

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

SCRUTINY REPORT 35

10 AUGUST 2015

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ROLE OF COMMITTEE

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

RESOLUTION OF APPOINTMENT

The Standing Committee on Justice and Community Safety when performing its legislative scrutiny role 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.

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SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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

Disallowable Instrument DI2015-93 being the Taxation Administration (Amounts Payable—Loose-fill Asbestos Insulation Eradication Buyback Concession Scheme) Determination 2015 (No. 3) made under section 139 of the *Taxation Administration Act 1999* revokes DI2015-39 and determines, for the purposes of the Scheme, the eligibility criteria, value of the concession, conditions and time limit for applications.

Disallowable Instrument DI2015-94 being the Road Transport (General) Vehicle Registration and Related Fees Determination 2015 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2014-220 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-96 being the Road Transport (General) Numberplate Fees Determination 2015 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2014-90 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-97 being the Road Transport (General) Refund and Dishonoured Payments Fees Determination 2015 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2014-91 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-98 being the Road Transport (General) Fees for Publications Determination 2015 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2014-93 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-99 being the Road Transport (General) (Road Safety Contribution) Determination 2015 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2003-82 and determines the fee payable for the road safety contribution.

Disallowable Instrument DI2015-100 being the Dangerous Goods (Road Transport) Fees and Charges Determination 2015 (No. 1) made under section 194 of the *Dangerous Goods (Road Transport) Act 2009* revokes DI2014-94 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-101 being the Road Transport (General) Concession Determination 2015 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2014-303 and determines the concessional fees payable by eligible persons for vehicle registration and driver licensing.

Disallowable Instrument DI2015-104 being the Race and Sports Bookmaking (Sports Bookmaking Events) Determination 2015 (No. 2) made under subsection 20(1) of the *Race and Sports Bookmaking Act 2001* revokes DI2015-37 and determines approved senior level and national and international racing sports bookmaking events.

Disallowable Instrument DI2015-105 being the Race and Sports Bookmaking (Rules for Sports Bookmaking) Determination 2015 (No. 2) made under subsection 23(1) of the *Race and Sports Bookmaking Act 2001* revokes DI2015-38 and determines the rules for sports bookmaking.

Disallowable Instrument DI2015-106 being the Taxation Administration (Amounts Payable—Duty) Determination 2015 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2014-186 and determines the amount of duty payable under various provisions of the *Duties Act 1999*.

Disallowable Instrument DI2015-108 being the Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2015 (No. 2) made under section 139 of the *Taxation Administration Act 1999* revokes DI2015-4 and determines, for the purposes of the Scheme, the income test and thresholds, eligibility criteria, determination of amounts, conditions, method of calculation of duty payable and time limit for applications.

Disallowable Instrument DI2015-109 being the Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2015 (No. 2) made under section 139 of the *Taxation Administration Act 1999* revokes DI2015-5 and determines, for the purposes of the Scheme, the eligibility criteria, amounts, conditions, method of calculation of duty payable and the time limit for applications.

Disallowable Instrument DI2015-110 being the Rail Safety National Law (Drug and Alcohol Analysts) Appointment 2015 (No. 1) made under section 11 of the *Rail Safety National Law (ACT) Act 2014* appoints three specified analysts currently engaged by the Office of the National Rail Safety Regulator to conduct alcohol and drug testing of ACT rail safety workers.

Disallowable Instrument DI2015-112 being the Scaffolding and Lifts (Fees) Determination 2015 made under section 21 of the *Scaffolding and Lifts Act 1912* revokes DI2014-135 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-113 being the Work Health and Safety (Fees) Determination 2015 (No. 2) made under section 278 of the *Work Health and Safety Act 2011* revokes DI2015-14 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-114 being the Workers Compensation (Fees) Determination 2015 made under section 221 of the *Workers Compensation Act 1951* revokes DI2014-140 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-115 being the Dangerous Substances (Fees) Determination 2015 made under section 221 of the *Dangerous Substances Act 2004* revokes DI2014-121 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-116 being the Emergencies (Fees) Determination 2015 made under section 201 of the *Emergencies Act 2004* revokes DI2014-122 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-117 being the Firearms (Fees) Determination 2015 made under section 270 of the *Firearms Act 1996* revokes DI2014-113 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-118 being the Nature Conservation (Exempt Animals) Declaration 2015 (No. 1) made under section 155 of the *Nature Conservation Act 2014* declares specified species to be exempt animals for the purposes of the Act.

Disallowable Instrument DI2015-120 being the Official Visitor (Children and Young People Services) Visit and Complaint Guidelines 2015 (No. 1) made under section 23 of the *Official Visitor Act 2012* makes the Official Visitor (Children and Young People Services) Visit and Complaint Guidelines.

Disallowable Instrument DI2015-121 being the Nature Conservation (Scientific Committee) Appointment 2015 (No. 1) made under section 36 of the *Nature Conservation Act 2014* appoints specified persons as chair, deputy chair and members of the Scientific Committee.

Disallowable Instrument DI2015-122 being the Agents (Fees) Determination 2015 made under section 176 of the *Agents Act 2003* revokes DI2014-116 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-123 being the Births, Deaths and Marriages Registration (Fees) Determination 2015 made under section 67 of the *Births, Deaths and Marriages Registration Act 1997* revokes DI2014-118 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-124 being the Classification (Publications, Films and Computer Games) (Enforcement) (Fees) Determination 2015 made under section 67 of the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* revokes DI2014-119 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-125 being the Cooperatives (Fees) Determination 2015 made under section 465 of the *Cooperatives Act 2002* revokes DI2014-120 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-126 being the Fair Trading (Motor Vehicle Repair Industry) (Fees) Determination 2015 made under section 55 of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* revokes DI2014-123 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-127 being the Hawkers (Fees) Determination 2015 made under section 45 of the *Hawkers Act 2003* revokes DI2014-126 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-128 being the Pawnbrokers (Fees) Determination 2015 made under section 27 of the *Pawnbrokers Act 1902* revokes DI2014-131 and determines the fee payable for a licence.

Disallowable Instrument DI2015-129 being the Registration of Deeds (Fees) Determination 2015 made under section 8 of the *Registration of Deeds Act 1957* revokes DI2014-132 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-130 being the Retirement Villages (Fees) Determination 2015 made under section 262 of the *Retirement Villages Act 2012* revokes DI2014-133 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-131 being the Sale of Motor Vehicles (Fees) Determination 2015 made under section 91 of the *Sale of Motor Vehicles Act 1977* revokes DI2014-134 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-132 being the Second-hand Dealers (Fees) Determination 2015 made under section 17 of the *Second-hand Dealers Act 1906* revokes DI2014-136 and determines the fee payable for a licence.

