



Legislative Assembly for the ACT

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

Scrutiny Report

9 December 2004

Report 1

TERMS OF REFERENCE

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

- (a) consider whether any instrument of a legislative nature made under an Act which is subject to disallowance and or disapproval by the Assembly (including a regulation, rule or by-law):
 - (i) is in accord with the general objects of the Act under which it is made;
 - (ii) unduly trespasses on rights previously established by law;
 - (iii) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contains matter which in the opinion of the committee should properly be dealt with in an Act of the Legislative Assembly;
- (b) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Committee;
- (c) consider whether the clauses of bills introduced into the Assembly:
 - (i) unduly trespass on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
- (d) report to the Assembly on these or any related matter and if the Assembly is not sitting when the Committee is ready to report on bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

HUMAN RIGHTS ACT 2004

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

MEMBERS OF THE COMMITTEE

MR BILL STEFANIAK, MLA (CHAIR)
MS KARIN MACDONALD, MLA (DEPUTY CHAIR)
DR DEB FOSKEY, MLA

LEGAL ADVISER: MR PETER BAYNE
SECRETARY: MR MAX KIERMAIER
(SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)
ASSISTANT SECRETARY: MS ANNE SHANNON
(SCRUTINY OF BILLS AND SUBORDINATE
LEGISLATION COMMITTEE)

ROLE OF THE COMMITTEE

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

BILLS:

Bills - No Comment

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

Road Transport (General) Amendment Bill 2004

This Bill would amend the *Road Transport (General) Act 1999* (the Act) to clarify the legal effect of Ministerial Declarations made under sections 12 and 13 of Act. In particular, the amendments would affect, by way of removing doubt, the operation of third-party policies in areas, in relation to vehicles, the subject of declarations made by a Minister under sections 12 and 13 of the Act.

Territory Owned Corporations Amendment Bill 2004 (No 2)

This Bill would amend the *Territory Owned Corporations Act 1990* (the Act) to allow the company known as Rhodium Asset Solutions Limited to be a Territory owned corporation by substituting it for Totalcare Industries Limited in Schedule 1 of the Act.

SUBORDINATE LEGISLATION

Subordinate Legislation – No Comment

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

Disallowable Instrument DI2004-178 being the Occupational Health and Safety (Codes of Practice for Noise) Approval 2004 made under section 206 of the *Occupational Health and Safety Act 1989* revokes Disallowable Instrument 2001-27 and approves the National Standard for Occupational Noise and the National Code of Practice for Noise Management and Protection of Hearing at Work.

Disallowable Instrument DI2004-179 being the Architects Board Appointment 2004 (No. 1) made under subsection 70(2) of the *Architects Act 2004* appoints specified persons to the Australian Capital Territory Architects Board.

Disallowable Instrument DI2004-181 being the Gaming Machine (Fees) Determination 2004 made under section 177 of the *Gaming Machine Act 2004* determines new fees payable under the Act.

Disallowable Instrument DI2004-182 being the Cultural Facilities Corporation (Designated Location) Declaration 2004 (No. 1) made under section 3A of the *Cultural Facilities Corporation Act 1997* declares Mugga Mugga (Block 6, Section 103, Symonston) as a designated location.

Disallowable Instrument DI2004-184 being the Gaming Machine (Warning Notices) Determination 2004 made under section 151 of the *Gaming Machine Act 2004* determines the form, minimum dimensions and text of warning notices.

Disallowable Instrument DI2004-185 being the Attorney General (Fees) Amendment Determination 2004 (No. 1) made under subsection 50(1) of the *Security Industry Act 2003* amends the Attorney-General (Fees) Determination 2004 (DI2004-106), as amended.

Disallowable Instrument DI2004-186 being the Road Transport (General)(Fees) Determination 2004 (No. 2) made under section 96 of the *Road Transport (General) Act 1999* revokes Disallowable Instruments DI2004-126, DI2000-180 and DI2001-117 and determines the application fees payable for various kinds of heavy vehicle permits.

