth or otherwise of the content of the declaration is an important issue in the trial: *A and B v. Director of Family Services* [1996] ACTSC 48.

The Committee accepts that such provisions are found in this kind of legislation. It does, however, query the need to single out hearsay evidence in the way this is done in clause 287. The impression might be given that the Bill is not concerned about this kind of evidence.

(c) The right to confrontation

The Committee also notes that clauses 289 and 290 of the Bill permit restrictions on the ability of a person to cross-examine persons in the proceedings under Part 3 of Chapter 7 of the Bill. Again, this policy is not without its problems. There may well be circumstances where such restrictions would prevent a person from making a defence of their reputation.

Powers of entry and search

At several points, the Bill makes adequate provision for the protection of the rights of client legal privilege and the privilege against self-incrimination; (see, for example, clause 195). This protection appears to be missing from clause 351. In this respect, the Committee has noted paragraph 351(1)(f), and the offence provision in clause 387.

The Committee commends the close attention given to safeguards found in clauses 395 and 396 surrounding the provisions for personal searches of a child or a young person.

Paragraph 2 (c) (v) – insufficient scrutiny of legislative power

The Committee notes that the standards which may be made by the chief executive under clause 398 of the Bill are not disallowable instruments. There does not appear to be any reason why they should not be disallowable by the Legislative Assembly.

Environment Protection (Amendment) Bill 1999

This Bill would amend the *Environment Protection Act 1997* for the purpose of introducing a scheme for the management of contaminated land in the Territory. This Bill is closely based on the draft for a Bill which was considered by the Urban Services Committee in its *Report No 10 on the Inquiry into the Exposure Draft of the Environment Protection (Amendment) Bill 1998*. The Bill would also provide a legal basis for the implementation in the Territory of certain Commonwealth subordinate laws, being the National Environment Protection (National Pollutant Inventory) Measure, and the National Environment Protection (Movement of Controlled Waste between States and Territories) Measure.

The scheme of the Bill is well explained in the Explanatory Memorandum. There appear, however, to be some drafting problems with the Bill:

- The opening words of proposed new section 91B appear to omit some words, or perhaps the word “include” should read “includes”;
- In clause 19, the reference in proposed new paragraph 135(1)(zcc) to subsection 91D(9) does not make sense, for that subsection does not fit the description of it given in proposed new paragraph 135(1)(zcc); and
- In clause 19, the reference in proposed new paragraph 135(1)(zce) to subsection 91E(1) does not make sense, for that subsection does not fit the description of it given in proposed new paragraph 135(1)(zce).

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

The Committee notes that a number of administrative discretions, the exercise of which could have a significant impact on a person affected, do not appear to be reviewable. These discretions are:

- That of the Environmental Protection Authority under proposed new section 21A(4)(b) to remove an entry from the register (see clause 9);
- That of the Authority under proposed new section 21A(4)(c) to remove an entry from the register (see clause 9);
- That of the Authority under proposed new section 91D(7) (see clause 16);
- That of the Authority under proposed new section 91D(8) (see clause 16); and
- That of the Authority under proposed new section 91I (see clause 16).

The Committee acknowledges an aggrieved person may seek review by way of judicial review, or investigation and recommendation by way of the Ombudsman. The omission to provide for review by the Administrative Appeals Tribunal would however be more efficacious, and, in comparison to judicial review, much less expensive.

The Committee draws this to the attention of the Assembly.

Land (Planning and Environment) (Amendment) Bill (No 2) 1999

This Bill would amend sections 184B and 187B of the Land (Planning and Environment) Act 1991 to delay until 31 March 2000 a change in the calculation of the change of use charge for a variation of nominal rent lease. Currently, subsection 184(2) provides that the charge shall be 75% of the value added

to the lease by the variation. Subsection 184B(1) provides, in effect, that the rate would be increased to 100% on 31 August 1999. (Similar provisions are found in section 187B.) The effect of the Bill would be to change the date 31 August 1999 to 31 March 2000.

Comments on the Explanatory Memorandum

The Explanatory Memorandum states that the effect of the Bill would be to remove the sunset provisions of sections 184B and 187B. This appears not to be the case. Rather, sunset – in the sense of the demise of the existing 75% formula, and its replacement by a 100% formula - would now be on 31 March 2000, rather than on 31 August 1999.

