



## **Legislative Assembly for the Australian Capital Territory**

Standing Committee on Justice and Community Safety  
(Legislative Scrutiny Role)

# **Scrutiny Report 27**

Legislative Assembly for the Australian Capital Territory  
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

---

Approved for publication

---

10th Assembly  
March 2023



# About the committee

## Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) on 2 December 2020.

The Committee is responsible for the following areas:

- (10) the Standing Committee on Justice and Community Safety is also to perform a legislative scrutiny role of bills and subordinate legislation by:
  - (a) considering whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:
    - (i) unduly trespass on personal rights and liberties;
    - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
    - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
    - (iv) inappropriately delegate legislative powers; or
    - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny; and
    - (vi) consider whether any explanatory statement associated with legislation meets the technical or stylistic standards expected by the Assembly;
  - (b) reporting 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*;
  - (c) considering whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
    - (i) is in accord with the general objects of the Act under which it is made;
    - (ii) unduly trespasses on rights previously established by law;
    - (iii) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
    - (iv) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; and
  - (d) 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 Assembly;

You can read the full establishing resolution [on our website](#).

## Committee members

Peter Cain MLA, Chair

Marisa Paterson MLA, Deputy Chair

Andrew Braddock MLA

## Secretariat

Kathleen de Kleuver, Committee Secretary

Daniel Stewart, Legal Adviser (Bills)

Stephen Argument, Legal Adviser (Subordinate Legislation)

## Contact us

**Mail** Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)  
Legislative Assembly for the Australian Capital Territory  
GPO Box 1020  
CANBERRA ACT 2601

**Phone** (02) 6205 0171

**Email** [scrutiny@parliament.act.gov.au](mailto:scrutiny@parliament.act.gov.au)

**Website** [parliament.act.gov.au/parliamentary-business/in-committees](http://parliament.act.gov.au/parliamentary-business/in-committees)

## 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.



# Contents

<b>About the committee</b>	<b>i</b>
Establishing resolution	i
Committee members	ii
Secretariat	ii
Contact us	ii
Role of Committee	ii
<b>1. Bills</b>	<b>1</b>
Government Responses –No comment	1
Professional Engineers Bill 2022	1
Long Service Leave (Portable Schemes) Amendment Bill 2022	1
<b>2. Subordinate Legislation</b>	<b>2</b>
Disallowable Instruments – No comment	2
Disallowable Instruments – Comment	2
Human Rights Issues	2
Human Rights Issues / Strict liability offences	3
No Human Rights Issues	4
Drafting issue	5
Human Rights Issues	6
Human Rights Issues	7
Human Rights Issues	10
Subordinate Laws – Comment	10
No Human Rights Issues	10
Human Rights Issues / Strict liability offences	11
Government responses – no comment	13
<b>Outstanding responses</b>	<b>15</b>
Bills/Subordinate Legislation/Regulatory Impact Statements	15
Report 12, dated 1 February 2022	15
Report 26, dated 14 March 2022	15

# 1. Bills

## Government Responses –No comment

### Professional Engineers Bill 2022

- 1.1. On 16 March 2023, the Committee received a response from the Minister for Sustainable Building and Construction on the Committee’s comments on the Professional Engineers Bill 2022 made in its *Scrutiny Report 25*. The Committee thanks the Minister for her response.

### Long Service Leave (Portable Schemes) Amendment Bill 2022

- 1.2. On 17 March 2023, the Committee received a response from the Minister for Industrial Relations and Workplace Safety on the Committee’s comments on the Long Service Leave (Portable Schemes) Amendment Bill 2022 made in its *Scrutiny Report 25*. The Committee thanks the Minister for his response.

These responses can be viewed [online](#).

