STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY (LEGISLATIVE SCRUTINY ROLE)

SCRUTINY REPORT 34

28 JULY 2015

COMMITTEE MEMBERSHIP

Mr Steve Doszpot MLA (Chair)

Dr Chris Bourke MLA (Deputy Chair)

Mr Jeremy Hanson CSC MLA

Ms Mary Porter AM, MLA

SECRETARIAT

Ms Janice Rafferty (Acting Secretary)

Ms Anne Shannon (Assistant Secretary)

Mr Peter Bayne (Legal Adviser—Bills)

Mr Stephen Argument (Legal Adviser—Subordinate Legislation)

CONTACT INFORMATION

Telephone	02 6205 0173
Facsimile	02 6205 3109
Post	GPO Box 1020, CANBERRA ACT 2601
Email	scrutiny@parliament.act.gov.au
Website	www.parliament.act.gov.au

ROLE OF COMMITTEE

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

RESOLUTION OF APPOINTMENT

The Standing Committee on Justice and Community Safety when performing its legislative scrutiny role shall:

(1) consider whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):

(a) is in accord with the general objects of the Act under which it is made;

(b) unduly trespasses on rights previously established by law;

(c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or

(d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;

(2) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Committee;

(3) consider whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:

(a) unduly trespass on personal rights and liberties;

(b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;

(c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;

(d) inappropriately delegate legislative powers; or

(e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;

(4) report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*;

(5) report to the Assembly on these or any related matter and if the Assembly is not sitting when the Committee is ready to report on bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

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BILLS

BILLS—NO COMMENT

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

APPROPRIATION BILL 2015-2016

This is a Bill for an Act to appropriate money for the purposes of the Territory for the financial year beginning on 1 July 2015, and for other purposes.

APPROPRIATION (OFFICE OF THE LEGISLATIVE ASSEMBLY) BILL 2015-2016

This is a Bill for an Act to appropriate money for expenditure in relation to the Office of the Legislative Assembly and Officers of the Assembly for the financial year beginning on 1 July 2015, and for other purposes.

ENERGY EFFICIENCY (COST OF LIVING) IMPROVEMENT AMENDMENT BILL 2015

This is a Bill for an Act to amend the *Energy Efficiency (Cost of Living) Improvement Act 2012* to extend and enhance the operation of the Energy Efficiency Improvement Scheme provided for by the Act.

FINANCIAL MANAGEMENT AMENDMENT BILL 2015

This is a Bill for an Act to amend the *Financial Management Act 1996*, primarily in relation to appropriation and budget management.

FIRST HOME OWNER GRANT AMENDMENT BILL 2015

This is a Bill for an Act to amend the *First Home Owner Grant Act 2000* to allow the Minister to determine the grant value through disallowable instrument.

NRMA—ACT ROAD SAFETY TRUST REPEAL BILL 2015

This is a Bill for an Act to repeal the *NRMA—ACT Road Safety Trust Act 1992*, and for other purposes.

RED TAPE REDUCTION LEGISLATION AMENDMENT BILL 2015

This is a Bill for an Act to amend a number of Territory laws to remove provisions that are redundant or an unnecessary administrative cost to business or government.

WATER RESOURCES (CATCHMENT MANAGEMENT COORDINATION GROUP) AMENDMENT BILL 2015

This is a Bill for an Act to amend the *Water Resources Act 2007* and the *Water Resources Regulation 2007* to establish the ACT and region catchment management coordination group under the Act to have an advisory function to the Minister for the Environment.

BILLS—COMMENT

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

LIQUOR AMENDMENT BILL 2015

This is a Bill for an Act to amend the *Liquor Act 2010*, primarily to create offences in relation to the supply of liquor to a child or a young person.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—paragraph (3)(a) of the terms of reference

Report under section 38 of the *Human Rights Act 2004*

OFFENCES RELATING TO THE SUPPLY OF LIQUOR TO CHILDREN AND YOUNG PEOPLE

By clause 15, it is proposed to insert section 204A into the *Liquor Act 2010,* to create offences in relation to the supply of liquor to a child or a young person. The nature of these offences and human rights issues that arise in relation to them is described and analysed in the Explanatory Statement. Subject to one matter, the Committee refers the Assembly to the Explanatory Statement for an adequate discussion of these issues.

At the outset, the Committee records that it had difficulty understanding the inter-relationship between proposed subsections 204AA(1) and 204AA(3). There is an apparent contradiction and perhaps some redrafting is required to make the situation clearer.

Proposed subsection 204AA(3) would create an offence where a person as described in paragraphs 204AA(3)(a) and (b) supplies liquor or low-alcohol liquor to a child or young person “at a private place”. Proposed subsection 204AA(4) permits a defendant to raise as a matter of defence—albeit one in respect of which the defendant carries an evidential burden—that “the supply is consistent with responsible supervision of the child or young person”. Proposed subsection 204AA(5) states a number of factors both relevant and irrelevant to applying this standard, but this is not an exhaustive statement and much will be left to the judgement of a police officer deciding whether to charge a person, and a court hearing the charge.

Insertion of this kind of defence has these results:

- it will be very hard for a person at a private place to assess whether they are exercising responsible supervision, being an assessment that will have a bearing on whether they are charged with a criminal offence;
- a wide area of discretion will be left to a police officer to decide whether to lay a charge; and
- it will be left to the courts to determine, over time, the matters relevant to making the assessment, thereby in effect requiring the exercise of legislative power.

The Committee raises no question as to policy objective, but it may be argued that a criminal offence should not have these characteristics. It should be noted further that the activity being regulated commonly occurs in households in the Territory, and many people will be brought within its ambit. The mere fact of being charged with an offence may affect a person's reputation, and there may be circumstances where they are required to disclose merely the fact of being charged.

The Committee draws these matters to the attention of the Assembly and recommends that the Minister respond.

MENTAL HEALTH BILL 2015

This is a Bill for an Act to provide for the treatment, care or support, rehabilitation and protection of people with a mental disorder or mental illness and the promotion of mental health and wellbeing, and for other purposes.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—paragraph (3)(a) of the terms of reference

Report under section 38 of the *Human Rights Act 2004*

The rights involved here may be described compendiously as "fundamental rights of self determination and bodily inviolability".[1] The *Human Rights Act 2004* (HRA) does not employ this language, but these rights are implicit in a number of HRA rights. The Explanatory Statement identifies these rights and the Committee refers Members to this analysis. The comments below take up issues not explored in the Explanatory Statement.

Most of this report is concerned with the provisions of the Bill that permit an agency of the State to authorise the administration of electroconvulsive therapy, or the performance of psychiatric surgery, to a person who has not given consent to such procedures. There is much discussion in the Explanatory Statement directed to justifying this result, and the Committee again refers members to this analysis. In the end, a fundamental remains: are there any circumstances in which non-consensual medical procedures are warranted? The Committee does not offer an opinion on this question, but raises it for consideration by the Assembly.

The Committee draws this matter to the attention of the Assembly.

EMERGENCY DETENTION

This is the subject of chapter 6 of the Bill; see page 8ff. Proposed section 39 amends the current section 39 of the *Mental Health (Treatment and Care) Amendment Act 2014* (2014 Act), in the ways described at page 34 of the Explanatory Statement. The Committee notes that by proposed paragraph 39(1)(f), the police officer, authorised ambulance paramedic, doctor or mental health officer who takes a person to an approved mental health facility under section 37 must give the person in charge of the facility a written statement containing "(f) anything else that happened when the person was being apprehended and taken to the facility that may have an effect on the person's physical or mental health".

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[1] *R v Broadmoor Hospital* [2001[EWCA 1545 at paragraph 12 per Simon Brown LJ http://www.bailii.org/ew/cases/EWCA/Civ/2001/1545.html

This obligation, requiring as it does the formation of a medical assessment, may be beyond the expertise of several of the persons upon whom the obligation is imposed. It is not clear to the Committee what would be the effect of a failure to observe this requirement, but in any event there is a question whether the provision would be more realistically expressed if words such as "in the opinion of the author of the written statement" were inserted between the words "may" and "have".

The Committee draws this matter to the attention of the Assembly and recommends that the Minister respond.

Proposed section 41A amends the current section 41A of the 2014 Act, in the ways described at Explanatory Statement page 36. In substance, it provides that the person in charge of the facility must notify the court of the "reasons" for the detention of a person at a mental health facility. The content of this obligation will be as described in section 179 of the *Legislation Act 2001*. There is a question whether this result was intended.

The Committee draws this matter to the attention of the Minister.

ELECTROCONVULSIVE THERAPY

This is the subject of chapter 6 of the Bill; see page 17ff. By proposed subsection 49(1), "electroconvulsive therapy" means a procedure for the induction of an epileptiform convulsion in a person. Proposed section 51 states, by reference to other provisions, the circumstances in which this therapy may be administered. To more simply state the matters that the Committee considers should be addressed by the Assembly, these comments will deal only with those provisions that relate to adults.[2]

The Committee considers that the Assembly would be assisted by advice from the Minister as to the legislative history (if any) of the provisions concerning both electroconvulsive therapy and psychiatric surgery.

The Committee recommends that the Minister respond.

The operation of these provisions turns crucially on whether the person to whom it is proposed to administer the therapy ("the relevant person") has decision-making capacity to consent to the administration of electroconvulsive therapy. Proposed section 52 deals with relevant persons who are determined to have decision-making capacity, and section 53 with those who do not.

Where the relevant person has decision-making capacity

By section 52, where a person does have decision-making capacity, the therapy may be administered if that person consents, either orally or in writing, to its administration, has not withdrawn that consent, and has not had it administered previously within a certain time frame.

