



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

11th Assembly

Subordinate Legislation & Publications Committee

**First Report of
Ministerial Correspondence on
Subordinate Legislation**

December 2008 – July 2011

COMMITTEE REPORT

August 2011

Presented and
ordered to be printed
by the Legislative
Assembly of the
Northern Territory
August 2011

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Chair's Preface

It has long been the practice of the Subordinate Legislation and Publications Committee to raise with Ministers questions and issues arising from its examination of subordinate legislation tabled in the Assembly. Previously, however, the results of the Committee's examination and the Ministers' responses have not been published. This report puts that correspondence on the public record. The Committee intends to continue to periodically publish this correspondence.

Rules, regulations and by-laws affect people in their day to day lives and it is important that the Assembly maintains a sufficient level of public scrutiny to ensure that they keep within the purpose and intention of the laws under which they are made and do not unduly affect people's rights. The publication of the Committee's correspondence with Ministers lets the public see the issues the Committee has raised and the responses and clarifications from Ministers.

The Committee acknowledges the responsiveness of Ministers and officers to the Committee's queries and is grateful for their work in responding to the Committee. The Committee also acknowledges the significant contribution made by its 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 collegiate approach in seeking to ensure a high standard of rules and regulations in the Northern Territory.



Michael Gunner MLA
Chair

Committee Members



Mr. Michael GUNNER, MLA

Member for Fannie Bay

Party: Australian Labor Party

Parliamentary Position: Government Whip

Committee Membership:

Standing: Public Accounts; Estimates; Subordinate Legislation and Publications; Legal and Constitutional Affairs; Standing Orders; Members' Interests
Sessional: Environment and Sustainable Development
Chair: Public Accounts; Estimates, Subordinate Legislation and Publications



Mr. Ross BOHLIN, MLA

Member for Drysdale

Party: Country Liberal Party

Committee Membership:

Standing: House, Subordinate Legislation and Publications



Mr. Adam GILES, MLA

Member for Braiiling

Party: Country Liberal Party

Committee Membership:

Standing: Subordinate Legislation and Publications



Ms. Marion SCRYMGOUR, MLA

Member for Arafura

Party: Australian Labor Party

Committee Membership:

Standing: House; Public Accounts, Estimates, Subordinate Legislation and Publications, Legal and Constitutional Affairs;
Sessional: Environment and Sustainable Development; Council of Territory Co-operation
Chair: Environment and Sustainable Development
Other: NT Constitutional Convention Committee



Ms. Lynne WALKER, MLA

Member for Nhulunbuy

Party: Australian Labor Party

Committee Membership:

Standing: House, Public Accounts, Estimates Subordinate Legislation and Publications

Sessional: Environment and Sustainable Development, Council of Territory Co-operation

Committee Secretariat

Committee Secretary: Mr Russell Keith (from 30 November 2010)
Mr Graham Gadd (until 29 November 2010)

Research Officer: Ms Maria Viegas

Administrative Assistants: Mrs Pauline Lewis (10 February to 12 August 2011)
Ms Lauren Copley
Ms Kim Cowcher

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Committee Terms of Reference

Standing Order 20

1. A Standing Committee on Subordinate Legislation and Publications to consist of five 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 have the power to consider, disclose and publish the Minutes of Proceedings, evidence taken and records of the Subordinate Legislation, Tabled Papers Committees and Publications Committees established in this Assembly and all previous Assemblies.

1. MINISTERIAL CORRESPONDENCE ON SUBORDINATE LEGISLATION

After examining subordinate legislation tabled and receiving advice from its legal counsel, the Committee may raise any questions or issues of concern with the responsible Minister. These letters, and the Ministers' replies, are set out below.

16 of 2008: Public Transport (Passenger Safety) Regulations



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY Subordinate Legislation and Publications Committee

The Honourable Delia Lawrie, MLA
Minister for Infrastructure and Transport
GPO Box 3146
DARWIN NT 0801

Dear Minister, 

Re: Regulation No. 16, Public Transport (Passenger Safety) Regulations

The Subordinate Legislation and Publications Committee considered the above regulation as required under its terms of reference contained within Standing Order 20.

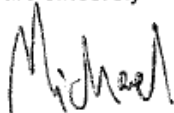
In reference to Regulation 3(b), it has been suggested to the Committee that the term 'an offence under a law of another jurisdiction which, if it had been committed in the Territory, would have constituted an offence of a kind mentioned in paragraph (a)' that would appear to create a legal impossibility.

Advice provided to the Committee is that if 'the offence' had been committed in the Territory it would not be an offence under a law of that other state, by virtue of the fact that the other state has no jurisdiction over what happens in the Territory.

The objective of similar Regulations has been achieved in other jurisdictions through the use of words that create a relationship to the offence. For example, s7 of the Western Australian *Working with Children (Criminal Record Checking) Act* uses the words 'an offence under a law of another jurisdiction the elements of which, if they had occurred in Western Australia, would have constituted an offence of a kind referred to in this subsection'. The Queensland *Transport Operations (Passenger Transport) Act* is expressed in the following terms: 'an offence against a law of another jurisdiction ... that substantially corresponds to an offence mentioned in paragraph (a) or (b)'. Section 27 of the Victorian *Surveillance Devices Act* is expressed in terms of 'an offence against a law of another jurisdiction ... that corresponds to a serious drug offence'. The Commonwealth *Extradition Act*, in requiring that there be an equivalent Australian offence to that in relation to which extradition is being sought by the foreign state, expresses equivalence in terms of requiring that the 'conduct constituting' the foreign offence be an offence in Australia.

The Committee awaits your advice on the issues raised. If any additional information is required please contact Terry Hanley in the Committee Secretariat on 8946 1438.

Yours sincerely



MR MICHAEL GUNNER
Chairman



MINISTER FOR INFRASTRUCTURE AND TRANSPORT

PARLIAMENT HOUSE
STATE SQUARE
DARWIN NT 0800

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DARWIN NT 0801
TELEPHONE: (08) 8901 4047
FACSIMILE: (08) 8901 4169

Mr Michael Gunner
Chairman
Subordinate Legislation and Publications Committee
Legislative Assembly of the Northern Territory
Parliament House
DARWIN NT 0800

COPY

Dear Mr *Michael* Gunner

Thank you for your letter dated 3 December 2008, regarding the Public Transport (Passenger Safety) Regulations, and in particular, the concerns raised in relation to Regulation 3 (b).

After consultation with the Department of Justice, it is the preliminary view of the Solicitor for the Northern Territory that, in promoting the purpose of Parliament, the ordinary and natural meaning words of the regulation are clear. As such, it is considered that the words appear to be unambiguous in the legislative context and therefore, an amendment is not considered necessary. However, formal advice can be sought from the Office of the Solicitor General if the Committee remains concerned.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Delia Lawrie'.

DELIA LAWRIE

12/1/09

**18 of 2008: Local Government (Accounting) Regulations &
25 of 2008: Local Government (Administration) Regulations**



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
Subordinate Legislation and Publications Committee**

Parliamentary Committee Office:
Level 3, Parliament House

GPO BOX 3721
DARWIN NT 0801

The Honourable Rob Knight, MLA
Minister for Local Government
GPO Box 3146
DARWIN NT 0801

Dear Minister, 

**RE: REGULATION NO. 18 OF 2008, LOCAL GOVERNMENT (ACCOUNTING)
REGULATIONS AND REGULATION NO. 25 OF 2008, LOCAL GOVERNMENT
(ADMINISTRATION) REGULATIONS**

The Subordinate Legislation and Publications Committee considered the above regulations as required under its terms of reference contained within Standing Order 20.

In considering Regulation No. 18, Part 2 there would not appear to be any provision allowing for the removal of members of the Advisory Committee, or for the circumstances where a person ceases to be a member. The Committee does note however Regulation No. 25, Part 2, 5 (3) does take up the issue of appointment and that the Terms and Conditions of membership are determined by the Minister. Members questioned whether it was only a timing issue between the gazettal notifications.

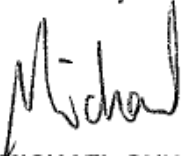
Regulation 25, in particular, Part 2, Regulation 3 deals with the appointment of members of the Advisory Committee while Regulation 5(3)(c) provides that a person ceases to be a member of the Committee if he or she 'breaches terms and conditions of membership determined by the Minister'. It is not clear to the Committee as to the source of the authority to impose the terms and conditions and how it is determined whether the terms and conditions have been breached. In considering the above, Members referred to Regulation No. 18 of 2008 which established The Advisory Committee.

Regulation 8(b) classifies as confidential 'information about the personal circumstances of a resident or ratepayer'. By regulation 9 and s 65(2) of the *Local Government Act*, the public may be excluded while confidential business is being considered. It is not clear to the Committee as to what is meant by the personal 'circumstances' of a ratepayer – for example, if the ratepayer has not paid their rates, does that relate to their 'personal circumstances'? The same question could well be asked in relation to any consideration, for example, of the personal financial circumstances of a resident who submits a quotation for work to be carried out for the council.

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The Committee awaits your advice on the issues raised. If any additional information is required please contact Terry Hanley in the Committee Secretariat on 8946 1438.

Yours sincerely





DOCUMENT 95
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MINISTER FOR LOCAL GOVERNMENT

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29/12/08

Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
GPO Box 3721
DARWIN NT 0801

FILE COPY

Dear Mr Gunner

I refer to your letter received by my office on 3 December 2008, in regards to the Subordinate Legislation and Publications Committee's review of the Local Government (Electoral) Regulations in accordance with Standing Order 20.

I can advise that in relation to the Committee's comments about Regulation 31, I have directed my Department of Local Government and Housing to commence the process for amending the provision so that it reads "*This Division provides for*" instead of "*This Division provides to*". However, as the Department is currently undertaking an internal review of the recent local government elections, the amendment will be delayed until the review is completed, lest the review uncovers any other minor amendments required to the legislation.

In regards to the Committee's comments about the lack of a definition of the word "officer" in Regulation 38(2)(b) and Regulation 45(1)(a)(ii), I can advise that the word "officer" refers to "authorised officer" as per the definition in Regulation 3 (Definitions) and Regulation 4 (authorised officer).

The Committee's concerns in relation to Regulation 51 (scrutiny of postal voting papers) and Regulation 30 (casting postal votes) is also noted. Advice received from my Department recommends that the provisions remain unchanged at this time as all voting forms are approved by the Northern Territory Electoral Commission. The forms would include the relevant instructions to voters, including information about time constraints for postal votes.

Thank you for bringing these matters to my attention.

Yours sincerely




ROB KNIGHT

23 of 2008: Legal Profession Admission Amendment Rule



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
Subordinate Legislation and Publications Committee

Dr Chris Burns, MLA
Minister for Justice and Attorney-General
GPO Box 3146
DARWIN NT 0801

Dear Minister, 

RE: LEGAL PROFESSION ADMISSION AMENDMENT RULE NO.23 of 2008

The Subordinate Legislation and Publications Committee considered the above regulation as required under its terms of reference contained within Standing Order 20.

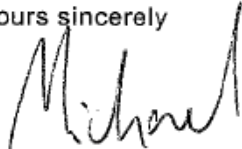
Sub-rule 16, generally, deals with the required English language standards of overseas applicants for admission to professional legal practice. This particular sub-rule provides that an applicant may be exempt from undertaking the ILETS test where he/she has undertaken the last 2 years of secondary education plus the required tertiary academic qualification in a country where English is the first language.

However, the rule further requires that the person be 'resident' in that country 'for the whole of the period' of that schooling and study. The Committee has been made aware that there could be argument as to what this means.

As noted in *Australian Temperance and General Mutual Life Assurance Society Ltd v Howe* (1922) 31 CLR 290, what constitutes 'residence' under one statute might not constitute residence under another. In addition, and perhaps depending on the meaning of the term 'resident', the requirement of residence for the whole of the period might disqualify a person who was out of the country [for example, on vacation] for a relatively short period.

The Committee awaits your advice on the issues raised. If any additional information is required please contact Terry Hanley in the Committee Secretariat on 8946 1438.

Yours sincerely



MR MICHAEL GUNNER MLA
Chairman



MINISTER FOR JUSTICE & ATTORNEY-GENERAL

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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and
Publications Committee
Parliament House
DARWIN NT 0800

Dear Chairman

Thank you for your letter regarding the Legal Profession Admission Amendment Rules No. 23 of 2008, in particular the meaning of the new rule 16(3)(b)(ii).

The Department of Justice has examined the issue raised by the Committee and advises me of the following:

- The term "resident" is not defined in the Rules or the *Legal Profession Act* nor does the *Interpretation Act* assist with a definition.
- As the Committee notes, the High Court case of *Australian Temperance and General Mutual Life Assurance Society Ltd v Howe* established that residence is a question of fact. In deciding whether a person is a resident the circumstances surrounding the person are to be examined together with the language used in the qualifying legislation.
- In *Hafza v Director-General of Social Security* (1985) 70 ALR 674, Wilcox J referred to the judicial consideration of the meaning of 'residence'. His Honour was of the opinion that few people are always at home and a person does not necessarily cease to be resident there because he or she is physically absent. His Honour found that the test is whether the person has retained a continuity of association with the place, together with an intention to return to that place and an attitude that that place remains "home".
- It is a matter for the Admission Board to be satisfied as to whether the applicant has met the requisite residential requirements, namely whether the applicant, for the whole or entire period of their study, retained a continuity of association with the place, together with an intention to return to that place and an attitude that that place remained home. Should the Admission Board require further evidence from the applicant, the Admission Board can seek that additional information from the applicant.



Based on these observations, I do not see any problem with the Rules.

However, as the Judges of the Supreme Court of the Northern Territory make the Rules, a copy of your correspondence and this letter will be provided to the Chief Justice of the Supreme Court for the Judges' consideration.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CB' with a large loop at the bottom.

CHRIS BURNS

22 DEC 2008

24 of 2008: Local Government (Electoral) Regulations



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PAGE 1 OF 2

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

GPO BOX 3721
DARWIN NT 0801

The Honourable Rob Knight, MLA
Minister for Local Government
GPO Box 3146
DARWIN NT 0801

Dear Minister,

RE: REGULATION NO. 24, LOCAL GOVERNMENT (ELECTORAL) REGULATIONS

The Subordinate Legislation and Publications Committee considered the above regulation as required under its terms of reference contained within Standing Order 20.

In considering Regulation 32, the Committee questions whether the wording should read 'This Division provides for...' instead of 'This Division provides to...'

With reference to Regulations 38(2)(b), 45(1)(a)(ii) is the 'officer' in these sub-regulations an 'authorised officer' or an 'officer in charge'? There would appear to be no separate definition of the word 'officer': see regulation 4(1).

Regulation 51(2) provides for circumstances where the returning officer must reject postal votes, including where 'the postal voting papers were witnessed after 6 pm on polling day'. In other words, it suggests that a vote is not valid if the voting paper was witnessed after that time. The procedure for casting a postal vote is set out at regulation 30. As part of that procedure, sub-regulation 30(2) requires the postal voter to show the unmarked postal voting papers to an 'authorised witness' [defined in regulation 3], while sub-regulations 30(3) and (4) further require both the voter and the witness to sign the postal vote certificate at the time at which the vote is cast. Implicitly, regulation 51(2) requires that to be done before 6 pm.

