Legislative Assembly for the ACT

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
(performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)

Scrutiny Report

15 JUNE 2010

Report 23

TERMS OF REFERENCE

The Standing Committee on Justice and Community Safety (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 Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*;

(e) 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.

MEMBERS OF THE COMMITTEE

Mrs Vicki Dunne , MLA (Chair)
Mr John Hargreaves, MLA (Deputy Chair)
Ms Meredith Hunter, MLA

Legal Adviser (Bills): Mr Peter Bayne
Legal Adviser (Subordinate Legislation): Mr Stephen Argument
Secretary: Ms Janice Rafferty
(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.

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BILLS

Bills—No comment

APPROPRIATION BILL 2010-2011

This is a Bill for an Act to appropriate money for the purposes of the Territory for the financial year beginning on 1 July 2010, and for other purposes.

CONSTRUCTION OCCUPATIONS LEGISLATION (EXEMPTION ASSESSMENT) AMENDMENT BILL 2010

This is a Bill to amend a number of laws relating to construction and, in particular, to introduce a category of licensed people who can certify if a proposed development is exempt from the need to obtain development approval and/or building approval.

DUTIES AMENDMENT BILL 2010

This is a Bill to amend the *Duties Act 1999* to implement a Budget Cabinet Decision in relation to 2010-11 Budget revenue measures.

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2010 (NO. 2)

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

REVENUE LEGISLATION AMENDMENT BILL 2010

This is a Bill for an Act to amend the *Duties Act 1999*, the *Payroll Tax Act 1987* and the *Rates Act 2004*.

SUBORDINATE LEGISLATION

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

Disallowable Instruments—No comment

Disallowable Instrument DI2010-38 being the Road Transport (General) (Application of Road Transport Legislation) Declaration 2010 (No. 4) made under section 12 of the *Road Transport (General) Act 1999* **declares that the road transport legislation does not apply to a road or road related area that is a special stage of the Appliance Installation Stages Rally.**

Disallowable Instrument DI2010-39 being the Taxation Administration (Amounts payable—Utilities (Network Facilities Tax)) Determination 2010 (No. 1) made under section 139 of the *Taxation Administration Act 1999* **determines the rate for section 8 of the** ***Utilities (Network Facilities Tax) Act 2006*** **for the year ending 31 March 2010 to be $722 per kilometre of network route length.**

Disallowable Instrument DI2010-43 being the Electricity Feed-in (Renewable Energy Premium) Percentage Determination 2010 (No. 1) made under section 9 of the *Electricity Feed-in (Renewable Energy Premium) Act 2008* **determines that the percentage of the premium to be paid for electricity generated by generators installed at the premises where the total capacity is more than 10 kilowatts but not more than 30 kilowatts is 100% of the Premium.**

Disallowable Instruments—Comment

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

Inadequate Explanatory Statement?

Disallowable Instrument DI2010-40 being the Surveyors (Surveyor-General) Practice Directions 2010 (No. 1) made under section 55 of the *Surveyors Act 2007* **revokes the Surveyors (Chief Surveyor) Practice Directions 2009 (No. 2) (DI2009-205) and establishes the Surveyors (Surveyor-General) Practice Directions 2010 (No. 1).**

The Committee notes that the Explanatory Statement for this instrument states:

> This instrument establishes the Surveyors (Surveyor-General) Practice Directions 2010 (No 1) and repeals the Surveyors (Chief Surveyor) Practice Directions 2009 (No 2) (DI2009-205). The new instrument replaces references to the Chief Surveyor with Surveyor-General.
>
> This instrument also corrects direction 67 (2) by removing the reference to the Minister approving and promulgating Standards and Specifications. Under the terms of Section 55 of the *Surveyors Act 2007* the Surveyor-General is able to issue directions in relation to the practice of surveying.

The Committee notes that direction 67(2) of the Surveyors (Chief Surveyor) Practice Directions 2009 (No 2) states:

> (2) Standards, specifications and/or guidelines for the preparation of Units Plans may be reviewed by the Chief Surveyor and approved and promulgated by the Minister.

As the Explanatory Statement for the current instrument indicates, the directions are made under section 55 of the *Surveyors Act 2007*, which provides:

> **55 Surveyor-general practice directions**
>
> (1) The surveyor-general may issue directions in relation to the practice of surveying, including, for example—
>
> (a) the preparation of plans showing the results of surveys; and
>
> (b) the preparation and keeping of field procedures relating to surveys; and
>
> (c) the supervision of people assisting surveyors in carrying out or preparing surveys; and

(d) the nature and position of survey marks; and

(e) the achievement of accuracy in surveying; and

(f) the provision of information by surveyors for inclusion in the digital cadastral database.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) Before issuing a practice direction, the surveyor-general must consult the advisory committee about the proposed direction.

(3) A practice direction is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(4) In this section:

digital cadastral database—see the *Districts Act 2002*, section 17.

The Committee notes that the requirement in subsection 55(2) that, before issuing a direction, the Surveyor-General consult the advisory committee is mandatory. The Committee notes that there is no indication, either on the face of the instrument or in the Explanatory Statement that the advisory committee has, in fact, been consulted.

The Committee would appreciate the Minister's advice that the Surveyor-General has, in fact, consulted the advisory committee before making these directions.

The Committee would also appreciate the Minister's advice as to whether any "standards, specifications and/or guidelines" were promulgated under the previous (incorrect) formulation of direction 67(2) and, if so, what (if any) steps have been taken to address any validity issues arising from the incorrect formulation of direction 67(2).

Incorrect section references? - Is this instrument valid?

Disallowable Instrument DI2010-41 being the Dangerous Goods (Road Transport) Fees and Charges Determination 2010 (No. 1) made under section 194 of the *Dangerous Goods (Road Transport) Act 2009* **sets out the fees payable in relation to things or services provided by the competent authority to persons involved in the transportation of dangerous goods by road.**

This instrument determines fees in relation to things or services provided by "the competent authority" to persons involved in the transportation of dangerous goods by road. Under section 20 of the *Dangerous Goods (Road Transport) Act 2009*, the Minister must (by notifiable instrument) declare one or more entities to be competent authorities for the Act.

Section 4 of this instrument provides:

4 Approval of packaging design

The fee for the making of an application for an approval under section 48 (Applications for approval of packaging design) of the regulation is $348.00.

The Committee notes that, in fact, section **49** of the *Dangerous Goods (Road Transport) Regulation 2010* deals with applications for approval of packaging design. Section 48 of the Regulation deals with offences.

