Legislative Assembly for the Australian Capital Territory
Standing Committee on Legal Affairs
(Legislative Scrutiny Role)

Scrutiny Report 1

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About the committee

Establishing resolution

The Assembly established the Standing Committee on Legal Affairs (Legislative Scrutiny Role) on 3 December 2024.

The Committee is responsible for the following areas:

“(9) the Standing Committee on Legal Affairs 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 and subordinate laws 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

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Taimus Werner-Gibbings MLA, Deputy Chair

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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.

Contents

1. Bills

Bills—Comment

COAG Legislation Amendment Bill 2024

1.1 This Bill amends the following legislation to amend outdated references to the Council of Australian Governments (COAG), COAG councils and various Ministerial forums:

a) *Dangerous Goods (Road Transport) Act 2009;*

b) Dangerous Goods (Road Transport) Regulation 2009;

c) *Health (National Health Funding Pool and Administration) Act 2013;*

d) *Utilities Act 2000;* and

e) Work Health and Safety Regulation 2011.

Do any provisions of the Bill inappropriately delegate legislative powers?—Committee Resolution of Appointment paragraph (9)(a)(iv)

Henry VIII clause

1.2 Clause 13 of the Bill will introduce a new Part 10 into the *Health (National Health Funding Pool and Administration) Act 2013*. This transitional Part includes a power to make transitional regulations in the following terms:

> (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the [Bill].
>
> (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
>
> (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

1.3 An identical provision will be introduced by clause 22 of the Bill as part of a new Part 21 of the *Utilities Act 2000*. Both clauses also include a provision for the respective Part to expire 2 years after commencement.

1.4 The explanatory statement introduced with the Bill includes the following outline of clause 13:

> [The proposed section] enables the making of a regulation that modifies the Act. A regulation under this section may only modify part 10 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

1.5 The outline of clause 22 includes the same description, including incorrectly referring to Part 10 instead of Part 21. It goes on to describe the proposed subsection (3) as giving a regulation made under the second subsection:

> full effect according to its terms. A provision of part 10 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of part 10 of the Act has no ongoing effect after the expiry of that part.

1.6 By enabling regulations to be made which can amend or modify the effect of primary legislation, these proposed provisions introduce what is commonly referred to as a "Henry VIII clause". The Committee in previous Assemblies has raised concerns over such clauses as representing an inappropriate delegation of legislative power. In its 2011 Fact sheet on Henry VIII clauses,[1] the Committee described this form of transitional regulation as a 'typical' Henry VIII in the ACT, and set out a number of reasons why it should not be used:

> [P]rimary legislation is made by the Legislative Assembly. The Legislative Assembly has direct control over the form of primary legislation. The Legislative Assembly also has direct control over when primary legislation takes effect. "Henry VIII" clauses allow for the amendment of primary legislation by subordinate legislation. Subordinate legislation is made by the Executive. The form and the date when subordinate legislation takes effect are entirely within the power of the Executive. The Legislative Assembly has no control over the form of subordinate legislation or when it takes effect. The Legislative Assembly's principal power in relation to subordinate legislation is the capacity to disallow it. If disallowance occurs, it occurs only after the subordinate legislation will have been in force for (probably) several months.
>
> In short, "Henry VIII" clauses detract from the legislative power of the Legislative Assembly.

1.7 In a letter dated 13 September 2022 to the then Attorney-General, the previous Committee pointed to a commonly used justification for the inclusion of Henry VIII clauses which is in the same terms as those included in the explanatory statement accompanying this Bill. In that letter, the previous Committee referred to a number of concerns with that common justification, including that its use seemed to be increasing and did not address the possible effect of transitional regulations on rights protected under the *Human Rights Act 2004*, that the expiry of transitional Parts may not prevent enduring effects on rights, privileges or liabilities modified by transitional regulations, and the potential lack of transparency of any impact of Henry VIII clauses on other territory laws remained. In general, the Committee was concerned with any justification which failed to explain why the power to make such transitional regulations was necessary in the context of the particular Bill in question.

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[1] Available at https://www.parliament.act.gov.au/__data/assets/pdf_file/0005/434345/HenryVIII-Fact-Sheet.pdf.

1.8 The previous Committee noted:

> The Committee has not generally set out circumstances which, in its view, will justify use of such transitional provisions, but it has previously taken into account the justification for the period before expiry of the provisions, the need for urgency in any modification to the transitional provisions, degree of consultation involved in development of the Bill, the extent transitional regulations may alleviate unforeseen impacts of the Bill on individual rights and privileges, the need to facilitate national regulatory schemes, and whether there is sufficient definition of the scope of the Bill to limit potential transitional regulations.

1.9 The Committee therefore requests further justification from the Minister for why provision for transitional regulations in the terms included in the Bill are considered necessary in the context of this Bill and the particular Acts being amended, including:

a) why the power to prescribe transitional matters necessary or convenient because of the enactment of the Bill is considered insufficient;

b) why further express limits could not be put on the scope, subject matter and duration of any regulations which may modify primary legislation and their impact on rights, privileges or liabilities; and

c) what alternatives to the provisions were considered and why those alternatives were not considered sufficient.

1.10 Consideration should also be given to amending the explanatory statement accompanying the Bill to include this further justification.

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond with sufficient time to allow the Committee to consider the response prior to the Bill being debated.

Justice and Community Safety Legislation Amendment Bill 2024 (No 2)

1.11 This Bill will amend various legislation relating to justice and community safety, including:

a) the *Fair Trading (Australian Consumer Law) Act 1992* so that the conduct and state of mind of various representatives can be attributed to the employer, principal or director of a body corporate;

b) the *Human Rights Commission Act 2005* to make clear that the Human Rights Commission can conduct preliminary inquiries, extend the ability to refer to the ACT Civil and Administrative Review Tribunal (ACAT) matters initiated by the Commission such as retirement villages, occupancy disputes and sexuality and gender identity conversion practices, and allow entities, including unincorporated entities, to be substituted as the respondent to a complaint;

c) the *Official Visitor Act 2012* to protect from liability entitled persons who make complaints or provide information to an official visitor and to allow official visitors to share information with other official visitors subject to maintaining secrecy requirements;

d) the *Residential Tenancies Act 1997* to make various technical amendments to changes introduced by the *Housing and Consumer Affairs Legislation Amendment Act 2024*; and

e) the *Retirement Villages Act 2012* to clarify the meaning of various provisions relating to residence committees.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee Resolution of Appointment paragraph (9)(a)(i)

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

Right to privacy and reputation (section 12 HRA)

Right to a fair trial (section 21 HRA)

Rights in criminal proceedings (section 22 HRA)

1.12 The *Human Rights Commission Act 2005* requires the Commission, when making a final report on a discrimination complaint, to inform complainants that their matter can be referred to ACAT for determination. The Commission currently does not have to include such a referral statement where the parties have reached a conciliation agreement, or the complainant has withdrawn the complaint. The Bill will extend the circumstances where a referral statement does not need to be provided to include where the complaint has otherwise been resolved to the Commission's satisfaction or the complainant, without good reason, has failed to take reasonable steps to resolve the complaint.

1.13 The explanatory statement accompanying the Bill states that these circumstances may include where the matter has been resolved by the parties informally or the complainant is no longer in contact with the Commission in relation to their dispute. The explanatory statement also notes the ability of the Commission to reopen complaints.

1.14 By removing a requirement to include a referral statement, and hence removing the way in which complaints can be brought before ACAT for determination after a fair and public hearing, the Bill may limit the right to a fair trial in section 21 of the HRA.

1.15 Information obtained in the exercise of an official function under the *Official Visitors Act 2012* is subject to various forms of protection against disclosure, including an offence under that Act for unauthorised disclosure of protected information. The Bill will allow information disclosed to or obtained by an official visitor in the exercise of their official functions to be given to other official visitors where the information is necessary for the effective exercise of functions under the Official Visitors Act.

1.16 By allowing the sharing of information which might be highly personal or sensitive the Bill may limit the protection of privacy and reputation provided by section 12 of the HRA.

1.17 The Bill will extend liability for strict liability offences under the *Fair Trading (Australian Consumer Law) Act 1992* for the conduct of employees or agents. Where an employee or agent acts at an individual's direction or within the scope of their actual or apparent authority, the individual will be liable as if they had engaged in the conduct of their employee or agent.

1.18 By subjecting individuals to strict liability offences, where an individual may be liable without having to establish fault, the Bill may limit the presumption of innocence protected as a right in criminal proceedings under section 22 of the HRA. The amendments in the Bill may also subject individuals to an evidential burden in accessing an exception or defence under the Act which may also limit the presumption of innocence.

1.19 The explanatory statement accompanying the Bill recognises these potential limitations of rights protected under the HRA and sets out 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.

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

Variation in Sex Characteristics (Restricted Medical Treatment) Amendment Bill 2024

1.21 This Bill amends the *Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023* to extend the period in which prescribed people (i.e. adults subject to a guardianship order or children without decision-making capacity with respect to medical treatment) can receive restricted medical treatment in relation to a variation of their sex characteristics without having a treatment plan approved by the Restricted Medical Treatment Assessment Board. The extension only applies to people who have commenced medical treatment in relation to their sexual characteristics prior to commencement of the Bill.

1.22 The Committee notes that this Bill was debated in the Assembly and passed on 4 December 2024 and substantively commenced on 12 December 2024. The Committee was not able to comment on the Bill prior to its enactment.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee Resolution of Appointment paragraph (9)(a)(i)

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

Right to recognition and equality before the law (section 8 HRA)

Right to life (section 9 HRA)

Right to protection from torture and cruel, inhuman or degrading treatment etc (section 10 HRA)

Right to protection of the family and children (section 11 HRA)

Right to privacy and reputation (section 12 HRA)

1.23 Under the Act, from 23 December 2024 various forms of surgical or medical treatments which change a person's sex characteristics will require approval of a treatment plan or be subject of an offence. The Bill will introduce transition provisions which will delay this requirement for 12 months for prescribed persons who have commenced some form of medical treatment in relation to their sexual characteristics.

1.24 The requirement for Board approval for restricted medical treatments was introduced to promote the rights of persons with variations in sex characteristics and delay harmful practices in relation to their treatment. By delaying the introduction of that protection for a limited cohort of people, the Bill may limit various rights protected by the HRA. In particular:

a) the Bill will treat people who received medical treatment prior to commencement of the Bill differently from those seeking to commence restricted medical treatments after 23 December 2024. This may limit the right to equality before the law in section 8 of the HRA;

b) delay of the protections of mental health and wellbeing intended to be accorded through Board approval may limit the right to life in Section 9 of the HRA;

c) delaying board approval allowing medical treatment in circumstances where the person doesn't have capacity to consent for themselves may limit the right in section 10(2) of the HRA of a person not to be subjected to medical or scientific experimentation or treatment without free consent;

d) delaying the Act's protection for certain children may limit the right to protection of the family and children under section 11 of the HRA; and

e) the Act was intended to promote physical, psychological and bodily integrity and autonomy as elements of personal privacy protected by section 12 of the HRA. Delaying introduction of the Act may therefore limit that protection.

1.25 The explanatory statement accompanying the Bill recognises these potential limitations and provides for why they should be considered reasonable using the framework set out in section 28 of the HRA. In particular, the explanatory statement sets out why there have been delays in providing approval for treatment plans, and why delaying ongoing treatment may have significant health implications. These health implications may be time critical but not necessarily fall within the definition of urgent treatment for which an exemption is already provided for in the Act. The Committee commends, in particular, the discussion of the effectiveness of alternative approaches to achieving the Bill's objectives in discussing the proportionality of any rights limitations under the Bill.

