



Legislative Assembly for the Australian Capital Territory

Standing Committee on Justice and Community Safety
(Legislative Scrutiny Role)

Scrutiny Report 22

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Approved for publication

10th Assembly
October 2022

About the committee

Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) on 2 December 2020.

The Committee is responsible for the following areas:

- (10) the Standing Committee on Justice and Community Safety is also to perform a legislative scrutiny role of bills and subordinate legislation by:
 - (a) considering whether the clauses of bills (and amendments proposed by the Government to its own 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; and
 - (vi) consider whether any explanatory statement associated with legislation meets the technical or stylistic standards expected by the Assembly;
 - (b) reporting 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*;
 - (c) considering 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; and
 - (d) 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 Assembly;

You can read the full establishing resolution [on our website](#).

Committee members

Peter Cain MLA, Chair

Marisa Paterson MLA, Deputy Chair

Andrew Braddock MLA

Secretariat

Kathleen de Kleuver, Committee Secretary

Emma-Kate Weaver, Administration Officer

Daniel Stewart, Legal Adviser (Bills)

Stephen Argument, Legal Adviser (Subordinate Legislation)

Contact us

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Role of 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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1. Bills—Proposed Amendments

Proposed Amendments – No Comment

Appropriation Bill 2022-2023

- 1.1. The Committee received proposed amendments to the *Appropriation Bill 2022-2023* from Ms Clay. These proposed amendments to the bill seek to reduce funding to the horseracing industry (by way of Memorandum of Understanding) from the Justice and Community Safety budget by 20 per cent each year, for five years, until the ACT Government is no longer subsidising that industry.
- 1.2. On 11 October 2022 the Committee made a 246A statement to the Assembly in relation to the Amendments to the *Appropriation Bill 2022-2023*.
- 1.3. **The Committee has no comments on the amendments.**
- 1.4. **This comment does not require a response.**

Response – No Comment

- *Drugs of Dependence (Personal Use) Amendment Bill 2022* Explanatory Statement from Mr Davis.

2. Subordinate Legislation

Disallowable Instruments – No comment

- 2.1. The Committee has examined the following disallowable instruments and has no comments on them:
 - **Disallowable Instrument DI2022-196** being the Government Procurement (Non-Public Employee Member) Appointment 2022 (No 1) made under section 12 of the *Government Procurement Act 2001*.
 - **Disallowable Instrument DI2022-197** being the Government Procurement (Non-Public Employee Member) Appointment 2022 (No 2) made under section 12 of the *Government Procurement Act 2001*.
 - **Disallowable Instrument DI2022-215** being the Terrorism (Extraordinary Temporary Powers) Public Interest Monitor Panel Appointment 2022 (No 1) made under section 62 of the *Terrorism (Extraordinary Temporary Powers) Act 2006*.
 - **Disallowable Instrument DI2022-216** being the Terrorism (Extraordinary Temporary Powers) Public Interest Monitor Panel Appointment 2022 (No 2) made under section 62 of the *Terrorism (Extraordinary Temporary Powers) Act 2006*.
 - **Disallowable Instrument DI2022-217** being the Terrorism (Extraordinary Temporary Powers) Public Interest Monitor Panel Appointment 2022 (No 3) made under section 62 of the *Terrorism (Extraordinary Temporary Powers) Act 2006*.

- **Disallowable Instrument DI2022-218** being the Taxation Administration (Amounts Payable—Land Tax) Determination 2022 made under section 139 of the *Taxation Administration Act 1999*.
- **Disallowable Instrument DI2022-219** being the Motor Accident Injuries (Internal Review) Guidelines 2022 made under section 487 of the *Motor Accident Injuries Act 2019*.