Disallowable Instrument DI2015-134 being the Radiation Protection (Council Member) Appointment 2015 (No. 1) made under section 68 of the *Radiation Protection Act 2006* appoints a specified person, as a member of the public, to the Radiation Council.

Disallowable Instrument DI2015-135 being the Gambling and Racing Control (Governing Board) Appointment 2015 (No. 1) made under sections 11 and 12 of the *Gambling and Racing Control Act 1999* and sections 78 and 79 of the *Financial Management Act 1996* appoints a specified person as a member and deputy chair of the ACT Gambling and Racing Commission Governing Board.

Disallowable Instrument DI2015-136 being the Gambling and Racing Control (Governing Board) Appointment 2015 (No. 2) made under sections 11 and 12 of the *Gambling and Racing Control Act 1999* and section 78 of the *Financial Management Act 1996* appoints a specified person as an ordinary member of the ACT Gambling and Racing Commission Governing Board.

Disallowable Instrument DI2015-138 being the Freedom of Information (Fees) Determination 2015 made under section 80 of the *Freedom of Information Act 1989* revokes DI2014-124 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-139 being the Guardianship and Management of Property (Fees) Determination 2015 made under section 75 of the *Guardianship and Management of Property Act 1991* revokes DI2014-125 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-140 being the Public Trustee (Fees) Determination 2015 (No. 2) made under section 75 of the *Public Trustee Act 1985* revokes DI2015-13 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-141 being the Unit Titles (Management) (Fees) Determination 2015 made under section 119 of the *Unit Titles (Management) Act 2011* revokes DI2014-138 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-142 being the Associations Incorporation (Fees) Determination 2015 made under section 125 of the *Associations Incorporation Act 1991* revokes DI2014-117 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-143 being the Civil Unions (Fees) Determination 2015 made under section 28 of the *Civil Unions Act 2012* revokes DI2014-111 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-144 being the Land Titles (Fees) Determination 2015 made under section 139 of the *Land Titles Act 1925* revokes DI2014-127 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-145 being the Liquor (Fees) Determination 2015 made under section 227 of the *Liquor Act 2010* revokes DI2014-128 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-146 being the Partnership (Fees) Determination 2015 made under section 99 of the *Partnership Act 1963* revokes DI2014-130 and determines the fee payable for an application for registration as an incorporated limited partnership.

Disallowable Instrument DI2015-147 being the Prostitution (Fees) Determination 2015 made under section 29 of the *Prostitution Act 1992* revokes DI2014-114 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-148 being the Security Industry (Fees) Determination 2015 made under section 50 of the *Security Industry Act 2003* revokes DI2014-137 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-154 being the Official Visitor (Corrections Management) Appointment 2015 (No. 1) made under paragraph 10(1)(b) of the *Official Visitor Act 2012* appoints a specified person as an official visitor for the purposes of the *Corrections Management Act 2007*.

Disallowable Instrument DI2015-155 being the Lotteries (Fees) Determination 2015 (No. 1) made under section 18A of the *Lotteries Act 1964* revokes DI2014-144 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-156 being the Official Visitor (Mental Health) Appointment 2015 (No. 1) made under paragraph 10(1)(e) of the *Official Visitor Act 2012* appoints a specified person as an official visitor for the purposes of the *Mental Health (Treatment and Care) Act 1994*.

Disallowable Instrument DI2015-158 being the Environment Protection (Fees) Determination 2015 (No. 2) made under section 165 of the *Environment Protection Act 1997* revokes DI2015-15 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-159 being the Fisheries (Fees) Determination 2015 (No. 1) made under section 114 of the *Fisheries Act 2000* revokes DI2014-156 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-160 being the Water Resources (Fees) Determination 2015 (No. 1) made under section 107 of the *Water Resources Act 2007* revokes DI2014-166 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-161 being the Taxation Administration (Amounts Payable—Duty) Determination 2015 (No. 2) made under section 139 of the *Taxation Administration Act 1999* revokes DI2015-106 and determines the amount of duty payable under various provisions of the *Duties Act 1999*.

Disallowable Instrument DI2015-162 being the Taxation Administration (Rates) Determination 2015 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2014-185 and determines variable rating factors for the calculation of rates payable for the purposes of the *Rates Act 2004*.

Disallowable Instrument DI2015-163 being the Taxation Administration (Land Tax) Determination 2015 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI204-279 and determines the rates for the calculation of land tax for residential land for the purposes of the *Land Tax Act 2004*.

Disallowable Instrument DI2015-165 being the Taxation Administration (Amounts Payable—Land Rent) Determination 2015 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2014-176 and determines the standard percentage, discount percentage, relevant percentage and income threshold amount for the purposes of the *Land Rent Act 2008*.

Disallowable Instrument DI2015-166 being the Taxation Administration (Rates—Fire and Emergency Services Levy) Determination 2015 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2014-182 and determines new amounts for the calculation of the fire and emergency services levy for the purposes of the *Rates Act 2004*.

Disallowable Instrument DI2015-167 being the Taxation Administration (Rates—Rebate Cap) Determination 2015 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2014-184 and determines the rebate cap for the purposes of the *Rates Act 2004*.

Disallowable Instrument DI2015-168 being the First Home Owner Grant (Objection Fees) Revocation 2015 made under section 54 of the *First Home Owner Grant Act 2000* revokes DI2014-178 to abolish the relevant objection fee.

Disallowable Instrument DI2015-169 being the Taxation Administration (Objection Fees) Revocation 2015 made under section 139A of the *Taxation Administration Act 1999* revokes DI2014-177 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-170 being the Taxation Administration (Witness Allowances) Determination 2015 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI1999-83 and determines the scale of allowances for the expenses of persons required to attend and give oral evidence before an authorised officer.

Disallowable Instrument DI2015-171 being the Road Transport (General) Parking Permit Fees Determination 2015 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2014-92 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-175 being the Gaming Machine (Fees) Determination 2015 (No. 1) made under section 177 of the *Gaming Machine Act 2004* revokes DI2014-109 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-176 being the Race and Sports Bookmaking (Fees) Determination 2015 (No. 1) made under section 97 of the *Race and Sports Bookmaking Act 2001* revokes DI2014-100 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-177 being the Unlawful Gambling (Charitable Gaming Application Fees) Determination 2015 (No. 1) made under section 48 of the *Unlawful Gambling Act 2009* revokes DI2014-99 and determines the fee payable for a charitable organisation to apply to the ACT Gambling and Racing Commission for approval to conduct charitable gaming.

Disallowable Instrument DI2015-178 being the Utilities (Gas Network Capital Contribution Code) Revocation 2105 made under section 59 of the *Utilities Act 2000* revokes DI2012-169 as a result of the regulation of gas networks being transferred from the Independent Competition and Regulatory Commission to the Australian Energy Regulator from 1 July 2015.

