Legislative Assembly for the Australian Capital Territory

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Standing Committee on Justice and Community Safety

(incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee)

Scrutiny Report No. 10 of 2001

2 August 2001

Terms of reference

(1) A Standing Committee on Justice and Community Safety be appointed (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee).

(2) The Committee will consider whether:

(a) any instruments of a legislative nature which are subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law) made under an Act:

(i) meet the objectives of the Act under which it is made;

(ii) unduly trespass on rights previously established by law;

(iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or

(iv) contain matter which should properly be dealt with in an Act of the Legislative Assembly.

(b) the explanatory statement meets the technical or stylistic standards expected by the Committee.

(c) clauses of bills introduced in the Assembly:

(i) do not unduly trespass on personal rights and liberties;

(ii) do not make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;

(iii) do not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;

(iv) inappropriately delegate legislative powers; or

(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

(d) the explanatory memorandum meets the technical or stylistic standards expected by the Committee.

(3) The Committee shall consist of four members.

(4) If the Assembly is not sitting when the Committee is ready to report on Bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing and circulation.

(5) The Committee be provided with the necessary additional staff, facilities and resources.

(6) The foregoing provisions of the resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Members of the Committee

Mr Paul Osborne, MLA (Chair)
Mr John Hargreaves, MLA (Deputy Chair)
Mr Trevor Kaine, MLA
Mr Harold Hird, MLA

Legal 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.

BILLS

Bills - No Comment

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

Casino Control Amendment Bill 2001

This Bill would amend the *Casino Control Act 1988* to enhance the regulatory control over casino licensees, ensure that they take responsibility for the actions of their employees, and have proper regard for their patrons.

Criminal Code 2001

This is a Bill for an Act that would be known as the Criminal Code 2001. Chapter 2 of the Code would state certain general principles of criminal responsibility. The matters covered include the standard of proof of criminal offences; the nature of the physical and mental (or fault) elements of a crime; how these two elements relate to one another; what matters might negate a finding of fault; and the burden of proof.

Duties Amendment Bill 2001 (No 2)

This Bill would amend the *Duties Act 1999* in various ways. A major objective is to implement the Competitive Neutrality Policy and National Competition Policy principles.

Fair Trading (Fuel Prices) Amendment Bill 2001

This Bill would amend the *Fair Trading (Fuel Prices) Act 1993* to insert provisions governing the supply of fuel by the supplier to a recipient.

Financial Management Amendment Bill 2001 (No 2)

This is a Bill to amend the *Financial Management Act 1996* in relation to the payment of moneys to support a free school bus scheme.

Land (Planning and Environment) Amendment Bill 2001 (No 4)

This Bill would amend the *Land (Planning and Environment) Act 1991* to require that certain development applications to be accompanied by a survey certificate.

Land (Planning and Environment) Amendment Bill 2001 (No 5)

This Bill would amend section 229A of the *Land (Planning and Environment) Act 1991* in a manner that would affect the power of the Minister to revoke a reference of a matter for determination by the Commissioner.

Protection Orders Bill 2001

This is a Bill for an Act to make comprehensive provision for the making of protection orders to protect persons from violence.

Protection Orders (Consequential Amendments) Bill 2001

This is a Bill for an Act to make provision for amendment of various laws of the Territory that that will be necessary upon the enactment of the Protection Orders Bill 2001.

Road Transport (Safety and Traffic Management) Amendment Bill 2001 (No 2)

This Bill would amend the *Road Transport (Safety and Traffic Management) Act 1999* to remove the sunset clause for speed and red light cameras and other traffic offence detection devices.

Statute Law Amendment Bill 2001

This Bill would amend various laws of the Territory to make a range of technical law reform changes to bring provisions up-to-date, repeal unnecessary provisions and make other amendments for statute law revision purposes.

Supreme Court Amendment Bill 2001

This Bill would amend the *Supreme Court Act 1933* to make provision for a Court of appeal to hear appeals from the Supreme Court. It would also make consequential amendments to some other laws.

Territory Records Bill 2001

This is a Bill for an Act to regulate the making, management and preservation of Territory records, and for access by the public to those records. Basic to this scheme would be obligations on an agency to make and keep full and accurate records of their activities and to ensure that information in the records is accessible at all times under the Act (and under the *Freedom of Information Act 1989*). An agency must have an approved records management system. The Minister may approve standards and codes against which the adequacy of a records management system may be assessed.

The scheme for access to records would not come into operation until 2006. There would be provision for a Director of Territory Records.

Bills - Comment

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

Bail Amendment Bill 2001 (No 2)

This Bill would amend the *Bail Act 1992* to extend the operation of section 9A of the Act. Section 9A was inserted into the Act by the *Bail Amendment Act 2001* and is to the effect that there is a presumption against bail being granted to a person who is alleged to have committed a serious offence whilst on bail in relation to another serious offence. A serious offence is defined as one punishable by imprisonment for 5 years or more. In addition to having regard to criteria which are, under the Act, applicable to the particular person, the court must not grant bail to the person affected by section 9A "unless satisfied that special or exceptional circumstances exist justifying the grant of bail".

The provisions of this Bill carry into effect the policy of the amendments made by the *Bail Amendment Act 2001*. Section 9A would apply where the person is alleged to have committed a serious offence while a charge for another serious offence is pending or outstanding. At present, section 9A applies only where the person is *on bail* for another serious offence. There are circumstances where a charge for another serious offence may be pending or outstanding, yet the person is not on bail in relation to that offence. The amendments proposed by this Bill would extend section 9A to these circumstances.

In addition, the Bill provides that the amendments proposed to section 9A apply in relation to a decision to grant bail after the commencement of this Act, even if the relevant serious offence is alleged to have taken place before that date.

Para (i) – undue trespass on personal rights and liberties

The rights to liberty and to a fair trial

In Report No 5 of 2001, Committee commented on a number of rights issues that are involved in a debate as to the desirability of a provision such as section 9A. In summary, and adapted to the present Bill, the Committee points to:

- The deprivation of personal liberty involved in a denial of bail;
- The common law policy that bail be granted as a rule rather than as an exception;
- The difficulties in terms of preparation for trial faced by a person who is not on bail; and
- The other provisions of this Act that would be relevant in a circumstance where the person is alleged to have committed a serious offence where charges on another such offence are outstanding or pending.