A similar error has been made in the following provisions of the instrument:

- paragraph 6(1)(a) - application for exemption - the reference to section 168 should be a reference to section 169;
- paragraph 6(1)(b) - application for an administrative determination or approval or the variation of a determination or approval - the reference to section 174 should be a reference to section 175;
- subsection 7(1) - application for licence - the reference to section 197 should be a reference to section 198;
- subsection 7(1) - application for renewal of licence - the reference to section 202 should be a reference to section 203;
- subsection 7(2) - replacement licences and licence labels - the reference to section 221 should be a reference to section 222;
- subsection 8(1) - application for licence - the reference to section 209 should be a reference to section 211;
- subsection 8(1) - application for renewal of licence - the reference to section 212 should be a reference to section 214.

The Committee also notes that subsections 7(2) and 8(4) of the instrument both refer to section 221 of the Regulation (though this may, in fact, be justifiable).

The Committee draws the Legislative Assembly's attention to this instrument, as it does not appear to have been validly made and is, therefore, possibly in breach of principle (a)(i) of the Committee's terms of reference, in that it may not be in accord with the general objects of the Act under which it is made.

Has this instrument been validly made?

Disallowable Instrument DI2010-42 being the Electricity Feed-in (Renewable Energy Premium) Rate Determination 2010 (No. 1) made under section 10 of the *Electricity Feed-in (Renewable Energy Premium) Act 2008* **determines that the Premium Rate is 45.7 cents per kilowatt hour (exclusive of GST).**

This instrument is made under section 10 of the *Electricity Feed-in (Renewable Energy Premium) Act 2008*. Section 10 provides:

> **10 Determination of premium rate**
>
> (1) For each financial year, the Minister must, not later than 3 months before the financial year, determine the premium rate for amounts payable by an electricity supplier under section 6 (Feed-in from renewable energy generators to electricity network) during the year.
>
> (2) A determination is a disallowable instrument.
>
> *Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
>
> (3) In making a determination, the Minister—
>
> (a) must seek the advice of the Independent Competition and Regulatory Commission to assist the Minister to determine the premium rate; and
>
> (b) must give priority to the following:

(i) the desirability of costs under this Act impacting equitably on all electricity users;

(ii) the need to encourage the generation of electricity from renewable sources;

(iii) the need to reduce emissions from greenhouse gases;

(iv) the need to reduce the likely effects of climate change;

(v) the desirability of occupiers being able to recoup investment on renewable energy generators within a reasonable time; and

(c) must have regard to the following:

(i) the amounts payable under this Act by an electricity distributor;

(ii) the amounts payable under this Act by an electricity supplier;

(iii) any additional metering costs passed on to an occupier because of section 6 (2) (c);

(iv) any advice received from the Independent Competition and Regulatory Commission in response to a request under paragraph (a);

(v) anything else the Minister considers relevant.

(4) Until the Minister determines the premium rate under this section, the premium rate is 3.88 times the transition franchise tariff retail price on the day this Act commences.

(5) If the Minister receives any advice requested under subsection (3)(a), the Minister must—

(a) present a copy of the advice to the Legislative Assembly within 3 sitting days after receiving the advice; and

(b) give a copy of the advice to each member of the Legislative Assembly—

(i) at least 14 days before the Minister makes the determination; but

(ii) within 30 days after receiving the advice.

The Committee notes that subsection 10(3) sets out various things that the Minister must do before making a determination under section 10. They include a requirement that the Minister seek the advice of the Independent Competition and Regulatory Commission.

The Committee notes that there is no indication, either on the face of the instrument or in the Explanatory Statement for the instrument, that the mandatory requirements have been complied with before the instrument was made. As a result, there is evidence on the basis of which the Committee (or the Legislative Assembly) can be satisfied that the instrument has been validly made.

In making this comment, the Committee notes that the making of the instrument might, of itself, be taken to be evidence that the pre-requisites for making the instrument have been met. That is, one might be entitled to assume that the Minister has sought the advice of the Commission, etc. While that may be the case, the Committee notes that it has consistently made the point that where there are mandatory pre-requisites for the making of an instrument (or a subordinate law), either the instrument itself or the Explanatory Statement for the instrument should state that the mandatory requirements have been met. As the Committee has consistently observed, this is not an onerous requirement.

Subordinate Law—No comment

The Committee has examined the following subordinate law and offers no comment on it:

Subordinate Law SL2010-10 being the Protection of Public Participation Regulation 2010 made under the *Protection of Public Participation Act 2008* **identifies factors that must be considered in working out a civil penalty under section 9 of the Act.**

Subordinate Laws—Comment

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

Positive comment – Strict liability offences

Subordinate Law SL2010-7 being the Road Transport Legislation Amendment Regulation 2010 (No. 2) 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* **amends road transport regulations by inserting provisions to require drivers of public passenger vehicles to display identity cards, changes the eligibility requirements for the issue of public vehicle licences and changes the restrictions on the age at which a vehicle may be registered as a taxi.**

The Committee notes with approval that the Explanatory Statement for this subordinate law provides a thorough explanation as to (a) why it is appropriate that various offences set out in the subordinate law are strict liability offences and (b) the defences that are nevertheless available in relation to the offences (including an explanation as to how those defences operate).

Positive comment – Correction of an oversight

Subordinate Law SL2010-11 being the Planning and Development Amendment Regulation 2010 (No. 2) made under the *Planning and Development Act 2007* **omits section 36 from Part 3.3 of the Planning and Development Regulation 2008.**

The Committee notes with approval that the Explanatory Statement for this subordinate law expressly acknowledges that it is made to correct an oversight.

Positive comment – Strict liability offences

Subordinate Law SL2010-12 being the Dangerous Goods (Road Transport) Regulation 2010 made under the *Dangerous Goods (Road Transport) Act 2009* **sets out the obligations of people involved in the transport of dangerous goods by road and reduces the risks of personal injury, death, property damage and environmental harm arising from the transport of dangerous goods by road.**

The Committee notes with approval that the Explanatory Statement for this subordinate law provides a thorough explanation as to (a) why it is appropriate that various offences set out in the subordinate law are strict liability offences and (b) the defences that are nevertheless available in relation to the offences (including an explanation as to how those defences operate).

GOVERNMENT RESPONSES

The Committee has received responses from:

- The Minister for Police and Emergency Services, dated 3 May 2010, in relation to comments made in Scrutiny Report 22 concerning the Emergencies Amendment Bill 2010.
- The Attorney-General, dated 3 May 2010, in relation to comments made in Scrutiny Report 22 concerning the Crimes (Sentence Administration) Bill 2010.
- The Minister for Planning, dated 25 May 2010, in relation to comments made in Scrutiny Report 22 concerning Subordinate Law SL2010-8, being the Planning and Development Amendment Regulation 2010 (No. 1).
- The Minister for Education and Training, dated 27 May 2010, in relation to comments made in Scrutiny Report 22 concerning Disallowable Instruments:
  - DI2010-36 being the Education (School Boards of Schools in Special Circumstances) Woden School Determination 2010; and
  - DI2010-37 being the Education (School Boards of Schools in Special Circumstances) Black Mountain School Determination 2010
- The Acting Treasurer, dated 28 May 2010, in relation to comments made in Scrutiny Report 22 concerning Disallowable Instrument DI2010-32, being the Taxation Administration (Amounts Payable—Motor Vehicle Duty) Determination 2010 (No. 1).

