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. 14 OF 1999

8 November 1999

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 Advisor: Mr Peter Bayne
Secretary: Mr Tom Duncan
Assistant Secretary (Scrutiny of Bills and Subordinate Legislation): Ms Celia Harsdorf

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.

Auditor-General Amendment Bill 1999

This Bill would amend the *Auditor-General Act 1996* to allow the Auditor-General to present completed reports to the Speaker of the Legislative Assembly when it is not sitting.

Drugs in Sport Bill 1999

This is a Bill for Act to confer on the Australian Sports and Drug Agency (ASDA) functions and powers to conduct sports drug testing and associated functions in the Territory. ASDA is a body established under the *Australian Sports and Drug Agency Act 1990* of the Commonwealth.

Holidays Amendment Bill 1999

This Bill would amend the *Holidays Act 1958* to the effect that a public holiday would be observed after midday on 31 December 1999.

Territory Owned Corporations Amendment Bill (No 2) 1999

This Bill would amend the *Territory Owned Corporations Act 1990* to achieve two primary objectives, being (i), to remove the capital management restrictions on Territory owned corporations by not restricting the issue of non-voting shares under a direction of the Treasurer, and (ii), to permit the timing for the preparation of a statement of corporate intent to be more flexible.

Bills - Comment

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

The Road Transport Bills 1999

A number of Bills dealt with in this Report are cognate one with another, and it is useful to identify them here. They are:

the Road Transport (Safety and Traffic Management) Bill 1999;
the Road Transport (Driver Licensing) Bill 1999;
the Road Transport (Vehicle Registration) Bill 1999; and
the Road Transport Legislation Amendment Bill 1999.

If enacted, this legislation would, together with some other laws, comprise the "road transport legislation", a term employed in these laws. The other laws referred to are the *Road Transport (Alcohol and Drugs) Act 1977*, and the *Road Transport (Dimensions and Mass) Act 1990*, as these laws would be if amended in the ways proposed in the Bills (and, in particular, by the Road Transport Legislation Amendment Bill 1999).

It is important to note that in addition to these Acts, the concept of "road transport legislation" also embraces any regulations made under these Acts.

Road Transport (General) Bill 1999

This is a Bill for an Act to provide, in the main, for the administration and enforcement of the road transport legislation; for the review of decisions made under that legislation; and for the determination of fees, charges and other amounts payable under that legislation.

Paragraph 2(c)(iv) – inappropriate delegation of legislative power

Henry VIIIth clauses

A Henry VIIIth clause "authorises the amendment of either the empowering legislation, or any other legislation, by means of delegated legislation ..": Senate Standing Committee for Scrutiny of Bills, *The Work of the Committee during the 38th Parliament May 1996 – August 1998*, (June 1999), at 61. Such clauses have long been the concern of scrutiny committees. (They are called Henry VIIIth clauses "on the basis of that particular king's extensive use of such provisions during his reign": D Pearce and S Argument, *Delegated Legislation in Australia* (2nd ed, 1999) at 15.)

As Pearce and Argument observe, "the basis for objection to such clauses is that they vest "an enormous amount of power in the executive government" and that "the power is capable of abuse"; ibid. But they also note that "the use of Henry VIIIth clauses in the Australian jurisdictions has become more, rather than less common" in the past 20 years: ibid.

We nevertheless consider it important to draw attention to such clauses, and pose for the Assembly the question whether it considers the potential use of such provisions justifiable.

We also consider it desirable that the relevant Explanatory Memorandum draw attention to this aspect of a provision in a Bill and provide some justification for the provision.

In this respect, we note clause 9 in particular.

Sub-clause 9(2) would permit regulations, made under the Act proposed to be enacted, to prevail over any other Act, and, moreover, would permit the regulations to provide that any other subordinate law prevail over the road transport legislation. (To appreciate this effect of subclause 9(2), it must be understood that the concept of "road transport legislation" embraces any regulations made under this proposed Act, (and the other proposed Acts)).

This is a very extensive Henry VIIIth clause, and it is noted that the Explanatory Memorandum does not attempt any justification for the power.

Taxation by subordinate laws

Subclause 96(1) provides that "The Minister may, in writing, determine fees, charges and other amounts payable under the road transport legislation". Such determinations are disallowable by the Assembly.