In this last respect, note may be taken of subparagraph 22(1)(a)(ii) of the Act, under which a court must have regard to "the likelihood of the person absconding", and of subparagraph 22(1)(c)(ii), under which a court must have regard to "the likelihood of the person committing an offence while released on bail".

On the other hand, the Committee notes the arguments made in the Presentation Speech for this Bill and in the Speech for the Bill for the earlier amendments made by the *Bail Amendment Act 2001*. The thrust of these arguments is that the interests of the community justify some restriction of the discretion of a court to grant bail where the person is alleged to have committed a serious offence while a charge for another serious offence is pending or outstanding. It is to be noted that the court is not bound to deny bail in this circumstance, but to have regard to whether there are special or exceptional circumstances that justify the grant of bail.

The Committee draws these matters to the attention of the Assembly.

Retrospective operation of the amendments

Proposed new subsection 9A(7) of the Act provides that the amendments proposed to section 9A apply in relation to a decision to grant bail after the commencement of this Act, even if the relevant serious offence is alleged to have taken place before that date.

The Committee has noted that the common law approach of the courts is to interpret statutes in a way that does not give them a retrospective operation where that would impinge on a person's rights and interests. This would appear to be the effect of proposed new subsection 9A(7).

The Committee notes that there is no justification offered in the Explanatory Memorandum for the need for the amendments to have a retrospective operation.

Auditor-General Amendment Bill 2001

This Bill would amend the *Auditor-General Act 1996* by the repeal of section 14 and the insertion of new sections 14 and 14A to enhance the power of the Auditor-General to obtain information.

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

While proposed new subsection 14(5) provides that a person shall not "without reasonable excuse" contravene a requirement to provide information, there is no explicit provision in the Bill, or in the Act, to govern the applicability of the privilege against self-incrimination and of legal professional privilege.

Crimes Legislation Amendment Bill 2001

This Bill would amend a number of laws of the Territory dealing with law enforcement and the criminal justice system.

What follows is an explanation of the key provisions of the Bill, interspersed with comment where that is considered appropriate.

The scheme for post-conviction review

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

Proposed new Part 17 makes provision for the making of an inquiry into a person's conviction for an offence. That is, the inquiry would take place after the existing avenues of appeal from conviction had been exhausted. It would replace the existing section 475 of the Act, which would be repealed.

Section 475 is an old provision, and to date there has only been one occasion on which a person has sought to make use of it. Section 475 was adopted from the same provision in the *Crimes Act 1900* of NSW. The NSW provision has been repealed and replaced by a complex scheme for post-conviction inquiry. Some reference to this scheme will be made below.

In recent Australian legal history, the most famous example of the use of such a scheme was in relation to Lindy Chamberlain; see *Report of the Commissioner, the Hon Mr Justice T R Morling*, (Royal Commission of Inquiry into the Chamberlain Convictions, 1987).

Provision for post-conviction inquiry is an essential component of a scheme of criminal justice. It is also clear that the present section 475 of the Act is inadequate. There then arises, however, a wide range of policy choices as to the nature of the best scheme.

This committee is not a law reform body, and the comments that follow are designed to assist debate on the model for reform presented in the Bill. In a general but important sense, the nature of a scheme of this kind bears on the personal rights and liberties of persons.

The first comment the Committee makes is that the material before the Assembly provides very little justification for the particular scheme in the Bill. This scheme is very different to the scheme in the *Crimes Act 1900* of NSW. On the face of it, the NSW scheme is more generous to the convicted person, and can be applied more flexibly to suit the circumstances of the particular case. (Another model may be found in the *Criminal Appeal Act 1995* (UK). This scheme was devised after long consideration, first by a Royal Commission, and then by the UK government. This law deals with several aspects of a post-conviction scheme that are not addressed in the scheme now proposed for the ACT.)

The particular comments the Committee makes will be interspersed in a brief analysis of the scheme of the Bill.

- An inquiry would be initiated in either of 2 ways: (1) by the Executive "on its own initiative" (section 557C), or (2) by the Supreme Court, after application made to it by the convicted person (section 557D).

- In either case, the inquiry may be ordered only if **each** of a certain conditions are met (section 557B).

Comment.

First, there is much complexity in the various paragraphs (a) to (g) of proposed new section 557B, and the question is whether this is necessary. Would it be possible to state the criteria more broadly, thus allowing for greater flexibility?

Secondly, these conditions appear to be more restrictive than the circumstances stated in the existing section 475, and in the comparable NSW provisions (sections 474C(2) and 474E(2) of the *Crimes Act 1900* of NSW). Under the NSW law, the government and the court appear to have a wider discretion to choose to institute an inquiry. There appears to be no means under the scheme in the Bill to seek review of the sentence imposed.

Thirdly, there is one aspect of proposed new section 557B that deserves comment. One condition is that "(d) there is a significant risk that the conviction is unsafe because of the doubt or question" whether the person is guilty of the offence. In addition, it must also be the case that "(g) it is in the interests of justice for the doubt or question to be considered at an inquiry". If the condition in (d) must be satisfied, in what circumstances would that in (g) not be so satisfied?

- Under the *Crimes Act 1900* of NSW, the government or the court may defer an application if it "fails to disclose sufficient information to enable the conviction or sentence to be properly considered" (section 474E(3A)(c). No such provision is made in the Bill.

- An inquiry is conducted by a board appointed under the *Inquiries Act 1991*, although it must be constituted by a magistrate or a judge of the Supreme Court (section 557G). The *Inquiries Act* applies to the inquiry.

Comment.

One aspect of procedure may be noted. By existing subsection 475(3):

> (3) Where on such inquiry the character of any person who was a witness on the trial is affected thereby, the Magistrate shall allow such person to be present, and to examine any witness produced before such Magistrate.

This provision is found in subsection 474G(4) the *Crimes Act 1900* of NSW. There appears to be no equivalent provision in the *Inquiries Act 1991*.

- Once the inquiry body makes a report, the Supreme Court may make orders about the disclosure of the report (section 557I).

Comment.

The Supreme Court may order the convicted person not to disclose the report except to obtain legal advice or representation. There are many circumstances in which the

convicted person may wish to disclose, and it is not apparent why this restriction is desirable. It is noted that the Explanatory Memorandum says that the purpose of proposed new section 557I is to enable the Supreme Court to act *before* the report is given to the Attorney-General and the convicted person. But the provision appears to have a much wider effect.

Another issue that arises is the extent to which the convicted person is to be apprised of the information presented to and/or gathered by the inquiry.