1.26 **The Committee draws these matters to the attention of the Assembly, but does not require a response from the Minister.**

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 DI2024-251 being the Road Transport (General) Vehicle Registration and Related Fees Determination 2024 (No 2) made under section 96 of the** *Road Transport (General) Act 1999* **revokes DI2024-84, determines fees, payable, for transactions relating to vehicle registration and related fees under the road transport legislation.**
- **Disallowable Instrument DI2024-252 being the Racing Appeals Tribunal Appointment 2024 (No 1) made under section 40 and section 1.1 of the** *Racing Act 1999* **revokes DI2021-187 and appoints specified persons as members of the Racing Appeals Tribunal.**
- **Disallowable Instrument DI2024-253 being the University of Canberra Council Appointment 2024 (No 2) made under section 11 of the** *University of Canberra Act 1989* **appoints a specific person as a member of the University of Canberra Council for a period of three years.**
- **Disallowable Instrument DI2024-254 being the University of Canberra Council Appointment 2024 (No 3) made under section 11 of the** *University of Canberra Act 1989* **re-appoints a specific person as a member of the University of Canberra Council for a period of three years.**
- **Disallowable Instrument DI2024-255 being the University of Canberra Council Appointment 2024 (No 4) made under section 11 of the** *University of Canberra Act 1989* **re-appoints a specific person as a member of the University of Canberra Council for a period of three years.**
- **Disallowable Instrument DI2024-256 being the Cemeteries and Crematoria (Governing Board) Appointment 2024 (No 1) made under section 117 of the** *Cemeteries and Crematoria Act 2020* **appoints a specific person as Chair of the Cemeteries and Crematoria Authority Governing Board for a period of two years.**
- **Disallowable Instrument DI2024-257 being the Cemeteries and Crematoria (Governing Board) Appointment 2024 (No 2) made under section 117 of the** *Cemeteries and Crematoria Act 2020* **appoints a specific person as a member of the Cemeteries and Crematoria Authority Governing Board for a period of one year.**
- **Disallowable Instrument DI2024-258 being the Cemeteries and Crematoria (Governing Board) Appointment 2024 (No 3) made under section 117 of the** *Cemeteries and Crematoria Act 2020* **appoints a specific person as a member of the Cemeteries and Crematoria Authority Governing Board for a period of three years.**
- **Disallowable Instrument DI2024-259 being the Cemeteries and Crematoria (Governing Board) Appointment 2024 (No 4) made under section 117 of the** *Cemeteries and Crematoria Act 2020* **appoints a specific person as a member of the Cemeteries and Crematoria Authority Governing Board for a period of three years.**

- **Disallowable Instrument DI2024-260 being the Cemeteries and Crematoria (Governing Board) Appointment 2024 (No 5) made under section 117 of the** *Cemeteries and Crematoria Act 2020* **appoints a specific person as a member of the Cemeteries and Crematoria Authority Governing Board for a period of three years.**
- **Disallowable Instrument DI2024-261 being the Cemeteries and Crematoria (Governing Board) Appointment 2024 (No 6) made under section 117 of the** *Cemeteries and Crematoria Act 2020* **appoints a specific person as a member of the Cemeteries and Crematoria Authority Governing Board for a period of three years.**
- **Disallowable Instrument DI2024-262 being the Cemeteries and Crematoria (Governing Board) Appointment 2024 (No 7) made under section 117 of the** *Cemeteries and Crematoria Act 2020* **appoints a specific person as a member of the Cemeteries and Crematoria Authority Governing Board for a period of three years.**
- **Disallowable Instrument DI2024-263 being the Cemeteries and Crematoria (Governing Board) Appointment 2024 (No 8) made under section 117 of the** *Cemeteries and Crematoria Act 2020* **appoints a specific person as a member of the Cemeteries and Crematoria Authority Governing Board for a period of three years.**
- **Disallowable Instrument DI2024-264 being the Emergencies (Multi-Hazard Advisory Council Members) Appointment 2024 (No 1) made under section 127 of the** *Emergencies Act 2004* **appoints specified persons as members of the ACT Multi-Hazard Advisory Council.**
- **Disallowable Instrument DI2024-265 being the Crimes (Sentence Administration) (Sentence Administration Board) Appointment 2024 (No 1) made under section 174 of the** *Crimes (Sentence Administration) Act 2005* **appoints a specific person as a non-judicial member of the Sentence Administration Board.**
- **Disallowable Instrument DI2024-266 being the Crimes (Sentence Administration) (Sentence Administration Board) Appointment 2024 (No 2) made under section 174 of the** *Crimes (Sentence Administration) Act 2005* **appoints a specific person as a non-judicial member of the Sentence Administration Board.**
- **Disallowable Instrument DI2024-267 being the Integrity Commission (Acting Commissioner) Appointment 2024 (No 2) made under sections 25 and 40 of the** *Integrity Commission Act 2018* **revokes DI2024-23 and appoints a specified person as acting ACT Integrity Commissioner.**
- **Disallowable Instrument DI2024-275 being the Government Procurement Rules 2024 made under section 42 (1) of the** *Government Procurement Act 2001* **establishes rules that Territory entities must follow when exercising a function in relation to procurement.**
- **Disallowable Instrument DI2024-286 being the Adoption (Fees) Determination 2024 (No 1) made under section 118 of the** *Adoption Act 1993* **revokes DI2022-257 and determines the maximum fee payable for services provided by Children Youth and Families for 2024-25.**

- **Disallowable Instrument DI2024-287 being the Public Sector Management Amendment Standards 2024 (No 2) made under section 251 of the** *Public Sector Management Act 1994* **empowers the Head of Service, with the written approval of the Chief Minister, to make Public Sector Management Standards for the purpose of the Act.**
- **Disallowable Instrument DI2024-297 being the Major Events (Royal Visit to Canberra) Declaration 2024 made under section 6 of the** *Major Events Act 2014* **applies the provisions of the Major Events Act 2014 to three major events in the ACT on 21 October 2024 during the Royal Visit.**

Disallowable Instruments—Comment

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

No Human Rights Issues

- **Disallowable Instrument DI2024-268 being the Energy Efficiency (Cost of Living) Improvement (Priority Households) Determination 2024 made under section 7A of the** *Energy Efficiency (Cost of Living) Improvement Act 2012* **revokes DI2020-255 and determines priority households.**
- **Disallowable Instrument DI2024-269 being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Target) Determination 2024, including a regulatory impact statement made under section 7 of the** *Energy Efficiency (Cost of Living) Improvement Act 2012* **revokes DI2015-268, DI2020-219, DI2021-162, DI2022-150 and DI2023-154 and determines the energy savings targets for a specified compliance period.**
- **Disallowable Instrument DI2024-270 being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2024, including a regulatory impact statement made under section 11 of the** *Energy Efficiency (Cost of Living) Improvement Act 2012* **revokes DI2015-271, DI2020-220, DI2021-163, DI2022-151 and DI2023-155 and determines the energy savings contribution for a specified compliance period.**
- **Disallowable Instrument DI2024-271 being the Energy Efficiency (Cost of Living) Improvement (Penalties for noncompliance) Determination 2024, including a regulatory impact statement made under section 22 of the** *Energy Efficiency (Cost of Living) Improvement Act 2012* **revokes DI2015-272, DI2020-221, DI2021-164, DI2022-152 and DI2023-156 and determines the shortfall penalty for noncompliance for a specified compliance period.**
- **Disallowable Instrument DI2024-272 being the Energy Efficiency (Cost of Living) Improvement (Priority Household Target) Determination 2024, including a regulatory impact statement made under section 8 of the** *Energy Efficiency (Cost of Living) Improvement Act 2012* **revokes DI2017-251, DI2018-243, DI2019-75, DI2020-222, DI2021-165, DI2022-153 and DI2023-157 and determines the priority household target for the total energy savings within the compliance period.**

- **Disallowable Instrument DI2024-273 being the Road Transport (Safety and Traffic Management) Protective Helmet for Bicycle Riders Approval 2024 (No 1) made under paragraph 73(1)(a) of the** *Road Transport (Safety and Traffic Management) Regulation 2017* **revokes DI2020-38 and approves protective helmets for bicycle riders that comply with the Standard and have an identifying mark certifying compliance with the Standard and are in good repair and proper working order and condition.**
- **Disallowable Instrument DI2024-274 being the Utilities (Technical Regulation) (Light Rail Regulated Utility (Electrical) Network Boundary Code) Approval 2024 made under section 14 of the** *Utilities (Technical Regulation) Act 2014* **revokes DI2021-211 and defines boundaries between a light rail regulated utility (electrical) and other networks.**
- **Disallowable Instrument DI2024-283 being the Road Transport (General) Parking Permit Fees Determination 2024 (No 1) made under section 96 of the** *Road Transport (General) Act 1999* **revokes DI2024-140 and sets the fees payable for various kinds of parking permits.**
- **Disallowable Instrument DI2024-285 being the Environment Protection Noise Measurement Manual 2024 made under section 29A of the** *Environment Protection Regulation 2005* **revokes DI2009-234 and authorises the Minister to approve a noise measurement manual for the measurement of noise.**
- **Disallowable Instrument DI2024-290 being the Controlled Sports (Fees) Determination 2024 (No 1) made under section 89 of the** *Controlled Sports Act 2019* **revokes DI2019-196 and determines fees payable in accordance with the Act.**
- **Disallowable Instrument DI2024-291 being the Controlled Sports Code of Practice 2024 (No 1) made under section 49 of the** *Controlled Sports Act 2019* **revokes DI2019-214 and approves the Controlled Sports Code of Practice for controlled sports events.**
- **Disallowable Instrument DI2024-293 being the Construction Occupations (Licensing) (Fees) Determination 2024 (No 3) made under section 127 of the** *Construction Occupations (Licensing) Act 2004* **revokes DI2024-112 and determines fees payable for the purposes of the Act.**

2.3 The Committee notes that the explanatory statement for each of the instruments mentioned above contains a statement to the effect that no human rights are engaged by the instrument.

2.4 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for these instruments.**

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

Disapplication of subsection 47(6) of the *Legislation Act 2001*

- **Disallowable Instrument DI2024-273 being the Road Transport (Safety and Traffic Management) Protective Helmet for Bicycle Riders Approval 2024 (No 1) made under paragraph 73(1)(a) of the** *Road Transport (Safety and Traffic Management) Regulation 2017* **revokes DI2020-38 and approves protective helmets for bicycle riders that comply with the relevant Standard and have an identifying mark certifying compliance with the Standard and are in good repair and proper working order and condition.**

2.6 This disallowable instrument is made under paragraph 73(1)(a) of the *Road Transport (Safety and Traffic Management) Regulation 2017*, which provides for the road transport authority to approve a protective helmet for bicycle riders as an approved bicycle helmet. This regulation also provides that an approved bicycle helmet must be worn by a person travelling in or on a personal mobility device (section 244H), by a bicycle rider and bicycle passenger, unless the passenger is a paying passenger on a three-wheeled or four-wheeled bicycle (section 256), and by a person riding on or in a bicycle trailer (section 257).

2.7 Section 3 of the instrument refers to (and relies on) various Australian and international standards, in imposing the standards to be met by helmets worn. Section 5 of the instrument then provides:

> 5 **Disapplication of Legislation Act, s 47(6)**
>
> The *Legislation Act 2001*, section 47(6) does not apply to an instrument applied, adopted or incorporated under this instrument.
>
> *Note:* This means the relevant standards do not need to be notified under the *Legislation Act 2001*. Information on how to obtain a copy of the relevant standards can be found in the explanatory statement to this instrument.

2.8 Subsection 47(6) of the *Legislation Act 2001* provides that any instrument that is incorporated by reference, and any amendment or replacement of such an instrument, is taken to be a notifiable instrument, for section 10 of the Legislation Act. A notifiable instrument must be notified on the ACT Legislation Register.

2.9 The Committee has always looked carefully at the disapplication of subsection 47(6) of the Legislation Act. The Committee's fundamental concern is to ensure that any material relied on by legislation is easily accessible by users, at no cost. Where there is a disapplication, the Committee expects to see a justification, usually in the explanatory statement for the relevant instrument, preferably with an indication of where the relevant material is readily available to users of the legislation, at no cost.

2.10 The explanatory statement for this instrument states:

> Historically, protective helmets for bicycle riders in Australia have been manufactured to comply with the Australian/New Zealand Standards in force from time to time as required by the Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 2001 (the trade practices regulations). On 22 March 2024, the trade practices regulations were repealed by the commencement of the Consumer Goods (Bicycle Helmets) Safety Standard 2024. At the time of repeal of the trade practices regulations, the approved standard was AS/NZS 2063:2008 – Bicycle helmets.
>
> The Consumer Goods (Bicycle Helmets) Safety Standard 2024 continues to permit bicycle helmets to comply with AS/NZS 2063:2008 - Bicycle Helmets and permits compliance with five additional regulations:
>
> - Australian Standard AS/NZS 2063:2020 – Helmets for use on bicycles and wheeled recreational devices
> - European standard EN 1078:2012+A1:2012 Helmets for pedal cyclists and for users of skateboards and roller skates

- US Consumer Product Safety Commission standard US CPSC 16 C.F.R. Part 1203 Safety Standard for Bicycle Helmets
- American Society for Testing and Materials (ASTM) standard F1447-18 Standard Specification for Helmets Used in Recreational Bicycling or Roller Skating
- Snell standard B-95 1995 Bicycle Helmet Standard, 1998 revision, Standard for Protective Headgear for Use in Bicycling.

2.11 The explanatory statement goes on:

> At the time of writing of this instrument, the *Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Regulations 2001* can be viewed on the Federal Register of Legislation at https://www.legislation.gov.au/F2001B00369/latest/text and the Consumer Goods (Bicycle Helmets) Safety Standard 2024 can be viewed on the Federal Register of Legislation at https://www.legislation.gov.au/F2024L00362/latest/text .
>
> This disallowable instrument updates the Australian Standard references to include the six standards listed above to be in line with the Commonwealth Consumer Goods (Bicycle Helmets) Safety Standard 2024.
>
> ………………
>
> Further, this instrument disapplies the provisions of section 47 of the *Legislation Act 2001* which would otherwise require notification of instruments applied by reference (in this case the Standards referred to in clause 3). The Standards referenced are technical in nature and describe performance and design requirements with which a protective bicycle helmet must comply.
>
> It is not possible to republish text contained in Standards documents as some of the documents are protected by copyright. It is not practical to republish information in the Standards in the instrument as this would amount to hundreds of pages.
>
> The ACT Government's access to the Standards is regulated by terms and conditions that govern how they can be used and disclosed. The standards that are copyright can be purchased from the relevant publisher:
>
> Australian Standard AS/NZS 2063:2008 - Bicycle Helmets; and Australian Standard AS/NZS 2063:2020 – Helmets for use on bicycles and wheeled recreational devices can be purchased from the publisher in either electronic or paper version through the Standards Australia website (www.standards.org.au). **Those who wish to have non-commercial access to Australian Standards for personal, domestic or household use can do so via the Standards Australia Reader Room website, available at readerroom.standards.org.au.** [emphasis added]
>
> European standard EN 1078:2012+A1:2012 Helmets for pedal cyclists and for users of skateboards and roller skates can be purchased from the publisher in either electronic or paper version through the European Standards website (www.en-standard.eu).
>
> American Society for Testing and Materials (ASTM) International standard F1447-18 Standard Specification for Helmets Used in Recreational Bicycling or Roller Skating can be purchased from the publisher in either electronic or paper version through the ASTM website (www.astm.org)

2.12 The Committee notes the information in relation to "non-commercial access to Australian Standards for personal, domestic or household use", which was an important development that the Committee observed and commented on during its work in the 10th Assembly. However, the Committee is concerned that the access to other documents relied on is only available at a cost. The Committee seeks the Minister's views on whether copies of the documents in question could, perhaps, be made available for inspection at a government location, as has happened in other cases (e.g. in the case of DI2024-274, also considered for this *Scrutiny Report*).

