



**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**STANDING COMMITTEE ON  
LEGAL AFFAIRS  
(PERFORMING THE DUTIES OF A SCRUTINY  
OF BILLS AND SUBORDINATE  
LEGISLATION COMMITTEE)**

**SCRUTINY REPORT NO. 31**

**11 APRIL 2003**



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**STANDING COMMITTEE ON LEGAL AFFAIRS  
(PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND  
SUBORDINATE LEGISLATION COMMITTEE)**

**MR BILL STEFANIAK MLA (CHAIR), MR JOHN HARGREAVES MLA,  
MS KERRIE TUCKER MLA**

**MR WAYNE BERRY, MLA  
SPEAKER  
LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY  
CANBERRA ACT 2601**

**DEAR MR SPEAKER**

**PLEASE FIND ENCLOSED A COPY OF REPORT NO. 31 OF THE STANDING COMMITTEE ON LEGAL AFFAIRS (PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE). UNDER ITS RESOLUTION OF APPOINTMENT, THE COMMITTEE IS EMPOWERED TO SEND A REPORT TO YOU WHILE THE ASSEMBLY IS NOT SITTING SO THAT YOU MAY GIVE DIRECTIONS FOR ITS PRINTING, CIRCULATION AND PUBLICATION. I SEEK YOUR APPROVAL TO PRINT, PUBLISH AND CIRCULATE REPORT NO. 31.**

**YOURS SINCERELY**

**BILL STEFANIAK MLA  
CHAIR**

**11 APRIL 2003**

**APPROVED  
WAYNE BERRY MLA  
SPEAKER**

**APRIL 2003**

## TERMS OF REFERENCE

The Standing Committee on Legal Affairs (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 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**

**MR BILL STEFANIAK, MLA (CHAIR)**  
**MR JOHN HARGREAVES, MLA (DEPUTY CHAIR)**  
**MS KERRIE TUCKER, MLA**

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

## **ROLE OF THE COMMITTEE**

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

**LEGAL AFFAIRS – STANDING COMMITTEE  
(PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND  
SUBORDINATE LEGISLATION COMMITTEE)**

**RESPONSES**

<b>Bills/Subordinate Legislation</b>	<b>Responses received – Scrutiny Report No.</b>
<b><u>REPORTS – 2001-2003</u></b>	
<b><u>Report No. 1, dated 12 December 2001</u></b>	
Nil	
<b><u>Report No. 2, dated 19 February 2002</u></b>	
Crimes Amendment Bill 2001 (No. 2) <b>(PMB)</b>	
<i>Act citation: Crimes Amendment Act 2002 (Passed 5.3.02).....</i>	<b>No. 5</b>
Crimes (Abolition of Offence of Abortion) Bill 2001 <b>(PMB)</b> .....	
Health Regulation (Maternal Health Information) Repeal Bill 2001 <b>(PMB)</b> .....	
Land (Planning and Environment) Legislation Amendment Bill 2001 <b>(PMB)</b> .....	
Supreme Court Amendment Bill 2001 (No. 2) <b>(PMB)</b> .....	
Subordinate Law No 40 –Building Regulations Amendment.....	<b>No. 8</b>
Subordinate Law No 41 – Building and Construction Industry Training Levy Regulations 2001.....	
Subordinate Law No 42 – Crimes Regulations 2001.....	
Subordinate Law No 43 – Dangerous Goods Regulations Amendment	
Subordinate Law No 44 – Road Transport (Driver Licensing) Regulations Amendment.....	<b>No. 8</b>
Subordinate Law No 45 – Road Transport (Public Passenger Services Regulations 2002.....	<b>No. 8</b>
Subordinate Law No 46 – Road Transport Amendment Regulations 2001.....	
Subordinate Law No 47 – Maternal Health Information Regulations Repeal 2001.....	<b>No. 10</b>
Health Professions Board (Procedures) Act – Determination No 221 of 2001.....	<b>No. 10</b>
Health Professions Board (Procedures) Act – Determination Nos. 216-220, 222, 225 to 237 of 2001.....	<b>No. 10</b>
Independent Pricing and Regulatory Commission Act - Determination No. 291 of 2001.....	<b>No. 8</b>
Legislative Assembly (Members’ Staff) Act - Determination No. 292 of 2001.....	<b>No. 23</b>
Residential Tenancies Act – Determination Nos. 301 to 304 of 2001..	
Rehabilitation of Offenders (Interim) Act 2001 - Determination No. 305 of 2001.....	

