



Legislative Assembly for the ACT

STANDING COMMITTEE ON LEGAL AFFAIRS  
(performing the duties of a Scrutiny of Bills and  
Subordinate Legislation Committee)

## Scrutiny Report

1 MAY 2006

**Report 24**



## 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.

### ***Human Rights Act 2004***

Under section 38 of the Human Rights Act, this Committee must report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly.

## **MEMBERS OF THE COMMITTEE**

**Mr Bill Stefaniak, MLA (Chair)**  
**Ms Karin MacDonald, MLA (Deputy Chair)**  
**Dr Deb Foskey, MLA**

---

**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.

**BILLS:****Bills—No Comment**

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

<b>ELECTORAL AMENDMENT BILL 2006</b>
--------------------------------------

This is a Bill to amend the *Electoral Act 1992* to widen the field of persons who may be appointed as Chairperson of the Commission, and to prevent the appointment of people who have recently been engaged in political activity through membership of a political party or an Australian parliament.

<b>LEGISLATIVE ASSEMBLY PRECINCTS AMENDMENT BILL 2006</b>
---

This is a Bill to amend the *Legislative Assembly Precincts Act 2001* to empower the Speaker to grant licences and set fees and conditions for the use of any part of the Assembly precincts.

<b>PEST PLANTS AND ANIMALS AMENDMENT BILL 2006</b>
--

This is a Bill to amend the *Pest Plants and Animals Act 2005* to create an offence in respect of the importation into the ACT of a prohibited pest plant, or something contaminated by a prohibited pest plant, where the importer is reckless about whether the importation of the plant is likely to result in the spread of prohibited pest plants. The Bill also enables a person to obtain a permit to propagate, import or supply a prohibited pest plant.

**Bills—Comment**

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

<b>ANIMAL WELFARE AMENDMENT BILL 2006</b>
---

This is a Bill to amend the *Animal Welfare Act 1992* to create offences in respect of a person's intentional or reckless conduct which causes serious harm or death to an animal.

**Report under section 38 of the *Human Rights Act 2004*  
Has there been a trespass on personal rights and liberties?**

*The obligation of a court to give procedural fairness to a defendant on a criminal trial*

The Committee has noted that by proposed new section 7B of the Act (*see* Clause 4 of the Bill) the trier of fact (that is the court) in relation to a prosecution in respect of proposed new section 7A may find the defendant guilty of the alternative offence against existing section 7, "but only if the defendant has been given procedural fairness in relation to that finding of guilt".

The Committee has no objection in principle to this proposition, but is concerned that it has been thought necessary to state it in the statute. It is long accepted in our legal system that a court will accord procedural fairness (or, as it has been said for centuries, natural justice) to a defendant on a criminal trial. This principle is imbedded in subsection 21(1) of the Human Rights Act. There is a slight risk that an express statement that a court in a particular situation is obliged to accord procedural fairness might be understood to mean that, in other contexts, it is not so obliged. At the least, it is curious that it is felt necessary to make an express statement.

If as a matter of policy it is proposed that such express statements about the obligations of courts to accord natural justice will be more common, the Committee considers that the Assembly would be assisted by a statement of the policy, and the reasons for the policy. This will facilitate a more informed human rights analysis of bills.

*Comment on the Explanatory Statement*

The Committee notes only that the word “communities” (see third paragraph under “Overview” should read “community’s”.

<b>ASBESTOS LEGISLATION AMENDMENT BILL 2006</b>
---

This Bill would amend various Territory laws to establish asbestos management regimes for the residential sector and those occupations that handle asbestos on a regular basis. It would provide: a range of measures dealing with minor maintenance work around homes and other types of buildings that may involve bonded asbestos; the licensing and training of construction and other occupations that handle asbestos on a regular basis; and the supply of information at key transaction points on the likely location of asbestos in homes built prior to 1985.

**Report under section 38 of the *Human Rights Act 2004*  
Has there been a trespass on personal rights and liberties?**

*The presumption of innocence and the reversal of the burden of proof*

Subsections 42A(1) to (3) of the *Building Act 2004* provide:

**42A Contravention of requirements for building work involving asbestos**

- (1) This section applies to specialist building work that involves the handling of asbestos or disturbance of loose asbestos.
- (2) The person who carries out the building work commits an offence if the carrying out of the work contravenes section 42.  
Maximum penalty: 50 penalty units.
- (3) An offence against subsection (2) is a strict liability offence.