> 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.

Disapplication of subsection 47(5) of the *Legislation Act 2001* / Human Rights Issues

- **Disallowable Instrument DI2024-276 being the Construction Occupations (Licensing) (Qualifications) Declaration 2024 (No 3) made under section 13 of the** *Construction Occupations (Licensing) Regulation 2004* **revokes DI2024-41 and declares the qualifications requirements necessary for an entity to be eligible to be licensed in a construction occupation or occupation class.**

2.13 This instrument, made under section 13 of the *Construction Occupations (Licensing) Regulation 2004*, declares the qualifications requirements necessary for an entity to be eligible to be licensed in a construction occupation or occupation class, for that regulation.

2.14 Section 5 of the instrument provides:

> **5 Disapplication of Legislation Act**
>
> The *Legislation Act 2001*, section 47(5) does not apply to AS2896:2021 as in force on the day this instrument commences and applied by this instrument.
>
> *Note*: The documents applied by this instrument do not need to be notified under the Legislation Act because s 47 (5) does not apply (see Legislation Act, s 47 (7)).
>
> Australia Standards are available for purchase at www.standards.org.au.

2.15 AS2896:2021 refers to Australian Standard AS2896:2021 *Medical gas systems – installation and testing of non-flammable medical gas pipeline systems*, which is relied on by Part 4 of the Qualifications Schedule made by this instrument, which prescribes eligibility requirements for Gasfitters and Gas Appliance Workers.

2.16 The Committee has consistently noted that the effect of subsection 47(5) of the *Legislation Act 2001* is that any external document that is relied upon (i.e., by being "applied, adopted or incorporated") by this instrument would have to be published on the ACT Legislation Register, as a "notifiable" instrument (for section 10 of the Legislation Act). This, in turn, ensures that users of legislation have free access to all the material that they need, in order to understand the full scope and effect of an instrument such as this. The Committee has always taken a strong view that such access is important. As a result, the Committee generally does not look favourably on the disapplication of subsections 47(5) (and (6)) of the Legislation Act and seeks an explanation as to why disapplication is necessary, in a particular case.

2.17 In this case, the explanatory statement for the instrument states:

> This instrument refers to Australian Standard AS2896:2021 *Medical gas systems – installation and testing of non-flammable medical gas pipeline systems*. This is the technical standard used by the sector and the sector have knowledge of the standard in undertaking their professional services. The standard referenced is available for purchase from www.standards.org.au. There are challenges relating to the ability to provide public access to Australian Standards due to copyright issues.
>
> Standards Australia has recently released an initiative (Reader Room) that provides limited, no-fee access to the entire catalogue of Australian Standards for non-commercial purposes, that is for personal, domestic or household use. This initiative provides access for free to a maximum of three standards every 12 months, with access for 24 hours at a time. The Reader Room is available at https://readerroom.standards.org.au/.

2.18 The Committee notes (with approval) the reference to the Reader Room initiative.

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

2.20 The explanatory statement for the instrument goes on to discuss human rights issues, focusing on the right to work, protected by section 27B of the *Human Rights Act 2004*:

> **CONSISTENCY WITH HUMAN RIGHTS**
>
> A detailed assessment of the human rights implications of the addition of new licensing requirements for medical gasfitters and medical gas technicians was contained in the explanatory statement to the Building and Construction Legislation Amendment Act 2023.
>
> It was recognised in that explanatory statement that the new licensing framework engaged the right to work (section 27B (1) of the HRA) and may limit this right by restricting access to what was a previously self-regulated profession.
>
> Section 27B (1) of the *Human Rights Act 2004* (HRA) expressly provides that the practice of a trade, occupation or professional may be regulated by law. Determining eligibility criteria such as qualifications, experience and competencies is common practice in occupational registration schemes.
>
> The new licensing framework introduces licence classes under the occupation of gasfitter in the Construction Occupations (Licensing) Regulation 2004 – medical gasfitter, medical gas technician, medical gasfitter permit and medical gas technician permit. The new permit licence classes support people entering the industry for the first time.
>
> The classes of medical gasfitter and medical gas technician enable the carrying out of relevant work without supervision. The eligibility criteria for these licence classes build upon the licensing framework and consist of two primary methods.
>
> Method 1 is consistent with existing occupations within the instrument and establishes a foundation encompassing both qualifications and experience, including a recognised trade qualification in plumbing.
>
> Method 2 has been developed to allow an alternative pathway for applicants who have been working in the industry for a significant period of time but who may not have a formal qualification. This allows applicants for both the medical gasfitter and medical gas technician licence to demonstrate relevant skills, knowledge and behaviours instead of formal qualifications such as prescribed under Method 1.

The alternative pathway at Method 2 allows for continuity of service in the medical gas field by enabling experienced tradespeople to apply for a licence under the new licensing framework without the need to undertake further training and qualifications, due to their extensive on-the-job experience. The people using this pathway already have an established understanding of relevant codes and standards applicable to medical gas piping systems.

To ensure appropriately skilled people are applying through Method 2, the practical experience required under this method includes an additional requirement to confirm knowledge and experience applying Australian Standard 2896:2021 – Medical Gas Systems – Installation and Testing of Non-Flammable Medical Gas Pipeline Systems. This mitigates the potential for people without an understanding of relevant, up-to-date codes and standards from applying through Method 2.

There are significant risks to health, safety and the economic wellbeing of individuals resulting from the provision of medical gas services where an individual does not have adequate qualifications, experience or follow an established verification process for the installation. The need to mitigate these risks has been recognised in the establishment of the requirement for demonstration of knowledge and experience applying the Australian Standard. Understanding of how to read and apply the Australian Standard is integral to the industry as formal qualifications in this field are limited.

Attesting to knowledge and experience applying the Australian Standard provides assurance of an applicant’s ability to interpret and apply a relevant standard in the absence of a trade qualification, such as the Certificate III in Plumbing required in Method 1, in which knowledge and application of standards is included as part of the course structure.

The requirement to confirm knowledge and experience applying the Australian Standard introduced by this instrument is rationally connected to the objective of ensuring the safety and correct installation of medical gas systems. It is considered reasonable and likely that a person working in the medical gas field would already have knowledge of, and access to, the referenced Australian Standard in order to meet the practical experience requirements for obtaining a licence.

This requirement will assist in protecting the community from adverse outcomes associated with medical gas systems that are not installed or commissioned correctly, which is established in the Australian Standard and by requiring skills and experience to be verified for people applying for a medical gas licence.

Additionally, licensees working on medical gas systems will be working under the building regulatory system in premises that are largely regulated by relevant health legislation. The Australian Standard contains requirements applicable to the gasfitter and gas technician as well as relevant hospital and health care facility staff, ensuring applicants are aware of the interrelationship between the building and health regulatory systems.

The framework has been designed to be the least restrictive approach and with sufficient safeguards to ensure the limitation on the right to work can be considered reasonable and justifiable.

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

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

Drafting issue

- **Disallowable Instrument DI2024-277 being the Legal Aid (Commission President) Appointment 2024 made under subsection 16(2) of the *Legal Aid Act 1977* appoints a specified person as part-time president of the Legal Aid Commission.**
- **Disallowable Instrument DI2024-278 being the Legal Aid (Commissioner - Financial Management) Appointment 2024 made under section 16 of the *Legal Aid Act 1977* appoints a specific person as a part-time member and commissioner of the board for a period of two years.**

2.23 The instruments mentioned above, made under section 16 of the *Legal Aid Act 1977*, appoint specified persons as "part-time president of the Legal Aid Commission" and "part-time member and commissioner of the board" respectively.

2.24 As the Committee has consistently pointed out, the appointments are made under section 16 of the *Legal Aid Act 1977*. The Committee has consistently noted that there is no reference in section 16 to appointing a "part-time president" or a "part-time member", only as "president" or "member". As the Committee has pointed out, several times, in relation to previous appointments under this provision, the only reference to "part-time" is in subsection 16(4), which provides that "[a] person appointed as a member by the Minister is appointed on a part-time basis". However, in a formal sense, this does not mean that persons are appointed as "a part-time member".[2]

2.25 The Committee notes that it discussed this issue in Scrutiny Report 33 of the 10th Assembly (5 September 2023),[3] in relation to the Legal Aid (Commissioner—ACTCOSS Nominee) Appointment 2023 (DI2023-205). The Committee referred to the fact that it had made a similar comment in Scrutiny Report 21 of the 10th Assembly (4 October 2022), in relation to appointments made by DI2022-185, DI2022-187 and DI2022-188),[4] and that the (then) Attorney-General responded to the Committee's comments, in a letter dated October 2022, stating:[5]

> I consider the reference to 'part-time member' necessary and appropriate in the above instruments to distinguish the member appointments from the appointment of the Chief Executive Officer, who is not appointed to, and does not operate in, that role on a part-time basis. Moreover, the description 'part-time' aptly describes the nature and commitment of the role of a Legal Aid Board Commissioner. Commissioners meet once every quarter or out-of-session to determine the policies, priorities and strategies of the Legal Aid Commission. For absolute clarity, in the future, the Justice and Community Safety Directorate will endeavour to ensure that disallowable instruments for Legal Aid Commission Board appointments specifically refer to section

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[2] See, e.g, *Scrutiny Report 21* of the 10th Assembly (4 October 2022). https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/2083434/Scrutiny-Report-21-4-October-2022.pdf, page 26.

[3] https://www.parliament.act.gov.au/__data/assets/pdf_file/0007/2279104/Scrutiny-Report-No-33.pdf, page 25.

[4] Available at https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/2083434/Scrutiny-Report-21-4-October-2022.pdf. See page 26.

[5] Available at https://www.parliament.act.gov.au/__data/assets/pdf_file/0017/2110166/Response-DI2022-185,-187-and-188.pdf.

> 16(4) which specifies that members appointed by the Attorney General are appointed on a part-time basis.

2.26 The Committee stated (in relation to DI2023-205) that it was disappointed to note that, despite the response of the (then) Attorney-General, neither the instrument mentioned above nor its explanatory statement referred to subsection 16(4).

2.27 Similarly, the explanatory statements for the 2 instruments mentioned above make no reference to subsection 16(4), despite the previous discussion. In all the circumstances, this is very disappointing.

2.28 **This comment requires a response from the Attorney-General.**

> The Committee draws this matter to the attention of the Legislative Assembly, under paragraph (9)(d) of the Committee's Resolution of Appointment, on the basis that the explanatory statement for this instrument may not meet the technical or stylistic standards expected by the Committee and asks the Attorney-General to respond before the Legislative Assembly's capacity to move to disallow the instruments expires.

Human Rights Issues

- **Disallowable Instrument DI2024-279 being the Professional Engineers (Professional Engineers) Code of Practice 2024 made under section 85 of the** *Professional Engineers Act 2023* **sets standards of conduct for professional engineers.**
- **Disallowable Instrument DI2024-280 being the Professional Engineers (Fire Safety Engineering) Code of Practice 2024 made under section 85 of the** *Professional Engineers Act 2023* **approves a code of practice for professional engineers providing professional engineering services in the area.**
- **Disallowable Instrument DI2024-281 being the Professional Engineers (Continuing Professional Development) Determination 2024 made under section 84 of the** *Professional Engineers Act 2023* **determines the continuing professional development required for an individual to be eligible to renew their registration.**

2.29 The first 2 instruments mentioned above are made under section 85 of the *Professional Engineers Act 2023*. They set standards of conduct for professional engineers and approve a code of practice for professional engineers providing professional engineering services in the area of fire safety engineering, respectively.

2.30 The third instrument mentioned above, made under section 84 of the Professional Engineers Act, determines the continuing professional development requirements for an individual to be eligible to renew their registration, under the legislation.

2.31 The explanatory statement for each of the instruments discusses human rights issues, focusing on the right to work, protected by section 27B of the *Human Rights Act 2004*. The explanatory statement for the first instrument mentioned above states:

> **Human Rights**

> The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters.
>
> Section 27B (1) of the *Human Rights Act 2004* (the HRA) expressly provides that the practice of a trade, occupation or profession may be regulated by law. Determining standards of conduct is common practice in occupational registration schemes.
>
> A detailed human rights assessment is contained in the explanatory statement to the Professional Engineers Bill 2022 including consideration of the impact of the introduction of a professional engineers registration scheme in the ACT on the right to work under section 27B of the HRA.
>
> Any engagement with or limitation on the right to work in section 27B of the HRA is considered reasonable and justifiable.

2.32 The explanatory statements for the second and third instruments mentioned above contain a similar statement.

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

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

Human Rights Issues

- **Disallowable Instrument DI2024-282 being the Motor Accident Injuries (Premiums) Guidelines 2024 (No 1) made under section 487 of the** ***Motor Accident Injuries Act 2019*** **revokes DI2023-232 and makes provision for information and factors to be taken into account to assist insurers in working out MAI premiums.**

2.35 This instrument, made under section 487 of the *Motor Accident Injuries Act 2019*, makes provision (for section 316 of the Act) for information and factors to be taken into account, to assist insurers in working out MAI premiums.