Disallowable Instrument DI2015-180 being the Legal Profession (Bar Council Fees) Determination 2015 (No. 1) made under subsection 84(2) of the *Legal Profession Act 2006* revokes DI2014-57 and determines fees payable for applications for the grant or renewal of a barrister practising certificate.

Disallowable Instrument DI2015-182 being the Adoption (Fees) Determination 2015 (No. 1) made under section 118 of the *Adoption Act 1993* repeals DI2014-199 and determines the maximum fees payable for services provided by the ACT Adoptions Unit.

Disallowable Instrument DI2015-184 being the Dangerous Substances (Government Analytical Laboratory) Exemption 2015 (No. 1) made under section 218 of the *Dangerous Substances Act 2004* exempts people working at the ACT Government Analytical Laboratory from the requirement to be licensed to handle security sensitive ammonium nitrate, a controlled dangerous substance.

Disallowable Instrument DI2015-185 being the Electoral (Fees) Determination 2015 made under section 340B of the *Electoral Act 1992* revokes DI2014-67 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-186 being the Tree Protection (Advisory Panel) Appointment 2015 (No. 1) made under section 69 of the *Tree Protection Act 2005* revokes DI2013-163 and DI2014-239 and appoints specified persons as members of the Tree Advisory Panel, with experience in forestry and as a landscape architect working in urban design.

Disallowable Instrument DI2015-187 being the Road Transport (Public Passenger Services) Maximum Fares for Taxi Services Determination 2015 (No. 1) made under section 60 of the *Road Transport (Public Passenger Services) Act 2001* revokes DI2014-147 and determines the maximum fares relating to the hiring or use of a taxi.

Disallowable Instrument DI2015-188 being the Heritage (Register Fees) Determination 2015 (No. 1) made under section 120 of the *Heritage Act 2004* revokes DI2014-158 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-189 being the Planning and Development (Fees) Determination 2015 (No. 1) made under section 424 of the *Planning and Development Act 2007* revokes DI2014-162 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-190 being the Surveyors (Fees) Determination 2015 (No. 1) made under section 80 of the *Surveyors Act 2007* revokes DI2014-163 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-191 being the Water and Sewerage (Fees) Determination 2015 (No. 1) made under section 45 of the *Water and Sewerage Act 2000* revokes DI2014-165 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-192 being the Unit Titles (Fees) Determination 2015 (No. 1) made under section 179 of the *Unit Titles Act 2001* revokes DI2014-164 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-193 being the Construction Occupations Licensing (Fees) Determination 2015 (No. 1) made under section 127 of the *Construction Occupations (Licensing) Act 2004* revokes DI2014-153 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-194 being the Architects (Fees) Determination 2015 (No. 1) made under section 91 of the *Architects Act 2004* revokes DI2014-149 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-195 being the Electricity Safety (Fees) Determination 2015 (No. 1) made under section 64 of the *Electricity Safety Act 1971* revokes DI2014-154 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-196 being the Gas Safety (Fees) Determination 2015 (No. 1) made under section 67 of the *Gas Safety Act 2000* revokes DI2014-157 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-197 being the Community Title (Fees) Determination 2015 (No. 1) made under section 96 of the *Community Title Act 2001* revokes DI2014-152 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-199 being the Juries (Payment) Determination 2015 made under section 51 of the *Juries Act 1967* revokes DI2014-197 and determines payments made to jurors for the purposes of the Act.

Disallowable Instrument DI2015-200 being the Planning and Development (Land Agency Board) Appointment 2015 (No. 1) made under section 42 of the *Planning and Development Act 2007* and section 79 of the *Financial Management Act 1996* appoints a specified person as chair of the Land Agency Board.

Disallowable Instrument DI2015-201 being the Planning and Development (Land Agency Board) Appointment 2015 (No. 2) made under section 42 of the *Planning and Development Act 2007* and section 79 of the *Financial Management Act 1996* appoints a specified person as deputy chair of the Land Agency Board.

Disallowable Instrument DI2015-202 being the Planning and Development (Land Agency Board) Appointment 2015 (No. 3) made under section 42 of the *Planning and Development Act 2007* and paragraph 78(7)(b) of the *Financial Management Act 1996* appoints a specified person as a member of the Land Agency Board.

Disallowable Instrument DI2015-204 being the Health (Fees) Determination 2015 (No. 1) made under section 192 of the *Health Act 1993* revokes DI2014-320 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-205 being the Planning and Development (Lease Variation Charges) Amendment Determination 2015 (No. 1) made under paragraph 276C(2)(a) and section 276E(1) of the *Planning and Development Act 2007* amends the schedules of codified Lease Variation Charges in DI2011-198.

Disallowable Instrument DI2015-206 being the Nature Conservation (Scientific Committee) Appointment 2015 (No. 2) made under section 36 of the *Nature Conservation Act 2014* appoints specified persons as chair, deputy chair and members of the Scientific Committee.

Disallowable Instrument DI2015-207 being the Public Place Names (Moncrieff) Determination 2015 (No. 5) made under section 3 of the *Public Place Names Act 1989* determines the names of two roads in the Division of Moncrieff.

Disallowable Instrument DI2015-208 being the Racing Appeals Tribunal Appointment 2015 (No. 2) made under section 40 and Schedule 1, section 1.1 of the *Racing Act 1999* revokes DI2014-145 and appoints a specified person as president of the Racing Appeals Tribunal.

Disallowable Instrument DI2015-209 being the Racing Appeals Tribunal Appointment 2015 (No. 3) made under section 40 and Schedule 1, section 1.1 of the *Racing Act 1999* appoints a specified person as deputy president of the Racing Appeals Tribunal.

Disallowable Instrument DI2015-210 being the Racing Appeals Tribunal Appointment 2015 (No. 5) made under section 40 and Schedule 1, section 1.1 of the *Racing Act 1999* appoints a specified person as a member of the Racing Appeals Tribunal.

Disallowable Instrument DI2015-212 being the Public Place Names (Pialligo) Determination 2015 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the name of a road in the Division of Pialligo.

Disallowable Instrument DI2015-214 being the Racing Appeals Tribunal Appointment 2015 (No. 4) made under section 40 and Schedule 1, section 1.1 of the *Racing Act 1999* appoints a specified person as a member of the Racing Appeals Tribunal.

Disallowable Instrument DI2015-215 being the Public Place Names (Molonglo Valley District) Determination 2015 (No. 1) made under section 3 of the *Public Place Names Act 1989* determines the name of a combined major pedestrian, cycleway and sewer bridge in the District of Molonglo Valley.