- It is the Full Court of the Supreme Court that under proposed new section 557J considers the report and by order either confirms the conviction or takes some action more favourable to the convicted person.

Comment. The range of options for action appears more limited than is found in similar schemes in other jurisdictions. There does not appear to be a means for the conviction to be quashed outright.

- By proposed new section 557L, the Bill would have a retrospective operation in that it would apply to a conviction for an offence even if that conviction happened before the commencement of this part of the Bill.

Comment.

This aspect of the scheme needs justification. It would seem, in effect, to reduce the existing legal entitlements of a convicted person.

General observations

Post-conviction inquiry is an essential component of a scheme of criminal justice and section 475 of the Act is inadequate. In other jurisdictions, extensive inquiry and consideration of options for reform have preceded reform. The schemes proposed have addressed a number of issues that are not dealt with in the proposed new Part 17 of the *Crimes Act 1900*.

One such issue is the relationship between the inquiry body and the police. The police will in most cases need to be involved in post-conviction investigation that takes place before and during an inquiry. The critical issue here is the extent to which the inquiry body might direct the police in relation to this investigation.

Another issue is the extent to which the person seeking an inquiry, or who will be the subject of an inquiry, may obtain legal aid. There are views that this should be available at least to enable the person to make representations designed to gain an inquiry.

A third and more fundamental issue is whether it is appropriate to vest in the Supreme Court the power to order an inquiry. Another model is to vest power in a non-judicial body independent of the political executive. That body would then be empowered to send the matter to the Full Court of the Supreme Court.

The reasonable suspicion test

In a number of provisions of the Act, the effect of the Bill would be to replace a "reasonable belief" test (say for making an arrest) with a "reasonable suspicion" test.

Para 2(c)(i) – undue trespass on personal rights and liberties

The Committee does not have any substantive comment to make here. It points out for the information of the Assembly that the "reasonable suspicion" test may be found in documents such as the *European Convention on Human Rights* (article 5(1)(c)). In that context, it has been said that it will be satisfied if there are "facts or information that would satisfy an objective observer that the person concerned may have committed the offence"; (see R Clayton and H Tomlinson, *The Law of Human Rights* (2000) at 490). The person making the arrest would have an onus to show that this test was met.

Identifying material and young persons who are 16 or 17

Currently, section 84 of the *Children and Young People Act* provides that:

> (1) In this section:
>
> *identifying material*, for a young person, means prints of his or her hands, fingers, feet or toes, recordings of his or her voice, photographs of him or her, samples of his or her handwriting or material from his or her body.
>
> *police officer* means the police officer for the time being in charge of a police station.
>
> (2) An authorised officer or a police officer may only take, or cause to be taken, identifying material of a young person if a magistrate has approved the taking of the identifying material.
>
> (3) Identifying material that consists of material from the body of a young person may only be taken in accordance with this section by a doctor.

Clause 5 of the Bill would qualify these provisions by the addition of new subsections (3A) and (3B). In effect, the position of a young person who was 16 or 17 when he or she allegedly committed the offence would be equated to that of an adult who incapable of managing their own affairs; see section 349ZP of the *Crimes Act 1900*.

Clause 6 of the Bill, which would insert new subsections 84(7) and (8) into the *Children and Young People Act*, carries this scheme further into effect. Clause 8 would insert a provision into the Act to govern the destruction of identifying material in the same circumstances as prevail under the *Crimes Act*.

Identifying material in relation to adults

Clause 32 of the Bill would repeal the existing subsection 349ZP(3) of the *Crimes Act 1900* and insert a new provision in its place. The effect would be to empower the

police, in relation to a person who is in lawful custody, to take identification material from the person that is "prints of the person's fingers or photographs of the person": proposed new paragraph 349ZP(3)(a). This power may be exercised independently of the consent of the person, or of any need to establish who the person is, or to provide evidence of the commission of an offence.

Para 2(c)(i) – undue trespass on personal rights and liberties

Is this extension of power justifiable?

The Explanatory Memorandum does not provide any justification for this proposal. What is proposed is contrary to the views of bodies such as the Australian Law Reform Commission (ALRC) (see below). That does not mean of course that what is proposed should not be adopted, but it does point to the need for some justification.

In its report *Criminal Investigation* (Report No 2, 1975) the ALRC noted that at common law the police did not have a comprehensive power to take photographs and fingerprints. They noted that in *R v Ireland* (1970) 126 CLR 321 at 334, Barwick CJ said that "neither at common law nor under that statute has a police officer power to require a person to submit himself to photography for any purpose other than identification". In a decision of the Supreme Court of the ACT, Fox J read a statutory provision in a way that precluded the police from fingerprinting a person in custody merely because that was thought desirable; see *Sernack v McTavish* (1970) 15 FLR 381.

The ALRC endorsed the common law position. They approved a view of the (then) Victorian Chief Justice's law reform committee that in the taking of fingerprints and photographs of a person there was involved a "certain embarrassment and indignity". The ALRC said that "[t]here is, for better or worse, an aura of real criminality about having one's fingerprints or photograph compulsorily taken" *Criminal Investigation* at para 113.

The ALRC recommended that the power to take fingerprints and photographs of a person in custody be limited to circumstances where that was necessary to identify the person or to afford evidence of the commission of the crime for which the person was in custody. (This position is a bit narrower than the existing subsection 349ZP(3) of the *Crimes Act 1900*.) It added, however, that the police should be permitted to obtain from a magistrate an order permitting fingerprinting and photography in other circumstances. This would, for example, permit police to obtain this identification evidence where they suspect that a person in custody on one charge might have committed other offences.

On the other hand, a broad power such as is contained in the proposed amendment to existing subsection 349ZP(3) would enable the police "to make 'windfall' identifications of persons caught for some minor offence, but wanted elsewhere for a major one" (*Criminal Investigation* at para 112). There have been cases where a person routinely fingerprinted for a minor offence did turn out to be wanted in connection with very serious crimes.

Retention and control of identifying matter

There is also the question of what is to happen to the records of fingerprints and photographs. The provisions of clause 32 of the Bill do not deal with this question, and in the context of debate on clause 32 this is a matter that should be clarified.

Move-on powers

Clause 10 would insert a new section 4 in the *Crime Prevention Powers Act 1998*. The effect on the current provision would be that the police might now direct that a person leave a public place by a particular route and/or not to return to the place for a stated period not longer than 6 hours.

