



Attorney-General
Minister for the Arts and Cultural Events
Minister for Building Quality Improvement
Minister for Business and Regulatory Services
Minister for Seniors and Veterans
Member for Ginninderra

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

Dear Mrs Jones

I write in response to the Standing Committee on Justice and Community Safety's Scrutiny Report No. 24 of 20 November 2018, which comments on the Royal Commission Criminal Justice Legislation Amendment Bill 2018 (the Bill).

I refer to the Committee's request for a response regarding comments on the Bill in relation to the right not to be held guilty of a criminal offence because of conduct that was not a criminal offence under Territory law when it was engaged in (section 25, *Human Rights Act 2004*). The comments concern proposed section 66B which creates a mechanism for the prosecution to allege offences constituted by a 'course of conduct'. The Committee notes the provision does not explicitly state whether it is intended to operate retrospectively.

I can advise that proposed section 66B does not raise an issue of retrospectivity. The course of conduct provision is not a new offence provision, and does not criminalise behaviour that was not previously considered criminal.

While it may appear that new section 66B which creates the ability to charge an offence alleged to be constituted by a course of conduct also engages the right at section 25(2) of the HR Act, the course of conduct provision allows the prosecution to prove existing offences by alleging evidence of a course of conduct. The prosecution will still only be indicting people on offences that currently or previously existed at the time of the offence. Section 66B, being procedural in nature, will apply to any complaints made following the commencement of the section.

The provision does not criminalise behaviour that was not previously criminal, nor does it amend any penalties either now or for future offences. For that reason, section 66B does not engage the right at section 25(2) as offenders will not be subject to heavier penalties or sentences that applied when the offence occurred.

ACT Legislative assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia
Phone +61 2 6205 2615 Email ramsay@act.gov.au



@Gordon_R_Ramsay



Gordon Ramsay MLA



Given that the issue of retrospectivity is not raised, I do not propose to table a revised Explanatory Statement.

I thank the Committee for its report and careful consideration of the Bill.

Yours sincerely

Gordon Ramsay MLA
Attorney-General