## 2. Subordinate Legislation

### Disallowable Instruments – No comment

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

- **Disallowable Instrument DI2023-9** being the Domestic Violence Agencies (Domestic Violence Prevention Council) Appointment 2023 (No 1) made under section 7 of the *Domestic Violence Agencies Act 1986*
- **Disallowable Instrument DI2023-11** being the Domestic Animals (Accredited Assistance Animal Public Access Standards) Determination 2023 made under section 95 of the *Domestic Animals Act 2000*
- **Disallowable Instrument DI2023-12** being the Domestic Animals (Assistance Animal Accreditation) Guidelines 2023 made under section 95 of the *Domestic Animals Act 2000*
- **Disallowable Instrument DI2023-13** being the Road Transport (General) Application of Road Transport Legislation Declaration 2023 (No 1) made under section 12 of the *Road Transport (General) Act 1999*

### Disallowable Instruments – Comment

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

### Human Rights Issues

- **Disallowable Instrument DI2023-1** being the Construction Occupations (Licensing) (Qualifications) Declaration 2023, made under section 13 of the Construction Occupations (Licensing) Regulation 2004, for sections 18 and 24A of the *Construction Occupations (Licensing) Act 2004*

2.3. This instrument, made under section 13 of the Construction Occupations (Licensing) Regulation 2004, declares the qualifications and financial requirements necessary for an entity to be eligible to be licensed in a construction occupation or occupation class, as provided for by sections 18 and 24A of the *Construction Occupations (Licensing) Act 2004*.

2.4. The explanatory statement for the subordinate law contains a discussion of human rights issues:

#### Human Rights

There are no human rights impacts related to this instrument.

The addition of the requirement for an electrical apprenticeship to be completed for an unrestricted electrical licence is not considered to limit a person's right to work under



section 27B of the *Human Rights Act 2004*. Section 13 (3) and section 14 of the Regulation provide alternative pathways for meeting the qualification requirements contained in this instrument.

The updated requirements for building assessors undertaking energy efficiency assessments retain existing requirements while also reflecting the current training courses available and recognised at the national level as part of the Nationwide House Energy Rating Scheme (NatHERS).

An applicant who is refused a licence may seek a review of the decision at the ACT Civil and Administrative Tribunal.

- 2.5. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this instrument.**
- 2.6. **This comment does not require a response from the Minister.**

## Human Rights Issues / Strict liability offences

- **Disallowable Instrument DI2023-2** being the Plastic Reduction (Public Event) Declaration 2023 (No 1) made under section 15 of the *Plastic Reduction Act 2021*

- 2.7. This instrument is made under section 15 of the *Plastic Reduction Act 2021*, which provides:

**15 Declaration of public events**

- (1) The Minister may declare that—
  - (a) a public event is an event to which this part applies (a ***declared public event***); and
  - (b) a single-use plastic product other than a prohibited plastic product (a ***declared single-use plastic product***) must not be supplied at the event.

*Note* Part 3 deals with the supply of prohibited plastic products.

- (2) The Minister may only make a declaration under subsection (1) in relation to a public event that is not a government event if—
  - (a) the declaration is made not less than 3 months before the day the event starts; and
  - (b) the Minister is satisfied that—
    - (i) there is an alternative product to the declared single-use plastic product reasonably available to the organisers of the declared public event; and

(ii) the declaration will not have an unreasonable impact on the event.

**Examples—unreasonable impact**

- 1 supplies of the declared single-use plastic product have already been purchased by food vendors in advance of the public event
- 2 not having the declared single-use plastic product available for use at the public event would be incompatible with food safety requirements
- 3 the cost of the alternative product will make it unprofitable for food vendors to participate in the public event

(3) A declaration is a disallowable instrument.

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

(4) In this section:

*government event* means an event conducted by the Territory.

2.8. Section 3 of the instrument, in conjunction with column 1 of table 1 of the Schedule to the instrument, declares “Groovin the Moo 2023” to be a “public event”. Section 4 of the instrument, in conjunction with column 3 of table 1 of the Schedule to the instrument, prohibits the supply of single-use plastic plates, single-use plastic bowls and single-use plastic takeaway containers at this event.

2.9. The Committee notes that the explanatory statement for the instrument contains the following discussion of human rights issues:

**Human rights**

As a result of this instrument, certain conduct is made an offence under section 16 of the Act. This is a strict liability offence, which may be seen to engage the presumption of innocence. The Explanatory Statement for the Plastic Reduction Bill 2020 addressed the human rights considerations related to the creation of the offence.