The Committee notes that there is nothing said as to who makes the determination that the person has decision-making capacity. Section 8 of the current Act states a number of principles to be taken into account when this question is considered in the course of the administration of the Act, but it does not give any guidance as to who the relevant decision-makers might be. In relation to section 52, it may be inferred that the decision-maker is the person who would administer the therapy.

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[2] The provisions concerning children raise other issues that are identified and discussed in the Explanatory Statement.

The Committee cannot see any practical problem arising from this lack of clarity, but draws it to the attention of the Minister.

Where the relevant person does not have decision-making capacity

If an adult relevant person is determined not to have decision-making capacity, the complicated scheme in proposed section 53 applies. As a practical matter, it seems that, at the outset of the process, someone has to make an assessment that the relevant person does not have decision-making capacity. This might be the chief psychiatrist or a doctor, but it appears that the Bill's provisions operate on the basis that it is only ACAT that must make a decision on this question (see below).

By subsection 53(2), if the person "has an advance consent direction consenting to electroconvulsive therapy", the therapy may be administered in accordance with the consent and if they do not refuse or resist. If the person did refuse or resist, or there was no advance consent direction, those wishing to administer the therapy would need to resort to proposed subsection 53(2).

In this kind of case, two conditions must be satisfied. **The first** (see paragraph 53(3)(a)) is that ACAT makes an electroconvulsive therapy order under subsection 55G(1), although making this order also requires ACAT to determine that the relevant person lacks decision-making capacity. **The second** is that one or other of the alternatives stated in paragraph 53(3)(b) is satisfied.

Subsection 53(2): the first condition—making of electroconvulsive therapy orders

The first condition stated in subsection 53(2) is that the therapy would be administered "in accordance with an electroconvulsive therapy order or an emergency electroconvulsive therapy order in force in relation to the person" (paragraph 53(3)(a)).

These orders are made by ACAT under division 9.2.2. The first step is that the chief psychiatrist or a doctor must form a belief on reasonable grounds that the ACAT could reasonably make an electroconvulsive therapy order in relation to a person, in which case they may apply to the ACAT for an electroconvulsive therapy order in relation to the person. ACAT must consult with a number of people (section 55D), and must hold a hearing (section 55E). Section 55F states a number of considerations the ACAT must take into account.

Section 55G then confers on ACAT power to make an electroconvulsive therapy order:

(1) On application under section 55C, the ACAT may make an electroconvulsive therapy order in relation to a person who is at least 12 years old if satisfied that—

(a) the person has a mental illness; and

(b) the person does not have decision-making capacity to consent to the administration of electroconvulsive therapy; and

(c) the person does not have an advance consent direction refusing consent to electroconvulsive therapy; and

(d) the administration of the electroconvulsive therapy is likely to result in substantial benefit to the person; and

(e) either—

(i) all other reasonable forms of treatment available have been tried but have not been successful; or

(ii) the treatment is the most appropriate treatment reasonably available.[3]

Subsection 55G(1) confers on ACAT two kinds of decision-making power. The first is to determine if the relevant person lacks decision-making capacity, and the second is to determine that electroconvulsive therapy is warranted. In both respects, ACAT is in effect the primary decision-maker; rather than as is usually the case, acting as a body reviewing a decision made by a primary decision-maker.

Section 53: the second condition—the first alternative—the person does not refuse or resist

If there is a relevant electroconvulsive therapy order, and the relevant person does not refuse or resist, then the therapy may be administered.

It is not clear who makes this assessment. Presumably it is the person who proposes to administer the therapy. There is then a question as to whether the person—or someone acting on their behalf—should have a right to seek review of this assessment.

The Committee draws these matters to the attention of the Assembly and recommends that the Minister respond.

Section 53: the second condition—the second alternative—there is a psychiatric treatment order or a forensic psychiatric treatment order in force

If the person does refuse or resist, the second alternative may be relied upon. This is that "a psychiatric treatment order or a forensic psychiatric treatment order is also in force in relation to the person". A psychiatric treatment order is one made by ACAT under section 28 of the current Act and a forensic psychiatric treatment order is made under section 48ZA.

The Committee recommends that a Note be inserted at the end of clause 53 indicating by whom and under what power both these kinds of orders may be made.

Such an order by itself cannot be a basis for administration of electroconvulsive therapy, but is apparently seen as an additional safeguard where there is an electroconvulsive therapy order or an emergency electroconvulsive therapy order in force. It is important then to note the circumstances in which ACAT may make a psychiatric treatment order or a forensic psychiatric treatment order. Section 28 of the current Act provides:

The ACAT may make a psychiatric treatment order in relation to a person if—

(a) the person has a mental illness; and

[3] ACAT cannot make an order if the relevant person has an advance consent direction r**efusing** consent to electroconvulsive therapy. In this case, the therapy cannot be administered even if all other conditions are satisfied.

(b) the ACAT has reasonable grounds for believing that, because of the illness, the person is likely to—

(i) do serious harm to himself, herself or someone else; or

(ii) suffer serious mental or physical deterioration; unless subject to involuntary psychiatric treatment; and

(c) the ACAT is satisfied that psychiatric treatment is likely to reduce the harm or deterioration (or the likelihood of harm or deterioration) mentioned in paragraph (b) and result in an improvement in the person's psychiatric condition; and

(d) the treatment cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.

To sum up, except in the case where the relevant person has an advance consent direction **refusing** consent to electroconvulsive therapy, a person who is determined by ACAT not to have decision-making capacity, and who refuses or resists administration of the therapy, may be forced to undergo its administration if ACAT has made two kinds of orders, being (1) an electroconvulsive therapy order, and (2) a psychiatric treatment order or a forensic psychiatric treatment order in relation to the person.

This is a very significant intrusion upon the liberty of the relevant person and the question is whether this is justifiable under HRA section 28. Central here is the question whether ACAT is an appropriate body to make these determinations as the primary decision-maker.

As noted, ACAT is in effect the primary decision-maker in relation to decisions about the administration of electroconvulsive therapy. It must consider all relevant material presented to it and come to the correct or preferable decision.[4] It will be presented with a dilemma where psychiatrists differ in their opinions.[5] There is a question whether it has sufficient expertise necessary to make an informed decision as to whether the opinion is reliable, or, in cases where there is conflicting evidence, to choose between them.[6]

The Committee notes that there are some aspects of the scheme for ACAT review that may assist it to make a decision that involves the formation of a medical opinion:

- Subsection 78(2) of the current Act provides that in relation to some decisions made under the Act, the ACAT panel determining the matter must include a presidential member and a non-presidential member with "relevant interest, experience or qualification". This Bill proposes to amend subsection 78(1) (which lists the relevant decisions) to include the making by ACAT of an electroconvulsive order or an emergency order under sections 55G and 55K.

[4] The word 'correct' is used to indicate that there is single correct decision; the word 'preferable' is used to indicate that there is a range of reasonable decisions that could be made – such as in the exercise of a discretion, and that ACAT will make the one that it prefers

[5] The facts in the English case of *R v Broadmoor Hospital* [2001[EWCA 1545 illustrate this point. The two bodies of psychiatric opinion were diametrically opposed on all issue of medical judgement. This sort of conflict often occurs in tribunal and court hearings where medical witnesses give evidence.

[6] It may make a choice by reference to non-expert evidence; for example, it may choose one opinion rather than another on the basis that the preferred expert made assumptions about the underlying facts that are closer to the facts found by ACAT than the facts assumed by another expert.

- Under section 97 of the ACAT Act, the general president may appoint an assessor to the tribunal for an application if satisfied that the person has the experience or expertise to qualify the person to exercise the functions of an assessor. The assessor may provide specialist or technical advice to a tribunal for an application, if asked by the tribunal.[7]

In the end, it is fair to describe ACAT as a non-expert body when it must make a decision that involves the formation of a medical opinion, and the dilemma remains. This dilemma has led some judges to reason that review of medical opinions should be way of judicial review on legality grounds. In *R v Camden and Islington Health Authority ex parte K*[8] Sedley LJ said:

> As it seems to me, the level of available redress, by judicial review rather than by appeal, is an appropriate one. No judge can realistically sit as a court of appeal from a psychiatrist on a question of professional judgment. What a judge must be able to do is to ensure that such judgment, to the extent that it exercises a public law function, is made honestly, rationally and with due regard only to what is relevant.

Judicial review on legality grounds precludes the court from re-making the relevant decision “on the merits”, but it does permit a review of the legal and factual findings of the decision-maker. English courts take the view that where the decision engages human rights, and requires a proportionality analysis, the standard of review is more intense than in relation to other kinds of administrative decision.[9] This approach affords a greater scope for a challenge to the decision of the psychiatrist (or indeed, or any expert) where the decision engages a human right. Some Australian courts have adopted this approach.[10]

On the other hand, other judges have rejected this approach. In *R v Broadmoor Hospital*, Simon Brown LJ said:

> It is surely one thing to say, as was decided by *K*, that the court could not compel a psychiatrist, against his clinical judgment, to undertake the patient's treatment in the community (as the MHRT's conditions of discharge there required); quite another to conclude that the courts can never decide disputed questions of professional opinion. Often, indeed, the court is required to do exactly that—classically when assessing damages in personal injury cases, but also when deciding medical negligence actions, ... [and] when determining best interest applications [in the family law jurisdiction].[11]

The views of Sedley LJ are supported by some passages in the Explanatory Statement to this Bill. At page 16, after referring to a number of kinds of powers that include the kinds of power vested in ACAT concerning electroconvulsive therapy, the Explanatory Statement states:

> **4.16** This body of international case law shows that so long as these powers meet the following eight provisos, they meet the test of compatibility with human rights provided by section 28 of the ACT Human Rights Act, discussed at the beginning of this segment. [footnote omitted]

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[7] Under section 94 of the ACAT Act the Executive may appoint a person as a temporary presidential member of the tribunal, but that person must be a lawyer.