Clause 1.9 of the Bill would insert a new subsection 42A(3A):

- (3A) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that—
- (a) the carrying out of the building work contravened section 42 only because friable asbestos was disturbed in carrying out the work; and
  - (b) either—
    - (i) the defendant took reasonable steps to minimise the risk of friable asbestos being disturbed; or
    - (ii) the disturbing of the friable asbestos happened in the defendant taking reasonable steps to minimise the risks resulting from the disturbance of the friable asbestos.

The Committee appreciates that this provision ameliorates the effect of section 42A. It is nevertheless a provision which requires the defendant to prove a matter going to her or his innocence of the crime charged, and moreover the defendant would carry a legal burden of proof in this regard. There is thus raised the issue of whether it derogates from the presumption of innocence.

In this particular instance, the Committee is of the view that the provision pursues a legitimate objective and does so in a proportionate manner. The defendant is better placed than the prosecution to adduce evidence of and carry a legal burden of proof of whether he or she took reasonable steps.

*Comment on the Explanatory Statement*

The Committee commends the effort taken to explain both the content and the purposes of the Bill. It points, however, to a few grammatical errors that might be addressed.

1. The second sentence in the explanation of clause 1.9 reads:

A person commits that offence if the person carries out specialist building work that involves the handling or disturbance of friable asbestos so as section 42, (Requirements for carrying out building work), of the Act is breached.

This is very hard to follow. Perhaps some words are missing. It might be better to set out the text of at least subsections 42A(1) to (3). A reader could then grasp the import of the insertion of a new subsection 42A(3A).

2. The first sentence in the explanation of clause 1.10 reads:

Currently under the Building Act, any asbestos related building work, regardless of the size, is taken as being work on building that effects the entitlement to occupy or use the building.

Should the words “of the work” be inserted after the word “size”, and should the word “the” be inserted between the words “on building”?

3. The explanation to clause 1.21 states that the new section 7A of the *Building Act* states a figure that is “arbitrary”. If that was so, there would be a question as to whether the provision could be supported. A rule that was arbitrary in its operation would be lacking in reason and objectionable on that basis.

Given what is said in the explanation to clause 1.21, the rule proposed appears to have a basis in reason. It would be better to reword the sentence “The 10m<sup>2</sup> mentioned in the clause is an arbitrary amount intended to be sufficient to permit certain minor work, ...” to read simply “The 10m<sup>2</sup> mentioned in the clause is intended to be sufficient to permit certain minor work, ...”.

4. In the explanation to clause 1.47, the sentence immediately below the heading “47L Requirement to give asbestos assessment report” should not contain a full stop after the word “regulation”, but rather a semi-colon.

## **SUBORDINATE LEGISLATION:**

### Disallowable Instruments—No Comment

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

**Disallowable Instrument DI2006-35 being the Road Transport (General) (Application of Road Transport Legislation) Declaration 2006 (No. 4) made under section 13 of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to vehicles or drivers competing in the ACT timed special (competitive) stages of the Subaru Rally of Canberra.**

**Disallowable Instrument DI2006-37 being the Road Transport (General) (Taxi Licence and Stand-by Hire Car Permit Fees) Determination 2006 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* determines fees payable for the purposes of the Act.**

**Disallowable Instrument DI2006-39 being the Health Records (Privacy and Access) (Fees) Determination 2006 (No. 1) made under section 34 of the *Health Records (Privacy and Access) Act 1997* revokes DI2005-33 and determines fees payable for the purposes of the Act.**

**Disallowable Instrument DI2006-40 being the Road Transport (Public Passenger Services) (Minimum Service Standards for Bus Services) Approval 2006 (No. 1) made under section 18B of the *Road Transport (Public Passenger Services) Regulation 2002* approves the Minimum Services Standards for the operation of a bus service.**



**Disallowable Instrument DI2006-41 being the Road Transport (Public Passenger Services) (Minimum Service Standards for Taxi Services) Approval 2006 (No. 1) made under section 18B of the *Road Transport (Public Passenger Services) Regulation 2002* approves the Minimum Services Standards for the operation of a taxi service.**

**Disallowable Instrument DI2006-42 being the Road Transport (Public Passenger Services) (Minimum Service Standards for Hire Car Services (Other Than Restricted Hire Car Services)) Approval 2006 (No. 1) made under section 18B of the *Road Transport (Public Passenger Services) Regulation 2002* approves the Minimum Services Standards for the operation of hire car services (other than restricted hire car services).**