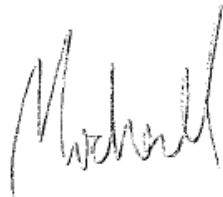
The difficulty is that no such requirement is specified in regulation 30. While regulation 30 requires the signature of a witness it does not prescribe when it has to be witnessed. There is also a question of whether a postal voter is advised as to that implicit limitation [implicit from regulation 51(2)].

There are other provisions in the regulations dealing with the question of when a vote has to be cast, but not in relation to postal votes. Regulation 3, in defining 'polling hours' refers only to votes cast at a 'polling place', at an 'early voting centre', and at a 'mobile polling place'. Similarly, regulation 37, which deals with 'polling times', refers only to 'polling places', 'early voting centres', and 'mobile polling places'.

The only indication of the time within which a postal vote has to be cast is the implicit limitation in regulation 51(2). While that regulation requires the returning officer to reject the vote 'if satisfied' that the voting paper was witnessed after 6 pm, regulation 30 does not prescribe any such requirement. Nor is it clear as to what advice is to be given to the voter in that regard.

The Committee awaits your advice on the issues raised. If any additional information is required please contact Terry Hanley in the Committee Secretariat on 8946 1438.

Yours sincerely

A handwritten signature in black ink, appearing to read "Michael". The signature is written in a cursive style with a large initial 'M'.



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PAGE 1 OF 1

MINISTER FOR LOCAL GOVERNMENT

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29/12/08

Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
GPO Box 3721
DARWIN NT 0801

FILE COPY

Dear Mr Gunner

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I can advise that in relation to the Committee's comments about Regulation 31, I have directed my Department of Local Government and Housing to commence the process for amending the provision so that it reads "*This Division provides for*" instead of "*This Division provides to*". However, as the Department is currently undertaking an internal review of the recent local government elections, the amendment will be delayed until the review is completed, lest the review uncovers any other minor amendments required to the legislation.

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Thank you for bringing these matters to my attention.

Yours sincerely



ROB KNIGHT

Charles Darwin University (Academic Board) By-laws 2009



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Subordinate Legislation and Publications Committee

The Honourable Paul Henderson MLA
Minister for Education and Training
Legislative Assembly of the Northern Territory
GPO Box 3146
DARWIN NT 0801

Dear Chief Minister,

Re: BATCHELOR INSTITUTE OF TERTIARY EDUCATION (ACADEMIC BOARD) BY-LAWS

The Subordinate Legislation and Publications Committee considered the above By-Laws as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

By-law 2(1)(c): The Committee suggests that the word 'appointed' should be replaced with the word 'elected'. While the Chair is 'appointed' under By-law 5(1), the Deputy Chair is 'elected' under By-law 5(4).

By-law 4(2)(a): the By-law deals with the occasions when a member of the Board vacates office. It is the Committees view that the first part of the By-law [vacates office if the member 'becomes a member of the Board by reason of an office held by that member'] would appear to anticipate the situation where an elected member [By-law 3(1)(f)] is subsequently appointed, for example, as a Head of Faculty and so becomes a member by virtue of By-law 3(1)(g) – in that event, they vacate office as an elected member under By-law 3(1)(f).

Members are not sure as to the object of the second part of that By-law – '... and ceases to hold the office which was the basis for that person's election as a member of the Board'. The clause would appear to indicate that the person must both assume another office and cease to hold the original office which entitled them to be elected in the first place. The only 'elected' members are full time staff members pursuant to By-law 3(1)(f) – it therefore seems to anticipate that the person will cease to hold the office of 'full-time academic staff' when appointed, for example, as Head of Faculty. The Committee questions whether that is likely to be the case in an academic institution; that is, they usually retain their substantive academic position.

The term 'academic staff' is not defined in the Act or By-laws, but presumably includes those appointed as Head of Faculty. Members came to the conclusion that it might be that the additional words in By-law 4(2)(a) are not intended to convey a dual requirement and are simply superfluous. In any event, as drafted, the provision would appear to be confusing.

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The Committee awaits your comments on the matters raised above, and if you require and further information please contact Mr Terry Hanley in the Committee Secretariat on 89461438.

Yours sincerely



MICHAEL GUNNER, MLA
Chairman

DOCUMENT17.....
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CHIEF MINISTER
MINISTER FOR EDUCATION AND TRAINING

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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
GPO Box 3721
DARWIN NT 0801

Dear Mr ~~Gunner~~ *Michael*

Thank you for your letter received on 29 May 2009, seeking comment on suggested changes to the Charles Darwin University (Academic Board) By-laws 2009.

The Charles Darwin University Council has the power to make and amend by-laws as per section 46 of its overarching legislation. In accordance with this, I have asked the Charles Darwin University Council to consider the suggested changes and provide feedback to me at the earliest opportunity. Once I have received this feedback I will then be in a position to provide comment to your committee.

Yours sincerely


PAUL HENDERSON
10/6/09

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PAGE 1 OF 1



CHIEF MINISTER
MINISTER FOR EDUCATION AND TRAINING

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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
GPO Box 3721
DARWIN NT 0801

Dear Mr ~~Gunner~~ *Michael*

I refer to my previous letter dated 10 June 2009 regarding comments on the Charles Darwin University (Academic Board) By-laws 2009 and suggested changes proposed by the Legislative Assembly Subordinate Legislation and Publications Committee.

Please find attached a copy of correspondence from Professor Barney Glover, Vice-Chancellor, Charles Darwin University, in response to the committee's comments. Please note Professor Glover's advice that the university is undertaking a review of academic governance arrangements and potential amendments to the by-laws will be considered as part of a suite of changes to improve current operations.

I have asked that I be informed of action taken by the university as a result of its review.

Yours sincerely


PAUL HENDERSON
10/8/09



DOCUMENT 4
PAGE 2 OF 2

Charles Darwin University
Darwin, NT 0909 Australia
www.cdu.edu.au
ABN 54 093 513 649
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The Honourable Paul Henderson MLA
Minister for Education and Training
Legislative Assembly of the Northern Territory
GPO Box 3146
DARWIN NT 0801

COPY

RECEIVED

2009/2569-PRH
CHIEF MINISTER'S OFFICE

Dear Chief Minister,

Re: Charles Darwin University (Academic Board) By-laws

Thank you for your letter concerning the above sent to our Chancellor, Mr Richard Ryan AO, which he has passed to me for a response.

As precursor to the responses to the questions, earlier this year the Council of the University agreed to commission a review of the University's academic governance arrangements. This review will be undertaken by a panel of leading academic staff with significant experience in academic governance from other Australian Universities. I fully expect that this review will offer a number of commendations as well as putting forward recommendations for improvement to current operations, which may include amendments to the current by-laws. It is in light of this review, at this time, I will only offer a brief response to the points raised outlining the way we have applied the By-laws.

By-law 3(1)(g)

If a person was appointed to the position of Reader (which is not an established position classification at the University) the staff member would carry the honorific title of Associate Professor. The effect of this is that the staff member would be entitled to vote in any election to fill vacancies on the Academic Board.

By-law 4(2)(a)

If a staff member ceases to hold a position in a category that enabled them to be elected to the Academic Board, then that category position would become vacant.

By-law 5

The Chair of Academic Board is an additional member of the Academic Board. If a staff member is already an elected member then they would have to resign from the elected position to take up the role of Chair.

From the comments put forward by the Subordinate Legislation and Publications Committee, I agree that there are some ambiguities present in the current By-laws that need to be resolved. However, as I mentioned earlier, we are currently reviewing our academic governance and I would prefer to wait until the review has been completed and then seek to have amendments made to the By-laws based as part of a suite of changes.

Yours faithfully,

Professor Barney Glover
VICE-CHANCELLOR

July 2009

30 of 2008: Alice Springs (Animal Management By-laws) 2008

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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Subordinate Legislation and Publications Committee

The Honourable Alison Anderson MLA
Minister for Parks and Wildlife
Legislative Assembly of the Northern Territory
GPO BOX 3146
DARWIN NT 0801

Dear Minister,

Re: Alice Springs (Animal Management) By-Laws 2008 [No 30 of 2008]

The Subordinate Legislation and Publications Committee considered the above By-Laws as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

In considering Regulation By-law 79(1); the Committee questions whether it would be appropriate to include the words 'with any other requirement' between the words 'comply' and 'necessary'.

By-law 85(1): By-law 76 requires that a 'declared' dog be constrained when at the premises where it is kept. By-laws 81-85 apply where a declared dog is away from the premises where it is kept [see By-law 80]. By-law 85(1) provides:

'A declared dog must not be on or at private, commercial and retail premises'.

By-law 5 defines 'premises' to include 'land, buildings and caravans'. The Committee suggests that this could be interpreted as meaning that a person cannot visit the private property of a friend or relative or a place of employment with a declared dog. It is not clear to the Committee if the provision was intended to be that wide – it does not even expressly make an exception in relation to the owner's premises, though [because of By-law 76] doubtless that would be inferred. It is also the Committee's view that; such an interpretation would lead to an inevitable breach where a person follows the procedure in By-law 94, noted below.

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PAGE 2 of 2

By-laws 94(2)(b): this provision provides that where the ownership of a declared dog changes [and thereby presumably its premises], notification need only be given within 7 days after the change of ownership. By-law 45


provides that the original owner remains the registered owner until the Registrar is notified and given written particulars of the change. Accordingly, it could be considered that until such notice is given, the declared dog would be residing at private premises in contravention of By-law 85(1). It is noted that By-law 76(2) makes only the 'owner' liable for a breach of By-law 76(1) – hence, there would be no liability on the part of the assignee until such time as ownership is formally transferred through the notification process.

By-law 102: It is not clear to Members as to why the term vehicle includes only 'motorised' wheelchairs – by expressly referring to 'motorised' wheelchairs it implicitly excludes other forms of wheelchairs.

By-law 161: Clause (1) allows an authorised person to call on a member of the Police Force for assistance in the exercise of powers under the By-laws. This is consistent with and in the same terms as the power given by s 117 of the *Local Government Act*. However, in considering clause (2) which purports to give power to a member of the Police Force to arrest or remove persons, the Committee questions if such a general power [in the Act] authorising the giving of assistance operates to allow By-laws to extend the power of police to make an arrest. Having said that Members acknowledge that it is probably of little practical consequence because of the scope of the power of arrest under s 123 of the *Police Administration Act*.

The Committee seeks your comments on the matters raised. If you require any further information please contact Mr Terry Hanley in the Committee Secretariat on 89461438.

Yours sincerely


MICHAEL GUNNER, MLA
Chairman



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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801

Michael
Dear Mr Gunner

Thank you for your letter providing comments by the Subordinate Legislation and Publications Committee on the recently introduced Alice Springs (Animal Management) By-laws.

The above By-laws were made under the *Local Government Act 2008* by special resolution of the Alice Springs Town Council on 29 September 2008. In accordance with section 190(1)(c) of the *Local Government Act 2008*, the council provided a certificate from a legal practitioner certifying that the By-laws are made consistently with the principles prescribed in this part of the Act.

A copy of your letter has been sent to the Alice Springs Town Council for consideration and response. The council has been requested to respond direct to the Subordinate Legislation and Publications Committee.

Yours sincerely


ROB KNIGHT

16 JUN 2009



Mayor's Office

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PAGE 1 OF 2

31 July 2009

Mr Michael Gunner, MLA
Chairman
Subordinate Legislation and Publications Committee
GPO Box 3721
DARWIN NT 0801

Dear Mr Gunner

ALICE SPRINGS (ANIMAL MANAGEMENT) BY-LAWS 2008 [No 30 of 2008]

I refer to your recent undated letter directed to the Minister for Parks and Wildlife concerning the above.

As this Council drafted the By-laws, I write in response to your Committee's comments on the subordinate legislation. I note that the Council Solicitor has assisted me in preparing this response.

By-law 85(1)

The intention of the By-law is indeed to apply the prohibition to all private, commercial and retail premises including those of a friend or relative and the owner's workplace save for the express exclusion contained in clause (3).

That this By-law does not apply to the owner's own premises is clear from the operation of 80 limiting the application of By-law 85, among others, to when the dog is away from the *premises where it is kept*. By-law 6 defines that term to mean the "premises where the animal is usually and ordinarily kept" – which would usually and ordinarily be the owner's own premises.

By-law 94

This By-law requires the assignor of a declared dog to notify Council within 7 days of change of ownership. Unless and until the assignor provides such notification, By-law 76 (read in conjunction with By-law 45) still obliges the assignor to ensure that the dog continues to be properly contained at the premises where it is kept, whether or not those premises change as a result of the assignment. There is therefore further incentive on the assignor to promptly give the notification.

If the premises where the dog is kept change on the assignment, By-law 80 then applies meaning that the assignor does not breach By-law 85 pending giving notice under By-law 94.

As to the assignee, the definition of "owner" in section 5, particularly the second limb, ensures that that person is equally subject to By-law 76 should the assignor fail to give the By-law 94 notification.

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By-law 102

The intention of this By-law is to prevent road traffic swerving to avoid a dog. Traffic may include bicycles and tricycles and, certainly in Alice Springs, motorised wheel chairs.

Manual wheelchairs are encountered on a footpath but not on a road.

By-law 161

Both clauses of this By-law were included mainly for educational purposes and in full recognition of the matters to which you refer.

By-law 79(1)

Council accepts that the suggested words need to be included and will do so as part of an amending process to address matters of policy arising since the adoption of the By-laws, for which amendment is considered desirable.

I trust that this letter satisfies your concerns but Council would of course be only too happy to receive any further comments that you may have.

Yours sincerely



Damien Ryan
MAYOR

9 of 2009: Transport Legislation Amendment (Alcohol Ignition Lock) Regulations



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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

GPO BOX 3721
DARWIN NT 0801

The Hon. Gerald McCarthy, MLA
Minister for Transport
GPO Box 3146
DARWIN NT 0801

Dear Minister

RE: Transport Legislation Amendment (Alcohol Ignition Locks) Regulations 2009 [No 9 of 2009]

The Subordinate Legislation and Publications Committee considered the above Regulation as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

Regulation 7A(d): The Committee questions whether this particular sub-regulation is within the regulation making power.

Regulation 7A imposes conditions on AIL [alcohol ignition locks] licences granted under section 10(4A) of the *Motor Vehicles Act*. That section allows the Registrar to grant an AIL licence to drive a vehicle that is not a commercial passenger vehicle. Regulation 7A(d) imposes a condition on an AIL licence that the licensee must not drive a vehicle if he or she has a blood alcohol content of 0.02% or more, while Regulation 7A(c), which provides that in certain circumstances the licensee's blood must not contain any alcohol, is consistent with sections 24 and 25 of the *Traffic Act*.

Section 10(4C) of the *Motor Vehicles Act* provides that the AIL licence:
is subject to the same conditions of the previous licence and *other conditions relating to the AIL* prescribed by regulation (*such as* conditions relating to approved suppliers); and
the Committee suggests that the provision could be construed narrowly. It refers to other conditions *relating to the AIL* and gives the example of conditions relating to approved suppliers. It is the Committee's view that this is quite different from a condition going to the blood alcohol level of the driver.

The Explanatory Memorandum places reliance on section 138(1) of the *Motor Vehicles Act* and sections 53(1) and (2)(s) of the *Traffic Act*. Section 138(1) includes the general power to pass regulations as 'necessary or convenient' and, section 138(1)(o), allows regulations in relation to 'the medical condition and physical and character fitness of an applicant for a driver's licence for a commercial passenger

vehicle'. The specific reference to commercial passenger vehicles suggests that the same power does not exist in relation to other vehicles.

