



Minister for City Services
Minister for Multicultural Affairs
Minister for Recycling and Waste Reduction
Minister for Roads and Active Travel
Minister for Transport
Member for Murrumbidgee

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Dear Mrs Jones

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislation Scrutiny Role) (the Committee) in its Scrutiny Report 32 in relation to the Litter Legislation Amendment Bill 2019 and DI2019-48 – being the Veterinary Practice (Fees) Determination 2019 (No 1).

I thank the Committee for its comments relating to entering abandoned vehicles, the definition of waste and litter in relation to strict liability offences, regulation making powers and incorporation of instruments. Responses to the Committee's comments are provided below.

Right to privacy and reputation (Section 12 HRA) – Entry to abandoned vehicles

The Committee has raised concerns about insufficient protection of private items or information accessed by an authorised officer when entering an abandoned vehicle to identify the owner. The explanatory statement outlines safeguards relating to when this power is appropriate, what an officer may do and how to treat personal information. While these safeguards are implied, the Committee would consider it appropriate to include these safeguards expressly in the Bill.

While it is intended that all officers authorised under the *Litter Act 2004* will act with reasonableness and integrity when carrying out their duties and follow policies and procedures that reflect the safeguards articulated in the explanatory statement, I will amend the Bill so that these safeguards are specified within the law when an authorised officer enters an abandoned vehicle.

Right to the presumption of innocence (Section 22 HRA) – Definition of litter and Strict liability offences

Definition of litter and application to strict liability offences

The Committee has raised concerns that changes to the definition of Litter in clause 5 of the Bill, by removing the words 'for example' at the beginning of the list of items considered litter and including

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a new example in clause 6, has broadened the definition of litter and how it might be applied, in particular for strict liability offences.

The omission of the phrase 'for example' from the definition of litter in section 5 of the Bill is technical in nature and avoids a drafting issue when an example is placed within an example. This does not change or broaden the definition of what constitutes litter. The items listed in subsections (a) and (b) remain examples of what litter includes, although not expressly stated.

The inclusion of the new example regarding soil assists with the reading of the Bill and clarifies how an item such as soil would contribute to making a place untidy and when it would be considered litter.

Offences within the Bill relating to litter extend beyond the definition of litter and include how that litter is deposited. Several safeguards within offences exist to protect against the issuing of unreasonable infringement notices. For example, simply moving soil around a property would not cause an offence whereas placing it in a public park would. Similarly, a large pile of soil would not cause an offence if the soil were for the purpose of road maintenance and placed with the consent of the ACT Government. The explanatory statement will be updated to clarify this.

Definition of waste and application to strict liability offences

The Committee has noted that there is no outline in the explanatory statement of why a definition of waste was added in the Bill and raised concerns that by adopting the definition of waste from the *Waste Management and Resource Recovery Act 2016* (WMRR Act), the definition of waste is broadened. The Committee has also asked for clarification around which definition of waste applies and has asked that consideration be given to avoiding cross references to other legislation.

The term 'waste' is used in the definition of litter in the Litter Act 2004. Waste is a broad term which should have a definition included, which is consistent with other legislation dealing with waste. By providing a definition of waste the it clarifies the definition of litter rather than broadening it. An explanation of the decision to include a definition of waste to the Bill will be included in the explanatory statement.

The WMRR Act and the *Litter Act 2004* are complementary pieces of legislation and the terms 'waste', 'waste collection service' and 'waste facility' are used within provisions in the Bill and the definitions of these terms have also been included in the Bill to keep the legislation consistent and avoid ambiguity. Not including a definition of waste was considered during the drafting process for the Bill. However, it was decided that this approach could introduce inconsistencies, and not reflect future changes to the definition of waste through the WMRR Act. I will include information regarding this decision in the explanatory statement.

Adopting and cross referencing the definitions from the WMRR Act is considered to be the best approach to ensure that the Statute book is clear and consistent and easy to interpret. I will also make a minor amendment to the Bill to clarify that the general definition of waste in the WMRR Act is intended to apply to the Litter Bill and not the section definition in Part 10. This will remove ambiguity when reading the Bill.