Disallowable Instrument DI2015-216 being the Planning and Development (Remission of Lease Variation Charges) Determination 2015 (No. 1) made under section 278F of the *Planning and Development Act 2007* determines remission amounts for lease variations to increase the number of dwellings permitted on land where the lease variation charge has been codified.

DISALLOWABLE INSTRUMENTS—COMMENT

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

MINOR DRAFTING ISSUE

Disallowable Instrument DI2015-107 being the Taxation Administration (Amounts Payable—Over 60s Home Bonus Scheme) Determination 2015 (No. 2) made under section 139 of the *Taxation Administration Act 1999* revokes DI2015-6 and DI2014-315 and determines, for the purposes of the Scheme, the eligibility criteria, amounts, conditions, method of calculation of duty payable and the time limit for applications.

Disallowable Instrument DI2015-172 being the Legislative Assembly (Members' Staff) Speaker's Salary Cap Determination 2015 (No. 1) made under subsections 5(3) and 17(4) of the *Legislative Assembly (Members' Staff) Act 1989* revokes DI2014-327 and determines the conditions under which the Speaker may employ staff and engage consultants or contractors, including the salary allocation for the 2015-2016 financial year.

Disallowable Instrument DI2015-173 being the Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2015 (No. 1) made under subsections 10(3) and 20(4) of the *Legislative Assembly (Members' Staff) Act 1989* revokes DI2014-326 and determines the conditions under which Members may employ staff and engage consultants or contractors, including salary allocations for the 2015-2016 financial year.

This first instrument mentioned above relates to the Over 60s Home Bonus Scheme, under which persons over 60 years of age can receive assistance to “downsize” and move to accommodation more suited to their needs. The instrument provides for a reduction in the conveyancing fees payable in relation to any new home purchase, in these circumstances.

Section 2 of the instrument provides:

2 Commencement

This instrument is taken to have commenced on 3 June 2015.

The Minister’s signature block for the instrument indicates that the instrument was made on 29 May 2015. The ACT Legislation Register indicates that the instrument was notified on 2 June 2015. That being so, it is not clear why the terminology “taken to have commenced” is used in section 2 of the instrument. The Committee notes that this terminology is generally used when an instrument has some form of retrospective effect, which seems inappropriate (and confusing) here.

The same comment applies in relation to the second and third instruments mentioned above, which determine the conditions under which the Speaker and Members, respectively, may employ staff and engage consultants or contractors, including salary allocations for the 2015-2016 financial year. In each case, the commencement provision for the instrument states that it is “taken to have commenced on 1 July 2015” while, in each case, the instrument is dated 19 June 2015 and was notified on 25 June 2015.

This comment does not require a response from the Minister.

ISSUES WITH FEES DETERMINATIONS

Disallowable Instrument DI2015-95 being the Road Transport (General) Driver Licence and Related Fees Determination 2015 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2014-89 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-111 being the Machinery (Fees) Determination 2015 made under section 5 of the *Machinery Act 1949* revokes DI2014-129 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-119 being the Nature Conservation (Fees) Determination 2015 (No. 1) made under section 368 of the *Nature Conservation Act 2014* revokes DI2014-161 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-133 being the Legal Profession (Solicitors Practising Fees) Determination 2015 made under section 84 of the *Legal Profession Act 2006* revokes DI2014-194 and determines fees payable for applications for the grant or renewal of a restricted or unrestricted practising certificate.

Disallowable Instrument DI2015-137 being the Court Procedures (Fees) Determination 2015 made under section 13 of the *Court Procedures Act 2004* revokes DI2014-112 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-157 being the Clinical Waste (Fees) Determination 2015 (No. 1) made under section 40 of the *Clinical Waste Act 1990* revokes DI2014-151 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-164 being the Rates, Land Tax and Land Rent (Certificate and Statement Fees) Determination 2015 (No. 1) made under section 78 of the *Rates Act 2004*, section 43 of the *Land Tax Act 2004* and section 32 of the *Land Rent Act 2008* revokes DI2014-179 and determines the fee for the provision of a certificate of rates, land tax, land rent and other charges, and a statement of amounts payable and payments made.

Disallowable Instrument DI2015-174 being the Casino Control (Fees) Determination 2015 (No. 1) made under section 143 of the *Casino Control Act 2006* revokes DI2014-108 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-198 being the Building (Fees) Determination 2015 (No. 1) made under section 150 of the *Building Act 2004* revokes DI2014-150 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-199 being the Juries (Payment) Determination 2015 made under section 51 of the *Juries Act 1967* revokes DI2014-197 and determines payments made to jurors for the purposes of the Act.

Disallowable Instrument DI2015-203 being the Road Transport (General) (Pay Parking Area Fees) Determination 2015 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes DI2014-253 and determines relevant parking fees for Territory-operated pay parking areas.

Disallowable Instrument DI2015-204 being the Health (Fees) Determination 2015 (No. 1) made under section 192 of the *Health Act 1993* revokes DI2014-320 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-213 being the Tobacco (Fees) Determination 2015 (No. 1) made under section 70 of the *Tobacco Act 1927* revokes DI2003-10 and determines fees payable for the purposes of the Act.

In this Scrutiny Report, the Committee has considered many instruments that determine fees payable under various Acts in relation to various matters. In general, the instruments determine fees for the 2015-2016 financial year and increase the fees payable in the 2014-2015 year.

The first instrument mentioned above, made by the Minister for Justice, determines fees payable for driver licence and related transactions under the road transport legislation. In relation to the reason for the fees increases provided for by the instrument—an issue in relation to which the Committee has maintained a keen interest—the Explanatory instrument states:

All fees have increased by the Wages Price Index (WPI) of 2.75%, rounded down to the nearest ten cents.

This explanation is repeated in various other instruments.

The second instrument mentioned above, made by the Minister for Workplace Safety and Industrial Relations, determines fees payable under the *Machinery Act 1946*. In relation to the reason for the fees increases provided for by the instrument, the Explanatory instrument states:

Fees in the 2015-16 Financial Year have been generally increased from fees in the previous Financial Year by an indexation of 4% and rounded to an appropriate value.

Again, this explanation is repeated in various other instruments.

The third instrument mentioned above, made by the Minister for the Environment, determines fees payable under the *Nature Conservation Act 2014*. In relation to the reason for the fees increases provided for by the instrument, the Explanatory instrument states:

The fees for the period from 1 July 2015 to 30 June 2016 represent a maximum increase of 4 per cent on the fees for the 2014-15 financial year, in accordance with ACT Treasury's inflation factor. Appropriate rounding has occurred in relation to increases.

