



Legislative Assembly for the ACT

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY  
(performing the duties of a Scrutiny of Bills and  
Subordinate Legislation Committee)

## Scrutiny Report

24 OCTOBER 2011

**Report 44**



## **TERMS OF REFERENCE**

The Standing Committee on Justice and Community Safety (when performing the duties of a scrutiny of bills and subordinate legislation committee) shall:

- (a) consider whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
  - (i) is in accord with the general objects of the Act under which it is made;
  - (ii) unduly trespasses on rights previously established by law;
  - (iii) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
  - (iv) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
- (b) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Committee;
- (c) consider whether the clauses of bills introduced into the Assembly:
  - (i) unduly trespass on personal rights and liberties;
  - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) 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) report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*;
- (e) report to the Assembly on these or any related matter and if the Assembly is not sitting when the Committee is ready to report on bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

## **MEMBERS OF THE COMMITTEE**

**Mrs Vicki Dunne , MLA (Chair)**  
**Mr John Hargreaves, MLA (Deputy Chair)**  
**Ms Meredith Hunter, MLA**

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**Legal Adviser (Bills): Mr Peter Bayne**  
**Legal Adviser (Subordinate Legislation): Mr Stephen Argument**  
**Secretary: Mr Max Kiermaier**  
**(Scrutiny of Bills and Subordinate Legislation Committee)**  
**Assistant Secretary: Ms Anne Shannon**  
**(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.

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## **PROPOSED GOVERNMENT AMENDMENTS TO BILLS**

### **Education and Care Services National Law (ACT) Bill 2011**

The Committee has been provided with a set of amendments to be moved to this Bill by the Minister for Community Services, and an accompanying letter containing a very brief explanation of the amendments.

The Committee offers no comment on these amendments.

### **Working with Vulnerable People (Background Checking) Bill 2010**

The Committee has been provided with a set of amendments to be moved to this Bill by the Minister for Community Services, and a Supplementary Explanatory Statement.

**Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?**

**Report under section 38 of the *Human Rights Act 2004***

The right to equal protection of the law—*Human Rights Act 2004* subsection 8(3)

By amendment 15 of this package of amendments, the Bill would contain a clause 31A, which would require the Commissioner to appoint a panel of 7 or more independent advisors to provide advice to the Commissioner about whether to give a person a role-based registration or “any other aspect of a risk assessment of a person”. The commissioner would have discretion whether to ask for advice or not, which must be from at least 3 of the panel.

The panel must include persons with experience or expertise in specified fields, and, in addition, must include “at least 1 Aboriginal or Torres Strait Islander person” (paragraph 31A(a)(ii)). This person need have no particular experience or expertise.

In that it would privilege persons who possess a particular racial characteristic, this provision engages the right to equal protection of the law stated in HRA subsection 8(3), and a justification in terms of HRA section 28 is required.

***The Committee draws these matters to the attention of the Assembly and recommends that the Minister respond.***

The Committee notes that, read with the Bill as presented to the Legislative Assembly, some of the amendments in this package assume that other clauses of the Bill will be amended. The Committee notes that this issue arises in respect of the amendments numbered 16 (compare to paragraph 33(2)(b) of the Bill), and 18 (compare to paragraph 39(2) of the Bill). The Committee would prefer if it were to be provided with all of the proposed amendments in one package.

***The Committee draws this matter to the attention of the Assembly and recommends that the Minister respond.***

## SUBORDINATE LEGISLATION

### Disallowable Instruments—No comment

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

**Disallowable Instrument DI2011-250** being the **Canberra Institute of Technology (Advisory Council) Appointment 2011 (No. 7)** made under section 31 of the *Canberra Institute of Technology Act 1987* appoints a specified person as a member of the **Canberra Institute of Technology Advisory Council** with skills in, and knowledge of, vocational education and training.

**Disallowable Instrument DI2011-251** being the **Road Transport (General) (Segway Exemption) Determination 2011 (No. 1)** made under section 13 of the *Road Transport (General) Act 1999* determines that a segway, or an operator or rider of a segway, is exempt from certain legislation.