Disallowable Instrument DI2004-187 being the Land (Planning and Environment) Refund Authorisation Criteria Determination 2004 made under subsection 178(4) of the *Land (Planning and Environment) Act 1991* revokes Disallowable Instrument DI2003-192 and determines criteria for the authorisation of a refund upon the surrender or termination of a lease of Territory land.

Disallowable Instrument DI2004-188 being the Land (Planning and Environment) Lease Transfer Consent Determination 2004 made under section 180 of the *Land (Planning and Environment) Act 1991* revokes Disallowable Instrument DI2003-249 and determines matters to be considered before the granting of a transfer of lease.

Disallowable Instrument DI2004-189 being the Stadiums Authority Appointment 2004 (No. 3) made under section 11 of the *Stadiums Authority Act 2000* appoints a specified person as a member of the Stadiums Authority Board.

Disallowable Instrument DI2004-190 being the Plumbers, Drainers and Gasfitters Board (Fees) Revocation 2004 made under section 46 of the *Plumbers, Drainers and Gasfitters Board Act 1982* revokes Disallowable Instrument DI2004-98.

Disallowable Instrument DI2004-191 being the Utilities (Water Restriction Scheme) Approval 2004 (No. 1) made under section 234 of the *Utilities Act 2000* and regulation 5 of the *Utilities (Water Restrictions) Regulations 2002* revokes Disallowable Instrument DI2003-266 and provides different stages of restrictions on the use of water, depending on the water storage at the time or the quantity of potable quality water available.

Disallowable Instrument DI2004-192 being the Building (Government Building Certification) (Fees) Determination 2004 made under section 108 of the *Building Act 1972 (repealed)* and section 150 of the *Building Act 2004* revokes Disallowable Instrument DI2003-91 and determines the fees payable for the provision of Government building certificate services.

Disallowable Instrument DI2004-193 being the Building (Fees) Determination 2004 (No. 2) made under section 108 of the *Building Act 1972 (repealed)* and section 150 of the *Building Act 2004* revokes Disallowable Instrument DI2004-101 and determines the fees payable for the purposes of the Act.

Disallowable Instrument DI2004-195 being the Electricity Safety (Fees) Determination 2004 (No. 2) made under section 128 of the *Electricity Safety Act 1971* revokes Disallowable Instrument DI2004-99 and determines the fees payable for the purposes of the Act.

Disallowable Instrument DI2004-196 being the University of Canberra Council Appointment 2004 (No. 4) made under paragraph 11(1)(d) of the *University of Canberra Act 1989* appoints a specified person as a member of the Council of the University of Canberra.

Disallowable Instrument DI2004-197 being the University of Canberra Council Appointment 2004 (No. 5) made under paragraph 11(1)(d) of the *University of Canberra Act 1989* appoints a specified person as a member of the Council of the University of Canberra.

Disallowable Instrument DI2004-198 being the Radiation (Fees) Determination 2004 (No. 1) made under section 77 of the *Radiation Act 1983* revokes Disallowable Instrument DI2003-247 and determines the fees payable under the Act.

Disallowable Instrument DI2004-199 being the Racing Appeals Tribunal Appointment 2004 (No. 2) made under sections 40 and 42 of the *Racing Act 1999* revokes Disallowable Instrument DI2004-183 and appoints specified persons as members of the Racing Appeals Tribunal.

Disallowable Instrument DI2004-200 being the Workers Compensation Supplementation Fund Appointment 2004 (No. 2) made under section 14 of the *Workers Compensation Supplementation Fund Act 1980* appoints a specified person as a member of the Insurers Advisory Committee.

Disallowable Instrument DI2004-201 being the Domestic Animals (Cat Curfew Area) Declaration 2004 (No. 1) made under subsection 81(1) of the *Domestic Animals Act 2004* provides 24 hours a day cat curfew in the suburbs of Bonner and Forde, as well as Mulligans Flat and Goorooyarroo Nature Reserves.