2.10. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this instrument.**

2.11. **This comment does not require a response from the Minister.**

## No Human Rights Issues

- **Disallowable Instrument DI2023-3** being the Unit Titles (Management) Certificate Determination 2023 made under section 119 of the *Unit Titles (Management) Act 2011*
- **Disallowable Instrument DI2023-4** being the Road Transport (General) Application of Road

Transport Legislation (Traffic Offence Detection Device) Declaration 2023 (No 1) made under section 13 of the *Road Transport (General) Act 1999*

- 2.12. The first instrument mentioned above, made under section 119 of the *Unit Titles (Management) Act 2011*, which sets out the information, etc that an “eligible person” for a unit or the common property in a units plan may request from the owners corporation for the property. Subsection 119(3) allows the Minister to determine the information that must be included in a unit title certificate or a unit title update certificate. This instrument exercises that power.
- 2.13. The explanatory statement for the instrument states:
- This instrument amends the requirement in section 3 (l) to provide the minutes of meetings of the owners corporation and the executive committee, held in the two years before the day the property was first advertised or offered for sale or listed with an agent.
- This requirement has been now been clarified to state that the unit title certificate must include minutes of meetings of the owners corporation, and the executive committee, held in the two years before the date of the unit title certificate. It also clarifies that the unit title update certificate need only provide copies of the minutes for any meetings held after the date of the unit title certificate up to the date of the unit title update certificate.
- 2.14. The Committee notes that the explanatory statement goes on the state that the instrument ‘does not engage any human rights’.
- 2.15. The second instrument mentioned above, made under section 13 of the *Road Transport (General) Act 1999*, disapplies various provisions of the Road Transport (Road Rules) Regulation 2017, in relation to the operation of a ‘traffic offence detection device’. The provisions in question related to driving, parking, etc on a nature strip and in relation to pay parking.
- 2.16. The Committee notes that the explanatory statement for the instrument states that ‘no human rights are impacted’.
- 2.17. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for the instruments mentioned above.**
- 2.18. **This comment does not require a response from the Minister.**

## Drafting issue

- **Disallowable Instrument DI2023-5** being the Animal Welfare (Private Keeping of Native Reptiles) Mandatory Code of Practice 2023 made under section 23 of the *Animal Welfare Act 1992*
- **Disallowable Instrument DI2023-6** being the Animal Welfare (Welfare of Native Wildlife—

Rescue, Rehabilitation and Release) Mandatory Code of Practice 2023 made under section 23 of the *Animal Welfare Act 1992*

- 2.19. The instruments mentioned above are made under section 23 of the *Animal Welfare Act 1992*. Each makes a mandatory code of practice, for that section, which provides:

**23 Mandatory code of practice**

- (1) The Minister may approve a code of practice, or part of a code of practice, relating to animal welfare as mandatory.
- (2) An approval must state to whom the mandatory code applies.
- (3) Before approving a code under subsection (1) the Minister must be satisfied that adequate consultation has occurred.
- (4) A mandatory code of practice is a disallowable instrument.

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

- 2.20. The Committee notes that, for each instrument, the formal part of the instrument consists of three sections that, respectively, name the instrument, provide for the commencement of the instrument and approve the code of practice that it attached to the instrument. The Committee notes that there is no provision dealing with the requirement in subsection 23(2) of the Act, that the approval must state to whom the mandatory code applies. While the Committee also notes that, in each case, this requirement is dealt with in the body of the relevant code (on page 2 of the code approved by the first instrument mentioned above and on pages 2, 5 and 12 of the code approved by the second instrument), the Committee considers that it would be preferable if this aspect of the statutory requirement was dealt with in the more formal part of the instruments.

- 2.21. **This comment does not require a response from the Minister.**

## Human Rights Issues

- **Disallowable Instrument DI2023-7** being the Lifetime Care and Support (Catastrophic Injuries) (Home Modifications) Guidelines 2023 made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*
- 2.22. This instrument is made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*, which allows the Lifetime Care and Support (LTCS) commissioner to make “LTCS guidelines” about “any matter required or permitted by this Act to be included in the guidelines”. The explanatory statement for the instrument states:

The LTCS Act has been modelled on the NSW *Motor Accidents (Lifetime Care and Support) Act 2006*. In order to provide consistent treatment and care for persons catastrophically injured in motor accidents and work injuries in the region, the LTCS

Guidelines have largely adopted the NSW Guidelines, but with minor changes to reflect the differences contained in the LTCS Act.

