

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
(LEGISLATIVE SCRUTINY ROLE)

SCRUTINY REPORT 4

14 MARCH 2013

COMMITTEE MEMBERSHIP

Mr Steve Doszpot MLA (Chair)

Mr Mick Gentleman MLA (Deputy Chair)

Ms Yvette Berry MLA

Mrs Giulia Jones MLA

SECRETARIAT

Mr Max Kiermaier (Secretary)

Ms Anne Shannon (Assistant Secretary)

Mr Peter Bayne (Legal Adviser—Bills)

Mr Stephen Argument (Legal Adviser—Subordinate Legislation)

CONTACT INFORMATION

Telephone 02 6205 0173

Facsimile 02 6205 3109

Post GPO Box 1020, CANBERRA ACT 2601

Email max.kiermaier@parliament.act.gov.au

Website www.parliament.act.gov.au

ROLE OF COMMITTEE

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

RESOLUTION OF APPOINTMENT

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

- (1) 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):
 - (a) is in accord with the general objects of the Act under which it is made;
 - (b) unduly trespasses on rights previously established by law;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
- (2) 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;
- (3) consider whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:
 - (a) unduly trespass on personal rights and liberties;
 - (b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) inappropriately delegate legislative powers; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
- (4) report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*;
- (5) 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.

TABLE OF CONTENTS

BILLS	1
BILLS—NO COMMENT	1
Justice and Community Safety Legislation Amendment Bill 2013 (No. 2)	1
SUBORDINATE LEGISLATION	1
DISALLOWABLE INSTRUMENTS—NO COMMENT	1
SUBORDINATE LAWS—NO COMMENT	1
GOVERNMENT RESPONSE	1
COMMENT ON PROPOSED GOVERNMENT AMENDMENTS	2
OUTSTANDING RESPONSES	3

BILLS

BILLS—NO COMMENT

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

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2013 (No. 2)
--

This is a Bill to amend a number of laws administered by the Department of Justice and Community Safety.

SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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

Disallowable Instrument DI2013-8 being the Public Place Names (Casey) Determination 2013 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the names of nine new roads in the Division of Casey.

Disallowable Instrument DI2013-9 being the Road Transport (General) Application of Road Transport Legislation Declaration 2013 (No. 1) made under section 12 of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to a road or road related area that is a special stage of the 2013 Brindabella Motor Sports Club Rally Test Days.

SUBORDINATE LAWS—NO COMMENT

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

Subordinate Law SL2013-2 being the Environment Protection Amendment Regulation 2013 (No. 1) made under the *Environment Protection Act 1997* makes technical amendments to schedule 2 and the Dictionary of the Environment Protection Regulation.

GOVERNMENT RESPONSE

The Committee has received a response from the Minister for Disability, Children and Young People, dated 5 March 2013, in relation to comments made in Scrutiny Report 2 concerning the Children and Young People Amendment Bill 2012 (No. 2).

The Committee wishes to thank the Minister for Disability, Children and Young People for her helpful response.

COMMENT ON PROPOSED GOVERNMENT AMENDMENTS

The response of the Minister for Disability, Children and Young People of 5 March 2013 advises the Committee that the Government proposes two amendments to the Children and Young People Amendment Bill 2012 (No 2). The amendment to clause 4 of the Bill enhances the protection of the right to liberty and security of a young detainee and the amendment to clause 8 is by way of clarification. In neither respect does the Committee raise any matter for consideration by the Assembly.