Para 2(c)(i) – undue trespass on personal rights and liberties

In relation to actions which restrict the freedom of a person to move about in public places, it is relevant to note that in *Melbourne Corporation v Barry* (1922) 31 CLR 174 at 206, Higgins J referred to "the common law rights of the King's subjects to pass through the highways". A 'freedom of movement' is stated in international rights documents.

This effect on freedom of movement that would result from this provision of the Bill is, however, relatively minor and applies only where the police believe on reasonable grounds that violence may otherwise occur. It might be noted that Article 12(3) of the ICCPR permits derogation of freedom of movement where this is necessary to protect public order or the rights and freedoms of others.

New offence of burglary

Clause 10 would insert a new section 102 in the *Crimes Act 1900* to the effect of broadening the offence to encompass the case where the offender entered or remained in a building as a trespasser with intent to commit an offence involving any kind of assault on anyone in the building.

New offence of passing a valueless cheque

Clause 13 would insert a new section 107A in the *Crimes Act 1900* to make it an offence to obtain goods, etc "by passing a cheque that is not paid on presentation". It is a defence if the person charged establishes reasonable grounds for believing that the cheque would be paid in full on presentation, or that he or she had no intention to defraud.

This is in effect an offence of strict liability, but modified where the defendant can establish a defence as permitted by the provision.

Given, however, that there is a reversal of the onus of proof, the explanatory memorandum should explain why this is necessary.

Stop and search powers

In three ways, the Bill would increase police powers to stop and search.

First, by clause 16, the powers in proposed new subsection 349SA(1) of the *Crimes Act* may be exercised where a police officer suspects, on reasonable grounds, that a person has in their possession something that was stolen or unlawfully obtained, or that was used, or is intended to be used, to commit an indictable offence. The police officer may stop and detain the person (so long as necessary to conduct the frisk or ordinary search: proposed new section 349SB), conduct such a search for the thing, and seize the thing: proposed new subsection 349A(2). In addition, the officer may seize "evidential material" in circumstances of urgency and seriousness and where that material might otherwise be lost, etc.

Secondly, by clause 18, amendments to section 349T of the *Crimes Act* – which relates to the stopping, searching and detaining of conveyances – would bring that section into line with the proposed new section 349SA. Section 349T powers may be exercised in relation to a thing relevant to an indictable offence found in a conveyance.

The third group of amendments relates to section 10 of the *Road Transport (Safety and Traffic Management) Act 1999*. Assuming that clause 54 is enacted – which replaces the word 'believes' with 'suspects' – subsection 10(1) will apply where a police officer suspects that a person is driving or has parked a vehicle on a road with a traffic evasion article fitted to, applied to, or carried in the vehicle (where that contravenes subsection 9(3) of the Act). By clause 55, new subsections 10(2) and (3) would be inserted. These provisions would empower the police to stop, detain and search the vehicle, and seize relevant articles. There are limits stated as to where the vehicle may be searched, and the length of detention. Clause 55 is based on the existing section 349U of the *Crimes Act 1900*.

Para 2(c)(i) – undue trespass on personal rights and liberties

In report No 6 of 1999, the Committee reviewed the common law, human rights instruments and opinion of law reform bodies in relation to this general issue of the appropriate scope of detention, search, and seizure powers. It was pointed that such powers were not recognised at common law, which law reflected a notion that a person had a right to integrity of the person. Human rights instruments such as the ICCPR support this concept.

Law reform bodies have, however, recognised that there are circumstances where the kinds of provisions, noted above, proposed by this Bill are justified. We quote from our Report No 6 of 1999:

> There are views that stop and search powers are never justifiable; see Feldman, *Civil Liberties and Human Rights in England and Wales* (1993) at 180ff, and CJC Criminal Justice Commission, *Report On a Review of Police Powers in Queensland, Vol III* at 299. This view has not, however, been taken by any Australian law reform body. The CJC noted the view that if the police did not, in

some circumstances, have such a power, they might resort to unnecessary use of the power to arrest as a device to make a search; CJC Report at 307.

But a 1975 ALRC Report accepted that there was an informal use of such powers by the police, and it was better that they be regulated. The ALRC concluded that

> the power to search persons and vehicles without warrant should [be available in] the following situations, namely where there are reasonable grounds to suspect that that there may be found (i) an offensive weapon or (ii) something which is the fruit of a serious crime, the means by which it was committed, or material evidence to prove its commission. By a 'serious' crime we mean, here as elsewhere, one punishable by a sentence of more than six month's imprisonment; Australian Law Reform Commission, *Criminal Investigation (Report No 2, Interim)* (1975) at 204.

The CJC also considered that the exercise of an emergency power to stop, detain and search a person should be exercised only in relation to a serious crime; see CJC Report at 322-323. The qualification it added was that "[a]ny other specific power concerning offences of less seriousness would need to show (such) extraordinary circumstances as to justify a broader application of the power"; ibid at 319

Looking at the three groups of amendments noted above, it may be said that the amendments proposed in the first two groups - to sections 9SA(1) and 349T of the *Crimes Act* - may be justified by the principles as stated in the ALRC report and the CJC Report if the concept of an indictable offence is equated to that of a serious offence.

The amendments proposed in the third group are more problematic in that the offences concerned – that is, of driving a vehicle fitted, etc with an evasion device – may on some views not be regarded as serious offences. (On the other hand, courts in the USA have allowed wide latitude to police to stop and search vehicles on public roads.)

Points of view may differ here, and the Committee draws this issue to the attention of the Assembly.

The limitation period for commencing a prosecution

Clause 45 of the Bill would insert into the *Interpretation Act 1967* a new section 33H. This would govern the question of when a prosecution for an offence against a law of the Territory must be commenced. A matter of substance to note is that a prosecution for a minor offence might be commenced at any time.

Orders to review acquittals

By clause 68, proposed new subsection 37R(3) would be inserted into the *Supreme Court Act* 1933. It would empower the Court of Appeal to make, in its discretion, an order to review an acquittal, and thus to set it aside and to order a new trial of the defendant. It may do so if it considers *either* that "(a) the trial judge made an error of

law in the course of the trial", or that "(b) for a jury trial – the trial judge misdirected the jury to acquit the defendant".

Clause 68 would bring about a fundamental change in the criminal law of the Territory. At the heart of debate about this provision is the scope of the principle against double jeopardy. This principle has been long regarded by the common law as fundamental to personal liberty. It is stated in Article 14(7) of the International Covenant on Civil and Political Rights (ICCPR) in these terms:

> No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

The scope of the principle against double jeopardy was considered by the High Courtin *Davern v Messel* (1984) 155 CLR 21. The judgments provide statements of the history of the principle in Australia, and contrasting policy perspective on how the principle might apply in relation to proposed new section 37R.