The LTCS Guidelines have been developed to meet the minimum benchmarks established for the National Injury Insurance Scheme, which is a federated model of state and territory based no-fault schemes providing lifetime care and support for people who have sustained a catastrophic motor accident or work injury. Under the National Injury Insurance Scheme eligible persons suffering catastrophic injuries will have a minimum level of entitlement to receive reasonable and necessary treatment and care. The levels of treatment and care to be provided are specified in detail in these Guidelines.

- 2.23. The Committee notes that, in substance, these particular guidelines deal with issues related to home alterations that are required by persons covered by the Act.
- 2.24. Given the subject matter of the instrument (ie catastrophic injuries), the Committee would have expected to see some discussion of human rights issues, either in the guidelines or in the explanatory statement for the instrument. Even a statement that no human rights are engaged by the instrument. There is none.
- 2.25. The Committee seeks the Minister’s advice as to the human rights implications of this instrument (if any).**
- 2.26. The Committee draws the attention of the Legislative Assembly to this instrument, under paragraph (10)(d) of the Committee’s Resolution of Appointment, on the basis that the explanatory statement for the instrument does not meet the technical or stylistic standards expected by the Committee.**

**This comment requires a response from the Minister. The Committee would be grateful if the Minister could respond before the Legislative Assembly’s capacity to move to disallow the instrument expires.**

## Human Rights Issues

- **Disallowable Instrument DI2023-8** being the Road Transport (Safety and Traffic Management) Traffic Offence Detection Device Approval 2023 (No 1) made under sections 13 and 15 of the *Road Transport (Safety and Traffic Management) Regulation 2017*
- 2.27. This instrument is made under made under sections 13 and 15 of the Road Transport (Safety and Traffic Management) Regulation 2017 and relates to the regulation of “traffic offence detection devices”, for section 24 of the *Road Transport (Safety and Traffic Management) Act 1999*.
  - 2.28. The explanatory statement for the instrument states:

Section 13(1) provides that the road transport authority may approve a traffic offence detection device. The approval must state the kind of device or system that is approved as a traffic offence detection device, including whether the device is an average speed detection system, a mobile device detection system, a speed measuring device, or another kind of device or system that detects or takes images of a vehicle or the driver of a vehicle being driven in contravention of the road transport legislation.

Section 13(3) requires that the road transport authority must not approve a device or system as a traffic offence detection device unless satisfied on reasonable grounds that the device or system is capable of complying with section 15 (Requirements for images taken by traffic offence detection devices—Act, section 24(2)(a)).

- 2.29. The explanatory statement goes on to discuss, in detail, the human rights implications of the instrument, by reference to the limitation of the right to privacy, protected by section 12 of the *Human Rights Act 2004*. The explanatory statement states (in part):

The use of traffic offence detection devices is necessary to support the enforcement of breaches of the Territory's road transport legislation and improve road safety within the Territory.

The ACT Road Safety Action Plan 2020-2023 (Action Plan) recognises that distracted driving, particularly distraction from mobile devices, is an increasing road safety issue. Drivers who look at their mobile devices while driving are three times more likely to be involved in a crash than non-users; dialling or locating and answering a hand-held phone increases the chances of having a crash by four times; and texting, browsing and emailing on a mobile device while driving increases crash risk by ten times.

Additionally, the Action Plan recognises that any level of speeding presents a road safety risk for the driver and other road users. Numerous studies have shown that perceived 'low level' speeding contributes to a significant percentage of road casualties and fatalities. Speeding at five kilometres an hour above the speed limit increases both the likelihood of a crash occurring, and the severity of driver and pedestrian injuries in a crash. For car occupants in a crash with an impact speed of 80 km/h, the likelihood of death is 20 times what it would have been at an impact speed of 30 km/h.

The devices approved in this instrument will be used to detect speeding and mobile phone use offences under the ACT's road transport legislation for the purposes of reducing road trauma.

**Rational connection between the limitation and the purpose (s28(d))**

The use of traffic offence detection devices in the community encourages changes in behaviour to protect and support the safety of all road users and ensure compliance with the ACT's road transport legislation.

In 2019, the ACT Government released the findings of an evaluation of the ACT's Road Safety Camera program, conducted by an expert road safety research body, Monash University's Accident Research Centre (MUARC). [footnote omitted] In the 12 months up to September 2017, the mobile camera program was found to have reduced crashes by about 22 per cent compared to if the program had not been running.