Regulation 7A(d) is concerned with licences to drive non commercial vehicles. Section 53(1) is also a general power to pass regulations as 'necessary or convenient', while s 53(2)(s) is concerned with payment of a prescribed amount in lieu of a penalty. It is the Committees view that it is unlikely that the general power under s 53(1) would be construed as allowing the creation of a new drink driving offence.

The Committee seeks your comments on the matters raised. If you require any further information please contact Mr Terry Hanley in the Committee Secretariat on 89461438.

Yours sincerely

MICHAEL GUNNER, MLA
Chairman



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MINISTER FOR TRANSPORT

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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
Legislative Assembly of the Northern Territory
GPO Box 3146
DARWIN NT 0801

Dear Mr Gunner

Thank you for your letter dated 13 January 2010, raising concerns regarding the validity of the Transport Legislation Amendment (Alcohol Ignition Locks) Regulations 2009, in particular Regulation 7A (d).

The introduction of Alcohol Ignition Interlocks (AILs) in the Northern Territory required a new class of licence to be created to allow the Registrar to grant a licence to a person who would otherwise be ineligible. The head of power relied upon is section 138(1) of the *Motor Vehicles Act*.

This section provides for the Administrator to make regulations, not inconsistent with the Act, **prescribing all matters** which are **required or permitted** to be prescribed¹, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, **and** in particular prescribing matters providing for and in relation to.... (the particular matters as listed in s.138 (1) (a-ag)).

Section 65(3) of the *Interpretation Act* provides that power conferred by an Act to make subordinate legislation for a particular purpose **is in addition to**, and does not limit the effect of power conferred by the Act to make subordinate legislation unless the Act expressly provides otherwise. There are no expressed or implied limitations under s.138 (1) of the *Motor Vehicles Act*.

Section 10 (4B) of the *Motor Vehicles Act* provides that the Registrar may only grant an AIL licence under certain conditions, including the Registrar being satisfied that the *Motor Vehicles Act* does not prevent the granting the AIL licence. A note to this sub-section draws attention to sections 102 and 102AA, where there are grounds for the Registrar to refuse to grant a licence. In effect,

¹ Section 17 of the *Interpretation Act* defines Prescribed as meaning prescribed by the Act in which the word is used or by a statutory instrument made, granted or issued under that Act.

Section 102 is a condition precedent to the exercise of the Registrar's powers. Section 102 (5A) goes on to provide that the Registrar may, subject to any direction of the Minister, grant or renew a licence under section 10, subject on such conditions **as are prescribed** or as the Registrar thinks fit.

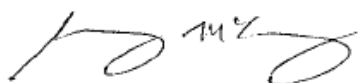
While section 10 (4C) provides that the AIL licence must be for the same class of vehicle that the applicant's previous licence related to and that the AIL licence is subject to the same conditions as the previous licence (for example to wear corrective lenses while driving), it also provides that the licence is subject to any other conditions that relate specifically to an AIL that are **prescribed in regulation**. While the notes in section 10(4C) do refer to conditions "such as conditions relating to approved suppliers", when read in conjunction with the Act, these do not limit what conditions maybe attached to the licence (refer s.102 (5A)).

Section 7A of the Motor Vehicle Regulations prescribes varying conditions that attach to an "I" class licence (AIL Licence), depending upon the circumstances. For example, regulation 7A (d) provides that for a person who is not subject to either s.24 or s. 25 of the *Traffic Act* (zero Blood Alcohol Content), then a condition on the licence is that the person must not drive a vehicle if they have a Blood Alcohol Content reading of 0.02 percent or higher. Primarily, this is in order to accommodate low levels of alcohol in certain foods and other products. If this provision is breached, the offender is not charged with drink driving, rather he or she is charged with driving unlicensed.

It is clear that the regulations do not seek to create a new drink driving offence as they are solely provided for in the *Traffic Act* and I am satisfied that the regulations are valid in their entirety.

Should you wish to discuss the matter further, please contact Barbara Littler, Acting Assistant Director, Transport Policy and Planning of the Department of Lands and Planning on telephone (08) 8924 7018.

Yours sincerely



GERRY MCCARTHY

2 MAR 2010

12 of 2009: Care and Protection of Children (Children's Services) Regulations 2009



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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

GPO BOX 3721
DARWIN NT 0801

The Hon. Kon Vatskalis, MLA
Minister for Child Protection
GPO Box 3146
DARWIN NT 0801

Dear Chief Minister,

RE: Care and Protection of Children (Children's Services) Regulations 2009 [No 12 of 2009]

The Subordinate Legislation and Publications Committee considered the above Regulations as required under its terms of reference contained within Standing Order 20 and seeks clarification of the following matters.

Regulation 15: It is not clear to the Committee why there is no power to suspend registration, similar to the condition contained within Regulation 12(3). The consensus among Members is that it could be considered a requirement in order to protect children pending a final determination.

The Committee also refers you to section 237(4) of the Act which gives a power to suspend a *license*.

Regulation 16: The Committee questions whether the register should also keep details of steps taken under regulations 12 and 15?

The Committee now seeks your comments on the matters raised. If you require any further information please contact Mr Terry Hanley in the Committee Secretariat on 89461438.

Yours sincerely

MICHAEL GUNNER, MLA
Chairman

January 2010

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DR CHRIS BURNS MLA
Minister for Education and Training

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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
GPO Box 3721
DARWIN NT 0801

22 FEB 2010

Dear Mr Gunner

Thank you for your letter of 13 January 2010 to the Hon Kon Vatskalis MLA, Minister for Child Protection, regarding the Care and Protection of Children (Children's Services) Regulations 2009 (No 12 of 2009). Your correspondence was forwarded to me as the Minister for Education and Training.

In relation to Regulation 15, you queried why there is no power to suspend registration for an Action Plan Agreement. Action Plan Agreements are not registered in the same manner as home based carers are registered, or as child care centres are licensed, which provide a formal status under which to operate.

An Action Plan Agreement is considered to be an undertaking by both parties which are in force for only as long as both parties are satisfied the agreement can be met. If one or both parties are dissatisfied, the agreement may be dissolved or renegotiated to reflect changed circumstances.

Services operating under an Action Plan Agreement are not registered, therefore suspension of registration cannot be applied.

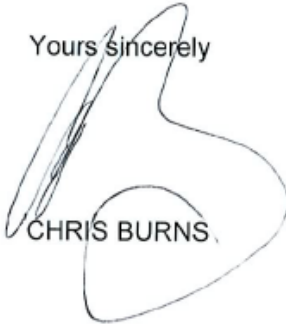
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The register referred to in Regulation 16 is an administrative tool to manage information about children's services in the Northern Territory. Your query regarding whether the register should contain detail of revocations and terminations of licensing and registration has merit and amendments will be forthcoming.

Thank you for bringing this to my attention.

Yours sincerely



CHRIS BURNS

21 of 2009: Unit Title Schemes (Management Modules) Regulations



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PAGE OF

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

GPO BOX 3721
DARWIN NT 0801

The Hon. Delia Lawrie, MLA
Minister for Justice and Attorney-General
GPO Box 3146
DARWIN NT 0801

Dear Minister,

Re: Unit Title Schemes (Management Modules) Regulations [No 21 of 2009]

The Subordinate Legislation and Publications Committee considered the above Regulation as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

Regulation 7(2): This regulation provides that each member of the Body Corporate Committee commits an offence where the committee fails to comply with certain requirements under the management module. Clauses 4(2) and 5(5) of Schedules 1 and 2 and clause 5(5) of Schedule 3 provide that where a member of the corporation is a company, the member must appoint an individual to be a committee member in place of the member. It would follow by the terms of regulation 7(2) that the delegate and not the company would be liable for the penalty. The questions that arises from that is whether that might or might not have been intended.

Schedule 1, 2 & 3 clause 9. This provision deals with removal of a committee member for breach of the code of conduct. There would appear to be no requirement of notice to the committee member. However, where that member is the delegate of a company, it could be considered useful to also include a requirement to notify that company. Otherwise there might be occasions where it is unaware of the proceedings being taken in relation to its delegate.

Schedule 1 & 2 clause 44(4) & Schedule 3 clause 35(4): Members of the Subordinate Regulations and Publications Committee require further clarification of the intent of this provision although it is noted that it also appears in the equivalent West Australian legislation.

Clauses 44 [Schedule 1 & 2] and 35 [Schedule 2] allow a mortgagee of a unit to assume voting rights in place of the owner. Counsel to the Committee suggests that this would appear to be unusual in a legal system, such as in Australia, where the mortgagee is not the legal owner of the property over which the mortgage lies. It has been suggested that it would appear to be better suited to a jurisdiction where the mortgagee becomes the legal owner of the property or where, at least, there is provision in the mortgage document giving the mortgagee such rights.

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In further consideration of clauses 43(4) [Schedule 1] and 35(4) [Schedule 2], they refer to voting rights in circumstances where '2 or more persons are mortgagees of a unit as joint tenants or tenants in common'. Members require clarification on how, as mortgagees, they can be joint tenants or tenants in common. Joint tenancy and tenancy in common are forms of *ownership* of real property. As noted, under the Northern Territory system, mortgagees are not owners of the property over which the mortgage lies, even where they are mortgagees in possession of the land.

The Committee seeks your comments on the matters raised. If you require any further information please contact Mr Terry Hanley in the Committee Secretariat on 89461438.

Yours sincerely

MICHAEL GUNNER, MLA
Chairman

January 2010

22 of 2009: Unit Titles (Management Modules) Regulations



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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

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DARWIN NT 0801

The Hon. Delia Lawrie, MLA
Minister for Justice and Attorney-General
GPO Box 3146
DARWIN NT 0801

Dear Minister,

RE: Unit Titles (Management Modules) Regulations [No 22 of 2009]

The Subordinate Legislation and Publications Committee considered the above Regulation as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

Comments by the Committee in relation to *Unit Title Schemes (Management Modules) Regulations [No 21 of 2009]* in previous correspondence should be read in conjunction with the comments below as they apply equally to *Unit Titles (Management Modules) Regulations [No 22 of 2009]*. The equivalent provisions under the latter regulations are noted below.

Regulation 6(2): this regulation is in the same terms as regulation 7(2) of the *Unit Title Schemes Regulations*, noted above. The comment made there is equally applicable here. The relevant clauses under the *Unit Titles Regulations* are clauses 4(2) and 5(5).

Schedule 1 & 2 clause 9: this clause is in the same terms as clause 9 of Schedules 1, 2 and 3 of the *Unit Title Schemes Regulations*, noted above. The comment made there is equally applicable here.

Schedule 1 clause 43(4) & Schedule 2 clause 35(4): these clauses are in the same terms as clauses 44(4) [Schedule 1 & 2] and clause 35(4) [Schedule 3] of the *Unit Title Schemes Regulations*, noted above. The comment made there is equally applicable here.

Schedule 1 clause 49(1)(b) & Schedule 2 clause 38(1)(b): These clauses allow access to corporation records by 'a person intending to buy a unit'. The Committee questions the intent behind this clause. Has it been incorporated to include anyone who merely indicates that they intend to buy a unit or does it require further and better evidence – for example, a conditional contract or confirmation from the present owner of such intent?

The Committee has formed the view that there are two issues here, the potentially onerous obligation of the corporation to comply with many requests and, the extent to which persons who will not become owners should have access to such information. However, it is noted that such a provision is incorporated into the *Unit Title Schemes Act* [section 81], though not in the *Unit Titles Act* which governs the present regulations.

The Committee seeks your comments on the matters raised. If you require any further information please contact Mr Terry Hanley in the Committee Secretariat on 89461438.

Yours sincerely

MICHAEL GUNNER, MLA
Chairman

January 2010



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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
Legislative Assembly of the
Northern Territory
GPO Box 3721
DARWIN NT 0801

Dear Mr Gunner *Michael*

Thank you for your letter of 13 January 2010 concerning the Unit Titles (Management Modules) Regulations [No 22 of 2009].

The Subordinate Legislation and Publications Committee has raised a number of issues. I have referred the issues to the relevant agency (Department of Justice) and, after considering the Department's comments, I advise as follows.

As mentioned in your letter many of the issues are the same as those raised in respect of the Unit Title Schemes (Management Modules) Regulations [No 21 of 2009]. Those issues are dealt with in my letter concerning those Regulations.

The additional issue, with response, is as follows:

Issue

The Committee notes that clause 49(1)(b) of Schedule 1 and clause 38(1)(b) of Schedule 2 of the Regulations permit access to the records of unit title bodies corporate by persons "intending to buy a unit". The Committee seeks further information about the intent of the clauses. In essence, the Committee is concerned as to whether the person seeking the access should be required to prove that they have a legal commitment to buy the unit. The Committee is also concerned that the provisions may impose onerous obligations on bodies corporate.

Response to the issue

The Regulations duplicate, for units under the *Unit Titles Act*, the provisions that apply under the *Unit Title Schemes Act* (section 81(2)) to units created under that Act from 1 July 2009.

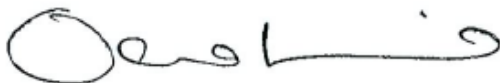
The provisions of both the Regulations and the *Unit Title Schemes Act* are unclear as to what is their actual effect. The likely intent was that the person seeking the information under the provisions would be doing so after having entered into a contract to buy the unit. The purpose of obtaining the information being so that the intending purchaser can be satisfied about various matters concerning the unit and the relevant body corporate.

In practice it is likely that the only persons seeking the information will be persons who have committed to make a purchase. Nonetheless, it appears appropriate to amend the Regulations so as to restrict the operation of the clauses to situations where the buyer has entered into a contract. It should also be noted that body corporate managers have also raised valid concerns regarding the extent to which a body corporate can require a fee to be paid for providing the access.

Accordingly, I have asked the Department of Justice to arrange for an appropriate amendment to the Unit Titles (Management Modules) Regulations so that the Regulations prescribe that a person intending to make a purchase must be able to show that he or she has entered into a contract. I also anticipate that a similar amendment will be made, for the purposes of the operation of section 81 of the *Unit Title Schemes Act*, to the Unit Title Schemes (Management Modules) Regulations

Please let me know if the Committee has any further queries concerning these regulations or the proposed changes.

Yours sincerely



DELIA LAWRIE

2/2/10

23 of 2009: Livestock Regulations



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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

GPO BOX 3721
DARWIN NT 0801

The Hon. Kon Vatskalis, MLA
Minister for Primary Industry, Fisheries and Resources
GPO Box 3146
DARWIN NT 0801

Dear Minister

RE: Livestock Regulations [No 23 of 2009]

The Subordinate Legislation and Publications Committee considered the above Regulation as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

Regulations 77-78: These regulations create offences on the part of suppliers where prescribed statements and warnings are not given on 'manufactured foodstuff'. The term 'manufactured foodstuff' is defined in regulation 75 as manufactured food intended for the consumption by livestock or *other animals*.

There must either be a statement [see regulation 76] that, for example, the container [regulation 78] does not contain restricted animal material [defined in regulation 74 – 'material derived from a mammal, bird or fish'] or a warning [regulation 76] that it does. The precise specifications of the warning are prescribed.

The Committee presumes that many of these products will be manufactured interstate or overseas [giving rise to a separate question of enforceability where the product is directly imported into the Territory by a person responsible for livestock]. On that basis, Members also presume that the responsibility falls on any local on-supplier or retailer.

'Supply' is defined in regulation 3 to include 'sell or exchange'. In that context, the definition of manufactured food in regulation 75 would mean food intended for consumption by livestock or *other animals* which would seem to place the obligation on every supplier or retailer to ensure that the appropriate statement or warning appears on every 'container', including, arguably, on tins or packets of pet food.