[8] [2001] 3 WLR 553, para 55.

[9] *R v Broadmoor Hospital* [2001[EWCA 1545 at paragraph 25.

[10] See PJB v Melbourne Health State Trustees Ltd [2011] VSC 327 at paragraph 315.

[11] [2001[EWCA 1545 at paragraph 22.

4.17 One, all the powers must be exercised only with caution and care and only:

a. if their exercise is determined necessary by a medical assessment of the person being assessed, treated, cared for, or supported necessitates, where the assessment is conducted in accordance with clinically accepted methods by an appropriately qualified doctor.

On this basis, it might be argued that ACAT does not appear to be a body suited to making assessments of this kind.

This analysis suggests that there is a choice to made here between two models for review of review of a decision made by a psychiatrist or similar expert (such as, relevantly, a neurosurgeon).

In relation to a decision to administer electroconvulsive therapy to a person, the model proposed in the Bill establishes a scheme for primary decision-making by a body (ACAT) that does not have expertise in the relevant field of medical opinion. (This does not completely describe the scheme, as outlined above, but describes its essence.) Review of ACAT's determination would be by way of an appeal on a point of law to the Supreme Court, or perhaps in some cases, within the ACAT structure.

An alternative model is to provide for primary decision-making by a body comprised of experts, with further review by a court on legality grounds, or, alternatively, to a tribunal (such as ACAT[12]) but which would not re-make the primary decision but review on narrower grounds. Apart from the case where the Supreme Court may, on behalf of the relevant person, consent to surgery, this is the scheme proposed in relation to the performance of psychiatric surgery. (See below; in this case, the experts sit with non-experts, but the two experts must agree with the recommendation).

Noting this difference of approach within the legislation to the making of medical judgements, the Committee recommends that the Minister explain why the ACAT model has been chosen in one case, and the expert panel model chosen in the other.

The purpose of this analysis is to bring these alternatives to the attention of the Assembly.

The Committee draws these matters to the attention of the Assembly and recommends that the Minister respond.

PSYCHIATRIC SURGERY

Part 9.3 governs the performance of psychiatric surgery on a person (the relevant person). Unless section 65 applies (see below), a doctor cannot perform this operation if the relevant person refuses consent (paragraph 60(b) and paragraph 61(2)(a)) (The doctor must also have the chief psychiatrist's approval for performance of the surgery (paragraph 60(a)). The doctor applies to the chief psychiatrist for approval to perform the surgery (subsection 61(1)). The chief psychiatrist then gives the application to a committee appointed under section 67. The committee chair convenes a meeting of the committee, and, after the committee has considered the application, gives a copy of its recommendations, accompanied by its reasons, to the chief psychiatrist (section 67). By section 64, the chief psychiatrist must decide an application under section 61 in accordance with the committee's recommendation.

[12] There is no bar to ACAT having a more limited review jurisdiction; see section 57 of the ACAT Act.

This committee comprises a psychiatrist, a neurosurgeon, a lawyer, a clinical psychologist and a social worker (section 67). Questions arising at meetings are decided by a majority of members. However, the recommendation of the committee must be supported by both the psychiatrist and the neurosurgeon (paragraph 62(3)(b).

It might be thought that these provisions recognise that decisions involving the exercise of professional medical expertise should be decided by experts (subject to judicial review on legality grounds). The inclusion of lay members on the committee recognises that the experts should take account of non-medical factors, and/or be a check on the reasoning processes of the professionals.

The Committee comments on two aspects of this scheme.

The apparent lack of due process rights in the course of a committee consideration of an application

On receipt of an application, the chair of the Committee must tell a number of people "of the application" (subsection 62(2)(a)). There arise a number of questions concerning the process of the committee that are not addressed in the Bill: do any of these persons have a right to make a submission to the committee, and is it obliged to take it into account? Would any such person have a right to make an oral submission? Should the relevant person have a right to obtain an opinion of a psychiatrist or neurosurgeon of their choice, and have that report considered by the committee? Should any such a psychiatrist or neurosurgeon have a right to make an oral submission? Should any such a psychiatrist or neurosurgeon have a right to comment on a recommendation of the committee?

The Committee draws these matters to the attention of the Assembly and recommends that the Minister respond.

The power of the Supreme Court to substitute its consent for the lack of consent by the relevant person

The lack of consent from the relevant person may be overcome by the Supreme Court substituting its consent to the operation. Clause 65 provides:

(1) On application by a doctor, the Supreme Court may, by order, consent to the performance of psychiatric surgery on a person.

(2) The Supreme Court may make the order only if satisfied that—

(a) the person has a mental illness; and

(b) the person does not have decision-making capacity to consent to the surgery and has not refused to consent to the surgery; and

(c) there are grounds for believing that the performance of the surgery is likely to result in substantial benefit to the person; and

(d) all alternative forms of treatment reasonably available have 17 failed, or are likely to fail, to benefit the person.

The Committee notes:

- all these matters upon which the Supreme Court must be satisfied would require the court (after hearing such expert evidence as is presented to it) to form its own opinion on a matter of professional medical judgement;
- paragraph (b) does not require the Supreme Court to be satisfied that the relevant person has consented (which would presumably be precluded by her or his lack of decision-making capacity), but only that the person had not refused to undergo the operation;
- paragraph (c) does not require the court to be satisfied that the proposed surgery is "likely" to result in substantial benefit to the person, but only that "there are grounds" to be so satisfied; and
- the words "likely to" in paragraph (c) state a less rigourous standard than one that would be conveyed by the word "would".

The processes that would be followed on a Supreme Court hearing would be those applicable to all kinds of matters, and would afford due process to the relevant person. There is however no provision in the Supreme Court Act for the appointment of assessors.

The function of section 65 is to provide a means for the performance of psychiatric surgery on a person in the absence of evidence that the person has consented to the operation. Two major issues arise.

The first is whether it is appropriate to vest this power in a body—which usually would comprise a single Supreme Court judge—which will not have any relevant expertise to make the relevant professional medical judgements. Why is it considered that the committee that approves an application for the surgery where the relevant person consents is not suitable to deal with a case where there is no consent (and no refusal)? What makes the first kind of decision suitable for a committee that can only make a recommendation for surgery where the two experts concur, but the second kind of decision suitable for determination by the Supreme Court?

The second issue is whether in any circumstances the bodily integrity of a person should be violated by the performance of psychiatric surgery in the absence of the express consent of the relevant person.

The Committee draws these matters to the attention of the Assembly and recommends that the Minister respond.

In accord with the now generally taken approach, (of which there are many examples in this Bill), the Committee recommends that the power of the Supreme Court to make an order be conditioned on its being satisfied on the matters stated in subclause 65(2) on "reasonable grounds".

The Committee draws these matters to the attention of the Assembly and recommends that the Minister respond.

GOVERNMENT AMENDMENTS

The Committee has examined Government amendments to the Children and Young People Amendment Bill 2015 (No. 2) and has no comment to make in relation to the amendments.

SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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

Disallowable Instrument DI2015-68 being the Nature Conservation (Brush-tailed Rock-wallaby) Action Plan 2015 (No. 1) made under section 42 of the *Nature Conservation Act 1980* **revokes Action Plan No 22 Brush-tailed Rock-wallaby (Petrogale penicillata) as attached to DI2013-277 and makes the Brush-tailed Rock-wallaby Action Plan 2015 (No. 1).**

Disallowable Instrument DI2015-69 being the Official Visitor (Children and Young People) Appointment 2015 (No. 1) made under subsection 10(1) of the *Official Visitor Act 2012* **appoints specified persons as official visitors for the *Children and Young People Act 2008*.**

Disallowable Instrument DI2015-70 being the Road Transport (General) Application of Road Transport Legislation Declaration 2015 (No. 4) made under section 12 of the *Road Transport (General) Act 1999* **declares that the road transport legislation does not apply to a road or road related area that is a special stage of the National Capital Rally.**

Disallowable Instrument DI2015-87 being the Cemeteries and Crematoria (Public Cemetery Fees) Determination 2015 (No. 1) made under section 49 of the *Cemeteries and Crematoria Act 2003* **revokes DI2014-188 and determines fees payable for the purposes of the Act.**

Disallowable Instrument DI2015-88 being the Nature Conservation (Species and Ecological Communities) Declaration 2015 (No. 1) made under section 38 of the *Nature Conservation Act 1980* **revokes DI2012-11 and determines specified species to be vulnerable species, endangered species and endangered communities.**

Disallowable Instrument DI2015-92 being the Civil Law (Wrongs) New South Wales Bar Association Scheme 2015 (No. 1) made under Schedule 4, section 4.10 of the *Civil Law (Wrongs) Act 2002* **approves The New South Wales Bar Association Scheme.**

Disallowable Instrument DI2015-102 being the Electricity Feed-in (Renewable Energy Premium - Registered Rural Block 708 Majura) Determination 2015 (No. 1) made under section 5E of the *Electricity Feed-in (Renewable Energy Premium) Act 2008* **determines the total renewable energy generators capacity that can be installed at Registered Rural Block 708, Division of Majura.**

Disallowable Instrument DI2015-103 being the Public Place Names (Moncrieff) Determination 2015 (No. 4) made under section 3 of the *Public Place Names Act 1989* **determines the names of ten roads in the Division of Moncrieff.**

DISALLOWABLE INSTRUMENTS—COMMENT

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

REASONS FOR FEES INCREASES

Disallowable Instrument DI2015-74 being the Animal Diseases (Fees) Determination 2015 (No. 1) made under section 88 of the *Animal Diseases Act 2005* **revokes DI2014-167 and determines fees payable for the purposes of the Act.**

Disallowable Instrument DI2015-79 being the Domestic Animals (Fees) Determination 2015 (No. 1) made under section 144 of the *Domestic Animals Act 2000* **revokes DI2014-169 and determines fees payable for the purposes of the Act.**