Similarly, mobile device detection cameras encourage drivers to stop using their mobile devices while driving through increased enforcement of existing road transport offences. The Human Rights Compatibility Statement to the Road Transport (Safety And Traffic Management) Amendment Bill 2021 noted that NSW had seen a significant reduction in the illegal use of mobile phones since the pilot of the cameras was first conducted in NSW in late 2018 and that Victoria had also established significant prevalence of illegal use of mobile phones during a three month trial of the cameras.

The collection of personal information by the traffic offence detection devices, including vehicle details, location, date and time of the infringement and images of a driver illegally using a mobile device, directly facilitates the enforcement of the ACT's road transport legislation and protects the community.

**2.30. In terms of the proportionality of the measures to the right limited, the explanatory statement goes on to state:**

It is considered that there are not any less restrictive means reasonably available to significantly improve road safety. The benefits of road safety cameras, in combination with police enforcement, is well established.

A number of safeguards have been incorporated into the regulatory framework for the operation of traffic offence detection devices. These will protect a person's right to privacy imposed by the collection, use, storage and disclosure of personal information arising from the use of these devices in the Territory.

Data from the traffic offence detection devices can only be used in accordance with the safeguards in section 29 of the *Road Transport (Safety and Traffic Management) Act 1999*. The *Road Transport (Safety and Traffic Management) Regulation 2017* also includes the following privacy safeguards:

- images taken by a traffic offence detection device that does not show a contravention of a provision of the road transport legislation must be deleted as soon as possible;
- images and data associated with an image taken by a traffic offence detection device must be encrypted; and
- for a traffic offence detection device designed to take an image of the driver of a vehicle, as far as practicable, the image must only show as much of the driver as is necessary to show the person in contravention of a provision of the road transport legislation.

The collection, use or disclosure of private information must comply with *the Information Privacy Act 2014* and the *Privacy Act 1988* (Cwlth). This includes the requirement for government contracts with any service provider to include appropriate provisions for privacy protections, in accordance with section 21 of the *Information Privacy Act 2014*.

These privacy safeguards will ensure there are adequate and effective safeguards that protect against arbitrary interferences with the right to privacy.

**2.31. The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this instrument.**

**2.32. This comment does not require a response from the Minister.**

## Human Rights Issues

- **Disallowable Instrument DI2023-10 being the Children and Young People (Research) Standards 2023 (No 1) made under section 887 of the *Children and Young People Act 2008***

2.33. This instrument makes “research standards”, for section 887 of the *Children and Young People Act 2008* (CYP Act), covering matters set out in section 808 of the Act. The explanatory statement for the instrument states:

The Research Standards identify key principles on which the design, conduct and approval of research as defined by section 806 of the CYP Act is based. The Research Standards have been determined from the CYP Act and from current national and international practice.

2.34. The explanatory statement goes on to discuss human rights issues:

The Research Standards uphold a person’s right to freedom of expression in line with Section 16 of the *Human Rights Act 2004* (HRC Act) [sic]. The privacy of research participants, including their personal and/or protected information, will be upheld in line with Section 12 of the HRC Act.

**2.35. The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this instrument.**

**2.36. This comment does not require a response from the Minister.**

## Subordinate Laws – Comment

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

## No Human Rights Issues

- **Subordinate Law SL2023-1 being the Government Agencies (Land Acquisition Reporting) Amendment Regulation 2023 (No 1) made under the *Government Agencies (Land Acquisition***



### *Reporting) Act 2018*

- **Subordinate Law SL2023-3** being the Rail Safety National Law (ACT) Amendment Regulation 2023 (No 1) made under the *Rail Safety National Law (ACT) Act 2014*
- 2.38. The first subordinate law mentioned above amends the Government Agencies (Land Acquisition Reporting) Regulation 2019, in relation to the reporting of government acquisitions of land (including under the *Confiscation of Criminal Assets Act 2003* and acquisitions relating to loose-fill asbestos-affected properties).
- 2.39. The second subordinate law mentioned above amends section 5 of the Rail Safety National Law (ACT) Regulation 2014, to replace the (testing) instruments currently prescribed for the purpose of drug analysis in oral fluid samples with the “Shimadzu High Performance Liquid Chromatograph Mass Spectrometer LCMS-8060”.
- 2.40. The Committee notes that the explanatory statements for both subordinate laws state that there are “no human rights impacts” related to the relevant subordinate law.
- 2.41. The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for the subordinate laws mentioned above.**
- 2.42. This comment does not require a response from the relevant Ministers.**