Members are concerned that there does not appear to be anything in the Act or Regulations to limit the term 'other animals' to animals that might ordinarily be thought to come within the purview of Livestock Regulations. While the term 'other animals' might be read in the context of the objects of the Act set out in section 3 [to promote a sustainable livestock and associated industries], the exception made in

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regulations 77 and 78 in relation to 'dry dog food' might cause some uncertainty as to the scope of the term. Even if the term 'other animals' were read to extend only to animals such as farm dogs, how is a retailer to know that wet pet food is intended for consumption by, for example, farm dogs?

The Committee seeks your comments on the matters raised. If you require any further information please contact Mr Terry Hanley in the Committee Secretariat on 89461438.

Yours sincerely

MICHAEL GUNNER, MLA
Chairman

January 2010



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PAGE 1 OF 2

THE HON KON VATSKALIS MLA

MINISTER FOR PRIMARY INDUSTRY, FISHERIES AND RESOURCES

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The Hon Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
Parliamentary Committee Office
Level 3, Parliament House
DARWIN NT 0800

Dear Mr Gunner

Thank you for your letter of 13 January 2010 concerning Livestock Regulations 75 to 78 which regulate the ban on the feeding of a manufactured foodstuff containing Restricted Animal Material (RAM) derived from a mammal, bird or fish to ruminants.

Australia has adopted a ban on feeding RAM to ruminants to manage the risk of a neurological disease in humans, caused by a prion (a biosecurity agent simpler than a virus), due to consuming meat products from infected cattle, sheep or goats. While Australia is free of mad cow disease (Transmissible Spongiform Encephalopathy), it is possible that a new prion disease could emerge within Australia. The prion could not propagate effectively due to the ban.

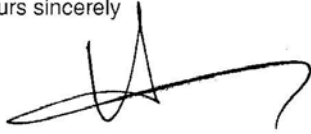
I agree with your committee that there is uncertainty, which will be addressed at the next revision of the Livestock Regulations.

Manufacturers of livestock feedstuffs nationally are required to provide a label that the manufactured foodstuff does not contain RAM or if it does contain RAM, provide a warning to not feed to ruminants. There are no manufacturers of stock feeds containing RAM within the Northern Territory. All compliance activity at Northern Territory retailers is directed to labelling provided by manufacturers. There has been no prosecution of Territory suppliers and no action will be taken against retailers selling wet dog food.

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The department's contact officer for this matter is Dr Brian Radunz, Northern Territory Chief Veterinary Officer. Dr Radunz can be contacted on telephone 8999 2130 or via email: brian.radunz@nt.gov.au.

Yours sincerely



KON VATSKALIS

09 FEB 2010

25 of 2009: Planning Amendment Regulations (No. 2) 2009 – Regulations



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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Subordinate Legislation and Publications Committee

The Honourable Delia Lawrie, MLA
Minister for Justice and Attorney-General
GPO Box 3146
DARWIN NT 0801

Dear Minister,

Re: Planning Amendment Regulations (No. 2) 2009 – Regulations 2009, No 25

At recent meetings of the Subordinate Legislation and Publications Committee Members have discussed the details contained in the above Regulations which provide for an exemption from Part 5 of the *Planning Act*, in respect of leases negotiated over Wadeye, Maningrida, Gunbalanya and Galiwin'ku. The Explanatory Memorandum attached to the Regulations indicates that the exemption is required in order to execute the necessary leases and enable SIHIP works to commence.

Further, the Explanatory Memorandum states that compliance with Part 5 may not be achievable because of certain survey requirements and prior service related works that may be needed as a condition of the consents, required under Part 5 of the *Planning Act*.

At a recent meeting the Committee resolved to seek from the relevant Minister some further and better particulars of the exemption provisions described above including any further reasons for the exemption and the proposed duration of the exemption.

The Committee seeks your comments on the above matters. If you require any further information please contact Mr Ian McNeill, Office of the Clerk on 8946 1450.

Yours sincerely

MICHAEL GUNNER MLA
Chairman
20 July 2010



MINISTER FOR LANDS AND PLANNING

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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
Parliament House
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Dear Mr Gunner

Planning Amendment Regulations (No.2) 2009 – Regulations 2009, No 25

Thank you for your letter dated 20 July 2010, to the Minister for Justice and Attorney-General, seeking further details of subdivisions comprising leases to the Chief Executive Officer (Housing), being exempt through the above regulation. This matter has been referred to me for response.

The Commonwealth Government has stipulated that prior to any works being carried out by the Commonwealth and Northern Territory Government Strategic Indigenous Housing and Infrastructure Program (SIHIP), there must be secure tenure over the land.

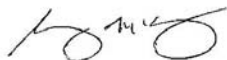
The Chief Executive Officer (Housing) has negotiated 20 + 20 year housing leases in four Top End communities; Wadeye, Maningrida, Gunbalanya and Galiwinku and is in the process of negotiating leases in a number of other communities. The grant of a lease for a term of more than 12 years is a subdivision under the *Planning Act* and a development permit is required to subdivide land.

Part 5 of the *Planning Act* specifies the requirements for a development application, public exhibition of the application and the issue of a development permit. The development permit specifies the development works to be carried out and the Surveyor-General cannot approve a plan of survey until those works have been completed.

To achieve the secure tenure required by the Commonwealth before works have commenced, it was decided that subdivisions comprising leases to the Chief Executive Officer (Housing) until 31 December 2013 be prescribed under Section 5 (2)(h) of the *Planning Act*. This means that Part 5 of the *Planning Act* does not apply. However, internal agency processes will ensure that the land use controls of the NT Planning Scheme and land servicing requirements of the Power and Water Corporation are met. Survey plans will not be approved by the Surveyor-General until they are endorsed by Strategic Lands Planning Division of the Department of Lands and Planning.

I trust that this explanation gives you the background as to why the regulation was made and how the Department of Lands and Planning is administering subdivisions to ensure that sound land use planning principles are upheld and new housing lots for SIHIP are adequately serviced.

Yours sincerely



GERRY MCCARTHY

19 AUG 2010



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Subordinate Legislation and Publications Committee

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Hon. Mr Gerry McCarthy
Minister for Lands and Planning
GPO Box 3146
DARWIN 0801 NT

14 November 2010

Dear Minister,

Re: Planning Amendment Regulations (No.2) 2009 – Regulations 2009, No.25

Thank you for your letter of 19 August 2010. The Subordinate Legislation Committee met on 27 October 2010 and appreciated your response to the land tenure questions previously raised.

It is requested that you provide some further explanation as to how the internal administrative Agency processes will work to ensure the NT Planning Scheme is able to operate in the interim period until 31 December 2013 envisaged under section 5 of the Planning Act.

Yours sincerely

Michael Gunner MLA
CHAIR



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MINISTER FOR LANDS AND PLANNING

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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801

Dear Mr Gunner

I refer to your letter received on 15 November 2010, seeking further details of internal administrative Agency processes to ensure the NT Planning Scheme is able to operate in the interim period until 31 December 2013.

Part 5 of the *Planning Act* (the Act) specifies the requirements for a development application, public notification of the application, determination of the application and the issue of a development permit. The development permit specifies the development works to be carried out.

The Surveyor-General must not sign a plan of survey until the works specified in the permit have been carried out.

The Chief Executive Officer (Housing) holds an exemption from complying with the provisions of Part 5 of the *Planning Act* pertaining to Subdivision.

In the absence of the formal processes described above, internal agency process is used to ensure that the land use controls of the NT Planning Scheme, requirements of the Surveyor-General in terms of the *Licensed Surveyors Act*, and land servicing requirements of the Power and Water Corporation (PWC) are met.

Alliances established to deliver housing and infrastructure through the Strategic Indigenous Housing and Infrastructure Programme (SIHIP) prepare concept subdivision plans.

These concept plans are reviewed at joint meetings with officials from the Department of Lands and Planning (DLP) and PWC (Remote Operations).

Subdivision concept plans are evaluated against the principles contained in the NT Planning Scheme, the provisions of the Act and the subdivision design standards within the Northern Territory Government Environmental Health Standards for Remote Communities in the Northern Territory.

DLP provides preliminary endorsement of concept plans for the alliances to proceed to detailed design. Design review meetings are held at key points during the design process to assess design progress and compliance with the NT Planning Scheme and the Act.

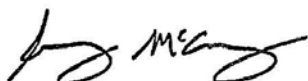
PWC provide written confirmation that services design has been completed to their satisfaction. Once this confirmation from PWC is received, DLP formally endorses the subdivision plan, and requests that the delegate of the Surveyor-General issues lot numbers.

Formal cadastral survey is undertaken by a licensed surveyor in accordance with the instructions of the Surveyor-General. The plan of survey is submitted to DLP for assessment.

The Department endorses the plan of survey if the subdivision has proceeded in keeping with the approved subdivision plan, and upon confirmation from PWC that construction of services has been completed satisfactorily. The endorsed plan of survey is then forwarded to the Surveyor-General for his signature. A plan of survey will not be signed by the Surveyor-General until Departmental endorsement is given, which mirrors the formal Part 5 process described at the outset of my letter.

I trust that this explanation gives you the background as to how the agencies are administering subdivisions, to ensure that the provisions of the Act and NT Planning Scheme are complied with until 31 December 2013.

Yours sincerely



GERRY MCCARTHY

10 DEC 2010

26 of 2009: Public Interest Disclosure Regulations



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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

GPO BOX 3721
DARWIN NT 0801

The Hon. Delia Lawrie, MLA
Minister for Justice and Attorney-General
GPO Box 3146
DARWIN NT 0801

Dear Minister,

RE: Public Interest Disclosure Regulations [No 26 of 2009]

The Subordinate Legislation and Publications Committee considered the above Regulation as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

Regulation 4: The Committee is concerned that the underlying rationale for the prescribed method of disclosure is not stated. The fact that regulation 4(3), which relates to written disclosure, prescribes communication by post and email and not by fax, could suggest that it is intended to preserve a degree of confidentiality. That also appears to be the objective of regulation 4(4).

It could be considered that any premature disclosure of the identity of the whistleblower could be prejudicial to that person and any process that does not give adequate protection will militate against people volunteering information.

It is the view of the Committees that if confidentiality is the objective, the other provisions appear to be 'loose'. For example, regulation 4(1)(b) allows the whistleblower to leave a telephone message. Members question the actual process for example, with whom is the message left, and what process exists to ensure the integrity of the message?

While regulation 4(3)(b) allows for any disclosure simply to be left at an office used by the recipient, the question remains as to who else has access to that office? There would appear to be no indication that the disclosure should be sealed.

In relation to written disclosures, there may be a necessity to consider the provision of a post box in such offices, to which only the recipient has access. Alternatively, there might be a process of delivery by registered post. In relation to telephone messages, under the present regulations it seems that the message could be left at the general office number. There might be a number of people who have access to such lines. An alternate process could see the provision and publication of the existence of, direct lines for such purposes.

The Committee would suggest that perhaps further consideration needs to be given to the objectives of the disclosure process and how those objectives might best be achieved.

Regulation 6: Requires the Commissioner to keep in contact with the person who has disclosed the information in relation to the status of the investigation. Under regulation 3, disclosure may be made to the Commissioner, the Speaker or a responsible chief executive. Under section 12(2) of the *Public Interest Disclosure Act*, any disclosure to a chief executive must be referred to the Commissioner, so that the Commissioner is able to keep in contact with the whistleblower in relation to such communications. However, under section 12(1) of the Act, the Speaker is not required to refer any disclosure to the Commissioner. In that event, it would seem that the Commissioner would not be in a position to comply with regulation 6(1). There is no equivalent obligation on the Speaker to keep in contact with the person who disclosed the information.

The Committee seeks your comments on the matters raised. If you require any further information please contact Mr Terry Hanley in the Committee Secretariat on 89461438.

Yours sincerely

MICHAEL GUNNER, MLA
Chairman

January 2010



MINISTER FOR JUSTICE & ATTORNEY-GENERAL

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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
Legislative Assembly of the
Northern Territory
GPO Box 3721
DARWIN NT 0801


Dear Mr Gunner

Accepted
minutes 27/4/2010

Thank you for your letter of 13 January 2010 providing comments on the Public Interest Disclosure Regulations (the Regulations).

The Subordinate Legislation and Publications Committee (the Committee) expressed concern with respect to:

- regulation 4 – that the underlying rationale for the prescribed method is not stated, that some provisions appear to be 'loose' with respect to confidentiality and suggesting further consideration needs to be given to the objectives of the process and how those objectives may best be achieved.

It is noted that the philosophy of the legislation is to allow disclosures to be made as easily as possible, with the objective of regulation 4 to facilitate the making of a disclosure pursuant to section 11 of the *Public Interest Disclosure Act* (the Act).

In keeping with this philosophy and objective, a range of mechanisms is provided to make a disclosure, some of which are more conducive to confidentiality than others. A discloser can choose a method of disclosing that offers them their desired degree of confidentiality. Those disclosers who are concerned about confidentiality have chosen, I am advised, to contact the office of the Commissioner for Public Interest Disclosures (the Commissioner) directly by telephone, and typically arrange face-to-face meetings before disclosing any information.

I am further advised that only staff of the Commissioner have access to that office.

I note that the equivalent Victorian and Tasmanian regulations (on which the NT legislation was based) provide that a written disclosure is made to the relevant person by addressing the disclosure to that person and sending or delivering the disclosure to, or leaving the disclosure at, the office of that person.

The legislation is for the benefit of disclosers and should not be unduly limiting or prescriptive. Otherwise a disclosure which fails to comply with the procedures in the regulations would not be covered or protected.

If problems are experienced in the future, consideration can then be given to amending the Regulations.

regulation 6 – that there is currently no obligation on the Speaker to keep contact with the discloser and the Commissioner would not be in a position to keep contact in accordance with regulation 6(1) if the Speaker does not refer a disclosure made to the Speaker to the Commissioner.

As noted, unless the Speaker refers a disclosure to the Commissioner, in his or her discretion under section 12(1) of the Act, the Commissioner has no role in dealing with that disclosure and would not be required to keep contact with the discloser. The Commissioner would not be satisfied that it would be reasonable to do so in accordance with regulation 6(5).

The legislation (Act and Regulations) provides the Speaker with very few limitations as to the manner in which a disclosure is handled. This is because members of the Legislative Assembly (MLAs) are ultimately accountable to Parliament and to the electorate. The Speaker (who traditionally deals with complaints) has the discretion as to how to deal with a disclosure about MLAs. The intention in including disclosures about MLAs was not to be prescriptive about how they should be handled but to ensure protection is given to a person who makes a public interest disclosure about them.

I note that in Victoria the Parliament has issued "Procedures for making a disclosure about a Member of Parliament".

trust the above goes some way to addressing the Committee's concerns.

Yours sincerely



MELIA LAWRIE

4/3/10

27 of 2009: Volatile Substance Abuse Prevention Amendment

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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

GPO BOX 3721
DARWIN NT 0801

The Honourable Kon Vatskalis, MLA
Minister for Health
PO Box 3721
DARWIN NT 0801

Dear Minister,

37

VOLATILE SUBSTANCE ABUSE PREVENTION AMENDMENT REGULATIONS No 27 of 2009

The Subordinate Legislation and Publications Committee considered the above Regulation as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

Reg 14: this regulation allows for the issuing of a treatment warrant [to require participation in a treatment programme] on application to a magistrate by telephone. If the magistrate issues a warrant, the magistrate must complete and sign the warrant and advise the applicant by telephone of its terms.