**Disallowable Instrument DI2011-252** being the **Public Place Names (Gungahlin) Determination 2011 (No. 1)** made under section 3 of the *Public Place Names Act 1989* determines the name of a public place in the Division of Gungahlin.

**Disallowable Instrument DI2011-253** being the **Public Place Names (Kowen District) Determination 2011 (No. 1)** made under section 3 of the *Public Place Names Act 1989* determines the names of two roads in the Kowen District.

**Disallowable Instrument DI2011-254** being the **Betting (ACTTAB Limited) Rules of Betting Determination 2011 (No. 1)** made under subsection 55(1) of the *Betting (ACTTAB Limited) Act 1964* revokes DI2010-190 and determines the **Rules of Betting for ACTTAB Limited**, incorporating the **Rules Relating to Betting Transactions in Victoria**.

**Disallowable Instrument DI2011-255** being the **Independent Competition and Regulatory Commission (Inquiry into Secondary Water Use) Terms of Reference Determination 2011** made under sections 15 and 16 of the *Independent Competition and Regulatory Commission Act 1997* refers to the **Independent Competition and Regulatory Commission** the task of undertaking an inquiry into, and assessment of, secondary water uses in the ACT.

**Disallowable Instrument DI2011-256** being the **Road Transport (Safety and Traffic Management) Parking Authority Declaration 2011 (No. 2)** made under subsection 75A(2) of the *Road Transport (Safety and Traffic Management) Regulation 2000* declares a specified organisation to be a parking authority within the area of Block 15, Section 3 in the suburb of Phillip.

**Disallowable Instrument DI2011-258** being the **Children and Young People (Death Review Committee) Appointment (No. 1)** made under section 727E of the *Children and Young People Act 2008* appoints a specified person as chair of the **Children and Young People Death Review Committee**.

**Disallowable Instrument DI2011-259** being the **Crimes (Sentence Administration) (Sentence Administration Board) Appointment 2011 (No. 5)** made under paragraph 174(1)(c) of the *Crimes (Sentence Administration) Act 2005* revokes DI2008-262 and appoints the position of **Superintendent of the Prosecution and Judicial Support area of ACT Policing** as a non-judicial member of **Sentence Administration Board**. It also appoints the **Officer-in-Charge of the Prosecution and Judicial Support area of ACT Policing** as an alternative non-judicial member if the non-judicial member is absent.

**Disallowable Instrument DI2011-260 being the Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2011 (No. 3) made under subsection 21(1) of the Race and Sports Bookmaking Act 2001 revokes DI2011-230 and approves the inclusion of an ACTTAB Limited sub-agency in the Mawson Club.**

**Disallowable Instrument DI2011-261 being the Independent Competition and Regulatory Commission (Price Direction for the Supply of Electricity to Franchise Customers) Terms of Reference Determination 2011 made under sections 15 and 16 of the Independent Competition and Regulatory Commission Act 1997 refers to the Independent Competition and Regulatory Commission the provision of a price direction for the supply of electricity to franchise customers.**

**Disallowable Instrument DI2011-271 being the ACT Teacher Quality Institute (Fee) Determination 2011 (No. 2) made under section 95 of the ACT Teacher Quality Institute Act 2010 revokes DI2011-44 and determines fees payable for the purposes of the Act.**

### **Disallowable Instruments—Comment**

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

*Commencement issue - Is this instrument validly made?*

**Disallowable Instrument DI2011-246 being the Domestic Animals (Cat Curfew Area) Declaration 2011 (No. 1) made under section 81 of the Domestic Animals Act 2000 revokes DI2004-201 and declares specified areas as cat curfew areas.**

This instrument makes a declaration, under section 81 of the *Domestic Animals Act 2000*, of cat curfew areas. Section 81 of the *Domestic Animals Act* provides:

#### **81 Declaration of cat curfew**

- (1) If the Minister is satisfied that cats in an area are a serious threat to native flora or fauna in the area, the Minister may declare the area to be an area where cats must be confined to their keeper's or carer's premises at all times or during stated times.
- (2) A declaration under this section is a disallowable instrument.  
*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (3) Unless a declaration is disallowed by the Legislative Assembly, the declaration commences—
  - (a) on the day after the last day when it could have been disallowed; or
  - (b) if the declaration provides for a later date or time of commencement—on that date or at that time.
- (4) The Minister must notify the making of a declaration under this section in a daily newspaper.