<b>Bills/Subordinate Legislation</b>	<b>Responses received – Scrutiny Report No.</b>
Commissioner for the Environment Act - Determination No. 315 of 2001.....	<b>No. 8</b>
Psychologists Act - Determination No. 318 of 2001.....	<b>No. 10</b>
Auditor-General Act – Determination No. 323 of 2001.....	
Drugs of Dependence Act – Determination No. 328 of 2001.....	<b>No. 10</b>
National Exhibition Centre Trust Act - Determination Nos. 330 and 331 of 2001.....	<b>No. 8</b>
Appointment to the Racing Tribunal.....	<b>No. 8</b>
<b><u>Report No. 3, dated 21 February 2002</u></b>	
Rehabilitation of Offenders (Interim) Amendment Bill 2002 (Passed 21.2.02).....	
<b><u>Report No. 4, dated 5 March 2002</u></b>	
Inquiries Amendment Bill 2002 (PMB).....	
Gene Technology Bill 2002.....	<b>No. 12</b>
Legislation Amendment Bill 2002 (Passed 15.4.02).....	<b>No. 9</b>
Subordinate Law No 49 – Road Transport (Offences) Regulations 2001.....	<b>No. 8</b>
Road Transport (Safety and Traffic Management) Regulations 2000 – Disallowable Instrument No 4.....	<b>No. 8</b>
Road Transport (Driver Licensing) Regulations 2000 – Disallowable Instrument No 7.....	<b>No. 8</b>
Health and Community Care Services Act – Determinations Nos 5 and 15.....	
<b><u>Report No. 5, dated 5 March 2002</u></b>	
Nil	
<b><u>Report No. 6, dated 7 March 2002</u></b>	
Nil	
<b><u>Report No. 7, dated 27 March 2002</u></b>	
Drugs of Dependence Amendment Bill 2002 (Passed 14.5.02).....	<b>No. 10</b>
Duties Amendment Bill 2002 (Passed 11.4.02).....	<b>No. 8</b>
Fair Trading Amendment Bill 2002 (PMB) (Passed 29.08.02).....	
Subordinate Law 2002 No 1 – Radiation Regulations 2002.....	<b>No. 10</b>
<b><u>Report No. 8, dated 1 May 2002</u></b>	
Discrimination Amendment Bill 2002 (PMB) (Passed 5.6.02).....	
Gaming Machine (Women’s Sports) Amendment Bill 2002 (Passed 4.6.02).....	<b>No. 10</b>

<b>Bills/Subordinate Legislation</b>	<b>Responses received – Scrutiny Report No.</b>
Subordinate Law No. 3 – Road Transport (Public Passenger Services) Regulations 2002.....	<b>No. 15</b>
Subordinate Law No. 4 – Community Title Regulations 2002.....	<b>No. 15</b>
Road Transport (Public Passenger Services) Regulations 2002 – Disallowable Instruments Nos 12 and 18.....	<b>No. 15</b>
Road Transport (General) Act – Disallowable Instrument No. 20.....	<b>No. 15</b>
Public Place Names Act – Disallowable Instrument No. 24.....	
<b><u>Report No. 9, dated 7 May 2002</u></b>	
Nil	
<b><u>Report No. 10, dated 14 May 2002</u></b>	
Building Amendment Bill 2002 ( <b>Passed 16.5.02</b> ).....	<b>No. 16</b>
<b><u>Report No. 11, dated 14 May 2002</u></b>	
Nil	
<b><u>Report No. 12, dated 16 May 2002</u></b>	
Justices of the Peace Act – Disallowable Instrument No. 25.....	
Residential Tenancies Act – Disallowable Instrument No. 26.....	
<b><u>Report No. 13, dated 29 May 2002</u></b>	
Cemeteries and Crematoria Bill 2002.....	<b>No. 15</b>
Duties (Insurance Exemptions) Amendment Bill 2002.....	<b>No. 15</b>
Road Transport Legislation Amendment Bill 2002.....	<b>No. 16</b>
<b><u>Report No. 14, dated 4 June 2002</u></b>	
Statute Law Amendment Bill 2002 ( <b>Passed 29.08.02</b> ).....	<b>No. 15</b>
<b><u>Report No. 15, dated 20 June 2002</u></b>	
Workers Compensation (Acts of Terrorism) Amendment Bill 2002....	<b>No. 17</b>
Remuneration Tribunal Act – Disallowable Instrument No. 34.....	<b>No. 23</b>
Hotel School Act – Disallowable Instrument No. 35.....	<b>No. 18</b>
Road Transport Act – Disallowable Instrument No. 39.....	<b>No. 17</b>
Commissioner for the Environment Act No. 38.....	<b>No. 17</b>
<b><u>Report No. 16, dated 25 June 2002</u></b>	
Maternal Health Legislation Amendment Bill 2002 ( <b>PMB</b> ).....	
Medical Practitioners (Maternal Health) Amendment Bill 2002 ( <b>Passed 21.08.02</b> ) ( <b>PMB</b> ).....	

<b>Bills/Subordinate Legislation</b>	<b>Responses received – Scrutiny Report No.</b>
Health and Community Care Services Act – Disallowable Instrument No. 41.....	<b>No. 19</b>
Public Place Names Act – Disallowable Instrument No. 43.....	<b>No. 17</b>
Disallowable Instrument No. 44.....	<b>No. 17</b>
Building Act – Disallowable Instrument No. 50.....	<b>No. 17</b>
<b><u>Report No. 17, dated 9August 2002</u></b>	
Justice and Community Safety Legislation Amendment Bill 2002 ( <b>Passed 22.08.02</b> ).....	
Magistrates Court (Refund of Fees) Amendment Bill 2002 ( <b>Passed</b> <b>25.09.02</b> ).....	
Planning and Land Bill 2002 ( <b>Passed 12.12.02</b> ).....	<b>No. 20</b>
Plant Diseases Bill 2002 ( <b>Passed 12.11.02</b> ).....	<b>No. 18</b>
Revenue Legislation Amendment Bill 2002 ( <b>Passed 22.08.02</b> ) .....	<b>No. 18</b>
Subordinate Law 2002 No. 11 – Custodial Escorts Regulations 2002.. Land (Planning and Environment) ACT Heritage	
Council Appointments 2002 (No 1) - DI 2002—56.....	<b>No. 20</b>
Roads and Public Places (Fees) Revocation and Determination 2002 (No 1) - DI 2002—71 .....	<b>No. 19</b>
Roads and Public Places (Fees) Revocation and Determination 2002 (No 2) - DI 2002—72.....	<b>No. 19</b>
Roads Transport (General) (Fees) Revocation and Determination 2002 – DI2002—73.....	<b>No. 19</b>
Hawker (Fees) Revocation and Determination 2002 – DI2002—74....	<b>No. 19</b>
Roads and Public Places (Fees) Revocation and Determination 2002 (No 3) – DI2002-75.....	<b>No. 19</b>
Water Resources (Fees) Revocation and Determination 2002 – DI2002-76.....	<b>No. 19</b>
Stock (Fees) Revocation and Determination 2002 (No 1) – DI2002-77	<b>No. 19</b>
Stock (Fees) Revocation and Determination 2002 (No 2) – DI2002-78	<b>No. 19</b>
Pounds (Fees) Revocation and Determination 2002 – DI2002-79.....	<b>No. 19</b>
Nature Conservation (Fees) Revocation and Determination 2002 – DI2002-80.....	<b>No. 19</b>
Lakes (Fees) Revocation and Determination 2002 – DI2002-81.....	<b>No. 19</b>
Environment Protection (Fees) Revocation and Determination 2002 – DI2002-82.....	<b>No. 19</b>
Domestic Animals (Fees) Revocation and Determination 2002 – DI2002-83.....	<b>No. 19</b>
Animal Welfare (Fees) Revocation and Determination 2002 – DI2002-84.....	<b>No. 19</b>
Animal Diseases (Fees) Revocation and Determination 2002 – DI2002-85.....	<b>No. 19</b>
Road Transport (General) (Parking Permit Fees) Revocation and Determination 2002 – DI2002-86.....	<b>No. 19</b>
Road Transport (General) (Vehicle Impounding and Seizure/Speed Tests) Revocation and Determination 2002 – DI2002-89.....	<b>No. 19</b>