The fourth instrument mentioned above, made by the President of the Law Society of the Australian Capital Territory (on behalf of the Council of the Law Society of the Australian Capital Territory) sets fees payable in relation to the grant of practising certificates to lawyers. In relation to the reason for the fees increases provided for by the instrument, the Explanatory Statement states:

The fees have been increased in line with the Consumer Price Index.

The Explanatory Statement then sets out the amount of each new fee and the amount of the previous fee, with no indication of the percentage of the increases. The percentage increases range between approximately 1% and approximately 3%.

The fifth instrument mentioned above, made by the Attorney-General, sets fees under the *Court Procedures Act 2004*. In relation to the reason for the fees increases provided for by the instrument, the Explanatory Statement states:

Fees in the 2015-16 Financial Year have been generally increased from fees in the previous Financial Year by an indexation of 4% and rounded to an appropriate value.

However, the Explanatory Statement also goes on to state:

Lodgment fee increases for Magistrates Court and Supreme Court civil proceedings

The lodgment fees to initiate civil proceedings in the Magistrates Court (item 1101) and to initiate civil proceedings in the Supreme Court (item 1200) in the 2015-2016 Financial Year for individuals have been increased from fees in the previous Financial Year by an indexation of 4% and then increased by an additional 50% and rounded to an appropriate value.

The lodgment fees for corporations for items 1101 and 1200 for the 2015-2016 Financial Year are twice the amount payable by individuals for the 2015-2016 Financial Year.

The additional revenue to Government from the increases in civil lodgment fees will offset important ACT justice initiatives, the 'Restorative Justice Scheme – Phase 2' and the 'A Fair, Just and Equitable Society – High Density Housing Program'. Both initiatives play an important part in reducing the impact of crime on the community.

The sixth instrument mentioned above, made by the Minister for the Environment, determines fees payable under the *Clinical Waste Act 1990*. In relation to the reason for the fees increases provided for by the instrument, the Explanatory Statement states:

The fees determined for the 2015-16 financial year represent the 2014-15 financial year fees increased in accordance with ACT Treasury's inflation factor of 4%. Appropriate rounding to the nearest 5 cents has occurred in relation to the increases.

This explanation is repeated in various other instruments.

The seventh instrument mentioned above, made by the Treasurer, determines fees payable under various provisions of the Rates Act 2004, the Land Tax Act 2004 and the Land Rent Act 2008. In relation to the reason for the fees increases provided for by the instrument, the Explanatory Statement states:

As announced in the 2014-15 Budget, all ACT Government regulatory service fees will be indexed on a consistent basis from 2014-15, with the indexation rate set at WPI plus 1 per cent (3.75 per cent total for this financial year). Accordingly, for 2015-16 the fee has been increased from \$99 to \$103 (rounded to the nearest dollar).

The fee amount reflects the unique position of the ACT Revenue Office, as it provides information on all charges concerning a parcel of land, including outstanding rates, land tax, land rent and any deferred amounts.

The eighth instrument mentioned above, made by the Minister for Racing and Gaming, determines fees payable under the *Casino Control Act 2006*. In relation to the reason for the fees increases provided for by the instrument, the Explanatory Statement states:

This instrument increases fees in accordance with Government policy which is based on the Wage Price Index estimates for 2015-2016 of 2.75%. Rounding to the nearest dollar has occurred in relation to the increases.

This explanation is repeated in various other instruments.

The ninth instrument mentioned above, made by the Minister for Planning, determines fees payable under the *Building Act 2004*. In relation to the reason for the fees increases provided for by the instrument, the Explanatory Statement states:

The majority of fees determined for the 2015-16 financial year represent the 2014-15 financial year fees increased in accordance with ACT Treasury's inflation factor of 4%. Appropriate rounding has occurred in relation to the increases.

The building levy has been increase to 0.9% of cost works. This funding will be used to undertake the necessary building inspections.

Fees have been rounded to achieve administrative efficiencies.

The tenth instrument mentioned above, made by the Attorney-General, determines amounts payable to jurors under the *Juries Act 1967*. In relation to the reason for the increases to the payments that are provided for by the instrument, the Explanatory Statement states:

The 2015-16 ACT Budget has forecast a CPI of 2% for 2015-16. This index has been applied to the payments set in 2014-15 to calculate the payments for the 2015-16 period.

The eleventh instrument mentioned above, made by the Minister for Justice, determines parking fees payable under the *Road Transport (General) Act 1999*. In relation to the reason for the fees increases provided for by the instrument, the Explanatory Statement states:

The increases in parking fees made by this instrument are consistent with the Government's policies to encourage greater use of sustainable transport options. They are also consistent with a Cabinet decision of 19 May 2015 to increase parking fees by 6% each financial year commencing 1 July 2015.

The twelfth instrument mentioned above, made by the Minister for Health, determines fees payable under the *Health Act 1993*. In relation to the reason for the fees increases provided for by the instrument, the Explanatory Statement states:

The Determination comes into effect on 1 July 2015 and reproduces Determination DI2014-320 [ie the previous determination] except for:

- items on Attachment A, which have increased by the Wage Price Index of 2.75% (subject to rounding);

- items on Attachment B, which have increased by the National Consumer Price Index of 1.30% (subject to rounding);
- items on Attachment C, which have increased or decreased by other factors;
- items on Attachment D, which are new or deleted fees;
- minor wording and formatting changes; and
- the date of effect.

The attachments referred to then list the various fees that are changed.

Finally, the thirteenth instrument mentioned above, made by the Minister for Health, determines fees payable under the *Tobacco Act 1927*. In relation to the reason for the fees increases provided for by the instrument, the Explanatory Statement states:

This instrument comes into effect the day after notification and increases the annual fees payable by \$100 plus the Wage Price Indexation rate of 2.75% (rounded to the nearest dollar) ...

The Explanatory Statement then lists the old and new fees.

The point of setting out the above is to demonstrate the variety of reasons provided for fees increases, etc contained in instruments considered by the Committee for this Scrutiny Report. The examples provided are not intended to be exhaustive but merely indicative.

As the Committee has previously noted, it has always taken a keen interest in fees determinations. In its document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps* (available at http://www.parliament.act.gov.au/in-committees/standing_committees/justice_and_community_safety_legislative_scrutiny_role), the Committee stated:

FEES DETERMINATIONS

The Committee prefers that instruments that determine fees indicate (either in the instrument itself or in the Explanatory Statement) the amount of the “old” fee, the amount of the new fee, any percentage increase **and also the reason for any increase** (eg an adjustment based on the CPI). Given the importance of fees to the administration of the ACT, it assists the Committee (and the Legislative Assembly) if fees determinations expressly identify the magnitude of any fees increases.