The Committee wishes to thank the Minister for Police and Emergency Services, the Attorney-General, the Minister for Planning, the Minister for Education and Training and the Acting Treasurer for their helpful responses.

PRIVATE MEMBER'S RESPONSE

The Committee has also received a response from Mr Hanson, dated 27 April 2010, in relation to comments made in Scrutiny Report 18 concerning the Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Bill 2009.

COMMENTS ON GOVERNMENT RESPONSE—CRIMES (SENTENCE ADMINISTRATION) BILL 2010

In *Scrutiny Report No 22*, the Committee offered extensive comment on this Bill. It did so acknowledging that the proposed amendments to the *Crimes (Sentence Administration) Act 2005* would have a significant impact on the administration of criminal justice. Several comments recommended further explanation in the Explanatory Statement. At several points the Committee noted that a particular proposed amendment engaged a provision of the *Human Rights Act 2004*, yet there was no mention of this Act in the Explanatory Statement.

Before turning to the detail of the Attorney-General's response, the Committee restates its view of the function of an Explanatory Statement. It is not merely to summarise the provisions of the Bill, although that is an important function. Adapted to the particular Bill, an explanation will also:

- explain why, at a general level, it is considered desirable to enact into law the scheme of the Bill, and, where desirable, explain the point of a particular provision of the Bill;
- identify each provision that engages a provision of the Human Rights Act, and if there is an apparent derogation from that Act, advance a justification that warrants a conclusion that there is no derogation (such as, for example, that a breach of privacy is not "arbitrary" – see HRA paragraph 12(a)), or that a derogation is "demonstrably justified in a free and democratic society" – HRA subsection 28(1)); and
- where desirable, explain how a particular provision of the Bill will operate in conjunction with existing law.

This is not an exhaustive list, and the Committee accepts that the extent of explanation will vary from bill to bill. A particularly significant consideration is whether the scheme will be of interest to members of the public who will not have the skill needed to read legislation or to find and understand other laws that would interact with the Bill if it is enacted (or not have easy access to persons who have this skill).

The Committee proposes to develop a position paper on the issue of the desirable content of an explanatory statement and will keep the Assembly informed.

The Human Rights Act is often promoted as embodying a "dialogue model", and the first stage of dialogue should occur between the promoter of a bill and the Assembly. The point of section 38, which requires this Committee to report to the Assembly "about human rights issues raised by"[1] a bill, is to ensure that when a bill is debated the Assembly appreciates that a provision of the bill impinges on a right protected by the Act. Given that section 37, which requires the Attorney-General to prepare and present a written "compatibility" statement to the Assembly, has been (with very few exceptions) understood to be satisfied by a single line statement of compatibility with the Act,[2] the Explanatory Statement must be the vehicle for a Minister to identify the rights issues that are raised by a bill, and to explain either why it is considered that any relevant provision does not derogate from a right, or, if it does, why that derogation is compatible with HRA section 28. The first stage in the dialogue is then the Explanatory Statement. The next stage is the Committee report, followed by debate in the Assembly.[3]

[1] This is a broader term of reference that that found, say, in the Victorian Act. That is, the Committee is not concerned narrowly with whether a provision of a bill is incompatible with the HRA. Its concern is to point to human rights issues that are raised.

[2] Where the Attorney considers that a provision in a bill is not compatible, the obligation to explain why this is so will require more than a single line statement. The Attorney's obligations extend only to bills presented by a Minister.

[3] The Explanatory Statement also plays a role in the promotion of dialogue, at this pre-enactment stage, between the promoter of the bill and the public. It also serves to promote knowledge of the rights stated in the Act.

This process breaks down if the Explanatory Statement does not address the human rights issues raised by the bill. This has occurred in this instance, and explains why the Committee takes the step of a further report that deals with the Attorney-General's response. That is, now that the Committee has a view from the Attorney-General, it can respond.

It may be the case, in this instance, the explanatory statement was prepared in haste. However, the Committee is concerned that, in some parts, the Attorney-General's response is deficient in accuracy and courtesy.

To assist the reader, this report will refer to the relevant numbered paragraph of the Committee's report in Scrutiny Report No 22.

1.3.1 The Committee expressed concern that the registrar of the Magistrates Court could seek personal information about a fine defaulter from the housing commissioner, and pointed out that this information would necessarily apply only to certain classes of public housing tenants. The Attorney-General's response does not address this issue. (The Committee accepts that it mislead the Attorney-General to think that a response was not required about this particular matter.)

1.6 The Committee recommended that the Explanatory Statement explain why the chief executive should have discretion to specify details regarding a fine defaulter's property or financial circumstances in the default notice (proposed section 116I refers). The Attorney-General rejects this suggestion, arguing that:

> [i]t seems self-evident that an arrangement about paying a fine be based on information about the ability of a defaulter to pay. This discretion is necessary to allow flexibility when determining terms of a payment arrangement. The Explanatory Statement will not be amended.

The Committee accepts this explanation of why discretion is necessary, but cannot understand why it could not be added to the Explanatory Statement. Relatively unsophisticated persons, who cannot afford to resort to lawyers, will be in receipt of a default notices, and such persons may wish to understand why they are being asked to provide personal information. The Explanatory Statement should assist them in this respect.

1.8.2 The Committee suggested that proposed section 116K apparently derogated from the role of the courts, although only in a minor way. The Attorney-General's response rejects the suggestion, adding that "[j]udicial officers have been consulted on this matter and agree with the Government's approach". The Committee accepts that a provision that permits the chief executive to alter a court-ordered fine payment scheme is not of great significance in itself, but it considers that the desirability of maintaining the independence of the judiciary from the executive is such that any provision that permits the executive to alter the effect of a court order should be justified. The Committee cannot comment on the opinion of the "judicial officers" without knowing who they were and what precisely the advice they offered was. Of course, great care should be exercised in any such interaction between the judiciary and the executive.

1.10.1 The Attorney-General rejects the Committee's suggestion that the Explanatory Statement explain the legal basis for the road transport authority to suspend a driver's licence or a vehicle registration. The Attorney-General asserts that "this authority already exists in the *Road Transport (General) Act 1999*". The Committee cannot understand why this statement, with a reference to the relevant sections, could not be added to the Explanatory Statement. The Assembly and the public need to be informed of such a matter.