Justices Mason and Brennan noted that an earlier case (referred to here as *Mastertouch*) had relied on " the "well-established and fundamental principle of the common law" that an appeal as of right does not lie ordinarily in a criminal case from a judgment of acquittal pronounced by a superior court on the merits" (155 CLR at 46). They later said that "[a]lthough the principle of the common law which was invoked … was expressed to be "well-established and fundamental" its origins were somewhat obscure. This was because the right of appeal from a decision of a court was unknown to the common law" (ibid at 47). They continued:

> [47] It was not until provision was made by statute towards the end of the seventeenth century for the bringing of appeals to Quarter Sessions in proceedings for summary offences that there was any occasion to consider whether an appeal lay from an acquittal … . And the question which then [48] arose, a question which has beset the courts on many occasions since, was one of statutory construction: did the statute, expressed though it was in general terms, confer a right of an appeal from an acquittal? In general, these provisions were interpreted as not giving to a prosecutor the right to appeal from the dismissal of a charge.

Their Honours then noted relevant aspects of Australian legal history:

> [51] Prior to Federation there seems to have been no provision for an appeal from either a conviction or an acquittal on an indictment in Australia. Soon after the passage of the English Act of 1907, each of the Australian States enacted legislation allowing for appeals by persons convicted on indictment … . In the cases of Western Australia and Tasmania provision was also made for appeals against acquittals in respect of verdicts by direction and on questions of law alone … . Several states have subsequently enacted procedures whereby points of law may be raised by the Crown or Attorney-General for determination by the Full Court of the Supreme Court or Court of Criminal Appeal without affecting a verdict of acquittal … .

Their Honours then noted how Australian courts had answered the question whether a particular statute, even though it was in general terms, conferred a right of an appeal from an acquittal. They said:

> [54] The Australian cases indicate that our courts have readily perceived indications of statutory intention to confer a right of appeal on a prosecutor from an acquittal in summary proceedings. There has been less reluctance to concede a right of appeal from an acquittal in summary proceedings than from an acquittal on indictment, for the very good reason that a jury verdict of not guilty has been traditionally regarded as inviolate (*R v. Weaver* (1931) 45 CLR 321 at p 356, per Evatt J.).

They thus concluded that Australian case-law supported the principle of interpretation applied by the Federal Court in *Mastertouch*. They said that "The main foundation for the principle as it has been expressed is the rule against double jeopardy, though the principle may also be based more generally on a notion of justice and fairness to the accused as the weaker party to criminal proceedings" [55].

Justices Mason and Brennan did, however, add comments that are supportive of the general thrust of proposed new section 37R – that is, that the Crown should be able to appeal against an acquittal.

> [55] It is perhaps somewhat surprising that the courts concluded so readily, without discussion of the countervailing factors, that the rule against double jeopardy extended so as to bar an appeal against an acquittal. The thrust of the double jeopardy rule is that no man shall be tried twice for the same offence (*Kepner v. United States* (1904) 195 US 100, at p 130). In his dissenting opinion in that case Holmes J. (with whom White and McKenna JJ. concurred) said (at p.134):
>
> > "... logically and rationally a man cannot be said to be more than once in jeopardy in the same cause, however often he may be tried. The jeopardy is one continuing jeopardy from its beginning to the end of the cause. Everybody agrees that the principle in its origin was a rule forbidding a trial in a new and independent case where a man already had been tried once. But there is no rule that a man may not be tried twice in the same case."
>
> The powerful considerations which made it unfair and unjust that a man should be prosecuted twice for the same offence seem to lose some of their force when an appeal is sought to be equated with a second prosecution. A second prosecution for the same offence immediately raises the spectre of persecution. Although the pursuit of a Crown appeal might be carried to the point of persecution, the risk of that occurrence is more remote, if only because the accused would be protected by the courts against an appeal which was instituted mala fides or amounted to an abuse of process and, as already noted, the courts would not go behind a jury's verdict. Moreover, the Crown has a legitimate interest in securing a review of a trial, more particularly if it appears that the trial judge has made an erroneous ruling on a question of law or departed from correct procedures.

Justices Mason and Brennan were in the majority of the High Court that held that the principle against double jeopardy did not preclude a final court of appeal from reversing a decision of an intermediate court that had, on the appeal of the defendant, reversed a conviction. Two other Justices dissented from this view, and in their reasoning took a much stronger stance on the scope of the principle.

Justice Murphy ‘s viewpoint is clearly opposed to the general thrust of proposed new section 37R. He said:

> [64] It is a golden rule, of great antiquity, that a person who has been acquitted on a criminal charge should not be tried again on the same charge. Its roots have been traced to Greek, Roman and Canon law (see Westen and Drubel, "Toward a General Theory of Double Jeopardy" in (1978) Sup. Ct. Rev. p.81 ff, and Hemmer, "Double Jeopardy Consequences of Dismissals" in (1980) 58 Wash. U. L. Q. p.117 ff ("Hemmer")). The rule is not confined to ancient times or civilizations; it is also well recognised in Anglo-Irish law where it has often been associated with habeas corpus. Both are vital to the protection of personal freedom (see *Cox v. Hakes* (1890) 15 AC 506 (*Cox's case*), Lord Halsbury at 522). Lord Dunedin, in *Secretary of State for Home Affairs v. O'Brien* (1923) AC 603 saw it as "a cardinal principle of the law of England, ever jealous for personal liberty, that when once a person has been held entitled to liberty by a competent Court there shall be no further question" (p.621). In *Benson v. Northern Ireland Road Transport Board* (1942) AC 520 (*Benson's case*), the Lord Chancellor Simon referred to *The King v. Tyrone County Justices* (1905) 40 Ir LTR 181, in which Chief Baron Palles spoke of the elementary principle that "an acquittal made by a Court of competent jurisdiction and made within its jurisdiction, although erroneous in point of fact, cannot as a rule be questioned and brought before any other court" (p.182), and stated that "the unchallenged and unchallengeable conclusion thus arrived at is really nothing more than an illustration of an extremely important and universally accepted principle of our law, and a principle which has been recognized again and again by the highest authorities both in England and in Ireland" (p.526).
>
> The principle extends to every kind of acquittal, whether or not based on a jury verdict (see *Benson's case*). But it is confined to acquittals; it does not prevent an appeal from an order quashing or setting aside a conviction but ordering a new trial.
>
> The principle applies where there is "a hearing on the merits", that is a dismissal based on a determination, correct or incorrect, of the law or facts of the case. The requirement of a hearing on the merits is satisfied even if the decision is based on a legal technicality, or when the prosecution tendered no evidence to support the charge.
>
> The rule was carried over to the United States by British colonists and found its way into the United States Constitution in the Fifth Amendment.
>
> …
>
> [63] There is a disturbing trend towards erosion of the value of an acquittal. In our criminal justice system the finality of an acquittal is [64] the keystone of personal