The applicant is then required to complete 2 copies of the form of warrant [Form 2 in the regulations] and send one copy to the magistrate. Upon receipt, the magistrate compares it with the original warrant and, by reg 14(2)(b), if the copy is in substance identical to the original then 'the copy has the same authority as the original warrant'.

That means that the copy prepared by the applicant can be used for the purposes of executing the warrant. Section 41(c)(1)(b) provides that a copy of the warrant must be produced to a person at the place where the warrant is executed.

The Committee considers that a difficulty throughout this process is that it is not clear from the regulations how the applicant for the warrant is to be informed that the magistrate has compared the copy with the original and that they are 'in substance identical'.

It would appear from the terms of reg 14(2) that it is only then that it has the same authority as the original warrant. If that is the intention and effect of reg 14, then there is a question of why the magistrate does not simply send a copy of the original warrant to the applicant [electronically or otherwise] and thereby avoid the preparation of copies by the applicant.

If, on the other hand, it was intended that the copy prepared by the applicant have immediate effect then, because of the terms of reg 14(2), it is the Committee's view that it is doubtful that the regulation as framed achieves that purpose.

-2-

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The Committee seeks your comments on the matters raised. If you require any further information please contact the Committee Secretariat on 89461438.

Yours sincerely



MICHAEL GUNNER, MLA
Chairman

April 2010



THE HON KON VATSKALIS MLA
MINISTER FOR HEALTH

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Mr Michael Gunner MLA
Parliamentary Committee Office
Level 3 Parliament House
DARWIN NT 0801

Dear Mr Gunner

Thank you for your correspondence on behalf of the Subordinate Legislation and Publications Committee received on 13 May 2010. I understand that the Committee has a query in regard to the *Volatile Substance Abuse Prevention Regulations* pertaining to the application and issuing of treatment warrants under the parent *Volatile Substance Abuse Prevention Act* (VSAPA).

The VSAPA, at Part 3 section 41A(3)(b), allows for treatment warrant applications to be made by telephone if it is impracticable to apply in person. The origin of this provision stemmed from a recommendation at the time of the review of administrative processes of the Act. The intention was to facilitate the application and issuing of a treatment warrant in a situation where the applicant could not attend court and the client was at risk of severe harm from volatile substance use.

The provisions in regulation 14 have been modelled on section 118 of the *Police Administration Act* (PAA) and are essentially the same. It is correct however, that there is no prescribed procedure for advising the applicant that the magistrate has compared the warrant and that they are 'in substance identical' in the regulation. At the time of drafting, it was considered that this was not necessary given courts have their own procedures in place.

As you point out in your letter the wording at section 14(2)(b) of the *Volatile Substance Abuse Prevention Regulations* suggests that, unless the applicant's copy is 'in substance identical' with the magistrate's original, it may not have the same authority. However, the Department of Health and Families are advised that the authority of the warrant has effect as a result of the magistrate communicating with the applicant, rather than by comparison which may occur at a later time.

.....
PAGE 1 OF 20/

The requirement of the applicant to make duplicate copies and provide a copy to the magistrate has been included in the regulations to achieve consistency with existing police and court procedures and alignment to section 118 of the PAA and other Acts dealing with warrants. The procedures, if followed as prescribed, should not impede a warrant being applied for, issued and executed in a timely manner.

However, noting your committee's concern, the Department of Health and Families will assess this matter, with the option of amending this provision through a statute law revision process, to be more exacting about comparisons as is worded in the PAA.

Thank you for your interest in the Act.

Yours sincerely


KON VATSKALIS
9/7/10

29 of 2009: Geothermal Energy Regulation



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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

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DARWIN NT 0801

The Honourable Kon Vatskalis, MLA
Minister for Primary Industry Fisheries and Resources
PO Box 3721
DARWIN NT 0801

Dear Minister

GEOTHERMAL ENERGY REGULATION 29 of 2009

The Subordinate Legislation and Publications Committee considered the above Regulation as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

Reg 10(6): by s 53(3) of the Act and regulation 10(5), certain drill core and other samples must be given to and stored by the Agency. Regulation 10(6) provides that 'a person' may examine drill core or other samples at the Agency's storage premises 'during the normal business hours' of the Agency.

This suggests that the samples are open to immediate access, which could cause administrative problems during any periods of peak demand. The Committee considers that it might be prudent to provide some latitude to the keeper of the samples to, for example, require notice and to allocate times. The Committee also presumes that in the context of s 53(3) no confidentiality attaches to any of the samples as under regulation 10(6) access is given to any person.

The Committee seeks your comments on the matters raised. If you require any further information please contact the Committee Secretariat on 89461438.

Yours sincerely

MICHAEL GUNNER, MLA
Chairman

April 2010

*see Answer Form 30
minutes 27-4-10*



DOCUMENT 34
PAGE 1 OF 1

THE HON KON VATSKALIS MLA

MINISTER FOR PRIMARY INDUSTRY, FISHERIES AND RESOURCES

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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
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Dear Mr Gunner

Michael 289 Para 36 of letter.

Thank you for your letter received in my office on 13 May 2010 in relation to Geothermal Energy Regulation 29 of 2009.

My Department of Resources has provided the following advice to clarify the Subordinate Legislation and Publications Committee's concerns regarding access to certain drill core samples pursuant to section 53(3) of the *Geothermal Energy Act*.

Due to the nature of geothermal energy exploration and the small number of applications expected, it is not anticipated that any undue administrative burden on the core store facility will be created.

Access to samples will be conducted in a similar manner to that of the current *Mining Act* by way of guidelines, whereby a person seeking to gain access to samples is required to obtain approval from the Storage Facility Manager in addition to an agreed date and time to gain access.

Should you have any further queries regarding this matter, may I suggest in the first instance, you contact Ms Jenny Saunders, Manager Minerals and Energy Information Centre Northern Territory Geological Survey, on telephone 8999 5280.

Yours sincerely

KON VATSKALIS

8/6/10



33 of 2009: Cross Border Justice Regulation



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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

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DARWIN NT 0801

The Honourable Delia Lawrie, MLA
Minister for Justice and Attorney-General
PO Box 3721
DARWIN NT 0801

Dear Minister,

MINUTE 27.4.12

CROSS BORDER JUSTICE REGULATION 33 of 2009

The Subordinate Legislation and Publications Committee considered the above Regulation as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

Reg 56: the Regulations make modifications to a number of Acts for the purposes of giving effect to the Cross-Border Justice Act and its object of facilitating the administration of justice in the cross-border regions. Regulations 50 to 56 deal with modifications to the Sentencing Act, dealing with matters such as community service orders in 'cross-border proceedings'. The Committee is aware that cross-border proceedings are proceedings that may be conducted in the Territory or another participating jurisdiction where the person the subject of the proceedings has a 'connection' [a connection is established, for example, by reference to where the person resides or where the offence was committed] with a cross-border region: as per s 68(1) of the Act. As to the area of the cross-border region, the Schedule to the present Regulations apply.

Regulation 56(2) modifies s 108(3)(b) of the Sentencing Act. Under the original s 108, pending sentence the court that was to impose the sentence could:

- (a) admit the person to bail, or
- (b) order the removal in custody of the person from one place in the Territory to another.

Sub-regulation (b) has been replaced, now allowing the court to order the removal in custody 'of the person from one place in a participating jurisdiction to another' [that is, the Northern Territory, Western Australia or South Australia: as per s 7 of the Act].

The Committee wishes to make two observations in relation to this provision. First, generally, other provisions of the Cross-border Justice Act and Regulations deal with persons who have a 'connection' with a cross-border region. For example, s 97 allows for the sentence of a person, following conviction, to be served in a participating jurisdiction 'if the person has a connection with a cross-border region'. On the other hand, regulation 56 seems to make s 108(3) of the Sentencing Act of general application; that is, applying to all persons, whether they have a connection to a cross-border region or not. It is not clear to the Committee that this was intended and, in any event, there is a question of whether that result would be consistent with the regulation making power under the Act.

Secondly, and consistent with the original s 108(3)(b), s 108(4) of the Sentencing Act provides:

A person to be sentenced for an offence shall, while in custody pending sentencing, be taken to be in the lawful custody of the Director or the Commissioner of Police (according to whether the person is in a prison or in police custody).

With the amended s 108(3)(b), it is not clear to the Committee how a person removed in custody from the Territory to another State can be taken to be still lawfully in the custody of the Northern Territory Director or the Commissioner of Police

The Committee seeks your comments on the matters raised. If you require any further information please contact the Committee Secretariat on 89461438.

Yours sincerely



MICHAEL GUNNER, MLA
Chairman

April 2010



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1023

MINISTER FOR JUSTICE & ATTORNEY-GENERAL

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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and
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GPO Box 3721
DARWIN NT 0801

Dear Mr Gunner

Thank you for your letter bringing to my attention possible anomalies created by regulation 56 of the Cross-border Justice Regulations and the modifications the Regulations make to the *Sentencing Act*.

The issues raised are:

1. in relation to moving prisoners from one jurisdiction to another, the Regulation does not specify that the prisoner must have a connection with a cross-border region; and
2. there is a lack of clarity about the custody of prisoners when they are transferred between jurisdictions in the Cross-border Justice Scheme.

The Act facilitates the administration of justice in regions straddling the Northern Territory's borders with South Australia and Western Australia, (called "participating jurisdictions" in the Act). The Act contains detailed rules governing how the laws as well as the administrative and judicial systems for each of the participating jurisdictions will operate when administering the laws of another jurisdiction. However, as it was not practically possible for the Act to cover all eventualities, the Act contains provisions that provide for modifications of Northern Territory law as are necessary to give effect to the Act.

In particular, section 14 states that in order to give effect to the Act a law of the Northern Territory must be applied with any "appropriate modifications as if the law had been altered in that way". Section 13 of the Act provides, for the purposes of section 14, what is meant by "appropriate modifications".

There are two types of "appropriate modifications". The first, in section 13(a) of the Act, provides for modification of a Territory law by regulation. The second, in section 13(b), is a kind of deemed modification. That is, it provides for "any other modifications of the law that are necessary or convenient, to give effect to the Act". The onus is on the person operating under a law that needs modification to give effect to the Act to work out what is the required modification.

Thus the Act, when appropriate, modifies, for the purposes only of the application of the Act, other NT Acts in cross-border matters, both where there are regulations in place, and, where it is necessary and convenient, where there are no regulations in place. The Act through the Regulations does not actually amend the legislation in any general manner. In this case, section 108 of the *Sentencing Act* has not been amended. You will, as an indication of this, see that the electronic version of the statute book as maintained by Parliamentary Counsel contains no reference to the modifications made by the Cross-border Justice Regulations. Instead its operation has been merely modified for the purpose of its operation regarding matters being dealt with under the cross border legislation.

Section 108 of the *Sentencing Act* deals with court orders to remove a person in custody from one place in the Territory to another. Regulation 56(2) of the Cross-border Justice Regulations modifies subsection 108(3) of the *Sentencing Act* to provide that, pending sentencing, the Court can;

- (a) admit the person to bail, or
- (b) make an order or orders for the removal in custody of the person from one place in a participating jurisdiction to another.

It does not use words that make it clear that the modification is only made for the purposes of section 14 of the Act. Other similar provisions of the Regulations include, in the modifications, references to the cross-border region. These references provide ready indicators as to why the modification has been made.

I accept that it is possible to read regulation 56 so that it seems to modify section 108(3)(b) of the *Sentencing Act* so that it has general application. That is, applying to all persons, whether they have a connection with a cross-border region or not. This does not give effect to the Act and is, accordingly, not the legal effect of the modification. Rather, authorities can only deal with a prisoner under the modified version of section 108(3)(b) of the *Sentencing Act* if the prisoner has some connection (as described in section 20 of the Act) with the cross border region.

I have asked the Department of Justice to develop an amendment so that section 108(3)(b), as modified, is clearer in its meaning. I understand that the likely amendment is one that will result in the modified section containing a reference to the cross-border region.

The second anomaly is that section 108(4) of the *Sentencing Act* reads

"A person to be sentenced for an offence shall, while in custody pending sentence, be taken to be in the lawful custody of the *Director or the Commissioner of Police* (according to whether the person is in prison or police custody)." (emphasis added)

If, under modified section 108(3)(b), a person is removed in custody from the NT to another participating jurisdiction, it is not clear how such a person can still be in the custody of the NT Director of Correctional Services or the Commissioner of Police. For this case section 13(b) of the Act operates so that there is a deemed modification. The deemed modification would be that the references to the NT statutory positions are read as references to the equivalent statutory positions in the jurisdiction in which the prisoner is in custody.

Section 13(b) is a standard provision of the cross border Acts of all three jurisdictions and is part of the model developed by Solicitors-General and Parliamentary Counsel of the three jurisdictions. It is, however, a relatively unique way of filling in gaps in legislation – that is, to require administrative and judicial officers to make up the law as they go.

Section 13(b) should only operate as a stop gap. It is desirable to amend the Cross-border Justice Regulations to modify section 108(4) of the *Sentencing Act* so that it is clear that the prisoner, upon being transferred to a cross-border jurisdiction would then be in the custody of the Director of Correctional Services (however named) or Commissioner of Police of that jurisdiction.

Accordingly, I have requested the Department of Justice to develop appropriate amendments to the Cross-border Justice Regulations.

Yours sincerely



DELIA LAWRIE

21.7.10

35 of 2009: Education (Non-Government Schools) Regulation




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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

GPO BOX 3721
DARWIN NT 0801

Dr Chris Burns, MLA
Minister Education and Training
PO Box 3721
DARWIN NT 0801

Dear Minister, 

EDUCATION (NON-GOVERNMENT SCHOOLS) REGULATION No 35 of 2009

The Subordinate Legislation and Publications Committee considered the above Regulation as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

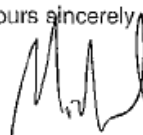
Reg 4(k): the regulation requires a record to be kept of each student's educational performance, including a comparison with any national standards of education.

Section 67A(2) and (3) of the *Education Act* require that a periodic 'report about the student' be given to the student's parent. However, that will not necessarily include the student's comparison with national standards, as referred to in reg 4K.

On the other hand section 67A(3)(a)(ii) allows for regulations to require the provision of further information to the parent. The Committee has raised the issue whether consideration should be given to requiring that the parents be advised as to the standard achieved by their child relative to national standards.

It is the Committees understanding that in some schools in various jurisdictions such information is not provided to the parents unless requested. The problem the Committee has with this approach is that not all parents will know that they can seek such information. Arguably it is information to which all parents should be automatically entitled.

The Committee seeks your comments on the matters raised. If you require any further information please contact the Committee Secretariat on 89461438.

Yours sincerely


MICHAEL GUNNER, MLA
Chairman

April 2010

Handwritten notes:
2009
14/04/10
23

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DR CHRIS BURNS MLA
Minister for Education and Training

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03 JUN 2010

Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
Legislative Assembly
GPO Box 3721
DARWIN NT 0801

See Lab. Form 37

Michael
Dear Mr Gunner

Thank you for your letter received in my office on 13 May 2010 inquiring about reports to parents on students' educational performance and comparisons with national standards.

The work currently being done by the Australian Curriculum, Assessment and Reporting Authority (ACARA) in developing an Australian curriculum includes the development of achievement standards as they apply to that curriculum. At present, the only national standards that exist are the national minimum standards in literacy and numeracy for students in years 3, 5, 7 and 9.