Creating or defining offences by regulation

Aggravated littering

The Committee notes that the Bill will introduce a new strict liability offence for aggravated littering in a public place, where the litter is of a kind prescribed by regulation. The Committee has requested an explanation as to why the Bill provides for the items to be prescribed in regulation rather than set out in the Act and suggests that consideration be given to include an explanation in the explanatory statement.

The Bill was drafted to allow an efficient and proportionate regulatory response to changing circumstances by allowing the list of aggravated items to be updated as needed without the need for legislative change. In considering the Committee's comments I have reflected on the most appropriate way to give effect to aggravated littering offences and have drafted an amendment which includes items that attract an infringement for aggravated littering in the *Litter Act 2004* rather than the regulation. I have also removed the power to add aggravated littering offences by regulation from the Bill. The Explanatory Statement will be updated to reflect this.

Regulation making power

The Committee has noted the proposed increase to the maximum penalty units for offences created in regulation and requested justification for the increase. The Committee has also noted that this should be included in the explanatory statement.

The maximum allowed penalty in the general regulation making power, including regulations regarding dockless bikes and other shared transport schemes, has been increased from 10 penalty units to 30 penalty units. It is expected that a regulation scheme for shared transport schemes would look similar to the current provisions for shopping trolleys, given the similarities between the two schemes (i.e. dumping of trolleys and dumping of dockless bikes).

Any regulation would need to provide a real incentive for an operator to comply with the regulation and this would require some offences to be up to 30 penalty units and have infringement notices attached of up to \$960. This is consistent with the Guide for Framing Offences. This is considered reasonable and proportionate to the nature of potential offences, noting that the highest offence for shopping trolleys is 60 penalty units for retailers not keeping their trolleys inside the precinct. It is foreseeable that a similar provision could be required for keeping dockless bikes inside a predetermined zone where the scheme is licensed to operate and that this would require a maximum penalty of more than 10 units to be effective. Justification for this increase will be included in the explanatory statement.

Incorporation of instruments

Codes of Practice

The Committee has noted that clause 28 of the Bill will allow the Minister to approve codes of practice setting out minimum standards or guidelines for the Act and that any code of practice can apply, adopt or incorporate an instrument as in force from time to time. The Committee has requested explanation why it is considered necessary to provide for incorporation of an instrument as in force from time to time.

The provisions in the Bill surrounding the amenity impact of hoarding are based off provisions in the *Public Health Act 1997* (PH Act), which include a similar provision for adopting or incorporating instruments. The Bill, as it relates to hoarding, has been constructed to complement the PH Act. Therefore, it is foreseeable that instruments developed under one Act may be incorporated into the other.

Research around how best to manage hoarding properties is evolving and consequently policy will also likely change moving forward. Any instrument adopted or incorporated into a code should apply as in force from time to time to reflect any changes in those instruments as the recommended approach evolves. This will also ensure that instruments are up to date and consistent between the *Litter Act 2004* and the PH Act if necessary. The explanatory statement will be updated to make this clear.

DI2019-48 – the Veterinary Practice (Fees) Determination 2019 (No 1)

The Committee raised concerns about the reason for the fee increase not meeting technical and stylistic standards in the explanatory statement. The explanatory statement should read that the instrument increases fees by 2.5 percent; the forecast Wage Price Index as per budget memo 2019/09, rounded for cash handling purposes and other purposes.

I would like to bring to the Committees attention that DI2019-48 has been revoked and replaced with DI2019-183 being the Veterinary Practice (Fees) Determination 2019 (No 2). The explanatory statement for DI2019-183 also states the fees were increased “based on advice from Treasury” and should have stated the increase by 2.5 percent is due to the forecast Wage Price Index as per budget memo 2019/09, rounded for cash handling and other purposes.

TCCS will endeavour that all future instruments and explanatory statements adhere to the technical and stylistic standards expected by the Committee.

I trust the above responses provide the Committee with clarification and addresses their concerns.

Yours sincerely

Chris Steel MLA
Minister for Recycling and Waste Reduction
Minister for City Services