<b>Bills/Subordinate Legislation</b>	<b>Responses received – Scrutiny Report No.</b>
<b><u>Report No. 18, dated 27 August 2002</u></b>	
Cooperatives Bill 2002...(Passed 19.11.02).....	<b>No 22</b>
<b><u>Report No. 19, dated 20 September 2002</u></b>	
Adventure Activities (Liability) Bill 2002 (PMB) .....	<b>No. 20</b>
Civil Law (Wrongs) Bill 2002 (Passed 26.09.02) .....	<b>No. 20</b>
Injuries Compensation Framework Bill 2002 (PMB) .....	<b>No. 20</b>
Prostitution Amendment Bill 2002 (Passed 24.09.02) .....	<b>No. 20</b>
Disallowable Instrument DI 2002—99 being the Machinery (Fees) Revocation and Determination 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—102 being the Architects (Fees) Revocation and Determination 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—103 being the Building (Fees) Revocation 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—104 being the Building (Fees) Determination 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—105 being the Community Title (Fees) Determination and Revocation 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—106 being the Construction Practitioners Registration (Fees) Determination and Revocation 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—109 being the Water and Sewerage (Fees) Revocation 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—110 being the Water and Sewerage (Fees) Determination 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—111 being the Land (Planning and Environment) (Fees) Revocation 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—112 being the Land (Planning and Environment) (Fees) Determination 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—113 being the Surveyors (Fees) Revocation 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—114 being the Surveyors (Fees) Determination 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—115 being the Unit Titles (Fees) Revocation 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—116 being the Unit Titles (Fees) Determination 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—120 being the Plumbers, Drainers and Gasfitters Board (Fees) Revocation and Determination 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—128 being the Scaffolding and Lifts (Fees) Revocation and Determination 2002 .....	<b>No. 22</b>
Disallowable Instrument DI 2002—129 being the Occupational Health and Safety (Fees) Revocation and Determination 2002 .....	<b>No. 22</b>

<b>Bills/Subordinate Legislation</b>	<b>Responses received – Scrutiny Report No.</b>
Disallowable Instrument DI 2002—130 being the Workers’ Compensation (Fees) Revocation and Determination 2002 .....	
Disallowable Instrument DI 2002—131 being the Dangerous Goods (Fees) Revocation and Determination 2002 .....	
Disallowable Instrument DI2002—107 being the Electricity (Fees) Revocation 2002 .....	<b>No. 22</b>
Disallowable Instrument DI2002—108 being the Electricity (Fees) Determination 2002 .....	<b>No. 22</b>
Disallowable Instrument DI2002—144 being the Cultural Facilities Corporation Appointment 2002 .....	
Disallowable Instrument DI 2002—137 being the Agents Act 1968 – Board Appointments 2002 (No. 1) .....	
Disallowable Instrument DI 2002—138 being the Agents Act 1968 – Board Appointments 2002 (No. 2) .....	
Disallowable Instrument DI2002—142 being the Gungahlin Development Authority Appointment 2002 (No 1) .....	<b>No. 22</b>
Disallowable Instrument DI2002—140 being the Waste Minimisation (Fees) Revocation and Determination 2002 .....	
<b><u>Report No 20, dated 11 November 2002</u></b>	
Civil Law (Wrongs) Amendment Bill 2002 ( <b>Passed 4.03.03</b> ) .....	
Criminal Code 2002 ( <b>Passed 10.12.02</b> ).....	<b>No. 22</b>
Planning and Land Bill 2002 (Further response).....	<b>No. 22</b>
Disallowable Instrument DI2002—161 being the Community and Health Services Complaints – Community and Health Rights Advisory Council – Appointment 2002 (No 1) .....	<b>No. 24</b>
Disallowable Instrument DI2002—167 being the Nurses Board Appointments 2002 (No 1) .....	<b>No. 24</b>
Disallowable Instrument DI2002—168 being the Physiotherapists Board of the ACT Appointments 2002 (No 1)....	<b>No. 24</b>
<b><u>Report No 21, dated 19 November 2002</u></b>	
Administrative Appeals Tribunal Amendment Bill 2002.....	<b>No. 23</b>
Building (Water Efficiency) Amendment Bill 2002 ( <b>PMB</b> ) .....	
Disallowable Instrument DI2002-174 being the Health Professions Boards (Procedures) – Medical Board of the ACT Appointments 2002 (No 1) .....	
Disallowable Instrument DI2002-188 being the Health Professions Boards (Procedures) – Medical Board of the ACT Appointments 2002 (No 2).....	
Disallowable Instrument DI2002-175 being the Health Professions Boards (Procedures) Optometrist Board Appointments 2002 (No 1).....	
Disallowable Instrument DI2002-176 being the Health Professions Boards (Procedures) – Veterinary Surgeons Board Appointments 2002 (No 1).....	