**Disallowable Instrument DI2006-43 being the Road Transport (Public Passenger Services) (Minimum Service Standards for Restricted Hire Car Services) Approval 2006 (No. 1) made under section 18B of the *Road Transport (Public Passenger Services) Regulation 2002* approves the Minimum Services Standards for the operation of restricted hire car services.**

**Disallowable Instrument DI2006-44 being the Road Transport (Public Passenger Services) (Defined Rights Conditions) Determination 2006 (No. 1) made under section 84M of the *Road Transport (Public Passenger Services) Regulation 2002* determines the conditions for defined rights to be allocated in a ballot of defined rights for transferable leased taxi licences.**

**Disallowable Instrument DI2006-45 being the Legal Aid (Commissioner (Law Society Nominee)) Appointment 2006 (No. 1) made under subsection 7(3) of the *Legal Aid Act 1977* appoints a specified person as a part-time Commissioner of the Legal Aid Commission.**

**Disallowable Instrument DI2006-46 being the Public Trustee (Investment Board) Appointment 2006 (No. 1) made under section 48 of the *Public Trustee Act 1985* appoints specified persons as members of the Public Trustee Investment Board.**

**Disallowable Instrument DI2006-47 being the Utilities Exemption 2006 (No. 1) made under section 22 of the *Utilities Act 2000* grants a specified provider an exemption from the requirement for a licence in relation to a utility service.**

**Disallowable Instrument DI2006-49 being the Drugs of Dependence (Treatment Assessment Panel) Appointment 2006 (No. 1) made under section 131 of the *Drugs of Dependence Act 1989* appoints specified persons as members of the Treatment Assessment Panel.**

#### Disallowable Instruments—Comment

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

*Minor drafting issue*

**Disallowable Instrument DI2006-36 being the Canberra Institute of Technology (Fees) Determination 2006 made under subsection 53(1) of the *Canberra Institute of Technology Act 1987* revokes previous fee determinations and determines fees payable for the purposes of the Act.**

The Committee notes that the prefatory section of this instrument refers to the fact that the instrument is made under the *Canberra Institute of Technology Act 1987*. Unlike other instruments, however, the prefatory section does not indicate under which particular section of that Act the Instrument is made. The Committee also notes, however, that the Explanatory Statement of the instrument indicates, in the text of the Statement, that the instrument is made under subsection 53(1) of the Act.

*Minor drafting issue*

**Disallowable Instrument DI2006-38 being the Transplantation and Anatomy (Designated Officers) Appointment 2006 (No. 1) made under section 5 of the *Transplantation and Anatomy Act 1978* appoints specified medical practitioners as designated officers at The Canberra Hospital.**

The Committee notes that there is a typographical error in the second line of the first paragraph of the Explanatory Statement. "Officers", second-occurring, should be "Officer".

*Are these instruments disallowable?*

**Disallowable Instrument DI2006-48 being the Health Professionals Pharmacy Board Appointment 2006 (No. 1) made under section 10 of the *Health Professionals Act 2004* appoints specified persons as President and members of the ACT Pharmacy Board.**

**Disallowable Instrument DI2006-50 being the Health Professionals Podiatrists Board Appointment 2006 (No. 1) made under section 10 of the *Health Professionals Act 2004* appoints specified persons as President and members of the ACT Podiatrists Board.**

These instruments appoint named persons to the ACT Pharmacy Board and ACT Podiatrists Board, respectively.

In each case, the Explanatory Statement to the instrument states that the instrument is a disallowable instrument, referring to the *Legislation Act 2001*. While it is correct that Division 19.3.3 of the *Legislation Act 2001* imposes certain requirements on the making of statutory appointments, including a requirement that such appointments be by disallowable instrument, the Committee notes that this requirement generally does not apply to instruments appointing public servants to statutory positions (see paragraph 227(2)(a)). It is for that reason that the Explanatory Statement to an instrument of appointment generally includes a statement indicating that the appointments contained in it are not public servant appointments. While this may be assumed from the description, in the Explanatory Statements, of the background of the various individuals, the Committee considers that, as a matter of course, each Explanatory Statement of this type should contain a statement that the persons appointed are not public servants. This then makes it clear to the Committee (and the Assembly) that the relevant provisions of the *Legislation Act* apply.