The Committee also prefers that fees determinations expressly address the mandatory requirements of subsection 56(5) of the *Legislation Act 2001*, which provides that a fees determination must provide:

- by whom the fee is payable; and
- to whom the fee is to be paid **[emphasis added]**

The Committee notes that the Explanatory Statements for the various fees instruments mentioned above do give the reasons for the fees increases determined by the instrument. The discussion above is intended to demonstrate to the Legislative Assembly the variety in the reasons and explanations provided.

This comment does not require a response from the Minister.

DRAFTING ISSUE

Disallowable Instrument DI2015-149 being the Canberra Institute of Technology (Institute Board Member) Appointment 2015 (No. 1) made under section 8 of the *Canberra Institute of Technology Act 1987* and section 79 of the *Financial Management Act 1996* appoints a specified person, a non-elected member with expertise and knowledge of industry and business, as chair of the Canberra Institute of Technology Institute Board.

Disallowable Instrument DI2015-150 being the Canberra Institute of Technology (Institute Board Member) Appointment 2015 (No. 2) made under section 8 of the *Canberra Institute of Technology Act 1987* and section 79 of the *Financial Management Act 1996* appoints a specified person, a non-elected member with expertise and knowledge of industry and business, as deputy chair of the Canberra Institute of Technology Institute Board.

Disallowable Instrument DI2015-151 being the Canberra Institute of Technology (Institute Board Member) Appointment 2015 (No. 3) made under section 8 of the *Canberra Institute of Technology Act 1987* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member of the Canberra Institute of Technology Institute Board, with expertise in industry and business, or vocational education and training and digital learning, or social policy issues including access, equity and diversity issues, or finance, or governance, human resources, risk management, or law.

Disallowable Instrument DI2015-152 being the Canberra Institute of Technology (Institute Board Member) Appointment 2015 (No. 4) made under section 8 of the *Canberra Institute of Technology Act 1987* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member of the Canberra Institute of Technology Institute Board, with expertise in industry and business, or vocational education and training and digital learning, or social policy issues including access, equity and diversity issues, or finance, or governance, human resources, risk management, or law.

Disallowable Instrument DI2015-153 being the Canberra Institute of Technology (Institute Board Member) Appointment 2015 (No. 5) made under section 8 of the *Canberra Institute of Technology Act 1987* and section 78 of the *Financial Management Act 1996* appoints a specified person as the student member of the Canberra Institute of Technology Institute Board.

The instruments mentioned above appoint various specified persons as Members (and, in some cases, as the Chair and the Deputy Chair) of the Board of the Canberra Institute of Technology. Each of the instruments is dated 26 June 2015 and each was notified on 29 June 2015.

The Committee notes that, in each case, both the instrument and the Explanatory Statement for the instrument cites section 8 of the *Canberra Institute of Technology Act 1987* (Principal Act) as the authority for the appointment. Sections 10 and 11 of that Act are also referred to. The Committee notes that those section numbers reflect the numbers given to the relevant sections by amendments made by section 11 of the *Canberra Institute of Technology Amendment Act 2014* (Amendment Act), which inserted the relevant provisions into the Principal Act, with effect from 1 July 2015. The Committee also notes that only the Explanatory Statement to the last-mentioned instrument above refers to the relevance of the Amendment Act.

The Committee notes that (as indicated by the relevant entry on the ACT Legislation Register), when the amendments were incorporated into the Principal Act, they were re-numbered. In the renumbered Principal Act, section 9 provides for the establishment of the Board and section 10 provides for the membership of the Board. The Committee notes that the re-numbering is consistent with sections 114, 116 and 118 of the *Legislation Act 2001*. However, the Committee also notes that the way that the instruments are presented (including in the Explanatory Statements) may cause some confusion to the reader of the instruments, in seeking out the relevant empowering provisions.

In making this comment, the Committee also notes that the common law recognises that an incorrect reference to an empowering provision does not operate to invalidate the making of delegated legislation and that as long as there is an empowering provision, the authority to make the delegated legislation will not be in doubt (see Pearce, D and Argument, S, *Delegated Legislation in Australia* (4th edition), paragraphs 13.20 to 13.24).

This comment does not require a response from the Minister.

NO EXPLANATION FOR FEES INCREASES

Disallowable Instrument DI2015-179 being the Public Pools (Active Leisure Centre Fees) Determination 2015 (No. 1) made under section 54 of the *Public Pools Act 2015* determines fees payable for the purposes of the Act.

Disallowable Instrument DI2015-181 being the Working with Vulnerable People Background Checking (Fees) Determination 2015 (No. 1) made under section 68 of the *Working with Vulnerable People (Background Checking) Act 2011* repeals DI2014-200 and determines the fees for services provided by the Working With Vulnerable People Screening Unit.

The first instrument mentioned above determines fees payable under the *Public Pools Act 2015* for the use of public pool facilities, from 1 July 2015. The Committee notes that, while the instrument states the fee payable (under the previous Act) from 1 July 2014, thereby allowing the Legislative Assembly to assess the magnitude of the fees increases, no explanation is provided for the fees increases.

The second instrument mentioned above determines fees payable under the *Working with Vulnerable People (Background Checking) Act 2011*. While the Explanatory Statement for the instrument indicates that the instrument “increases” the fees payable under the previous instrument (which is revoked by this instrument), no indication is given either as to what the fee has been increased from, not of the reasons for the increase. A check of the previous instrument indicates that one of the fees imposed has been increased from \$73.00 to \$76.00.

As the Committee has previously noted, it has always taken a keen interest in fees determinations. In its document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps* (available at http://www.parliament.act.gov.au/in-committees/standing_committees/justice_and_community_safety_legislative_scrutiny_role), the Committee stated:

FEES DETERMINATIONS

The Committee prefers that instruments that determine fees indicate (either in the instrument itself or in the Explanatory Statement) the amount of the “old” fee, the amount of the new fee, any percentage increase **and also the reason for any increase** (eg an adjustment based on the CPI). Given the importance of fees to the administration of the ACT, it assists the Committee (and the Legislative Assembly) if fees determinations expressly identify the magnitude of any fees increases.

The Committee also prefers that fees determinations expressly address the mandatory requirements of subsection 56(5) of the *Legislation Act 2001*, which provides that a fees determination must provide:

- by whom the fee is payable; and
- to whom the fee is to be paid [emphasis added]

The Committee notes that the Explanatory Statements for the fees instruments mentioned above do not give the reasons for the fees increases determined by the instrument. While, at this time of the year, the Committee expects that fees increases will be Budget-related, the Committee reminds Ministers that it prefers that Explanatory Statements for fees instruments address all of the Committee’s various requirements.

This comment does not require a response from the Minister.