<b>Bills/Subordinate Legislation</b>	<b>Responses received – Scrutiny Report No.</b>
Disallowable Instrument DI2002-183 being the Justices of the Peace Appointment of Justices of the Peace 2002 .....	
<b><u>Report No 22, dated 21 November 2002</u></b>	
Civil Law (Wrongs) Amendment Bill 2002 (No 2) (PMB) .....	
Crimes Amendment Bill 2002 (PMB).....	
Revenue Legislation Amendment Bill 2002 (No 2) (Passed 10.12.02)	<b>No. 23</b>
Disallowable Instrument DI2002-174 being the Health Professions Boards (Procedures) – Medical Board of the ACT Appointments 2002 (No 1) .....	<b>No. 24</b>
Disallowable Instrument DI2002-175 being the Health Professions Boards (Procedures) Optometrist Board Appointments 2002 (No 1) .....	<b>No. 24</b>
Disallowable Instrument DI2002-176 being the Health Professions Boards (Procedures) Veterinary Surgeons Board Appointments 2002 (No 1) .....	<b>No. 24</b>
Disallowable Instrument DI2002-183 being the Justices of the Peace – Appointment of Justices of the Peace 2002.....	<b>No. 24</b>
Disallowable Instrument DI2002-188 being the Health Professions Boards (Procedures) – Medical Board of the ACT Appointments 2002 (No 2) .....	<b>No. 24</b>
<b><u>Report No 23, dated 6 December 2002</u></b>	
Discrimination Amendment Bill 2002 (No 2) (Passed 13.03.03) .....	
Health and Community Care Services (Repeal and Consequential Amendments) Bill 2002 (Passed 10.12.02).....	
Litter Amendment Bill 2002 (PMB) .....	
<b><u>Report No 24, dated 28 January 2003</u></b>	
ACTION Authority Amendment Bill 2002 (Passed 18.2.03).....	
Taxation (Government Business Enterprises) Bill 2002 (Passed 11.03.03) .....	<b>No 27</b>
Community Based Sentences (Transfer) Bill 2002 (Passed 20.2.03) ..	
Cemeteries and Crematoria Bill 2002 (No 2) (Passed 6.03.03) .....	
Hawkers Bill 2002 (Passed 6.03.03) .....	
Security Industry Bill 2002 (Passed 20.2.03).....	
<b><u>Report No 25, dated February 2003</u></b>	
Confiscation of Criminal Assets Bill 2002 (Passed 4.3.02) .....	<b>No 26</b>
Crimes (Industrial Manslaughter) Amendment Bill 2002 .....	
Disallowable Instrument DI2002-193 being the Supervised Drug Injection Trial Advisory Committee Appointments 2002 (No 1)...	
Disallowable Instrument DI2002-194 being the Residential Tenancies - Tribunal Selections 2002 .....	

<b>Bills/Subordinate Legislation</b>	<b>Responses received – Scrutiny Report No.</b>
Disallowable Instrument DI2002-195 being the Road Transport (General) – Declaration that the road transport legislation does not apply to certain roads and road related areas 2002 (No 7) .....	
Disallowable Instrument DI2002-197 being the Domestic Violence Prevention Council Appointments 2002-2004.....	
<b><u>Report No 26, dated 27 February 2003</u></b>	
Consumer and Trader Tribunal Bill 2003 .....	
Land (Planning and Environment) (Compliance) Amendment Bill 2003.....	
Subordinate Law SL2003-1 being the Urban Services (Application of Criminal Code) Amendment Regulations 2002 .....	
Disallowable Instrument DI2002-207 being the Gambling and Racing Commission – Appointments 2002 (No 1).....	<b>No 30</b>
Disallowable Instrument DI2002-212 being the National Exhibition Centre Trust Appointment 2002 (No 2).....	<b>No 30</b>
Subordinate Law SL2002-37 being the Trade Measurement (Miscellaneous) Amendment Regulations 2002 .....	
Disallowable Instrument DI2002-219 being the Health Professions Boards (Procedures) – Nurses Board of the ACT Appointments 2002 (No 2) .....	
Disallowable Instrument DI2002-220 being the Water Restriction Scheme Approval 2002 (No 2) .....	
Disallowable Instrument DI2002-223 being the Occupational Health and Safety Council – Appointment 2002 (No 3) .....	<b>No 30</b>
Disallowable Instrument DI2002-224 being the Occupational Health and Safety Council – Appointment 2002 (No 2) .....	<b>No 30</b>
Disallowable Instrument DI2002-225 being the Occupational Health and Safety Council – Appointment 2002 (No 2) .....	<b>No 30</b>
Disallowable Instrument DI2002-232 being the Road Transport (General) Revocation of Declaration for Traffic Marshals 2002 ...	
Disallowable Instrument DI2003-3 being the Hotel School Appointment 2003 (No 1).....	<b>No 30</b>
Disallowable Instrument DI2003-5 being the Tree Protection (Interim Scheme) Determination of Criteria 2002.....	
<b><u>Report No 27, dated 11 March 2003</u></b>	
Bushfire Inquiry (Protection of Statements) Bill 2003 <b>(PMB)</b> <b>(Passed 12.03.03)</b> .....	
Bushfire Reconstruction Authority Bill 2003 <b>(PMB)</b> .....	
Charitable Collections Bill 2002 .....	<b>No 31</b>
Disallowable Instrument DI2003-21 being the Plumbers, Drainers and Gasfitters Board Appointments 2003 (No 1) .....	
Disallowable Instrument DI2003-23 being the Occupational Health and Safety (Fees) Revocation and Determination 2003 .....	