Liquor (Amendment) Bill 1999

This Bill would amend the *Liquor Act 1975* in a number of ways. The major areas of change to the regulation of the liquor industry would be:

- The insertion of new provisions for the Liquor Licensing Board to prepare a Licensing Standards Manual, which shall set out general standards, approved by the Minister, with which licensed premises, and their licensees, must comply. Failure to comply is a ground for the issue by the Board of a reprimand to the licensee, and for the issue of a direction to the licensee. (Non-compliance with a direction is a ground for suspension of a licence under section 47, and its cancellation under section 53);
- Amendments in respect of the regulation of under-age drinking;
- Amendments in respect of a determination of indoor occupancy loadings;
- Reorganisation of the provisions relating to the disciplinary powers of the Board; and
- The introduction of an annual licence fee.

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

The power to seize a false document of identification

The Committee notes that under proposed new section 93K (see clause 32), a licensee, or the employee of a licensee, may seize an item of property belonging to another. Such seizure would, without statutory warrant, amount to a trespass to property, and, in more modern language a violation of the right to property. This power will apply only to a document which is believed on reasonable grounds to be a false document of identification. Any document seized must be given to the Registrar of Liquor Licenses within 72 hours of its seizure. The licensee must make records of all such documents seized by the licensee or an employee of the licensee.

In these circumstances, the Committee does not consider that this power of seizure is an undue trespass on personal rights and liberties.

Burden of proof provisions

The Committee takes this opportunity to open for discussion the issue of the appropriate policies to follow in the placing of the burden of proof in relation to some matter of fact that is, by statutory provision, one which will fall for determination in the application of the statute. There are several examples in this Bill, and some are noted below. The issue is one which arises constantly in the drafting of laws.

The concept of the burden (or onus) of proof is employed primarily to describe which party to a court proceeding must prove to the court the existence of a particular ultimate fact in issue in that proceeding. That is, at the verdict stage of the trial, it gives guidance to the court as to “the decision [it] should give

when it is left in a state of uncertainty by the evidence on a particular issue [of ultimate fact]”: *McDonald v Director-General of Social Security* [1984] 1 FCR 354 at 356 per Woodward J.

For example, on a murder trial, the prosecution must prove to the court (in this sort of case, usually a jury), that the defendant intended to kill the victim. It has both a legal and an evidential burden of proof in relation to this ultimate fact in issue. The distinction between the legal and the evidential burden is explained below. At this point, we will elaborate on the notion of an ultimate fact in issue.

An ultimate fact in issue is one which a party must prove exists to the satisfaction of the fact-finder exists if the party is to succeed in her or his cause of action, or prosecution, or defence. (In most cases, the fact-finder will be a magistrate or a judge. On criminal trials for serious offences, the fact-finder will be a jury.) Just what precisely these ultimate facts is determined in the end by the particular cause of action (in civil case), or by the terms of an offence (in a criminal case), or by the nature of a defence which may be raised (in either kind of case). Thus, on a murder trial, the prosecution must prove to the jury that the defendant intended to kill the victim because it is an element of the common law offence of murder that the defendant must have intended to kill the victim.

As part of its proof that defendant intended to kill, the prosecution might attempt to prove that the defendant had a motive to kill the victim. It is not, however, essential to prove in every murder case that the defendant had such a motive. The prosecution could well attempt to prove that defendant intended to kill the victim by some other means - such as by simply pointing to the manner of death of the victim, and submitting that from the manner of death it could be inferred that the slayer intended to kill. Thus, proof of motive is not an ultimate fact in issue on a murder trial. Simplifying this a bit, it may be said that where the prosecution does rely on motive, proof of that fact is simply a ‘fact in issue’, as distinct from ultimate fact in issue.

A party which fails to satisfy the court that there exists some fact in issue will not necessarily lose its case. For example, the prosecution might attempt to prove that the defendant intended to kill by adducing evidence of both the manner of death of the victim and of defendant’s motive to kill. On the one hand, the court might find that it was not satisfied that the defendant had such a motive, but, on the other, that proof of the manner of death was enough to satisfy it that defendant intended to kill. But a prosecution which fails to satisfy the court that there exists some ultimate fact in respect of which it carries the legal burden of proof will necessarily lose its case. Another way to put this is to say that the prosecution has a legal burden of proof to prove that the defendant intended to kill.

On a particular trial for murder, the defendant may also have a legal burden of proof in relation to some matter of defence which is raised on that particular trial. For example, at common law, a defendant might submit that he or she was insane, and in this case, must prove to the satisfaction of the court that he or she was insane.

Before going on, it may be useful to explain of the notion of proving some ultimate fact to the satisfaction of the court. On a criminal trial the general rule is that the prosecution must prove such a fact beyond reasonable doubt – see subsection 141(1) of the *Evidence Act 1995*. On the other hand, the general rule is that the defendant must prove such a fact on the balance of probabilities – see subsection 141(2).