Disallowable Instruments – Comment

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

Fees Determinations / Human Rights Issues

- **Disallowable Instrument DI2022-194** being the Water Resources (Fees) Determination 2022 (No 2) made under section 107 of the *Water Resources Act 2007*.
- **Disallowable Instrument DI2022-195** being the Firearms (Fees) Determination 2022 (No 2) made under section 270 of the *Firearms Act 1996*.
- **Disallowable Instrument DI2022-199** being the Public Trustee and Guardian (Fees) Determination 2022 (No 2) made under section 75 of the *Public Trustee and Guardian Act 1985*.
- **Disallowable Instrument DI2022-200** being the Land Titles (Fees) Determination 2022 (No 2) made under section 139 of the *Land Titles Act 1925*.
- **Disallowable Instrument DI2022-201** being the Liquor (Fees) Determination 2022 (No 2) made under section 227 of the *Liquor Act 2010*.
- **Disallowable Instrument DI2022-202** being the Security Industry (Fees) Determination 2022 (No 2) made under section 50 of the *Security Industry Act 2003*.
- **Disallowable Instrument DI2022-203** being the Partnership (Fees) Determination 2022 (No 2) made under section 99 of the *Partnership Act 1963*.
- **Disallowable Instrument DI2022-204** being the Associations Incorporation (Fees) Determination 2022 (No 2) made under section 125 of the *Associations Incorporation Act 1991*.
- **Disallowable Instrument DI2022-205** being the Tobacco and Other Smoking Products (Fees) Determination 2022 (No 2) made under section 70 of the *Tobacco and Other Smoking Products Act 1927*.
- **Disallowable Instrument DI2022-206** being the Architects (Fees) Determination 2022 (No 2) made under section 91 of the *Architects Act 2004*.
- **Disallowable Instrument DI2022-207** being the Electricity Safety (Fees) Determination 2022 (No 2) made under section 64 of the *Electricity Safety Act 1971*.
- **Disallowable Instrument DI2022-208** being the Environment Protection (Fees) Determination 2022 (No 2) made under section 165 of the *Environment Protection Act 1997*.
- **Disallowable Instrument DI2022-209** being the Gas Safety (Fees) Determination 2022 (No 2) made under section 67 of the *Gas Safety Act 2000*.

- **Disallowable Instrument DI2022-210** being the Water and Sewerage (Fees) Determination 2022 (No 2) made under section 45 of the *Water and Sewerage Act 2000*.
- 2.3. Each of the instruments mentioned above determine fees, for various Acts, for the 2022-23 financial year. All except DI2022-195 apply from 1 September 2022. DI2022-195 applies from the day after notification. It was notified on the ACT Legislation Register on 5 September 2022. The Committee notes that each instrument mentioned above revokes and re-makes an instrument made earlier in 2022 (that has been previously considered by the Committee).
- 2.4. The Committee notes, with approval, that in each case, the instrument and/or the explanatory statement for the instrument sets out the information required by the Committee (see [Subordinate legislation—Technical and stylistic standards—Tips/Traps](#)¹) in relation to fees determinations, namely:
- the “old” fee;
 - the “new” fee;
 - the percentage of any increase in the fee; and
 - the reasons for any increase.
- 2.5. The Committee notes that the reasons for the fees increases are typified by this statement, in the explanatory statement for DI2022-195 (i.e., the Firearms (Fees) Determination 2022 (No 2)):

Update to the instrument

This instrument provides an update to the Firearms (Fees) Determination. It does not seek to apply updates retrospectively. The instrument applies a 0.29% wage price index increase rounded down to the nearest dollar. The fee increases are in accordance with a 2022-23 budget initiative, Better Digital Services – increasing Access Canberra Staff. This instrument repeals the Firearms (Fees) Determination 2022 DI2022-92. Explanatory notes in the determination list the fees previously determined to enable comparison.

This instrument does not of itself restrict a person’s freedom of movement within the Territory, however the operation of the event will close to members of the general public the parts of the forest in which the event will be conducted. This will restrict the free movement of people in that area of the Territory during the event. As parts of the road transport legislation are being disapplied for the event to operate as intended, vehicles will be travelling in parts of the forest in excess of the usual speed limits and in a manner not consistent with the road rules. As such, the restriction on the free movement of people in those parts of the forest at those times is considered reasonable and proportionate to ensure the safety of non-

¹ https://www.parliament.act.gov.au/data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards.pdf

participants and represents the least restrictive approach that enables the event to proceed.

- 2.6. The exception is DI2022-199 (i.e., the Public Trustee and Guardian (Fees) Determination 2022 (No 2)), the explanatory statement for which states:

This determination provides four new fees to support the Public Trustee and Guardian’s proposed Will Register. These fees will enable full cost recovery of the provision of services associated with the Register as follows –

- For requesting deposit of a Will with PTG [i.e., the Public Trustee and Guardian] - \$220
- For requesting withdrawal of a Will held by PTG - \$165
- To request a search for a Will held by PTG - \$22
- To request a certified copy of a will deposited with PTG - \$44.

These fees include GST.

The fees determined are maximum amounts. Lower amounts may be charged by the Public Trustee and Guardian under fee reductions and waivers provision in the *Public Trustee and Guardian Act 1985*.

Explanatory notes in the determination list the fees previously determined to enable comparison.