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**Bills/Subordinate Legislation**

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**Responses received –  
Scrutiny Report No.**

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**Report No 30, dated 31 March 2003**

Agents Bill 2003 .....  
Legislation (Statutory Interpretation) Amendment Bill 2003 .....

## **BILLS**

### Bills - No Comment

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

### **Construction Practitioners Legislation Amendment Bill 2003**

This Bill would amend the *Construction Practitioners Registration Act 1998* to provide for the appointment of government building certifiers to supplement the work of private certifiers, with the object of providing a means to finalise the certification of building projects.

### **Financial Management Amendment Bill 2003**

This Bill would amend the *Financial Management Act 1996*, primarily in relation to amendment of departmental budgets and the type of permissible investments for public moneys.

### **Government Procurement Amendment Bill 2003**

This Bill would amend the *Government Procurement Act 2001* to incorporate into the Act, with some amendment, the provisions of the *Public Access to Government Contracts Act 2000* and the *Government Contractual Debts (Interest) Act 1994*. These latter two Acts would be repealed.

### **Rates and Land Tax Amendment Bill 2003**

This Bill would amend the *Rates and Land Tax Act 1926* to introduce an alternative method for assessing rates for residential parcels of land.

### Bills - Comment

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

### **Animal and Plant Diseases Amendment Bill 2003**

This Bill would amend the *Animal Diseases Act 1993* and the *Plant Diseases Act 2002* to provide for the commencement of declarations of quarantine and importation restriction prior to the relevant notification day.

*Para 2(c)(i) - undue trespass on rights and liberties*

#### Notice of the operation of a law

The quite limited provision in various clauses of the Bill for the commencement of a declaration of quarantine and importation restriction prior to the relevant notification

day involves an inroad into the principle that the public should be able to determine the content of a law in force by reference to the Legislation Register. The Explanatory Memorandum explains why this is necessary, and the Committee does not suggest that the relevant clauses require amendment.

### Strict liability offences

Proposed new sections 8(10), 10(10), 12(10), 18(2) and 21 of the *Plant Diseases Act 2002* would create strict liability offences.

The Explanatory Memorandum explains why this is desirable, and the Committee commends the fact that the Explanatory Memorandum addresses these issues. (Although there is no explanation in relation to proposed new subsection 20(3) (see clause 19).)

The Committee does, however, draw the attention of the Assembly to the proposed amendment (by clause 18) of section 16 of the *Plant Diseases Act 2002*. Section 16 would become an offence of strict liability. The Explanatory Memorandum also explains that this involves the removal of an existing provision (section 16(2)) of the Act that allows for a reasonable excuse defence. The Committee does not accept that the defences provided for in the *Criminal Code 2002* are such as to cover the ground of a reasonable excuse defence; (the Explanatory Memorandum may not have intended to so suggest).

The Committee has said in earlier Reports that provision for a reasonable grounds excuse in relation to a strict liability offence is what should be considered as a means of ameliorating the effect of a strict liability offence (in addition to the mistake of fact defence allowed for by section 36 of the *Criminal Code 2002*).

Of particular concern in relation to clause 18 is that what is involved is a diminution in the range of defences currently available. The Explanatory Memorandum states that the more limited range that would be available under clause 18 would be "adequate". What needs explanation is why the existing section 16(2) is more than adequate, in the sense of creating some problem in the administration of the Act, thus creating the need to diminish the protection of rights provided for by s 16(2).

There is an important issue of personal rights involved here. A strict liability offence do not have a mental element, or mens rea. In this way there is a breach of the fundamental principle that a person is not to be found guilty of a criminal offence unless they are proved to have intended to commit the acts that constitute the physical elements of the offence. The primacy of this principle is recognised by section 22 of the *Criminal Code 2002*.

The comments just made apply as well to clauses 20, 21 and 23 of the Bill.

## **Road Transport (Public Passenger Services) Amendment Bill 2003**

This is a Bill to amend the *Road Transport (Public Passenger Services) Act 2001* to provide for regulations to be made to create systems for the licensing of hire cars and for the accrediting of hire-car operators.

*Para 2(c)(i) - undue trespass on rights and liberties*

### Strict liability offences

Proposed new ss 60D, 60E, 60N and 60O would create strict liability offences. The Explanatory Memorandum does not explain why it is necessary to make the offence of this character, nor indicate whether consideration was given to inserting an defence of reasonable grounds or the like, (in addition to the mistake of fact defence allowed for by section 36 of the *Criminal Code 2002*).

### Comment on the Explanatory Memorandum

The Explanatory Memorandum does not explain the clauses separately.

## **Sentencing Reform Amendment Bill 2003**

This Bill would amend the *Supreme Court Act 1933* to empower the Supreme Court to issue guideline judgments; the *Crimes Act 1900* to increase the maximum sentence that might be imposed in relation to a number of serious offences, and to create some new offences; and the *Rehabilitation of Offenders (Interim) Act 2001* in relation to non-parole periods.