Disallowable Instrument DI2004-202 being the Agents (Qualifications for Auditors) Determination 2004 (No. 1) made under section 114 of the *Agents Act 2003* determines the category of auditors able to undertake audits of agents' trust accounts.

Disallowable Instrument DI2004-203 being the Utilities (Variation of Industry Code) Approval 2004 (No. 1) made under section 61 of the *Utilities Act 2000* expands the meaning of "informed consent" to include consent that is made electronically.

Disallowable Instrument DI2004-204 being the Utilities (Variation of Industry Code) Approval 2004 (No. 2) made under section 61 of the *Utilities Act 2000* expands the meaning of "informed consent" to include consent that is made electronically.

Disallowable Instrument DI2004-205 being the Road Transport (General) (Parking Ticket Fees) Determination 2004 (No. 1) made under section 96 of the *Road Transport (General) Act 1999* revokes Disallowable Instrument DI2003-329 and determines the fees payable for short stay on-street parking where parking tickets are obtain from ticket machines in the vicinity of the Section 84 redevelopment.

Disallowable Instrument DI2004-206 being the **Attorney General (Fees) Amendment Determination 2004 (No. 2)** made under section 37 of the *Supreme Court Act 1933* amends the **Attorney-General (Fees) Determination 2004 (DI2004-106)**, as amended.

Disallowable Instrument DI2004-207 being the **Land (Planning and Environment) (Change of Use Charge Remission-Prohibition of Smoking) Policy Direction 2004 (No. 1)** made under regulation 21 of the *Land (Planning and Environment) Regulations 1992* determines the circumstances under which the change of use charge is remitted.

Disallowable Instrument DI2004-208 being the **Road Transport (General) (Application of Road Transport Legislation) Declaration 2004 (No. 9)** made under section 12 of the *Road Transport (General) Act 1999* declares the road transport legislation applies to certain areas that are open to or used by the public.

Disallowable Instrument DI2004-209 being the **Land (Planning and Environment) (Remission of Change of Use Charge) Policy Direction 2004 (No. 1)** made under regulations 21 and 32 of the *Land (Planning and Environment) Regulations 1992* revokes **Disallowable Instrument DI2003-250** and determines remissions of change of use charges in one circumstance.

Disallowable Instrument DI2004-210 being the **Land (Planning and Environment) (Remission of Change of Use Charge) Policy Direction 2004 (No. 2)** made under regulations 21 and 32 of the *Land (Planning and Environment) Regulations 1992* determines remissions of change of use charges in one circumstance.

Disallowable Instrument DI2004-211 being the **Occupational Health and Safety Council Appointment 2004 (No. 7)** made under paragraph 21(1)(a) of the *Occupational Health and Safety Act 1989* appoints a specified person as an acting member of the Occupational Health and Safety Council.

Disallowable Instrument DI2004-212 being the **Victims of Crime (Victims Assistance Board) Appointment 2004 (No. 4)** made under the *Victims of Crime Act 1994* and paragraph 8(1)(d) of the *Victims of Crime Regulations 2000* appoints a specified person as a member of the Victims Assistance Board of the Australian Capital Territory.

Disallowable Instrument DI2004-215 being the **Long Service Leave (Building and Construction Industry) Board Appointment 2004 (No. 3)** made under section 9 of the *Long Service Leave (Building and Construction Industry) Act 1981* appoints a specified person as an acting member of the Board.

Disallowable Instrument DI2004-216 being the **Public Place Names (Belconnen) Determination 2004 (No. 1)** made under section 3 of the *Public Place Names Act 1989* determines the names of public places at Lake Ginninderra in the suburb of Belconnen as specified.

Disallowable Instrument DI2004-217 being the **Public Place Names (Greenway) Determination 2004 (No. 2)** made under section 3 of the *Public Place Names Act 1989* determines the names of public places at Lake Tuggeranong in the suburb of Greenway as specified.

