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

SCRUTINY REPORT 16

19 MAY 2022
THE COMMITTEE

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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

(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;
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BILLS

BILLS—COMMENT

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

HEALTH LEGISLATION AMENDMENT BILL 2022

This Bill amends:

- the Tobacco and Other Smoking Products Act 1927 (TOSP Act) to allow compliance testing to occur for sales of e-cigarettes to minors; to clarify that no smoking products may be sold via vending machine and to exempt community pharmacists from the requirement to source nicotine vaping products from a wholesaler who holds an ACT Tobacco licence;
- the Medicines Poisons and Therapeutic Goods Act 2008 (MPTG Act) to extend the application of Commonwealth therapeutics goods laws in the ACT; and
- the Transplantation and Anatomy Act 1978 (TA Act) to resolve technical legal compatibility issues between the TA Act and the Births, Deaths and Marriages Registration Act 1997 enabling verifying information to be issued to confirm a deceased individual’s donor status.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee Resolution of Appointment paragraph (10)(a)(i)

Report under section 38 of the Human Rights Act 2004 (HRA)

RIGHT TO PROTECTION OF THE FAMILY AND CHILDREN (SECTION 11 HRA)

The Bill will amend the TOSP Act to expand the range of products that can be subject to compliance testing to include non-tobacco products such as e-cigarettes and other personal vaporiser related products. These smoking products can be subject to compliance testing, which involves a young person (a purchase assistant), under the supervision of an authorised officer, purchasing, or trying to purchase, smoking products from tobacco licence-holders. As the Bill will extend the circumstances in which a child is involved in enforcement operations under the Act the Bill may limit the right to protection of children in section 11 of the HRA. The explanatory statement accompanying the Bill recognises this potential limitation and provides a justification for why it should be considered reasonable using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly.

The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.

RIGHTS IN CRIMINAL PROCEEDINGS (SECTION 22 HRA)

The Bill will amend section 67 of the TOSP Act. Under section 67 it is a strict liability offence for the holder of a retail tobacconist’s licence to obtain a smoking product from someone who is not the holder of a wholesale tobacco merchant’s licence. The Bill will provide an exception to this offence where the holder of the retail tobacconist’s licence operates a community pharmacy and obtains personal vaporiser products that are listed as a medicine under the medicines and poisons standard (as defined in section 11 of the MPTG Act).
The Bill will also amend section 49 of the TA Act. Section 49 of the TA Act makes it an offence to disclose information which identifies a person who has donated tissue under the Act in certain circumstances. The Bill will provide an exception allowing disclosure to or in relation to a next of kin of a deceased person for the purposes of subsection 38A (3) of the Births, Deaths and Marriages Registration Act 1997 (which provides for a request from next of kin to include a statement that the deceased was a tissue donor on their death certificates).

As an exception to an offence requires the defendant to meet an evidential burden these amendments may limit the presumption of innocence protected as a right in criminal proceedings in section 22 of the HRA. This possible limitation is recognised in the explanatory statement accompanying the Bill and a justification for why they should be considered reasonable is provided using the framework in section 28 of the HRA. Subject to the comments below on strict liability offences, the Committee refers that statement to the Assembly.

The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW (SECTION 8 HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

FREEDOM OF EXPRESSION (SECTION 16 HRA)

RIGHTS IN CRIMINAL PROCEEDINGS (SECTION 22 HRA)

Under the MPTG Act, the Therapeutic Goods Act 1989 (Cwlth) (TGA Act) and any statutory instruments under the Act are applied as a law of the Territory. The TGA Act regulates the quality, safety, efficacy and timely availability of therapeutic goods, including medicines and medical devices. It applies to corporations and things done by natural persons involved with interstate and international trade and commerce. The Bill will extend the operation of the TGA as a law of the Territory to apply to acts done by a person who is not a corporation and while in the course of trade or commerce within the limits of the Territory.

The TGA Act includes extensive regulatory restrictions and authority which may limit rights protected under the HRA. These include provisions relating to the use, offering for sale and advertising of various therapeutic goods. The TGA Act confers authority on Commonwealth officers and other authorised persons to engage in investigation and enforcement action, including entering residential premises without a warrant, seizing goods, and requiring the provision of personal information, in some cases limiting protections against self-incrimination. The TGA Act also contains a wide range of strict liability offences.