2.36 The explanatory statement for the instrument discusses human rights issues:

> **Consistency with Human Rights**
>
> In developing the guidelines, consideration was given to its compatibility with the *Human Rights Act 2004* and the terms of reference of the Justice and Community Safety Committee. The guidelines outline how corporations as licensed insurers are to propose MAI premiums for approval by the MAI Commission as required under the primary legislation and therefore do not affect an individual's human rights.

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

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

Human Rights Issues

- **Disallowable Instrument DI2024-284 being the Road Transport (General) Application of Road Transport Legislation (Blue Range Rallysprint) Declaration 2024 (No 1) made under section 13 of the *Road Transport (General) Act 1999* provides that certain parts of the road transport legislation do not apply to a designated vehicle or the driver of a designated vehicle while participating in a special stage of the event.**

- **Disallowable Instrument DL2024-298 being the Road Transport (General) Application of Road Transport Legislation (TGRA Rally Test Day) Declaration 2024 (No 1) made under section 13 of the *Road Transport (General) Act 1999* provides that certain parts of the road transport legislation do not apply to a designated vehicle or the driver of the designated vehicle while participating in a special stage event.**

2.39 Each of the instruments mentioned above 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. For the first instrument mentioned above, the declaration provides that the *Motor Accident Injuries Act 2019*, and various other specified provisions of the motor traffic legislation, do not apply in relation to the Blue Range Rallysprint, scheduled to take place on 26 October 2024. For the second instrument mentioned above, similarly, the declaration provides that the Motor Accident Injuries Act, and a similar list of specified provisions of the motor traffic legislation, do not apply in relation to the TGRA Rally Test Day, scheduled to take place on 5 November 2024.

2.40 The Committee notes that the explanatory statement for the first instrument discusses 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) he 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 event in closing parts of

> the forest in which the event 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 disapplied for the event 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.

2.41 A similar statement appears in the explanatory statement for the second instrument mentioned above.

2.42 **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.**

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

Human Rights Issues

- **Disallowable Instrument DI2024-288 being the Road Transport (Road Rules) Advertising Declaration 2024 (No 2) made under section 213SA of the** *Road Transport (Road Rules) Regulation 2017* **revokes DI2024-240 provides that it is an offence for a driver to park in a designated place if a sign displaying advertising or electoral matter is attached to the vehicle.**

2.44 This instrument, made under paragraph 213SA(3)(b) of the *Road Transport (Road Rules) Regulation 2017*, declares matter that is or is not advertising. Section 213SA provides that it is an offence for a driver to park in a designated place if a sign displaying advertising or electoral matter is attached to the vehicle. The Minister may declare matter that is or is not advertising for the purpose of this offence.

2.45 This instrument declares that advertising matter is any matter displayed from a sign attached to a vehicle that is greater in area than $1.5m^2$. This applies to both commercial and community advertising. A "sign" is defined as a board, device, plate, or screen.

2.46 The explanatory statement for the instrument contains a lengthy discussion of the human rights implications of the instrument, focussing on the right to freedom of expression and the rights in criminal proceedings, protected by sections 16 and 22 of the *Human Rights Act 2004*, respectively:

> **Human Rights considerations**
>
> During the development of this instrument, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).
>
> Nature of the right and the limitation (s28(a) and(c))
>
> This instrument engages and limits the right to freedom of expression (section 16 of the HRA).
>
> As outlined in the Explanatory Statement to the [*Electoral and Road Safety Legislation Amendment Act 2023*], prohibiting vehicles from parking on designated roads, road-related areas, and public unleased land where the vehicle has a sign attached that displays advertising could be considered to limit a

person’s right to freedom of expression by restricting the opportunity to receive and impart information and ideas displayed on parked vehicles.

The declaration on what is or is not advertising matter details the extent that the rights to freedom of expression are limited. A sign attached to a vehicle cannot display advertising that is greater in area than $1.5m^2$. Designated places are defined by notifiable instrument under section 213SA(3)(a).

The ability to impart information in this manner is therefore prohibited where the elements of the offence are met.

This instrument also engages and limits the rights in criminal proceedings (section 22 of the HRA). The offence under section 213SA is a strict liability offence and this instrument forms an element of that offence. Strict liability is applied to determine if the advertisement is greater than $1.5m^2$. There are no fault elements and therefore the conduct alone is sufficient to determine that this component of the offence has been met.

Legitimate purpose (s 28(2)(b))

The primary purpose is to support road safety. It aims to reduce driver distraction, a key focus area of the ACT Road Safety Action Plan 2024-25.

A driver can not only be distracted from activity inside the vehicle, such as from passengers and mobile phones, but also from the road environment. As outlined by NSW[6], distraction is anything that takes your eyes off the road, your hands off the wheel, or your mind off driving. Distraction takes the driver’s attention away from driving.

A driver that takes their eyes off the road for just two seconds when driving at 60km/hr will travel 33 metres while being distracted. At 100km/hr this increases to 55m.[7] These are distances that the vehicle travels while the driver is not focused on the task at hand.

A driver that takes their eyes off the road for longer than two seconds doubles the risk of a crash.

Rational connection between the limitation and the purpose (s 28(2)(d))

Roadside advertising is a distraction outside the vehicle that can take the driver’s attention away from the driving task. It is recognised as an example of inattention on the SA website[8]. Roadside advertising can be a visual distraction as well as cognitive distraction by affecting the driver’s thoughts.

One of the factors that may affect whether a sign is distracting is its size. The sign must be large enough to be a visual distraction to passing drivers. The instrument determines that the parked vehicle cannot have a sign attached that has advertising greater than $1.5m^2$.

Proportionality (s 28(2)(e))

[6] NSW Government. Driving Distractions. Website. <https://www.nsw.gov.au/driving-boating-and-transport/roads-safety-and-rules/warnings-and-hazards/driving-distractions>

[7] Government of Western Australia. Road Safety Commission. Distractions – Facts at a glance. Website <https://www.wa.gov.au/system/files/2021-07/Distance-of-distraction-facts-at-a-glance_1.pdf>

[8] Government of South Australia. Department of Infrastructure and Transport. Towards Zero Together. Website. <https://www.dit.sa.gov.au/towardszerotogether/Safer_behaviours/inattention>

> The instrument defines advertising matter to an extent that is necessary to support the offence under section 213SA of the road rules to reduce driver distraction and improve road safety.
>
> Alternative measures that are less restrictive are not considered equally effective in achieving these objectives. Increasing the permitted size of the advertising matter will increase the ability for the roadside advertisement to be distracting to passing drivers.
>
> A defined area of 1.5m^2 is proportionate as it recognises that there is an extensive range of advertising and information on vehicles in the ACT. The defined area will exclude smaller advertising that may not have the sole purpose of distracting drivers.
>
> The offence is limited in the road rules to require the vehicle to be parked in a designated place and have a sign attached. A sign is defined as board, device, plate or screen. The offence therefore allows for advertising to be conducted by other means. For example, by vehicles that advertise without a sign attached to the vehicle, such as wrapped vehicles, or vehicles that do not park in designated places.
>
> The need for some vehicles to display safety related information is recognised from a compliance and enforcement perspective. Imparting this type of information in a predominant position on the vehicle can be important for the safety of all road users. Examples include cautionary signs to warn of a driver unloading or a vehicle frequently stopping.
>
> ACT drivers will be informed of the offence and its application prior to its commencement. Sufficient time will be given to ensure that those business that are affected can adopt appropriate changes to any current roadside advertising practices.

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

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

Human Rights Issues

- **Disallowable Instrument DI2024-289 being the Urban Forest (Approval Criteria) Determination 2024 (No 1) made under section 20 of the *Urban Forest Act 2023* revokes DI2023-270 and determines the criteria for approving an activity that would, or may, damage a protected tree or be prohibited groundwork in a protected zone, for a protected tree or a declared site.**

2.49 This instrument, made under section 20 of the *Urban Forest Act 2023,* determines the criteria for approving an activity that would, or may, damage a protected tree or be prohibited groundwork in a protected zone, for a protected tree or a declared site.

2.50 The explanatory statement for the instrument discusses human rights issues, focussing on the right to life and the right to privacy and reputation, protected by sections 9 and 12 of the *Human Rights Act 2004*, respectively:

> **Human rights**
>
> The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among

other matters. In this case, the right to life is promoted and the right to privacy and reputation is limited.

The *Urban Forest Act 2023* promotes the right to life. It seeks to address the ACT Government's obligation to protect the health and wellbeing of its citizens through maintaining and enhancing the environmental conditions of Canberra society. The approval criteria support the Government to be able to assess proposed activities which may significantly affect the urban forest in order to permit those which are justified and limit those which are not.

The right to privacy and reputation provides for a person's ability to enjoy their home. The *Urban Forest Act 2023* limits this right by requiring occupiers of the land on which regulated and registered trees are located to apply to the ACT Government to conduct activities which may impact these trees. The approval criteria limit the ability of persons to undertake such activities where the proposed activities do not meet the approval criteria. The limitations on the right to privacy are considered proportionate to the legitimate purpose of tree protection and securing a resilient and sustainable ACT urban forest.

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

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

Human Rights Issues

- **Disallowable Instrument DI2024-292 being the Civil Law (Wrongs) The Law Society of the New South Wales Professional Standards Scheme 2024 made under section 4.10 of the *Civil Law (Wrongs) Act 2002* gives notice of the Professional Standards Council of New South Wales approval of The Law Society of New South Wales Professional Standards Scheme.**

2.53 This instrument gives notice of the approval, by the Professional Standards Council of New South Wales, of the Law Society of New South Wales Professional Standards Scheme. The explanatory statement for the instrument states:

Professional Standards Legislation (PSL) was developed on a national basis following the insurance crisis of 2002.

PSL, which has been passed by all states and territories, involves a trade-off whereby professionals' occupational liability for negligence is limited in return for commitments to higher standards of service delivery and insurance. These standards are monitored by the ACT Professional Standards Council, which operates on a national basis as a part of the Professional Standards Councils.

2.54 A Scheme is subject to tabling in, and disallowance by, the Legislative Assembly, under section 4.10 of Schedule 4 to the *Civil Law (Wrongs) Act 2002*, which provides:

4.10 Schemes are subject to disallowance

(1) The Minister must—

(a) give notice of—

(i) the council's approval of the scheme; or

(ii) for an interstate scheme—the approval of the scheme by the appropriate council for the jurisdiction in which the scheme was prepared; and

(b) include the approved scheme in the notice.

(2) A notice is a disallowable instrument.

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

(3) In this section, a reference to an interstate scheme includes a reference to an instrument amending an interstate scheme.

Note Subsection (3) applies s (1) and s (2) to instruments that amend an interstate scheme. Those subsections already apply, by virtue of s 4.14 (5), to instruments that amend a scheme that is not an interstate scheme.

2.55 The explanatory statement for the instruments discusses human rights issues, focussing on the right to work, protected by section 27B of the *human Rights Act 2004*:

Human rights implications

As noted above, when an interstate professional standards scheme has been approved by the appropriate council for the jurisdiction in which the scheme was prepared, the Attorney-General is required under schedule 4, section 4.10 of the *Civil Law (Wrongs) Act 2002* to give notice that the scheme.

The instrument engages the right to work (section 27B, *Human Rights Act 2004*).

The scheme is intended to promote high standards of service delivery and insurance for professionals and limit the occupational liability of a person to whom it applies.

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

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

Human Rights Issues

- **Disallowable Instrument DI2024-294 being the Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 4) made under section 19 of the** *Animal Diseases Act 2005* **revokes DI2024-206 and allows the Minister to make quarantine declarations to prevent the spread of the avian influenza disease.**
- **Disallowable Instrument DI2024-296 being the Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 5) made under section 19 of the** *Animal Diseases Act 2005* **revokes DI2024-203 and allows the Minister to make quarantine declarations to prevent the spread of the avian influenza disease.**

2.58 The instruments mentioned above, made under section 19 of the *Animal Diseases Act 2005*, are quarantine declarations, intended to prevent the spread of the avian influenza disease in the ACT. Both instruments supersede an earlier instrument. The explanatory statement for the first instrument mentioned above states:

> This Declaration is different to the *Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 1)* (DI2024-206) as the area declared is a contraction of the quarantine area immediately around the infected premises in accordance with the principles of the nationally-agreed management strategies for emergency animal diseases (AUSVETPLAN). There is increased confidence that the outbreak has been contained to the infected premises and therefore a contraction of the quarantine area is reasonable. However, there is still a risk associated with the infected premises which requires controlling through the restrictions imposed by this Declaration.

2.59 The explanatory statement for the second instrument mentioned above states:

> This instrument revokes the Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 4) (DI2024-294) and Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 5) (DI2024-296) (the revoked instruments) to remove the quarantine area as movement restrictions are no longer required in the area.