- 2.7. **The comment immediately above does not require a response from relevant Ministers.**

- 2.8. The Committee notes that the explanatory statements for **DI2022-195, DI2022-206, DI2022-207, DI2022-208, DI2022-209 and DI2022-210** also address human rights implications for the instruments, stating “no human rights are impacted”.

- 2.9. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for DI2022-195, DI2022-206, DI2022-207, DI2022-208, DI2022-209 and DI2022-210.**

- 2.10. **This comment does not require a response from the Minister.**

Strict Liability Offences / Human Rights Issues

- **Disallowable Instrument DI2022-198** being the Plastic Reduction (Public Event) Declaration 2022 (No 3) made under section 15 of the *Plastic Reduction Act 2021*.
- **Disallowable Instrument DI2022-223** being the Plastic Reduction (Public Event) Declaration 2022 (No 4) made under section 15 of the *Plastic Reduction Act 2021*.

- 2.11. The instruments mentioned above are made under section 15 of the *Plastic Reduction Act 2021*, which provides:

Declaration of public events

- (1) The Minister may declare that—

- (a) a public event is an event to which this part applies (a declared public event); and
- (b) a single-use plastic product other than a prohibited plastic product (a declared single-use plastic product) must not be supplied at the event.

Note Part 3 deals with the supply of prohibited plastic products.

- (2) The Minister may only make a declaration under subsection (1) in relation to a public event that is not a government event if—
 - (a) the declaration is made not less than 3 months before the day the event starts; and
 - (b) the Minister is satisfied that—
 - (i) there is an alternative product to the declared single-use plastic product reasonably available to the organisers of the declared public event; and
 - (ii) the declaration will not have an unreasonable impact on the event.

Examples—unreasonable impact

- 1 supplies of the declared single-use plastic product have already been purchased by food vendors in advance of the public event
- 2 not having the declared single-use plastic product available for use at the public event would be incompatible with food safety requirements
- 3 the cost of the alternative product will make it unprofitable for food vendors to participate in the public event
- (3) A declaration is a disallowable instrument.

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

- (4) In this section:

government event means an event conducted by the Territory.

2.12. Section 3 of the first instrument mentioned above, in conjunction with column 1 of table 1 of the Schedule to the instrument, declares various events to be “public events”. They include Spilt Milk 2022, the 2023 National Multicultural Festival, Australia Day in the Capital, Enlighten Festival, Lights! Canberra! Action!, Canberra Balloon Spectacular, Symphony in the Park, Canberra Day and Reconciliation Day events. The explanatory statement for the instrument states:

Spilt Milk music festival is not a government event so the requirements in section 15(2) of the Act apply, including that this declaration has been made not less than 3 months before this event.

2.13. The explanatory statement states:

Single-use plastic plates and bowls have been banned at all of the listed events, and single-use plastic takeaway containers have been banned at all listed events except the National Multicultural Festival. Prohibiting these plastic items from these events will reduce plastic waste. It will also provide a demonstration of the types of alternatives available to single-use plastics.

2.14. The explanatory statement goes on to discuss human rights issues:

Human rights

As a result of this instrument, certain conduct is made an offence under section 16 of the Act. This is a strict liability offence, which may be seen to engage the presumption of innocence. The Explanatory Statement for the *Plastic Reduction Bill 2020* addressed the human rights considerations related to the creation of the offence.

2.15. Similarly, section 3 of the second instrument mentioned above, in conjunction with column 1 of table 1 of the Schedule to the instrument, declares events including *Summernats 2023*, the *Royal Canberra Show 2023* and the *National Folk Festival 2023* to be “public events”. The explanatory statement for the second instrument contains a similar human rights discussion to that contained in the explanatory statement for the first instrument.

2.16. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for these instruments.**

2.17. **This comment does not require a response from the Minister.**

Human Rights Issues

- **Disallowable Instrument DI2022-220** being the *Public Place Names (Whitlam) Determination 2022 (No 2)* made under section 3 of the *Public Place Names Act 1989*.

2.18. This instrument, made under section 3 of the *Public Place Names Act 1989*, determines the names of seven roads in the Division of Whitlam. The Committee notes that the explanatory statement for the instrument includes a discussion of human rights issues:

Human Rights

Section 12 of the *Human Rights Act 2004* creates a right to privacy and reputation.

Conceivably, the naming of a place has the potential to infringe the right to privacy and reputation of a person after whom a place is named. In this case the process through which places are named ensures that this right is not infringed and that only appropriate information is included in a determination. This process includes the consultation described above. Additionally, in relation to places named after people, only the names of deceased persons are determined.