freedom (see *The Queen v. Darby* (1982) 40 ALR 594). A decision to permit the government to appeal against an acquittal presents another undermining of the finality of an acquittal and a serious undermining of personal freedom. It means "that the right of personal freedom ... is to be subject to the delay and uncertainty of ordinary litigation, so that the final determination ... may only be arrived at by the last Court of Appeal" (Lord Halsbury, *Cox's case,* p.522).

Legal proceedings, especially criminal ones, can be an instrument of oppression by governments against their citizens; they can ruin an individual despite the fact that he or she is ultimately acquitted. Even a relatively minor charge can have this effect. It is common knowledge that every year in Australia tens of thousands of citizens plead guilty to minor offences although they dispute their guilt. They do this rather than suffer the cost and inconvenience of the criminal justice process. To add the risk that the prosecution will appeal against an accused person's acquittal adds a new dimension and a further avenue of cost and inconvenience. It is of little concern to the government, as prosecutor, if it prosecutes a defendant once, twice or three times in an effort to secure a conviction.

Justice Deane expressed similar sentiments:

[67] The "universal maxim of the common law" that no person is to be brought into jeopardy more than once for the same offence (see Blackstone, *Commentaries on the Laws of England*, l5th ed. (l809), Book 4, p. 335) has been correctly described by Black J. as "one of the oldest ideas found in western civilization" with roots running deep into Greek and Roman times (*Bartkus v. Illinois* (l959) 359 US l2l, at pp l5l-l52 (3 Law Ed 2d 684, at p 706)). It is reflected in the patristic maxim that "not even God judges twice for the same act". In its primary application, it precludes a person being tried again for an offence of which he has already been convicted or acquitted by a competent court in a completed course of legal proceedings. In its extended application, it operates to preclude at least some appeals from verdicts of acquittal. The "underlying idea" of the rule was said by Black J. (*Green v. United States* (l957) 355 US l84, at pp l87-l88 (2 Law Ed l99, at p 204)) to be that "the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offence" thereby subjecting him to embarrassment, expense, continuing anxiety and insecurity and "enhancing the possibility that even though innocent he may be found guilty".

Any statement of the rationale of the common law rule against double jeopardy is incomplete, however, unless it also takes account of the fact that, at least in common law countries and apart from the exceptional case of a private prosecution, both the prosecutor and the court in a criminal case are essentially emanations of the same entity. Regardless of whether it be seen or described in terms of the sovereign or the people, that entity is the state. It is the state that establishes and maintains the judicial system. It is the state that brings an accused person before that judicial system on a charge of [68] an offence against the law of the state. It is in the state's favour that the overwhelming balance of power and resources will ordinarily lie. If, in that context, a competent court in the state's own system rules that the state's charge should be dismissed and makes an order that the person against whom the state has brought proceedings is acquitted and discharged, there is plainly much to be said for the view that, as a matter of

> ordinary fairness, that person should be entitled to be released both from custody and jeopardy on that charge. Put another way, the citizen who is told by a competent court of the state that the state's proceedings against him are resolved in his favour should not awake on the morrow to be told he faces renewed jeopardy on that charge either by reason of the institution by the state of new proceedings against him or by reason of an appeal by the state against its own court's decision. That is not, of course, to say that a mistaken decision of law leading to an acquittal should be permitted to stand as a bad precedent; there are many examples of legislative provisions which effectively allow for an appeal on questions of law involved without subjecting the person who has been acquitted by a competent court to renewed jeopardy … .

The policy question has been much debated in literature in the USA, and in some USA judicial decisions: (see Y Kamisar, W R LaFave and J H Israel, *Modern Criminal Procedure* (5th ed, 1980). Some particular points are relevant here. One of the grounds stated in proposed new subsection 37R(3) of the *Supreme Court Act* 1933 upon which the Court of Appeal may make an order to review an acquittal is that "(a) the trial judge made an error of law in the course of the trial". The example given in the Bill is where the trial judge excluded evidence sought to be adduced by the prosecution. The comments in the Explanatory Memorandum suggest that the drafters of the Bill do not see this as a case involving an erroneous decision by a jury to acquit.

But is this so clear? Some USA commentators have argued that:

> a jury verdict of not guilty deserves special protection because the jury decision may have been based on the jury's authority to "acquit against the evidence" [i.e. to nullify]. Because the jury has such an authority, one can never be certain that a jury acquittal was in fact based on any legal error that may have occurred at the trial (Kamisar, et al at 1492).

These authors also make a point that bears on the desirability of the second of the grounds stated in proposed new subsection 37R(3) of the *Supreme Court Act 1933* upon which the Court of Appeal may make an order to review an acquittal. This is that the Court considers that "(b) for a jury trial – the trial judge misdirected the jury to acquit the defendant". The authors say:

> a judicial ruling terminating the case solely on the basis of the judge's assessment of the credibility or weight of the evidence also may receive special treatment since the factual assessment is essentially "non-reviewable" and therefore cannot appropriately be categorised as clearly erroneous. On the other hand, if the judicial determination is based in part on an erroneous interpretation of the applicable law, it should … be subject to appellate review … . (ibid).

These comments by Justices of the High Court in *Davern v Messel*, and from Kamisar, et al point to arguments that both support and do not support the policy underlying proposed new section 37R.

We also note another limited approach to qualification of the principle against double jeopardy suggested by an author who made a full study of the matter. M L Friedland,

Double Jeopardy (1969), (chapter 10, noting the conclusion at 310) is of the view that the Crown should be entitled to appeal from an acquittal only where (i) the defendant had been found guilty in independent proceedings of improper conduct that might have influenced the verdict, and (ii) where an error had been committed at the trial which virtually prevented the jury from considering the case on its merits.