2.60 The explanatory statements for both instruments discuss human rights issues, focussing on the right to freedom of movement and the right to work, protected by sections 13 and 27B of the *Human Rights Act 2004*, respectively. The explanatory statement for the first instrument mentioned above states:

> **Human Rights**
>
> The Declaration engages and may limit the right to freedom of movement (s 13, HRA) and the right to work and other work-related rights in the *Human Rights Act 2004* (HRA). The limitations are reasonable and proportionate in accordance with the test in section 28 of the HRA. The measures in the Declaration have a critical purpose, which is to minimise the spread of the disease in the ACT.
>
> The limitation on the right to the freedom of movement only applies to someone who is intending to move a declared animal, declared animal products or equipment used in the care of birds, as defined within the Declaration. This limitation is necessary as the movement of birds and any object capable of transmitting the disease are heavily implicated in the spread of the disease. There are no other reasonably available and less restrictive alternatives to avoid the risk of the spread of the disease from one backyard to the next.
>
> The limitation on the right to work and other work related rights (s 27B, HRA) apply to the owners of poultry businesses whose premises fall within the restricted quarantine area. This limitation is necessary as the movement of birds and any object capable of transmitting the disease are heavily implicated in the spread of the disease. The Territory is working very closely with the affected businesses. There are provisions under the Act that provide compensation for animals, premises or other things that are destroyed to control and prevent the spread of the disease. There are no other reasonably available and less restrictive alternatives to avoid the risk of the spread of the disease.

2.61 There is a statement in the explanatory statement for the second instrument mentioned above in similar terms.

2.62 **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.**

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

Human Rights Issues

- **Disallowable Instrument DI2024-295 being the Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2024 made under section 27 of the** *Working with Vulnerable People (Background Checking) Act 2011* **revokes DI2021-4 and makes the Working with Vulnerable People Commissioner's Risk Assessment Guidelines.**

2.64 This instrument, made under section 27 of the *Working with Vulnerable People (Background Checking) Act 2011*, makes the Working with Vulnerable People Commissioner's Risk Assessment Guidelines. The explanatory statement for the instrument states:

> Section 27 of the *Working with Vulnerable People (Background Checking) Act 2011* (Act) requires the Commissioner for Fair Trading (Commissioner) to make Risk Assessment Guidelines (Guidelines) about how the Commissioner will conduct risk assessments for the purposes of determining whether a person poses an unacceptable risk of harm to a vulnerable person accessing a regulated activity or service.
>
> The Guidelines set out the process and factors for the Commissioner to consider when assessing individual applications for registration under the Act and conducting additional risk assessments on people who already hold a registration under the Act. The Act and Guidelines serve an important and legitimate objective of protecting vulnerable people from harm through careful risk-based screening of people seeking to work with a vulnerable person.

2.65 The Committee notes that the instrument refers to Australian Standard *AS ISO 31000:2018 Risk Management – Principles and Guidelines*:

> The risk assessment process described in the Guidelines is consistent with Australian Standard AS ISO 31000:2018 Risk Management – Principles and Guidelines (the risk Standard) which provides generic guidelines and establishes a number of principles for the identification and management of risk.
>
> It is not possible for the Guidelines to create a risk assessment framework that takes into account every possible scenario. The Guidelines outline the minimum mandatory considerations which the Commissioner must or may consider in assessing an individual's risk of harm.

2.66 The Committee also notes that the explanatory statement for the instrument states:

> Australian Standard AS ISO 31000:2018 Risk management–Guidelines (the Risk Standard) is a principle which is observed within the Guidelines however the Risk Standard does not in and of itself influence decision making.

2.67 The explanatory statement for the instrument goes on to discuss human rights issues, referring to the right to work, the right to privacy and the right to equality, protected by sections 27B, 12 and 8, respectively.

> **Human rights implications:**
>
> During the development of the Guidelines, due regard was given to their compatibility with human rights as set out in the *Human Rights Act 2004*.

> The human rights of vulnerable people, applicants, and registrants are core elements in the decision-making process. The Working with Vulnerable People background checking scheme and Guidelines engage and may limit rights of applicants and registrants, including the right to work, right to privacy, and right to equality. However, these limitations are reasonable and proportionate to achieve the important objective of protecting vulnerable people from serious harm.
>
> The Guidelines establish a clear process for individualised risk assessment to be conducted in relation to each application and registration; with the applicant/registrant given the opportunity to respond and provide submissions prior to a final decision being made, ensuring that the applicant/registrant's right to procedural fairness is respected and that other rights are not unreasonably limited.
>
> Tables 2 and 3 of the Guidelines represent the factors the Commissioner will consider when assessing the level of risk an applicant/registrant poses. These factors are drawn from the Act, and the Guidelines provide more detailed guidance as to how these factors are to be considered, ensuring that the assessment is clearly focused on determining the objective risk posed by an individual to vulnerable persons and that the reliability and relevance of evidence is carefully weighed.
>
> The Act and Guidelines contain other safeguards to minimise the restriction of rights of applicants and registrants. The Commissioner acknowledges the valuable contributions individuals with lived experience offer in specific roles and can issue role-based registrations. The least restrictive conditional registration addressing an identified risk posed by an applicant or registrant will be granted wherever possible; whilst ensuring the best interest of vulnerable people is the paramount consideration in any decision outcome in accordance with section 6A of the Act.
>
> When applying Schedule 3 of the Act, there are some serious offences which preclude registration in roles working with children or in the NDIS context as required by national schemes. These serious offences have a clear and rational link to the objective risk posed by a person. Where there is doubt about the categorisation of an offence the Guidelines provide that the Commissioner will consider the lowest categorisation of offence, thus allowing an applicant to make a case regarding exceptional circumstances and to allow registration where the person does not pose a risk to vulnerable people, following an individualised assessment.

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

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

Human Rights Issues

- **Disallowable Instrument DI2024-299 being the Animal Diseases (Exotic Disease Quarantine Area) Revocation 2024 made under section 19 of the** *Animal Diseases Act 2005* **revokes DI2024-294 and DI2024-296 and provides that a Minister can declare an exotic disease quarantine area.**

2.70 This instrument revokes the *Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 4)* (DI2024-294) and the *Animal Diseases (Exotic Disease Quarantine Area) Declaration 2024 (No 5)* (DI2024-296), considered earlier in this *Scrutiny Report*, removing the quarantine area provided for by those instruments, as movement restrictions are no longer required in the area.

2.71 The explanatory statement for the instrument addresses human rights issues:

> **Human rights**
>
> The limitations on the right to freedom of movement and the right to work and other work-related rights in the *Human Rights Act 2004*, sections 13 and 27B, were addressed in the explanatory statements for *the* revoked instruments. By revoking the instruments declaring the exotic disease quarantine areas, the limitation on these rights has been removed.

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

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

Human Rights Issues

- **Disallowable Instrument DI2024-300 being the Working with Vulnerable People (Background Checking) Declaration 2024 (No 2) made under section 12 of the** *Working with Vulnerable People (Background Checking) Act 2011* **exempts international visitors from registration under the working with Vulnerable People scheme, while engaged in a regulated activity for a purpose related to the FIBA tournament in the period 8 to 17 November 2024.**

2.74 This instrument exempts international visitors from registration under the Working with Vulnerable People (**WWVP**) scheme, while in Canberra for the tournament that qualifies teams for the FIBA Asia Cup and FIBA World Cup Youth events. The FIBA Under 15 Oceania Cup 2024 (the tournament) was hosted by Basketball Australia, being the national governing body for basketball, at the Australian Institute of Sport in Canberra from 11 to 16 November 2024. Nine national federations across Oceania participated in the tournament.

2.75 The exemption is provided on the basis that relevant persons are engaged in a “regulated activity”, for section 8 of the *Working with Vulnerable People (Background Checking) Act 2011*, for a purpose related to the tournament, in the period 8 to 17 November 2024, which includes pre-competition activities and the competition.

2.76 The explanatory statement for the instrument discusses human rights issues:

> **Human rights implications**
>
> During the development of this Instrument, due regard was given to its effect in relation to the compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

> The Declaration engages the right to liberty and security of person (section 18 of the HRA) in relation to vulnerable people accessing regulated activities regarding their vulnerability.
>
> The Declaration engages this right because the Commissioner for Fair Trading (the Commissioner) will engage in a higher level of risk by exempting international visitors.
>
> The Declaration does not limit this right because international teams and support personnel are subject to other regulatory obligations, including conditions of entry to Australia and the framework for safeguarding children and young people which applies to all activities organised or authorised by the national governing body for basketball. Exempt individuals are also limited to engaging in a regulated activity for a purpose related to the tournament.
>
> The Commissioner maintains the power to revoke the exemption in relation to any person, where the individual is subsequently assessed as an unacceptable risk of harm to children and vulnerable people. This reduces the risk of potential harm to children and vulnerable people and protects the rights and dignity of vulnerable people by limiting their exposure to people who pose a risk to their safety, welfare and wellbeing.

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

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

Subordinate Laws—Comment

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

- **Subordinate Law SL2024-18 being the Magistrates Court (Professional Engineers Infringement Notices) Regulation 2024 made under section 119 of the** *Magistrates Court Act 1930* **enables a professional engineer's officer to issue an infringement notice to a person who has committed a strict liability offence under the Professional Engineers Act.**

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

Right to presumption of innocence (subsection 22(1) HRA)

2.80 Part 3.8 of the *Magistrates Court Act 1930* creates a system of infringement notices for certain offences, as an alternative to prosecution. Under section 119 of that Act, regulations may be made prescribing offences as infringement notice offences. This subordinate law is made for section 119 and will allow infringement notices to be issued in relation to certain offences under the *Professional Engineers Act 2024*.

2.81 The Committee notes that it has become accustomed to the explanatory statements for subordinate laws made under section 119 of the Magistrates Court Act to discuss human rights, by reference to the rights in criminal proceedings, protected by section 22 of the *Human Rights Act 2004*. The particular issue is the reliance on strict liability offences, which goes against the presumption of innocence, enshrined in subsection 22(1) of the Human Rights Act.

2.82 The Committee notes that, for this subordinate law, the explanatory statement (which identifies 5 new strict liability offences) states:

Rights Limited

Rights in criminal proceedings

Section 22 (1) of the Human Rights Act provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Nature of the right and the limitation (s 28 (2) (a) and (c))

This regulation creates infringement notice penalties for strict liability offences in the Professional Engineers Act and as such, it might be seen to engage the presumption of innocence.

This regulation does not create any offences. This regulation introduces infringement notices for five strict liability offences in the Professional Engineers Act.

Strict liability offences engage section 22 (1) of the Human Rights Act as there is no requirement to establish a fault element, such as intention, recklessness, or negligence and the prosecution need only show that the defendant did the prohibited act.

Legitimate purpose (s 28 (2) (b))

The infringement notice scheme created by this regulation provides an additional compliance mechanism which allows an infringement notice to be issued to a person who has committed certain strict liability offences under the Professional Engineers Act. This supports the objective of the Professional Engineers Act which is to uphold the standards of practice for professional engineers in the ACT.

The human rights assessment for the Professional Engineers Act contained an assessment against section 22 (1) of the Human Rights Act for the strict liability offences created by that Act.

Rational connection between the limitation and the purpose (s 28 (2) (d))

Appropriate regulatory actions are essential to building community and industry confidence in the regulatory oversight undertaken by Government of professional engineers. Infringement notices are an important component of an effective regulatory framework by providing a deterrent to non-compliance and an alternative to prosecution. Effective infringement notice schemes minimise the cost of litigation for the Territory while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

Infringement notice penalties are typically applied to strict liability offences that arise in a regulatory context where, for reasons such as public safety and the public interest in ensuring compliance with regulatory schemes, a range of penalties are required.

The intention of introducing infringement notice penalties for strict liability offences introduced in the Professional Engineers Act is to support an effective regulatory scheme. Infringement notice penalties are just one enforcement action that the Professional Engineers Registrar can take in relation to breaches of the Professional Engineers Act. Other actions include taking regulatory action, such as licence suspension, under the Professional Engineers Act.

As with many regulatory frameworks involving registration, the inclusion of infringement notice penalties supports a regulatory framework that is intended to provide enhanced consumer protection outcomes for persons interacting with the professional engineering industry.

Proportionality (s 28 (2) (e))

Infringement notices are an important component of an effective regulatory framework by providing a deterrent to non-compliance and an alternative to prosecution. Effective infringement notice schemes minimise the cost of litigation for the Territory while offering people a choice concerning whether to accept a lesser penalty without admitting the offence or remaining liable to prosecution.

Under the Magistrates Court Act a person authorised to issue an infringement notice for an offence has discretion to decide whether to issue the notice. Also, a person issued with an infringement notice has the option to pay the notice, seek an extension of time to pay, enter into an infringement notice management plan, apply to have the infringement notice waived or withdrawn, or dispute the notice.

It should be noted that paying an infringement notice is not an acceptance of guilt. If a person declines to pay an infringement notice, the Professional Engineers Registrar has the discretion to either proceed with a prosecution or cease action.

Any breaches of the offence framework will be managed through an 'engage, educate and enforce' compliance process. This provides a safeguard to ensure the limitation on any rights is reasonable and proportionate. Should a breach occur, conduct that contravenes the legislative framework will be considered on a case-by-case basis and within its own context.

The Professional Engineers Registrar sits within Access Canberra and applies the Access Canberra Accountability Commitment and takes a risk-based approach to taking regulatory action.

The strict liability offences in the Professional Engineers Act are framed with clear criteria as to whether the offence has occurred. The clear framing of offences, as well as strong communication around the obligations of professional engineers are important safeguards on individual rights, and ensure the proportionality of introducing infringement notice penalties.

The offences and penalties are consistent with the ACT Government *Guide for Framing Offences* and are considered proportionate to the purpose of the Professional Engineers Act.