The Committee notes that subsection (3) above creates an important limitation on the commencement of an instrument made under section 81.

Section 2 of this instrument provides:

## **2 Commencement**

This instrument commences on the day after it is notified.

This would appear to be contrary to what is provided for in subsection 81 (3) of the Domestic Animals Act. It is difficult to see how, consistent with subsection 81 (3), an instrument can commence on the day after notification.

In making this comment, the Committee notes that the commencement provision of the instrument that this instrument revokes and replaces – DI2004-201 – provides:

## **2 Commencement**

This instrument commences on the day after the last day when it could have been disallowed.

**The Committee seeks the Minister’s advice as to how this instrument is consistent with the requirements of subsection 81 (3) of the *Domestic Animals Act 2000*.**

*Minor drafting issue*

**Disallowable Instrument DI2011-247 being the Gambling and Racing Control (Governing Board) Appointment 2011 (No. 1) made under section 11 of the *Gambling and Racing Control Act 1999* and paragraph 78(5)(b) of the *Financial Management Act 1996* appoints a specified person as an ordinary member of the ACT Gambling and Racing Commission, with knowledge, experience or qualifications related to providing counselling services to problem gamblers.**

**Disallowable Instrument DI2011-248 being the Gambling and Racing Control (Governing Board) Appointment 2011 (No. 2) made under section 11 of the *Gambling and Racing Control Act 1999* and paragraph 78(5)(b) and section 79 of the *Financial Management Act 1996* appoints a specified person as an ordinary member and deputy chair of the ACT Gambling and Racing Commission.**

The first instrument mentioned above appoints a specified person as an ordinary member of the governing board of the ACT Gambling and Racing Commission. The formal part of the instrument indicates that it is made under section 11 of the *Gambling and Racing Control Act 1999* and paragraph 78(5)(b) of the *Financial Management Act 1996*.

The Committee notes that section 11 of the Gambling and Racing Control Act establishes the governing board. Subsection 78(5) of the Financial Management Act provides:

- (5) Also, unless the establishing Act otherwise provides, a person must not be appointed as a member if—
  - (a) the person is a public servant; and
  - (b) if the governing board has a maximum of 6 members or less—the appointment would result in more than 1 public servant being a member of the board; and
  - (c) if the governing board has a maximum of more than 6 members—the appointment would result in more than 2 public servants being members of the board.

It is difficult to see how paragraph 78(5)(b) of the Financial Management Act can apply to this appointment. The Committee notes that section 12 of the Gambling and Racing Control Act provides (in part):

## 12 Governing board members

- (1) The governing board has 5 members, of whom 1 must have knowledge, experience or qualifications related to providing counselling services to problem gamblers.

*Note 1* The chair and deputy chair of the governing board must be appointed under the *Financial Management Act 1996*, s 79.

*Note 2* The chief executive officer of the authority is a member of the board (see *Financial Management Act 1996*, s 80 (4)).

The Explanatory Statement for the instrument states that the person appointed is not a public servant. That being so, the Committee cannot understand how a provision that (in effect) limits the number of public servants who can be appointed to a governing board could be engaged by the appointment of a person who is not a public servant.

In making this comment, the Committee notes that the Explanatory Statement for the instrument refers only to “section 78” of the Financial Management Act.

The Committee notes that the second instrument mentioned above appoints a specified person as an ordinary member and as deputy chair of the governing board. The formal part of the instrument indicates that it is made under section 11 of the Gambling and Racing Control Act and under paragraph 78(5)(b) and section 79 of the Financial Management Act. The Committee notes that section 79 of the Financial Management Act applies to the appointment of chairs and deputy chairs of governing boards.