Students across Australia in years 3, 5, 7 and 9 are tested through the annual National Assessment Program in Literacy and Numeracy (NAPLAN). Reports detailing student achievement in relation to the national minimum standards, including comparisons with state or territory and national averages, are issued by ACARA in late September to parents and guardians of all students who were tested. The reports are distributed through schools.

All jurisdictions are party to NAPLAN testing, hence reports are issued to all tested students across Australia.

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Thank you for your interest in this matter. Should you have any further queries regarding reporting student achievement I would be pleased to assist.

Yours sincerely



CHRIS BURNS

36 of 2009: Darwin Waterfront Corporation Regulations

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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY Subordinate Legislation and Publications Committee

Parliamentary Committee Office:
Level 3, Parliament House

GPO BOX 3721
DARWIN NT 0801

The Honourable Paul Henderson, MLA
Chief Minister
PO Box 3721
DARWIN NT 0801

Dear Chief Minister,

DARWIN WATERFRONT CORPORATION REGULATIONS No 36 of 2009

The Subordinate Legislation and Publications Committee considered the above Regulation as required under its terms of reference contained within Standing Order 20 and wishes to make the following comments.

Reg 4(1): This regulation empowers the Darwin Waterfront Corporation to impose levies for the funding of promotional activities on a business operating in the precinct. Section 16(2) of the *Darwin Waterfront Corporation Act* provides that a levy 'may only be imposed on a person prescribed by regulation', while s 16(4) provides that 'the regulations may provide for the maximum amount of the levy that may be imposed on a person for a year (including specifying how that amount must be worked out)'.

The Committee is of the opinion that although s 16(4) is not expressed in mandatory terms, reg 4(1) is totally open-ended. Not only does it not specify a maximum amount, it does not require any proportionality or equality of treatment as between businesses. It creates the potential for excessive or disproportionate levies, with little recourse for businesses.

The Committee seeks your comments on the matters raised. If you require any further information please contact in the Committee Secretariat on 89461438.

Yours sincerely

MICHAEL GUNNER, MLA
Chairman

April 2010

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Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801

Dear Mr Gunner *Michael*

Thank you for your April 2010 letter seeking my comments on matters raised with regard to Darwin Waterfront Corporation Regulation 4(1) which deals with the setting of a levy to fund promotional activities.

The *Darwin Waterfront Corporation Act* establishes the Darwin Waterfront Corporation and vests it with the following functions (among others):

- (a) to do anything for the development of land in the Precinct that is owned or controlled by the Corporation;
- (b) to manage property (including land and marine infrastructure) in the Precinct that is owned or controlled by the Corporation;
- (c) to do anything (***promotional activities***) for the promotion of the Precinct as a place of residence and business and a venue for public events and entertainment;
- (d) to do anything for construction to be carried out in the Precinct;
- (e) to preserve good order in the Precinct;
- (f) to do anything for the provision of municipal services in the Precinct; and
- (g) to do anything for the development and maintenance of other civic amenities and facilities in the Precinct (including the staging of public events and entertainment in the Precinct).

Note that the Regulations will not commence until the Darwin Waterfront Corporation By-laws commence. The By-laws will require the Corporation:

- o to set a budget for the levy;
- o provide that budget to those persons to be levied; and
- o provide those persons with quarterly expenditure statements and an annual expenditure statement which is to include a statement about the carry forward or refund of any unexpended funds.

For your information the relevant by-law provisions are attached (Attachment A).

Section 11 of the Act allows the Corporation to establish committees in relation to its powers or functions. It is envisaged that committees will be set up comprising business owners and/or residents of the Precinct for representation on issues affecting the Precinct.

In addition, the Corporation intends to conduct a review of its operations and the operation of the Act within 12 months of the first occupation of the residential units in the Precinct (in accordance with section 37 of the Act). In particular, the Corporation will prepare a report on a number of matters including:

- (a) the management of the Precinct; and
- (b) the representation of individuals and groups in the membership of the Corporation.

The establishment of these Committees will provide an appropriate vehicle for recourse by the operators of businesses within the Precinct to the Corporation.

I am satisfied that the proposed By-laws eliminate the potential for excessive or disproportionate levies, and that they provide adequate opportunity for businesses to raise concerns and issues. Businesses will be reimbursed monies not spent or this amount will be carried into the next financial year resulting in a levy reduction for the following period.

Yours sincerely


PAUL HENDERSON
4/6/10

Part 2 Administrative matters
Division 1 Rates, levies and fees

- (a) for a units plan – the body corporate constituted under section 27(1) of the *Unit Titles Act* for the plan; or
- (b) for a building development plan – the body corporate constituted under section 28(1) of the *Unit Titles Act* for the plan.

9 Proposed expenditure statement relating to levy

- (1) At least one month before the start of each financial year, the Corporation must give each prescribed person a statement setting out an estimate of the Corporation's proposed expenditure on promotional activities for the financial year.
- (2) However, if the Corporation intends to impose a levy on a prescribed person during the financial year in which these By-laws commence, the Corporation must, no later than 14 days after the commencement, give the person a statement setting out an estimate of proposed expenditure for the remainder of the financial year.

10 Quarterly and annual expenditure statements relating to levy

- (1) No later than one month after the end of each 3 month period in a financial year, the Corporation must give each prescribed person a statement of all expenditure by the Corporation on promotional activities for which the person is required to pay a levy.
- (2) No later than 3 months after the end of each financial year, the Corporation must give each prescribed person a statement of all expenditure on promotional activities by the Corporation in the financial year.
- (3) The statement mentioned in clause (2) must be prepared in accordance with relevant principles and disclosure requirements of the Australian Accounting Standards Board, as in force at the time the statement is prepared.

11 Unexpended amount of levy carried forward or refunded

- (1) If a prescribed person pays the Corporation an amount as a levy for a financial year and it is not used for the funding of promotional activities in that year, the Corporation must:
 - (a) carry forward the amount to be used for that purpose in the next financial year; or
 - (b) refund the amount to the prescribed person.
- (2) If the Corporation has underestimated the expenditure on proposed

Part 2 Administrative matters
Division 2 Permits and signs

promotional activities for a financial year, the Corporation may:

- (a) carry forward the outstanding amount of the levy remaining payable by a prescribed person; and
- (b) impose an additional levy for that amount for the next financial year.

12 Determination of fee

(1) The Corporation may determine a fee (a *determined fee*) for:

- (a) a service provided by the Corporation; or
- (b) a permit application; or
- (c) entrance to the Wave Lagoon.

(2) The Corporation must publish a notice of the fee in a newspaper circulating in the Precinct as soon as practicable after the determination is made.

Division 2 Permits and signs

13 Application for permit

(1) A person may apply to the Corporation for a permit ~~mentioned in~~ these By-laws.

(2) The application must be:

- (a) in the approved form; and
- (b) accompanied by the determined fee.

14 Decision on permit application

(1) On receiving the application, the Corporation must:

- (a) grant the permit; or
- (b) refuse to grant the permit; or
- (c) grant the permit subject to conditions.

(2) If the Corporation refuses to grant the permit or grants the permit subject to conditions, the Corporation must notify the applicant of the reasons for its decision.

4 of 2010: Care and Protection of Children (Mediation Conferences) Regulations

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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Subordinate Legislation and Publications Committee

Hon. Kon Vatskalis
Minister for Child Protection
GPO Box 3146
DARWIN 0801 NT

14 November 2010

Dear Minister,

**Re: Care and Protection of Children (Mediation Conferences) Regulations,
No. 4 of 2010 of 2010**

The Subordinate Legislation Committee met on 27 October 2010 and considered the above by-law.

The Committee seeks your comments on the matters raised in the attached enclosure to provide some further clarity and how these Regulations will operate administratively.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Gunner'.

Michael Gunner MLA
CHAIR

Enc.



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

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PAGE 2 OF 2

Subordinate Legislation and Publications Committee

Care and Protection of Children (Mediation Conferences) Regulations [No 4 of 2010]

Reg 8(2)(c)(ii) and (3): provides for the making of a record of any 'agreement' reached at a mediation conference. It is noted that there may be a number of 'participants' (see Regulation 3) at a mediation conference: see s 49(6) of the *Care and Protection of Children Act* and Regulation 5(3). While for drafting purposes this might be a difficult matter to resolve, there could be questions as to when an 'agreement' has or has not been reached. For example, is there 'agreement' where one of the participants, while not specifically agreeing or disagreeing to a proposal, remains neutral, or where one of the participants leaves prior to the completion of the mediation conference, or where one of the participants fails to sign the agreement pursuant to regulation 8(3)(b)? The fact of the existence of an 'agreement' is significant. By s 109(2)(a) of the *Care and Protection of Children Act*, where there is a temporary protection order in relation to a child, the CEO may return the child to a parent, before the order ceases to be in force, 'under an agreement arising from a mediation conference'.

Reg 10: provides that the convenor of the mediation, a person assisting the convenor, and the person assisting the child must not disclose 'any personal information about the child, or a member of the child's family,' that is obtained as a result of their involvement in the mediation process. There are two comments. First, it is not clear why the requirement of confidentiality is confined to those persons. There may be a number of other 'participants' in the mediation process: see s 49(6) of the *Care and Protection of Children Act* and Regulation 5(3). It is suggested that the requirement of confidentiality should be extended to all 'participants' and that this obligation should be made clear to them at the outset of the process. Second, the requirement of confidentiality is confined to personal information 'about the child, or a member of the child's family'. The nature of mediation is such that personal information might be divulged in relation to any participant at the mediation. Participants might be reluctant to provide information relevant to the mediation if there is no confidentiality protection in relation to personal information they might disclose about themselves in the context of information relating to the child or the child's family.



THE HON KON VATSKALIS MLA
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PARLIAMENTARY
COMMITTEES

01 DEC 2010

RECEIVED

Mr Michael Gunner MLA
Chair
Subordinate Legislation and Publications Committee
GPO Box 3721
DARWIN NT 0801

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PAGE 1 OF 2

Dear Mr Gunner

Thank you for your letter received 15 November 2010, regarding the Care and Protection of Children (Mediation Conferences) Regulations 2010.


The implementation of mediation conferencing is an important area of reform for the Northern Territory's child protection system, and was commenced in Alice Springs in 2010 using a Family Group Conferencing model. I was pleased to note the Board of Inquiry into the Child Protection System in the Northern Territory made two recommendations with respect to mediation conferencing (Recommendation 31 and Recommendation 86), both of which endorsed the roll-out of mediation conferencing in the child protection system across the Northern Territory.

With respect to the specific queries raised in your letter:

- **The making of an agreement.** The role of the convenor of the mediation conference is to manage the process of the mediation, and to therefore determine when an agreement has been reached and who should be signatories to the resulting written document. This may vary from mediation to mediation. In some cases the agreement may involve all parties present at the mediation, where in other cases it may only involve some of the parties. The convenor is trained and qualified to conduct the mediation conference in any way the convenor considers appropriate, as per Regulation 8.
- **Confidentiality provisions.** The confidentiality provisions of the Regulations relate only to the convenor and persons appointed by the convenor, and to personal information about a child or a member of the child's family. As per other mediation legislation, it is not possible to enforce confidentiality provisions on parties to mediation. All parties to mediation are, however, urged to maintain confidentiality in line with the spirit of the process.

I trust this addresses your queries, and invite you to contact Ms Michelle Brown, Director Strategic Policy and Performance on 8999 2727 should further information be required.

Yours sincerely



KONVATSKALIS

30 NOV 2010

15 of 2010: Darwin Waterfront Corporation By-laws



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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Subordinate Legislation and Publications Committee

Hon. Delia Phoebe Lawrie
Minister for Justice and Attorney-General
GPO Box 3146
DARWIN 0801 NT

14 November 2010

Dear Minister,

Re: Darwin Waterfront Corporation By-laws, No. 15 of 2010

The Committee met on the 27 October 2010 and discussed the above Regulation together with the attached advice from legal counsel.

The Committee was of the general opinion that some of the penalties set out appeared to be excessive, and there were some other issues identified by in the advice we received from our independent legal counsel.

Please find attached a full copy of the advice we have received.

During the last sitting of the assembly you advised that new amendments to the regulations were already being drafted.

Could you please provide advice to the committee on how the regulations are being amended, and in particular address the concerns raised in this advice.

Yours sincerely,

Michael Gunner MLA
CHAIR

Enc.



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Subordinate Legislation and Publications Committee

Enc.

Darwin Waterfront Corporation By-Laws [No 15 of 2010]

Penalties: There are 76 provisions in these by-laws which impose a penalty [though see also by-law 59, which imports certain of the penalty provisions under the *Darwin City Council By-Laws*]. All of them save one [by-law 24] impose a maximum penalty of 100 penalty units. This is despite what appears to be a considerable variance in the seriousness of the offences. Also, that approach seems to be inconsistent with the fact that variable penalty units arise where an infringement notice is issued and the person elects to pay the prescribed amount rather than having the matter dealt with by a court: see by-laws 111-119. The penalty units applicable to infringement notices appear in the Schedule and range from 1 to 5 penalty units. It is noted that the monetary value of one penalty unit is \$133, so that 100 penalty units equates to \$13,300: see *Penalty Units Regulations*.

Certainly, some of the penalties appear to be excessive, as exemplified by by-laws 31(3) [leaving garbage for collection outside specified times], 35 [failure to replace garbage container and lid], 65(4) [washing or repairing a vehicle in a public place], 68(1) [leaving a shopping trolley in a public place], and 72 [walking on a promenade roof]. The exceptional provision dealing with young children entering public amenities is dealt with separately, below.

By way of comparison, in relation to leaving shopping trolleys, by-law 13 of the *Alice Springs (Shopping Trolleys) By-Laws* imposes a maximum penalty of 10 penalty units for the analogous offence.

The approach taken in relation to the *Darwin Waterfront Corporation By-Laws* can be contrasted with that taken under the *Darwin City Council By-laws*. Under those by-laws there is a single provision, which imposes a maximum penalty of 100 penalty units in relation to any breach of the by-laws: see by-law 20. That is a quite different approach, as a court is able to weigh the relative seriousness of the offences as between the by-laws and is entitled to take the view that a less serious offence was intended to attract a penalty at the lower end of the range between 1 and 100: see s 5(2)(a) and (b) *Sentencing Act*. On the other hand, a breach of a by-law dealing with a matter of greater public importance might attract a penalty at the higher end of that range. On the other hand, where a maximum penalty of 100 penalty units is imposed in relation to the single offence of, for example, abandoning a shopping trolley, a court can look only at relativities in relation to the seriousness of the particular incident of abandonment before the court as compared with other possible incidents of abandonment of trolleys. In other words, the court would not be looking at the seriousness of the offence in the context of the by-laws as a whole, but rather in the context of the relative seriousness of this breach of by-law 68(1) relative to other breaches of by-law 68(1). On that basis, a more serious breach of by-law 68(1) might attract a penalty in the higher end of the range.

