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Chair’s Preface

Rules, regulations and by-laws affect people in their day to day lives. It is important that the Assembly maintains a sufficient level of scrutiny of such subordinate legislation to ensure that they keep within the purpose of the laws under which they are made and do not unduly affect people’s rights. As part of that scrutiny, the Committee writes to responsible Ministers raising questions on concerns the Committee has with a regulation. Ministers reply with clarification about the intended operation of the regulations or undertakings to correct any errors. This report places those letters on the public record and allows interested persons to see those clarifications or undertakings.

In addition, all Northern Territory government departments and a range of other organisations have a statutory responsibility to provide annual reports on their activities to the Speaker or relevant Minister for tabling in the Assembly. This report also details correspondence regarding outstanding reports or any other issues the Committee has raised in relation to annual reporting requirements.

On behalf of the Committee I would like to thank Ministers for their responsiveness in addressing the Committee’s queries. The Committee also acknowledges the significant contribution made by its independent legal counsel, Professor Ned Aughterson, and thanks him for his diligent work in advising the Committee.

I also thank the members of the Committee for their efforts and bipartisan approach in seeking to ensure a high standard of rules and regulations in the Northern Territory, and compliance with legislative reporting requirements. I commend this report to the House.

Larisa Lee MLA
Chair
# Committee Members

<table>
<thead>
<tr>
<th>Ms Larisa LEE MLA</th>
<th>Member for Arnhem</th>
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<tr>
<td>Party:</td>
<td>Country Liberals</td>
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<td>Parliamentary Position:</td>
<td>Deputy Chairman of Committees</td>
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**Committee Membership**

- **Sessional:** Northern Territory’s Energy Future
- **Chair:** Legal & Constitutional Affairs, Subordinate Legislation & Publications.

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<tr>
<th>Ms Kezia PURICK MLA</th>
<th>Hon Member for Goyder</th>
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<td>Party:</td>
<td>Country Liberals</td>
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<td>Speaker</td>
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**Committee Membership**

- **Standing:** Legal & Constitutional Affairs, Subordinate Legislation & Publications, House, Standing Orders
- **Chair:** House Committee

<table>
<thead>
<tr>
<th>Ms Lia FINOCCHIARO MLA</th>
<th>Member for Drysdale</th>
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<tr>
<td>Party:</td>
<td>Country Liberals</td>
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<td>Government Whip</td>
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**Committee Membership**

- **Standing:** Legal & Constitutional Affairs, Subordinate Legislation & Publications.
- **Chair:** Public Accounts, Estimates & Government Owned Corporations.

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<tr>
<th>Ms Nicole MANISON MLA</th>
<th>Member for Wanguri</th>
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<td>Party:</td>
<td>Australian Labour Party</td>
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**Committee Membership**


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<th>Mr Gerry McCARTHY MLA</th>
<th>Member for Barkly</th>
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<td>Australian Labour Party</td>
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<td>Deputy Leader of the Opposition</td>
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**Committee Membership**

- **Standing:** Legal & Constitutional Affairs, Subordinate Legislation & Publications
- **Sessional:** Northern Territory’s Energy Future

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1. Member for Drysdale, Ms Lia Finocchiaro was Committee Chair from 25 October 2012 through to 27 March 2013 when Member for Stuart, Mrs Bess Price, took over as Chair. On 18 September 2013 Member for Stuart, Mrs Bess Price, was discharged from the Committee following her appointment to the Ministry. Member for Arnhem, Ms Larisa Lee, was subsequently appointed to the Committee and on 9 October 2013 was elected as Chair of the Committee.

2. Member for Wanguri, Ms Nicole Manison, replaced Member for Fannie Bay, Mr Michael Gunner, on the Committee as of 20 August 2013.
Committee Secretariat

Committee Secretary: Ms Julia Knight
Administration/Research Officer: Ms Lauren Orrock
Administration Assistant: Ms Kim Cowcher

Contact Details: GPO Box 3721 DARWIN NT 0801
Tel: +61 08 8901 4149
Fax: +61 08 8941 2567
Email: slpc@nt.gov.au
Terms of Reference

On 23 October 2012 the Assembly resolved that:

During the present session of the Assembly, and notwithstanding anything contained in the standing orders, that the Legal and Constitutional Affairs Committee be assigned the powers and functions of the Subordinate Legislation and Publications Committee as laid out in the standing orders.