Friedland also raises an issue that, under section 37R, would be left to the Court of Appeal without guidance from the legislature. This is the issue of what standard should be applied by the court in granting a new trial. Friedland's answer is:

> [T]he test proposed by Dixon CJ in an Australian case adopts the most desirable approach: a new trial should not be granted unless the error was "on the whole case a probable explanation of the verdict of the jury" (ibid at 311; the quote is from *Vallance v The Queen* (1961) 35 ALJR 182 at 185).

Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2001

This Bill would amend the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*. It is consequential upon the enactment of the *Classification (Publications, Films and Computer Games) Act 1995* (Commonwealth) and its provisions have been drafted to reflect model legislative provisions agreed upon by Commonwealth, State and Territory Ministers.

Para 2(c)(i) – undue trespass on personal rights and liberties

By proposed new section 70 (see clause 19), some of the proposed new provisions of the Act would have a retrospective operation.

There is no explanation in the Explanatory Memorandum as to why these provisions should have retrospective operation. It is not apparent on the face of the Bill that such an effect would be only beneficial.

Environment Protection Amendment Bill 2001

This Bill would amend the *Environment Protection Act 1997*. Apart from some minor matters, it would provide that by disallowable instrument the Minister may declare that certain classes of environmental protection agreements and environmental authorisations need not be preceded by public notification. It would empower authorised officers to obtain certain information without warrant.

Para 2(c)(i) – undue trespass on personal rights and liberties

<u>Powers on a routine inspection by an authorised officer</u>

Section 96 of the Act provides that for the purposes of ascertaining whether the Act is being complied with, an authorised officer may enter premises (other than residential premises) at any reasonable time; or any premises with the consent of the occupier. The powers of an officer on making such a "routine inspection" are stated in section

99 of the Act. In respect of the premises or anything on the premises the officer may: (a) inspect or examine; (b) take measurements or conduct tests; (c) take samples for analysis; or (d) examine records or documents relating to the operation of equipment and the operational processes carried out on those premises.

By clause 15 of the Bill, which would insert a new paragraph 99(e), an officer would also be empowered to "take photographs, films, or audio, video or other recordings".

Under the terms of the Act as it stands, an officer conducting a routine inspection may only take photographs, etc where he or she has reasonable grounds for believing that the circumstances are of such seriousness and urgency as to require the exercise of the power without a warrant; see section 101. This limitation would be removed by clause 15 (and see the consequent amendment to section 100 proposed by clause 16).

It is to be noted that there is no statement in sections 96, 99 or 100 of the Act (as they would be after amendment) as to when it would be appropriate for an officer to exercise this additional power.

Comment.

The Presentation Speech states that this power in paragraph 99(e) would be exercised only where the officer believed that the situation he or she found on the premises "would be remedied by the time [a] warrant had been obtained, and that to meet environmental protection needs, such evidence should be obtained immediately". This limitation is not, however, reflected in the paragraph 99(e) and the provisions associated with it.

Drafting problem

Under section 100 of the Act as it stands, an officer conducting a routine inspection may, where he or she has reasonable grounds for believing that the circumstances are of such seriousness and urgency as to require the exercise of the power without a warrant, require the occupier or a person on the premises to do any of the following: (i) answer questions or furnish information; (ii) make available any record or other document kept on the premises; and (iii) provide reasonable assistance to the officer in relation to the exercise of his or her powers under this section.

By clause 16, section 101 would be repealed and a new provision inserted. No change of substance would result, but instead of stating these powers in section 101, there is incorporation by reference of the powers that may be exercised under subsection 100(2) pursuant to a warrant. This does not, however, make complete sense. The reference in subsection 100(2) to "the exercise of his or her powers under subsection (1)" cannot apply to an officer conducting a routine inspection because that officer does not have any powers under subsection 100(1). A drafting amendment may be necessary here.

Comment on Explanatory Memorandum.

It is common (but not universal) to find that an Explanatory Memorandum does little other than to attempt a summary of a provision of the Bill. At times, the purpose of

the proposed clause of the Bill may be ascertained from the Presentation speech and/or the introduction to the Explanatory Memorandum. It is impossible to do so where the Explanatory Memorandum states merely that a provision of the Act has been repealed. There are two examples of this in this Explanatory Memorandum; see the explanations to clauses 14 and 17.

In general, the Committee urges those who prepare an Explanatory Memorandum to attempt to explain why a clause in a Bill is being proposed to the Assembly.

Fair Trading Legislation Amendment Bill 2001

This Bill would amend the *Fair Trading Act 1992*; the *Fair Trading (Consumer Affairs) Act 1973;* the *Magistrates Court Act 1930*; and the *Sale of Goods Act 1954*. In particular, it would make provision for the making by regulation of common form provisions to be inserted in codes of practice made under the *Fair Trading Act 1992*; amend the *Fair Trading (Consumer Affairs) Act 1973* to provide investigators with powers of search and seizure; and amend the *Magistrates Court Act 1930* to insert in it a scheme for the issuing of infringement notices in relation to offences specified by regulation.

Para 2(c)(i) – undue trespass on personal rights and liberties

The *Fair Trading (Consumer Affairs) Act 1973* would be amended to provide investigators with powers of search and seizure. These provisions are in standard form and the Committee does not, in general, see that they trespass unduly on personal rights and liberties. It makes comment in two particular respects.

First, it draws attention to the two circumstances stated in proposed new subsection 12(1) (see clause 19) where an investigator may enter premises without the consent of the owner or under a warrant.

Secondly, it is noted that while the privilege against self-incrimination is displaced, there is full protection against the use of the evidence thus obtained, including, in particular, protection against the derivative use of the information; see proposed new section 12I. Legal professional privilege is protected; see proposed new section 12J. It is, however, not clear whether these provisions would apply in respect of the power of an investigator to make a copy of any document under paragraph 12(1)(b). Sections 12I and 12J will apply only where the person is required to produce a document. Apart from the fact that in the provisions that would be inserted by clause 19 there appears to be no power to make such a requirement, it may be (i) that an investigator acting under paragraph 12(1)(b) is not bound to respect legal professional privilege, and (ii) the information obtained by the copying of the document would override any claim against self-incrimination that might have been raised. The Explanatory Memorandum does not attempt to explain how the provisions in proposed new sections 12 to 12N would work, and the issues raised might be clarified.

The proposals for amendment of the *Magistrates Court Act 1930* are in a form that has been adopted in other Territory laws.