Disallowable Instrument DI2015-80 being the Animal Welfare (Fees) Determination 2015 (No. 1) made under section 110 of the *Animal Welfare Act 1992* **revokes DI2014-168 and determines fees payable for the purposes of the Act.**

Disallowable Instrument DI2015-81 being the Stock (Fees) Determination 2015 (No. 1) made under section 68 of the *Stock Act 2005* **revokes DI2014-170 and determines fees payable for the purposes of the Act.**

Disallowable Instrument DI2015-82 being the Stock (Levy) Determination 2015 (No. 1) made under section 6 of the *Stock Act 2005* **revokes DI2014-171 and determines the number of animals making up a stock unit and the levy amount per stock unit.**

Disallowable Instrument DI2015-83 being the Stock (Minimum Stock Levy) Determination 2015 (No. 1) made under section 7A of the *Stock Act 2005* **revokes DI2014-172 and determines the minimum stock levy for landholdings.**

Disallowable Instrument DI2015-84 being the Tree Protection (Fees) Determination 2015 (No. 1) made under section 109 of the *Tree Protection Act 2005* **revokes DI2014-174 and determines fees payable for the purposes of the Act.**

Disallowable Instrument DI2015-85 being the Waste Minimisation (Landfill Fees) Determination 2015 (No. 1) made under section 45 of the *Waste Minimisation Act 2001* **revokes DI2014-173 and determines fees payable for the purposes of the Act.**

Disallowable Instrument DI2015-86 being the Public Unleased Land (Fees) Determination 2015 (No. 1) made under section 130 of the *Public Unleased Land Act 2013* **revokes DI2014-187 and determines fees payable for the purposes of the Act.**

Each of the instruments mentioned above determines fees for the purposes of the relevant Act. In each case, the instrument revokes the fees determination for the 2014-2015 financial year and determines fees applicable from 1 July 2015. In each case, the Explanatory Statement for the instrument states:

> The determination increases … fees by 4% taking into consideration rounding for cash handling purposes.

The Committee has always taken a keen interest in fees determinations. In its document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps* (available at http://www.parliament.act.gov.au/in-committees/standing_committees/justice_and_community_safety_legislative_scrutiny_role), the Committee stated:

> **FEES DETERMINATIONS**
>
> The Committee prefers that instruments that determine fees indicate (either in the instrument itself or in the Explanatory Statement) the amount of the "old" fee, the amount of the new fee, any percentage increase **and also the reason for any increase** (eg an adjustment based on the CPI). Given the importance of fees to the administration of the ACT, it assists the Committee (and the Legislative Assembly) if fees determinations expressly identify the magnitude of any fees increases.

> The Committee also prefers that fees determinations expressly address the mandatory requirements of subsection 56(5) of the *Legislation Act 2001*, which provides that a fees determination must provide:
>
> - by whom the fee is payable; and
> - to whom the fee is to be paid **[emphasis added]**

The Committee notes that the Explanatory Statements for the various fees instruments mentioned above do not give the reasons for the fees increases determined by the instrument. While, at this time of the year, the Committee expects that fees increases will be Budget-related (and while the explanations given suggest that the increases are Budget-related), the Committee reminds Ministers that it prefers that Explanatory Statements for fees instruments address all of the Committee's various requirements.

This comment does not require a response from the Minister.

MINOR DRAFTING ISSUE

Disallowable Instrument DI2015-89 being the University of Canberra Council Appointment 2015 (No. 1) made under section 11 of the *University of Canberra Act 1989* **appoints a specified person as a member of the University of Canberra Council.**

Disallowable Instrument DI2015-90 being the University of Canberra Council Appointment 2015 (No. 2) made under section 11 of the *University of Canberra Act 1989* **appoints a specified person as a member of the University of Canberra Council.**

Disallowable Instrument DI2015-91 being the University of Canberra Council Appointment 2015 (No. 3) made under section 11 of the *University of Canberra Act 198***9 appoints a specified person as a member of the University of Canberra Council.**

Each of the instruments mentioned above appoints a specified person to the University of Canberra Council. The Committee notes that the Explanatory Statement for each of the instruments states that

> … the [instrument] is a disallowable instrument for the purpose of division 19.3.3 of the *Legislations Act 2001*. [emphasis added]

The Committee notes that the correct reference should be to the *Legislation Act 2001*.

This comment does not require a response from the Minister.

SUBORDINATE LAW—NO COMMENT

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

Subordinate Law SL2015-19 being the Medicines, Poisons and Therapeutic Goods Amendment Regulation 2015 (No. 1) made under the *Medicines, Poisons and Therapeutic Goods Act 2008* **amends the *Medicines, Poisons and Therapeutic Goods Regulation 2008*.**

SUBORDINATE LAWS—COMMENT

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

STRICT LIABILITY OFFENCES

Subordinate Law SL2015-16 being the Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2015 (No. 2) made under the *Magistrates Court Act 1930* **amends the Magistrates Court (Work Health and Safety Infringement Notices) Regulation by inserting additional offences for which infringement notices can be issued.**

This subordinate law amends Schedule 1, part 1.2 of the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* (the WHS Regulation), by inserting 32 new offences in relation to which infringement notices can be issued. The Explanatory Statement for the subordinate law states:

> The infringement notice system is intended to provide an alternative to prosecution where it is deemed appropriate to impose a monetary fine rather than taking the matter before the court. Under the Magistrates Court Act, a person authorised to issue an infringement notice for an offence has discretion to decide whether to issue a notice.

The Explanatory Statement goes on to state:

> Section 6A of the WHS Regulation provides that, unless otherwise specified, the physical elements of an offence are strict liability. For the offences in [this subordinate law], the prosecution is required to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made the conduct innocent, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact.
>
> The rationale for these strict liability offences is that people who owe work safety duties can be expected to be aware of their duties and obligations to the wider public. Breaches should be apparent without the need for further inquiry, or the need to weigh up competing or contradictory evidence.
>
> Failure to comply with any requirement in [the WHS Regulation] is an offence. As these offences arise in the regulatory context where public safety is paramount, there is an interest in ensuring regulatory schemes are observed, and in this context the sanction of criminal penalties is justified.

The Committee notes (with approval) that this explanation addresses the Committee's requirements in relation to strict liability offences, as set out in document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps* (available at http://www.parliament.act.gov.au/in-committees/standing_committees/justice_and_community_safety_legislative_scrutiny_role).

This comment does not require a response from the Minister.

INTERACTION WITH EXISTING LAW—UNRESOLVED ISSUES RELATED TO COMMENTS PREVIOUSLY MADE BY THE COMMITTEE

Subordinate Law SL2015-17 being the Building (General) Amendment Regulation 2015 (No. 1) made under the *Building Act 2004* requires inspection of living areas affected by loose-fill asbestos insulation to identify the extent of contamination of these living areas.

Subordinate Law SL2015-18 being the Civil Law (Sale of Residential Property) Amendment Regulation 2015 (No. 1) made under the *Civil Law (Sale of Residential Property) Act 2003* requires inspection of living areas affected by loose-fill asbestos insulation to identify the extent of contamination of these living areas.

The first subordinate law mentioned above is made under the *Building Act 2004* (Building Act). It amends the Building (General) Regulation 2008. The Explanatory Statement for the subordinate law states that the amendments made by the subordinate law are "complementary" to amendments made by the Dangerous Substances (General) Amendment Regulation 2015 (No 1) and the Dangerous Substances (General) Amendment Regulation 2015 (No 2). According to the Explanatory Statement, the amendments made by this subordinate law ensure

> … that the specific reports that are required under the Regulation are given a similar status and made available in the same way as an asbestos assessment report under the Dangerous Substances Act 2004, section 47K.

The Committee notes that (as the term is not defined) it is not clear to what "the Regulation" refers. However it seems that the term refers to the Building (General) Regulation 2008.

The Explanatory Statement goes on to state:

> There are two stages to the commencement of the Amending Regulation and this reflects the two stages of the requirements for inspection and management of loose-fill asbestos contamination in the living areas of residential premises in the Dangerous Substances (General) Regulation 2004. The amendments made by the Dangerous Substances (General) Amendment Regulation 2015 (No 1) require homeowners of affected residential premises to have an inspection of the living areas of the premises for loose-fill asbestos contamination and to have this inspection by 15 May 2015. This requirement is replaced by the more extensive requirement in the Dangerous Substances (General) Amendment Regulation 2015 (No 2) for an asbestos contamination report that includes a risk assessment and management component.

At this point, the Committee notes the assertion above that the relevant inspection is "required" by 15 May 2015.

The second subordinate law mentioned above is made under the C*ivil Law (Sale of Residential Property) Act 2003* (the Act). The Explanatory Statement for the second subordinate law states that the amendments made by the subordinate law are "complementary" to amendments made by the Dangerous Substances (General) Amendment Regulation 2015 (No 1) and the Dangerous Substances (General) Amendment Regulation 2015 (No 2).

The Explanatory Statement for the second subordinate law goes on to state that the amendments made by the second subordinate law

> … have the effect of requiring an inspection of the living areas of premises that are affected by loose-fill asbestos insulation to identify the extent, if any, of asbestos contamination in those living areas.

The Explanatory Statement goes on to state:

> The Amending Regulation is consequential to the amendments to the Dangerous Substances (General) Regulation 2004 and ensures that the specific reports that are required under that Regulation are given a similar status and made available in the same way as an asbestos assessment report under the *Dangerous Substances Act 2004*, section 47K.
>
> There are two stages to the commencement of the Amending Regulation and this reflects the two stages of the requirements for inspection and management of loose-fill asbestos contamination in the living areas of residential premises in the Dangerous Substances (General) Regulation 2004. The amendments made by the Dangerous Substances (General) Amendment Regulation 2015 (No 1) require homeowners of affected residential premises to have an inspection of the living areas of the premises for loose-fill asbestos contamination and to have this inspection by 15 May 2015. This requirement is replaced by the more extensive requirement in the Dangerous Substances (General) Amendment Regulation 2015 (No 2) for an asbestos contamination report that includes a risk assessment and management component.