1. A Standing Committee on Subordinate Legislation and Publications to consist of 5 Members shall be appointed at the commencement of each Assembly. The Committee shall examine and report upon all instruments of a legislative or administrative character and other papers which are required by statute to be laid upon the Table.

2. The Committee shall, with respect to any instrument of a legislative or administrative character which the Legislative Assembly may disallow or disapprove, consider –

   (a) whether the instrument is in accordance with the general objects of the law pursuant to which it is made;
   (b) whether the instrument trespasses unduly on personal rights or liberties;
   (c) whether the instrument unduly makes rights and liberties of citizens dependent upon administrative and not upon judicial decisions;
   (d) whether the instrument contains matter which in the opinion of the committee should properly be dealt with in an Act;
   (e) whether the instrument appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made;
   (f) whether there appears to have been unjustifiable delay in the publication or laying of the instrument before the Assembly; and
   (g) whether for any special reason the form or purport of the instrument calls for elucidation.

3. The Committee, if it is of the opinion that an instrument ought to be disallowed or disapproved –

   (a) shall report that opinion and the grounds thereof to the Assembly before the end of the period during which any notice of the motion for disallowance of that instrument may be given to the Assembly; and
   (b) if the Assembly is not sitting, may refer its opinion and the grounds thereof to the authority by which the instrument was made.

For the purposes of these Standing Orders, “instrument of a legislative or administrative character” has the same meaning as that defined in the Interpretation Act.

4. The Committee, if it is of the opinion that any matter relating to any paper which is laid upon the Table of the Assembly should be brought to the notice of the Assembly, may report that opinion and matter to the Assembly.
5. All petitions and papers presented to the Assembly which have not been ordered to be printed shall stand referred to the Committee, which shall report from time to time as to what petitions and papers ought to be printed and whether wholly or in part.

6. The Committee shall inquire into and report, from time to time, on the printing, publication and distribution of publications or such other matters as are referred to it by the Speaker or the Assembly.

7. The Committee shall have power to send for persons, papers and records, to sit in public or private session notwithstanding any adjournment of the Assembly and to adjourn from place to place.

8. The Committee shall have power to consider, disclose and publish the Minutes of Proceedings, evidence taken and records of the Subordinate Legislation, Tabled Papers and Publications Committees established in this Assembly and all previous Assemblies.
1 Introduction

1.1 Where any Act confers the power to make or amend statutory rules, regulations and by-laws subject to disallowance under section 63 of the Interpretation Act 2011, there is a statutory requirement for all such instruments to be presented to the Assembly. After examining subordinate legislation tabled in the Legislative Assembly the Committee may raise any questions or issues of concern with the responsible Minister. These letters, and the Ministers’ replies, are set out below in Chapter 2.

1.2 In addition the Committee is responsible for ensuring that all Northern Territory government departments, Independent Officers (such as the Auditor-General, Ombudsman, and Information Commissioner), statutory authorities, government owned corporations, and a number of other regulatory bodies comply with statutory annual reporting requirements. Chapter 3 sets out correspondence with Ministers regarding outstanding annual reports and any other issues raised by the Committee in relation to annual reports tabled in the Assembly.
2 Ministerial Correspondence on Subordinate Legislation

43 of 2012 Building (Resolution of Residential Building Works Disputes) Regulations

The Hon Peter Chandler
Minister for Lands, Planning and the Environment
GPO Box 3146
DARWIN NT 0801

Dear Minister

Re: Building (Resolution of Residential Building Works Disputes) Regulations
[No 43 of 2012]

The Subordinate Legislation and Publications Committee met on 27 March 2013 and considered the above regulations.

The Committee seeks your comment on the attached enclosure from our independent legal counsel.

Please feel free to contact me to discuss further if necessary.

Yours sincerely

[Signature]

Ms L H Finoaocchiaro MLA
CHAIR
27 March 2013
Enc.
Legal Advice from Professor Aughterson

Building (Resolution of Residential Building Works Disputes Regulations [No 43 of 2012])

Reg. 18(1): perhaps after 'no contractual relationship' add 'at the time of the making of the application'? See also reg. 19(1)(d).

Reg. 18(2) and 63: it seems that the reference should be to 'the parties to the dispute' rather than 'the parties to the application'.