1.10.2ff The Attorney-General rejects the suggestion that the procedure for automatic suspension of a driver's licence and/or a vehicle registration, and for negative reporting to a credit provider, engages HRA paragraph 10(1)(b). The Committee was concerned that in some cases, such actions might be disproportionately severe, given that there was no scope at all for an assessment of the hardship that would be suffered by a particular fine defaulter. The Attorney-General's response does not address this particular concern.

1.13.1 As the first step following non-payment by a defaulter after licence suspension, etc, the chief executive may conduct an examination of a fine defaulter, and may serve an examination notice on the defaulter if chief executive considers that information in documents sought under the notice would assist to make a determination. The Attorney-General's response justifies the omission of a requirement that this power be exercise upon reasonable grounds on the basis that the exercise of this power "is a precursor to further, more serious, fine enforcement action". It is argued that the other provisions of the Bill that do contain this limitation "are of a different nature and deal, for example, with a person's liberty".

On the other hand, as subsequent paragraphs of the Committee report noted, the exercise of this power does derogate from the right to privacy, and there is no apparent basis, in this context, for regarding this right as deserving less protection than the right to liberty. In addition, while the service of an examination notice may be a precursor to more serious action, its effect may well be to make that later action more serious.

The Committee sees no reason to omit a requirement that that this power be exercised upon reasonable grounds.

1.13.3 Sections 170 and 171 of the *Legislation Act 2001* are "determinative" provisions[4] of that Act designed to ensure that any provision of another law – such as one that empowers an official to require a person to produce documents or to answer questions – is interpreted to preserve the common law privileges against selfincrimination and exposure to the imposition of a civil penalty (subsection 170(1)), and in relation to client legal privilege (also known as legal professional privilege) (subsection 171(1)). These privileges are now recognised to be common law rights deserving of a high level of protection. They are probably implicit in the right to privacy (HRA paragraph 12(a)), and limited recognition of the privilege against selfincrimination is found in HRA subsection 22(2)(i).

[4] Such a provision "may be displaced [by other laws] expressly or by necessary implication": subsection 6(2).

The Committee frequently recommends that a note drawing attention to sections 170 and 171 be added to a relevant provision of a bill, and in relation to this Bill said that "[f]ine defaulters might not be aware of sections 170 and 171 of the Legislation Act, and might not think to read proposed section 116P even if it includes a reference to these provisions". In plainer terms, the Committee recommended that fine defaulters be informed, in a manner commonly adopted, that they might claim the benefit of significant human rights.

The corporate memory of the Committee doubts that such a recommendation has ever been rejected, and certainly not in the terms employed in the Attorney-General's response. To say simply that "it is not a requirement for these notes to be included in all relevant legislation" is tantamount to saying 'we are not going to do it because we are not compelled to do it'. This ignores the reason why – from a human rights perspective – the notes should be included.

1.17.5ff The Attorney-General does not accept the Committee's view that the conduct by the registrar of an examination hearing is affected by HRA subsection 21(1), and thus attracts the application of the rights stated in this provision. In part, this provision provides that:

> Everyone has the right to have … *rights and obligations* recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

On the face of it, the conduct by the registrar of an examination hearing is a process to determine the obligations of a fine defaulter – that is, of the obligations to answer questions and produce documents. It is also a determination of the rights of the defaulter – that is, of the rights to claim the privileges against selfincrimination and exposure to the imposition of a civil penalty and in relation to client legal privilege.

The Attorney-General argues that an examination by the registrar "is not a trial". There is nothing in subsection 21(1) that requires that a decision-making process in relation to the extent of rights and obligations to be by trial as a condition of this right being engaged. On the contrary, it is the fact that there is a process for decision of this kind that triggers the right to have this process decided by "a competent, independent and impartial court or tribunal after a fair and public hearing".[5]

The great width of this right could greatly complicate the process of administrative decision-making. The courts in Europe and the United Kingdom have devised an interpretation of the provision designed to accommodate the fact that at first instance a great many decisions in relation to rights and obligations are made by persons or bodies that are not courts or tribunals. The Committee reviewed this approach in *Scrutiny Report No 32* of the *6th Assembly*, concerning the Revenue Legislation Amendment Bill 2006 (No 2), and stated the governing principle thus:

> A statute that vests in a body or person (other than a court or tribunal) a power to take action that affects the rights or obligations of a person on its face derogates from HRA subsection 21(1). But such a scheme might be found under HRA section 28 to be a justifiable derogation of subsection 21(1) if, in the words of the theory applied by the European Court of Human Rights, and adopted in the United Kingdom House of Lords in their application of Article 6 of the *European Convention on Human Rights*, "the

[5] Nor does fact that the registrar's examination might be described as "an administrative function" avoid the operation of subsection 21(1). There is no such limitation in the provision.

procedures, viewed as a whole, provide full jurisdiction to deal with the case as the nature of the decision requires": (*R (on the application of Thompson) v Law Society* [2004] 2 All ER 113 at 129, per Clarke LJ). It is this theory that reveals how section 21(1) limits legislative choice in the design of schemes for the exercise of administrative power and of judicial review.

In assessing "whether the composite procedure of administrative decision together with a right of appeal to a court is sufficient" (Lord Hoffman), the courts look at the scope for review by a court of the administrative decision, and at the nature of the power itself – including the conditions under which it may be exercised – and the nature of the process to be followed in the exercise of the power. In this way, the courts necessarily review the design of the decision-making scheme.[6]

Of course, the matters that a court may address under HRA subsection 21(1) are also matters that the Assembly should address when considering a bill for an Act that would create (or add to) an administrative decision-making scheme.

In short, the courts examine the whole decision-making process, and in particular the availability and nature of judicial review, to assess whether there is a breach of the relevant equivalent to subsection 21(1). However, the point remains that a process such as that conducted by the registrar is subject to HRA subsection 21(1).[7]

1.20ff The Committee took view that the process whereby the Magistrates Court made a fine enforcement order was affected by HRA subsection 21(1), and it suggested that if the result of proposed subsection 116W(2) was that this court could disregard the law of evidence, there was a derogation from the rights stated in subsection 21(1). This particular concern is not dealt with by the Attorney-General because it appears that he considers that the Committee was only concerned with the process whereby the registrar applied to the court for a fine enforcement order.

1.20.3 The Committee suggested, by reference to a decision of the European Court of Human Rights, that "at the point that the Magistrates Court entertains an application for a fine enforcement order, the fine defaulter is "charged with a criminal offence", and must be afforded the guarantees set out in HRA subsection 22(2)". The Attorney-General rejects this possibility, arguing that "[t]he making of an application to have a fine enforcement order made against a defaulter is an administrative action taken to enforce the original penalty". This response does not deal with the issue. The Committee was addressing the process before the Magistrates Court after an application had been made. Given the European Court decision, it is a point to be addressed.

