

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

SCRUTINY REPORT 10

2 November 2021

THE COMMITTEE

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ROLE OF COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

RESOLUTION OF APPOINTMENT

- (10) the Standing Committee on Justice and Community Safety is also to perform a legislative scrutiny role of bills and subordinate legislation by:
- (a) considering whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:
 - (i) unduly trespass on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny; and
 - (vi) consider whether any explanatory statement associated with legislation meets the technical or stylistic standards expected by the Assembly;
 - (b) reporting to the Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*;
 - (c) considering whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
 - (i) is in accord with the general objects of the Act under which it is made;
 - (ii) unduly trespasses on rights previously established by law;
 - (iii) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
 - (iv) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; and
 - (d) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Assembly;

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BILLS

BILLS—NO COMMENT

The Committee has examined the following bills and offers no further comment on them:

APPROPRIATION BILL 2021-2022

This Bill provides for appropriations for the 2021-22 financial year for the expenditure of public money by the Territory, including separate appropriations for each Territory entity.

APPROPRIATION (OFFICE OF THE LEGISLATIVE ASSEMBLY) BILL 2021-2022

This Bill provides for the appropriation of money for the 2021-22 financial year for the Office of the Legislative Assembly and officers of the Assembly (the ACT Integrity Commissioner, the Auditor-General and the Electoral Commissioner).

CITY RENEWAL AUTHORITY AND SUBURBAN LAND AGENCY AMENDMENT BILL 2021

This Bill amends the *City Renewal Authority and Suburban Land Agency Act 2017* to amend the definition of “land” in that Act to remove references to “leases” to ensure that, if needed in the future, the Agency has the legal authority to buy and sell land in NSW.

BILL—COMMENT

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

PLANNING AND UNIT TITLES LEGISLATION AMENDMENT BILL 2021

This Bill is an omnibus bill to enable minor legislative amendments related to the portfolio responsibilities of the Environment, Planning and Sustainable Development Directorate.

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

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

RIGHT TO A FAIR TRIAL (SECTION 21 HRA)

Part 11A of the *Land Titles Act 1925* provides for the approval and registration of building management statements for buildings which contain multiple crown leases. The statement acts as a binding agreement between the owners of the leases (i.e. any owners corporation of a units plan, each other lessee and any mortgagee in possession and sublessee). The Bill will amend the process of approval of these statements and any amendments by the Planning and Land Authority. The amendments make clear that the Authority has only a limited role in ensuring the statement meets the relevant formal requirements under the Act. The Authority does not consider the adequacy of the statement.

The Bill will also delete Part 18 of the Act to remove the ability to seek merits review in the ACT Civil and Administrative Tribunal of any decision by the Authority not to approve a building management statement. By removing an opportunity for review of a decision made by the Authority, the Bill may potentially limit the right to a fair trial protected by section 21 of the HRA. This potential limitation is recognised by the explanatory statement accompanying the Bill, and a justification for why it should be considered reasonable is provided using the framework in section 28 of the HRA. The Committee refers that statement to the Assembly, noting in particular the absence of any substantive basis on which approval of a building management statement can be denied and the opportunity provided to revise any application that doesn't meet the formal requirements of approval and reapply for approval.

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

SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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

- **Disallowable Instrument DI2021-203 being the Cemeteries and Crematoria (Governing Board) Appointment 2021 (No 1) made under sections 117 and 118 of the *Cemeteries and Crematoria Act 2020* and sections 78 and 79 of the *Financial Management Act 1996* appoints specified persons as chair, deputy chair and members of the ACT Public Cemeteries Authority Governing Board.**
- **Disallowable Instrument DI2021-204 being the Animal Welfare (Advisory Committee Member) Appointment 2021 (No 1) made under section 109 of the *Animal Welfare Act 1992* appoints specified persons as members of the Animal Welfare Advisory Committee.**
- **Disallowable Instrument DI2021-208 being the Nature Conservation (Scientific Committee) Appointment 2021 made under section 36 of the *Nature Conservation Act 2014* appoints specified persons as members of the Scientific Committee.**
- **Disallowable Instrument DI2021-213 being the Civil Law (Wrongs) Australian Property Institute Valuers Limited Scheme 2021 (No 1) made under section 4.10 of Schedule 4 of the *Civil Law (Wrongs) Act 2002* gives notice of the Professional Standards Council of Victoria's approval of the Australian Property Institute Valuers Limited Scheme.**