The Committee appreciates that in legislation of this kind it may, as a matter of convenience, be necessary to have fees and charges be determined in this way. Our concern is with subclause 96(6), which provides:

> A reference in this Part to a fee, charge or other amount includes a reference to a fee, charge or other amount that is a tax.

The Explanatory Memorandum notes that in this respect the clause departs from the terms of the existing section 217A of the *Motor Traffic Act 1936*.

The general principle according to which many scrutiny committees operate is as stated by Senate Standing Committee for Scrutiny of Bills: "It is for Parliament to set a tax rate and not for the makers of subordinate legislation to do so": *The Work of the Committee during the 37th Parliament May 1993 – March 1996*, (June 1997), at 62. It said that "[t]he vice to be avoided is taxation by non-primary legislation".

This approach reflects the long-standing constitutional position that "the raising* and expenditure** of public revenue have long been under the control of Parliament": *Northern Suburbs General Cemetery Reserve Trust v Commonwealth* (1993) 176 CLR 555 at 579 per Brennan J.

> **Petition of Right* (1627), s 8; Bill of Rights (1688), s 1; Maitland, *The Constitutional History of England*, (1908), pp 307-309; *Attorney-General v Wilts United Dairies* (1922) 91 LJKB 897, at p 900.
>
> ***Auckland Harbour Board v The King* (1924) AC 318, at pp 326-327; Maitland, op cit, pp 309-310.

In order to give some content to this constitutional position, the courts have, as a matter of general approach, held that a statutory power to impose by subordinate law a fee or a charge will be restricted to fixing an amount that is genuinely a recompense for the provision of a service rendered. If the amount fixed exceeds what is a fair recompense, the amount will be characterised as a tax, the essential nature of which is an exaction for public purposes. If the power to make the subordinate law does not clearly authorise the imposition of a tax, it will be invalid to the extent that it purports to do so.

The application of this general approach is, however, a matter of substance and not merely of form. As Barwick CJ said in *Marsh v Shire of Serpentine-Jarrahdale* (1966) 172 CLR 572 at 580:

> the validity of the by-law can be determined by placing the payment for which it provides into the category of a fee or into that of a tax, … [and] in general a fee is a payment for or in respect of services rendered whereas a tax is not, but rather a means of obtaining revenue for governmental purposes. But, although the broad distinction between a fee for performing a service and a tax to raise revenue is quite valid, the … question as to validity is not necessarily answered merely by designating this payment as one or the other. What is authorized under the description of a fee may very well be a tax and yet within the actual authority given. The question remains one of interpretation of the statute, bearing in mind its relevant purposes …

One example of legislative action designed to protect the constitutional principle is found in subsection 51 (1) of the *Australian Prudential Regulation Authority Act 1988* (Cth). This provides that a body may, by written instrument, fix charges to be paid to that body by a person in respect of services and facilities that body provides the person, or in respect of applications or requests made to that body. Subsection 51 (2) then provides:

> (2) A charge fixed under subsection (1) must be reasonably related to the costs and expenses incurred or to be incurred by [the body] in relation to the matters to which the charge relates and **must not be such as to amount to taxation**.

The purpose of subclause 96(6) would appear to be to ensure that the power to be conferred on the Minister by subclause 96(1) is **not** read in a way that would protect the general constitutional position that a tax should be levied only by Parliament.

The issue raised by subclause 96(6) is straightforward – does the Assembly wish to empower the Minister to levy taxes by means of regulations which may be made under the road transport legislation?

Non-disallowable subordinate laws

Under subclause 106(4), the Minister has a power to place a limit on the number of taxi operator's licences. There is a similar power in clause 107 in respect of restricted taxi operator's licences.

Under clause 146, the Minister may approve the maximum fares that may be charged by the holder of a bus service licence.

These powers are legislative in nature and the issue is whether their exercise should be disallowable by the Assembly. It should be noted that under clause 115 a determination by the Minister of the maximum fares for hiring a taxi **is** a disallowable instrument.

Paragraph 2 (c) (ii) – insufficiently defined administrative powers

Authorised persons

The Committee draws attention to the width of the provision in clause 19, which enables the road transport authority to authorise "a person to be an authorised person" for the road transport legislation.

In view of the fact that these laws confer law enforcement powers on authorised persons, we state again our concern that there appears to be no limit to what kinds of persons may be appointed as such.