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[6] See too Peter Bayne, "The Human Rights Act 2004 (ACT) and Administrative Law: a Preliminary View" (2007) 52 *AIAL Forum* 3. This approach has been adopted by the ACT Civil and Administrative Tribunal; see *Thomson v ACT Planning and Land Authority* [2009] ACAT 38.

[7] The English Court of Appeal has held that proceedings that are not determinative of civil rights or obligations may still be subject to HRA subsection 21(1) where the outcome of those proceedings will have a substantial influence or effect on the determination of those rights or obligations: *G, R v X School* [2010] EWCA Civ 1.

1.22.1 The Committee recommended that the Attorney-General explain the comment in the Presentation Speech that an earnings order "must adhere to any income protection legislation".[8] The response states: "The Bill was drafted in a way that was mindful of the Commonwealth legislation and compliments [*sic*] the income protection provisions". (The response also allows, however, that there might be inconsistency between the scheme of the Bill and Commonwealth law.) This is a significant matter, and the precise way the Bill is intended to complement Commonwealth law should be explained in the Explanatory Statement.

1.22.2 Contrary to the Attorney-General's response, the Committee did not state that an order to an employer to deduct an amount from an employee's pay is "forced or compulsory labour" and thus engages HRA subsection 26(2). After reference to points made in an ILO Convention and a decision of the European Court of Human Rights, the Committee said that "it is hard to state a view one way or the other on this issue as it concerns proposed subsection 116Y(2)". There was no need for the Attorney-General to reject an "assertion" that HRA subsection 26(2) was engaged.

The Committee was in this part of its report raising a human rights issue, and a response needs to focus on the substance of the issue.

1.27.5 The Committee noted that the Explanatory Statement omitted any mention of proposed subsections 116D(3), (4) and (5) and recommended that the Explanatory Statement state their substance. This is rejected by the Attorney-General on the basis that they are "self-explanatory" and repeating the substance "would add no value".

The Committee is surprised by this comment, given that it could be made about a great many provisions of this bill and of most other bills. There is value in plainer statement of the content of a provision of a bill. Readers of Explanatory Statements may be misled as to the content of a bill if the odd provision of a bill is not explained or even referred to.

1.28.3 The Committee raised the question whether a provision (proposed subsection 116ZE(3)) that provided that "The court may inform itself in any way it considers appropriate …" engaged HRA subsection 21(1). The Attorney-General rejected this concern by pointing out that it was "a standard provision". This may be so, but it does not deal with the Committee's concern that displacement of the law of evidence and thus of "all the protections that that body of law provides by way of ensuring the reliability and value of evidence" should be matched by some standard in substitution.

Vicki Dunne, MLA
Chair

June 2010

[8] Some examples were provided.

JUSTICE AND COMMUNITY SAFETY—STANDING COMMITTEE (PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE)

REPORTS—2008-2009-2010

OUTSTANDING RESPONSES

Bills/Subordinate Legislation

Report 1, dated 10 December 2008

Development Application (Block 20 Section 23 Hume) Assessment Facilitation Bill 2008

Report 2, dated 4 February 2009

Disallowable Instrument DI2008-221 - Emergencies (Bushfire Council Members) Appointment 2008 (No. 2)

Disallowable Instrument DI2008-222 - Emergencies (Bushfire Council Members) Appointment 2008 (No. 3)

Education Amendment Bill 2008 (PMB)

Freedom of Information Amendment Bill 2008 (No. 2)

Report 3, dated 23 February 2009

Subordinate Law SL2008-55 - Firearms Regulation 2008

Report 8, dated 22 June 2009

Disallowable Instrument DI2009-75 - Utilities (Consumer Protection Code) Determination 2009

Disallowable Instrument DI2009-86 - Legal Aid (Commissioner—Bar Association Nominee) Appointment 2009

Report 10, dated 10 August 2009

Disallowable Instrument DI2009-93 - Utilities (Grant of Licence Application Fee) Determination 2009 (No. 2)

Subordinate Law SL2009-25 - Criminal Code Amendment Regulation 2009 (No. 1)

Report 11, dated 24 August 2009

Disallowable Instrument DI2009-104 - Government Procurement Appointment 2009 (No. 1)

Disallowable Instrument DI2009-147 - Legal Profession (Barristers and Solicitors Practising Fees) Determination 2009

Subordinate Law SL2009-34 - Agents Amendment Regulation 2009 (No. 1)

Bills/Subordinate Legislation

Report 12, dated 14 September 2009
Civil Partnerships Amendment Bill 2009 (PMB)
Crimes (Assumed Identities) Bill 2009
Disallowable Instrument DI2009-185 - Public Sector Management Amendment Standards 2009 (No. 7)
Eggs (Cage Systems) Legislation Amendment Bill 2009 (PMB)

Report 14, dated 9 November 2009
Building and Construction Industry (Security of Payment) Bill 2009
Disallowable Instrument DI2009-58 - Heritage (Council Chairperson) Appointment 2009 (No. 1)
Education (Participation) Amendment Bill 2009

Report 15, dated 16 November 2009
Disallowable Instrument DI2009-211 - Emergencies (Strategic Bushfire Management Plan for the ACT) 2009
Subordinate Law SL2009-48 - Crimes (Sentencing) Amendment Regulation 2009 (No. 1)

Report 17, dated 9 December 2009
Civil Partnerships Amendment Bill 2009 (No. 2)

Report 18, dated 1 February 2010
Planning and Development (Notifications and Review) Amendment Bill 2009 (PMB)

Report 19, dated 22 February 2010
Disallowable Instrument DI2009-235 - Attorney General (Fees) Amendment Determination 2009 (No. 5)
Education (Suspensions) Amendment Bill 2010 (PMB)

Report 20, dated 15 March 2010
Disallowable Instrument DI2010-10 - Exhibition Park Corporation (Governing Board) Appointment 2010 (No. 1)
Subordinate Law SL2009-56 - Court Procedures Amendment Rules 2009 (No. 3)

Report 22, dated 27 April 2010
Infrastructure Canberra Bill 2010 (PMB)
Radiation Protection (Tanning Units) Amendment Bill 2010 (PMB)
Subordinate Law SL2010-4 - Road Transport (Mass, Dimensions and Loading) Regulation 2010
Subordinate Law SL2010-9 - Animal Welfare Amendment Regulation 2010 (No. 1)

Simon Corbell MLA

ATTORNEY GENERAL
MINISTER FOR THE ENVIRONMENT, CLIMATE CHANGE AND WATER
MINISTER FOR POLICE AND EMERGENCY SERVICES
MINISTER FOR ENERGY

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mrs Dunne

I am writing in relation to the comments on the Emergencies Amendment Bill 2010 contained within Scrutiny of Bills Report Number 22 of 27 April 2010. I offer the following in response.