The Explanatory Statement for the second instrument indicates that the person appointed is not a public servant. That being so, the Committee cannot understand how paragraph 78(5)(b) – a provision that (in effect) limits the number of public servants who can be appointed to a governing board - could be engaged by the appointment of a person who is not a public servant.

Again, in making this comment, the Committee notes that the Explanatory Statement for the instrument refers only to “section 78” of the Financial Management Act.

In relation to the paragraph 78(5)(b) issue, the Committee assumes that these are simply examples of a “precedent” for an instrument of appointment being used in circumstances where the precedent does not, in fact, apply. The Committee notes that it has warned against the use of precedents in this way in its recently-published “Tips and traps” document for subordinate legislation (available on the Committee’s website, at <http://www.parliament.act.gov.au/downloads/committee-business/Subordinate-legislation-stylistic-standards-updated.pdf>).

This comment does not require a response from the Minister.

*When does this instrument commence?*

**Disallowable Instrument DI2011-249 being the Justices of the Peace (Eligibility) Guideline 2011 made under section 2 of the Justices of the Peace Act 1989 revokes DI2006-216 and determines eligibility for appointment as a justice of the peace.**

This instrument makes guidelines for the eligibility of persons for appointment as a Justice of the Peace. It is made under section 2 of the *Justices of the Peace Act 1989*, which provides:

## 2 Who may be appointed justice of the peace?

- (1) A person is eligible to be appointed as a justice of the peace (an *eligible person*) if the person—
  - (a) is at least 18 years old; and
  - (b) satisfies the criteria (if any) in the guidelines made by the Minister for this section.
- (2) The Minister may make guidelines about eligibility for appointment as a justice of the peace.
- (3) A guideline is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

The Committee notes that, unusually for subordinate legislation that the Committee scrutinises, this instrument does not contain a commencement provision. It is dated 14 September 2011 but it does not contain any statement as to when it commences.

The Committee notes that section 73 of the *Legislation Act 2001* provides for the commencement of legislation generally. It provides:

### 73 General rules about commencement

- (1) An Act commences—
  - (a) on the day after its notification day; or
  - (b) if the Act or another Act provides for a different date or time of commencement—on that date or at that time.
- (2) A legislative instrument commences—
  - (a) on the day after its notification day; or
  - (b) if an Act or the instrument provides for a later date or time of commencement—on that date or at that time; or
  - (c) if an Act provides for an earlier date or time of commencement—on that date or at that time; or
  - (d) if the instrument, under authority given by an Act, provides for an earlier date or time—on that date or at that time.

#### Examples—par (b)

- 1 A subordinate law may provide that it commences on a stated future date or at a stated time on a stated future date.
- 2 A disallowable instrument may provide that it commences on the commencement of a stated law or a stated provision of a stated law.
- 3 A notifiable instrument may provide that it commences on the expiry of a stated statutory instrument.
- 4 A notifiable instrument may provide that it commences on the date fixed by a Commonwealth Minister, by notice in the Commonwealth gazette, under a stated Commonwealth Act.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

- (3) Without limiting subsection (2), if a legislative instrument is notified on a day after the day or time provided by the instrument for its commencement, and subsection (2) (c) or (d) does not apply to the instrument—
- (a) the instrument is valid; but
  - (b) the instrument commences on the day after its notification day.
- (4) A statutory instrument that is not a legislative instrument commences—
- (a) on the day after the day it is made or, if it is required under an Act or statutory instrument to be approved (however described) by the Executive, a Minister or any other entity, the day after the day it is approved; or
  - (b) if an Act or the instrument provides for a later date or time of commencement—on that date or at that time; or
  - (c) if an Act provides for an earlier date or time of commencement—on that date or at that time; or
  - (d) if the instrument, under authority given by an Act, provides for an earlier date or time—on that date or at that time.
- (5) This section is subject to the following sections:
- (a) section 75 (Commencement of naming and commencement provisions);
  - (b) section 76 (Non-prejudicial provision may commence retrospectively);
  - (c) section 79 (Automatic commencement of postponed law);
  - (d) section 79A (Commencement of amendment of uncommenced law);
  - (e) section 81 (Exercise of powers between notification and commencement).
- (6) This section is a determinative provision.