Reg. 62(5): the reference in reg. 62(5) should be to regulation 57(1)(d), not 68(1)(d).
MINISTER FOR LANDS, PLANNING AND THE ENVIRONMENT

Mrs Bess Price MLA
Chair
Subordinate Legislation and Publications Committee
GPO Box 3721
DARWIN NT 0801

Dear Mrs Price,

Thank you for the letter dated 27 March 2013, from the previous Chair of the Subordinate Legislation and Publications Committee, Ms Lia Finocchiaro MLA, enclosing advice on the Building (Resolution of Residential Building Disputes) Regulations by independent legal counsel for the Subordinate Legislation and Publications Committee (the Committee). This letter has only recently been received by my Department.

The Building (Resolution of Residential Building Disputes) Regulations provide for the detail of the dispute resolution component of the Residential Building Cover package, which commenced on 1 January 2013.

I referred the issues to my Department and received the following advice.

Regulation 18(1)

Legal counsel for the Committee queried whether it would be preferable to include the words 'at the time of making the application' in Regulation 18(1). Following consultation between my Department and Parliamentary Counsel’s Office, I am advised that in the context of section 54FC(1) of the Building Act, the relevant time for the purpose of determining whether a dispute is a Consumer Guarantee Dispute, is the time when the application is made. However, in other contexts, the question of whether a dispute is a Consumer Guarantee Dispute will arise at other times.

For example, Regulation 20 provides that after the application is made, the Commissioner of Residential Building Disputes (the Commissioner) must decide whether to accept the application. One of the things that the Commissioner must consider is whether the 'specified circumstance' exists. That is, that there is no contractual relationship between the parties. In this context, the relevant time for determining
whether the specified circumstance exists is the time the Commissioner is deciding whether to accept the application, which may be up to 10 business days after the application was made and by which time, the contractual relationship between the parties might have changed. If the suggested words were added to Regulation 16(1), the definition of Consumer Guarantee Dispute work would be correct in the context of section 54FC(1) of the Building Act, but not necessarily in other contexts.

It is therefore considered preferable to keep Regulation 16(1) drafted as it is.

Regulation 16(2) and 63

In relation to the suggestion that Regulation 16(2) and 63 should refer to ‘the parties to the dispute’, as opposed to the current drafting of ‘the parties to the application’, I advise that the term ‘party’ is a defined term. It is defined to mean ‘party to an application’.

For Consumer Guarantee Disputes and Mediation/Conciliation, the applications are referred to in the Building Act and the Regulations as disputes (section 54FC and Regulation 10 refers). For Technical Inspection applications, however, there does not need to be a dispute, there just needs to be an allegation of defective work (section 64FB of the Building Act refers). This means that if the suggestion by legal counsel were accepted, then the reference in Regulation 63 would be incorrect. In relation to the suggestion to include those words in 16(2), it is considered preferable to keep it as drafted. In most locations in the legislation, the parties are referred to simply as ‘the parties’. Accordingly, if any amendments were to be made, the words ‘to the application’ could be deleted. It is, however, Parliamentary Counsel’s view that it is preferable to retain those words.

Regulation 62(5)

The third suggestion by legal counsel is accepted. There is an incorrect reference in Regulation 62(5) to 69(1)(c), and that reference should be corrected to state Regulation 57(1)(d). I have therefore approved my Department instructing Parliamentary Counsel to draft that change.

I thank the Committee for bringing these matters to my attention. I trust that this letter satisfies your concerns, however, should you require further information or would like to provide additional comment, please contact Mr Steve Popple, Senior Director Building Advisory Services at the Department of Lands, Planning and the Environment on 8999 8960.

Yours sincerely

PETER CHANDLER

[Signature]
44 of 2012 Building (RBI and Fidelity Fund Schemes) Regulations

DEPARTMENT OF THE LEGISLATIVE ASSEMBLY
12th Assembly
Subordinate Legislation and Publications Committee

The Hon Peter Chandler
Minister for Lands, Planning and the Environment
GPO Box 3146
DARWIN NT 0801

Dear Minister

Re: Building (RBI and Fidelity Fund Schemes) Regulations [No 44 of 2012]

The Subordinate Legislation and Publications Committee met on 27 March 2013 and considered the above regulations.

The Committee seeks your comment on the attached enclosure from our independent legal counsel.

Please feel free to contact me to discuss further if necessary.