- 2.19. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this instrument.**
- 2.20. **This comment does not require a response from the Minister.**

Human Rights Issues

- **Disallowable Instrument DI2022-214** being the Animal Diseases (Varroa Mite Import Restriction) Declaration 2022 (No 2) made under section 15 of the *Animal Diseases Act 2005*.
 - **Disallowable Instrument DI2022-221** being the Fisheries (Recreational Fishing) Declaration 2022, including a regulatory impact statement section 15 of the *Fisheries Act 2000*.
 - **Disallowable Instrument DI2022-222** being the Fisheries (Fishing Closures) Declaration 2022, including a regulatory impact statement section 13 of the *Fisheries Act 2000*.
- 2.21. The Committee notes that the explanatory statements for each of the instruments mentioned above state that there are no human rights issues arising from the relevant instrument.
- 2.22. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for the instruments mentioned immediately above.**
- 2.23. **This comment does not require a response from the relevant Ministers.**

Regulatory Impact Statements – No comment

- 2.24. The Committee has considered regulatory impact statements for the following disallowable instruments and offers no comments on them:
- **Disallowable Instrument DI2022-221** being the Fisheries (Recreational Fishing) Declaration 2022, including a regulatory impact statement section 15 of the *Fisheries Act 2000*.
 - **Disallowable Instrument DI2022-222** being the Fisheries (Fishing Closures) Declaration 2022, including a regulatory impact statement section 13 of the *Fisheries Act 2000*.

Response – no comment

- Disallowable Instrument DI2022-67 being the Plastic Reduction (Single-use Plastic Products) Exemption 2022
- Disallowable Instrument DI2022-70 being the Working with Vulnerable People Background Checking (Fees) Determination 2022 (No 1)
- Disallowable Instrument DI2022-71 being the Electoral (Fees) Determination 2022

The responses can be viewed [online](#).

The Committee wishes to thank the Ministers for the helpful responses.

Peter Cain MLA
Chair
October 2022

Outstanding responses

Bills/Subordinate Legislation

Report 12, dated February 2022

Bills

- Electoral Amendment Bill 2021
- Financial Management Amendment Bill 2021 (No 2)

Report 20, dated 13 September 2022

Bills

- Climate Change and Greenhouse Gas Reduction (Natural Gas Transition) Amendment Bill 2022 [response required prior to the Bill being debated]
- Period Products and Facilities (Access) Bill 2022 [response required prior to the Bill being debated]
- Senior Practitioner Amendment Bill 2022 [response required prior to the Bill being debated]
- Urban Forrester Bill 2022 [response required prior to the Bill being debated]

Subordinate Legislation

- Victims of Crime (Fees) Determination 2022 (No 1) [DI2022-101] [response required before Legislative Assembly's capacity to move to disallow instrument expires]
- Juries (Payment) Determination 2022 [DI2022-107] [response required before Legislative Assembly's capacity to move to disallow instrument expires]

Report 21, dated 4 October 2022

Bills

- Freedom of Information Amendment Bill 2022 [response required prior to the Bill being debated]
- Planning Bill 2022 [response required prior to the Bill being debated]
- Workplace Legislation Amendment Bill 2022 [response required prior to the Bill being debated]

Subordinate Legislation

- Disallowable Instrument DI2022-178 being the Children and Young People (Work Experience) Standards 2022 (No 1) [response required before Legislative Assembly's capacity to move to disallow instrument expires]
- Disallowable Instrument DI2022-179 being the Taxation Administration (Amounts Payable—Motor Vehicle Duty) Determination 2022 [response required before Legislative Assembly's capacity to move to disallow instrument expires]

- Disallowable Instrument DI2022-181 being the Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Determination 2022 [response required before Legislative Assembly's capacity to move to disallow instrument expires]
- Disallowable Instrument DI2022-185 being the Legal Aid (Commissioner—Specialist Assistance) Appointment 2022 [response required before Legislative Assembly's capacity to move to disallow instrument expires]
- Disallowable Instrument DI2022-187 being the Legal Aid (Commissioner—Financial Management) Appointment 2022 [response required before Legislative Assembly's capacity to move to disallow instrument expires]
- Disallowable Instrument DI2022-188 being the Legal Aid (Commissioner—Bar Association Nominee) Appointment 2022 [response required before Legislative Assembly's capacity to move to disallow instrument expires]