Again, at this point, the Committee notes the assertion above that the relevant inspection is "required" by 15 May 2015.

The Committee notes that it commented on the Dangerous Substances (General) Amendment Regulation 2015 (No. 1) (Subordinate Law SL2015-10) in *Scrutiny Report 32 of the Eighth Assembly*. Those comments related to the date of effect of the relevant amendments. In particular, the Committee sought advice in relation to the proposition that inspections were "required" by 15 May 2015.

The Committee received a response to these comments on 28 July 2015. The Minister's response indicates that the requirement to arrange to have an inspection is an "absolute requirement" and operates from the commencement of the relevant regulation. The Minister's response further indicates that only a "small and identifiable group of people" are affected by the requirement and that the Asbestos Response Task Force has "actively contacted" those people, to assist them with making the relevant arrangements by the due date.

The Committee's draws the Minister's response to the attention of the Legislative Assembly.

In *Scrutiny Report 33 of the Eighth Assembly*, the Committee considered the Dangerous Substances (General) Amendment Regulation 2015 (No. 2), which is also referred to above. The Committee again referred to the assertion, in relation to this particular subordinate law, that there was a "requirement" that inspections take place by 15 May 2015. Given that the lack of a response to the comments in *Scrutiny Report 32*, the Committee sought the Minister's advice about the interaction between the Dangerous Substances (General) Amendment Regulation 2015 (No. 2) and the Dangerous Substances (General) Amendment Regulation 2015 (No. 1).

The Committee has received no response to those comments.

In the light of the above, and in light of the relevance of the issue to the Building (General) Amendment Regulation 2015 (No. 1) and the Civil Law (Sale of Residential Property) Amendment Regulation 2015 (No. 1), the Committee again seeks the Minister's advice about the interaction of the Dangerous Substances (General) Amendment Regulation 2015 (No. 2) and the Dangerous Substances (General) Amendment Regulation 2015 (No. 1) (raised in *Scrutiny Report 32 of the Eighth Assembly*).

GOVERNMENT RESPONSES

The Committee has received responses from:

- The Minister for Children and Young People, dated 3 June 2015, in relation to comments made in Scrutiny Report 33 concerning the Children and Young People Amendment Bill 2015 (No. 2) (attached).
- The Minister for Racing and Gaming, dated 3 June 2015, in relation to comments made in Scrutiny Report 33 concerning the Gaming Machine (Reform) Amendment Bill 2015 (attached).
- The Minister for Racing and Gaming, dated 23 June 2015, in relation to comments made in Scrutiny Report 33 concerning Disallowable Instrument DI2015-63—Racing Appeals Tribunal Appointment 2015 (No. 2) (attached).
- The Minister for Justice, dated 29 June 2015, in relation to comments made in Scrutiny Report 33 concerning the Road Transport Legislation Amendment Bill 2015 (attached).
- The Chief Minister, dated 1 July 2015, in relation to comments made in Scrutiny Report 20 concerning the Red Tape Reduction Legislation Amendment Bill 2014 (attached).
- The Minister for Territory and Municipal Services, dated 10 July 2015, in relation to comments made in Scrutiny Report 33 concerning the Veterinary Surgeons Bill 2015 (attached).
- The Minister for Workplace Safety and Industrial Relations, dated 27 July 2015, in relation to comments made in Scrutiny Report 32 concerning Subordinate Law SL2015-10—Dangerous Substances (General) Amendment Regulation 2015 (No. 1) (attached).
- The Minister for Workplace Safety and Industrial Relations, dated 27 July 2015, in relation to comments made in Scrutiny Report 33 concerning Disallowable Instruments (attached):
  - DI2015-52 - Work Health and Safety (Work Safety Council Employee Representative) Appointment 2015 (No. 1); and
  - DI2015-53 - Work Health and Safety (Work Safety Council Employer Representative) Appointment 2015 (No. 1).

The Committee wishes to thank the Minister for Children and Young People, the Minister for Racing and Gaming, the Minister for Justice, the Chief Minister, the Minister for Territory and Municipal Services and the Minister for Workplace Safety and Industrial Relations for their helpful responses.

Steve Doszpot MLA
Chair

28 July 2015

OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

Report 3, dated 25 February 2013

Disallowable Instrument DI2013-5—Road Transport (Third-Party Insurance) Early Payment Guidelines 2013 (No. 1)

Report 27, dated 3 February 2015

Public Sector Bill 2014

Report 33, dated 26 May 2015

Subordinate Law SL2015-13 - Dangerous Substances (General) Amendment Regulation 2015 (No. 2), including a regulatory impact statement

Mick Gentleman MLA

MINISTER FOR PLANNING
MINISTER FOR ROADS AND PARKING
MINISTER FOR WORKPLACE SAFETY AND INDUSTRIAL RELATIONS
MINISTER FOR CHILDREN AND YOUNG PEOPLE
MINISTER FOR AGEING

MEMBER FOR BRINDABELLA

Mr Steve Doszpot MLA
Chair, Standing Committee on Justice and
Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mr Doszpot

Thank you for providing Scrutiny Report No.33 and the Standing Committee on Justice and Community Safety's (the Committee) comments in relation to Children and Young People Amendment Bill 2015 (No.2) (the Bill).

I thank the Committee for its consideration of the Bill that will enable the Territory to monitor the ongoing suitability of organisations providing services through the strategy *A Step Up for Our Kids.* The Bill will provide the Territory with a range of powers to intervene when an organisation is not compliant with the conditions of their approval.

It is brought to the Committee's attention that Division 10.4.3 – Approved care and protection organisations – complaints, and Division 10.4.4 – Approved care and protection organisations – intervention apply to organisations, not individuals, and therefore do not amount to an *undue trespass on personal rights and liberties.*

It is agreed that Division 10.4.3 and Division 10.4.4 of the Bill could be improved to be more explicit and consistent in its application of procedural fairness and natural justice. I advise that the Bill has been amended to address the issues raised by the Committee. The Government Amendments also include an amendment to the commencement date, transitional arrangements for organisations approved under the *Children and Young People Act 2008* and an amendment to section 525 – Approval of places of care.

The Government Amendments (Attachment A) and Supplementary Explanatory Statement (Attachment B) are provided for your consideration.

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone: (02) 6205 0218 Fax: (02) 6205 0368 Email: GENTLEMAN@act.gov.au
Twitter: @GENTLEMANMick Facebook: www.facebook.com/MickGentleman

The issues raised by the Committee and where they are addressed in the Government Amendments to the Bill are provided in a table at Attachment C.

I can confirm that further detail on the operation of the intervention powers proposed in Bill will be provided through a disallowable instrument being developed in consultation with stakeholders.

Once again, I thank the Committee for its comments.

Yours sincerely

Mick Gentleman MLA
Minister for Children and Young People
June 2015

Joy Burch MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR POLICE AND EMERGENCY SERVICES
MINISTER FOR DISABILITY
MINISTER FOR RACING AND GAMING
MINISTER FOR THE ARTS

MEMBER FOR BRINDABELLA

Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety
(Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Doszpot

I write in response to Scrutiny Report 33 provided by the Standing Committee on Justice and Community Safety in its Legislative Scrutiny Role (the Committee) on 26 May 2015, which provides comment on the Gaming Machine (Reform) Amendment Bill 2015 (the Bill).

I thank the Committee for their comments and provide the following responses.

Dispensing clauses sections 6 and 7 – eligibility considerations

The Committee indicates that further justification should be provided for the dispensing clauses in sections 6 and 7 of the Bill.

I note at the outset that these provisions have existed in the *Gaming Machine Act 2004* (the existing Act) since its creation (see sections 20 and 21 of the Act). As noted in the Explanatory Statement tabled in 2004 (page 11), 'these provisions allow some discretion by the Commission [i.e. the ACT Gambling and Racing Commission] [where]...circumstances are such that it would be harsh or unreasonable to consider the individual [or the corporation] as not eligible.'

I note the Committee's comments in relation to *O'Donoghue v Ireland* ([2008] HCA14 at [179]) as providing a basis for the 'longstanding and fundamental principle of our constitutional law' (page 4 of the Scrutiny Report). I consider that the dispensing provisions in the Bill do not offend this principle as they are included in the Bill for the consideration of the Legislative Assembly. Accordingly, if the Bill is passed, any dispensation will be made with the authority of parliament.

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone: (02) 6205 0020 Fax: (02) 6205 0495 Email: BURCH@act.gov.au
Twitter: @JoyBurchMLA Facebook: www.facebook.com/joyburchmla

I note also that the ACT Gambling and Racing Commission (the Commission) is an independent regulator, established by and granted powers by the Assembly, and bound by the limits of those statutes, including the overarching *Gambling and Racing Control Act 1999* (the Control Act).

The power granted to the Commission is not unfettered, rather the Commission is bound to consider public interest considerations by subsections 6(3) and 7(2) of the Bill.

In relation to whether the power should be disallowable by the Assembly, I note that disallowance could cause considerable uncertainty for gaming machine licence applicants, and delays depending on the timing of Assembly sittings. It would be difficult for business decisions to be made and progressed while subject to potential disallowance.

The provisions are therefore considered reasonable and proportionate in balancing the integrity of the industry and administrative fairness to an applicant.

Noting, however, the Committee's recommendation, I have decided to table a Revised Explanatory Statement to ensure the justification for the dispensing clauses is clear.

Widely expressed administrative powers

I note the Committee's general comments about the statement of administrative powers, but do not agree to a more narrow statement of subsections 38D(4) and 38F(b) in the Bill.