It is now necessary to distinguish between the notion of the legal burden of proof and the evidential burden of proof. As explained, the notion of the legal burden comes into play at the verdict stage of a trial. The notion of the evidential burden comes into play at a point on a trial where “a party to litigation ... has concluded his evidence”, and “the Court [is] called upon by the other party to determine the question of law whether that evidence can support a verdict or finding for him on whom the [evidential] onus lies”: *McDonald v Director-General of Social Security* [1984] 1 FCR 354 at 369 per Jenkinson J.

An example may explain the point. Suppose that the prosecution on a murder trial attempts to prove that the defendant intended to kill the victim by adducing evidence of the manner of death of the victim. At the end of all the evidence adduced by the prosecution, from all of its witnesses, and before the defendant

decides whether to adduce evidence, the defendant may submit to the court that the prosecution had not satisfied the evidential burden of proof in relation to the ultimate fact in issue of whether the defendant intended to kill. To put this in other words, the defendant would submit that the prosecution had failed to make out a case to answer in relation to this ultimate fact in issue. In other words, the defendant would make a 'no-case' submission.

The trial judge decides this issue, whether or not a jury is sitting to decide the ultimate facts in issue. The question the trial judge asks is whether on the evidence adduced by the prosecution the court could, acting reasonably, make a finding at the verdict stage that the defendant intended to kill. The trial judge must assess the strength of the case for the prosecution in relation to that issue of ultimate fact by taking the relevant evidence adduced by the prosecution at its highest. This means that the trial judge must ignore any weaknesses in that evidence, and any evidence favourable to the defendant that may have emerged in the case for the prosecution.

The question for the trial judge at the 'no-case' stage is very different to the question which must be asked at the verdict stage. At that later stage, the question is whether the court is satisfied according to the applicable standard of proof, (here, beyond reasonable doubt), that the defendant did intend to kill.

On a particular trial, the defendant might have an evidential burden of proof. Thus, if the defendant submits that he or she was insane, the defendant has an evidential burden of proof in relation to this issue of fact. Of course, this issue of fact will be an ultimate issue only if the defendant chooses to run this line of defence. If it is raised, then at the end of all the evidence adduced by the defence, the prosecution may submit to the court that the defendant had not satisfied the evidential burden of proof in relation to the ultimate fact in issue of whether the defendant was insane. If the trial judge upheld the submission of the prosecution, the trial judge would instruct the jury to ignore the possibility that the defendant was insane. (Where there is no jury, the trial judge, or the magistrate, would also ignore this possibility at the verdict stage.)

There is now a further complication to be explained. This is that in relation to some issues of ultimate fact, one party may have an evidential burden of proof, and the other party may have a legal burden of proof. This is commonly the case in criminal matters.

A defendant charged with murder may submit that he or she acted in self-defence. By making this submission, the defendant is invoking a common law defence which, if accepted by the court at the verdict stage, would have the result that the defendant was not guilty of murder. Once invoked, the question whether the defendant acted in self-defence becomes an ultimate issue of fact.

In this situation, the defendant has an evidential burden to satisfy the trial judge that, looking at the evidence in its most favourable aspect from the defendant's viewpoint, the court could, at the verdict stage, find that the defendant had acted in self-defence. This question would generally be determined by the judge at the end of defendant's case, although only if the prosecution made a 'no-case' submission at that stage. If the trial judge ruled in favour of the prosecution, the result would be that at the verdict stage the court would not consider whether the defendant acted in self-defence. (On a jury trial, the judge would instruct the jury to not consider that defence.)

But if the trial judge ruled in favour of the defendant, the result would not be that at the verdict stage the defendant would carry a legal burden of proof in relation to whether he or she acted in self-defence. Rather, if the trial judge finds that the defendant has discharged the evidential burden, the result is that the prosecution must now disprove that the defendant acted in self-defence. That is, the prosecution bears legal burden of proof in relation to this issue. (As put in *Zecevic v DPP* (1987) 162 CLR 645 at 657, per Wilson, Dawson and Toohey JJ: "...once the evidence discloses the possibility that the fatal act was done in self-defence, [that is, once the defendant has discharged the evidential burden], a burden falls upon the prosecution to disprove that fact, that is to say, to prove beyond reasonable doubt that the fatal act was not done in self-defence".)