Widely expressed discretionary powers

There are many undefined discretionary powers in the Bill. We have noted in particular various provisions in Part 9, concerning the licensing of public vehicles. These provisions often confer a power in terms only that the repository of the power "may" do something, such as issue a licence. This style of drafting may be contrasted to a more modern approach that seeks to spell out those considerations relevant or irrelevant to the exercise of the discretion. The explanation for the older style of provisions in the Bill may lie in the fact that many of these provisions have been carried over from the *Motor Traffic Act 1936*. This law was drafted at a time when there was less concern with undefined discretionary powers.

Based on a clause in this Bill, we make below a suggestion for dealing with this problem. First, however, we note two instances where we consider that the power has been expressed in terms which are too wide.

In subclauses 156(1) and (2), the road transport authority is empowered to exercise a discretion if it "believes" that a certain state of affairs exists. This is a very subjectively worded power, and stands in contrast to the more usual formula that an authority may take action if it believes on "reasonable grounds" that the state of affairs exists. The Committee cannot see why the more usual formula should not be employed.

In subclause 209(2) it is provided that the Minister may cancel the approval of an insurer as an authorised insurer "for any reason the Minister considers appropriate". This is an extraordinarily wide power. It appears to place the personal whim of the Minister above the notion that administrative powers must be exercised according to law. We cannot see any justification for the inclusion of these words. We note that the terms in which the Minister may **grant** the approval – see clause 207 – are wide enough.

We have noted one instance where there is an attempt to provide for the introduction of a flexible regime for guidance which would allow the Assembly some oversight of the exercise of administrative power. This is found in clause 32, under which the responsible Minister may issue guidelines for the exercise of the discretionary powers vested by clauses 30 and 31 in administering authorities. (The powers concerned relate to the withdrawal of infringement notices.) Any such guidelines would be disallowable by the Assembly.

We commend this provision. We suggest that this Bill contain a provision, to be applicable to all of the administrative powers that to be found in the road transport legislation, that would enable the Minister to

issue guidelines for the exercise of these powers, and, moreover, would allow the Assembly to disallow the guidelines.

Possible mismatch between provisions

Without expressing a view, the Committee draws attention to the difference between paragraph 26(2)(e), and paragraph 35(2)(e).

Paragraph 2 (c) (i) - undue trespass on personal rights and liberties

Privacy - Clause 58

The Committee has noted in other reports the common law position that a person is not required to give their name and address to a police officer. This may be said to be a dimension of a notion of a right to privacy; (see Scrutiny Report No. 6 of 1999, "Further Report on the Tobacco (Amendment) Bill 1999").

Under clause 58, the driver of a motor vehicle (or the rider of an animal) will commit an offence if the person fails, without reasonable excuse, to state her or his name and address to a police officer or an authorised person. (What will be a reasonable excuse in these circumstances is undefined.)

The Committee notes, however, that such provisions are common in road traffic laws.

Mandatory sentences – clauses 62 and 63

Under these clauses, a person would, upon conviction for certain serious offences in relation to driving, be automatically disqualified from holding or obtaining a driver's licence.

Any form of mandatory sentence is a matter of concern. The Committee notes, however, that these provisions substantially re-enact provisions in existing laws.

Liability for unsuccessful prosecutions – clause 77

It appears that the effect of this clause would be that a person (other than a police officer, an authorised person, or the road transport authority) who unsuccessfully prosecuted another person (the defendant) under the road transport legislation, would

be liable to pay to the defendant "as well as any costs or disbursements, compensation for loss of time or anything else".

It is not clear which court would have jurisdiction to determine the extent of this liability. Liability could, moreover, under the rubric of "or anything else", be quite extensive, perhaps extending to "psychological" injuries.

If the policy is to discourage 'private' prosecutions, it might be better to prohibit them, rather than to expose a person to what might be extensive liability and expensive judicial process.

Open-ended offences – clause 82

This clause provides simply that a person must not use a motor vehicle without the owner's consent. This is understandable, but given that the concept of "use" is open-ended (see in the Dictionary to the Act), the Committee queries whether there should be some "reasonable excuse" limitation, perhaps stated as a matter to be established by way of defence. Such a defence might be raised where the vehicle is used in order to obviate some danger, or to preserve life.

Restrictions on access by discovery – clause 189

Provisions in clause 189 require the driver (or other persons) of a vehicle involved in a motor vehicle accident to give to an authorised insurer, or to the nominal defendant, notice of matters such as the circumstances of the accident. It is obvious that this document would be of interest to persons who might wish to sue the driver. But by subclause 189(6), such notices are not subject to discovery and are not admissible in evidence in a legal action (except for a prosecution for failure to give the notice).