Disallowable Instrument DI2004-218 being the Long Service Leave (Building and Construction Industry) Board Appointment 2004 (No. 4) made under section 9 of the *Long Service Leave (Building and Construction Industry) Act 1981* appoints a specified person as an acting member of the Board.

Disallowable Instrument DI2004-219 being the Workers Compensation Supplementation Fund Appointment 2004 (No. 3) made under section 14 of the *Workers Compensation Supplementation Fund Act 1980* appoints a specified person as a member of the Insurers Advisory Committee.

Disallowable Instrument DI2004-222 being the Road Transport (General) Nominal Defendant Revocation and Appointment 2004 (No. 1) made under section 215 of the *Road Transport (General) Act 1999* revokes Disallowable Instrument DI2001-95 and appoints a specified person as the Nominal Defendant.

Disallowable Instrument DI2004-223 being the Road Transport (General) (Application of Road Transport Legislation) Declaration 2004 (No. 10) made under section 12 of the *Road Transport (General) Act 1999* declares the road transport legislation does not apply to the ACT roads and road related areas used by vehicles competing in the ACT timed special stages of the Brindabella Motor Sport Club 2004 Caltex Airport Starmart Rally.

Disallowable Instrument DI2004-224 being the Residential Tenancies Tribunal Appointment 2004 (No. 1) made under subsection 112(1) of the *Residential Tenancies Act 1997* appoints a specified person as President of the Residential Tenancies Tribunal.

Disallowable Instrument DI2004-225 being the Residential Tenancies Tribunal Appointment 2004 (No. 2) made under subsection 113(1) of the *Residential Tenancies Act 1997* appoints a specified person as acting President of the Residential Tenancies Tribunal.

Disallowable Instrument DI2004-226 being the Rehabilitation of Offenders (Interim) (Sentence Administration Board) Appointment 2004 (No. 2) made under section 68 of the *Rehabilitation of Offenders (Interim) Act 2001* appoints a specified person as Chairperson of the Sentence Administration Board.

Disallowable Instrument DI2004-227 being the Rehabilitation of Offenders (Interim) (Sentence Administration Board) Appointment 2004 (No. 3) made under section 68 of the *Rehabilitation of Offenders (Interim) Act 2001* appoints a specified person as a non-judicial member of the Sentence Administration Board.

Disallowable Instrument DI2004-228 being the Land (Planning and Environment) (Fees) Determination 2004 (No. 4) made under section 287 of the *Land (Planning and Environment) Act 1991* revokes Disallowable Instrument DI2004-175 and determines the fees payable for the purposes of the Act.

Disallowable Instrument DI2004-229 being the Public Sector Management Amendment Standard 2004 (No. 7) made under section 251 of the *Public Sector Management Act 1994* amends the Management Standards.

Disallowable Instrument DI2004-233 being the Long Service Leave (Contract Cleaning Industry) Board Appointment 2004 (No. 2) made under section 10 of the *Long Service Leave (Contract Cleaning Industry) Act 1999* appoints a specified person as an acting member of the Board.

Disallowable Instrument DI2004-234 being the Gene Technology (GM Crop Moratorium) Moratorium Order 2004 (No. 1) made under section 7 of the *Gene Technology (GM Crop Moratorium) Act 2004* prohibits the cultivation in the open environment of a specified variety of canola plant tolerant to the herbicide glufosinate ammonium due to genetic modification.

Disallowable Instrument DI2004-235 being the Gene Technology (GM Crop Moratorium) Moratorium Order 2004 (No. 2) made under section 7 of the *Gene Technology (GM Crop Moratorium) Act 2004* prohibits the cultivation in the open environment of a specified variety of canola plant tolerant to the herbicide glyphosate due to genetic modification.