---

*Inadequate Explanatory Statement*

**Disallowable Instrument DI2006-51 being the Transplantation and Anatomy (Designated Officers) Revocation 2006 (No. 1) made under section 5 of the *Transplantation and Anatomy Act 1978* revokes DI2000-324, DI2000-325, DI2000-326, DI2000-327, DI2000-342, DI2000-349, NI2001-370 and NI2001-371.**

This instrument revokes six disallowable instruments and two notifiable instruments. The instruments in question appoint a person or persons as a "Designated Officer" for the purposes of the *Transplantation and Anatomy Act 1978*.

The Explanatory Statement to this instrument states.

Section 5 of the *Transplantation and Anatomy Act 1978* allows for the appointment of Designated Officers by the Minister. A Designated Officer has the authority to authorise, in writing, the removal of tissue from the body of a deceased person for the purpose of transplantation to the body of a living person or for other therapeutic, medical and scientific purposes.

Section 6 of the *Legislation Act 2001* allows the Minister to amend or repeal the instrument.

A review has been undertaken of previous instruments, which identifies [sic] those officers who are still performing the duties of a designated officer. Of the 18 officers identified on the instruments only 8 officers, who are considered to be Public Servants, have retained this role.

The officers who wish to continue acting in the role of designated officer are public servants as defined in the *Legislation Act 2001*. In consequence, Section 5 of the *Transplantation and Anatomy Act 1978* requires that these appointments be made in writing.

The Committee is confused by various aspects of this Explanatory Statement. First, the Committee notes that (on its examination) the instruments revoked appoint only 17 officers, and not 18, as claimed. Each of DI2000-324, DI2000-325, DI2000-327, DI2000-342 and NI2001-371 appoint one person. NI2001-370 appoints 11 persons. DI2000-326 and DI2001-349 appears to appoint the same person.

Second, it is not clear to the Committee how section 6 of the *Legislation Act 2001* is thought to apply to this exercise. The Committee considers that section 46 of the *Legislation Act*, which provides that the power to make an instrument includes the power to amend or repeal the instrument, is the more appropriate provision.

Third, it is not entirely clear to the Committee what the final paragraph of the Explanatory Statement is intended to mean. The Committee assumes that this means that the eight persons who are to continue to act as Designated Officers must be appointed in writing, as required by section 5 of the *Transplantation and Anatomy Act*, but, because they are public servants, the instrument of appointment is not a disallowable instrument.

Finally, it is not clear to the Committee how this instrument relates to DI2006-38 (discussed above). Is the Committee correct in assuming that DI2006-38 is part of the same exercise (ie resulting from the review that is referred to in the Explanatory Statement to this instrument), only the persons appointed by that instrument are not public servants?

The Committee would appreciate the Minister's clarification of the issues discussed above.

#### Subordinate Laws—No comment

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

**Subordinate Law SL2006-5 being the Road Transport Legislation (Taxi Licences) Amendment Regulation 2006 (No. 1) made under the *Road Transport (Driver Licensing) Act 1999, Road Transport (General) Act 1999 and Road Transport (Public Passenger Services) Act 2001* introduces a transferable leased taxi licence and a ballot process for the allocation of transferable leased taxi licences.**

#### **REGULATORY IMPACT STATEMENTS:**

There is no matter for comment in this report.

#### **GOVERNMENT RESPONSES:**

The Committee has received responses from:

- The Chief Minister, dated 16 March 2006, in relation to comments made in Scrutiny Report 22 concerning:
  - DI2005-291, being the Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Members' Staff 2005;
  - DI2005-292, being the Legislative Assembly (Members' Staff) Deemed Date of Termination of Employment of Office-holders' Staff 2005; and
  - DI2005-277, being the Public Sector Management Amendment Standard 2005 (No. 10).
- The Minister for Education and Training, dated 29 March 2006, in relation to comments made in Scrutiny Report 22 concerning DI2005-282, being the University of Canberra (Academic Board) Amendment Statute 2005.
- The Acting Treasurer, dated 29 March 2006, in relation to comments made in Scrutiny Report 22 concerning SL2005-42, being the Financial Management Regulation 2005.
- The Acting Treasurer, dated 30 March 2006, in relation to comments made in Scrutiny Report 23 concerning the Duties Amendment Bill 2006.
- The Minister for Planning, dated 3 April 2006, in relation to comments made in Scrutiny Report 23 concerning DI2006-14, being the Land (Planning and Environment) Territory Plan Amendment 2006 (No. 1).