*Para 2(c)(i) - undue trespass on rights and liberties*

### Guideline judgments

Proposed new sections 37SA and 37SB (see clause 4) would empower the Court of Appeal to give "a guideline judgment to be taken into account by the courts when sentencing offenders" (proposed new subsection 37SA(1)).

In *Wong v The Queen* (2001) 207 CLR 584, the High Court addressed some of the constitutional issues relating to the exercise of such powers by courts. It is clear that there is no separation of powers objection to the conferral of such a power on a court. It is the exercise of this power that a court may breach this limits of its powers. Gaudron, Gummow and Hayne JJ said (at 615 [83]):

Again, for the reasons given earlier, there is an important distinction between a court articulating the principles which do, or should, underpin the determination of a particular sentence and the publication of the expected or intended results of future cases. Articulation of applicable principle is central to the reasoned exercise of jurisdiction in the particular matters before the court. By contrast, the



publication of expected or intended results of future cases is not within the jurisdiction or the powers of the court.

Earlier, their Honours said (at 613-614 [80]):

The fixing of such a table begins to show signs of passing from being a decision settling a question which is raised by the matter, to a decision creating a new charter by reference to which further questions are to be decided. It at least begins to pass from the judicial to the legislative (footnote omitted).

It is clear that the majority allowed that a guideline might articulate the principles which should underpin the determination of a particular sentence. This is what proposed new section 37SA of the Supreme Court Act 1933 would permit. The Committee records these comments of the majority in Wong to signal its recognition that there are rights issues involved in the conferral of a guideline making power on a court. These would, however, be matters for any court exercising a power such as is proposed by proposed new section 37SA of the Supreme Court Act 1933.

#### Maximum penalties

The Bill would increase the maximum penalty for a wide range of serious offences under the *Crimes Act 1900*. The broad issue here is whether there would be, if a maximum were fixed, such a disproportion between the penalty and the crime that it could be said that the punishment did not fit the crime and was unjust.

Whether this occurs will, however, generally be a function of the sentencing judge. It is probably only in an extreme case that it could be said that fixing a maximum penalty can be said to be unjust in the sense of authorising an oppressive punishment.

#### Factors in the determination of sentences

Currently, paragraph 342(1)(i) of the *Crimes Act 1900* provides:

In determining the sentence to be imposed on a person, the matters to which a court shall have regard include, but are not limited to, such of the following matters as are relevant and known to the court: ...

- (i) the cultural background, character, antecedents, age, means and physical or mental condition of the person;

By clause 69 of the Bill, the word "cultural" would be omitted. (The introductory wording of subsection 342(1) would also be changed, but in an immaterial way).

The Committee cannot assess whether there are rights issues involved without some explanation of the object of this amendment. It is noted below that there is no explanatory statement and that the proponent of the Bill has undertaken to provide one to the Assembly.

### Mandatory sentences

It does not appear that the Bill would fix a minimum sentence. Proposed new section 31A of the *Rehabilitation of Offenders (Interim) Act 2001* (clause 82) has been noted. When setting a nonparole period, the sentencing judge must set that period which would be specified in the table attached to the proposed definition of "standard nonparole period" "unless the court considers that there are reasons for setting a nonparole period for the offence that is longer or shorter than the standard nonparole period". For example, while the standard period in relation to the offence of sexual assault in the first degree is fifteen years, the sentencing judge has an open-ended discretion to fix a term lower (or higher) than fifteen years as the nonparole period.

### Comment on the explanatory statement

There is no explanatory statement. The proponent of the Bill has undertaken to provide one to the Assembly.

## **Tertiary Accreditation and Registration Bill 2003**

The Bill, together with the Vocational Education and Training Bill, is designed to bring ACT regulatory arrangements on vocational education and training and higher education into line with the requirements of the nationally agreed Australian Quality Framework. This Bill would create an Accreditation and Registration Council, which is subject to Ministerial direction. It provides for the registration of training organisations, and the accreditation of vocational courses; for the registration of non-university higher education providers and the accreditation of non-university higher education courses; and for the recognition of universities.

### *Para 2(c)(i) - undue trespass on rights and liberties*

#### An immunity conferred on "the University of the Third Age (U3A)"

By clause 84, it is an offence for a person to use the title of 'university' unless the person is a university. There is then a dispensation by subclause 84(2): "This section does not apply to the University of the Third Age (U3A)".

It is fundamental that the law apply equally to all citizens. Any dispensation should be justified. In some circumstances, the justification may be apparent from the face of the law, or from the Explanatory Memorandum and such like.

In this case, there is no information given as to what is the U3A, whether it has any legal personality, who controls it and how it is governed, and whether any persons derive any benefit, including any commercial benefit, from its operations. It is not known whether it provides any kind of certification as a consequence of its activities. These matters might be explained, but there would then arise the question whether there should be some facility for other persons to claim a similar exemption from clause 84.

As a general principle, a law should state a principle according to which persons might apply for an exemption, rather than state simply that some particular person is

exempt. The principle could be framed with the circumstances of the U3A in mind, but it would permit others, now or in the future, similarly placed to the U3A, to seek exemption. In this way, the principle of equal treatment according to law would be preserved.

### Strict liability offences

Clauses 54, 67, 71, 79 and 84 would create strict liability offences. Only in relation to clause 84 does the Explanatory Memorandum mention that this is the character of the offences. The Explanatory Memorandum does not explain why it is necessary to make the offence of this character, nor indicate whether consideration was given to inserting an defence of reasonable grounds or the like, (in addition to the mistake of fact defence allowed for by section 36 of the Criminal Code 2002).