This Bill is part of, and consistent with, the ACT's suite of racing and gaming legislation. It provides appropriate and proportionate powers aimed at achieving the important objectives of industry integrity, consumer protection and harm minimisation and is to be applied alongside the Control Act. Any power conferred on the Commission under the amendments will be exercised with due regard to the boundaries of the existing Act and the Control Act.

In respect of proposed subsection 38D(4) the provision was drafted with due consideration of limiting the scope of administrative power. It is sufficiently defined by the specific requirement that the Commission must consider the Social Impact Assessment (SIA) and any submission made on the SIA. The provision was drafted to incorporate the requirement established by subparagraph 13(1)(e) of the existing Act as it relates to in-principle approvals, in line with the broader changes made within the Bill to reflect the change to in-principle authorisation certificates.

The proposed subsection 38F(b) was drafted giving careful consideration to the intent of the provisions in the existing Act and mirrors subparagraph 38K(2)(b).

The intent of the in-principle provisions in part 2C of the Bill is similar to part 2A of the existing Act. These provisions allow for the in-principle approval

of an authorisation certificate at an address of unleased land before the acquisition of an interest in the land or premises at the address is finalised.

As such, subsection 38F(b) provides the Commission with a level of flexibility and scope in relation to the types of conditions to be imposed when issuing or extending an in-principle authorisation certificate. Prescribing conditions in this instance may not allow the Commission to appropriately cater for the varied and unique circumstances of each application in relation to an in-principle authorisation certificate.

Given the diverse nature of the gaming industry and the need to ensure integrity, whilst balancing the circumstances of the land and the (potential) approval-holder, the legislation must provide the Commission with the capacity to be responsive to the particular circumstances in line with its statutory responsibilities. The Bill provides flexibility to ensure that appropriate conditions can be placed on the in-principle authorisation certificate to respond to unforeseen issues, which may be necessary to avoid risks to consumer protection or to uphold the integrity of the industry.

As provided for in the Bill, the reach of the Commission's administrative power in this regard is limited to the applicant for an in-principle authorisation certificate, which includes only a current or prospective class C licensee (an entity, not an individual), and there must be suitable land – that is, currently unleased land that is to be leased with a purpose clause permitting a club.

Administrative powers – opportunity to respond

I note the Committee's comments in relation to sections 32, 35, 36, 37, 38D, 38I, 38K, 38N and 127W, however, I do not consider that it is necessary to provide an opportunity to respond for these powers.

The abovementioned provisions relate to decision making by the Commission and in every circumstance, the provisions require the Commission to tell the person in writing of their decision and give reasons for that decision.

Furthermore, a person who considers they have been adversely affected by a decision under any of the abovementioned provisions has the opportunity to seek review as they are all reviewable decisions under schedule 1 – reviewable decisions of the Bill.

Strict liability offences

I thank the Committee for their considerate comments in relation to the treatment of strict liability offences and defences in the Explanatory Statement and justification for exceeding the higher maximum penalties in some instances.

In response to the Committee's comments about subsection 39(1A) of the Bill and the inclusion of an additional 'reasonable steps' defence, I note that this amendment revises an existing strict liability offence within the Act to include references to authorisation certificates, in line with the new licensing and authorisation framework.

Notwithstanding that the strict liability offence has existed since 2004 without the additional ‘reasonable steps’ defence, I have carefully considered the Committee’s comments and decided to bring forward a Government amendment to include a ‘reasonable steps’ defence in the section. This amendment will be supported by a Supplementary Explanatory Statement.

I would also like to advise the Committee that I will be tabling a minor and technical amendment to the existing note within section 39, to reflect that conditions can be imposed on authorisation certificates (as well as on licences).

Comment on the Explanatory Statement

I thank the Committee for their kind comments in relation to the analysis of human rights issues in the Explanatory Statement. The Revised Explanatory Statement for the Bill addresses the matters raised.

I trust that the response addresses the Committee’s comments in relation to the Bill. I thank the Committee for its comments and observations.

Yours sincerely

Joy Burch MLA
Minister for Racing and Gaming
June 2015

Joy Burch MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR POLICE AND EMERGENCY SERVICES
MINISTER FOR DISABILITY
MINISTER FOR RACING AND GAMING
MINISTER FOR THE ARTS

MEMBER FOR BRINDABELLA

Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety
(Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Doszpot

I refer to the recent publication of the Standing Committee on Justice and Community Safety's Scrutiny Report No. 33, and the Committee's comments in relation to Disallowable Instrument DI2015-63, being the *Racing Appeals Tribunal Appointment 2015 (No.1)*.

I thank the Committee for its consideration of the instrument that appoints two specified persons as members of the Racing Appeals Tribunal under the *Racing Act 1999*.

I note the Committee's comment that Explanatory Statements for instruments of appointment should indicate whether the persons appointed are (or are not) public servants.

I can confirm that the persons appointed by DI2015-63 are not public servants.

I can also advise that I have asked the Chief Minister, Treasury and Economic Development Directorate to ensure that this information is included when drafting Explanatory Statements for future instruments of appointment.

Yours sincerely

Joy Burch MLA
Minister for Racing and Gaming
June 2015

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone: (02) 6205 0020 Fax: (02) 6205 0495 Email: BURCH@act.gov.au
Twitter: @JoyBurchMLA Facebook: www.facebook.com/joyburchmla

Shane Rattenbury MLA

MINISTER FOR TERRITORY AND MUNICIPAL SERVICES
MINISTER FOR JUSTICE
MINISTER FOR SPORT AND RECREATION
MINISTER ASSISTING THE CHIEF MINISTER ON TRANSPORT REFORM

MEMBER FOR MOLONGLO

Mr Steve Doszpot MLA
Chair—Standing Committee on Justice and Community Safety
(Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA CITY ACT 2601

Dear Mr Doszpot

I write with reference to Scrutiny Report 33 provided by the Standing Committee on Justice and Community Safety (the Committee) on 26 May 2015 which provides comment on the Road Transport Legislation Amendment Bill 2015 (the Bill). I thank the Committee for its consideration of the Bill.

Creation of a strict liability offence of drinking alcohol while driving a vehicle

The Committee considered that the Explanatory Statement provided a good analysis of the human rights issues raised.

The Committee noted that the amendments create a presumption that a substance is alcohol if it is in a container that has a label or advertising material indicating that it contains alcohol. While the Committee raised no issue with this, the Committee noted that section 70 of the *Evidence Act 2011* excludes the operation of the hearsay rule in respect of contents of tags, labels and writing placed on an object.

I appreciate the Committee's advice in this regard and agree that section 70 of the *Evidence Act 2011* will support enforcement of the new offence.

Creation of a power for police to issue a surrender notice for the seizure of a vehicle used in committing particular offences

The Bill proposes to insert a new section 10BA into the *Road Transport (Safety and Traffic Management) Act 1999*. The Explanatory Statement states that the new power allows a police officer to issue a surrender notice requiring the responsible person for a vehicle to surrender the vehicle for impounding at the place and by the date stated in the notice. The power to issue a surrender notice is in addition to the existing power to seize and impound a motor vehicle

under section 10C.

The amendments do not expand the circumstances in which a vehicle may be impounded — they merely establish an alternative method of impoundment.

It is an offence under new section 10BA (5) for the responsible person for a motor vehicle to fail to comply with a surrender notice, with a maximum penalty of 20 penalty units. New section 10BA (7) provides that the offence does not apply if the person has a reasonable excuse for failing to comply with the notice. The person bears an evidential burden to establish a reasonable excuse.

The Committee noted that the Explanatory Statement deals with the strict liability offence elements of this section and commended the addition of a defence of “reasonable excuse” to the failure to comply element of the offence.

The existing vehicle seizure scheme

The Committee advised that notwithstanding that the proposed new section 10BA of the *Road Transport (Safety and Traffic Management) Act 1999* does not amend or extend the existing scheme, the proposal should be assessed against the rights stated in the *Human Rights Act 2004* (HRA).

The Committee advised that the question whether impounding of a vehicle engages the HRA and/or common law rights should be considered. In particular, the Committee raised concerns that impoundment of a vehicle might be said to engage the right to freedom of movement; the right to privacy; and the right to property. The Committee recommended that appropriate section 28 justifications be included in the Explanatory Statement for these potential limitations.

The behaviours targeted by the seizure scheme — including races, burnouts and menacing driving — often involve high speeds, risky manoeuvres and deliberately aggressive or threatening driving, which all have the potential to increase the likelihood of serious injuries and deaths on the Territory’s roads. Therefore, insofar as the vehicle seizure scheme could be said to engage the rights to freedom of movement; the right to privacy; and the right to property, any limitation is reasonable and can be demonstrably justified, as required by section 28 of the HRA, as necessary for improving road safety in the ACT. This will further the ability of all residents of and visitors to the ACT to live and travel safely within the community. This is a vitally important objective.

Additionally, it is considered that any limitations created by the vehicle seizure scheme are not extensive and therefore proportionate to the nature of the mischief created by the relevant offences. While it is arguable that the scheme engages the right to freedom of movement, it should be noted that the owner of the vehicle, and any other individuals affected by impoundment, are still free to use other forms of transport such as walking, cycling and public transport. In

addition, if the owner of the vehicle continues to hold a driver licence or permit, then that person is free to drive an alternate vehicle.

Any limitation to the right to privacy that arises from the scheme is not extensive. The seizure powers can be exercised only in very specific circumstances, where drivers are reasonably expected to have engaged in deliberately dangerous driving behaviours. It is noted that the amendment providing for a notice to surrender in fact supports the right to privacy, as it allows a responsible person for a vehicle to remove his or her personal items from the vehicle before surrendering it to police.