The Committee commends the drafters for their having taken account of the comments of this Committee in its Report No 15 of 2000 about an earlier Bill. The Committee takes pleasure in noting that this is an example of how the work of the Committee may influence on the drafting of laws at the drafting stage. Interaction of this kind is a positive aspect of relations between the executive and the legislative branches of government in the Territory.

Comment on Explanatory Memorandum.

This is an example of an Explanatory Memorandum that does, for the most part, explain the point of a particular provision. In particular, the Committee commends the explanations of clauses 8, 13 and 16 of the Bill (among others). These explanations provide concise information as to the existing law, the problem addressed, and the main point of the clause.

Workers Compensation Amendment Bill 2001

This is a Bill to amend the *Workers Compensation Act 1951* to the effect of encouraging the return to work of an injured worker as a significant object of the law.

(iv) – inappropriate delegation of legislative power

Power by regulation to dispense with fundamental elements of the scheme

Under proposed new subsection 6C(4) (see clause 5), regulations may prescribe injuries that are not compensable, and the circumstances in which they are not compensable under the Act.

Under proposed new subsection 15D(4) (see clause 14) the regulations may exempt employers from the obligation stated in subsection 15D(1) to provide a worker with vocational retraining.

The Committee draws attention to these provisions for the consideration or whether it is appropriate to delegate such a wide power to set aside fundamental elements of the scheme of the Act. It is noted that a regulation would be a disallowable instrument, but the question remains as to whether the displacement of the Act that is contemplated by these provisions is a matter more appropriate for consideration by the Assembly.

Henry 8th provision

By proposed new section 38 (see clause 26), regulations may modify the operation of proposed new Part 8 of the Act. This power is, however, limited to modifying transitional provisions of the Act.

Subordinate Legislation - No Comment

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

Subordinate Law 2001 No 15 being the Unit Titles Regulations 2001 made under the *Unit Titles Act 2001* provides the articles for owners corporations, conciliation articles and provides detail requirements for diagrams, schedules of entitlement, development statements and financial amounts.

Subordinate Law 2001 No 16 being the Bookmakers Regulations Amendment made under the *Bookmakers Act 1985* amends the citation of the regulations from the *Bookmakers Regulations* to the *Bookmakers Regulations 1985* and removes the subregulation that prescribes the minimum amounts that can be bet by telephone with a bookmaker and removes a related definition.

Instrument No. 103 of 2001 made under section 4 of the *Public Place Names Act 1989* determines the name, origin and significance of a new street in the Division of Nicholls.

Determination No. 104 of 2001 made under section 287 of the *Land (Planning and Environment) Act 1991* amends Determination No. 165 of 2000 (notified in Gazette S20, dated 8 June 2000) and is a supplementary determination of fees and explanatory memorandum.

Determination No. 105 of 2001 made under the *Adoption Regulations, Agents Act 1968, Associations Incorporation Act 1991, Births, Deaths and Marriages Registration Act 1997, Business Names Act 1963, Classification (Publications, Films and Computer Games) (Enforcement) Act 1995, Consumer Credit (Administration) Act 1996, Instruments Act 1933, Land Titles Act 1925, Liquor Act 1975, Magistrates Court Act 1930, Prostitution Act 1992, Public Trustees Act 1985, Registration of Deeds Act 1957, Sale of Motor Vehicles Act 1977, Supreme Court Act 1933, Trade Measurement (Administration) Act 1991* revokes each Determination as set out in Schedule 1 and determines that the fees and charges payable for the purposes of the Acts are as set out in Schedule 3.

Determination No. 106 of 2001 made under section 79 of the *Emergency Management Act 1999* revokes Determination No. 209 of 2000 (notified in Gazette No. 26, dated 29 June 2000) and determines that the fees payable for the purposes of the Act are as set out in items 1 to 4 of the Schedule to the determination.

Determination No. 107 of 2001 made under subsection 13 (1) of the *Road Transport (General) 1999* declares that the road transport legislation does not apply to vehicles and persons competing in the GMC 4000 V8 Supercar race including all support events, trials and practice runs held from 8 June to 10 June 2001.

Determination No. 108 of 2001 made under section 58 of the *Veterinary Surgeons Act 1965* revokes all previous determinations of fees payable under the Act and determines fees payable for the purposes of the Act are as set out in the Schedule to the determination.

Determination No. 109 of 2001 made under subsection 97 (1) of the *Land (Planning and Environment) Act 1991* appoints a specified person to be a

member of the ACT Heritage Council for a period of three years from 14 June 2001.

Determination No. 110 of 2001 made under section 32 of the *Health and Community Care Services Act 1996* revokes Determination No. 334 of 2000 (notified in Gazette No. 45 on 9 November 2000) and determines fees and charges for the purposes of the Act as specified in the Schedule to the determination to take effect from 1 July 2001.

INTERSTATE AGREEMENTS

There is no matter for comment in this report.

REGULATORY IMPACT STATEMENTS

There is no matter for comment in this report.

GOVERNMENT RESPONSES

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

- Community Title Bill 2001 (Report No. 7 of 2001) (Minister for Urban Services, dated 27 June 2001).
- Long Service Leave (Cleaning, Building and Property Services) Amendment Bill 2001 (Report No. 7 of 2001) (Minister for Urban Services, dated 27 June 2001).
- Waste Minimisation Bill 2001 (Report No. 7 of 2001) (Minister for Urban Services, dated 27 June 2001).
- Land (Planning and Environment Act – Determinations Nos 44 and 45 (Report No. 7 of 2001) (Minister for Urban Services, dated 27 June 2001).
- Independent Competition and Regulatory Commission Act – Determination No. 65 (Report No. 7 of 2001) (Minister for Urban Services, dated 27 June 2001).
- Insurance Authority Act – Determination No. 111 of 2001 (Report No. 9 of 2001) (Treasurer, dated 2 July 2001).
- Occupational Health and Safety Act – Determinations Nos 70 to 81 (Report No. 7 of 2001) (Minister for Urban Services, dated 17 July 2001).
- Tree Protection Bill 2001 (Report No. 7 of 2001) (Minister for Urban Services, dated 17 July 2001).

Copies of the responses are attached.

The Committee thanks the Treasurer and the Minister for Urban Services for their helpful responses. It has noted in particular the respects in which the Minister for Urban Services has undertaken to amend certain provisions of Territory laws to address concerns raised by the Committee.

Paul Osborne, MLA
Chair

August 2001