DISAPPLICATION OF SUBSECTION 47(6) OF THE LEGISLATION ACT 2001

Disallowable Instrument DI2015-183 being the Taxation Administration (Amounts Payable—Motor Vehicle Duty) Determination 2015 (No. 1) made under section 139 of the *Taxation Administration Act 1999* revokes DI2010-133 and determines the duty payable on the application to register a motor vehicle.

This instrument determines amounts of duty payable under the Taxation Administration Act 1999 in relation to an application to register a motor vehicle. The instrument refers to the Green Vehicle Guide, in defining the concept of a **non-rated vehicle**. Section 5 of the instrument displaces subsection 47(6) of the *Legislation Act 2001* in relation to the Green Vehicle Guide. As a note to section 5 states, this means that the Green Vehicle Guide is not a “notifiable instrument” under the Legislation Act and, in turn, that there is no obligation to publish the Green Vehicle Guide (and any amendments to it) on the ACT Legislation Register. However, an internet address is provided for the Green Vehicle Guide.

The Committee normally expects that if subsection 47(6) of the Legislation Act is disapplied, an explanation is provided as to why this is thought to be justified. This reflects the view that legislation—any material relied upon by legislation—should be accessible to users of legislation, usually on the ACT Legislation Register. In this case, no explanation is provided.

However, the Committee notes that this instrument revokes an earlier instrument—DI2010-133. The Committee also notes that the earlier instrument also disapplied subsection 47(6) and that the Explanatory Statement for the instrument contained the following statement:

This instrument specifies that section 47(6) of the *Legislation Act 2001* does not apply to the Green Vehicle Guide. That section would require the text of the Green Vehicle Guide to be remade as a new Notifiable Instrument every time the Green Vehicle Guide is amended, which is as frequent as 2-3 times per week, whenever a new vehicle model becomes available for sale. The displacement of that section will ensure that the Green Vehicle Guide can be applied automatically for the purposes of this instrument when it is amended by the Commonwealth without the requirement to continually remake it as a Notifiable Instrument.

The Committee assumes that this explanation applies equally to the current instrument. **However, the Committee seeks the Minister’s advice as to the reasons for the disapplication of subsection 47(6) of the *Legislation Act 2001* in relation to this instrument.**

SUBORDINATE LAWS—NO COMMENT

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

Subordinate Law SL2015-20 being the Magistrates Court (Nature Conservation Infringement Notices) Regulation 2015 made under Part 3.8 of the *Magistrates Court Act 1930* provides for the issuing of infringement notices for certain offences against the *Nature Conservation Act 1980*.

Subordinate Law SL2015-21 being the Liquor Amendment Regulation 2015 (No. 1) made under the *Liquor Act 2010* removes the prohibition on a liquor serving counter for an outdoor dining area at licensed premises.

Subordinate Law SL2015-22 being the Court Procedures Amendment Rules 2015 (No. 2) made under section 7 of the *Court Procedures Act 2004* amends the *Court Procedures Rules*.

Subordinate Law SL2015-23 being the Nature Conservation Regulation 2015 made under the *Nature Conservation Act 2014* enhances management of areas for conservation by identifying additional areas to be included as reserves, and supports administration of suitable nature conservation licences.

SUBORDINATE LAWS—COMMENT

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

*INCREASES IN INFRINGEMENT NOTICE PENALTIES***Subordinate Law SL2015-25 being the Road Transport (Offences) Amendment Regulation 2015 (No. 1) made under section 23 of the Road Transport (General) Act 1999 increases infringement notice penalties.**

This subordinate law increases infringement notice penalties for offences under the *Road Transport (General) Act 1999*. The Committee notes that, by way of explanation for the penalty increases, the Explanatory Statement for the subordinate law states:

Infringement notice penalties are being increased by 6% (in accordance with the 2014–15 Budget decision that the Government will set the Traffic and Parking fines indexation to 6% in 2014-15 and over each year of the forward estimates). An additional one-off 57 cent increase was applied in 2014–15 to transport related fees and charges, including infringement notice penalties, to provide ongoing funding for the alcohol interlock program.

An increase in the Victims Services Levy from \$30 to \$40 was announced in the 2015–16 Budget. Most road transport infringement notice penalty amounts include a component, not identified separately, accounting for the Victims Services Levy.

Offences to which the Victims Services Levy is intended to apply have generally been increased by an additional \$10 to account for the increase in the Victims Services Levy.

All infringement penalty amounts are rounded down to the nearest dollar.

Given the extensive discussion in this Scrutiny Report of fees increases and the justification for those increases, the Committee draws the attention of the Legislative Assembly to the statements above.

This comment does not require a response from the Minister.

*AMENDMENT OF PRIMARY LEGISLATION BY DELEGATED LEGISLATION – RELIANCE ON “HENRY VIII” CLAUSE***Subordinate Law SL2015-26 being the Nature Conservation (Transitional Provisions) Regulation 2015 made under the Nature Conservation Act 2014 provides that transitional lists constitute threatened native species or ecological communities lists for the purposes of the Act.**

The Committee notes that section 5 of this subordinate law has the effect of inserting a new section 404A into the *Nature Conservation Act 2014*. New subsection 404A(1) provides that a “threatened native species list” made by the Minister under section 63 of the Nature Conservation Act is taken, if notified, to be a list of threatened native species notified under paragraph 91(2)(a) of the Nature Conservation Act. New subsection 404A(2) provides that a “threatened ecological communities list” made by the Minister under section 69 of the Nature Conservation Act is taken, if notified, to be a list of threatened ecological communities notified under paragraph 91(2)(b) of the Nature Conservation Act.

The subordinate law is made under section 414 of the Nature Conservation Act, which provides:

414 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive’s opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

The Committee notes that it has consistently queried whether, in fact, a provision such as subsection 414(3) correctly reflects the law in the ACT. Subsection 414(3) would appear to contradict the power of the Legislative Assembly, under the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), to make laws from time to time, including (of course) at a time subsequent to the making of the earlier law. It might also be seen as an ineffective attempt to entrench a regulation made under subsection 414(3).

That issue aside, the Committee notes that section 414 is a “Henry VIII” clause, in that it allows the effective amendment (or, in this case, the “modification”) of primary legislation by delegated legislation (see the Committee’s *Henry VIII clauses – Fact sheet* http://www.parliament.act.gov.au/__data/assets/pdf_file/0005/434345/HenryVIII-Fact-Sheet.pdf).

The Explanatory Statement for the subordinate law provides the following explanation:

Transitional sections 402-404 of the [Nature Conservation] Act deem species or ecological communities in a declaration under the 1980 Act to be “eligible species” or “eligible communities” for the purpose of sections 63 and 69 respectively. This permits the Minister to make the relevant transitional lists under ss 63, 69 as threatened species/ecological communities list. The purpose of the transitional provisions is that the transitional lists constitute threatened native species lists or threatened ecological communities lists for the purposes of the Act as whole.