Disallowable Instrument DI2004-236 being the Rehabilitation of Offenders (Interim) (Sentence Administration Board) Appointment 2004 (No. 4) made under paragraph 68(1)(a) of the *Rehabilitation of Offenders (Interim) Act 2001* revokes Disallowable Instrument DI2004-226 and appoints a specified person as Chairperson of the Sentence Administration Board.

Disallowable Instrument DI2004-237 being the Long Service Leave (Contract Cleaning Industry) Board Appointment 2004 (No. 1) made under section 10 of the *Long Service Leave (Contract Cleaning Industry) Act 1999* appoints a specified person as a member of the Board.

Disallowable Instrument DI2004-239 being the Long Service Leave (Contract Cleaning Industry) Board Appointment 2004 (No. 4) made under section 10 of the *Long Service Leave (Contract Cleaning Industry) Act 1999* appoints a specified person as an acting member of the Board.

Disallowable Instrument DI2004-240 being the Long Service Leave (Contract Cleaning Industry) Board Appointment 2004 (No. 5) made under section 10 of the *Long Service Leave (Contract Cleaning Industry) Act 1999* appoints a specified person as Chairperson of the Board.

Disallowable Instrument DI2004-241 being the Long Service Leave (Building and Construction Industry) Board Appointment 2004 (No. 5) made under section 8 of the *Long Service Leave (Building and Construction Industry) Act 1981* appoints a specified person as Chairperson of the Board.

Disallowable Instrument DI2004-242 being the Gungahlin Drive Extension Authorisation 2004 (No. 2) made under section 230 of the *Gungahlin Drive Extension Authorisation Act 2004* approves Development Application No. 200400336.

Disallowable Instrument DI2004-243 being the Domestic Violence Prevention Council Appointment 2004 (No. 2) made under section 6 of the *Domestic Violence Agencies Act 1986* appoints specified persons as members of the Domestic Violence Prevention Council.

Disallowable Instrument DI2004-244 being the Legal Aid (Commissioner (Law Society Nominee)) Appointment 2004 made under paragraph 7(1)(e) and subsection 7(3) of the *Legal Aid Act 1977* appoints a specified person as a part-time Commissioner of the Legal Aid Commission.

Disallowable Instrument DI2004-245 being the Road Transport (General) (Application of Road Transport Legislation) Declaration 2004 (No. 11) made under section 12 of the *Road Transport (General) Act 1999* declares the road transport legislation does not apply to the ACT roads and road related areas used by vehicles competing in the ACT timed special stages of the Light Car Club of Canberra 2004 Canberra Rally Experience.

Disallowable Instrument DI2004-247 being the Education (Constitution of School Boards of School-Related Institutions and Other Schools in Special Circumstances) Determination 2004 (No. 1) made under section 43 of the *Education Act 2004* sets in place the constitution of school boards of school-related institutions and other schools in special circumstances.

Disallowable Instrument DI2004-248 being the Hotel School Appointment 2004 (No. 5) made under section 25 of the *Hotel School Act 1996* appoints a specified person as Director of the Australian International Hotel School.

Disallowable Instrument DI2004-249 being the Land (Planning and Environment) ACT Heritage Council Appointment 2004 (No. 1) made under sections 96 and 99 of the *Land (Planning and Environment) Act 1991* appoints a specified person as an expert member and Deputy Chairperson of the ACT Heritage Council.

Disallowable Instrument DI2004-250 being the Land (Planning and Environment) ACT Heritage Council (Members) Appointment 2004 (No. 1) made under section 96 of the *Land (Planning and Environment) Act 1991* appoints specified persons as members of the ACT Heritage Council.

Disallowable Instrument DI2004-251 being the Road Transport (General) (Application of Road Transport Legislation) Declaration 2004 (No. 12) made under section 12 of the *Road Transport (General) Act 1999* declares that the road transport legislation does not apply to the ACT roads and road related areas used when vehicles are competing in the ACT timed special stages of the Brindabella Motor Sport Club 2004 National Capital Rally.