Yours sincerely

Ms Lisa Finocchiaro MLA
CHAIR
27 March 2013
Enc.
Legal Advice from Professor Aughterson

Building (RBI and Fidelity Fund Schemes) Regulations [No 44 of 2012]

Reg. 15(1)(m): provides that the policy of insurance need not cover financial loss incurred in relation to any 'fraud or dishonest conduct of any kind by the builder'. It is not clear what this is intended to exclude from insurance cover. By regulation 14, the policy is to cover defective work. On the other hand, for example, the deliberate use of inferior materials involves 'fraud or dishonest conduct'. Presumably it cannot have been intended that that sort of dishonest conduct is to be excluded from insurance cover. See also reg. 46(1)(m).

Reg. 22(2): provides that if the beneficiary has the defective guaranteed work rectified before making the claim, the insurer is entitled to reject the claim. See also reg. 43(2). Presumably this is to allow for proper assessment of the defective work and the most effective resolution. However, might a situation arise where for safety reasons urgent remedial work is required prior to undertaking the formal claim process?
Ministerial Correspondence on Subordinate Legislation and Publications

MINISTER FOR LANDS, PLANNING AND THE ENVIRONMENT

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Ms Lia Finocchiaro MLA
Chair
Subordinate Legislation and Publications Committee
GPO Box 3721
DARWIN NT 0801

Dear Ms Finocchiaro

Thank you for your letter of 27 March 2013 enclosing comments on the Building (RBI and Fidelity Fund Schemes) Regulations by the independent Legal Counsel for the Subordinate Legislation and Publications Committee.

The Building (RBI and Fidelity Fund Schemes) Regulations provide for the detail of the insurance and fidelity fund elements of the Residential Building Cover package and commenced on 1 January 2013. In very general terms, the Regulations establish what type of work requires Residential Building Cover (either insurance or fidelity fund cover), what claims may be made under those certificates, and prudential matters relating to fidelity fund schemes.

The issues identified by Legal Counsel relate to the claims that may be made under either a policy of insurance, or fidelity fund certificate. I referred the issues to my Department and received the following advice.

Regulations 15(1)(m) and 46(1)(m)

The intention behind this provision was to make it clear that dishonest or fraudulent behaviour could be a matter upon which an insurer, or fidelity fund operator could refuse a claim. As the Committee’s Legal Counsel correctly presumes, it was not intended that a breach of a consumer guarantee by a builder would be captured by this provision, which would render sections 54C and 54D of the Building Act, and regulations 14 and 45, meaningless.

The types of losses that must be covered by an insurance policy or a fidelity fund certificate are set out in regulations 14 and 45. The types of losses that are not required to be covered are set out in regulations 15 and 46.
- 2 -

As an insurance policy and fidelity fund certificate must cover those losses mentioned in regulations 14 and 45, an argument could not be made that the cover does not extend to that type of loss because of the words 'fraud or dishonest conduct of any kind by the builder' in 15(1)(m) and 46(1)(m).

Regulations 15(1)(m) and 46(1)(m) are discretionary, as an insurer or fidelity fund provider could offer greater cover than the minimum that is required by 14 and 45. Regulations 15 and 46 provide guidance on types of financial losses that are not required to be covered by an insurer or fidelity fund provider.

Defective work is defined in section 4 of the Building Act as where a builder carries out work or supplies materials otherwise than as required by a consumer guarantee. On the above basis the Department is satisfied that an insurer or fidelity fund provider could not refuse cover for defective work because a builder knowingly used inferior products.

**Regulations 22(2) and 43(2)**

These regulations provide that if a beneficiary has defective guaranteed work rectified before making a claim, the insurer or fidelity fund may reject the claim. Legal counsel for the Committee correctly presumes that the intention was to ensure that the insurer or fidelity fund could assess work prior to deciding the claim. For example, it provides the insurer/fidelity fund provider with an opportunity to work out what would be the most appropriate method of rectification.

Nothing would prevent the beneficiary from making a claim to the insurer or fidelity fund immediately. The beneficiary would have had sufficient time to arrange for an inspection by a relevant professional that made the assessment that the building required immediate attention, so there is no reason why the beneficiary could not have made a claim at the same time. Additionally, if there were matters of safety, the beneficiary would not occupy the building and would be required to wait until the work had been rectified in any event.