The report notes that the powers of the emergency controller, in the circumstance where a state of emergency has not been declared, would have an adverse impact on various human rights. I note that the same human rights concerns were raised in relation to the Emergencies Bill 2004 by the scrutiny committee in report number 52 of 29 June 2004, where the committee commented on these provisions as they relate to the powers of the controller during a state of emergency. The comments below in the response from the then Minster for Police and Emergency Services, Mr Bill Wood, are equally valid in relation to the current Bill:

> The report notes the Committee's concerns that the Bill contains various emergency powers that may amount to an undue trespass on personal rights and liberties. The powers that may be exercised .... do affect a wide range of human rights, including the right to privacy and freedom of movement. The issue is whether the Bill and the surrounding legal framework place limits on rights and are justifiable and contain adequate safeguards against possible violations of rights.
>
> International human rights norms provide that a fundamental requirement for limiting rights during an emergency is that they be limited to the extent strictly required by the exigencies of the situation. Certain rights have been identified as non-derogable under any circumstances, including the right to life; the prohibition of torture; the right to be free from forced labour; and protection from retrospective criminal offences and penalties. In relation to non-absolute rights such as the right to privacy and freedom of movement, the International Covenant on Civil and Political Rights (ICCPR) includes specific limitations in the article relating to the particular right. By saying which limitations are permissible the ICCPR accommodates the tension between legitimate competing interests and the protection of individual human rights.

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> In line with these international norms, the *Human Rights Act 2004* recognises that few rights are absolute and limits may be placed on rights within defined boundaries with the aim of balancing competing interests. Placing limits on rights is permissible only if what is done is authorised by a Territory statute or statutory instrument; is reasonable; and is demonstrably justifiable in a democratic society, which means it must fulfil a pressing social need, pursue a legitimate aim and be proportionate to the aims being pursued.
>
> In my view, the special powers that may be exercised .... are reasonable and justifiable and settle on the right balance between individual rights and the public interest in ensuring the protection and preservation of life, property and the environment from emergencies such as fire, earthquake and hazardous material incidents. The Bill also provides for remedies to be sought if a person suffers loss as a result of emergency powers being exercised.

The committee has also provided comments in relation to the proposed subsection 150C (3). In particular, I note the following comments from the committee:

> First, as it has noted before, the Committee understands that a provision such as proposed subsection 150C(3) is inconsistent with the provision in subsection 22(1) of the *Australian Capital Territory (Self-Government) Act 1988* (Cwth) that "Subject to this Part and Part VA, the Assembly has power to make laws for the peace, order and good government of the Territory". That is, a Territory law that purports to restrain the power of the Legislative Assembly to make laws is inconsistent with a grant of power by the Act to the Assembly that is plenary except so far as modified by the Act, and of course, subject to the Commonwealth Constitution.

I respectfully disagree. This provision does not have the effect of entrenching subsection 150C (2) against the operation of any other territory law. Section 150C (3) is a type of provision used to make it clear that it prevails over other territory laws in the event of any inconsistency. It is used, for example, in some emergency or law enforcement type legislation where other territory laws could impede the operation of laws made for public protection, safety reasons or in the public interest. For example, see also the *Crimes (Controlled Operations) Act 2008* ss 18 and 22 and the *Crimes (Assumed Identities) Act 2009,* ss 24 and 27.

Section 150C (3) is not restraining the power of the Legislative Assembly to make laws. This provision can be amended or repealed by the Assembly at any time like other piece of legislation. The Assembly could even make another law that overrides the effect of this law if necessary.

I hope this information is of assistance.

Yours sincerely

Simon Corbell MLA
Minister for Police and Emergency Services

3·5·10

Simon Corbell MLA

ATTORNEY GENERAL
MINISTER FOR THE ENVIRONMENT, CLIMATE CHANGE AND WATER
MINISTER FOR ENERGY
MINISTER FOR POLICE AND EMERGENCY SERVICES

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
Legislative Assembly
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Dear Mrs Dunne

I note the Standing Committee on Justice and Community Safety (the Committee) has released Scrutiny Report No.22 (the Report) containing comments on the Crimes (Sentence Administration) Bill 2010 (the Bill). I offer the following response to those comments.

In paragraph 1.6 of the Report, the Committee recommends that the Explanatory Statement be amended to explain why the chief executive has the discretion to request information relating to a defaulter's property and financial circumstances before considering a payment arrangement. It seems self-evident that an arrangement about paying a fine be based on information about the ability of the defaulter to pay. This discretion is necessary to allow flexibility when determining terms of a payment arrangement. The Explanatory Statement will not be amended.

The Committee suggests there is a separation of powers issue in allowing the chief executive to alter the payment arrangements of a fine. When a court issues a fine and that fine is not paid on time, it becomes a debt owed to the Territory. Administration of this debt rests with the administrative area of the Magistrates Court as a function of the executive government. This is current practice. If a court specifies a payment arrangement when issuing a fine, and that arrangement becomes unsustainable for the offender, allowing the chief executive to alter the payment arrangement facilitates the effective administration of the fine. This does not change the substance of the order. Judicial officers have been consulted on this matter and agree with the Government's approach.

Paragraph 1.10.1 of the Report suggests that the Explanatory Statement should be amended to explain the legal basis for the road transport authority to suspend a driver licence and vehicle registration. This authority already exists in the *Road Transport (General) Act 1999*. This does not need to be justified in the Explanatory Statement for the Bill.

The Committee goes on to suggest that the suspension of a defaulter's driver licence and negative reporting to a credit provider may be cruel, inhuman or degrading and therefore engages section

10(1)(b) of the *Human Rights Act 2004* (HRA). These actions do not engage this right. There is nothing cruel, inhuman or degrading about providing clear consequences for a failure to comply with a judicial order, particularly as this does not occur until the fine defaulter has been notified that this action will be taken in the penalty notice, default notice and reminder notice. This is sufficient warning and affords the defaulter ample opportunity to take positive action to avoid licence and registration suspension and negative credit reporting.

The Committee has requested justification for omitting a requirement for the chief executive to act on "reasonable grounds" when requesting certain information in an examination notice. This administrative function is a precursor to further, more serious, fine enforcement action. In order to determine what further action is appropriate, the chief executive needs the type of information specified in the provision. Belief on "reasonable grounds" is not necessary. The other provisions referred to by the Committee that contain "reasonable grounds" are of a different nature and deal with, for example, a person's liberty. It is therefore appropriate for these other provisions to be subject to the "reasonable grounds" test.