The object would appear to be to protect the authorised insurer, or the nominal defendant. Another effect, however, is to restrict the ability of a party to a legal action to gain access to evidence that might be of critical significance to the ability of the party to pursue its action.

This restriction will, moreover, inhibit the ability of a court to determine the truth in relation to the circumstances of a motor vehicle accident. The common law has long restricted to a very small compass the circumstances in which a witness may or shall refuse to reveal relevant evidence. Justice Dixon J observed in *McGuiness v Attorney-General of Victoria* (1940) 63 CLR 73 at 102 that there was

> [an] inevitable conflict between the necessity of discovering the truth in the interests of justice on the one hand and on the other the obligation of secrecy or confidence which an individual called upon to testify may have undertaken to a party or to a person.

At common law, with few exceptions, this conflict was resolved by adopting the principle that "no obligation of honour, no duties of non-disclosure arising from the nature of a pursuit or calling, could stand in the way of the imperative necessity of revealing the truth in the witness box"; ibid at 102-103.

In relation to subclause 189(6), there is no issue of any confidential communication being revealed. There appears to be no case for non-disclosure according to the common law approach.

It makes sense then, to speak of the common law right of a party to litigation to gain access to evidence that is relevant to proof of facts in issue in the particular matter. This notion might be expressed as a dimension of the authority of a court to exercise its judicial function: (cf *Haj-Ismail v Minister for Immigration and Ethnic Affairs* (1981) 36 ALR 526 at 527).

There is, thus, a question whether subclause 189(6) is an undue trespass on personal rights and liberties.

Road Transport (Safety and Traffic Management) Bill 1999

This is a Bill for an Act to provide, in the main, for a safety and management system in relation to road transport in the Territory. It deals in particular with safety and traffic management on roads, and is designed to facilitate the adoption of consistent road rules throughout Australia.

Paragraph 2 (c) (i) - undue trespass on personal rights and liberties

The Committee draws attention to clause 16, which provides:

> If the driver of a vehicle, or rider of an animal, is involved in a traffic accident on a road or road related area, and someone dies or is injured in the accident, the driver or rider must not knowingly fail to stop and give any assistance that is necessary and that it is in his or her power to give.

Such a provision may be said to legislate the obligation of the 'good Samaritan' (*Luke* 10:33). It appears not to have a parallel in the existing law. The heading to this clause refers to section 178 of the *Motor Traffic Act 1936*, but that provision does not contain a 'good Samaritan' provision.

Good Samaritan laws have long been a subject of controversy among philosophers and lawyers. It is generally true to say that the common law has been very reluctant to recognise that a person has a legal duty of any kind to assist a stranger in trouble. Such small steps in the direction of recognition of such a duty as that taken in the decision of the Court of Appeal of New South Wales in *Lowns v Woods* (1996) Aust Torts Reports 81-376 have been controversial. (The result of that case is that "every member of the New South Wales medical profession, regardless of specialised training, has a legal, as opposed to a moral, duty to rescue in certain circumstances": K Amirthalingam and T Faunce, "Patching up proximity": problems with the judicial creation of a new medical duty to rescue" (1997) 5 *Torts Law Journal* 27 at 29).

These authors make a point of interest to the subject of this Bill. They argue that the courts should leave the creation of duties to rescue to the legislature, but they add:

> The creation of new categories of duty of care, even if done incrementally, is a complex regulatory act requiring detailed public evaluation. Such a function … is best performed by the legislature through commissions of inquiry and not by the judiciary: ibid.

With this we respectfully agree. But this points also to the need for a legislature to proceed carefully in the creation of new heads of legal liability, whether criminal and/or civil.

The creation of new criminal liability is of particular significance. The offence proposed by clause 16 would expose all those who use the roads of the ACT to a new form of criminal liability in respect of activity which has not to this date been criminal. And given our past practice, most road users would not expect this activity, (that is, failing to render assistance), to be criminal.

Moreover, in relation to this activity, there is a real possibility that a court would find that this provision also creates a new form of civil liability. That is, a court might say that a person who fails to comply with this obligation to assist is liable in tort for breach of statutory duty in respect of such injuries (or the exacerbation of injuries) as are suffered by the injured person as a result of the failure to assist.