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

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

- **Subordinate Law SL2024-19 being the Education Amendment Regulation 2024 (No 2) made under the *Education Act 2004* amends the Education Regulation 2005 (the Regulation).**

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

2.85 This subordinate law is made for section 41 of the *Education Act 2004*. The explanatory statement states:

> Part 3.4, Section 41 of the *Education Act 2004* outlines the requirements for the composition of school boards. This section stipulates that schools prescribed under the Regulations must include two student members on their school board.
>
> Schedule 1 of the Regulation lists schools which must have student board members. Part 1.1 of the Schedule lists all ACT public high schools and Part 1.2 lists all ACT public colleges.
>
> An amendment to Schedule 1, Part 1.1 of the Regulation is required to list the name of Agnes Shea High School which is commencing operation in Term 1, 2025 to enable the appointment of student members to their school board.

2.86 The explanatory statement goes on to discuss human rights issues:

> **CONSISTENCY WITH HUMAN RIGHTS**
>
> The amendment to the Regulation does not engage human rights.

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

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

- **Subordinate Law SL2024-20 being the Road Transport (Alcohol and Drugs) Amendment Regulation 2024 (No 1) made under the** *Road Transport (Alcohol and Drugs) Act 1977* **prescribes the Securetec DrugWipe 3 S as a drug screening device for the purpose of the Act.**

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

2.89 This subordinate law is made under section 7B of the *Road Transport (Alcohol and Drugs) Act 1977* (Meaning of drug screening device), which provides for drug screening devices to be prescribed by regulation. A drug screening device is designed and made to indicate whether a prescribed drug is present in a person's oral fluid when a sample of the person's oral fluid is applied to the device.

2.90 This regulation prescribes the Securetec DrugWipe 3 S as a drug screening device for the purposes of section 7B of that Act. The existing prescribed device, the Securetec DrugWipe TWIN – also known as the DrugWipe II TWIN, continues to be prescribed.

2.91 The explanatory statement for the subordinate law discusses human rights issues:

> It is not considered that there are any human rights implications associated with this amendment.

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

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

- **Subordinate Law SL2024-21 being the Planning (General) Amendment Regulation 2024 (No 1) made under section 523 *Planning Act 2023* to increase regulatory transparency and certainty and assist the Authority to manage community expectations.**

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

Right to privacy and reputation (section 12 HRA)

2.94 This subordinate law amends the *Planning (General) Regulation 2023*. It relates to "unclean" households. The explanatory statement for the subordinate law states:

> The regulation [i.e the subordinate law] is made under section 523(2)(e) of the [*Planning Act* 2023] in relation to procedures for investigating a complaint about the controlled activity of failing to keep a leasehold clean.
>
> The Regulation:
>
> - includes the procedures for carrying out the [Territory Planning] Authority's functions to investigate a complaint about unclean leasehold under Chapter 12 (Development offences and controlled activities) and chapter 13 (Enforcement); and
> - sets out some of the circumstances in which a complaint should be referred to another entity.
>
> The regulation is enforced by the Authority, which conducts inspections and handles compliance issues.

2.95 The explanatory statement for the subordinate law goes on to discuss human rights issues, focussing on the right to privacy, protected by section 12 of the *Human Rights Act 2004*:

> **CONSISTENCY WITH HUMAN RIGHTS**
>
> The regulation engages section 12 (right to privacy and reputation) of the, in particular the right to privacy. This right protects individuals from unlawful or arbitrary interference with privacy and home.
>
> The *Planning Act 2023* promotes the right to privacy and encompasses the idea that individuals are entitled to have a separate area of autonomous space free from excessive government intervention and unsolicited intrusion by other individuals.
>
> The detailed human rights assessment for the *Planning Act 2023* is contained in its Explanatory Statement.
>
> Rights limited
>
> The regulation addresses unclean leaseholds and creates limitations on the right to privacy by typically inspecting individuals' homes to determine unclean items. Such inspections may intrude into an individual's private home, which may be seen as a breach of their right to privacy.
>
> Requirements to make specific changes or improvements to a property can also impact an individual's privacy by dictating how they must maintain their home.
>
> Legitimate purpose

The legitimate objective of the regulation is to promote community safety and hygiene as well as maintaining the overall quality of leasehold properties in the ACT.

Rational connection between the limitation and the purpose

The regulation balances the need for maintaining health and safety and community standards with the protection of individual rights. This involves ensuring that any interference with privacy is justified as being necessary for protecting public health or ensuring safety, is proportionate, and is accompanied by a fair process. This means that while addressing unclean conditions is a legitimate goal, inspections should not be excessively intrusive.

Proportionality

The Regulation specifies that an inspection will be undertaken from a public place near the leasehold, minimising intrusion from authorised inspectors.

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

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

- **Subordinate Law SL2024-22 being the Construction Occupations (Licensing) Amendment Regulation 2024 (No 1) made under section 129 of the** *Construction Occupations (Licensing) Act 2024* **establishes a new licencing framework for people installing and working on medical gas systems.**

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

Right to work (section 27B HRA)

2.98 This subordinate law, made under section 129 of the *Construction Occupations (Licensing) Act 2024*, establishes a new licencing framework for people installing and working on medical gas systems. In particular, it:

- introduces two new licence classes – medical gasfitter permit and medical gas technician permit – which enable the provision of medical gas services, under supervision;
- excludes medical gasfitting and medical gas technician work for a medical gas system used, or for use, only in the practice of veterinary science from the construction occupation of gasfitter and the requirement for a licence;
- establishes a condition that limits an individual licensee from undertaking medical gas technician work for a medical gas system that they have already undertaken medical gasfitting work on, in the case that they hold both classes of licence. This condition does not limit the ability for a company to employ two individuals to perform the separate roles of medical gasfitter and medical gas technician;
- makes other minor and technical amendments.

2.99 The explanatory statement for the subordinate law discusses human rights issues, focussing on the right to work, protected by section 27B of the *Human Rights Act 2004*:

> **CONSISTENCY WITH HUMAN RIGHTS**
>
> The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters.
>
> A detailed assessment of the human rights implications of the new licensing framework for medical gasfitters and medical gas technicians was contained in the explanatory statement to the amendment Act.
>
> It was recognised in that explanatory statement that the new licensing framework engaged the right to work (section 27B (1) of the *Human Rights Act 2004* (the HRA)) and may limit this right by restricting access to what was a previously self-regulated profession. Section 27B (1) of the HRA expressly provides that the practice of a trade, occupation or profession may be regulated by law.
>
> There are significant risks to health, safety and the economic wellbeing of individuals resulting from the provision of medical gas services where an individual does not have adequate qualifications, experience or follow an established verification process for the installation. The need to mitigate these risks has been recognised in the establishment of the requirement for demonstration of knowledge and experience.
>
> The introduction of two new permit classes (Medical Gasfitter permit and Medical gas Technician permit) supports people entering the industry that may be unable to demonstrate these requirements. The permits provide a pathway for applicants to obtain experience and qualifications who would otherwise not be eligible to work within this field under the licensing framework.
>
> The framework has been designed to be the least restrictive approach and with sufficient safeguards to ensure the limitation on the right to work can be considered reasonable and justifiable.
>
> The condition established in this regulation that limits an individual licensee from undertaking medical gas technician work for a medical gas system that they have already undertaken medical gasfitting work on, in the case that they hold both classes of licence, is considered reasonable and proportionate to the objectives of the medical gas licensed framework established by the amendment Act. The prevention of individuals commissioning their own work mitigates the likelihood that a poor installation can be certified and placed into operation putting the wider community at risk.

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

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

- **Subordinate Law SL2024-24 being the Guardianship and Management of Property Amendment Regulation 2024 (No 1) made under the** *Guardianship and Management of Property Act 1991* **allows for a trustee company or a private individual to be appointed as a represented person's financial manager in certain circumstances.**

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

Right to life (section 9 HRA)

Right to privacy and reputation (section 12 HRA)

2.102 This subordinate law amends the *Guardianship and Management of Property Regulation 1991*, partly in response to Recommendation 15 of the Auditor-General's Report No. 3 of 2023, Financial Management Services for Protected Persons. Recommendation 15 was that the PTG should seek an addition to section 6 of the Regulation to explicitly require a private manager to lodge information with respect to a represented person's expenditure.

2.103 The explanatory statement to the subordinate law contains a 4-page discussion of human rights issues, focusing on the right to life (which is promoted) and the right to privacy (which is limited), protected by sections 9 and 12 of the *Human Rights Act 2004*, respectively. In relation to the limitations on the right to privacy, the discussion concludes:

> It is clear from the [Auditor-General's] Report that increased oversight is necessary, which means that the right to privacy may be limited by the need to gather and examine additional information relating to a represented persons finances. Making the obligations of private managers explicit in legislation will ensure these obligations are clear and increase compliance. In this way, the amendments are the most reasonable and least restrictive approach to allow the PTG [Public Trustee and Guardian] and ACAT [ACT Civil and Administrative Tribunal] to carry out their functions more effectively under the GMP Act [*Guardianship and Management of Property Act 1991]*, and consequently ensure represented persons are protected from financial harm.

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

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

- **Subordinate Law SL2024-25 being the Building (General) Amendment Regulation 2024 (No 2), including Regulatory Impact Statement, made under section 152** *Building Act 2004***, supports implementation of reforms to strengthen building certification services in the ACT.**

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

Right to privacy (section 12 HRA)

Right to work (section 27B HRA)

2.106 This subordinate law is made under section 152 of the *Building Act 2004*. According to the explanatory statement for the subordinate law, it supports the implementation of reforms to strengthen building certification services in the ACT, by prescribing:

> - the requirement for a public servant to be nominated to attend mandatory inspections in relation to stages of building work; and

- matters that must be considered by the Construction Occupations Registrar in deciding whether a building is fit for occupancy and use.

2.107 The explanatory statement for the subordinate law contains a detailed discussion of human rights issues, focusing on the right to privacy and the right to work, protected by sections 12 and 27B of the *Human Rights Act 2004*, respectively. The discussion concludes:

> **Proportionality (s28 (e))**
>
> The [*Human Rights Act 2004*] permits reasonable and justifiable limits on human rights. The requirements in the regulation have been designed to be the least restrictive approach and with sufficient safeguards to ensure the limitation on the right to privacy and the right to work can be considered reasonable and justifiable.
>
> Delayed commencement of the new requirements is designed to ensure sufficient lead in time to support those working in the industry and the ongoing provision of services without disruption. The new requirements will be supported by engagement and advice to industry to ensure that certifiers understand the new requirements.
>
> Public servants have obligations under the *Public Sector Management Act 1994*, including obligations regarding conflict of interests and disclosing confidential information. As such, the nominated public servant is required to deal fairly with the property owner as they have the obligation to make all reasonable efforts to help public members to understand their entitlements, and any requirement the person is obliged to meet, under a territory law and other obligations.
>
> Other mechanisms in place to mitigate privacy concerns, include the property owner's right to access any information produced by the nominated public servant through the under the *Freedom of Information Act 2016*.

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

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

- **Subordinate Law SL2024-26 being the Magistrates Court (Building Infringement Notices) Amendment Regulation 2024 (No 2) made under section 119 of the** *Magistrates Court Act* **enables infringement notices to be issued for certain offences against the** ***Building Act 2024*****.**

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

Right to privacy (section 12 HRA)

Rights in criminal proceedings (section 22 HRA)

Right to work (section 27B HRA)

2.110 Part 3.8 of the *Magistrates Court Act 1930* creates a system of infringement notices for certain offences, as an alternative to prosecution. Under section 119 of that Act, regulations may be made prescribing offences as infringement notice offences. This subordinate law is made for section 119 and will allow infringement notices to be issued in relation to certain offences under the *Building Act 2004*.

2.111 The explanatory statement for the subordinate law contains a detailed discussion of human rights issues, focusing on the right to privacy, the rights in criminal proceedings and the right to work, protected by sections 12, 22 and 27B of the *Human Rights Act 2004*, respectively.

2.112 In relation to section 22, the explanatory statement states:

> Infringement notice schemes arguably engage section 22 of the Human Rights Act and engage the Scrutiny Committee terms of reference. As this regulation is removing infringement notice penalties not introducing new ones, it is not considered to engage section 22 of the Human Rights Act or engage the Scrutiny Committee terms of reference.

2.113 In relation to section 27B, the explanatory statement states:

> This regulation could be seen to engage and limit the right to work as demerit points are considered to be a form of disciplinary action under the *Construction Occupations (Licensing) Act 2004* (the COLA) that can lead to conditions being placed on a licence or licence suspension. These actions can result in limiting or preventing the licensee from undertaking work in scope of the licence held. A person's licence can also be suspended or disqualified under the COLA if the licensee has incurred 15 or more demerit points for a construction occupation within the previous 3 years.

2.114 In relation to section 12, the explanatory statement states:

> This regulation could also be seen to engage and limit the right to privacy as under the COLA, the Construction Occupations Registrar is required to keep a demerit points register. The COLA does not stipulate the specific information to be held on the demerit points register but this includes the licensee's name, licence number, business phone number and email and demerit points. This register is not publicly available, and section 102 of the COLA requires the Construction Occupations Registrar to ensure that information on the demerit points register is secure and only disclosed in accordance with that Act or another law in force in the ACT.
>
> In addition to the demerit points register, the Construction Occupations Registrar must maintain a public register of licensee information which includes details of any licence suspensions or disqualifications as a result of incurring demerit points and any conditions on a licence. Information about demerit points that do not meet the threshold for suspension or disqualification are not published on the public register.