Insofar as the scheme limits the right to property, it should again be noted that the vehicle seizure power can only be exercised against drivers who are reasonably suspected to have engaged in specific illegal acts. Furthermore, the legislation provides avenues for the responsible person for a vehicle to apply to the chief police officer and/or the Magistrates Court for the release of the vehicle. Again, the amendment providing for a notice to surrender supports the right to property, as it allows a responsible person for a vehicle to take personal items out of the vehicle prior to surrendering it.

The Explanatory Statement has been revised to express the justification for any limitations created by the vehicle seizure scheme within a section 28 framework, as recommended by the Committee.

Numbering errors in the Explanatory Statement

The Committee noted that there was a problem with the numbering of the clauses, in that certain clauses refer to the wrong amendment. I thank the Committee for bringing the errors to my attention and advise that they have been addressed in the revised Explanatory Statement, as recommended by the Committee.

A copy of the revised Explanatory Statement is attached for your reference. I propose to table this revised document when the Bill is debated.

Yours sincerely

Shane Rattenbury MLA
Minister for Justice

Andrew Barr MLA

CHIEF MINISTER

TREASURER
MINISTER FOR ECONOMIC DEVELOPMENT
MINISTER FOR URBAN RENEWAL
MINISTER FOR TOURISM AND EVENTS

MEMBER FOR MOLONGLO

Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mr Doszpot

I am writing to formally respond to the Standing Committee on Justice and Community Safety's examination of the Red Tape Reduction Legislation Amendment Bill 2014 (Scrutiny Report 20).

As noted in debate on the Bill, which the ACT Legislative Assembly passed on 23 October 2014, the recommendations of Scrutiny Report 20 in relation to the Bill were fully adopted and addressed in the revised Explanatory Statement. Due to an administrative oversight, the then Chief Minister's letter of 8 October 2014 to you, as Chair of the Committee, on this Bill did not include the revised Explanatory Statement.

I apologise for the delay in providing a formal response to this report and enclose a copy of the Explanatory Statement for your records.

Yours sincerely

Andrew Barr MLA
Chief Minister

Enc

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone: (02) 6205 0011 Fax: (02) 6205 0157 Email: barr@act.gov.au
Facebook: Andrew.Barr.MLA Twitter: @ABarrMLA

Shane Rattenbury MLA

MINISTER FOR TERRITORY AND MUNICIPAL SERVICES
MINISTER FOR JUSTICE
MINISTER FOR SPORT AND RECREATION
MINISTER ASSISTING THE CHIEF MINISTER ON TRANSPORT REFORM

MEMBER FOR MOLONGLO

Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Doszpot

I refer to the comments of the Standing Committee on Justice and Community Safety in Scrutiny Report 33 of 26 May 2015 (the report) regarding the Veterinary Surgeons Bill 2015.

The committee has made several useful comments on the Bill, particularly on its human rights implications. I would point out, however, that the Bill essentially reproduces the currently-existing provisions of the *Health Professionals Act 2004* related to the regulation and occupational discipline of veterinary surgeons in the ACT.

My response to the committee's comments and questions follow below:

THE INVESTIGATION BY A PANEL OF THE MENTAL AND PHYSICAL HEALTH OF A VETERINARY SURGEON (page 10)

Part 8 of the Bill, personal assessment panel (PAP), engages the right to privacy. The provisions allow for the investigation of a complaint or matter which considers the mental and/or physical health of a veterinary surgeon and their ability to practice competently in compliance with the professional standards. These provisions are compatible with human rights placing the minimum limitation on the right to ensure public safety and, through community protection, positive animal welfare outcomes.

The committee states on page 12 of the report the fundamental question: *why is any kind of personal assessment of a veterinary surgeon necessary?* In clarifying this question, the committee puts a view that any assessment could be made instead by a professional standards panel (PSP) under part 9 of the Bill. Further, that it should be at the discretion of the veterinary surgeon whether

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone: (02) 6205 0005 Fax: (02) 6205 0007 Email: rattenbury@act.gov.au
Facebook: shanerattenburymla Twitter: @ShaneRattenbury

they wish to raise and have their physical or mental health assessed in a professional standards investigation.

The issue of referring appropriate matters to a PAP rather than a PSP is to protect the veterinary surgeon. A person will not always realise or will not acknowledge the medical issues which prevent competent practice. For example, this may be the case in situations of drug addiction or drug misuse in an environment where the person has access to prescription drugs; or, where a professional does not acknowledge their eroded or changed mental capacity in the case of illness. So too, examples exist where a person is not physically able to handle large animals in a surgical setting due to a medical condition.

It is not in the interests of public safety to allow self-identification of these issues when they are apparent or suspected following a complaint. Separating the PAP process from a PSP process affords an individual due consideration of the appropriate matters and in so doing affords greater privacy rights. Part 8 of the Bill anticipates a more sensitive assessment of the issues by a panel and clearly identifies the alleged or suspected source of the malpractice. This does not prevent a person from also raising personal medical issues under a part 9 process if they wish to so, however, it is not an area that a PSP is set up to investigate.

Is the granting of complaint rights too wide?

My response to this question is provided below as part of the discussion under the heading “The scheme for the making of complaints”.

Role of the Human Rights Commission

Clause 51 states that a complaint can be made to the board. The board is established under the Bill to receive complaints. This is a standard framework for occupation/profession regulatory schemes in the Territory. The Human Rights Commission (HRC) (through the Health Commissioner) has a role in working with the board to determine how complaints are handled by the board. This provides for scrutiny in decision making.

The Health Commissioner has a similar role in working with health practitioner boards under the National laws. Any uncertainty that the committee has in relation to the Health Commissioner’s role may be clarified with reference to part 7 and division 5.3 of the Bill.

Power to compel the production of information

The PAP is an investigatory body and is not a court or tribunal and does not have the power to compel the production of information although it can seek and request information. While the committee states this may be to the disadvantage of the veterinary surgeon, the need to compel the production of information is not recorded as having raised any concerns for health practitioner boards under the Health Professionals Act.

Interpretation of clause 74(2)(b)

The intention of clause 74(2)(b) is that information held by the panel will be released to the veterinary surgeon under investigation. I note the committee's view that this provides discretion to the panel as to what is actually provided however, in the interests of procedural fairness and natural justice, unless there is a good reason to withhold information, it would be released. As every case is different and has its own sensitivities it is appropriate that discretion remain with the panel.

Discussion on procedures for a personal assessment panel

I note the committee's discussion on page 11 on procedural matters and the position stated by the committee that it is preferable that critical questions of procedure be answered in the legislation. The prescription provided by the Bill is adequate to ensure that a PAP can undertake its functions in a legislative framework while still allowing flexibility to proceed sensitively and fairly in any particular case.

Decisions of the PAP and board

It is the board (not the PAP) that makes the final decision on the recommendation and decisions of the panel's investigation not withstanding that there are actions that the PAP can take independently and with the agreement of the person under clause 78. The PAP provides a report to the board under clause 80 which the person is informed about noting the need for the PAP to reach specific recommendations in agreement with the person.

In the context of the committee's discussion on documentation of decisions, Clause 86 of the Bill provides that when the board makes its decision about the complaint that it must provide reasons for that decision. In other words, it is the board which uses the findings and recommendations of the panel as contained in the report in coming to a decision. Administrative decision makers are often faced with situations where their decisions are based on the investigation, findings and recommendations of others and this does not preclude the ability for the decision maker to be able to document the reasons for that decision.

The regime in the Bill is no different from that which is currently in place under the *Health Professionals Act 2004* and which was formerly applied to all health professionals in the ACT prior to the move to a national system.

Agreement of Veterinary Surgeon

I note the committee's broader discussion in relation to clause 78 and clause 80. As the decisions made by the PAP may impact on the person's treatment of health related issues, it is important for these to be made only with the agreement of the person otherwise the person's rights under section 10 of the *Human Rights Act 2004* may be limited. The PAP must report to the board on findings and recommendations and, not withstanding clause 78, the report must contain the PAP's recommendations and whether these were agreed to or not by the person under investigation.

THE SCHEME FOR THE MAKING OF COMPLAINTS
(Page 33)

A veterinary surgeon is a person who, due to their professional standing and qualifications, is held to a high level of accountability. Limitations placed on a veterinary surgeon's personal rights and liberties in their professional capacity are justifiable. As health professionals they are accountable, through the board, to the community particularly where there is a reasonable question of malpractice. The legislation reflects this position.

Is the granting of complaint rights too wide?

I return to the earlier question raised by the committee. It is correct that under clause 50(1), any person can make a complaint to the board about a veterinary surgeon.

Incompetent care of animals and breaches of professional standards are identified when a sick or injured animal is removed from the care of one veterinarian to another by the service user. In these cases, it is the second veterinarian that may be best placed to identify the malpractice. Others listed in the notes to clause 50(1) include the police. This would be appropriate for example, when the misuse of drugs or breaches of other laws have been identified.

The *Community and Health Services Complaints Act 1993*, which the committee references, was repealed in 2006. The regime under the *Health Professionals Act 2004* and the current Health Practitioner National Law (ACT) recognise the need for broader categories of complainant in relation to health services and the importance of reporting instances of alleged malpractice in the interests of public health and community safety.

To limit complainants to only those who are the 'user' of a health service may mean that malpractice that should have been notified in the interest of public safety and community protection are not and that the profession is compromised and its reputation damaged when other veterinarians are called on to correct incompetent mistakes. To limit the complainant to only the user would be a retrograde measure and I do not believe it would be consistent with community expectation.

Board's discretion about complaints and referral to the PSP

The board sought clarification as to why there is no similar provision to clause 68(2) (personal assessment panel establishment) that provides discretion to the board for referral of a matter to a professional standards panel (PSP) instead. A specific referral provision is not required because referral to the PSP is effectively the default position whereas the referral to a PAP is made in consideration of the criteria under clause 68.