DISALLOWABLE INSTRUMENTS—COMMENT

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

COVID-19-RELATED INSTRUMENTS / INSTRUMENT RE-MADE SHORTLY AFTER BEING MADE

- **Disallowable Instrument DI2021-205 being the Medicines, Poisons and Therapeutic Goods (Vaccinations by Pharmacists) Direction 2021 (No 2) made under section 352 of the *Medicines, Poisons and Therapeutic Goods Regulation 2008* revokes DI2021-111 and provides that a pharmacist or intern pharmacist may administer vaccines without prescription if they comply with the Pharmacist Vaccination Standards imposed by the Chief Health Officer.**

- **Disallowable Instrument DI2021-207 being the Medicines, Poisons and Therapeutic Goods (Vaccinations by Pharmacists) Direction 2021 (No 3) made under section 352 of the *Medicines, Poisons and Therapeutic Goods Regulation 2008* revokes DI2021-205 and provides that a pharmacist or intern pharmacist may administer vaccines without prescription if they comply with the Pharmacist Vaccination Standards imposed by the Chief Health Officer.**

These instruments, made under section 352 of the *Medicines, Poisons and Therapeutic Goods Regulation 2008*, give directions in relation to the administration of a vaccine to a person, without prescription, by a pharmacist or intern pharmacist. Under subsections 352(1) and (2), a pharmacist or an intern pharmacist is only authorised to administer a vaccine to a person, without prescription, if the pharmacist or intern pharmacist administers the vaccine in accordance with these directions, made by the chief health officer.

The Committee notes that the explanatory statement for the first instrument mentioned above, made on 9 August 2021 and notified on the ACT Legislation Register on that same day, indicates that the instrument is part of the legislative response to the COVID-19 pandemic. It states:

Part B, section 1 of the Pharmacist Vaccination Standards has been amended to enable pharmacists or intern pharmacists to administer a COVID vaccine in line with the minimum patient age that COVID vaccine is approved or provisionally approved for use by the Therapeutic Goods Administration (TGA) and no less than 10 years of age (where a product is approved for use in persons under the age of 10 years).

This change serves to lower the previously imposed patient age limit of 16 years for pharmacist administration of COVID-19 vaccines. The change is intended to align with TGA approved age restrictions for the Pfizer and Moderna vaccines to support consumer access to these vaccines, which at the time of notification of these Standards are provisionally approved for use in persons aged 12 years of age and older.

The minimum patient age of 10 years for pharmacist administration of COVID vaccines imposed by these Standards is intended to align with the minimum patient age for pharmacist administration of an influenza vaccine in the Vaccination Standards and draws upon the established policy position that pharmacists may administer a subcutaneous vaccine to persons 10 years of age and over. The intent of establishing this age limit is to provide flexibility should a COVID vaccine be approved or provisionally approved for use in children younger than 12 years in the future.

The Committee notes that the explanatory statement goes on to indicate that a new subclause (c) has also been added to section 1 of Part B, “to require pharmacists to administer a COVID-19 AstraZeneca vaccine in accordance with the *Australian Technical Advisory Group on Immunisation (ATAGI) clinical guidance on use of COVID-19 vaccine in Australia*, which states the COVID-19 Cominarty (Pfizer) vaccine is preferred over the AstraZeneca vaccine for people aged less than 60 years”. The explanatory statement states:

The intent is to ensure pharmacists only administer the AstraZeneca vaccine to persons under the age of 60 years following preferential consideration of the use of the Pfizer vaccine and following an explanation by the pharmacist of the risks and benefits of the AstraZeneca vaccine and receiving written informed consent of the patient.

The explanatory statement goes on to state:

The condition which restricted pharmacists and intern pharmacists from administering the COVID-19 AstraZeneca vaccine to people who are 50 years of age or older is removed in this version of the Vaccination Standards. By removing this condition, both pharmacists and intern pharmacists will be able to administer the AstraZeneca vaccine subject to requirements to follow ATAGI clinical guidance and obtain written informed consent outlined in Part B, section 1 of the Standards.

The Committee notes that the second instrument mentioned above was made on 13 August 2021 (ie four days after the first instrument) and notified on the ACT Legislation Register on 16 August 2021. Section 3 of the second instrument revokes the first instrument mentioned above. The Committee notes that the notation on the ACT Legislation Register indicates that the first instrument was effective from 10-16 August 2021 and that the second instrument is effective from 17 August 2021.

The Committee notes that the second instrument is substantially similar to the first instrument. However, the Committee notes that the explanatory statement for the second instrument states:

The first note in Part B, section 1 of the Vaccination Standards has been amended in this version to rectify an error that was identified following notification of the preceding instrument DI2021-205. The minimum patient age referred to in the note for use of the Moderna vaccine has been corrected from 12 to 18 years, in accordance with TGA provisional approval for the vaccine.