2.115 The discussion concludes:

> Appropriate regulatory actions are essential to building community trust and confidence in the ACT's building and construction industry and in the regulatory oversight undertaken by Government. This promotes public safety and supports the Government's commitment to building quality and an industry that is held accountable for their actions and a regulatory system that provides greater protection to the community and lifts standards across the sector.
>
> There is a high expectation that the building and construction sector will comply with the requirements of the Building Act, and it is important that those

> requirements are enforced through appropriate penalties to protect the community. Appropriate penalties in this instance include demerit points which cannot currently be issued for offences for which an infringement notice can be issued by virtue of section 89 of the COLA. Demerit points can be issued under COLA for contraventions of that Act and any operational Act, such as the Building Act, and are considered to be the most effective deterrent for these offences and to hold industry accountable for their actions.
>
> Any breaches of the Building Act are managed through an 'engage, educate and enforce' compliance process. The Construction Occupations Registrar sits within Access Canberra and applies the Access Canberra Accountability Commitment and takes a risk-based approach to taking regulatory action. The Access Canberra Accountability Framework includes the Building and construction services compliance framework, which is publicly available.
>
> It is also an important consumer protection measure and part of the Government's commitment to an accountable and transparent building and construction sector to have information about disciplinary action taken against licensees publicly available. Publishing details about licensees and former licensees allows members of the public and industry to access information required to enable them to make informed choices when entering a relationship with a licensed construction professional. The information that is required to be available on the public register is limited to the minimum information required to enable consumers and industry to make informed decisions about whether to engage with a particular licensed construction professional. The particulars which are to be included in the public register are prescribed in the *Construction Occupations (Licensing) Regulation 2004*. Information on the register is published in accordance with section 107A of the COLA and is removed from the register in accordance with that provision. The demerit point system under COLA is well-established in the ACT and core enforcement tool for the regulator. Reducing the Regulator's ability to use this tool is not consistent with Government policy in relation to building quality in the ACT and enforcement and compliance models based on risk.

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

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

- **Subordinate Law SL2024-27 being the Controlled Sports Amendment Regulation 2024 (No 1) made under section 90 of the *Controlled Sports Act 2019* provides the Executives with regulation making powers, to make provision in relation to the conduct of controlled sports events.**

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

2.118 The explanatory statement for this subordinate law states:

> The purpose of the *Controlled Sports Amendment Regulation 2024 (No. 1)* is to amend the *Controlled Sports Regulation 2019* to clarify certain aspects of controlled sports events, per the below:

The inclusion of a section to clarify that sports or activities meeting certain criteria are not considered controlled sports to omit activities that have been inadvertently captured by the legislation.

The prescription of a controlled sports official role to be a 'support trainer' such that a registered trainer who is undertaking a second role at a controlled sports event does not require registration as a second official;

The amendment of the title of Part 3 of the regulation to reflect the correct terminology of the conduct of 'registered' events to correlate with Division 4.2 of the Act; and;

The substitution of a definition of a national sporting organisation to include a state sporting organisation recognised by a national sporting organisation.

The amendments focus on clarifying aspects of controlled sports events and do not detract from the purpose of the legislation. In addition, **these amendments will not engage the *Human Rights Act 2004* as they are related to operational aspects of the conduct of controlled sports events**. [emphasis added]

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

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

- **Subordinate Law SL2024-28 being the Urban Forest Amendment Regulation 2024 (No 1) made under the** *Urban Forest Act 2023* **supports operation of the *Urban Forest Act 2023.***

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

2.121 This subordinate law amends the *Urban Forest Regulation 2023* for applicants seeking to remove a protected tree, by (according to the explanatory statement:

- introducing an exemption from entering into a canopy contribution agreement (CCA) for homeowners who have 30% or more canopy cover and insufficient planting space due to existing trees on their block;
- introducing changes to CCA's for homeowners who have 30% tree canopy on their land if the decision-maker is satisfied that it is not feasible to plant all of the required replacement trees on site;
- providing that an owners' corporation for a units plan are taken to be homeowners for the purpose of entering in a CCA when the removal of a protected tree is on common property and not associated with development work; and
- making minor and technical amendments, to recast the existing provisions to introduce the above changes and support the operation of the provisions.

2.122 The explanatory statement discusses human rights issues:

CONSISTENCY WITH HUMAN RIGHTS

During the development of this regulation due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

> The Regulation does not impose any limitations on a person's human rights.
> A human rights compatibility statement for the requirement to enter in a Canopy Contribution Agreement was prepared prior to the commencement of the Act and the *Urban Forest Regulation 2023*.

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

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

- **Subordinate Law SL2024-29 being the Common Boundaries Regulation 2024 made under the** *Common Boundaries Act 1981* **supports the implementation of the homes swimming pool safety reforms scheme, which came into effect on 1 May 2024 through the** ***Building (Swimming Pool Safety) Amendment Act 2023*****.**

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

2.125 The explanatory statement for this subordinate law states:

> The regulation supports the implementation of the home swimming pool safety reforms scheme, which came into effect on 1 May 2024 through the *Building (Swimming Pool Safety) Amendment Act 2023*.
>
> The scheme requires home swimming pools and spas in the ACT to have a safety barrier that meets current safety standards by 1 May 2028, or have an exemption. There will be circumstances when a dividing fence will need to be repaired or replaced to comply with the safety standards prescribed under the scheme, where it makes up part of a pool safety barrier for a regulated swimming pool.
>
> The regulation prescribes matters to be taken into account by the ACT Civil and Administrative Tribunal (ACAT) in making a determination relating to a dividing fence which makes up part of a safety barrier for a regulated swimming pool.

2.126 The explanatory statement discusses human rights issues:

> **CONSISTENCY WITH HUMAN RIGHTS**
>
> The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters.
>
> The regulation does not engage any human rights under the *Human Rights Act 2004*. The human rights engaged by the implementation of the home swimming pool safety reforms scheme were addressed through the explanatory statement for the *Building (Swimming Pool Safety) Amendment Act 2023*.

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

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

- **Subordinate Law SL2024-30 being the Road Transport (Driver Licensing) Amendment Regulation 2024 (No 1) made under the** *Road Transport (Driver Licensing) Act 1999* **and the** *Road Transport (General) Act 1999* **improves road safety by strengthening the reporting and monitoring of heavy vehicle licence holders' fitness to drive and to improve the administration and efficiency of the Territory's road transport legislation.**

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

Right to recognition and equality before the law (section 8 HRA)

Right to life (section 9 HRA)

Right to privacy and reputation (section 12 HRA)

Right to a fair trial (section 21 HRA)

Right to work (section 27B HRA)

2.129 This subordinate law amends the *Road Transport (Driver Licensing) Regulation 2000* and the *Road Transport (General) Regulation 2000*. The explanatory statement for the subordinate law states that the amendments are in response to a 2022 Coroner's report.

2.130 The amendments:

- introduce a requirement for certain health practitioners to report to the Road Transport Authority (RTA) where a patient is applying for, or holds, a heavy vehicle class of licence and is considered to have a medical condition that is likely to impair their ability to drive a heavy vehicle safely;
- allow for the release of a person's driver licence information to a health practitioner upon their request to assist with their reporting requirements;
- introduce "authorised occupational therapists", to assist in the fitness to drive medical review process;
- allow for the release of reports or other relevant information for the purposes of assessing a person's fitness to drive to authorised occupational therapists or authorised medical reviewers;
- allow for the release of reports relating to an interstate licence holder's fitness to drive to be disclosed to the driver licence issuing interstate authority;
- update the definition of "allied professional practitioner", to align with registration requirements of the Health Practitioner Regulation National Law (ACT); and
- make minor technical amendments, to improve the administration and efficiency of the legislation relating to fitness to drive.

2.131 The explanatory statement for the subordinate law contains a detailed (11-page) discussion of human rights issues, focusing on the right to recognition and equality before the law, the right to life, the right to privacy, the right to a fair trial and the right to work, protected by sections 8, 9, 12, 21 and 27B of the *Human Rights Act 2004*, respectively. The right to life is promoted. All the other rights identified are limited.

2.132 The explanatory statement for the subordinate law states:

> The limitations on human rights in the Regulation are proportionate and justified in the circumstances because they are the least restrictive means available to achieve road safety. The achievement of road safety is an important objective for the ACT community.

2.133 The explanatory statement for the subordinate law goes on:

> Proportionality (s 28(2)(e))
>
> The amendments are proportionate in their purpose to protect public safety by introducing a number of human rights safeguards.
>
> Any person, including any health practitioner, can already report a driver to the RTA if they are concerned about the person's safe driving ability. The mandatory reporting requirement will apply to those health practitioners selected as most likely to have a clinical understanding of the medical condition and its effect on a person's ability to drive heavy vehicles safely.
>
> Reporting is limited to relevant medical conditions that the health practitioner believes are likely to impair a person's ability to drive heavy vehicles safely, where this belief is established from an examination or assessment of the person. The health practitioner may consider the treatment or management of the condition when determining whether the person's ability to drive heavy vehicles is impaired. The health practitioner may also refer to Austroads' Assessing Fitness to Drive for guidance, which is publicly available on the Austroads website. Additionally, reporting is only required where the illness, injury or incapacity is considered permanent or long-term. As noted in the Bill, this is in accordance with Austroads' Assessing Fitness to Drive where temporary conditions are not usually a matter for the licensing authority[9].
>
> Supporting guidelines will assist health practitioners in considering when a report might be necessary. That is, when the health practitioner considers the person's long term or permanent medical condition is likely to impair their ability to drive heavy vehicles safely. Guidelines will be publicly available on the ACT Legislation Register as a notifiable instrument. Within the parameters of the medical standards in Assessing Fitness to Drive, the guidelines provide the opportunity to further assist health practitioners with the reporting requirements under the Regulation and to guide reporting so that it supports road safety. Health practitioners are not required to refer to these guidelines to meet their obligations under the Regulation.
>
> If the health practitioner chooses to request licence details from the RTA prior to making a report, the scope of information that may be shared is limited only to the kind, class, conditions and status of a heavy vehicle licence held or applied for. This is the minimum information required to allow a practitioner to know whether a person holds or is applying for a heavy vehicle licence. It is not necessary for the RTA to share all of these details; only the information necessary to assist the

[9] Austroads. *Assessing Fitness to Drive*. Page 11. Available at https://austroads.com.au/__data/assets/pdf_file/0037/498691/AP-G56-22_Assessing_Fitness_Drive.pdf

practitioner in knowing whether to make a report or not will be shared. This allows for a health practitioner to confirm that a person does not hold and is not applying for a heavy vehicle licence, which would mean a report does not need to be made.

If a report is made, the health practitioner is not required to conduct any further detailed assessment of the medical condition or provide a detailed report to the RTA at that time. For example, health practitioners are not required to complete a Commercial Driver's Health Assessment to meet their reporting requirement. It is not a requirement that health practitioners are knowledgeable or experienced in assessing a person against the required medical standards in Assessing Fitness to Drive. Once notified, the RTA may require the person, by notification in writing, to complete any medical examinations or driving assessments as required to enable a comprehensive fitness to drive assessment against national standards.

The person's name, address, date of birth and nature of the illness, injury or incapacity is the minimum detail that will enable the person to be identified by the RTA and supports the commencement of a fitness to drive assessment by the RTA in the interests of road safety.

The Regulation introduces the human rights safeguard that the person to whom the report relates is aware of the report made by their health practitioner. Specifically, the Regulation requires that the health practitioner, as soon as practicable, takes all reasonable steps to tell the person to whom the information relates about the contents of a report to the RTA. The Regulation recognises that the health practitioner may advise the person that they intend to make a written report before it is made (for example, during a consultation) or after a report has been made.

Access Canberra has the delegated function from the RTA to maintain the driver licensing register and to issue, renew, cancel, suspend, or impose conditions on a licence. This includes the ability to impose eligibility requirements as well as require and assess evidence of compliance with the medical standards. Access Canberra is a business unit of the Chief Minister, Treasury and Economic Development Directorate and must comply with the Directorate's Privacy Policy. Access Canberra must also comply with the privacy and information management requirements prescribed in the *Information Privacy Act 2014*, the *Territory Records Act 2002*, and the *Health Records (Privacy and Access) Act 1997*.

2.134 The explanatory statement for the subordinate law states:

The Bill's human rights assessment is relevant in considering the Regulation's proportionality to a heavy vehicle driver's right to work and right to a fair trial.

As intended by the Bill, the Regulation integrates into the existing fitness to drive framework and the existing protections for people to obtain or hold a driver licence, together with the need to consider implications on the safety of all ACT road users. The RTA will uphold the national medical standards in Austroads' Assessing Fitness to Drive, including the more stringent commercial medical standards for heavy vehicle drivers of class MR and above. The RTA will continue to undertake assessments of a person's fitness to drive in accordance with existing standards and processes legislated by the Road Transport (Driver Licensing) Regulation 2000.

Drivers applying for a heavy vehicle class MR and above must currently meet the commercial medical standards to be issued the licence class, as well as complete a medical assessment every five years against these standards. Drivers of class MR and above would therefore be aware that there are required medical standards to safely drive these vehicles. Section 11 of the *Road Transport (General) Regulation 2000* prescribes decisions made by the RTA as internally reviewable decisions. Detailed in the Bill, reviewable decisions include requiring a person to provide evidence of compliance with the medical standards, or to refuse to renew, issue or vary a licence, or a decision to cancel, suspend or impose a condition on a licence. A person also has a right to apply to the ACT Civil and Administrative Tribunal to request a review on an internal reviewer's decision.

2.135 The explanatory statement for the subordinate law concludes:

The amendments are the least restrictive means to prevent serious injury and deaths on the ACT road network.