I trust that this letter satisfies your concerns, however, should you require further information or would like to provide additional comment, please contact Mr Armando Padovan, Director of Building Advisory Services at the Department of Lands, Planning and the Environment on 8999 8997.

Yours sincerely

PETER CHANDLER

30 MAY 2013
Ministerial Correspondence on Subordinate Legislation and Publications

57 of 2012 Alice Springs (Management of Public Places) Amendment By-Laws

DEPARTMENT OF THE LEGISLATIVE ASSEMBLY
12th Assembly
Subordinate Legislation and Publications Committee

The Hon Alison Anderson MLA
Minister for Local Government
GPO Box 3148
DARWIN NT 0801

Dear Minister

Re: Alice Springs (Management of Public Places) Amendment By-Laws [No 57 of 2012]

The Subordinate Legislation and Publications Committee met on 15 May 2013 and considered the above by-laws.

When these by-laws were first introduced in August 2010 the Committee's independent legal counsel raised a number of concerns. However, the Minister at the time advised that she was satisfied that Alice Springs Town Council had complied with the relevant sections of the Local Government Act for the making of by-laws, in particular s190(1)(c) which requires certification from a legal practitioner of the consistency of the by-laws with the principles of the Act. The Minister also provided the Committee a copy of the Council's response to the Committee's letter.

It is noted that at the time the Council advised that when the by-laws were reviewed they would amend by-laws 32, 55, 58 and 63 to eradicate the inconsistencies, anomalies and errors identified by the Committee's legal counsel. However, although the Council has addressed the typographical errors regarding by-laws 58 and 63, they have failed to address the inconsistencies and anomalies raised in relation to by-laws 32 and 56.

The Committee is particularly concerned that the Alice Springs Town Council has failed to address the more substantive issues raised by the Committee's legal counsel in October 2010 in relation to:

- the extent to which By-Law 64 complies with section 257 of the Local Government Act; and
- the fact that whilst the Council acknowledged the Committee's concerns regarding By-Laws 20, 21 and 52(2) may be contested in court, the Council has made no attempt to amend these By-Laws to avoid such situations.

Given the above, and the number of issues regularly highlighted by the Committee's legal counsel regarding regulations and By-Laws tabled by Local Government Authorities, the Committee also notes its concern regarding the adequacy of the process of regulation making by Local Government Authorities.

The Committee therefore would be grateful if you could explain why the Council failed to amend by-laws 32 and 56 in its recent review of the Alice Springs

GPO Box 3721, DARWIN NT 0801
Telephone: 08 8948 1486 Facsimile: 08 8941 2637 e-mail: dpc@nt.gov.au
(Management of Public Places) By-Laws as per its previous advice of 3 February 2011, or address the more substantive issues raised in relation to By-Laws 64, 20, 21 and 52(2). The Committee also seeks your comments in relation to the adequacy of the current process for regulation making by Local Government Authorities.

Yours sincerely

Mrs Bess Price MLA
Chair
21 May 2013

Enc: Legal Advice, 7 October 2010
   Response from Alice Springs Town Council, 3 February 2011
   Legal Advice, 29 April 2013
LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Subordinate Legislation and Publications Committee

Alice Springs (Management of Public Places) By-Laws 2009 (No. 11 of 2009)

By-law 11 and 53: other than certain types of vehicles, such as emergency or service vehicles, a person cannot (without a permit) ride a 'vehicle' within Todd Mall or any 'park, garden or reserve'. The term 'vehicle' is defined in by-law 5 and includes a 'conveyance', but does not include a bicycle, pram or wheelchair. The term 'conveyance' could be interpreted broadly to include skateboards, roller skates, or scooters. These would not come within the bicycle exception. The term 'bicycle' is defined in by-law 5 and includes a 'tricycle and any pedal-powered vehicle'. The reference to 'pedal power' seems to confine the term to more traditional forms of bicycles.

Some confusion also arises from the interrelationship between by-laws 11 and 53. The latter provision prohibits the riding or use of a bicycle or skateboard (which term includes roller skates and roller blades) in Todd Mall. It is not clear why the similarly focused provisions are dealt with in distant parts of the by-laws. While by-law 11 implicitly allows the riding of a bicycle in Todd Mall (a bicycle being excluded from the definition of 'vehicles', which are prohibited), the reference provision in 53 makes it clear that bicycles cannot be ridden in Todd Mall and, for the first time, makes reference to skateboards. As noted above, this begs the question of whether 'skateboards' are 'vehicles' for the purpose of by-law 11.