Prescription of regulatory offences: of the offences arising under the by-laws, 28 are designated as regulatory offences. The effect of designating an offence as a regulatory offence is that a person in breach is denied certain of the excuses, including the excuses of unwilling act and accident, which are available in relation to 'crimes' or 'simple offences': see *Criminal Code* s 22. The suggested rationale for the designation of offences as regulatory offences has been the subject of a separate advice to the Subordinate Legislation and Publications Committee. In that advice, the following comment is made:

There are two principal reasons for the establishment of regulatory offences. The first is to encourage people to take particular care in relation to certain matters of public importance, such

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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Subordinate Legislation and Publications Committee

as avoiding pollution and ensuring the orderly use of public space. The second reason is recognition of the scarcity of law enforcement resources to bring effective prosecutions where, for example, intent has to be proved and other excuses disproved. The designation of certain offences as regulatory offences simplifies the process, thus allowing scarce resources to be allocated to more important matters. In that context, regulatory offences are generally confined to circumstances where the conduct entails no or little moral blame (the person would not be labelled a 'criminal'), but where the restrictions or obligations imposed are seen necessary in an ordered society.

In relation to the *Darwin Waterfront Corporation By-Laws*, it is difficult to discern any pattern as between those offences that are and are not designated as regulatory offences. For example, damaging a garbage container [by-law 34(2)] is a regulatory offence, while interfering with a garbage container [by-law 34(1)] is not: see by-law 34(3). Also, displaying a vehicle for sale in a public place is a regulatory offence [by-law 65(3)], while washing or carrying out repairs on a vehicle in a public place is not: see by-law 65(4). Under by-law 61(3), interfering with or damaging structures in a public place is a regulatory offence, while distributing a hand bill in a public place is not: see by-law 63. It might be asked why these differences arise.

By-law 20: provides that the Corporation may direct an owner or occupier of land to carry out 'work' on that land. As drafted, it is open-ended and seems to allow for a direction to be given in relation to any type of work and regardless of the expense. So construed, this could give rise to a serious interference with the rights pertaining to the ownership of land. It is noted that the equivalent provision under the *Darwin City Council By-Laws* is differently drafted. By-law 10(1) of those by-laws provides that 'where the council requires work to be carried out by the owner or occupier of land', it may give notice requiring the owner or occupier to carry out those works. Use of the terminology 'where the council requires work to be carried out' appears to refer to specific provisions in the by-laws [for example, by-laws 31 and 84] where the council is able to require certain work to be carried out. In that sense, by-law 20 seems to be merely facilitative of those provisions, specifying the possible terms of any notice. In contrast, as noted above, by-law 20 of the *Darwin Waterfront Corporation By-Laws* could be construed as a power in itself to require the carrying out of works. For clarity, it would seem preferable to redraft by-law 20 or to cross-reference it with the specific powers vested in the Corporation to order the carrying out of specific works: see by-laws 45, 63(5), 93, 94, and 103-105.

By-law 62: provides that a person must not 'excavate land'. The term is not defined, and could be construed as extending to private land. It is noted that s 12(1) of the *Darwin Waterfront Corporation Act* gives authority to the Corporation to do anything for the development and management of land in the Precinct that is 'owned or controlled by the Corporation'. It is not clear what is intended by by-law 62 and whether it is within power.

By-law 63(3): provides that a person must not affix a handbill to a structure on private land adjoining a public place without a permit: see definition of 'handbill' in by-law 3. Presumably, under by-law 4 a 'public place' includes a road. This would mean that a person could not attach a for-sale sign or a political poster on their private property without a permit [see by-law 63(2) re permits]. In any event, it is questionable whether such a provision comes within the powers conferred in the *Darwin Waterfront Corporation Act*, unless it can be said that it is necessary for the purpose of 'preserving good order in the Precinct' [s 19(1)(e) of the Act], or controlling 'the use of land and water' [s 19(1)(c)] or for the 'care and maintenance' of the Precinct [s 19(1)(d)].

By-law 64(1): provides that a person may not stack, store or display goods in a public place 'or outside any premises adjoining a public place'. This is unclear. Under by-law 3, 'premises' includes land and



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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Subordinate Legislation and Publications Committee

buildings. If it is outside land adjoining a public place, then presumably it will be on public land – it will be outside any private land adjoining a public place. If it is outside a building then it might be on private land. If the by-law is intended to capture the stacking, storage or display of goods on private land [as with by-law 63(3)], why is that not stated? In any event, there remains the question of whether it would be within power, as with by-law 63(3).

By-law 69: provides that a person over the age of 5 cannot enter a public facility set aside for members of the opposite sex and imposes a maximum penalty of 100 penalty units. This provision is contrary to s 38 of the Criminal Code, which provides that 'a person under the age of 10 is excused from criminal responsibility for an act, omission or event', and is thus beyond power.

By-law 109: allows an authorised person to enter premises for the purpose of removing and impounding an advertising sign and to carry out demolition or other work necessary to remove the sign. There is nothing under that provision requiring the person to obtain permission or a warrant. This is to be contrasted with by-law 26, which, by 26(2) requires consent or a warrant or, in an emergency, the CEO's authorisation. It is also to be contrasted with the similar provision under by-law 203 of the *Darwin City Council By-Laws*, which is made subject to s 116 of the *Local Government Act*. The latter Act has limitations in the same terms as by-law 26(2), noted above. It might well be that by-law 26(1)(d) would be interpreted as applying 26(2) to by-law 109. However, for the benefit of those administering as well as those subject to the by-laws, it might be helpful to make that clear.

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MINISTER FOR JUSTICE & ATTORNEY-GENERAL

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Mr Michael Gunner MLA
Chair
Subordinate Legislation and Publications Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801



Michael
Dear Mr Gunner

Thank you for your recent letter regarding the Darwin Waterfront Corporation By-Laws (the By-Laws), received by my office on 15 November 2010.

As you know, the NT Government has committed to review the By-Laws to address issues raised by the Member for Port Darwin, Mr John Elferink MLA. I note that the issues raised by Mr Elferink are also raised in the legal advice provided to the Subordinate Legislation and Publications Committee (the Committee), which you attached to your letter.

Lawyers from the Department of Justice are working with the Darwin Waterfront Corporation (the Corporation) to address the issues raised by Mr Elferink and by the Committee through its legal advice.

Please find enclosed (*) a copy of drafting instructions to Parliamentary Counsel, proposing amendments to the By-Laws. You will note that all of the issues raised in the Committee's legal advice are addressed (whether or not amendment is recommended).

No amendment is proposed to By-Law 20, as I am advised that it does not lack clarity. It is intended to provide power to the Corporation to give directions for the clean up of hazardous objects and materials on private land which could, for example, become a missile during a cyclone. I understand that the Darwin City Council (DCC) uses its equivalent power (DCC By-Law 10) for a similar purpose. By-Law 20 would not be read as giving the Corporation power beyond that which it requires to perform its functions under the *Darwin Waterfront Corporation Act* (the Act).



No amendment is proposed for By-Law 62. The Darwin Waterfront Precinct (the Precinct) is constructed on a former industrial site and, as such, is contaminated land that has been remediated in accordance with the Clean Up To Extent Practicable principle under the National Environment Protection Measure. Conditions for use of land on the site are set out in a Site Management Plan approved for use by the Contaminated Land Auditor. The purpose of By-Law 62, which is intended to cover all land, including private land within the Precinct, is to ensure the Corporation is given notice of proposed excavation works and has the power (by way of the issue of a permit) to bind contractors and residents wishing to excavate land to comply with the conditions of the Site Management Plan. I am advised by the Solicitor-General that By-Law 62 is unlikely to be ultra vires and would be supported by sections 12 and 19 of the Act.

The proposed amendments to the penalties for offences under the By-Laws are in accordance with the penalties policy prepared by the Department of Justice, which is used to set penalty levels for offences across the NT statute book.

As mentioned in the drafting instructions, when Parliamentary Counsel has prepared a draft of the amendments, it is proposed that comments will be sought from the Committee and Mr Elferink before the amendments are settled. It is anticipated that this consultation will occur in February 2011.

Yours sincerely



DELIA LAWRIE

Encl (*)

1/12/10



DEPARTMENT OF JUSTICE

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DOCUMENT 6262
PAGE 1 OF 13

Legal Policy

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Our Ref: 20080579
Your Ref:

Ms Dawn Ray
Parliamentary Counsel
Office of the Parliamentary Counsel
GPO Box 4396
DARWIN NT 0801

Dear Madam

Instructions for amendment of the Darwin Waterfront Corporation By-Laws

Introduction

The Department of Justice (DoJ) has received instructions from the Chief Executive Officer of the Darwin Waterfront Corporation, Mr Pat Coleman, to provide drafting instructions to you to amend the Darwin Waterfront Corporation By-Laws (the By-Laws) to address concerns raised by the Member for Port Darwin, Mr John Elferink MLA, and the Subordinate Legislation and Publications Committee (the Committee). Government has committed to review the By-Laws (Minister for Justice and Attorney-General, Hansard 20 October 2010). These concerns are summarised below.

Please draft the requested amendments so that the amended By-Laws will be made by the end of March 2011.

Background

On 20 October 2010, Mr Elferink moved a motion to disallow the By-Laws. He further moved that debate be adjourned until the last day of the March 2011 Sittings, on the understanding that, by that date, the By-Laws will have been satisfactorily amended to address the concerns he raised in the Legislative Assembly and at a meeting he had on 13 September 2010 with Mr Coleman, representatives from the Department of the Chief Minister, lawyers from DoJ and the Minister for Justice and

Attorney-General's justice advisor. The Darwin Waterfront Corporation undertook to review the By-Laws and amend them to address Mr Elferink's concerns.

In November 2010 the Chair of the Subordinate Legislation and Publications Committee (the Committee) of the Legislative Assembly, Mr Michael Gunner MLA, wrote to the Minister for Justice and Attorney-General seeking advice on how the By-Laws are to be amended and addressing concerns raised about the By-Laws in independent legal advice the Committee had obtained. There is considerable overlap between the concerns of Mr Elferink and those of the Committee.

On instructions from Mr Coleman DoJ reviewed the By-Laws. The enclosed (*) table is a summary of the proposed amendments, which have been endorsed by Mr Coleman. Please note that the table was prepared before the letter from the Committee was received. Therefore it does not address those concerns raised only by the Committee.

Concerns about the By-Laws

Mr Elferink and the Committee have the following concerns about the By-Laws:

- the penalty levels prescribed for offences under the By-Laws, are all, except for By-Law 24(3), set at 100 Penalty Units, despite the considerable variance in seriousness of the offences;
- there is a seemingly random classification of offences as regulatory or not. For example, By-Laws 42(1) and 43(1) both deal with the discharge of a substance. By-Law 42(1) is a regulatory offence; By-Law 43(1) is not; and
- By-Law 69 appears to seek to criminalise the conduct of children under 10, contrary to section 38 (or section 43AP) of the Criminal Code.
- lack of clarity as to the scope of By-Law 20, namely whether it is intended to be a power in itself to require the carrying out of works or whether it is intended to be facilitative of specific provisions (By-Laws 45, 63(5), 94 and 103 – 105);
- By-Laws 62, 63(3) and 64(1) appear to be ultra vires; and
- there is an apparent tension between By-Law 109 and By-Law 26.

The Committee raised the following additional concerns:

It is the opinion of DoJ that By-Law 20 is not unclear and no amendment to it is sought. In relation to By-Law 62, DoJ has obtained an advice from the Solicitor-General that it is unlikely that the By-Law is ultra vires as it would be supported by sections 12 and 19 of the *Darwin Waterfront Corporation Act*. Accordingly, no amendment to By-Law 62 is sought.

Proposed amendments

Amendment 1: penalties

Please amend the penalties for offences under the By-Laws in accordance with column 2 of the table.

Amendment 2: classification of offences

Please classify the offences as regulatory unless otherwise indicated in column 4 of the table. Please provide for a defence of reasonable excuse for certain offences in accordance with column 5 of the table.

Amendment 4: By-Law 33

Please redraft By-Law 33 so that it clearly provides that failure to comply with those matters listed from (a) – (f) is an offence. Please also omit (g) as that conduct is covered by By-Law 31(3).

Amendment 5: By-Law 39(4)(b)

Please remove the reference to 'accidentally' breaking, as the concept of accident is confusing and unnecessary in this By-Law.

Amendment 6: By-Law 60(1)

Please include an exception to the application of this offence, namely at the beach at the public enclosed waters where the excavation is purely for recreational purposes (building sand castles and the like).

Amendment 7: By-Law 63

Please include a further exemption in By-Law 63(2) such that a handbill for the purpose of this By-Law does not include a sign which is the subject of a permit under a Signs Code made under By-Law 101, or exempt from the requirement for a permit under that Code.

Amendment 8: By-Law 64

Please omit. I am instructed that this By-Law is not required.

Amendment 9: By-Law 69

Please redraft so that it is an offence for a person to enter a dressing room, toilet or shower set aside for persons of the opposite sex. The application of section 38 of the Criminal Code will ensure that children under 10 cannot be criminally responsible for a breach of this By-Law. There should be a separate offence for a parent or other adult person who is responsible for the custody, care or control of a child between the ages of 5 and 15 years to fail to ensure the child does not enter a dressing room, toilet or shower set aside for persons of the opposite sex. Both should be regulatory offences with a defence of reasonable excuse. The maximum penalty for each offence should be 20 Penalty Units.

Amendment 10: By-Law 70

Please omit By-Law 70(1)(f) and replace it in By-Law 61, which it partially overlaps.

Amendment 11: By-Law 77

The emphasis of the offending behaviour here should be that a person who an authorised person reasonably suspects to be suffering from an infectious or

contagious skin disease or skin complaint must not enter (or must leave) the Wave Lagoon or public enclosed waters when directed to do so. A failure to comply with the direction constitutes the offence. It should be a regulatory with a defence of reasonable excuse and a maximum penalty of 100 Penalty units.

Please omit the existing By-Law 77 and replace it with one drafted in accordance with the above instruction.

Amendment 12: By-Laws 109, 108 and 26(1)

Please omit By-Law 109 and include in By-Law 26(1) an additional reason for an authorised person to enter and remain on premises, namely to remove and impound an advertising sign under By-Laws 107 or 108. Some amendment may be required to By-Law 108 for consistency. In addition, By-law 26(2) should be amended such that the CEO's authorisation should also be a basis for entry on premises to remove a sign that in the opinion of the authorised person, creates a hazard or risk to life or property (as provided for in By-law 108(1)(b)).

Amendment 13: Schedule

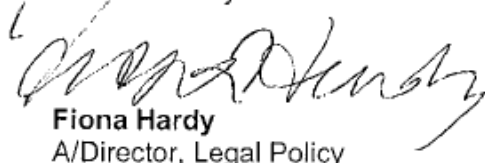
Please include By-Laws 77, 87(4) and 89(4) in the Schedule. The prescribed amount payable for an infringement offence should be 2, 1 and 1 Penalty Units respectively.

Timing

A draft of the amended By-Laws should be ready by February 2011, to allow time for Mr Elferink and the Committee to make comments before the final amendments are settled by the end of March 2011. Please advise if there are any problems with the proposed timetable.

Please note that I will be on leave from 30 November 2010 – 10 January 2011. Mr Daniel Wauchope from the Solicitor for the Northern Territory or Ms Ros Chenoweth should be able to provide further instructions, if required, during the time I am away. Mr Wauchope can be contacted on extension 57814 or at daniel.wauchope@nt.gov.au. Ms Chenoweth can be contacted on extension 57665 or at rosslyn.chenoweth@nt.gov.au.