As further explanation, clause 88(4) provides that only a complaint that is referred to a PSP can be investigated by that PSP. This clarifies that the PSP cannot accept complaints from any source other than a referral or act on its own volition. As the board is the only entity that can receive complaints then it is implicit that the referral is from the board.

The committee questioned whether the board should have discretion to decline to take action on a complaint. If a complaint is not accepted as a complaint by the board (in consultation with the HRC), then it is, in effect, a decision by the board to decline a complaint. This may occur where there is no evidence to substantiate a complaint or a complaint is erroneous or frivolous. It would also be inconsistent with the role of the PSP as the decision making body for the board to have this function. A PSP may decide not to inquire into a complaint if it is appropriate to make a decision about the complaint without an inquiry (Clause 91(2)).

Protection from breach of confidence disclosure and protection against civil liability in making complaint

As requested by the Committee, a revised explanatory statement will be prepared which will address the justification of the relevant provisions.

Anonymous complaints and complaints in writing

The committee asked: does clause 53(2) allow the Director General to accept an anonymous complaint; and, when acting under clause 53(3) should the Director General be required to reduce the complaint to a written form.

The board could accept an anonymous complaint and this is consistent with complaints policy across government. Acceptance of anonymous complaints is however problematic as pointed out by the committee and thus may not be acceptable by the board as a complaint.

Clause 53(3) states:

> If the board accepts an oral complaint, the board must require the person making the complaint to put the complaint in writing and sign it, unless satisfied that there is a good reason for not doing so.

Administratively the complaint will be reduced to writing by the board or other person as the matter could not be progressed. The board’s executive officer has a role under clause 54 in helping a person to make a complaint. It appears unnecessary and over prescriptive to reduce an oral complaint to writing as a matter of law.

Provision of complaint details to veterinary surgeon

The committee asked why, if the complaint is in written form, the veterinary surgeon cannot be given its full terms.

This question stems from an observation that clause 56(2)(c) provides that the board provide the relevant veterinary surgeon with general information about the complaint. This is the case in the current Health Professionals Act.

The current board[13] supports this position and has argued that at the preliminary stages of complaint consideration complaints are often only made in general terms and more information is sought from veterinary surgeons and complainants in relation to a complaint before accepting it. In addition, the board has argued that the details of the complaint are matters for the appropriate panels to disclose to the veterinary surgeon not the board.

Written complaints may also require the redaction of material on privacy or other grounds which in effect results in expression of the complaint in general terms. The provision of information about complaints in general terms also protects service users and assists in the maintenance of relationships between the professional and the user in situations where a complaint may not proceed and where the specifics of the complaint may easily identify a complainant.

The provision does not preclude the board from considering the release of the full terms of a complaint to the veterinary surgeon.

EMERGENCY ORDERS (page 14)

The power for the ACT Civil and Administrative Tribunal (ACAT) to issue an emergency order currently exists under the Health Professionals Act and has been transitioned into the new Bill. It is conceded that an emergency order is probably a rare and unlikely event with regard to veterinary practice as opposed to other health professions. It may have application in severe cases of animal welfare abuse or in situations where the order takes the form of an interim rather than final order. It was considered appropriate to include in the new legislation as part of continuing the current regime for veterinary surgeons.

The emergency order remains an occupational discipline order and the *ACT Civil and Administrative Tribunal Act 2008* (ACAT Act) applies.

How and by whom an application for an emergency order may be made?

An occupational discipline order or direction made by the Tribunal is done so under Part 6 division 6.2 of the ACAT Act. Under section 29(2) of that Act, parties to an application for an occupational discipline order are the entity that brings the application and the person to whom the application relates. Under clause 60 of the Bill, the Board seeks an occupational discipline order and is therefore the entity referred to in section 29 of the ACAT Act.

Whether the veterinary surgeon concerned will be advised of the application and have an opportunity to appear before ACAT?

[13] The current board will continue to operate under the new legislation under transitional arrangements.

This is a matter for ACAT but I note that ACAT is obliged to provide notice under division 6.2 of the ACAT Act.

If the application and order are made ex parte whether the veterinary surgeon will have an opportunity to make submissions after the event that the order should be revoked?

These are matters for ACAT but I note that the ACAT has powers which would allow this to occur.

THE SCHEME FOR THE MAKING OF COMPLAINTS AND THE RIGHT TO A FAIR TRIAL (page 15)

Informed person and limitation of use or disclosure of information

The committee notes that there are provisions in Part 12 of the Bill which engage section 21 of the *Human Rights Act 2004* in relation to a fair trial. The committee identifies that to have a fair trial a person must have an ability to adduce evidence before a court or tribunal which supports the person's case or weakens the case of the other party.

Part 12 Protection and Information is the same as that contained in the Health Professionals Act. The part seeks to protect the information that may be held by an 'informed person' in an inquiry or investigation about a health professional. This recognises limitations on the privacy right and seeks to protect an individual to the greatest extent possible from unauthorised disclosure of information. This part protects information which has been obtained through the exercise of functions under the Bill from being abused or recklessly misused.

A person can be convicted under this provision if:
the person uses or divulges information and that information is protected information about someone else; and
the person is reckless about whether the information is protected information about someone else.

The maximum penalty for these offences is 50 penalty units, imprisonment for 6 months or both. These offences are in line with the principles set out in the JACS Guide to Framing Offences and are aimed at ensuring that the personal information which can come into the possession of individual people by virtue of their position in a public capacity is not misused. Creating offences to discourage the abuse of personal information is necessary to ensure trust in the ability of the Board and its employees to responsibly manage information obtained from individuals by the operation of this Bill.

The following defences apply to a charge of these offences:

- the protected information is used or divulged under the Act, or another Territory law;
- the protected information is used or divulged in the exercise of a function under the Act, or another Territory law;

- the protected information is used or divulged in a court proceeding;
- the protected information is used or divulged with the consent of the person the information is about.

In this clause protected information means any personal information which is obtained because of the exercise of a function under the Act.

The provision is consistent with other ACT legislation. It is a standard protection for information provided to the Veterinary Surgeons Board, or any other person, because of the exercise of a function under the Bill.

I thank the committee for its comment and trust that my response clarifies and answers the questions the Committee has raised.

Yours sincerely

Shane Rattenbury MLA
Minister for Territory and Municipal Services

Mick Gentleman MLA

MINISTER FOR PLANNING
MINISTER FOR ROADS AND PARKING
MINISTER FOR WORKPLACE SAFETY AND INDUSTRIAL RELATIONS
MINISTER FOR CHILDREN AND YOUNG PEOPLE
MINISTER FOR AGEING

MEMBER FOR BRINDABELLA

Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mr Doszpot

Thank you for Scrutiny of Bills Report No 32 of 11 May 2015. I offer the following response in relation to the Committee's comments on the Dangerous Substances (General) Amendment Regulation 2015 (No 1).

The Committee has sought advice on how the Explanatory Statement can state that inspections required under the regulation as amended must be completed by 15 May 2015.

As the Committee noted in its report, the amendment commenced on 15 May 2015. From this date, the requirement in new section 341 is expressed as an absolute requirement—that is, a person who is required to have the inspection must have arranged for an inspection and the preparation of an asbestos contamination report. A person who has not done so is in breach of the regulation.

There is a small and identifiable group of people affected by the new regulation. The Asbestos Response Taskforce actively contacted these people in the lead up to 15 May 2015 to assist them with making the required arrangements by that date. The Taskforce is continuing to assist homeowners with the inspection of their homes for asbestos contamination.

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone: (02) 6205 0218 Fax: (02) 6205 0368 Email: GENTLEMAN@act.gov.au
Twitter: @GENTLEMANMick Facebook: www.facebook.com/MickGentleman

I thank the Committee for its consideration of this regulation.

Yours sincerely

Mick Gentleman MLA
Minister for Workplace Safety and Industrial Relations

Mick Gentleman MLA

MINISTER FOR PLANNING
MINISTER FOR ROADS AND PARKING
MINISTER FOR WORKPLACE SAFETY AND INDUSTRIAL RELATIONS
MINISTER FOR CHILDREN AND YOUNG PEOPLE
MINISTER FOR AGEING

MEMBER FOR BRINDABELLA

Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Doszpot

Thank you for the Standing Committee on Justice and Community Safety's comments regarding:

- Disallowable Instrument DI2015-52, being the *Work Health and Safety (Work Safety Council Employee Representative) Appointment 2015 (No. 1),* which facilitates appointments to the ACT Work Safety Council to represent the interests of employees; and
- Disallowable Instrument DI2015-53 being the Work Health and Safety *(Work Safety Council Employer Representative) Appointment 2015 (No. 1),* which facilitates appointments to the ACT Work Safety Council to represent the interests of employers.

As you are aware, the Committee queried whether proper consultation was undertaken with the people or bodies that represent the interests of employees and employers, as prescribed in Schedule 2, section 2.3(a) and 2.3(b) of the *Work Health and Safety Act 2011*.

I can confirm that consultation did occur. Specifically, the Work Safety Council was informed of the pending vacancies and members were asked to nominate suitable representatives in late 2014. The peak bodies represented at the meeting in question included Unions ACT, the ACT & Region Chamber of Commerce and Industry and the Master Builders Association. Nominations were subsequently received from Unions ACT and the ACT Council of Social Services.

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone: (02) 6205 0218 Fax: (02) 6205 0368 Email: GENTLEMAN@act.gov.au
Twitter: @GENTLEMANMick Facebook: www.facebook.com/MickGentleman

I have requested that in the future, explanatory statements provide sufficient information about the consultation process to assure the Committee that the correct approach has been undertaken.

Yours sincerely

Mick Gentleman MLA
Minister for Workplace Safety and Industrial Relations
July 2015