In relation to all the common law defences, (except insanity), it is the law that the defendant bears an evidential burden of proof, but the prosecution bears a legal burden (of disproof). These principles have been established by the courts over a long period. Just looking at criminal cases here, the courts express their conclusion in relation to an argument about which party has the burden of proof in respect of some particular ultimate issue of fact by saying,

- on the one hand, that if that ultimate issue of fact is an element of the offence with which the defendant is charged, the prosecution has the legal and evidential burden of proof in relation to proof of that fact, but
- on the other hand, if that ultimate issue of fact is a matter of defence, the defendant has at least an evidential burden of proof, and, in some situations, may also have a legal burden of proof in relation to proof of that fact.

There are a number of difficulties in the application of these principles:

- it is not at all easy to predict how a court will classify a particular issue of ultimate fact. The distinction between what is an element, and what is a matter of defence, is not easy to draw. This is so in particular where the offence is one created by statute; and
- where it may be guessed that a court will place some burden on a defendant, it is not easy to predict whether that will be an evidential, a legal, or both kinds of burden.

In a criminal case, one can start with the policy that “it is the duty of the prosecution to prove [a defendant’s] guilt”: *Woolmington v DPP* [1935] AC 462 at 481. That principle is, however, subject to displacement by any “statutory exception”: *ibid.* (These principles were endorsed by a majority of the High Court in *Chugg v Pacific Dunlop* (1990) 170 CLR 249 at 257.) This policy does not take the matter very far.

Provisions of statutes that create offences often provide, in relation to some matter of fact, that the defendant has a burden of proof. In this Bill, for example, proposed new subsection 93F(1) would provide that:

“(1) The licensee commits an offence if a person under 18 years old possesses or consumes liquor on the licensed premises”.

Pausing there, there is no doubt that the prosecution would carry the legal burden of proof of establishing beyond reasonable doubt (see subsection 141(1) of the *Evidence Act 1995 (Commonwealth)*) that a person possessed or consumed liquor on the licensed premises, and that that person was under 18 years old.

But then subsection 93F(2) would provide that:

“(2) In a proceeding for an offence against subsection (1) it is a defence if the licensee proves that –

- (a) the person was at least 16 years old; and
- (b) the person had shown a document of identification to the licensee (or an employee of the licensee).”

It is possible that a court would read this provision to mean that a defendant who wished to rely on subsection 93F(2) would carry the legal burden of proof of establishing on the balance of probabilities (see subsection 141(2) of the *Evidence Act 1995 (Commonwealth)*) that the matters of fact stated in paragraphs (a) and (b) existed.

It is, however, also possible, (and perhaps more likely), that a court would read this provision to mean that a defendant who wished to rely on subsection 93F(2) would need only to discharge what is often called an

evidential burden of proof of establishing that the matters of fact stated in paragraphs (a) and (b) existed: (compare to *Van Schaik v Neuhaus* [1996] ACTSC 37.)

The matter is far less clear with respect to proposed new subsection 93F(3). This provides that:

(3) This section does not apply to the possession of liquor by a person –

(a) in the course of the person's employment;

Would the prosecution carry both an evidential and legal burden to prove that the defendant did not possess the liquor in the course of her or his employment? Or would the defendant carry either or both an evidential and legal burden to prove that he or she did so possess the liquor? (The High Court decision in *Dowling v Bowie* (1952) 86 CLR 136 shows just how difficult it is to resolve such issues.)

The Committee does not propose in this report to explore the policies appropriate to a determination of how a burden of proof should be placed in the expression of a statutory offence (or the creation of a statutory civil liability.) Nor does it wish to suggest here any particular form of drafting which might make clearer just where the burden does lie in relation to some statutory offence or civil liability.

We draw this general matter to the attention of the Legislative Assembly and invite a response from the Executive.

Long Service Leave (Cleaning, Building and Property Services) Bill 1999

This is a Bill for an Act to provide for long service leave for employees in the cleaning, building and property services industry. This Act would create the Cleaning Industry Long Service Leave Board, and create the position of Long Service Leave Registrar. There would be provision for the creation of two registers – one of employees, and one of employers. Employers would be required to make payments to the Board, and employees would be entitled to claim benefits from the fund thus created. The Registrar would be empowered to appoint inspectors.

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

Clause 23 of the Bill would empower inspectors to enter premises and inspect documents. The inspectors might also require a person on the premises to give documents to an inspector. (It is not clear whether the inspector may retain those documents or make copies of them. Given the express power next mentioned, an inspector may not have any such power.) An inspector may also require an employer to produce documents to the Board.

It is not made clear whether the exercise of these powers is subject to the privilege of any person to claim client legal privilege or that against self-incrimination. In such laws, it would be usual to make provision that a person must not without reasonable excuse fail to comply with a requirement of an inspector. This qualification is not found in the existing clause 23(5).

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

The Committee notes that the Bill provides for extensive review by the Administrative Appeals Tribunal of administrative discretions which may be made under the proposed Act. The Committee commends the Bill in this respect.