## Human Rights Issues / Strict liability offences

- **Subordinate Law SL2023-2** being the Magistrates Court (Work Health and Safety Infringement Notices) Amendment Regulation 2023 (No 1) made under the *Magistrates Court Act 1930*
- 2.43. This subordinate law amends the Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011, to add offences against the *Work Health and Safety Act 2011* (WHS Act) and the Work Health and Safety Regulation 2011 (WHS Regulation), in relation to which the work safety regulator can issue an infringement notice, rather than prosecuting matters through the courts. This, in turn, involves strict liability in relation to the offence and, also, publication in relation to offenders on a public register.
- 2.44. The explanatory statement for the subordinate law contains a detailed discussion of the human rights implications of the amendments made by the subordinate law, referencing the right to life, under section 9 of the *Human Rights Act 2004*, and the right to work, under section 27B of the Human Rights Act (which are promoted by the amendments) and the right to privacy and reputation, under section 12 of the Human Rights Act and the right to be presumed innocent until proven guilty according to law, under subsection 22(1) of the Human Rights Act (which may be limited by the amendments).
- 2.45. In relation to the right to privacy and reputation, the explanatory statement states:

If the licensee has been given an infringement notice under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* information about the infringement notice is included in a public register. This amendment regulation expands on the number of offences against which an infringement notice may be issued and, if issued, information about the notice will also be included on the public register. This engages and may limit the right to privacy and reputation of licensees whose reputation may be scrutinised due to being issued an infringement notice. Particularly where, in some cases, the business or trading name is the full name of the licensee.

**2.46. On the question of the proportionality of the measure, the explanatory statement concludes:**

In developing this amendment regulation consideration has been given to the proportionality of potential human rights limitations to the importance of protecting worker safety.

On balance, any limitation on the right to privacy and reputation is justified through the protection of the right to life and the right to work. Where an alleged breach of safety obligations has occurred, it is the practice of the ACT's regulatory system to make this publicly known to meet community and social expectations. This supports the principle of deterrence against non-compliance by upholding and focussing on safety compliance in the services delivered by licensees. It is important to note that the public register, and publication of all information including trading names, are already online at the WorkSafe ACT website. This Amendment Regulation will only impact the register when licensees have allegedly breached their WHS obligations and been issued with an infringement notice for the alleged breach.

The type of information included on the public register is reasonable and proportionate to achieving the policy objective of protecting worker safety. The information included on the register is circumscribed according to this purpose. The register focuses on the license type and basic business information. This is the minimum information needed for the register to be an effective deterrent against non-compliance.

Given the importance of ensuring compliance with laws that protect the health and safety of workers and other people, the limitation on privacy and reputation caused by the establishment of the public register is the only reasonable and proportionate means to uphold this regulatory framework and achieve the policy objective.

**2.47. On the issue of the presumption of innocence, the explanatory statement states:**

The Amendment regulation also engages and may limit the right to be presumed innocent until proved guilty according to law under section 22(1) of the [Human Rights Act].

Infringement notices are on-the-spot fines and are not a substitution for prosecution and trial. They instead provide an alternative to proceeding with a prosecution if the person pays a nominal amount of the potential fine for the offence. Under an

infringement notice scheme, the alleged offender does not undergo a prosecution or trial where the full right to presumed innocence until proven guilty is upheld.

- 2.48. On the question of the proportionality of the measure, the explanatory statement concludes:

The limitation on the right to presumption of innocence is proportionate in the context of infringement notice schemes within the regulatory system. These schemes serve a legitimate purpose when used appropriately and with suitable offences.

A thorough assessment, including consultation with the work safety regulator, has been undertaken in line with the *Guide for Framing Offences* to ensure the additional offences against which an infringement notice may be issued are necessary to ensure appropriate compliance and enforcement. This includes the general application of strict liability to each physical element of each offence under the WHS Act and WHS Regulations. The expansion of this scheme is the mechanism required to uphold the ACT's work health and safety regulatory framework.