Disallowable Instrument DI2004-252 being the Financial Management Amendment Guidelines 2004 (No. 4) made under section 67 of the *Financial Management Act 1996* amend the Financial Management Guidelines 2002.

Disallowable Instrument DI2004-253 being the Long Service Leave (Contract Cleaning Industry) Board Appointment 2004 (No. 6) made under section 10 of the *Long Service Leave (Contract Cleaning Industry) Act 1999* appoints a specified person as a member of the Board.

Disallowable Instrument DI2004-254 being the Public Place Names (City) Determination 2004 (No. 2) made under section 3 of the *Public Place Names Act 1989* determines the names of new streets in the Division of City.

Disallowable Instrument DI2004-255 being the Public Place Names (Gungahlin) Determination 2004 (No. 3) made under section 3 of the *Public Place Names Act 1989* determines the names of new streets in the Division of Gungahlin.

Disallowable Instrument DI2004-256 being the Public Place Names (Dunlop) Determination 2004 (No. 2) made under section 3 of the *Public Place Names Act 1989* determines the names of new street in the Division of Dunlop.

Disallowable Instrument DI2004-257 being the Attorney General (Fees) Amendment Determination 2004 (No. 3) made under section 99 of the *Partnership Act 1963* amends the Attorney-General (Fees) Determination 2004 (DI2004-106), as amended.

Subordinate Law SL2004-32 being the Magistrates Court (Occupational Health and Safety Infringement Notices) Regulations 2004 made under the *Magistrates Court Act 1930* enable infringement notices to be issued for certain offences under the *Occupational Health and Safety Act 1989* and associated Regulations.

Subordinate Law SL2004-38 being the Magistrates Court (Construction Occupations Infringement Notices) Regulations 2004 made under the *Magistrates Court Act 1930* enables infringement notices to be issued for certain offences.

Subordinate Law SL2004-39 being the Dangerous Substances (General) Amendment Regulations 2004 (No. 1) made under the *Dangerous Substances Act 2004* amend the Dangerous Substances (General) Regulations 2004.

Subordinate Law SL2004-40 being the Road Transport (Third-Party Insurance) Amendment Regulations 2004 (No. 1) made under the *Road Transport (General) Act 1999* revise the maximum CTP premiums that can be charged for various premium classes for policies taking effect on or after 1 October 2004.

Subordinate Law SL2004-42 being the Liquor Amendment Regulations 2004 (No. 1) made under the *Liquor Act 1975* declares specified areas as prescribed public places for the purposes of *Summernats 2005*.

Subordinate Law SL2004-43 being the Land (Planning and Environment) Amendment Regulations 2004 (No. 2) made under the *Land (Planning and Environment) Act 1991* provides for the remission of change of use charges.

Subordinate Law SL2004-44 being the Construction Occupations (Licensing) Amendment Regulations 2004 (No. 1) made under the *Construction Occupations (Licensing) Act 2004* provide for a new licensing regime for various construction occupations.

Subordinate Law SL2004-45 being the Water and Sewerage Amendment Regulations 2004 (No. 1) made under the *Water and Sewerage Act 2000* provide for the installation of built-in piping for convenient domestic use of rainwater runoff and reuse of grey water in new residential buildings.

Subordinate Law SL2004-46 being the Building Amendment Regulations 2004 (No. 1) made under the *Building Act 2004* determines the procedures and technical standards to be followed in relation to building work and occupying buildings.

Subordinate Law SL2004-47 being the Road Transport Legislation Amendment Regulations 2004 (No. 1) made under the *Road Transport (Driver Licensing) Act 1999*, *Road Transport (General) Act 1999*, *Road Transport (Public Passenger Services) Act 2001*, *Road Transport (Safety and Traffic Management) Act 1999* and *Road Transport (Vehicle Registration) Act 1999* updates regulations, including allowing driving instruction vehicles to be fitted with a dual control accelerator.

