



Gordon Ramsay MLA

Member for Ginninderra

Attorney-General

Minister for Regulatory Services

Minister for the Arts and Community Events

Minister for Veterans and Seniors

Ms Giulia Jones MLA

Chair

Standing Committee on Justice and Community Safety

ACT Legislative Assembly

London Circuit

CANBERRA ACT 2601

Dear Ms Jones

Thank you for Scrutiny Report 5 of 27 April 2017.

I offer the following response in relation to the Standing Committee on Justice and Community Safety's (the Committee) comments on the road safety consequential amendments in the Justice and Community Safety Legislation Amendment Bill 2017 (the Bill).

Do any provisions of the Bill inappropriately delegate legislative powers?

Background to Road Rules Regulation

The Australian Road Rules (ARRs) are currently incorporated into ACT law by the *Road Transport (Safety and Traffic Management) Regulation 2000*. The ARRs are under continuous review as part of the National Transport Commission maintenance program for model transport laws. Amendments to the ARRs are processed in batches at regular intervals referred to as 'amendment packages'.

The ACT is the only jurisdiction that requires the National Transport Commission to produce a full publication of the ARRs for the implementation of approved amendment packages. The 10th amendment package was approved on 15 November 2013 for implementation by jurisdictions, and the 11th amendment package was approved on 6 November 2015. The ACT has been unable to implement these amendment packages because the National Transport Commission has decided to delay republishing the ARRs.

Amending ACT road transport legislation to incorporate the ARRs into a single regulation that is applicable in the ACT, rather than referencing the ARRs, will provide a single source for road rules in the ACT.

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia

Phone +61 2 6205 2615 Email ramsay@act.gov.au



@Gordon_R_Ramsay



Gordon Ramsay MLA

Additionally, a regulation is a much more flexible vehicle than primary legislation, and will facilitate quicker and more efficient updates to reflect the most recent ARRs. The proposed regulation is the *Road Transport (Road Rules) Regulation 2017* (Road Rules Regulation). The Road Rules Regulation is not intended to make substantive changes to the existing law other than those expressly mentioned in the approval by the Minister for Justice, Consumer Affairs and Road Safety. The only approved substantive amendments are those necessary to incorporate the National Transport Commission's 10th and 11th amendment packages.

Consequential Amendments

A suite of consequential amendments are required before the Road Rules Regulation can commence. The Bill introduces consequential amendments to a number of Acts relating to road safety by introducing signpost definitions which refer to the Road Rules Regulation.

The Bill provides that the consequential amendments are to commence at the same time as the Road Rules Regulation.

None of the consequential amendments in the Bill are affected by the National Transport Commission's 10th and 11th amendment packages. The amendments in the Bill that cite the new Regulation would not substantively change the law in the ACT.

Signpost Definitions

Signpost definitions are commonly used to ensure a defined term has the same meaning across the statute book. It is a current standard drafting practice in the ACT to locate the substance of a definition in the piece of legislation where the term is most often used, or where most of the relevant law relating to the defined term is located. For example, part 15 of the Bill, substitutes the definition of 'park' in the *Public Unleased Land Act 2013*. The definition of 'park' is to be located in the new Regulation because that is where the law about parking vehicles is predominantly located (parking is to be mentioned more than 800 times in the new Regulation).

If the text of the definition were repeated in the Public Unleased Land Act, the policy area would need to constantly monitor amendments to the new Regulation to ensure the two definitions do not unintentionally deviate over time. The careful use of signpost definitions minimises the risk of unintended deviation and promotes consistency throughout the statute book. The use of a signpost definition in this case *may* be viewed as a kind of delegation, but is arguably neither unusual nor controversial given the inter-legislative nature of the delegation. The Assembly retains ultimate legislative control over both the Act and (by disallowance) the Regulation.

Explanatory Statement

As the Road Rules Regulation is not yet completed and has not yet commenced, publishing a draft of the Regulation in the Explanatory Statement of the Bill would be neither practical nor appropriate. Doing so may have the unintended effect of committing the Government to particular wording or approaches before the policy has been finalised and approved. It is also impractical due to the proposed size and comprehensiveness of the Road Rules Regulation.

Furthermore, the rationale for the Road Rules Regulation may actually be better suited to the Explanatory Statement for the Road Rules Regulation itself rather than the Bill, which is only implementing consequential amendments.

I thank the Committee for its consideration of this Bill and trust that this response to its questions is of assistance to the Assembly.

Yours sincerely

Gordon Ramsay MLA
Attorney-General