*Note* See s 5 for the meaning of determinative provisions, and s 6 for their displacement.

On the basis of paragraph 73(2)(a) of the Legislation Act, this instrument commences on the day after the day that it was notified on the ACT Legislation Register. The Committee notes that the ACT Legislation Register indicates that the instrument was notified on 19 September 2011 and that its effective date is 20 September 2011.

This comment does not require a response from the Minister.

*Minor drafting issue*

**Disallowable Instrument DI2011-257 being the Climate Change and Greenhouse Gas Reduction (Greenhouse Gas Emissions Measurement Method) Determination 2011 made under section 11 of the *Climate Change and Greenhouse Gas Reduction Act 2010* prescribes a method of measuring greenhouse gas emissions.**

The Committee notes that the formal parts of this instrument and the Explanatory Statement for the instrument indicate that it is made under the *Climate Change and Greenhouse Gas Reductions Act 2010*. The Committee also notes that the text of the Explanatory Statement does not repeat this (minor) error.

This comment does not require a response from the Minister.

*Minor drafting issue—Does the ACT Bushfire Council currently have a deputy chairperson?*

**Disallowable Instrument DI2011-264 being the Emergencies (Bushfire Council Members) Appointment 2011 (No. 1) made under section 129 of the *Emergencies Act 2004* appoints a specified person as a member and chairperson of the ACT Bushfire Council.**

**Disallowable Instrument DI2011-265 being the Emergencies (Bushfire Council Members) Appointment 2011 (No. 2) made under section 129 of the *Emergencies Act 2004* appoints a specified person as a member of the ACT Bushfire Council.**

**Disallowable Instrument DI2011-266 being the Emergencies (Bushfire Council Members) Appointment 2011 (No. 3) made under section 129 of the *Emergencies Act 2004* appoints a specified person as a member of the ACT Bushfire Council.**

**Disallowable Instrument DI2011-267 being the Emergencies (Bushfire Council Members) Appointment 2011 (No. 4) made under section 129 of the *Emergencies Act 2004* appoints a specified person as a member of the ACT Bushfire Council.**

**Disallowable Instrument DI2011-268 being the Emergencies (Bushfire Council Members) Appointment 2011 (No. 5) made under section 129 of the *Emergencies Act 2004* appoints a specified person as a member of the ACT Bushfire Council.**

**Disallowable Instrument DI2011-269 being the Emergencies (Bushfire Council Members) Appointment 2011 (No. 6) made under section 129 of the *Emergencies Act 2004* appoints a specified person as a member of the ACT Bushfire Council.**

**Disallowable Instrument DI2011-270 being the Emergencies (Bushfire Council Members) Appointment 2011 (No. 7) made under section 129 of the *Emergencies Act 2004* appoints a specified person as a member of the ACT Bushfire Council.**

The first instrument mentioned above appoints a specified person as a member and as the chairperson of the ACT Bushfire Council. The following six instruments appoint six specified persons as members of the ACT Bushfire Council.

The Committee notes that the appointments are made under the *Emergencies Act 2004*. The relevant provisions of the Act are as follows:

**127 Establishment of bushfire council**

The ACT Bushfire Council is established.

**128 Constitution of bushfire council**

- (1) The bushfire council consists of—
  - (a) a chairperson; and
  - (b) a deputy chairperson; and
  - (c) at least 3, and not more than 10, other members.
- (2) The deputy chairperson acts in the position of chairperson—
  - (a) during all vacancies in the position; and
  - (b) during all periods when the chairperson cannot for any reason exercise the functions of the position.

*Note* The Legislation Act, div 19.3.2 deals with acting appointments and div 19.3.2A with standing acting arrangements.

At this point, it should be noted that subsection 128(1) provides that the ACT Bushfire Council “consists of” a chairperson, a deputy chairperson and between 3 and 10 other members.

## **129 Bushfire council members**

- (1) The Minister must appoint the bushfire council members.