Subordinate Law SL2004-49 being the Agents Amendment Regulations 2004 (No. 1) made under the *Agents Act 2003* amend the *Agents Regulations 2003*.

Subordinate Law SL2004-50 being the Magistrates Court (Litter Infringement Notices) Regulations 2004 made under the *Magistrates Court Act 1930* provide for the issue of infringement notices for certain offences.

Subordinate Law SL2004-51 being the Community Based Sentences (Transfer) Regulation 2004 made under section 31 of the *Community Based Sentences (Transfer) Act 2003* provides for the formal transfer and enforcement of community based sentences between Australian jurisdictions.

Subordinate Legislation – Comment

The Committee has examined the following items of subordinate legislation and offers these comments on them:

Minor drafting errors

Subordinate Law SL2004-41 being the Health Professionals Regulations 2004 made under the *Health Professionals Act 2004* provides process and machinery provisions to support the operation of the Act.

The Committee notes that whilst the explanatory statement to the above instrument contains the title of the instrument to which it refers, it does not specify the number of the instrument. It assists both the public and Members when tracking legislation to know exactly which instrument an explanatory statement refers to.

The Committee also notes that paragraph 1 of the explanatory statement refers to the Act as the “Health Professions Act 2004”, whereas the correct title should be *Health Professionals Act 2004*.

Disallowable Instrument DI2004-194 being the Construction Occupations Licensing (Fees) Determination 2004 made under section 30 of the *Construction Practitioners Registration Act 1998* and section 127 of the *Construction Occupations (Licensing) Act 2004* revokes Disallowable Instrument DI2003-177 and determines the fees payable for the purposes of the Act.

The Committee notes that both the instrument and its explanatory statement refer to the “Constructions Occupations (Licensing) Act 2004”. A check on the Legislation Register shows that the correct title should be the *Construction Occupations (Licensing) Act 2004*.

Disallowable Instrument DI2004-246 being the Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2004 (No. 1) made under subsection 21(1) of the *Race and Sports Bookmaking Act 2001* revokes Disallowable Instrument DI2003-74 and provides for the approval of a new ACTTAB Ltd sub-agency.

The explanatory statement to this instrument states that the instrument being revoked, DI2003-74, was notified on 24 May 2003. A check on the Legislation Register shows that the instrument was, in fact, notified on 23 May 2003.

Disallowable Instrument DI2004-230 being the Legislative Assembly (Members' Staff) Members' Hiring Arrangements Approval 2004 (No. 1) made under subsections 10(2) and 20(3) of the *Legislative Assembly (Members' Staff) Act 1989* revokes Disallowable Instrument DI2003-317 and determines the arrangements for the employment of staff by Members.

Disallowable Instrument DI2004-231 being the Legislative Assembly (Members' Staff) Office-Holders' Hiring Arrangements Approval 2004 (No. 1) made under subsections 5(2) and 17(3) of the *Legislative Assembly (Members' Staff) Act 1989* revokes Disallowable Instrument DI2003-318 and determines the arrangements for the employment of staff or engagement of contractors or consultants by office-holders.

The explanatory statements to these instruments state that the instruments being revoked, DI2003-317 and DI2003-318, were notified on 5 December 2003. A check on the Legislation Register shows that the instruments were, in fact, notified on 4 December 2003.

Disallowable Instrument DI2004-221 being the Nature Conservation (Flora and Fauna Committee) Appointment 2004 (No. 2) made under section 18 of the *Nature Conservation Act 1980* appoints specified persons as Chairperson and Deputy Chairperson of the Flora and Fauna Committee.

The Committee notes that paragraph 3 of this instrument refers to the appointment of Chair and Deputy Chair to the Fauna Committee and wonders whether the title of the Committee should, in fact, be the Flora and Fauna Committee. The Committee also notes the paragraph numbering on the instrument is incorrect.

The explanatory statement to this instrument also appears to contain an error, in that paragraph 3 states that this instrument appoints 6 members.