Payroll Tax (Amendment) Bill (No 2) 1999

This Bill would amend section 9 of the *Payroll Tax Act 1987* to the effect of making clear that payroll tax is not payable by employment agents who pay wages to contractors where the latter are bona fide employers.

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

The Committee notes that this amendment would have retrospective effect, but considers that it would not amount to an undue trespass on the personal rights and liberties of any person. In this respect, the Bill would have an entirely beneficial operation.

Subordinate Laws (Amendment) Bill 1999

This Bill would amend the *Subordinate Laws Act 1989* to the effect that, upon the tabling in the Legislative Assembly of a subordinate law which is subject to disallowance by the Assembly, the Assembly might disallow the law within 6 sitting days of its being tabled.

Paragraph 2 (c) (v) – insufficient scrutiny of legislative power

This Bill would bring about a significant reduction in the time within which the Legislative Assembly might disallow a subordinate law that is subject to disallowance. At present, the Assembly may exercise this power within 15 sitting days of the law being tabled.

The Committee notes that the corresponding period of disallowance in other Australian jurisdictions is:

The Commonwealth – 15 sitting days
New South Wales - 15 sitting days
Northern Territory - 12 sitting days
Queensland - 14 sitting days
South Australia - 14 sitting days
Tasmania - 15 sitting days
Victoria - 18 sitting days
Western Australia - 14 sitting days

In this light, the Assembly may wish to consider whether the Explanatory Memorandum provides a sufficient justification for what would be a significant change.

INTERSTATE AGREEMENTS

The Committee has not received any relevant notification.

Subordinate Legislation - No Comment

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

Subordinate Law No. 6 of 1999 being the Motor Vehicle (Third Party Insurance) Regulations (Amendment) made under subsection 88 (1) of the *Motor Traffic Act 1936* amends the regulations by revising the maximum CTP premiums that can be charged.

Subordinate Law No. 7 of 1999 being the Dangerous Goods Regulation (Amendment) made under subsection 13 (2) of the *Dangerous Goods Act 1984* introduces a new regulatory regime for the use, sale and availability of fireworks.

Subordinate Law No. 8 of 1999 being the Liquor Regulations (Amendment) made under subsection 84 (3) of the *Liquor Act 1975* declares areas prescribed public places for the purposes of Summernats 2000.

Subordinate Law No. 9 of 1999 being the Fair Trading Regulations (Amendment) made under the *Fair Trading Act 1992* prescribes the Motor Vehicle Service and Repair Industry Code of Practice which is an approved code of practice under section 34.

Subordinate Law No. 10 of 1999 being the Gas Supply Regulations 1999 made under section 61 of the *Gas Supply Act 1999* establishes the procedures and responsibilities for the natural gas industry concerning gasfitting work on consumer piping systems, meter testing and safety and operating plans.

Subordinate Law No. 11 of 1999 being the Fair Trading Regulations (Amendment) made under section 35 of the *Fair Trading Act 1992* amends the Fair Trading Regulations to prescribe an amendment to the Fitness Industry Code of Practice and an amendment to the Crown Marshals Industry Code of Practice and repeals regulation 5 of the Principal Regulations.

Subordinate Law No. 12 of 1999 being the Taxation Administration Transitional Regulations made under section 16 of the *Taxation Administration (Consequential and Transitional Provisions) Act 1999* amends section 78 of the *Taxation Administration Act 1999* to allow the Commissioner to delegate his or her functions under that Act or any other Act.

Determination No. 97 of 1999 made under section 80 of the *Energy and Water Act 1988* revokes Determination of fees No. 278 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 98 of 1999 made under section 9 of the *Water Resources Act 1998* is an approval of environmental flow guidelines dated 27 May 1999.

Determination No. 99 of 1999 made under subregulation 33 (4) of the Motor Traffic Regulations declared the period 11 June to 14 June 1999 (inclusive) as a holiday period.

Determination No. 100 of 1999 made under section 16 of the *Hotel School Act 1996* appoints a specified person as a member of the Hotel School Board of the Australian Capital Territory.

Determination No. 101 of 1999 made under section 105A of the *Liquor Act 1975* revokes Determination No. 152 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 102 of 1999 made under section 120A of the *Agents Act 1968* revokes Determination No. 76 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 103 of 1999 made under subsection 3 (1) of the *Justices of the Peace Act 1989* appoints specified persons as Justices of the Peace.

Determination No. 104 of 1999 made under paragraph 75 (1) (b) of the *Tenancy Tribunal Act 1994* is a Variation of the Commercial and Retail Leases Code of Practice.