The TGA Act, as a law of the Commonwealth, and authorised persons acting under the authority of the TGA Act do not have to comply with the HRA. By applying the TGA Act as a law of the Territory the Bill will allow limitation of various human rights, including the right to equality protected by section 8, the protection of privacy provided by section 12, the right to freedom of expression as protected by section 16, and various rights in criminal proceedings including the presumption of innocence protected by section 22.

The explanatory statement accompanying the Bill states that applying the TGA Act will enable ‘limited regulatory action’ to be taken by the Therapeutic Goods Administration but does not directly engage the HRA as Australian Government employees, in exercising functions of a Commonwealth law, are not subject to the HRA (in particular the right to
privacy and reputation) in making regulatory decisions. In facilitating possible TGA compliance activity against sole traders and individuals in the ACT, it is noted that any privacy impacts would be reasonably limited to activities concerning the Therapeutic Goods Act 1989 (Cwlth) and that privacy protections are already afforded to sole traders under the Privacy Act 1988 (Cwlth). Privacy complaints against Australian Government agencies or employees may also be investigated by the Office of the Australian Information Commissioner.

In the Committee’s view, the fact that Commonwealth employees are not subject to the HRA in making regulatory decisions enhances the Bill’s potential limitation of rights protected under the HRA and requires a justification for be provided using the framework in section 28 of that Act. While the statement above may recognise and provide some justification for the potential impact on privacy rights, this statement is incomplete – it is not set out in the framework provided by section 28 of the HRA and does not recognise and provide a justification for why the other impacts on human rights should be considered reasonable. The Committee therefore requests that the explanatory statement be amended to include recognition of the potential for the Bill to limit human rights by extending the application of the TGA Act in the Territory and a justification for why any such limits should be considered reasonable using the framework in section 28 of the HRA.

The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond prior to the Bill being debated.

Do any provisions of the Bill inappropriately delegate legislative powers?— Committee Resolution of Appointment paragraph (10)(a)(iv)

Do any provisions of the Bill insufficiently subject the exercise of legislative power to parliamentary scrutiny? – Committee Resolution of Appointment paragraph (10)(a)(v)

As described above, the Bill will extend the application of the TGA Act and statutory instruments made under that Act to apply to non-corporations trading solely within the Territory. The incorporation of the TGA Act as a law of the Territory includes any modifications in the future (see section 102 of the Legislation Act 2001). The effect of extending the application of the TGA Act in this way is to effectively delegate to the Commonwealth government legislative power over any future modifications or extensions of the TGA Act or statutory instruments, with no scope for the Assembly to be able to scrutinise their impact.

The explanatory statement accompanying the Act describes the extension of the application of the TGA Act as a ‘minor and technical update’ which will enable the TGA to take action against sole traders operating wholly within the ACT in relation to nicotine vaping products (aka nicotine containing e-cigarettes) and other matters arising under the [TGA Act].

The Committee notes that the regulation of nicotine vaping products or other tobacco products is the subject of other amendments in the Bill and discussed in the explanatory statement in relation to the Bill’s promotion of the right to life in section 9 of the HRA. However, the extension of the TGA Act application in the Territory is not limited to the powers of the TGA in relation to nicotine products. The Committee therefore requests further information on why such a broad extension of the application of the TGA Act is warranted, and that the explanatory statement be amended to include this information.
The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond prior to the Bill being debated.

**TERRORISM (EXTRAORDINARY TEMPORARY POWERS) AMENDMENT BILL 2022**

This Bill amends the *Terrorism (Extraordinary Temporary Powers) Act 2006* to extend its operation until 19 November 2027. It will also make amendments relating to:

- contact with diplomatic representatives;
- increasing protections for people with impaired decision-making ability by extending the contact time with family and requiring police officers to take reasonable steps to assist them in exercising their contact rights;
- allowing identification material to be taken to record any illness or injury suffered while in detention; and
- providing for a review of the Act to be presented to the Assembly no later than 19 November 2026.

*Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee Resolution of Appointment paragraph (10)(a)(i)*

**Report under section 38 of the Human Rights Act 2004 (HRA)**

- **Freedom of movement (section 13 HRA)**
- **Right to liberty and security of person (section 18 HRA)**
- **Humane treatment when deprived of liberty (section 19 HRA)**
- **Right to a fair trial (section 21 HRA)**
- **Rights in criminal proceedings (section 22 HRA)**

The Terrorism (Extraordinary Temporary Powers) Act is currently due to expire 16 years after its commencement, or 19 November 2022. The Bill will defer this expiry for a further 5 years, until 19 November 2027. It will be the fourth extension of the Act, with two previous five-year extensions (in 2011 and 2016) and a one year extension in 2021 to provide for additional time to report on the Bill’s operation.¹ The Act provides for the preventative detention of persons for up to 14 days to prevent imminent terrorist acts or preserve evidence of recent terrorist acts. The Act also confers special powers to prevent or investigate terrorist acts, including through the reasonable use of force by police officers, to require identification, search persons, vehicles and premises, move vehicles and cordon off areas from entry. By extending the operation of the Act, the Bill may therefore significantly limit a number of rights protected under the HRA, including the rights to movement, liberty, and a fair trial, and other rights in criminal proceedings.

The explanatory statement recognises these potential limitations and provides a justification for why they should be considered reasonable using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly.

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¹ See *Crimes Legislation Amendment Act 2021 (No 2)*, Clause 17.
The Committee notes that a review of the Act was tabled in the Assembly on 13 April 2021. In summary, the Review:

found that the policy objectives of the Act remain relevant, and that the scheme contains a range of important human rights safeguards that distinguish it from comparable schemes in other Australian jurisdictions. However, noting the extraordinary nature of the powers in the Act, there may be an opportunity to refine or enhance these safeguards. This opportunity should be further explored prior to any extension of the Act.

The review and its conclusions are not mentioned in the explanatory statement accompanying the Bill. This is surprising given the purpose of the review was to inform the possible extension of the Act. The Bill provides for a further review of the operation and effectiveness of the Act prior to the proposed new expiry in 2027. The Committee considers this an important element in any justification for continuing the significant limitations placed by the Act on rights protected by the HRA. The Committee therefore requests that the explanatory statement accompanying the Bill include reference to the most recent review and how the Bill reflects the conclusions reached, and that any future extensions of the Act include reference to the results of future inquiries into the human rights impacts of the Act.

The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond prior to the Bill being debated.

PRIVACY AND REPUTATION (SECTION 12 HRA)

Division 2.12 of the Act provides for the taking, use and destruction of a detainees identification material. Identification material is defined in the Act for this purpose to mean:

(a) prints of the person’s hands, fingers, feet or toes; or
(b) recordings of the person’s voice; or
(c) samples of the person’s handwriting; or
(d) photographs (including video recordings) of the person.

Section 59 restricts the taking of identification material, requiring police officers at or above the rank of sergeant to take identification material from a person detained under a preventative detention order only if the person consents in writing or the officer believes on reasonable grounds that it is necessary to confirm the person’s identity is as stated in a preventative detention order. A police officer may use force that is reasonably necessary to take identification material, and there are additional protections for persons with impaired decision-making ability.

It is an offence under section 60 of the Act to use any identification material taken under section 59 for a purpose other than deciding whether the detained person is the person stated in the order. Any taken identification material must be destroyed after any relevant proceedings are finalised or after one year.


3 See ibid at page 3.

4 See definition in section 9.
The Bill will amend these sections by allowing a police officer to take identification material, without the detainees consent, to ‘record any illness or injury that the person suffered while detained under the order’. Identification material taken for this purpose can then be used in a complaint, an investigation or a proceeding that relates to the person’s apprehension or detention’. By enhancing the circumstances in which identification material may be taken and used the Bill may therefore limit the protection of privacy provided by section 12 of the HRA.

The explanatory statement accompanying the Bill recognises this potential limitation. It is justified using the framework set out in section 28 of the HRA as a reasonable means ‘to protect the welfare of any individual that may be detained by police under the TETP Act and enhance police accountability, through the recording of any illness or injury suffered while a person is detained in custody’. However, the Committee is concerned that there may be a less restrictive means available to achieve this objective.