### *Para 2(c)(ii) - insufficient definition of administrative powers*

Some aspects of the way the Bill confers and regulates the exercise of administrative power give cause for comment.

### Qualification of the ultra vires principle

Critical to the rule of law is the principle that bodies invested with statutory power should stay within the boundaries of their power; (in legal terms, the body should not act ultra vires - "beyond power"). Legislative qualification of this principle raises a concern. The Committee notes that while subclause 27(1) states that the council must, in conducting an audit, use certain standards, subclause 27(2) then states that a failure to comply is of no effect if the failure "does not substantially affect the outcome of the audit".

This might be seen as a minor qualification of the ultra vires principle, but, given its critical significance in our constitutional system, any qualification of it should be justified.

### Unqualified administrative discretions

There are several clauses in the Bill that confer on a person or body an administrative power in terms that do not indicate, or if they so indicate, do not so limit, the exercise of a significant administrative power. See, for example, clause 33, in relation to the registration of a registered training organisation, noting subclauses 33(2), (3) and (5).

One technique to provide guidance is to empower the decision-maker, or a person such as a Minister, to issue guidelines to govern the exercise of the power. This technique is adopted in relation to one kind of power; see subclause 86(1) in relation to the recognition of universities.

There is no apparent reason why it could not be applied in relation to other administrative powers, and might be done in a global fashion rather than in relation to each power.

## Vocational Education and Training Bill 2003

This is a Bill for an Act to establish the ACT Vocational Education and Training Authority and to regulate employment based training. It would repeal the *Vocational Education and Training Act 1995*, and would operate in conjunction with the proposed *Tertiary Accreditation and Registration Act 2003*.

*Para 2(c)(i) - undue trespass on rights and liberties*

### Strict liability offences

Clauses 29 and 36 would create strict liability offences. The Explanatory Memorandum does not explain why it is necessary to make the offence of this character, nor indicate whether consideration was given to inserting a defence of reasonable grounds or the like, (in addition to the mistake of fact defence allowed for by section 36 of the Criminal Code 2002).

### Subordinate Legislation - No Comment

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

**Disallowable Instrument DI2003-28 being the Road Transport (General) – Declaration that the road transport legislation does not apply to certain roads and road related areas 2003 (No 1) made under section 12 of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to the ACT roads and road related areas used when vehicles are used to demonstrate rally driving at the media launch for the 2003 Australian Rally Championship on 12 March 2003. Roads in the Kowen Forest are to be used for this purpose. All participating vehicles are road registered and are compulsory third party (CTP) insured.**

**Disallowable Instrument DI2003-29 being the Utilities – Water Restriction Scheme Approval 2003 (No 1) made under section 234 of the *Utilities Act 200* revokes DI2002-203 being the Water Restriction Scheme Approval 2002 and DI2002-220 being the Water Restriction Scheme Approval 2002 (No 2) and approves the water restriction scheme developed by ACTEW Corporation which provides for target reductions in consumption of water under each specific stage.**

### Subordinate Legislation - Comment

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

**Disallowable Instrument DI2003-26 being the Public Trustee – Appointments to the Public Trustee Investment Board 2003 (No 1) made under section 48 of the *Public Trustee Act 1985* appoints specific persons to be members of the Public Trustee Investment Board.**

*Is this instrument disallowable?*

The Committee notes that the explanatory statement gives no indication as to whether or not the persons appointed to the Public Trustee Investment Board are public servants. An instrument appointing a public servant is not a disallowable instrument under section 227 (2) (a) of the *Legislation Act 2001*.

*When did these appointments commence?*

The Committee also notes that neither this instrument nor its explanatory statement give any indication of the time for commencement or completion of these appointments; *see* subsection 48 (2) of the *Public Trustee Act 1985*. The instrument was signed by the Attorney-General on 27 February 2003 and notified on 6 March 2003.

**Disallowable Instrument DI2003-27 being the Utilities (Dam Safety Code) Variation Determination 2003 made under sections 61 and 65 of the *Utilities Act 2000* approves variations to the Code as specified in the Schedule.**

Missing Explanatory Statement

There was no Explanatory Statement attached to this instrument.

**INTERSTATE AGREEMENTS**

There is no matter for comment in this report.

**REGULATORY IMPACT STATEMENTS**

There is no matter for comment in this report.

**GOVERNMENT RESPONSE**

The Committee has received a response in relation to comments from:

- The Minister for Urban Services, dated 31 March 2003, in relation to comments in Scrutiny Report No. 27 regarding the Charitable Collections Bill 2003.

A copy of the response is attached.

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

Bill Stefaniak MLA  
Chair

April 2003



**Bill Wood** MLA

MINISTER FOR URBAN SERVICES MINISTER FOR THE ARTS AND HERITAGE  
 MINISTER FOR DISABILITY, HOUSING AND COMMUNITY SERVICES  
 MINISTER FOR POLICE AND EMERGENCY SERVICES

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MEMBER FOR BRINDABELLA

Mr Bill Stefaniak MLA  
 Chair  
 Standing Committee on Legal Affairs  
 London Circuit  
 CANBERRA ACT 2601

Dear Mr <sup>Bill</sup> Stefaniak

Thank you for the comments made by the Committee in your Scrutiny of Bills Report No. 27 of 11 March 2003 on the Charitable Collections Bill 2003. I offer the following response in relation to the matters raised by your Committee.

Strict liability offences

Consideration was given to each offence in the Bill and whether it should be a strict liability offence or not. Strict liability offences are administratively more efficient and are generally at the less serious end of the criminal offence spectrum. Clauses 16, 17, 32, 39, 42, 44 (1), 47, 48, 49 (3), 50, 53, 55, 56 contain strict liability offences because the offences have only monetary penalties.