*Note 1* For the making of appointments generally, see the Legislation Act, pt 19.3.

*Note 2* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3). The appointment of someone other than a public servant for more than 6 months under this section would require consultation and be disallowable (see Legislation Act, s 227).

*Note 3* A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

- (2) The Minister must try to ensure that the following people are among the members appointed:

- (a) a person with skills or experience in fire sciences;
- (b) a person with experience in land management;
- (c) a person with experience in fighting fires in built-up areas;
- (d) a person with experience in fighting fires in rural areas;
- (e) a person with experience in indigenous land management;
- (f) a person to represent the interests of rural lessees;
- (g) a person with relevant skills or experience to represent the community’s interest in the environment;
- (h) a person to represent the community’s interests generally.

- (3) The following must not be appointed under subsection (1):

- (a) the commissioner;
- (b) the chief officer of an emergency service.

- (4) An appointment must be for a term of not longer than 4 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

The Committee notes that, in relation to the subsection 129(2) requirements, the Explanatory Statements for the various instruments state:

Under section 129 (2) the Minister must try to ensure that people with particular skills, interests and experience are among the members appointed. The appointments are made according to these requirements.

The Committee notes, however, that none of the six non-chairperson instruments appoints a deputy chairperson. The Committee also notes that none of the appointments that (after this round of appointments) remain on the ACT Legislation Register - namely DI2010-245, DI2010-257 and DI2010-258) seem to involve the appointment of a deputy chairperson. That being so, the Committee queries whether, at present, the ACT Bushfire Council has a deputy chairperson, as provided for by subsection 128(1) of the Emergencies Act.

**Given that subsection 128(1) of the *Emergencies Act 2004* provides that the ACT Bushfire Council “consists” of various members, including a deputy chairperson, the Committee seeks the Minister’s advice to whether (and, if so, how) subsection 128(1) of the *Emergencies Act* has been complied with.**

## **GOVERNMENT RESPONSES**

The Committee has received responses from:

- The Treasurer, dated 13 October 2011, in relation to comments made in Scrutiny Report 41 concerning Disallowable Instruments:
  - DI2011-169, being the Superannuation Management Guidelines 2011; and
  - DI2011-170, being the Financial Management (Territory Authorities) Guidelines 2011.
- The Minister for Education and Training, dated 18 October 2011, in relation to comments made in Scrutiny Report 42 concerning Disallowable Instrument DI2011-216, being the Education (Government Schools Education Council) Appointment 2011 (No. 2).
- The Minister for Community Services, dated 18 October 2011, in relation to comments made in Scrutiny Report 43 concerning the Working with Vulnerable People (Consequential Amendments) Bill 2011.

The Committee wishes to thank the Treasurer, the Minister for Education and Training and the Minister for Community Services for their helpful comments.

Vicki Dunne, MLA  
Chair

October 2011

**JUSTICE AND COMMUNITY SAFETY—STANDING COMMITTEE  
(PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND  
SUBORDINATE LEGISLATION COMMITTEE)**

**REPORTS—2008-2009-2010-2011**

**OUTSTANDING RESPONSES**

**Bills/Subordinate Legislation**

**Report 1, dated 10 December 2008**

Development Application (Block 20 Section 23 Hume) Assessment Facilitation Bill  
2008

**Report 2, dated 4 February 2009**

Education Amendment Bill 2008 (PMB)

**Report 8, dated 22 June 2009**

Disallowable Instrument DI2009-75—Utilities (Consumer Protection Code)  
Determination 2009

**Report 10, dated 10 August 2009**

Disallowable Instrument DI2009-93—Utilities (Grant of Licence Application Fee)  
Determination 2009 (No. 2)

**Report 12, dated 14 September 2009**

Civil Partnerships Amendment Bill 2009 (PMB)

**Report 14, dated 9 November 2009**

Building and Construction Industry (Security of Payment) Bill 2009  
Disallowable Instrument DI2009-58—Heritage (Council Chairperson) Appointment  
2009 (No. 1)