The Bill will allow the taking of photographs, including video recordings, of persons detained under the Act where the police officer believes it is necessary to record any illness or injury. Force can be used for this purpose. The provision is permissive – there is no requirement for material to be taken where a person suffers an injury or illness while in detention. The material can be used in a complaint, an investigation or a proceeding that relates to the person’s apprehension or detention. It is not required that the person agrees to the taking or use of the material, or that any material taken be made available to the person or necessarily provided for use in any complaint, investigation or proceeding. It may be possible, therefore, for the material to be taken for the purposes of identifying the limits or absence of any injury or illness or defending against any potential proceedings that may be brought.

The Committee also notes that, given the different terminology used, it is not clear whether the proceedings in which the material can be used will in all cases be the same as the relevant proceedings, if brought within one year, for which the material must be preserved. The Committee is also unclear how the amendments will operate with section 58 of the Act, which allows the asking of questions of detainees to ensure their safety and wellbeing but requires a video or audio recording to be made of the questioning and which must be kept for one year. Schedule 1 of the Act, which provides restrictions and protections in relation to the conduct of personal searches, including the removal of clothing, does not apply to the amendments.

The explanatory statement describes policy and practices of ACT Policing to protect individuals who suffer an injury or illness:

ACT Policing processes require officers to undertake assessments on the intake of a detainee into custody. Officers are required to regularly check on detainees in custody to ensure their wellbeing and safety. A nurse is also present or on call to provide medical assistance for any detainees who may suffer an injury or illness in detention, with the ACT Ambulance Service being called on a case-by-case basis. These processes act as safeguards to ensure detainees are given appropriate care and treatment while in custody.

Appropriate processes are also in place where it may be necessary for a detainee’s clothing to be removed for recording an illness or injury. This will not be undertaken without medical professionals from the ACT Ambulance Service present and/or the stationed ACT Watch House nurse. The removal of a detainee’s clothing is only undertaken by police if it is for the purposes of preventing or responding to immediate potential instances of self-harm of the detainee.
The Committee is concerned that these policies and practices are not reflected in, and may potentially be inconsistent with, the amendment.

In the Committee’s view, current provisions in the Act relating to the taking of identifying material are appropriately limited to material which is directly related to identifying the individual concerned. The use of material to record injury or illness of detainees should be more clearly restricted to protecting individuals who suffer that illness or injury while being detained under the Act. The Committee therefore requests further information on why further protections are not reasonably available in achieving the legitimate objectives of this amendment.

The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond prior to the Bill being debated.

SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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

- Disallowable Instrument DI2022-29 being the Official Visitor (Disability Services) Appointment 2022 (No 1) made under s. 10(1)(c) (Appointment) Official Visitor Act 2012 appoints a specified person as an official visitor for the purposes of the Disability Services Act 1991 for 3 years.

- Disallowable Instrument DI2022-30 being the Legal Aid (Commissioner—Law Society Nominee) Appointment 2022 made under s 16 (Constitution of board) Legal Aid Act 1977 appoints a specified person as a part-time member and commissioner of the Board of the Legal Aid Commission, nominated by the Council of the Law Society of the ACT, for the period of three years.


- Disallowable Instrument DI2022-34 being the Gaming Machine (Authorisation Surrender - Fee Waiver) Determination 2022 (No 1) made under section 177 of the Gaming Machine Act 2004 waives the fees listed in the schedule where the matter for which the fee is payable is undertaken as a result of the surrender of a gaming machine authorisation to receive an incentive payment under the ACT Government’s Gaming Machine Authorisation Surrender Incentive 2022.

- Disallowable Instrument DI2022-35 being the Public Health (Fees) Determination 2022 (No 1) made under section 137 of the Public Health Act 1997 revokes and replaces DI2021-262 and determines fees payable for the purposes of the Act (Schedules 1 to 5).
DISALLOWABLE INSTRUMENTS—COMMENT

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

HUMAN RIGHTS ISSUES

- **Disallowable Instrument DI2022-33 being the Road Transport (General) Application of Road Transport Legislation Declaration 2022 (No 4) made under section 13 of the Road Transport (General) Act 1999** determines that certain parts of the road transport legislation do not apply to a designated vehicle, or the driver of a designated vehicle, participating in a special stage of the Netier National Capital Rally 2022.