In a number of paragraphs in the Report, the Committee refers to sections 170 and 171 of the *Legislation Act 2001* and a lack of reference to these provisions in the Bill. While some relevant legislation includes notes referencing these sections, it is not a requirement for these notes to be included in all relevant legislation. The provisions of the *Legislation Act* operate whether or not notes to this effect are included in legislation.

The Committee suggests that proposed section 116T(7) of the Bill, which allows the registrar to conduct an examination hearing in open court or in absence of the public, engages the right to a fair trial in section 21(1) of the HRA. An examination hearing is not a trial. It is an administrative function to aid in the determination of an appropriate enforcement action that has arisen as a result of a prosecution for an offence. This right is not engaged and a note referencing section 21 of the HRA should not be inserted into proposed section 116T(7).

In paragraph 1.20.2 of the Report, the Committee suggests that proposed section 116W(2) of the Bill is in conflict with section 21(1) of the HRA. Making an application to the Magistrates Court for a fine enforcement order to be made is an administrative task. By ensuring that such an application contains the information stated in the provision, the Bill ensures that the Magistrates Court, when exercising an administrative function to enforce a criminal penalty, is fully informed. A fine defaulter does not face a criminal charge when an application is made to the court. The criminal charge has already been heard and a fine handed down. This Bill deals with the enforcement of fines resulting from a criminal charge. Section 21(1) of the HRA is not engaged.

In paragraphs 1.20.3 and 1.20.4, the Committee implies that when an application is made to the Magistrates Court for a fine enforcement order, the fine defaulter is charged with a criminal offence and section 22(2) of the HRA applies. The Committee recommends that a note drawing attention to section 22(2) of the HRA be inserted into proposed section 116W of the Bill.

As has already been stated, a fine defaulter has already been charged with a criminal offence, a fine has been imposed as punishment for this offence and the defaulter has failed to pay it. The making of an application to have a fine enforcement order made against a defaulter is an administrative action taken to enforce the original penalty. The defaulter is not charged with another criminal offence and section 22(2) of the HRA will not apply. No note is necessary.

The Committee suggests that the proposed section 116X(3) is not sufficient in ensuring that an order will not be made if it is unfair or will cause undue hardship. The court can only make a fine enforcement order if it is in the interests of justice to do so. Fairness is integral to the interests of justice.

The Committee also suggests that allowing the registrar to make a fine enforcement order contradicts sections 21(1) and 22(2) of the HRA. The making of a fine enforcement order is not a trial nor is it a criminal proceeding. It is an administrative function to aid in the enforcement of a

criminal penalty that has not been complied with. Human rights are not engaged and therefore not contradicted.

Paragraph 1.22.1 of the Report questions how income protection legislation prevents earnings redirection orders from being made in certain circumstances given that the proposed section 116Y of the Bill contains no such restriction. The main income protection legislation is Commonwealth legislation relating to social security. The Bill was drafted in a way that was mindful of the Commonwealth legislation and compliments the income protection provisions. In any event, if there was an inconsistency between the ACT legislation and the Commonwealth legislation, the Commonwealth legislation would prevail to the extent of the inconsistency.

In addition to the above concern, the Committee states that an earnings redirection order that requires an employer to deduct an amount from an employees pay is "forced or compulsory labour" and therefore engages section 26(2) of the HRA. An employer is permitted to deduct an administrative fee to cover expenses associated with complying with an earnings redirection order. Making deductions, either compulsory or employee initiated, from an employee's pay is work that forms part of normal civil obligations. I reject the assertion that section 26(2) of the HRA is engaged.

Proposed section 116Y(5) of the Bill operates to protect an employee from dismissal, adverse role change and/or discrimination arising from having an earnings redirection order imposed on them. An employer will still be permitted, in accordance with relevant employment and industrial relations legislation, to dismiss or change the role of an employee. If this action occurs and an employee claims that the action is a result of an earnings redirection order, the onus will be on the prosecution to substantiate the claim as is ordinarily the case. There is no issue here.

The Committee raises a concern that when property is seized, the Bill does not provide an obligation on the Chief executive to prevent damage occurring to property, nor does it provide for compensation. The Bill does not need to make such provisions as a defaulter will be able to pursue a civil action if the chief executive causes unnecessary damage to property that has been returned to the defaulter.

Paragraph 1.27.3 of the Report raises a concern about the chief executive's discretion in deciding whether to refuse or grant an application to return seized property. Under the principles of administrative law, the chief executive is required to take into account all relevant considerations when making a decision such as this. The factors listed in the provision are ones that may be relevant for the chief executive to consider. The wording in this provision is therefore appropriate.

The Committee recommends that the Explanatory Statement be amended to state the substance of proposed sections 116(ZD)(3),(4) and (5). The substance of these sections is self explanatory and repeating the sections in the Explanatory Statement would add no value.

Voluntary Community Work Orders (VCWO) are not available for fine defaulters who have been convicted of a personal violence offence. The Committee suggests that this engages section 8(3) of the HRA. VCWOs will be administered by the community group Volunteering ACT. It is highly likely that a fine defaulter undertaking a VCWO will be exposed to other volunteers and members of the public and their safety is of paramount concern. A person convicted of a personal violence offence poses an unacceptable risk. If section 8(3) of the HRA is engaged, derogation from this section is justified.

Proposed section 116ZE(3) of the Bill allows the court to 'inform itself in any way it considers appropriate' when making a VCWO. The Committee is concerned that this engages section 21(1) of the HRA. This is a standard provision that appears in a number of pieces of legislation including the *Bail Act 1992*, *ACT Civil and Administrative Tribunal Act 2008* and the *Legislation Act 2001*.

Furthermore, the Committee recommends that the Explanatory Statement be amended to explain why the court might decide to take no further action if a fine defaulter fails to comply with a

VCWO. Proposed section 116ZH(3) affords the court a broad discretionary power to deal with non-compliance of VCWOs. When deciding what action to take in both these situations, the court will consider relevant information on a case-by-case basis. This allows the court to exercise flexibility when making decisions relating to VCWOs. Principles of procedural fairness would apply.

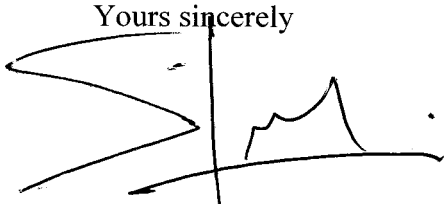
The imprisonment of a fine defaulter is the absolute last resort under the fine enforcement scheme contained in the Bill. The Government has been very clear on this. Before imprisonment is considered, all appropriate fine enforcement action must have been pursed to no avail. Furthermore, if a fine defaulter applies to have the fine remitted, it must have been decided that remission was not appropriate. Finally, if an application is made to the court to imprison a fine defaulter, the court is under no obligation to imprison the defaulter. If section 18(1) of the HRA is engaged, derogation is justified.