By-law 12(1): without knowing how large the contemplated parks or reserves are, a speed limit of 5 mph might be unrealistic in relation to emergency vehicles.

By-law 16: prohibits, without a permit (among other things) the 'exposing of goods, whether or not for sale, in, on or over a public place or outside a building adjoining a public place'. A 'public place' includes a road (by-law 5) and, presumably, a 'building' includes a private residence. Conceivably, this could extend to prohibiting the holding of private lawn sales — conducted outside of the residence and adjoining a public road.

By-laws 20 & 21: in relation to the conduct of a business from a 'nail' in a public place, by-law 20 prohibits selling offensive goods or materials, while by-law 21 prohibits effective conduct. In both cases an 'authorised person' can deem the material or conduct to be offensive. In other words, the test is not an objective one, but rather depends on the subjective sensibilities of the 'authorised person' in question. This is highly unusual and a dangerous infringement of individual rights, where conduct is not measured by community standards, but by the unpredictable and variable reactions of officials. A person who operates a stall has no way of knowing what the views of individual 'authorised persons' might be in relation to any given material or conduct. See also by-law 12(2).

By-law 22: prohibits graffiti. However, the definition of graffiti at by-law 5 is contrast to markings made to the exterior of premises. It seems to follow that any marking of the interior of a building (for example, a public toilet block) is not prohibited. On the other hand, the definition is not confined to public premises, so that, for example, the painting of a symbol or drawing on the gate [see definition of 'premises' in by-law 5] of private premises would attract liability.

By-law 41: creates the offence of littering. In addition to actual littering, by 41(5) the offence can also arise where an authorised person 'reasonably believes' that there has been littering. While reasonable belief is an appropriate basis for initiating action against a person, it is another matter where the offence itself is established simply because a given person believes that an offence has been committed. Whether or not an offence exists should depend on whether or not in fact the prescribed conduct has taken place. As presently drafted, even if the person can prove that they had no association
Subordinate Legislation and Publications Committee

with the latter in question, the offence would arise simply because the authorised person had reasonable grounds for believing that they left the litter in the place.

By-law 56: creates the offence of damage to any building or structure etc. situated on or 'facing' a public place. As noted in relation to by-law 14, a 'public place' includes a road (by-law 5) and, presumably, a 'building' includes a private residence. That would seem to mean that where the property in question faces a public road, a person commits an offence where they damage their own property.

By-law 58(2): typo - word 'only' appears twice in first line.

By-law 62: it appears that there are some words missing in the last two lines of 62(1). After the words "by satisfying By-law 62", presumably there should be the words "the Council may" (advertise for sale ...).

By-law 64: where an impounded vehicle is sold by the Council there is no right on the part of the owner to recover any sum in excess of the amount necessary to cover Council fees under 62. Indeed, by-law 64 provides that there is no right of claim by the owner. This constitutes a significant interference with property rights. And compare s 257 of the Local Government Act, which allows for the recovery of compensation where property is acquired by operation of that Act on other than just terms.
3 February 2011

Ms Trish Angus
Executive Director
Department of Housing, Local Government and Regional Services
GPO Box 4621
DARWIN NT 0801

Dear Ms Angus

RE: ALICE SPRINGS (MANAGEMENT OF PUBLIC PLACES) BY-LAWS

Thank you for your letter of 20 December 2010 and the enclosed comments of the Chairman of the Subordinate Legislation and Publications Committee in relation to the above recently introduced By-laws.

Council responds to the comments of Mr Gunner MLA as follows:

By-law 12(1)

In the case of the example which is cited, Council would of course exercise discretion in a prosecution under the By-law. It is not considered that a special exemption, along the lines found in By-law 11(2), is necessary in the context of this By-law.

By-law 14

The intention of this By-law is indeed to regulate the holding of lawn sales conducted outside of a residence and adjoining a public road.

By-laws 20, 21 and 52(2)

Council notes that the Committee’s concerns may be tested in Court by an aggrieved party. Furthermore, that the relevant offence under By-law 52 is found in not complying with a direction of an authorised person.

By-law 52

Council advises that the intention of this By-law is indeed only to regulate the application of graffiti to the exterior of premises, relying on other by-laws including By-law 50 to regulate conduct within public premises.