This instrument is made under section 13 of the Road Transport (General) Act 1999, which allows the Minister to declare that the road transport legislation, or a provision of the road transport legislation, does not apply to a vehicle, person or animal in a place or circumstance stated in the declaration. The instrument declares that the Motor Accident Injuries Act 2019 and various road transport regulations do not apply in relation to the Netier National Capital Rally 2022, scheduled to be held between 31 March and 3 April 2022.

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

**Human rights implications**

During the development of this instrument, due regard was given to its effect and the operation of the rally in relation to the compatibility with human rights as set out in the Human Rights Act 2004 (HRA).

Section 28 of the HRA provides that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

a) the nature of the right affected

b) the importance of the limitation

c) the nature and extent of the limitation

d) the relationship between the limitation and its purpose

e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

Section 13 of the HRA provides a right for people to move freely within the ACT.

The declarations in this instrument do not of itself restrict a person’s freedom of movement within the Territory, however the operation of the events in closing parts of the forest in which the events will be conducted to members of the public will restrict the free movement of people in that area of the Territory during the event. As parts of the road transport legislation are being disapplid for the events to operate as intended, vehicles will be travelling in parts of the forest in excess of the usual speed limits and in a manner not consistent with the road rules. As such, the restriction on the free movement of people in those parts of the forest at those times is considered reasonable and proportionate to
ensure safety of non-participants and represents the least restrictive approach that enables the event to proceed.

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.

This comment does not require a response from the Minister.

COVID-19-RELATED INSTRUMENTS / HUMAN RIGHTS ISSUES

- Disallowable Instrument DI2022-36 being the Liquor (COVID-19 Emergency Response—Licence Fee Waiver) Declaration 2022 (No 1) made under sections 35 and 229 (2)(d) of the Liquor Regulation 2010 waives fees payable for specified liquor licences due to the COVID-19 public health emergency if certain conditions are met.

- Disallowable Instrument DI2022-37 being the Road Transport (General) (COVID-19 Emergency Response) Application Order 2022 (No 2) made under section 14 of the Road Transport (General) Act 1999 varies sections of the Road Transport (Driver Licensing) Regulation 2000 to support the decisions agreed by the Infrastructure and Transport National Cabinet Reform Committee on 25 January 2022 as well as alleviate ongoing operational impacts arising from the ACT August 2021 COVID-19 lockdown

The first instrument mentioned above, made under section 35 of the Liquor Regulation 2010, waives various annual licence fees under the Liquor Act 2010, for the period from 1 April to 30 June 2022. The explanatory statement for the instrument states that the waiver of fees relates to the COVID-19 pandemic and notes that the instrument extends the effect of earlier fees waivers. It states:

The fee waivers were initially made under the Liquor (Public Health Emergency—Licence Fee Waiver) Declaration 2020 [DI2020-45] (repealed) and the Liquor (COVID-19 Emergency Response—Licence Fee Waiver) Declaration 2020 [DI2020-119] (repealed) in response to the Public Health (Closure of Non-Essential Business or Undertaking) Emergency Direction 2020 (the closure direction) [NI2020-181]. The closure direction, made on 23 March 2020 directed the closure of:

- businesses that supply liquor for consumption on the premises but not including any part of those businesses that sell liquor for consumption off the premises as defined by the Liquor Act 2010;
- hotels, whether licensed or unlicensed, but not to the extent that they provide accommodation, takeaway meals or a meal delivery service, or a bottle shop;
- a casino;
- cinemas, nightclubs or entertainment venues of any kind;
- restaurants or cafes, other to than to the extent that they provide takeaway meals, or a meal delivery services.

The closure direction was made in relation to the Public Health (Emergency) Declaration 2020 (No 1) [NI2020-153] to prohibit the operation of non-essential business and undertakings to limit the spread of Novel Coronavirus 2019 (COVID-19).

The fee waiver supports Canberra’s economic recovery from the COVID-19 pandemic.

The comment immediately above does not require a response from the Minister.
The second instrument, made under section 14 of the *Road Transport (General) Act 1999*, is also related to the COVID-19 pandemic. It varies the operation of various provisions of the road transport legislation, with effect from 1 April 2022 to 25 January 2024. In essence, the substantive amendments extend time periods applicable to various licence holders. Again, the explanatory statement indicates that the instrument extends the effect of previous measures.