The Committee wishes to thank the Chief Minister, the Minister for Education and Training, the Acting Treasurer and the Minister for Planning for their helpful responses.

Bill Stefaniak, MLA  
Chair

May 2006

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

**REPORTS—2004-2005-2006**

**OUTSTANDING RESPONSES**

**Bills/Subordinate Legislation**

**Report 1, dated 9 December 2004**

Disallowable Instrument DI2004-230 – Legislative Assembly (Members' Staff)  
Members' Hiring Arrangements Approval 2004 (No. 1)  
Disallowable Instrument DI2004-231 – Legislative Assembly (Members' Staff)  
Office-holders' Hiring Arrangements Approval 2004 (No. 1)

**Report 3, dated 17 February 2005**

Health Records (Privacy and Access) Amendment Bill 2005. **(Passed 17.02.05)**

**Report 4, dated 7 March 2005**

Disallowable Instrument DI2004-260 – Health (Interest Charge) Determination 2004  
(No. 1)  
Disallowable Instrument DI2004-269 – Public Place Names (Gungahlin)  
Determination 2004 (No. 4)  
Disallowable Instrument DI2004-270 – Utilities (Electricity Restriction Scheme)  
Approval 2004 (No. 1)  
Disallowable Instrument DI2005-1 – Emergencies (Strategic Bushfire Management  
Plan) 2005  
Land (Planning and Environment) (Unit Developments) Amendment Bill 2005  
**(PMB)**  
Subordinate Law SL2004-52 – Health Professionals Amendment Regulation 2004  
(No. 1)  
Subordinate Law SL2004-61 – Utilities (Electricity Restrictions) Regulations 2004

**Report 5, dated 14 March 2005**

Disallowable Instrument DI2005-12 – Health Professions Boards (Procedures)  
Pharmacy Board Appointment 2005 (No. 1)  
Disallowable Instrument DI2005-8 – Community and Health Services Complaints  
Appointment 2005 (No. 1)

## **Bills/Subordinate Legislation**

### **Report 6, dated 4 April 2005**

Disallowable Instrument DI2005-20 – Public Place Names (Dunlop) Determination 2005 (No. 1)  
Disallowable Instrument DI2005-22 – Public Place Names (Watson) Determination 2005 (No. 1)  
Disallowable Instrument DI2005-23 – Public Place Names (Bruce) Determination 2005 (No. 1)  
Long Service Leave Amendment Bill 2005 (**Passed 6.05.05**)

### **Report 10, dated 2 May 2005**

Crimes Amendment Bill 2005 (**PMB**)  
Disallowable Instrument DI2005-34 – Health (Nurse Practitioner Criteria for Approval) Determination 2005 (No. 1)

### **Report 11, dated 20 June 2005**

Disallowable Instrument DI2005-33 – Health Records (Privacy and Access) (Fees) Determination 2005 (No. 1)

### **Report 12, dated 27 June 2005**

Disallowable Instrument DI2005-61 – Radiation (Fees) Determination 2005 (No. 1)  
Disallowable Instrument DI2005-73 – Utilities (Gas Restriction Scheme) Approval 2005 (No. 1)

### **Report 14, dated 15 August 2005**

Sentencing and Corrections Reform Amendment Bill 2005 (**PMB**)

### **Report 15, dated 22 August 2005**

Disallowable Instrument DI2005-124 – Public Place Names (Belconnen) Determination 2005 (No. 2)  
Disallowable Instrument DI2005-127 – Emergencies (Fees and Charges 2005/2006) Determination 2005 (No. 1)  
Disallowable Instrument DI2005-133 – Emergencies (Bushfire Council Members) Appointment 2005 (No. 2)  
Disallowable Instrument DI2005-138 – Planning and Land Council Appointment 2005 (No. 1)  
Disallowable Instrument DI2005-139 – Planning and Land Council Appointments 2005 (No. 2)

## **Bills/Subordinate Legislation**

Disallowable Instrument DI2005-140 – Planning and Land Council Appointments 2005 (No. 3)

Disallowable Instrument DI2005-170 – Public Places Names (Watson) Determination 2005 (No. 2)

Disallowable Instrument DI2005-171 – Public Places Names (Mitchell) Determination 2005 (No. 1)

Hotel School (Repeal) Bill 2005 (**Passed 25.08.05**)