In relation to the second limb of the Committee’s concerns as to this By-law, Council certainly has no desire to restrict freedom of expression in the context of private premises provided that the amenity of the local area is maintained: see By-law 24. To the extent, therefore, that By-law 52 might be said to apply to proprietors marking their own property, it will be accordingly amended at Council’s next review on the By-laws.
By-law 41
Council again notes that the Committee’s concerns may be tested in Court by an aggrieved party.

By-law 56
Noted. Council will rectify anomaly when these by-laws are next reviewed.

By-law 57
Noted. Council will rectify this error when these by-laws are next reviewed.

By-law 63
Ditto.

By-law 64
Council considers that given the practical context in which Part 4.2 is intended to operate, sufficient and proportionate safeguards are afforded the owner of the vehicle.

Yours faithfully

[Signature]

Darren Ryan
Mayor
Legal Advice from Professor Aughterson

Alice Springs (Management of Public Places) Amendment By-Laws [No 57 of 2012]

These regulations address some of the issues in the nature of typographical errors appearing in the original By-Laws, including those indicated in my advice to the Committee of 7 October 2010, but do not address the more substantive issues raised in that advice.
Miss Larisa Lee MLA  
Chair  
Subordinate Legislation and Publications Committee  
Legislative Assembly of the Northern Territory  
GPO Box 3721  
DARWIN NT 0801  

Dear Larisa  

Dear Miss Lee  

Thank you for the letter dated 21 May 2013, from Mrs Bess Price MLA, former Chair, providing comments by the Subordinate Legislation and Publications Committee on the recently introduced Alice Springs (Management of Public Places) Amendment By-laws 2012.  

A copy of your letter has been sent to the Alice Springs Town Council for consideration and response. Once this response is received, the Department of Local Government and Regions will respond direct to the Subordinate Legislation and Publications Committee.  

Yours sincerely  

DAVID TOLLNER  
22 OCT 2013
25 of 2013 Marine (General) Regulations

DEPARTMENT OF THE LEGISLATIVE ASSEMBLY
12th Assembly
Subordinate Legislation and Publications Committee

REF: COMM2012/00025.39

Hon Peter Styles, MLA
Minister for Transport
GPO Box 3146
DARWIN NT 0801

Dear Minister

Re: Marine (General) Regulations [No 25 of 2013]

The Subordinate Legislation and Publications Committee met on 9 October 2013 and considered the above regulations.
The Committee seeks your comment on the attached enclosure from our independent legal counsel.
Please feel free to contact me to discuss further if necessary.

Yours sincerely

Ma Larisa Lee, MLA
Chair
9 October 2013
Enc.

GPO Box 9721, DARWIN NT 0801
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Legal Advice from Professor Aughterson

Marine (General) Regulations [No 25 of 2013]

Reg. 10(1): The power of a boating inspector to inspect a craft is confined to ascertaining whether the craft is being or is about to be operated in accordance with regulation 5 (see also regulation 25). Is there need to extend that power to enable checks in relation to other requirements, such as under regulation 8?

Reg. 15(2): regulation 15(1) controls the speed at which persons under specified ages can drive hire-and-drive vessels. Regulation 15(2) provides:

A person must not knowingly permit a person to use or drive a hire-and-drive vessel in contravention of subregulation (1)

Elsewhere the regulations provide that an owner or other person must not ‘permit’ certain activities. For example, regulation 7(2) provides that an owner must not ‘permit’ the craft to be used to tow a water skier unless there is someone watching the skier at all times.

It is not clear why there is the element of ‘knowingly’ in one and not the other. In relation to 7(2) it might be that the owner is not on the vessel and has no control. It begs the question of the obligations of the owner in those circumstances, and what conduct or omission would constitute ‘permitting’ as distinct from ‘knowingly permitting’.

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Ms Larisa Lee MLA
Chair
Subordinate Legislation and Publications Committee
GPO Box 3721
DARWIN NT 0801

Dear Ms Lee

Thank you for your letter of 9 October 2013, regarding the issues raised by your independent legal counsel on provisions in the Marine (General) Regulations.