In preparing the transitional lists it became apparent that the achievement of this purpose is not beyond doubt because of an unintended break in the connection between relevant provisions and the definition of a “threatened species list” under section 62 of the Act.

Section 62 of the Act defines a “threatened species list” as a list notified under section 91 of the Act following the Minister’s consideration of recommendations by the Scientific Committee under section 87. The section 87 process clearly does not apply to the transitional list of threatened species and therefore section 91 does not apply. It is then arguable that the section 62 definition does not apply to this transitional list as intended.

To cover the above gap, the transitional regulation modifies chapter 20 of the Act by inserting new section 404A (refer to clause 5 of the transitional regulation). New section 404A deems a list made under section 63 of the Act to be a list notified under section 91 of the Act. This will ensure that the list meets the terms of the definition of a “threatened species list” under section 62 of the Act. Section 62 of the Act defines a threatened species list as a list notified under section 91.

Similar provision has been made in this transitional regulation for the threatened ecological communities transitional list in connection with sections 68, 69 and 91 of the Act.

As a result of this regulation the proposed transitional lists will be able to be made under a combination of the existing transitional provisions of the Act and new section 404A inserted by the transitional regulation.

The Committee notes that, while “Henry VIII” provisions are generally frowned upon by the Committee (and by committees performing a similar role to the Committee), this subordinate law is evidently within the power provided for by section 414 of the Nature Conservation Act, which has been approved by the Legislative Assembly. The Committee also notes, with approval, that section new 404A (and, indeed section 414 of the Nature Conservation Act) expires two years after the commencement of the Nature Conservation Act, meaning that, in line with the proposition that they are “transitional” provisions, the section has a time-limited operation.

This comment does not require a response from the Minister.

GOVERNMENT RESPONSE

The Committee has received a response from the Attorney-General, dated 3 August 2015, in relation to comments made in Scrutiny Report 34 concerning the Liquor Amendment Bill 2015 ([attached](#)).

The Committee wishes to thank the Attorney-General for his helpful response.

Steve Dospot MLA
Chair

10 August 2015

OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

Report 3, dated 25 February 2013

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

Report 27, dated 3 February 2015

Public Sector Bill 2014

Report 33, dated 26 May 2015

Subordinate Law SL2015-13 - Dangerous Substances (General) Amendment Regulation 2015 (No. 2), including a regulatory impact statement

Report 34, dated 28 July 2015

Mental Health Bill 2015



Simon Corbell MLA

DEPUTY CHIEF MINISTER

ATTORNEY-GENERAL

MINISTER FOR HEALTH

MINISTER FOR THE ENVIRONMENT

MINISTER FOR CAPITAL METRO

MEMBER FOR MOLONGLO

Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mr Doszpot

Thank you for Scrutiny of Bills Report No. 34 of 28 July 2015. I offer the following response in relation to the Committee's comments on the *Liquor Amendment Bill 2015*.

Apparent contradiction in drafting

The Committee noted that it had difficulty understanding the inter-relationship between proposed subsections 204A(1) and 204A(3), that there is an apparent contradiction, and suggested redrafting to make the situation clearer.

After reconsidering the drafting of new section 204A, it is not clear to me that there is a contradiction between subsections (1) and (3). I offer the following information to the Committee to assist in understanding the operation of new section 204A.

New section 204A inserts two offences into the Liquor Act. The first offence reflected in the operation of subsections (1) and (2), of supplying liquor to a child or young person at a private place, only applies to people who are not:

- a parent or guardian of the child or young person; or
- authorised by a parent or guardian of a child or young person to supply liquor to the child or young person.

It is important to note that subsection (2) operates as an exception to the offence, it is not a defence.

The second offence of supplying liquor to a child or young person at a private place reflected in the operation of subsections (3) and (4) only applies to people who are:

- a parent or guardian of the child or young person; or
- authorised by a parent or guardian of a child or young person to supply liquor to the child or young person; and where
- the supply is not consistent with responsible supervision.

ACT LEGISLATIVE ASSEMBLY

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Subsection (4) operates as an exception to the offence, it is not a defence.

New section 204A was constructed in consultation with the ACT's Director of Public Prosecutions, and is also consistent with the construction of similar offences in Queensland and the Northern Territory.

Characteristics of offences

The Committee also notes that it could be argued that a criminal offence should not have the following characteristics:

- difficult for people to make an assessment about whether their behaviour could be subject to the offence;
- broad discretion for the police to determine whether to lay a charge; and
- opportunity for courts to determine matters relevant to the operation of the offence.

I do not support this argument. Criminal offences which involve these characteristics are extremely common across the statute book. The offences of 'neglect' and 'offensive behaviour' in the *Crimes Act 1900* are examples of offences in the ACT, which may be similarly characterised.

Subsection 204A(5) is designed to provide guidance about the range of matters that would be relevant to determining whether supply is consistent with the responsible supervision of a child or young person. This legislative guide, combined with the proposed information and education strategy that will be implemented prior to the commencement of new section 204A, will assist the community in understanding the types of behaviour which would be subject to the offence.

It is not unusual for police discretion to be exercised in deciding whether to charge particular offences. For some offences, the capacity for police to exercise discretion is important, as it is not possible, in the construction of the offence, to encompass all conduct that is intended to be made criminal, and clearly exclude all other conduct. Discretion is also important to ensure that laws are applied fairly and do not have harsh or intolerable results in the variety of circumstances in which they arise. ACT Policing officers maintain discretions about whether to charge people for a large number of offences in the ACT, and are appropriately trained and educated about exercising these discretions within the scope of their powers.

It is also not unusual for offences to be subject to court interpretation. Indeed, it is unlikely that legislation can ever be drafted with such precision and clarity that interpretation would not be required. In undertaking judicial interpretation, our courts operate within the confines of the rule of law, and it is always open to the legislature to legislate should judicial interpretation move beyond the intended operation of a provision.

Practical operation of the offence

Finally, the Committee notes that the activity being regulated commonly occurs in households in the Territory, and many people will be brought within its ambit.

As is noted in the explanatory statement, the offences are not designed to restrict the practice within the Australian community where some parents choose to permit the occasional consumption of limited amounts of alcohol, under supervision within the family environment.

The offences are directed at unauthorised and irresponsible supply of liquor to children or young people.

Anecdotal evidence from some of the other jurisdictions that have similar offences is that a very small number of people have been charged. For example, in Tasmania, since the offence was enacted in 2009, only approximately ten people have been charged.

I thank the Committee for its consideration of this Bill.

Yours sincerely

Simon Corbell MLA
Attorney-General