Yours faithfully



Fiona Hardy
A/Director, Legal Policy

25 November 2010

DARWIN WATERFRONT CORPORATION BY-LAWS
TABLE OF PROPOSED PENALTIES

By Law	Proposed penalty	Current infringement penalty	Regulatory offence?	Reasonable excuse
15 Contravening permit condition	100	1	Yes	Yes
17(3) Interfering with sign	20	2	Yes	No
24(3) Failure to return identity card	20	1	Yes	No
25(2) Contravening direction	100	2	Yes	Yes
27(3) Entering public place in contravention of notice	20	3	Yes	No
29 Obstructing authorised person	50	2	No	
31(3) Leaving garbage for collection outside specified times	5	1	Yes	No

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33 Incorrect maintenance and use of garbage container	20	1	Yes ¹	No
34(1) Interfering with a garbage container	20	1	Yes	No
34(2) Damaging a garbage container	20	1	Yes	No
35 Failure to replace garbage container or lid	5	1	Yes	No
37(1) Depositing litter on land	20	2	Yes	No
37(3) Placing waste in public litter bin	5	1	Yes	No
38(1) Lighting or maintaining fire in open air	100	3	Yes	Yes
39(2) Bringing glass into public place where prohibited	20	2	Yes	No
39(4)(a) Intentionally breaking glass or other material	100	4	No. Note that the breaking of the glass is intentional.	No

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¹ This by law needs to be redrafted as no offence is created by the current wording. Also, by-law 33(g) should be omitted as by-law 31(3) already covers this conduct.

39(4)(b) Failure to safely dispose of glass or other material	50	1		Yes. ²	Yes
39(5) Discarding glass in public elsewhere than in litter bin	50	4		Yes	Yes
40(1) Throwing stones or other object	100	2		Yes	Yes
41 Burning offensive materials	20	2		Yes	No
42(1) Discharging water or another substance	77 ³	4		Yes	Yes
43(1) Discharging waste product	77 ⁴	4		Yes	Yes
44(1) Damaging trees and plants	77 ⁵	1		Yes	Yes
46 (1) and (3) Unauthorised fishing	20	1		Yes	No
60(1) Laying pipes etc, or digging ⁶	100	3		Yes	Yes

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² This offence should be reworded to remove reference to accidentally breaking. The concept of accident is confusing and unnecessary.
³ This penalty is prescribed as the offence is an environmental offence level 4.
⁴ This penalty is prescribed as the offence is an environmental offence level 4.
⁵ This penalty is prescribed as the offence is an environmental offence level 4.

61(1) Interfering with structures	100	3	Yes	Yes
62(1) Excavating	100	3	Yes	Yes
63(1) Distributing or affixing handbills in public place	5	1	Yes	No
63(3) Affixing handbills on private land	5	1	Yes	No
64(1) Goods in public place	5	1	Yes	No
65(1) Displaying vehicle or boat for sale in public place	5	1	Yes	No
65(4) Washing or repairing vehicle or boat in public place	5	1	Yes	No
65(7) Driving motor vehicle/ or vehicle other than motor vehicle in contravention of sign;	20	2 – if motor vehicle 1 – if not	Yes	No
66(1) Performing etc in public place	20	1	No	No

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⁶ This offence should contain some exception, so that it does not capture activities such as building a sandcastle at the beach

66(2) Amplification etc in public place	20	1	Yes	No
67(1) Camping in public place	20	1	Yes	No
67(5) Contravening direction in relation to camping	100	3	Yes	Yes
68(1) Leaving shopping trolley in public place	5	1	Yes	No
69(1) and (2) Entering public amenity for member of the opposite sex ⁷	20	1	Yes	Yes
70(1)(a) Obstructing or disturbing person in a public place	50	1	No.	No.
70(1)(b), (c) & (d) Offensive conduct	50	1 for (b) 3 for (c)	Yes	No

⁷ Needs to be rewritten: eg

a) A person must not enter a dressing room, toilet or shower set aside for the use of persons of the opposite sex. It is a defence if the person proves that he/she had a reasonable excuse.

b) A parent or other adult person who is responsible for the custody, care or control of a child between the ages of 5 years and 15 years shall ensure that the child does not enter a dressing room, toilet or shower set aside for the use of persons of the opposite sex to the child. It is a defence if the person proves that he/she had a reasonable excuse.

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			2 for (d)		
70(1)(e) Behaving dangerously in public place	100		4	Yes	Yes
70(1)(f) Interfering with structure in a public place	Should be removed and inserted in 61(1), which it partially overlaps		Delete (see column 2)		
70(1)(g) Contravening direction in public place	20		3	Yes	No
70(2) Restricting public access or obstructing in public place	20		2	Yes	No
72 Walking on roof etc	20		1	Yes	No
73(2) Animals on promenade	5		1	Yes	No
74(1) Driving or stopping motor vehicle on promenade	20 (same as 65(7))		3	Yes	No
74(3) Driving vehicle on promenade at excessive speed	20		1	Yes	No
75(1)(a) Entering Wave Lagoon without paying fee	5		1	Yes	No

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75(1)(b) Entering Wave Lagoon outside open hours	10	2	Yes	No
76 Possessing liquor in Wave Lagoon	20	1	Yes	No
77 Entering Wave Lagoon or public enclosed waters with skin disease	100	2	Yes, but this offence requires redrafting, so that the offence is failing to comply with a direction of an authorised officer to leave or not to enter the Wave Lagoon	Yes
78 Allowing animal in Wave Lagoon or public enclosed waters	20	1	Yes	No
79(1) Introducing animals or plants in Wave Lagoon or public enclosed waters	100	5	No	No
80 Feeding fish in public enclosed waters	5	1	Yes	No
81(1) Boats in public enclosed waters	20	2	Yes	No
81(4) Contravening notice in relation to speed	20	2	Yes	No

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82(2) Contravening direction	20	1		Yes	No
84(1), (2) & (3) Stallholders association contravening obligations	100	3		Yes	Yes
85(1) Unauthorised sale of goods from stall	20	1		Yes	No
86(1) & (2) Stallholder contravening obligation	20	1		Yes	No
87(4) Off street parking ⁸	5	(proposed) 1		Yes	No
89(4) On street parking ⁹	5	(proposed) 1		Yes	No
90(1) & (3) Actions likely to damage road or endanger person	100	4		Yes	Yes
91(1) Failure to provide safety lights	100	4		Yes	Yes
92(1) Removing road kerb	100	3		Yes	Yes
93(2) Erecting fence at incorrect height and distance	100	1		Yes	Yes

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⁸ This offence is not currently included in the infringement notice scheme and should be included.
⁹ This offence is not currently included in the infringement notice scheme and should be included.

94 Unauthorised constructing crossing in contravention of permit	100		2		Yes	Yes
95(1) Driving or parking on non-approved crossing etc	20		1		Yes	No
96(3) Driving or moving heavy thing over crossing	100		3		Yes	Yes
97(2) Riding in bicycle restriction area	5		1		Yes	No
102 Unauthorised exhibiting of sign	20		2		Yes	No
103(2) Contravening notice directing repair or removal of sign	100		3		Yes	Yes
104(2) Contravening notice giving direction about sign	100		3		Yes	Yes
106(3) Contravening notice directing removal of sign	100		3		Yes	Yes

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18 of 2010: Alice Springs (Management of Public Places)



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Subordinate Legislation and Publications Committee

DOCUMENT58
PAGE1 OF 3

Hon. Malarndirri Barbara Anne McCarthy
Minister for Local Government
GPO Box 3146
DARWIN 0801 NT

14 November 2010

Dear Minister,

Re: Alice Springs (Management of Public places) By-Law No.18 of 2010

The Subordinate Legislation Committee met on 27 October 2010 and considered the above by-law.

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

Please feel free to contact me anytime to discuss further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Gunner'.

Michael Gunner MLA
CHAIR

Enc.



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

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PAGE 2 OF 3

Subordinate Legislation and Publications Committee

Alice Springs (Management of Public Places) By-Laws 2009 [No 18 of 2010]

By-laws 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 at 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 remote 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 kph might be unrealistic in relation to emergency vehicles.

By-law 14: 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 'stall' in a public place, by-law 20 prohibits selling offensive goods or materials, while by-law 21 prohibits offensive 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 of 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 52(2).

By-law 32: prohibits graffiti. However, the definition of graffiti at by-law 5 is confined 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 proscribed conduct has taken place. As presently drafted, even if the person can prove that they had no association



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Subordinate Legislation and Publications Committee

with the litter 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 63: it appears that there are some words missing in the last two lines of 63(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.



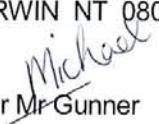
MINISTER FOR LOCAL GOVERNMENT

Parliament House
State Square
Darwin NT 0800
minister.mccarthy@nt.gov.au



GPO Box 3146
Darwin NT 0801
Telephone: 08 8901 4072
Facsimile: 08 8901 4080

Mr Michael Gunner MLA
Chairman
Subordinate Legislation and Publications Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801


Dear Mr Gunner

Thank you for your letter providing comments by the Subordinate Legislation and Publications Committee on the recently introduced Alice Springs (Management of Public Places) By-laws.

The above by-laws were made under the *Local Government Act* by special resolution of the Alice Springs Town Council on 26 July 2010. In accordance with section 190(1)(c) of the *Local Government Act*, the council provided a certificate from a legal practitioner certifying that the by-laws were made consistently with the principles prescribed in the Act.

A copy of your letter was sent to the Alice Springs Town Council for consideration and response. The Council has now provided a response to the matters raised (attached).

Yours sincerely


MALARNDIRRI MCCARTHY

11 APR 2011



Mayor's Office

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 this 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 32

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 56 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 32 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.



City of Alice Springs
100 Todd Street and Gregory Terrace • PO Box 1611 Alice Springs NT 0871
Tel: (08) 8951 4000 • Fax: (08) 8951 4001
www.alicesprings.nt.gov.au • 131 313 (local) 131 313 (national)



- 2 -



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 58

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



Damien Ryan
MAYOR

19 of 2010: Care and Protection of Children (Placement Arrangement) Regulations



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
11th Assembly

Standing Committee on Subordinate Legislation and Publications

1 December 2010

The Hon. Kon Vatskalis MLA
Minister for Child Protection
PO Box 3146
DARWIN NT 0801

Dear Minister,

**Re: *Care and Protection of Children (Placement Arrangement) Regulations*
[No. 19 of 2010]**

The Subordinate Legislation and Publications Committee met on 1 December 2010 and considered the above by-law.

The Committee seeks your comments on the matter raised in the attached advice from the Committee's independent legal counsel.

The advice asks whether different criteria were intended for the different wording for otherwise identical provisions for eligibility as an 'authorised carer' under regs 3(c) and 3(e) as well as 9(d) for 'emergency carers'. The advice suggests that the different wording could have implications for interpretation.

Please contact me or Russell Keith, Clerk Assistant-Committees on 8946 1429 if you need further clarification on this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael Gunner'.

Michael Gunner MLA
CHAIR

Enc.



DOCUMENT 71
OFFICE CP
.....

THE HON KON VATSKALIS MLA
MINISTER FOR CHILDREN AND FAMILIES
MINISTER FOR CHILD PROTECTION

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Mr Michael Gunner MLA
Chair
Legislative Assembly of the Northern Territory
Standing Committee on Subordinate Legislation and Publications
GPO Box 3721
DARWIN NT 0801

Dear Mr Gunner

Thank you for your letter of 1 December 2010, where you have sought advice about the interpretation of the Care and Protection of Children (Placement Arrangement) Regulations.

The *Care and Protection of Children Act 2007* will be reviewed in response to a number of recommendations contained in the Report of the Board of Inquiry into the Child Protection System in the Northern Territory.

The matters referred by the Standing Committee on Subordinate Legislation and Publications will be considered during the review.

Yours sincerely

KON VATSKALIS

14 JAN 2011

26 of 2010: Construction Contracts (Security of Payments) Amendment Regulations



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PAGE 1 OF 2

LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Subordinate Legislation and Publications Committee

Hon. Delia Lawrie, MLA
Minister for Justice and Attorney General
GPO Box 3146
DARWIN NT 0801

February 2011

Dear Attorney

Delia

**Re: Construction Contracts (Security of Payments) Amendment Regulations
[No. 26 of 2010]**

The Subordinate Legislation Committee met on 22 February 2011 and considered the above by-law.

The Committee seeks your clarification of the matters raised in the attached enclosure.

Yours sincerely

Michael
Michael Gunner MLA
CHAIR

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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Subordinate Legislation and Publications Committee

Construction Contracts (Security of Payments) Amendment Regulations [No 26 of 2010]

There seems to be an inconsistency between the Explanatory Memorandum and Regulation 5(d). The Explanatory Memorandum states that the Regulations are amended by, among other things, omitting RICS Dispute Resolution Services as a "prescribed appointer" whereas reg 5(d) inserts RICS as a prescribed appointer.

Appendix A: List of Ministerial Correspondence on Subordinate Legislation

No.	Title of Regulation/Bylaw	Minister	Letter to Minister	Minister's Response
16 of 2008	Public Transport (Passenger Safety) Regulations	Infrastructure and Transport	1/12/2008	12/1/09
18 & 25 of 2008	Local Government (Accounting) Regulations	Local Government	1/12/2008	undated
23 of 2008	Legal Profession Admission Amendment Rule	Justice and Attorney General	1/12/2008	22/12/08
24 of 2008	Local Government (Electoral) Regulations	Local Government	1/12/2008	undated
30 of 2008	Alice Springs (Animal Management By-laws 2008	Local Government	May 2009	16/6/2009 31/7/2009
2009	Charles Darwin University (Academic Board) By-laws 2009	Education and Training	May 2009	10/6/2009 10/8/2009
9 of 2009	Transport Legislation Amendment (Alcohol Ignition Locks) Regulations	Transport	Jan 2010	2/3/2010
12 of 2009	Care and Protection of Children (Children's Services) Regulations	Child Protection	Jan 2010	22/2/2010
21 of 2009	Unit Titles Schemes (Management Modules) Regulations	Justice and Attorney General	Jan 2010	Feb 2010
22 of 2009	Unit Titles Schemes (Management Modules) Regulations	Justice and Attorney General	Jan 2010	2/2/2010
23 of 2009	Livestock Regulations	Primary Industry, Fisheries and Wildlife	Jan 2010	9/2/2010
25 of 2009	Planning Amendment Regulations (No. 2) 2009	Lands and Planning	20/7/2010	19/8/2010 10/12/2010
26 of 2009	Public Interest Disclosure Regulations	Justice and Attorney General	Jan 2010	4/3/2010
27 of 2009	Volatile Substance Abuse Prevention Amendment Reg	Health	April 2010	9/7/2010
29 of 2009	Geothermal Energy Regulation	Primary Industry, Fishers & Wildlife	April 2010	8/6/2010
33 of 2009	Cross Border Justice Regulation	Justice and Attorney General	April 2010	21/7/2010
35 of 2009	Education (Non-Government Schools) Regulation	Education and Training	April 2010	3/6/2010
36 of 2009	Darwin Waterfront Corporation Regulations	Chief Minister	April 2010	4/6/2010
4 of 2010	Care and Protection of Children (Mediation Conferences) Regulations	Child Protection	14/11/2010	30/11/2010
15 of 2010	Darwin Waterfront Corporation By-laws	Justice and Attorney General	14/11/2010	25/11/2010
18 of 2010	Alice Springs (Management of Public Places)	Local Government	14/11/2010	11/4/2011
19 of 2010	Care and Protection of Children (Placement Arrangement) Regulations	Child Protection	1/12/2010	14/1/2011

23 of 2010	Litchfield Council Rural Dog Management By-laws	Local Government	5/5/2011	29/7/2011
26 of 2010	Construction Contracts (Security of Payments) Amendment Regulations	The Hon Delia Lawrie	24/2/2011	