Steve Doszpot MLA
Chair

March 2013

OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

Report 1, dated 29 November 2012

Disallowable Instrument DI2012-232—Long Service Leave (Portable Schemes) Security Work Declaration 2012

Subordinate Law SL2012-36—Food (Nutritional Information) Amendment Regulation 2012 (No. 1)

Report 2, dated 4 February 2013

Directors Liability Legislation Amendment Bill 2012

Report 3, dated 25 February 2013

Disallowable Instrument DI2012-238 - Public Sector Management Amendment Standards 2012 (No. 3)

Disallowable Instrument DI2012-246 - Road Transport (General) Withdrawal of Infringement Notices Guidelines 2012 (No. 1)

Disallowable Instrument DI2012-268 - Energy Efficiency (Cost of Living) Improvement Record Keeping and Reporting Code of Practice 2012 (No. 1)

Disallowable Instrument DI2012-272 - Health (Fees) Determination 2012 (No. 2)

Disallowable Instrument DI2012-279 - Energy Efficiency (Cost of Living) Improvement Eligible Activities Code of Practice 2012 (No. 1)

Disallowable Instrument DI2013-3 - Health (Fees) Determination 2013 (No. 1)

Disallowable Instrument DI2013-5 - Road Transport (Third-Party Insurance) Early Payment Guidelines 2013 (No. 1)

Gaming Machine Amendment Bill 2013 (EMB)



Joy Burch MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR DISABILITY, CHILDREN AND YOUNG PEOPLE
MINISTER FOR THE ARTS
MINISTER FOR WOMEN
MINISTER FOR MULTICULTURAL AFFAIRS
MINISTER FOR RACING AND GAMING

MEMBER FOR BRINDABELLA

Mr Steve Doszpot
Chair
Standing Committee on Justice and Community Safety
(performing the duties of the Scrutiny of Bills
and Subordinate Legislation Committee)
ACT Legislative Assembly
CANBERRA ACT 2601

Dear Mr Doszpot

I refer to the previous Scrutiny of Bills Committee Report 53 (2012) from the 7th Legislative Assembly and to the Scrutiny of Bills Committee Report 2 (2013) from the 8th Legislative Assembly regarding the *Children and Young People Amendment Bill 2012* (the Bill). I offer the following response to the Committees' comments.

The previous Committee's comment in Report 53 (2012) is in relation to clause 4 *Managing use of force* and that the new section 223 (3B) "is cast in very wide language" in determining when planned use of restraint may be used on a detainee outside a detention place and not have to be reported.

Clause 4 in the Bill strengthens the statutory requirement to report the use of force on a young detainee. Further, planned use of restraint can only be used once a young detainee is assessed as being a risk outside a detention place. This assessment must follow the Classification Assessment and Re-assessment security classification procedure under the *Children and Young People (Admission and Classification) Policy and Procedures 2008* (No 1).

As stated in the Explanatory Statement this provision engages a number of rights in the *Human Rights Act 2004*. Importantly, clause 4 maintains current requirements regarding use of force including that the circumstances are sufficiently serious to justify use, the kind of restraint is appropriate in the circumstances and the restraint is used appropriately in the circumstances. The amendment does not change this area of policy or the application of the Human Rights Act.

ACT LEGISLATIVE ASSEMBLY

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

Phone (02) 6205 0020 Fax (02) 6205 0495

Email BURCH@act.gov.au Twitter: @JoyBurchMLA Facebook: www.facebook.com/joyburchmla

100
CANBERRA


I will address the Committee's concern by proposing Government amendments to clause 4 to clarify the circumstances under which planned use of restraint could be used and limit the planned use of restraint to only outside a detention place for escort purposes. Attached for the Committee's consideration are Government amendments to the Bill (see Attachment A).

I note the current Committee's comment in Report 2 (2013), in particular to clause 4 Managing use of force. I draw the Committee's attention to my response above about current requirements regarding use of force.

I also take this opportunity to advise the Committee that I propose to amend clause 8 *Revocation of foster carer's authorisation* (see Attachment A). The amendment clarifies the grounds for revoking a carer's authorisation.

I trust the first amendment addresses the concern raised by the Committee in Report 53 (2012) and that the second amendment raises no concern.

Yours sincerely



Joy Burch MLA
Minister for Disability, Children and Young People
5 March 2013