**Report 18, dated 1 February 2010**

Planning and Development (Notifications and Review) Amendment Bill 2009 (PMB)

**Report 19, dated 22 February 2010**

Education (Suspensions) Amendment Bill 2010 (PMB)

**Report 22, dated 27 April 2010**

Infrastructure Canberra Bill 2010 (PMB)  
Radiation Protection (Tanning Units) Amendment Bill 2010 (PMB)

**Report 24, dated 28 June 2010**

Disallowable Instrument DI2010-65—Auditor-General (Standing Acting Arrangements)  
Appointment 2010

## **Bills/Subordinate Legislation**

### **Report 30, dated 15 November 2010**

Corrections Management (Mandatory Urine Testing) Amendment Bill 2010 (PMB)  
Discrimination Amendment Bill 2010 (PMB)

### **Report 34, dated 24 March 2011**

Road Transport (Third-Party Insurance) Amendment Bill 2011

### **Report 38, dated 27 June 2011**

Disallowable Instrument DI2011-75—Territory Records (Advisory Council)  
Appointment 2011 (No. 1)

Disallowable Instrument DI2011-76—Territory Records (Advisory Council)  
Appointment 2011 (No. 2)

Disallowable Instrument DI2011-77—Territory Records (Advisory Council)  
Appointment 2011 (No. 3)

Disallowable Instrument DI2011-78—Territory Records (Advisory Council)  
Appointment 2011 (No. 4)

Disallowable Instrument DI2011-79—Territory Records (Advisory Council)  
Appointment 2011 (No. 5)

Disallowable Instrument DI2011-80—Territory Records (Advisory Council)  
Appointment 2011 (No. 6)

### **Report 39, dated 28 June 2011**

Electoral (Donation Limit) Amendment Bill 2011 (PMB)

### **Report 40, dated 11 August 2011**

Crimes (Penalties) Amendment Bill 2011 (PMB)

### **Report 42, dated 15 September 2011**

Children and Young People (Transition to Independence) Amendment Bill 2011 (PMB)  
Disallowable Instrument DI2011-197—Planning and Development (Remission of Lease  
Variation Charges) Determination 2011 (No. 1)

### **Report 43, dated 13 October 2011**

Disallowable Instrument DI2011-194 - Tobacco (Compliance Testing Procedures)  
Approval 2011 (No. 1) .....

Disallowable Instrument DI2011-228 - Health (Local Hospital Network Council—  
Member) Appointment 2011 (No. 1) .....

Disallowable Instrument DI2011-229 - Health (Local Hospital Network Council—  
Member) Appointment 2011 (No. 2) .....

Disallowable Instrument DI2011-231 - Health (Local Hospital Network Council—  
Member) Appointment 2011 (No. 3) .....

Disallowable Instrument DI2011-232 - Health (Local Hospital Network Council—  
Member) Appointment 2011 (No. 4) .....

Disallowable Instrument DI2011-233 - Health (Local Hospital Network Council—  
Member) Appointment 2011 (No. 5) .....

Disallowable Instrument DI2011-234 - Health (Local Hospital Network Council—  
Member) Appointment 2011 (No. 6) .....

**Bills/Subordinate Legislation**

Disallowable Instrument DI2011-235 - Health (Local Hospital Network Council— Member) Appointment 2011 (No. 7) .....
Disallowable Instrument DI2011-236 - Health (Local Hospital Network Council— Member) Appointment 2011 (No. 8) .....
Disallowable Instrument DI2011-237 - Health (Local Hospital Network Council— Member) Appointment 2011 (No. 9) .....
Disallowable Instrument DI2011-241 - Planning and Development (Land Agency Board) Appointment 2011 (No. 1) .....
Subordinate Law SL2011-26 - Gene Technology Amendment Regulation 2011 (No. 1)



## Andrew Barr MLA

DEPUTY CHIEF MINISTER

TREASURER

MINISTER FOR ECONOMIC DEVELOPMENT

MINISTER FOR EDUCATION AND TRAINING

MINISTER FOR TOURISM, SPORT AND RECREATION

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MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA  
Chair  
Standing Committee on Justice and Community Safety  
ACT Legislative Assembly  
London Circuit  
CANBERRA ACT 2601

Dear Mrs ~~Dunne~~<sup>Vicki</sup>

Thank you for the Scrutiny of Bills Report No. 41 of 22 August 2011. I offer the following response in relation to the Committee's comments on the *Superannuation Management Guidelines 2011* (DI2011-169) and the *Financial Management (Territory Authorities) Guidelines 2011* (DI2011-170), and whether the guidelines correctly use the term 'prescribed'.