Disallowable Instrument DI2004-232 being the University of Canberra (Courses and Awards) Amendment Statute 2004 (No. 2) made under section 40 of the *University of Canberra Act 1989* adds new awards arising from the accreditation of new courses and the re-accreditation of existing courses in 2004.

Paragraphs 3 and 4 of the explanatory statement to this instrument refer to the instrument as the "Courses and Awards Amendment Statute 2004". The Committee wonders if the correct reference should be "Courses and Awards Amendment Statute 2004 (No. 2).

Disallowable Instrument DI2004-258 being the Road Transport (Offences) (Declaration of Holiday Period) Determination 2004 (No. 1) made under paragraph 21(1)(e) of the *Road Transport (Offences) Regulation 2001* specifies a period to be a holiday period.

Both the instrument and its explanatory statement state that the instrument is made under the *Road Transport (Offences) Regulations 2001*. A check on the Legislation Register reveals that the correct title of the regulation is the *Road Transport (Offences) Regulation 2001*.

Incorrect reference

Subordinate Law SL2004-48 being the Civil Law (Sale of Residential Property) Amendment Regulations 2004 (No. 1) made under the *Civil Law (Sale of Residential Property) Act 2003* specifies certain requirements that must be included in a building and compliance inspection report.

The Committee notes that reference is made in the explanatory statement overview to subparagraph 9(1)(g)(iii) of the Act. A check on the Legislation Register reveals that subparagraph 9(1)(g)(iii) relates to the requirements for a unit. Perhaps, the correct reference should be to subparagraph 9(1)(h)(iii), which relates to the requirement for a building and compliance inspection report.

Appointment of public servants

Disallowable Instrument DI2004-180 being the Health Professions Boards (Procedures) Podiatrists Board Appointment 2004 (No. 1) made under section 5 of the *Health Professions Boards (Procedures) Act 1981* appoints specified persons to the Board.

Disallowable Instrument DI2004-220 being the Nature Conservation (Flora and Fauna Committee) Appointment 2004 (No. 1) made under section 17 of the *Nature Conservation Act 1980* appoints specified persons as members of the Flora and Fauna Committee.

The Committee notes that, in each of these instruments, one of the appointees is a public servant and that, under Division 19.3.3 of the Act, the appointment of a public servant cannot be disallowed. The Committee suggests that such an appointment should be made under a separate process and not included in an instrument that is disallowable.

Errors in explanatory statements?

Disallowable Instrument DI2004-213 being the Long Service Leave (Building and Construction Industry) Board Appointment 2004 (No. 1) made under section 8 of the *Long Service Leave (Building and Construction Industry) Act 1981* appoints a specified person as a member of the Board.

Disallowable Instrument DI2004-214 being the Long Service Leave (Building and Construction Industry) Board Appointment 2004 (No. 2) made under section 8 of the *Long Service Leave (Building and Construction Industry) Act 1981* appoints a specified person as a member of the Board.

The Committee notes that the explanatory statements to these instruments state that the appointees are representing employee organisations. A check of the Act on the Legislation Register reveals that section 8 requires that the Board shall consist of:

- (a) the chairperson;
- (b) a member representing employer organisations; and

(c) a member representing employee organisations.

The Committee therefore wonders if one of the appointments should be a member representing an employer organisation.

INTERSTATE AGREEMENTS

The Committee has not been advised of any negotiations in respect of an Interstate Agreement.

REGULATORY IMPACT STATEMENTS

The Committee has received the following Regulatory Impact Statements and offers no comment on them:

Subordinate Law SL2004-45 being the Water and Sewerage Amendment Regulations 2004 (No. 1).

Disallowable Instrument DI2004-234 being the Gene Technology (GM Crop Moratorium) Moratorium Order 2004 (No. 1).

Disallowable Instrument DI2004-235 being the Gene Technology (GM Crop Moratorium) Moratorium Order 2004 (No. 2).

Bill Stefaniak MLA
Chair

December 2004