Paying an infringement notice is not a plea of guilt or an acceptance of guilt. The *Magistrates Court Act 1930* section 122(e) provides that if a person wishes to dispute liability for the offence, the issue may be referred to the Magistrates Court. Where this occurs the Government and prosecuting agency is responsible for proceeding with prosecution or dropping the allegation. This offers an avenue for review and provides some agency for the alleged offender to preserve their right to innocence until proved guilty. On balance, given the option to dispute liability for the offence, the expansion of WHS infringement notices is necessary to ensure the ACT WHS regulatory framework continues to protect worker health and safety.

- 2.49. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.**
- 2.50. **This comment does not require a response from the Minister.**

## Government responses – no comment

- **Subordinate Law SL2022-16** being the Residential Tenancies Amendment Regulation 2022 (No 1) made under the *Residential Tenancies Act 1997*.
- **Subordinate Law SL2022-17** being the Gambling and Racing Control (Code of Practice) Amendment Regulation 2022 (No 1), including a regulatory impact statement, made under the *Gambling and Racing Control Act 1999*.

These responses can be viewed [online](#).

The Committee wishes to thank the Minister for Sustainable Building and Construction, and the Minister for Industrial Relations and Workplace Safety for their helpful responses.

Peter Cain MLA  
Chair  
March 2023

# Outstanding responses

## Bills/Subordinate Legislation/Regulatory Impact Statements

### Report 12, dated 1 February 2022

#### Bills

- Electoral Amendment Bill 2021

### Report 26, dated 14 March 2022

#### Bills

- Motor Accident Injuries Amendment Bill 2023
- Work Health and Safety Amendment Bill 2022 (further information requested in respect of the Government response received on 23 February 2022)

#### Subordinate Legislation

- **Disallowable Instrument DI2022-252** being the Road Transport (Public Passenger Services) Maximum Fares for Taxi Services Determination 2022 (No 1) made under section 60 of the *Road Transport (Public Passenger Services) Act 2001* [response required before the Legislative Assembly's capacity to move to disallow the subordinate law expires]
- **Disallowable Instrument DI2022-255** being the Waste Management and Resource Recovery (Fees) Determination 2022 (No 2) made under section 126 of the *Waste Management and Resource Recovery Act 2016* [response required before the Legislative Assembly's capacity to move to disallow the instrument expires]
- **Disallowable Instrument DI2022-257** being the Adoption (Fees) Determination 2022 (No 1) made under section 118 of the *Adoption Act 1993* [response required before the Legislative Assembly's capacity to move to disallow the instrument expires]
- **Disallowable Instrument DI2022-259** being the Heritage (Council Member) Revocation 2022 (No 1) made under section 17 of the *Heritage Act 2004* • **Disallowable Instrument DI2022-260** being the Heritage (Council Member) Revocation 2022 (No 2) made under section 17 of the *Heritage Act 2004* • **Disallowable Instrument DI2022-261** being the Heritage (Council Member) Revocation 2022 (No 3) made under section 17 of the *Heritage Act 2004*
- **Disallowable Instrument DI2022-262** being the Heritage (Heritage Council) Appointment Revocation 2022 (No 4) made under section 17 of the *Heritage Act 2004* [response required before the Legislative Assembly's capacity to move to disallow the instrument expires]

- **Disallowable Instrument DI2022-263** being the Taxation Administration (Amounts Payable—Ambulance Levy) Determination 2022 made under section 139 of the *Taxation Administration Act 1999* [response required before the Legislative Assembly’s capacity to move to disallow the instrument expires]
- **Disallowable Instrument DI2022-265** being the Building and Construction Industry Training Levy (Governing Board) Appointment 2022 (No 1) made under section 7 of the *Building and Construction Industry Training Levy Act 1999* and sections 78 and 79 of the *Financial Management Act 1996* [response required before the Legislative Assembly’s capacity to move to disallow the instrument expires]
- **Subordinate Law SL2022-19** being the Court Procedures Amendment Rules 2022 (No 3) made under section 7 of the *Court Procedures Act 2004* [response required before the Legislative Assembly’s capacity to move to disallow the subordinate law expires]