Subordinate Law SL2005-15 – Periodic Detention Amendment Regulation 2005 (No. 1)

### **Report 16, dated 19 September**

Civil Law (Wrongs) Amendment Bill 2005 (**PMB**)

### **Report 18, dated 14 November 2005**

Disallowable Instrument DI2005-209 – Health (Fees) Determination 2005 (No. 3)

Disallowable Instrument DI2005-212 – Mental Health (Treatment and Care) Official Visitor Appointment 2005 (No. 1)

Guardianship and Management of Property Amendment Bill 2005 (**PMB**)

### **Report 19, dated 21 November 2005**

Disallowable Instrument DI2005-239 - Utilities (Water Restrictions Scheme) Approval 2005 (No. 1)

### **Report 22, dated 6 March 2006**

Construction Occupations Legislation Amendment Bill 2006 (**Passed 30.03.06**)

Disallowable Instrument DI2005-298 - Health (Fees) Determination 2005 (No. 6)

Disallowable Instrument DI2005-302 - Public Health (Risk Activities) Declaration 2005 (No. 1)

Disallowable Instrument DI2005-303 - Public Health (Infection Control) Code of Practice 2005

Subordinate Law SL2005-39 - Road Transport Legislation Amendment Regulation 2005 (No. 1)

### **Report 23, dated 27 March 2006**

Disallowable Instrument DI2006-11 - Health Professionals (ACT Nursing and Midwifery Board) Appointment 2006 (No. 1)

Disallowable Instrument DI2006-12 - Health Professionals (Medical Board) Appointment 2006 (No. 1)

Disallowable Instrument DI2006-24 - Mental Health (Treatment and Care) (Official Visitors) Appointment 2006 (No. 1)



<b>Bills/Subordinate Legislation</b>
Subordinate Law SL2006-1 - Health Professionals Amendment Regulation 2006 (No. 1)
Subordinate Law SL2006-2 - Health Professionals Amendment Regulation 2006 (No. 2)



## Jon Stanhope MLA

CHIEF MINISTER

ATTORNEY GENERAL MINISTER FOR THE ENVIRONMENT  
MINISTER FOR ARTS, HERITAGE & INDIGENOUS AFFAIRS

MEMBER FOR GINNINDERRA

Mr Bill Stefaniak MLA  
Chair  
Scrutiny of Bills and Subordinate Legislation Committee  
ACT Legislative Assembly  
London Circuit  
CANBERRA ACT 2601

Dear Mr Stefaniak

### Standing Committee on Legal Affairs Scrutiny Report 22, 6 March 2006

Thank you for your comments regarding a minor drafting issue in relation to two subordinate disallowable instruments, DI2005-291 and DI2005-292, made under subsection 13(5) and 8(6) of the *Legislative Assembly (Members' Staff) Act 1989*, respectively.

The superfluous reference at the end of section 6 of DI2005-291 and section 5 of DI2005-292 do not negate or invalidate these instruments.

Your comments have been noted and will be taken into consideration in future drafting.

I also refer to your comments on Disallowable Instrument DI2005-277 (Public Sector Management Amendment Standard 2005 (No.10)), made under section 251 of the *Public Sector Management Act 1994*.

As noted by the Committee, pending the inclusion of the Management Standards (the Standards) on the Legislation Register, the text of rules prior to amendment is included as a schedule to the explanatory statement. This addresses concerns the Committee has previously raised about accessibility of historical versions of the Standards.

You would also be aware that I wrote to you on 9 March 2006 to advise on the progress of the translation of the Standards to the Legislation Register.

Yours sincerely

Jon Stanhope MLA  
Chief Minister

16 MAR 2006

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601  
Phone (02) 6205 0104 Fax (02) 6205 0433





## KATY GALLAGHER MLA

MINISTER FOR EDUCATION AND TRAINING

MINISTER FOR CHILDREN, YOUTH AND FAMILY SUPPORT

MINISTER FOR WOMEN    MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO

Mr Bill Stefaniak MLA  
Chair  
Standing Committee on Legal Affairs  
c/- Scrutiny Committee Secretary  
Chamber Support Office  
ACT Legislative Assembly  
GPO Box 1020  
CANBERRA ACT 2601

Dear Mr <sup>Bill</sup> Stefaniak

Thank you for your Scrutiny of Bills Report No 22 of 6 March 2006. I offer the following response in relation to Disallowable Instrument DI2005-282, being the University of Canberra (Academic Board) Amendment Statute 2005 made under section 40 of the *University of Canberra Act 1989*.