2.136 In relation to the right to privacy, the explanatory statement for the subordinate law states:

Proportionality (s28(2)(e)

The limitation on the right to privacy by health practitioners sharing personal information with the RTA and by the RTA sharing personal and health information with authorised occupational therapists, authorised medical reviewers, and interstate authorities is considered proportionate to the legitimate purpose.

The requirement for health practitioners to report a person to the RTA is not introducing a new limitation on the right to privacy as voluntarily reports are already possible.

The Regulation introduces the human rights safeguard that the person to whom the report relates is aware of the report made by their health practitioner. Specifically, the Regulation requires that the health practitioner, as soon as practicable, takes all reasonable steps to tell the person to whom the information relates about the contents of a report to the RTA. The Regulation recognises that the health practitioner may advise the person that they intend to make a written report before it is made (for example, during a consultation) or after a report has been made.

Authorised occupational therapists and authorised medical reviewers must be appointed by the RTA under section 78B and 78C of the Road Transport (Driver Licensing) Regulation 2000. This ensures only those necessary, who offer expertise with assessing a person's fitness to drive, can be provided personal and personal health information under section 69, 78 and 103AA.

The report or evidence that is shared with an authorised occupational therapist or authorised medical reviewer must be relevant to a person's medical fitness to drive a motor vehicle. Similarly, personal information can only be shared if it is reasonably necessary for the examination or assessment to be carried out.

Authorised occupational therapists and authorised medical reviewers provide advice to the RTA. The decision that affects a person's licence remains with the

RTA. The RTA will maintain the existing fitness to drive assessment processes set out in the Road Transport (Driver Licensing) Regulation 2000.

As outlined previously, Access Canberra must uphold the privacy policy and legislation requirements in the Chief Minister, Treasury and Economic Development Directorate's Privacy Policy, *Information Privacy Act 2014*, the *Territory Records Act 2002*, and the *Health Records (Privacy and Access) Act 1997*.

A decision to refer a report or other medical information relevant to a person's fitness to hold a licence to an authorised medical reviewer or authorised occupational therapist in accordance with section 78(4)(b), 69(8)(b), or 103AA(4)(a), is a reviewable decision under Section 11 of the Road Transport (General) Regulation 2000. The person whose information is released can seek an internal review of the decision by the RTA. A person also has a right to apply to the ACT Civil and Administrative Tribunal to request a review on an internal reviewer's decision.

The limitation on the right to privacy by disclosing information relevant to an interstate licence holder's medical fitness to drive a vehicle to the issuing interstate licensing authority is considered proportionate to the legitimate purpose. As outlined in the Bill:

- the fitness to drive medical standards in Austroads Assessing Fitness to Drive are applied nationally;
- sharing information because there is a genuine road safety risk is in the interests of protecting public safety;
- the ACT RTA does not have the power to impose conditions on an interstate driver licence and therefore sharing the information will ensure that appropriate conditional licences can be issued and allow ACT Policing to enforce these conditions when driving on the ACT road network; and
- interstate licensing authorities are regulated by privacy legislation applicable to personal and health information in that jurisdiction.

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

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

- **Subordinate Law SL2024-31 being the Gaming Machine (Offset Amounts) Amendment Regulation 2024 (No 1) made under section 178 of the** *Gaming Machine Act 2004* **prescribe duties payable on dutiable transactions under Chapters 2 and 3 of the** ***Duties Act 1999*** **as offset amounts.**

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

2.139 This subordinate law amends the *Gaming Machine (Offset Amounts) Regulation 2018*, to prescribe duties payable on dutiable transactions under Chapters 2 and 3 of the *Duties Act 1999* as offset amounts under section 10H of the *Gaming Machine Act 2004*. The explanatory statement for the subordinate law states:

> As a result of this Regulation clubs which obtained offsets from surrendering gaming machine authorisations under Part 2A of the *Gaming Machine Act 2004* are now able to offset duties that become payable when acquiring land such as a commercial or residential property.
>
> The *Duties Act 1999* imposes duties on transfers of land, known as dutiable property. These can include residential properties, land used for primary production purposes, commercial properties (such as childcare centres or office spaces), or mixed-use land, among other types. Allowing clubs to offset these duties will reduce barriers for clubs to expand the ways they can diversify their businesses and establish new revenue streams, away from gaming machine revenue. The Regulation will serve to lower cost barriers for clubs to expand into alternative revenue generation strategies.

2.140 The explanatory statement discusses human rights issues:

> CONSISTENCY WITH HUMAN RIGHTS
>
> The Regulation does not engage any human rights set out in the *Human Rights Act 2004* as the offset amounts are only accessible under a voluntary surrender agreement entered into by a gaming machine licensee and the Territory. Eligibility for offset amounts is restricted to gaming machine licensees that are clubs, and all club licensees operate within a corporate or incorporated association structure.

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

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

- **Subordinate Law SL2024-32 being the Taxation Administration Amendment Regulation 2024 (No 1) made under section 97 of the** *Taxation Administration Act 1999* **amends the information-sharing provisions in the *Taxation Administration Regulation 2004* to support the administration of the offsets under Part 2A of the *Gaming Machine Act 2004*.**

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

2.143 This subordinate law amends the *Taxation Administration Regulation 2004*, to prescribe the Gambling and Racing Commission, gaming officers, and the director-general of the administrative unit responsible for the *Gambling and Racing Control Act 1999* (currently the Justice and Community Safety Directorate) as persons prescribed under section 97(1)(e)(xix) of the *Taxation Administration Act 1999*. The amendment is made in connection with the *Gaming Machine (Offset Amounts) Amendment Regulation 2024 (No 1)*, to enable a tax officer to disclose to these prescribed persons information obtained in relation to the administration of the *Duties Act 1999* for the purpose of administering Part 2A of the *Gaming Machine Act 2004*.

2.144 The explanatory statement for the subordinate law states:

> The *Gaming Machine (Offset Amounts) Amendment Regulation 2024 (No 1)* prescribes duties payable on dutiable transactions under Chapters 2 and 3 of the *Duties Act 1999* as offset amounts under section 10H of the *Gaming Machine Act 2004*. As a result of this Regulation, clubs which obtained offset amounts from surrendering gaming machine authorisations under Part 2A of the *Gaming Machine Act 2004* are now able to offset duties that become payable when

> directly or indirectly acquiring dutiable property (or other dutiable transactions) or acquiring an interest in a landholder that owns land in the ACT.
> The *Duties Act 1999* is a 'tax law' as defined under section 4 of the *Taxation Administration Act 1999*. The *Duties Act 1999* imposes duties on transfers of dutiable property which can include land or other dutiable transactions such as a declaration of trust. Dutiable property includes land which includes residential, primary production or commercial properties. Duty is imposed on relevant acquisitions in landholders because ownership of land in the ACT is indirectly transferred. The Regulation will support information-sharing arrangements to allow a tax officer to disclose relevant information to prescribed persons to support the administration of offsets against duties under the *Duties Act 1999* by clubs using offset amounts under a voluntary surrender agreement entered into with the Territory under the Part 2A of the *Gaming Machine Act 2004*.

2.145 The explanatory statement discusses human rights issues:

> **CONSISTENCY WITH HUMAN RIGHTS**
>
> The Regulation does not engage any human rights set out in the *Human Rights Act 2004* as the offset amounts are only accessible under a voluntary surrender agreement entered into by a gaming machine licensee and the Territory. Eligibility for offset amounts is restricted to gaming machine licensees that are clubs, and all club licensees operate within a corporate or incorporated association structure.

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

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

- **Subordinate Law SL2024-33 being the Agents Amendment Regulation 2024 (No 1) made under the** *Agents Act 2003* **amends the *Agents Regulation 2003* to provide that the *Agents Act 2003* does not apply to community housing providers, and their employees, registered with the National Regulatory System for Community Housing.**

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

Rights in criminal proceedings (section 22 HRA)

Right to work (section 27B HRA)

2.148 This subordinate law amends the *Agents Regulation 2003*, to provide that the *Agents Act 2003* does not apply to community housing providers (**CHPs**), and their employees, registered with the National Regulatory System for Community Housing (**NRSCH**), when they are providing or offering to provide a tenancy management service. The explanatory statement for the subordinate law states:

> In practice, this will exempt registered CHPs and their employees from having to obtain a real estate agents licence.

2.149 The explanatory statement discusses human rights issues:

> **HUMAN RIGHTS IMPLICATIONS**
>
> This Regulation does not engage or limit rights under the *Human Rights Act 2004*. Exemption from the Agents Act will support registered CHPs to sustainably manage private rental properties for lease by people with very low, low, and moderate incomes. The Regulation indirectly supports the right to protection of the family and children and

the right to family and home under sections 11 and 12 of the Human Rights Act respectively by supporting CHPs to provide affordable housing effectively and efficiently.

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

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

National Laws—Comment

2.152 The Committee has examined the following National Laws and offers these comments on them:

- **Heavy Vehicle National Legislation Amendment Regulation 2024 (2024 No 126—Queensland) made under the Heavy Vehicle National Law as applied by the** *Heavy Vehicle National Law Act 2012* **and the law of States and Territories.**
- **Rail Safety National Law National Regulations (Fees) Amendment Regulations 2024 (2024 No 277—South Australia) made under section 55 of the** *Rail Safety National Law (Act) 2014*.

2.153 The Committee notes, with approval, that each of the National Laws mentioned above is accompanied by a (helpful) explanatory statement, as the Committee has consistently requested.

2.154 The Committee also notes that the explanatory statement for each National Law includes a statement that no human rights are affected by the National Law.

2.155 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for the National Laws mentioned above.**

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

Regulatory Impact Statements—No comment

2.157 The Committee has examined the regulatory impact statements for the following disallowable instruments and subordinate law and offers no comments on them:

- **Disallowable Instrument DI2024-269 being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Target) Determination 2024, including a regulatory impact statement made under section 7 of the** *Energy Efficiency (Cost of Living) Improvement Act 2012* **revokes DI2015-268, DI2020-219, DI2021-162, DI2022-150 and DI2023-154 and determines the energy savings targets for a specified compliance period.**

- **Disallowable Instrument DI2024-270 being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2024, including a regulatory impact statement made under section 11 of the** *Energy Efficiency (Cost of Living) Improvement Act 2012* **revokes DI2015-271, DI2020-220, DI2021-163, DI2022-151 and DI2023-155 and determines the energy savings contribution for a specified compliance period.**

- **Disallowable Instrument DI2024-271 being the Energy Efficiency (Cost of Living) Improvement (Penalties for noncompliance) Determination 2024, including a regulatory impact statement made under section 22 of the** *Energy Efficiency (Cost of Living) Improvement Act 2012* **revokes DI2015-272, DI2020-221, DI2021-164, DI2022-152 and DI2023-156 and determines the shortfall penalty for noncompliance for a specified compliance period.**
- **Disallowable Instrument DI2024-272 being the Energy Efficiency (Cost of Living) Improvement (Priority Household Target) Determination 2024, including a regulatory impact statement made under section 8 of the** *Energy Efficiency (Cost of Living) Improvement Act 2012* **revokes DI2017-251, DI2018-243, DI2019-75, DI2020-222, DI2021-165, DI2022-153 and DI2023-157 and determines the priority household target for the total energy savings within the compliance period.**
- **Subordinate Law SL2024-25 being the Building (General) Amendment Regulation 2024 (No 2), including Regulatory Impact Statement, made under section 152** *Building Act 2004*, **supports implementation of reforms to strengthen building certification services in the ACT.**

Ministerial response—Comment

- **Subordinate Law SL2024-16 being the Building and Construction Industry Training Levy Amendment Regulation 2024 (No 1) made under section 37 of the** *Building and Construction Industry Training Levy Act 1999* **amends the *Building and Construction Industry Training Levy Regulation 2001*.**

2.158 The Committee considered this subordinate law in *Scrutiny Report 45* of the 10th Assembly. In that *Scrutiny Report*, the Committee noted that the explanatory statement for the subordinate law contained no discussion of possible human rights issues raised by the subordinate law, to assist the Committee in its (expanded) role under section 38 of the *Human Rights Act 2004*.

2.159 The Committee drew the attention of the Legislative Assembly to the subordinate law, under (then) principle (9)(d) of the Committee's Resolution of Appointment, on the basis that the explanatory statement for the subordinate law did not meet the technical or stylistic standards expected by the Committee.

2.160 The (then) Minister for Skills and Training responded to the Committee's comments, in a letter dated 13 September 2024. The response states:

> The subordinate law does not engage any human rights contained in the *Human Rights Act 2004* as it makes a minor amendment to clarify the definition of 'approved training' within the *Building and Construction Industry Training Levy Act 1999*. Therefore, I do not believe there is a need for any discussions of possible human rights issues to be included in the explanatory statement.
>
> I have reminded the directorate of the expectations that human rights engagement is referenced within explanatory statements.

2.161 While the Committee is grateful for the (then) Minister reminding his directorate of the expectations that human rights engagement is referenced within explanatory statements, the Committee disagrees with the Minister's view that, as the subordinate law did not engage any human rights contained in the *Human Rights Act 2004*, there was no need for any discussions of possible human rights issues to be included in the explanatory statement. The Committee's firm view is that to assist the Committee in its (expanded) role under section 38 of the *Human Rights Act 2004*, it is imperative that the human rights impact be expressly addressed, even if the assessment is that there is no human rights impact. The Committee notes that this has proved to be a common practice, for other subordinate legislation.

Peter Cain MLA
Chair

January 2025