Determination No. 105 of 1999 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 234 of 1998 and determines fees payable for various purposes of the Act and for section 12 of the Act in particular.

Determination No. 106 of 1999 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 7 (1) (a) and subsection 7 (2) of the *Nurses Act 1988* appoints a specified person to be a member of the Nurses Board of the ACT.

Determination No. 107 of 1999 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 7 (1) (a) and subsection 7 (2) of the *Nurses Act 1988* appoints a specified person to be a member of the Nurses Board of the ACT.

Determination No. 108 of 1999 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 7 (1) (a) and subsection 7 (2) of the *Nurses Act 1988* appoints a specified person to be a member of the Nurses Board of the ACT.

Determination No. 109 of 1999 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 7 (1) (a) and subsection 7 (2) of the *Nurses Act 1988* appoints a specified person to be a member of the Nurses Board of the ACT.

Determination No. 110 of 1999 made under subsection 5 (1) of the *Health Professions Boards (Procedures) Act 1981* and paragraph 7 (1) (a) and subsection 7 (2) of the *Nurses Act 1988* appoints a specified person to be a member of the Nurses Board of the ACT.

Determination No. 111 of 1999 made under section 4 of the *Public Place Names Act 1989* determines the names of certain streets in the Division of Palmerston.

Determination No. 112 of 1999 made under section 4 of the *Public Place Names Act 1989* amends instrument No. 53 of 1999 omits a street name and determines the name of a certain street in the Division of Gungahlin.

Determination No. 113 of 1999 made under section 4 of the *Public Place Names Act 1989* omits a street name in the District of Gungahlin.

Determination No. 114 of 1999 made under subsection 31 (1) of the *Environment Protection Act 1997* is an accreditation of the ACT Firewood Code of Practice. The Code is set out in the Schedule to the Determination.

Determination No. 115 of 1999 made under subsection 161 (5) of the *Land (Planning and Environment) Act 1991* revokes Determination No. 78 of 1996 and determines the criteria for the direct grant of Crown leases to statutory authorities and Territory Owned Corporations.

Determination No. 116 of 1999 made under section 132 of the *Casino Contract Act 1988* revokes Determination No. 117 of 1998 and determines fees payable for the various purposes of the Act in relation to licences under the Act.

Determination No. 117 of 1999 made under section 8 of the *Milk Authority Act 1971* appoints a specified person to be Chairperson of the Board of the ACT Milk Authority for a period through to 25 October 1999.

Determination No. 118 of 1999 made under section 32 of the *Health and Community Care Services Act 1996* revokes Determination No. 249 of 1998 and determines fees and charges payable for the purposes of the Act.

Determination No. 120 of 1999 made under subsection 254 (1) of the *Land (Planning and Environment) Act 1991* declares certain plants to be pest plants for the purposes of the Act.

Determination No. 121 of 1999 made under section 27B of the *Hawkers Act 1936* revokes Determination No. 125 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 122 of 1999 made under 5A of the *Lakes Act 1976* revokes Determination of fees No. 124 of 1998 and determines fees payable for permits to use a power boat.

Determination No. 123 of 1999 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 133 of 1998 and determines fees payable for transactions relating to vehicle licences and permits.

Determination No. 124 of 1999 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 135 of 1998 and determines fees payable for transactions relating to number plates.

Determination No. 125 of 1999 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 131 of 1998 and determines fees payable for transactions relating to parking labels.

Determination No. 126 of 1999 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 134 of 1998 and determines fees payable for transactions relating to parking and traffic infringements for the purposes of subsection 4 (10) of the Act.

Determination No. 127 of 1999 made under subsection 57 (1) of the *Motor Vehicles (Dimensions and Mass) Act 1990* revokes Determination No. 128 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 128 of 1999 made under section 83A of the *Nature Conservation Act 1980* revokes Determination No. 136 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 130 of 1998 made under section 40A of the *Dog Control Act 1975* revokes Determination No. 138 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 131 of 1999 made under section 110 of the *Animal Welfare Act 1992* revokes Determination No. 140 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 132 of 1999 made under section 9A of the *Roads and Public Places Act 1937* revokes Determination No. 153 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 133 of 1999 made under section 4A of the *Machinery Act 1949* revokes Determination No. 51 of 1994 and determines fees payable for purposes of the Act.

Determination No. 134 of 1999 made under section 287 of the *Land (Planning and Environment) Act 1991* revokes Determination No. 165 of 1998 and determines fees payable for purposes of the Act.