In addition, and whether or not a court would find a new head of liability in tort, a person who does attempt to comply with this provision will expose his or herself to the risk of a suit in negligence. That is, the injured person may say that the rescuer failed to take reasonable care in attempting to comply.

The creation of such potentially far-reaching and onerous liabilities on members of the community raises a question whether this provision is an undue trespass on rights and liberties.

Without attempting to be exhaustive, a number of difficult issues of policy may be identified.

First, there is the question whether a failure to rescue or assist in such circumstances should amount to a criminal offence. There appear to be few jurisdictions in the common law world in which one can find an analogous provision. The imposition of criminal liability is a draconic step. Even the mere prosecution of a person for an offence such as this will be a reflection on the character of the defendant.

One might respond by saying - "if the cap fits, wear it". But the reasons why people fail to assist are complex; (see generally, D B Yeager, "A Radical Community of Aid: A Rejoinder to Opponents of Affirmative Duties to Help Strangers" (1993) 71 *Washington University Law Quarterly* 1 at 15). Danger and fear of retaliation play some part in explaining failure to intervene and assist. This might be thought less likely in the case of road accidents, but in recent times "road rage" is an unfortunate but real phenomenon on the roads, and a person whose vehicle has been involved in an accident might have a justifiable fear of suffering harm if he or she stops to give assistance to other persons involved.

Beyond this calculation of the danger to her or himself, the decision to rescue is very complex. In many circumstances, it would be very harsh to visit criminal liability on a person adjudged by a court or a jury to have failed to act in accord with the court or jury's retrospective judgment of what was required in the aftermath of a vehicle accident.

Secondly, where there is criminal liability imposed for failure to assist, it is often qualified by defences. Take these examples:

- section 252 of the *Criminal Code* of Canada provides that a person in charge of a vehicle involved in an accident commits an offence if he or she fails to stop, or to offer assistance to a person injured, but only where those omissions are done "with intent to escape civil or criminal liability". A defendant bears a burden of proof to establish lack of intent, but there is no limit as to how this might be done; (see *Martin's Annual Criminal Code 1999*, (1999, Canada Law Book Co) at CC/436);
- a Rhode Island law that imposes criminal liability in circumstances which would include vehicle accidents qualifies the liability by providing that it arises only to the extent that the 'rescuer' can provide "reasonable assistance", and only "to the extent that he or she can do so without danger or peril to himself or herself": see D B Yeager, above at 6; and
- a Wisconsin law that imposes criminal liability in circumstances which would include vehicle accidents qualifies the liability by providing that compliance is not necessary if that would place the would be rescuer in danger, or would interfere with duties the person owes to others, or if assistance had been summoned or provided by others; (ibid).

(It should also be noted that sometimes such duties also include a duty to summon law enforcement officers.)

Secondly, there is a question whether there are other and better approaches to encouraging assistance to the injured at road accidents. As has been said, "while punishment expresses social condemnation of unacceptable conduct, incentives may work as effectively in altering conduct": ibid at 11. For example, it might be better, at least initially, to provide incentives to rescuers. One suggestion is that a successful, non-negligent rescuer have a right to compensation from the rescuee for any injuries suffered by the rescuer; (see ibid, n 51 at 11). Apart from legal remedies, schemes for public recognition and reward might be adopted: ibid at 11.

Thirdly, there is the issue of the appropriate penalty. The USA jurisdictions that impose criminal sanctions impose a very light penalty; (D B Yeager, above at 23).

The Committee doubts that there is any need to move with speed. The author of a 1993 USA study of laws that imposed some form of criminal liability found that none of the prosecutors who had responded to his inquiry as the enforcement of those laws reported any prosecution for violation of the laws; (ibid 8).

There are a number of issues that the Committee considers should be more fully explored before a provision of this kind is enacted:

- whether such an offence should be created at all;
- if so, whether the offence should be stated in a way that permits the person charged to raise a "reasonable excuse", or any other kind of defence; and
- whether failure to comply with any such provision should give rise to a civil liability – based on the tort of breach of statutory duty – on the part of the person who fails to stop.

Road Transport (Driver Licensing) Bill 1999

This is a Bill for an Act to provide for the licensing of drivers and for related matters, and in these respects is designed to facilitate the adoption of consistent road rules throughout Australia.

Road Transport (Vehicle Registration) Bill 1999

This is a Bill for an Act to provide for the registration of vehicles and for related matters, and in these respects is designed to facilitate the adoption of consistent road rules throughout Australia.