The Committee raises a concern about the possible imprisonment of young offenders. Under the current scheme, it is possible that a young offender with capacity to pay will be imprisoned for defaulting on a fine. In practice, this is rarely, if ever, imposed. Given the new options being proposed in the new scheme, it is even more unlikely that a young offender will be imprisoned for defaulting on a fine. Young offenders will be able to take advantage of provisions that allow the discharge of a fine when in custody for other matters.

It is important to note that the Department of Justice and Community Safety and the Department of Housing and Community Services are developing a protocol relating to how young offenders will be dealt with under the new fine enforcement scheme. This will ensure that young offenders are afforded the maximum amount of protection.

I thank the Committee for its comments and trust that my response addresses the Committee's concerns.

Yours sincerely



Simon Corbell MLA
Attorney General

3.5.10

Andrew Barr MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR PLANNING
MINISTER FOR TOURISM, SPORT AND RECREATION
MINISTER FOR GAMING AND RACING

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
CANBERRA ACT 2601

Dear Mrs Dunne

I refer to Scrutiny Report No. 22 of 27 April 2010 and the Committee's comments regarding Subordinate Law SL2010-8, the *Planning and Development Amendment Regulation 2010 (No 1).*

The Committee commented favourably on the fact that the Regulatory Impact Statement for this instrument contained a thorough explanation as to the reasoning behind the widening of exemptions from the development approval process (this is, to include public art) and also an explanation as to why that widening should be accepted by the Legislative Assembly (for example, the limited public complaints about the existing exemptions).

The Committee was critical of the fact that a similar discussion was not also included in the Explanatory Statement for the subordinate law. The comments have been noted and will be taken into account in preparing future legislation.

I would like to thank the Committee for its consideration of this item of legislation.

Yours sincerely

Andrew Barr MLA
Minister for Planning

25 MAY 2010

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Andrew Barr MLA

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MINISTER FOR GAMING AND RACING

MEMBER FOR MOLONGLO

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
Legislative Assembly
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Dear Mrs Dunne

Thank you for your Scrutiny of Bills Report No 22 of 27 April 2010. The Committee made comment about the adequacy of the Explanatory Statements in relation to Disallowable Instruments DI2010-36 and DI2010-37 being the Education (School Boards of Schools in Special Circumstances) Woden and Black Mountain School Determinations 2010 made under section 43 of the *Education Act 2004* (the Act).

As the Committee noted, the Act allows for the Chief Executive of the ACT Department of Education and Training (the Department) to determine the composition of the boards of certain schools. The Committee identified that the Act does not provide guidance as to what are special circumstances or the situations in which the Chief Executive might exercise the power. The Committee also noted that an explanation as to the reasons for the instrument being made is not a statutory requirement, but in the absence of good reason to do so, the Explanatory Statement should include this information.

The Woden and Black Mountain Schools have been declared Schools in Special Circumstances and the composition of the boards determined to accommodate needs identified by the School Boards and communities in relation to the role of student members appointed to the board.

I note the Committee's comments and thank the Committee for its observations. In response to the Committee's feedback, the Department will ensure that future Explanatory Statements will include an explanation as to the reasons for the instrument being made.

Yours sincerely

Andrew Barr MLA
Minister for Education and Training

27 MAY 2010

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Jon Stanhope MLA

CHIEF MINISTER

MINISTER FOR TRANSPORT MINISTER FOR TERRITORY AND MUNICIPAL SERVICES
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MINISTER FOR THE ARTS AND HERITAGE

MEMBER FOR GINNINDERRA

Mrs Vicki Dunne MLA
Chair, Standing Committee on Justice and Community Safety
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Dear Mrs Dunne

As the Treasurer, Katy Gallagher MLA is on leave, I am responding in Ms Gallagher's absence in reference to comments in the Scrutiny of Bills Report No 22 of 27 April 2010 in relation to Disallowable Instrument DI2010-32, being the *Taxation Administration (Amounts Payable – Motor Vehicle Duty) Determination 2010 (No. 1)* (the Determination), and its disapplication of subsection 47 (6) of the *Legislation Act 2001* (the Legislation Act).

(a) Why is it necessary to displace 47 (6) of the Legislation Act in this instance?

The Green Vehicle Guide (GVG) is a database website administered by the Commonwealth and covers vehicles for sale in Australia. It is updated as frequently as 2-3 times per week by car manufacturers, whenever a new vehicle model becomes available for sale.

To notify the GVG on the Legislation Register as frequently as it is updated, would be unnecessary and administratively cumbersome. By disapplying 47 (6) of the Legislation Act, it is made clear that the GVG is not a notifiable instrument and, therefore, does not need to be notified each time it is updated.

(b) What (if any) mechanisms exist to advise those affected by this instrument of any changes to the (Commonwealth) Green Vehicle Guide?

The GVG is easily accessible on the internet and kept up-to-date by the Commonwealth. Motor vehicle dealers are the predominant users of the GVG, and accessing it is easy and in no way onerous. It is not unreasonable for them, or other less frequent users to access the website whenever they require the relevant information.

Furthermore, the ACT's vehicle registration system, 'Rego. ACT', accommodates and correctly applies the rates of duty in accordance with the data contained within the GVG. It should be noted that while the GVG is updated on a regular basis, the rates of duty do not change.

I trust these comments assist the Committee and address its concerns.

Yours sincerely

Jon Stanhope MLA
Acting Treasurer

28 MAY 2010

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Jeremy Hanson CSC MLA

Australian Capital Territory

Member for Molonglo

Opposition Whip

Shadow Minister for Health, Police, Indigenous Affairs, Veterans' Affairs and Corrections

Mrs Vicki Dunne MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly Committee Office

Dear ~~Mrs. Dunne~~, Vicki,

I thank the Standing Committee on Justice and Community Safety for its comments on the *Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Bill 2009* in its Scrutiny of Bills Report No. 18 of February 2010.

I note the comments of the Committee in relation to the manner in which the Bill engages the *Human Rights Act 2004*, but I note also that the inclusion of drugs testing as set out in my Bill merely replicates the existing provisions relating to alcohol testing. I do not believe therefore that the amendments *unduly* trespass on personal rights and liberties any more so than the existing provisions for alcohol testing.

With respect to the drafting point identified by the Committee in relation to Section 21 of the existing Act, I can advise that this anomaly was identified following further examination following the presentation of the Bill and a technical amendment was drafted and circulated to Members on the 24th of March 2010 to remedy it.

I thank the Committee for their comments and trust that this response is of assistance to you.

Yours sincerely,

Jeremy Hanson, CSC, MLA

27 **April 2010**

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