Determination No. 135 of 1999 made under section 104 of the *Electricity Act 1971* revokes Determination No. 163 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 136 of 1999 made under section 12A of the *Dangerous Goods Act 1984* revokes Determination No. 219 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 137 of 1999 made under section 65 of the *Building Act 1972* revokes Determinations Nos 162 and 277 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 138 of 1999 made under section 39B of the *Architects Act 1959* revokes Determination No. 161 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 139 of 1999 made under 116 of the *Unit Titles Act 1970* revokes Determination No. 169 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 140 of 1999 made under section 52A of the *Surveyors Act 1967* revokes Determination No. 168 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 141 of 1999 made under section 6B of the *Scaffolding and Lifts Act 1957* revokes Determination No. 50 of 1994 and determines fees payable for the purposes of the Act.

Determination No. 142 of 1999 made under section 45A of the *Plumbing, Drainers and Gasfitters Board Act 1982* revokes Determination No. 166 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 143 of 1999 made under section 3F of the *Building and Services Act 1924* revokes Determination No. 127 of 1998 and determines charges payable for the purposes of the Act.

Determination No. 144 of 1999 made under section 11A of the *Ambulance Service Levy Act 1990* revokes Determination No. 154 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 145 of 1999 made under subsection 12 (1) of the *Trade Measurement (Administration) Act 1991* revokes Determination No. 271 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 146 of 1999 made under section 140 of the *Consumer Credit (Administration) Act 1996* revokes Determination No. 270 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 147 of 1999 made under section 90A of the *Sale of Motor Vehicles Act 1977* revokes Determination No. 272 of 1997 and determines fees payable for the purposes of the Act.

Determination No. 148 of 1999 made under subsection 248A (1) of the *Magistrates Court Act 1930* and subsection 94 (1) of the *Coroners Court Act 1997* revokes Determination No. 95 of 1998 and determines fees payable for the purposes of section 248B of the *Magistrates Court Act 1930* and section 95 of the *Coroners Court Act 1997*.

Determination No. 149 of 1999 made under subsection 59A (1) of the *Administrative Appeals Tribunal Act 1989* and subsection 78 (1) of the *Tenancy Tribunal Act 1994* revokes Determination No. 97 of 1998 and under subsection 135 (1) of the *Residential Tenancies Act 1997* revokes Determination No. 81 of 1998 and determines fees payable for the purposes of section 59B of the *Administrative Appeals Tribunal Act 1989*, section 79 of the *Tenancy Tribunal Act 1989*, section 99 of the *Consumer Credit (Administration) Act 1996* and section 73 of the *Residential Tenancies Act 1997*.

Determination No. 150 of 1999 made under subsection 37 (1) of the *Supreme Court Act 1933* revokes Determination No. 96 of 1998 and determines fees payable for the purposes of section 37A of the Act.

Determination No. 151 of 1999 made under section 139 of the *Taxation Administration Act 1999* determines the rate shall be 4.72% per annum for the purposes of paragraph 26 (2) (b).

Determination No. 152 of 1999 made under section 66 of the *Gaming Machine Act 1987* revokes Determination No. 140 of 1996 and determines a new fee to be paid under subsection 34 (2) for the issue of a repairer's certificate.

Determination No. 153 of 1999 made under section 18A of the *Lotteries Act 1964* revokes Determination No. 139 of 1996 and determines fees payable for the purposes of section 7(A) of the Act.

Determination No. 154 of 1999 made under section 66 of the *Gaming Machine Act 1987* determines a fee payable to accompany an application for an inter-club permit under subsection 45B (1) of the Act.

Determination No. 155 of 1999 made under subsection 15 (11) of the *Rates and Land Tax Act 1926* revokes Determination No. 132 of 1992 and determines a discount rate of 3% for the purposes of subsection 15 (11).

Determination No. 156 of 1999 made under section 121 of the *Adoption Act 1993* and regulation 31 of the Adoption Regulations revokes Determination No. 205 of 1998 and determines fees payable for the purposes of regulation 24 (3) (b).

Determination No. 157 of 1999 made under subsection 139 (1) of the *Land Titles Act 1925* revokes Determination No. 201 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 158 of 1999 made under section 8 of the *Registration of Deeds Act 1957* revokes Determination No. 204 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 159 of 1999 made under section 4A of the *Business Names Act 1963* revokes Determination No. 203 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 160 of 1999 made under section 37 of the *Instruments Act 1933* revokes Determination No. 207 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 161 of 1999 made under section 67 of the *Births, Deaths and Marriages Registration Act 1997* revokes Determination No. 206 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 162 of 1999 made under section 126 of the *Associations Incorporation Act 1991* revokes Determination No. 202 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 163 of 1999 made under paragraph 204 (a) of the *Land (Planning and Environment) Act 1991* approves the Canberra Nature Park Plan of Management.