The Committee noted that the Explanatory Statement did not provide sufficient information regarding the detail and effect of the amendments made. I acknowledge these concerns and attach for the Committee's information an Explanatory Statement that provides a greater level of detail.

I hope this information addresses the Committee's concerns, and thank you for bringing this matter to my attention.

Yours sincerely

*Katy Gallagher*  
Katy Gallagher MLA  
Minister for Education and Training  
29/3/06

### ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601    GPO Box 1020, Canberra ACT 2601  
Phone (02) 6205 0840    Fax (02) 6205 3030



## Revised explanatory statement 24 March 2006

### University of Canberra (Academic Board) Amendment Statute 2005 DI2005-282

Section 40 of the *University of Canberra Act 1989* gives the University Council the power to make Statutes.

Section 19 of the Act establishes an Academic Board. The *Academic Board Statute 1990* (the Principal Statute) contains additional detail of the Board's members, their terms of office, and the Board's powers and procedures.

The *University of Canberra (Academic Board) Amendment Statute 2005* seeks to amend the Principal Statute to modify those provisions.

The amendment reduces the size of the Board, mainly by modifying the representation of professors. Instead of all professors being members of the Board, up to four who are not members in some other capacity will be elected by their peers. The amendment also allows the Council to designate up to three members of the academic staff as members of the Board and provides that the two elected student members are to be one undergraduate and one postgraduate, neither of whom is to be simultaneously a member of the Council.

The amendment provides for professors elected to the Board to serve for a period of 2 years.

Sections 7 and 8 of the Principal Statute detail the responsibilities of the Board and its powers to advise Council. The amendment adds quality assurance and strategic planning to those responsibilities and clarifies the powers by adding reference to academic policy, the formulation of academic objectives, and the actions necessary to sustain and develop the University's academic objectives.

Section 42 of the *University of Canberra Act 1989* requires that a Statute, once made by Council, be submitted by the Chancellor to the Executive for approval.



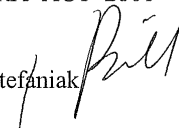
## Jon Stanhope MLA

CHIEF MINISTER

ATTORNEY GENERAL MINISTER FOR THE ENVIRONMENT  
MINISTER FOR ARTS, HERITAGE & INDIGENOUS AFFAIRS

MEMBER FOR GINNINDERRA

Mr Bill Stefaniak MLA  
Chair  
Standing Committee on Legal Affairs  
performing the duties of the Scrutiny of Bills Committee  
ACT Legislative Assembly  
London Circuit  
CANBERRA ACT 2601

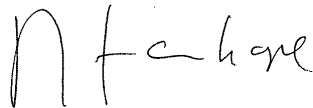
Dear Mr Stefaniak 

I write in response to your Committee's comments in Scrutiny Report 22 of 6 March 2006 in relation to Subordinate Law SL2005-42 being the Financial Management Regulation 2005.

The Committee commented that the subordinate law amends the *Financial Management Act 1996* (FMA); that is, a subordinate law amends an Act. As the Committee noted, the authority for this is section 111 of the FMA, Transitional regulations. The Committee pointed out that this is a 'Henry VIII' clause, and that the provisions of the subordinate law are within the scope of section 111, as authorised by the Legislative Assembly when that section of the FMA was enacted in October 2005.

I appreciate the Committee's careful scrutiny of legislation and acknowledge its comments in relation to this subordinate law.

Yours sincerely



Jon Stanhope MLA  
Acting Treasurer

**29 MAR 2006**

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601  
Phone (02) 6205 0104 Fax (02) 6205 0433





## Jon Stanhope MLA

CHIEF MINISTER

ATTORNEY GENERAL MINISTER FOR THE ENVIRONMENT  
MINISTER FOR ARTS, HERITAGE & INDIGENOUS AFFAIRS

MEMBER FOR GINNINDERRA

---

Mr Bill Stefaniak MLA  
Chair  
Standing Committee on Legal Affairs  
Legislative Assembly for the ACT  
GPO Box 1020  
CANBERRA ACT 2601

Dear Mr Stefaniak

I am writing in response to the comments of the Standing Committee on Legal Affairs in Scrutiny Report 23 (27 March 2006) on the *Duties Amendment Bill 2006* (the Bill).