These regulations are a consolidation of provisions from various regulations made under the Marine Act, that were repealed upon the commencement of the Marine Safety (Domestic Commercial Vessel) (National Uniform Legislation) Act. Apart from necessary cross referencing changes, the various regulations referred to in the advice from the Committee’s independent legal counsel were not changed when they were reproduced in the Marine (General) Regulations.

The current requirement for the operator of a jet ski to have a cut off switch and the powers given to boating inspectors comes from the Marine (Pleasure Craft) Regulations that were repealed when the Marine Safety (Domestic Commercial Vessel) National Law came into force. At no stage have the powers of boating inspectors extended to the requirements for jet skis, but I agree that they should and I have directed the Department of Transport to address this issue when the regulations are next amended.

Regulation 15 comes from the Marine (Hire-and Drive Vessel) Regulations that were also repealed when the Marine Safety (Domestic Commercial Vessel) National Law came into force. The use of the word “knowingly” reflects the style of the draftsperson in the Office of Parliamentary Counsel who drafted those regulations. In contrast, the similar vessel owner offences in regulations 7(2) and 8(1) both come from the Marine (Pleasure Craft) Regulations.

None of these offences are regulatory offences, which means in any prosecution it will be necessary to prove that the owner, in allowing someone else to use their vessel (or jet ski), knew or intended that that person would use it in a manner that breached the relevant regulation. The prefacing of the word “permit” with “knowingly” in regulation 15 merely spells out the fact that knowledge is a necessary ingredient of the offence.
Removing the word “knowingly” from regulation 15(2) will make no difference to the outcome of a prosecution of an owner for allowing an underage person to drive their vessel at a speed greater than 12 knots. However, for the sake of consistency with the other owner offence provisions in these regulations, regulation 15(2) will also be amended to remove the word “knowingly” when the Department of Transport next opens these regulations for amendment.

Thank you for bringing this matter to my attention.

Yours sincerely,

[Signature]

PETER STYLES

8/9/13
3 Ministerial Correspondence on Publications

Outstanding Hospital Board Annual Reports

The Hon David Tollner MLA
Minister for Health
GPO Box 3146
DARWIN NT 0801

Dear Minister

Re: Outstanding Hospital Board Annual Reports

It has come to the attention of the Subordinate Legislation and Publications Committee that the 2011/12 Annual Reports for the Royal Darwin Hospital and the Tennant Creek Hospital Boards have yet to be tabled in the Assembly.

Pursuant to Section 25 (1) of the Hospital Management Boards Act, annual reports are to be provided to the Minister no later than 30 September each year and tabled within 10 sitting days of receipt. As such, both of these reports are now overdue.

It would be appreciated if you could advise the Committee why these reports have not been tabled in accordance with the legislative requirements and when they will be tabled.

Yours sincerely

[Signature]

Lia Finocchiaro MLA
Chair
13 February 2013
Mrs Bess Price MLA
Chair
Subordinate Legislation and Publications Committee
GPO Box 3721
DARWIN NT 0801

Dear Mrs Price

Thank you for the letter of 13 February 2013, from the previous Chair of the Committee Ms Lisa Finocchiaro MLA, regarding the 2011/12 Annual Reports for the Tennant Creek Hospital (TCH) and the Royal Darwin Hospital (RDH).

These Annual Reports were previously produced by the respective hospital's governing Board. These Boards were dissolved as at 30 June 2012 and replaced respectively with the Central Australian Hospital Network Governing Council and the Top End Hospital Network Governing Council.

The Tennant Creek Hospital Board, while officially in place until 30 June 2012, did not function from late 2011. The members of the current Central Australian Hospital Network Governing Council are all new appointees and none served on the TCH Board. TCH has also had changes of General Managers since 2011.

No TCH Annual Report for 2011/12 was prepared, and given the circumstances with regard to the former Board, no report for 2011/12 is available nor is one able to be produced for tabling in the Legislative Assembly.

The Royal Darwin Hospital 2011/12 Annual Report was in preparation by the former Board. It is now in its final stages of development and the current Chair of the Top End Hospital Network Governing Council advises that it will be completed 21 May 2013. It will be available for tabling in the August 2013 Legislative Assembly.

Yours sincerely

Robyn Lambley

14 May 2013
### Appendix A: List of Ministerial Correspondence on Subordinate Legislation

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<td>Building (Resolution of Residential Building Works Disputes) Regulations</td>
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<td>Hon Robyn Lambley</td>
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<td>No 1 of 2013</td>
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