The explanatory statement for the second instrument contains a detailed discussion of the human rights implications of the instrument, by reference to the right to recognition and equality before the law, protected by section 8 of the *Human Rights Act 2004*. It states (in part):

ACT road transport legislation provides a general exemption for interstate, external territory and foreign licence holders from requiring an ACT driver licence to drive on an ACT road a vehicle of the class to which the vehicle being driven applies until the person has resided in the ACT for a continuous period of longer than 3 months. Under temporary COVID-19 measures, this legislated period has been extended to 6 months until 31 March 2022.

This application order may be seen to engage and limit a person’s right to recognition and equality before the law in that the instrument affords holders of interstate, external territory and foreign driver licence licences issued under the law of a recognised country with 12 months after they begin residing in the ACT in which they can drive on ACT roads on their non-ACT licence. This is an additional 9 months.

For foreign driver licence issued under the law of an experienced or non-recognised country, the general exemption will not be extended by this instrument, and from 1 April 2022, the general exemption for these licence holders will revert back from 6 months to 3 months.

The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for the second instrument mentioned above.

The comment immediately above does not require a response from the Minister.

**Subordinate Laws—Comment**

The Committee has examined the following subordinate law and offers these comments on it:

**Human rights issues**

- **Subordinate Law SL2022-4 being the Workers Compensation Amendment Regulation 2022 (No 1) made under the *Workers Compensation Act 1951* makes amendments to align with the new requirement under the Act and provide for the licensing process, criteria for issuing a licence, conditions that may be imposed on a licence and record-keeping requirements.**

This subordinate law amends the *Workers Compensation Regulation 2002*, substituting various Divisions and provisions of that regulation with new Divisions and provisions. The explanatory statement for the subordinate law states:

The purpose of this Regulation is to amend the *Workers Compensation Regulation 2002* (the WC Regulation) to align with the licensing framework that commenced under the *Workers Compensation Act 1951* (WC Act) from 9 January 2021.

Workers’ compensation insurers and self-insurers that were approved/exempted to operate prior to 9 January 2021 were extended to 31 December 2021 under the *Workers Compensation Amendment Regulation 2020* (No 1) [SL2020-40] and again until 31 May 2022 under the *Workers Compensation Amendment Regulation 2021 (No 1)* [SL2021–29] as licensees under the WC Act. This was to allow time for the supporting instruments for the new licensing framework to be made.
The licensing framework aims to better align the ACT’s requirements with other more contemporary licensing schemes and ensures workers can have the same service delivery expectations for workers’ compensation matters regardless of whether their employer is insured by an insurer or self-insured.

These amendments support the required licensing framework to align with the new requirements under the WC Act and provide for the licensing application process, criteria for issuing a licence, conditions that may be imposed on a licence, and record-keeping requirements.

The explanatory statement goes on to discuss human rights issues:

**CONSISTENCY WITH HUMAN RIGHTS**

These amendments do not engage the Human Rights Act 2004 (HR Act).

The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.

This comment does not require a response from the Minister.

**RESPONSES**

**GOVERNMENT RESPONSES**

- Mr Rattenbury (Minister for Consumer Affairs), dated 4 May 2022, in relation to comments made in Scrutiny Report 15 concerning the Fair Trading and Other Justice Legislation Amendment Bill 2022.

- Ms Stephen-Smith (Minister for Health), dated 4 May 2022, in relation to comments made in Scrutiny Report 15 concerning the Radiation Protection Amendment Bill 2022.

- Mr Rattenbury (Attorney-General), dated 3 May 2022, in relation to DI2022-1 being the Court Procedures (Fees) Determination 2022.

**PRIVATE MEMBERS RESPONSE**


  **These responses** can be viewed online.

The Committee wishes to thank the Attorney-General, Minister for Consumer Affairs, the Minister for Health and Dr Paterson for their helpful responses.

Peter Cain MLA
Chair
May 2022

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OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

• Report 2, dated 24 March 2021
  – Drugs of Dependence (Personal Use) Amendment Bill 2021

• Report 12, dated 1 February 2022
  – Electoral Amendment Bill 2021
  – Financial Management Amendment Bill 2021 (No 2)

• Report 15, dated 27 April 2022
  – Education Amendment Bill 2022) [response required prior to the Bill being debated]