Clauses 37 and 38 contain strict liability offences with a maximum penalty of 100 penalty units, imprisonment for one year or both, because failure to meet these requirements means that the object of this Bill relating to promoting the proper management and administration of collections would not be met. These clauses refer to circumstances when a licence has been suspended or cancelled by the chief executive.

Clauses 14 and 45 contain strict liability offences with a maximum penalty of 200 penalty units, imprisonment for two years or both, based on advice from the Criminal Law Section of the Department of Justice and Community Safety that this will allow the Confiscation of Criminal Assets Bill 2002 to be invoked if needed.

Lack of clarity in clause 23 concerning the power to refuse a licence

Under subclause 23 (2), if a collection does not include a charitable purpose, or an entity has not agreed to an application for a collection on its behalf where the entity is not the applicant, a licence must not be granted. This is because these grounds go to the heart of the reasons for the legislation and any problem with them cannot be resolved other than by a new application. This is the reason that the chief executive "must refuse" a licence in clause 23 (2).

ACT LEGISLATIVE ASSEMBLY

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With the reasons listed in subclauses 23 (3) and (4), (for example, if the chief executive is not satisfied that the proposed collection will be carried out in a proper way), a problem in relation to the application may be able to be dealt with by conditions in the licence. If the problem cannot be dealt with by conditions in the licence or through other agreed means, the chief executive will need to be able to refuse the licence.

Lack of clarity in clause 44 concerning burden of proof

Clause 44 (3) is clearly an “exception”, “exemption” or “qualification” and therefore section 58 (1) of the *Criminal Code 2002* applies to place the evidential burden on the defendant to present or point to evidence that suggests a reasonable possibility that the deducted proceeds were a lawful and proper expense in accordance with the conditions (if any) of the licensee’s licence.

As *The Guide on the Commonwealth Criminal Code* suggests, there can sometimes be confusion about whether the prosecution is intended to bear both the evidential and legal burden of an exception. However this is usually because the exception forms part of the description of the offence. See, for example, *DPP v United Telecasters Sydney Limited* (1990) 168 CLR 594, which is cited in the Guide. In that case, section 100 (5A) of the *Broadcasting and Television Act 1942* (Cwlth) provided that the holder of a commercial television station licence “shall not ... televise an advertisement for ... cigarettes”. Section 100 (10) provided that a reference in subsection 5A to “televising an advertisement” shall be read as not including an accidental or incidental accompaniment of the televising ...”. In other words, the exception formed part of the description of the offence by reference. This is clearly not the case in clause 44. Indeed the general rule of statutory interpretation is that if the qualification appears in a separate provision to the offence provision, the presumption (subject to any express or implied contrary intention) is that the legislature intended to impose an evidential burden on the defendant (*C Dowling v Bowie* [1952] 86 CLR 136, per Dixon CJ at p 137). The presumption did not operate in the *United Telecasters* case because the qualification specified how an element of the offence in section 100 (5A) should be understood.

In cases like clause 44 (3) the provision is so clearly an exception or qualification that it is unnecessary to include a note stating that the evidential burden lies on the defendant. There is likely to be greater scope for confusion if the policy were that such a note should be included even when there is no doubt that the exception falls within the rule in section 58 (3) of the Code. This is because in those cases when the note is not included there will be a tendency to believe that section 58 (3) does not apply when in fact it does. Clause 5 of the Bill already alerts a user to the need to read the legislation in the context of the Code.

On the issue of the examples to the Code, section 58 (3), they illustrate how some common kinds of offence provisions in ACT legislation are to be interpreted in the context of the subsection. Examples may extend but do not limit the meaning of the provision to which they relate (see *Legislation Act 2001*, section 132 (1)). In deciding whether a particular provision is an exception etc, a court must look at whether the provision is correctly characterised as a exception etc. The examples may aid this process. Accordingly, the examples to the Code, section 58 (3) may not be directly applicable to clause 44 (3) of the Bill because the subclause does not use an "if" style formulation as is the case with the examples. However, as noted above, it is clear from a reading of the subclause that it is an "exception", "exemption" or "qualification" for the purposes of the Code, section 58 (3) and the absence of a directly applicable example in the section does not affect the nature of clause 44 (3) as an exemption etc.

Privileges against disclosure

After clause 53 (3) there is a note that draws a user's attention to the privileges mentioned by the committee. There is no need to insert an additional note.

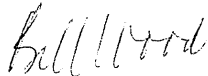
Lack of compensation for injury arising out of government action

Given the range of circumstances in which a public statement or warning by the Minister may be made, it is not appropriate to create an entitlement to compensation. The reference to the Territory in clause 62 (4) includes the Minister. The *Legislation Act 2001*, dictionary, part 1, defines the term 'the Territory', when used in other than a geographical sense, as meaning the body politic established by the *Australian Capital Territory (Self-Government) Act 1988* (Cwth), section 7. The Minister is part of the body politic.

Comment on the Explanatory Memorandum

An error was made in the version of the Explanatory Memorandum that was printed because it included clause 16, which was deleted just before the Bill was presented to Cabinet. I assume that the comment relating to the Explanatory Memorandum, where you state that 'clause 15 is not found in Part 3', that you were referring to clause 16. The correct version of the Explanatory Memorandum was lodged on the ACT Legislation Register website at the time the Bill was presented. The correct version of the Explanatory Memorandum will be printed and distributed to the people who received the original printed version.

Yours sincerely



Bill Wood MLA  
Minister for Urban Services

31 March 2003