The Parliamentary Counsel's Office has advised that the *Legislation Act 2001* definition of 'prescribed' only applies if there is no contrary intention on how the term is to be interpreted. Specifically, Section 151(1) of the *Legislation Act 2001* states the following:

"A definition in an Act or statutory instrument applies except so far as the contrary intention appears".

The *Financial Management Act 1996* (FMA) and the *Territory Superannuation Provision Protection Act 2000* (TSPPA), under which the guidelines are issued, both clearly reflect a contrary intention on how 'prescribed' is to be interpreted as both Acts contain their own definition of 'prescribed'. As a result, the definitions contained in the FMA and TSPPA operate to exclude the application of the *Legislation Act 2001* definition of 'prescribed'. As the guidelines are issued under these Acts, the correct definitions of 'prescribed' to be applied for the guidelines are the definitions contained in the FMA and TSPPA.

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I trust that the above response answers the Committee's concerns and I thank the Committee for its comments.

Yours sincerely

  
Andrew Barr MLA  
Treasurer

13 OCT 2011



## Andrew Barr MLA

DEPUTY CHIEF MINISTER

TREASURER

MINISTER FOR ECONOMIC DEVELOPMENT

MINISTER FOR EDUCATION AND TRAINING

MINISTER FOR TOURISM, SPORT AND RECREATION

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MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA  
Chair  
Standing Committee on Justice and Community Safety  
Legislative Assembly  
London Circuit  
CANBERRA ACT 2600

Dear Mrs Dunne

Thank you for your Scrutiny of Bills Report No 42 of 15 September 2011, in which the committee made comment about Disallowable Instrument DI2011-216. The Disallowable Instrument appoints Mr Denis O'Dea as an education member representing the ACT Council of Parents and Citizens Association on the Government Education Council for three years.

I wish to clarify for the Committee that at the time of the appointment, Mr O'Dea was an employee of the Australian Public Service on a temporary contract, and therefore not a public servant under the definition of the *Legislation Act 2001*.

I note the committee's comments and thank the Committee for its observations. In response to the Committee's feedback, I will ensure future appointment instruments only include the wording "*the appointee is not a public servant.*"

Yours sincerely

Andrew Barr MLA  
Minister for Education and Training

18 OCT 2011

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## Joy Burch MLA

MINISTER FOR COMMUNITY SERVICES  
MINISTER FOR MULTICULTURAL AFFAIRS  
MINISTER FOR AGEING  
MINISTER FOR WOMEN  
MINISTER FOR ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS  
MINISTER FOR THE ARTS

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MEMBER FOR BRINDABELLA

Mrs Vicki Dunne MLA  
Chair  
Standing Committee on Justice and Community Safety  
ACT Legislative Assembly  
CANBERRA ACT 2601

Dear Mrs Dunne

I am writing in relation to the Committee's comments concerning the proposed Working with Vulnerable People (Consequential Amendments) Bill 2011 (the Consequential Amendments Bill) in Scrutiny Report No 43.

Thank you for the Committee's comments on the Consequential Amendments Bill and explanatory statement.

I acknowledge the Committee has noted the human rights limitations arising from the Working with Vulnerable People (Background Checking) Bill 2010 (WWVP Bill) have already been considered by the Assembly and the Committee referring Members of the Assembly to Scrutiny report 27 for the Committee's review of the WWVP Bill and Scrutiny Report 30 for the Government's response to the Committee's comments.

Yours sincerely



Joy Burch MLA  
Minister for Community Services

18 October 2011

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