In Report 23, the Committee considered whether the amendment of Chapter 14 of the *Duties Act 1999* by regulation as provided by proposed section 402 in clause 15 of the Bill was an appropriate delegation of legislative power.

The main purpose of the Bill is to remove the liability for certain taxes from a particular date. For this reason, the Bill is designed to ensure that taxpayers discharge the liabilities they incur prior to that date. Because the Bill cannot anticipate every avoidance issue that may arise, there is provision for the Executive to make transitional regulations to deal quickly with unanticipated issues, including those that may arise during the implementation phase.

Accordingly, the Bill provides that when an issue is identified, a transitional regulation may be made to apply prospectively to ensure that taxpayers discharge their liabilities notwithstanding any legislative deficiency. Importantly, the transitional regulations expire 12 months after commencement. This is considered to be an appropriate timeframe as it enables scrutiny by the Assembly while also providing for unanticipated issues to be dealt with in subordinate legislation. The timeframe allows for any issue dealt with by regulation to be put to the Assembly as an amendment to the *Duties Act 1999*. The Committee has acknowledged circumstances in which the delegation of legislative power may be useful, for example, as would apply to the implementation of the arrangements provided by the Bill.

Moreover, I am not persuaded that the Committee's reference to section 152 of the *Health Professionals Act 2004* as a more limited form of a Henry VIII clause is an appropriate comparison.

First, both regimes have substantially different purposes. In particular, the proposed amendments to the *Duties Act 1999* in the Bill involve a fundamental shift in the tax base.

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601

Phone (02) 6205 0104 Fax (02) 6205 0433

Secondly, the only substantive difference between section 152 of the Health Professionals Act and the relevant provision in the Bill is that the delegation of legislative power under the Health Professionals Act expires at the end of two years, while under the Bill it would expire at the end of five years.

In each case, the same delegation applies, albeit for different periods, noting that (as the Committee has acknowledged) the delegation is, in any event, subject to disallowance by the Assembly, and that it is for the Assembly to decide whether such a degree of supervision is adequate.

Further, there are compelling reasons for the five year period specified in the Bill.

The Bill provides for the power to make transitional regulations to expire on 1 July 2011, that is, five years after the liability is incurred. As the Commissioner for ACT Revenue can issue a reassessment of a tax liability up to five years after the original assessment, the power to make regulations for the five years ensures that all taxpayers are treated consistently, equitably and fairly.

In this regard, neither of the Committee's suggested alternatives (a positive resolution provision or a delayed commencement of the transitional regulation to allow further scrutiny) is acceptable in achieving this outcome. An early commencement of the delegation, and an extended (five year) timeframe, are necessary and appropriate arrangements to provide certainty in redressing any unanticipated issue that may arise in the implementation period. These arrangements provide certainty to taxpayers and are also intended to reduce any scope for litigation where a taxpayer's liability becomes the subject of a dispute.

The Explanatory Statement accurately describes the above power conferred on the Executive in relation to matters not adequately or appropriately dealt with in Chapter 14 of the *Duties Act 1999*. However, it omits to recognise that that power also applies in relation to any matter not already dealt with under that Chapter. I propose to address this issue in the course of the debate on the Bill in the Assembly.

Thank you for the opportunity to address the Committee's concerns.

Yours sincerely



Jon Stanhope MLA  
Acting Treasurer

30 MAR 2006



**Simon Corbell** MLA

MINISTER FOR HEALTH    MINISTER FOR PLANNING

---

MEMBER FOR MOLONGLO

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

Dear Mr Stefaniak

Thank you for Scrutiny Report Number 23 of 27 March 2005.

The Report included comment on disallowable instrument DI2006-14 prepared by the ACT Planning and Land Authority. The Committee noted that there was no explanatory statement for this instrument.

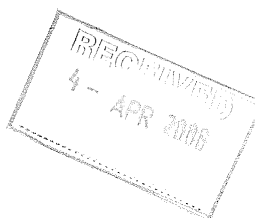
However, in making this comment the Committee acknowledged that this instrument contains in Annex A an amount of detail about the effect of the amendments to the Territory Plan Written Statement that are made by the instrument. The Committee's comment is noted.

Thank you for raising this matter with me.

Yours sincerely

Simon Corbell MLA  
Minister for Planning

3.4.06



ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601    GPO Box 1020, Canberra ACT 2601  
Phone (02) 6205 0000    Fax (02) 6205 0535