Determination No. 164 of 1999 made under subsection 36 (1) of the *Motor Traffic Act 1936* revokes Determination No. 118 of 1998 and determines the maximum taxi fares payable for the purposes of the Act.

Determination No. 165 of 1999 made under paragraph 10 (1) (w) of the *Remuneration Tribunal Act 1995* provides that the Remuneration Tribunal is to determine the fees and allowances to be paid to the Chair and members of the ACT Sport and Recreation Council.

Determination No. 167 of 1999 made under section 67 of the *Vocational Education and Training Act 1995* revokes Determination No. 147 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 168 of 1999 made under section 41 of the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994* revokes Determination No. 148 of 1998 and determines fees payable for the purposes of the Act.

Determination No. 169 of 1999 made under section 118 of the *Adoption Act 1993* revokes Determination No. 149 of 1998 and determines fees payable for the purposes of section 62 of the Act.

Determination No. 170 of 1999 made under section 4 of the *Public Place Names Act 1989* determines the name of a public park in the Division of O'Connor.

Determination No. 171 of 1999 made under section 66 of the *Gaming Machine Act 1987* determines for the purposes of paragraph 14 (2) (f) of the Act the fee that shall accompany an application for the grant of a gaming machine licence shall be \$1,500 and applies on and from 1 July 1999.

Determination No. 172 of 1999 made under section 66 of the *Gaming Machine Act 1987* determines for the purposes of subsection 22 (2) of the Act that the fee that shall accompany a request for a variation to a gaming machine licence shall be \$25 per gaming machine and applies on and from 1 July 1999.

Determination No. 173 of 1999 made under section 66 of the *Gaming Machine Act 1987* determines for the purposes of subsection 45G (1) of the Act that the fee that shall accompany a written request for a variation of an inter-club linked jackpot permit shall be \$500 and applies on and from 1 July 1999.

Determination No. 174 of 1999 made under 18A of the *Lotteries Act 1964* determines for the purposes of subsection 7AA (2) of the Act that the fee that shall accompany an application for a variation to a lottery approval shall be \$30 and applies on and from 1 July 1999.

Determination No. 175 of 1999 made under section 139A of the *Taxation Administration Act 1999* determines for the purposes of subsection 100 (2) of the Act that the fee that shall accompany an objection to an assessment or a decision shall be \$50 and applies on and from 1 July 1999.

Determination No. 176 of 1999 made under section 36 of the *Rates and Land Tax Act 1926* determines for the purposes of subsections 22GE(1B), 22GV(2A), 28C(2A), 29(1A) and 30(2A) of the Act that the fee to accompany an application to object, reconsider or review an assessment, decision or determination shall be \$50 and applies on and from 1 July 1999.

Determination No. 177 of 1999 made under subsection 13CB (3) of the *Legislative Assembly (Member's Staff) Act 1989* is an approval of the Chief Minister of arrangements for the engagement of consultants or contractors by Office-Holders.

Determination No. 178 of 1999 made under subsection 13CE (3) of the *Legislative Assembly (Member's Staff) Act 1989* is an approval of the Chief Minister of arrangements for the engagement of consultants or contractors by Members.

Subordinate Legislation - Comments

The Committee has examined the following subordinate legislation and offers the following comment:

Determination No. 119 of 1999 made under section 44 of the *Electricity Supply Act 1997* determines fees payable for the purposes of the Act.

The Committee draws attention to the incorrect description of the Act as the *Electricity Supply Act 1998* in the instrument. The description of the Act should read *Electricity Supply Act 1997*.

Determination No. 129 of 1999 made under section 165 of the *Environment Protection Act 1997* revokes Determination No. 80 of 1998 and determines fees payable for the purposes of the Act.

The Committee draws attention to Determination No. 80 of 1998 which is revoked by this instrument. This determination was not laid before the Assembly in accordance with paragraph 6 (1) (c) of the *Subordinate Laws Act 1989* and may therefore have ceased to have effect after 15 sitting days (from notification) had elapsed. The Committee therefore questions whether there is a need to revoke this determination.

GOVERNMENT RESPONSES

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

- the Olympic Events Security Bill 1999 in response to its Report No. 4 of 1999;
- Determination No. 78 made under the *Legislative Assembly (Members' Staff) Act 1989* in response to its Report No. 6 of 1999.

Copies of the responses are attached.

The Committee thanks the Attorney-General and the Director, Employment and Remuneration, Chief Minister's Department for their helpful responses.

Paul Osborne, MLA
Chair

August 1999