Road Transport Legislation Amendment Bill 1999

This is a Bill for an Act to amend various Acts and subordinate laws of the Territory, which amendments would be made necessary or desirable if the Assembly were to enact the Road Transport (General) Act 1999, the Road Transport (Safety and Traffic Management) Act 1999, the Road Transport (Driver Licensing) Act 1999, and the Road Transport (Vehicle Registration) Act 1999.

Subordinate Legislation - No Comment

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

Subordinate Law No. 19 of 1999 being the Scaffolding and Lifts Regulations Amendment made under the *Scaffolding and Lifts Act 1957* and subsection 22 (2) of the *Scaffolding and Lifts Act 1912-1948 (NSW)* amends the regulations in force under the *Scaffolding and Lifts Act 1912* of New South Wales in their application in the Territory, as set out in the Schedule, to incorporate the amendments to the regulations under the ACT *Occupational Health and Safety Act 1989.*

Subordinate Law No. 20 of 1999 being the Dangerous Goods Regulation Amendment made under subsection 13 (2) of the *Dangerous Goods Act 1984* amends the *Dangerous Goods Regulation 1978* of New South Wales in its application in the Territory, as set out in the Schedule, to incorporate the amendments to the regulations under the ACT *Occupational Health and Safety Act 1989.*

Subordinate Law No. 21 of 1999 being the Occupational Health and Safety Regulations Amendment made under section 97 of the *Occupational Health and Safety Act 1989* replaces the old prescriptive style regulation in the *Scaffolding and Lifts Regulation* by introducing a new performance based regulation for the use of explosives at a workplace and repeals the existing name of the regulation and renames it as the *Occupational Health and Safety Regulation 1991*.

Subordinate Law No. 22 of 1999 being the Motor Traffic Regulations Amendment made under the *Motor Traffic Act 1936* amends the Regulations to insert Parts 4B, 4C 4D and 4E in relation to parking infringements, infringement notices, demerit points and traffic offence detection devices.

Subordinate Law No. 23 of 1999 being the Maternal Health Information Regulations Amendment made under section 16 of the *Health Regulations (Maternal Health Information Act) 1998* amends Maternal Health Information Regulations 1999 to provide more accurate information for women who are contemplating an abortion.

Subordinate Law No 24 of 1999 being the Mediation Regulations Amendment made under section 13 of the *Mediation Act 1997* prescribes in regulation 4 to add an approved agency to the approved agencies listed in the Regulations.

Determination No. 233 of 1999 made under section 217A of the *Motor Traffic Act 1936* determines a $10 fee payable in respect of a copy of an image taken by a traffic offence detection device for the purposes of the Act.

Determination No. 234 of 1999 made under section 217A of the *Motor Traffic Act 1936* revokes Determination No. 223 of 1999 and determines fees payable in relation to drivers' licences for the purposes of various provisions of the Act and of the Motor Traffic Regulations.

Determination No. 235 of 1999 made under section 4 of the *Public Place Names Act 1989* determines the names of certain public places in the Division of Nicholls.

Determination No. 244 of 1999 made under section 23C of the *Nature Conservation Act 1980* comprises a number of action plans for protecting ACT's threatened species and an ecological community prepared by the Conservator of Flora and Fauna. These plans relate to 11 species: Yellow Box/Red Gum Grassy Woodland; Hooded Robin (*Melanodryas cucullata)*; Swift Parrot (*Lathamus discolor);* Superb Parrot *(Polytelis swainsonii)*; Brown Treecreeper *(Climacteris picumnus);* Painted Honeyeater *(Grantiella picta)*; Regent Honeyeater *(Xanthomyza phrygia*); Perunga Grasshopper *(Perunga ochracea)*; Brush-tailed Rock-wallaby *(Petrogale penicillata)*;

Smoky Mouse *(Pseudomys fumeus)*; and Tuggeranong Lignum *(Muehlenbeckia tuggeranong)*.

INTERSTATE AGREEMENTS

The Committee has not received any relevant notification.

GOVERNMENT RESPONSES

The Committee has received a response in relation to comments made concerning:

- Determination No. 229 of 1999 made under the *[Health Complaints Act 1993]* (Report No. 12 of 1999)

A copy of the response is attached.

The Committee thanks the Minister for Health and Community Care for his helpful response.

Paul Osborne, MLA
Chair

November 1999