This is correct. The Committee notes that the revised Note states (with the red and blue annotations indicating amendments made by the second instrument):

Note: On the date of effect of these Standards, the Therapeutic Goods Administration (TGA) has provisionally approved ~~both~~ the Comirnaty (Pfizer) ~~and Moderna~~ COVID-19 ~~vaccines~~vaccine for use in persons greater than or equal to 12 years of age. ~~The covid-19~~~~(Both the~~ chadox1-s) (AstraZeneca) ~~vaccine~~ ~~is~~and Moderna Spikevax (elasomeran) COVID-19 vaccines are provisionally approved by the TGA for use in persons greater than or equal to 18 years of age.

The Committee notes that there are some further changes to the explanatory statement for the first instrument that do not appear to have been identified in the explanatory statement for the second instrument. The Committee notes that the following sentence appears in the explanatory statement for the first instrument:

The intent of establishing this age limit is to provide flexibility should a COVID vaccine be approved or provisionally approved for use in children younger than 12 years in the future.

The Committee notes that, in the explanatory statement for the second instrument, “12 years” is amended to “10 years”. The Committee also notes that the paragraph in the explanatory statement for the first instrument (already quoted above) that starts ... “The condition which restricted pharmacists and intern pharmacists from administering the COVID-19 AstraZeneca vaccine to people who are 50 years of age or older ...” is omitted from the explanatory statement for the second instrument.

The Committee seeks the Minister’s advice as to the significance (if any) of these amendments to the explanatory statement for the second instrument mentioned above.

This comment requires a response from the Minister. The Committee would be grateful if the Minister could respond before 25 November 2021, when the Legislative Assembly’s capacity to move to disallow the instruments will expire.

HUMAN RIGHTS ISSUES

- **Disallowable Instrument DI2021-206 being the Road Transport (Safety and Traffic Management) Traffic Offence Detection Device Approval 2021 (No 1) made under subsection 13(1) and paragraph 15(1)(c) of the Road Transport (Safety and Traffic Management) Regulation 2017 approves certain speed measuring devices as traffic offence detection devices.**

This instrument, made under subsection 13(1) and paragraph 15(1)(c) of the *Road Transport (Safety and Traffic Management) Regulation 2017* approves certain speed measuring devices as traffic offence detection devices.

The Committee notes that the explanatory statement for the instrument discusses the human rights implications of the instrument, by reference to the right to privacy set out in section 12 of the *Human Rights Act 2004*. The Committee notes that, over the course of three pages, the explanatory statement discusses the nature of the rights and also justifies the limitation of the right, by reference to section 28 of the Human Rights Act. Included in that justification is the following statement:

... the right to privacy is enhanced by this instrument as the requirements for the operation of traffic offence detection devices protect personal privacy by setting safeguards in relation to minimum timeframes for the deletion of images, requirements for recording of image files and verification requirements for image files.

The discussion of human rights implications concludes by listing safeguards that were incorporated into the relevant legislative regime by the *Road Transport (Safety and Traffic Management) Amendment Act 2021*, which was passed by the Legislative Assembly on 22 June 2021. The explanatory statement also states that the instrument ...

... does not approve any new devices for use on ACT roads. Each device approved in Schedules 1 to 3 was previously approved under the *Road Transport (Safety and Traffic Management) Regulation 2017*, prior to the commencement of the amendment Act.

The Committee notes that it commented on the Road Transport (Safety and Traffic Management) Amendment Bill 2021 in *Scrutiny Report 5* of the 10th Assembly (26 May 2021). In that Scrutiny Report, the Committee raised various issues with the Bill, including the legislative re-arrangement that is reflected in this instrument. The Minister for Transport and City Services responded to those comments in a letter dated 17 June 2021. The Committee notes that it made no further comment in relation to the Minister's response.

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

This comment does not require a response from the Minister.

COVID-19-RELATED INSTRUMENT

- **Disallowable Instrument DI2021-209 being the Liquor (COVID-19 Emergency Response—Permit Fee Waiver) Declaration 2021 (No 3) made under section 35 of the Liquor Regulation 2010 waives specified application fees which allow on licensees to receive a commercial permit to sell liquor for takeaway consumption and commercial and non-commercial permit-holders to amend their permits to reschedule event dates.**

This instrument, made under section 35 of the *Liquor Regulation 2010*, waives certain application fees for licensees under the *Liquor Act 2010*. Section 35 of the *Liquor Regulation* expressly allows the Commissioner for Fair Trading to waive or reduce fees in relation to licences or permits, if the Commissioner considers that the waiver or reduction “is appropriate because of the financial impact of the COVID-19 emergency on the business carried on under the licence or permit”. The explanatory statement for the instrument indicates that the instrument is made “in light of the evolving public health situation in the Australian Capital Territory”. The explanatory statement particularly refers to the Public Health (Lockdown Restrictions) Emergency Direction 2021 (No 4) [NI2021-496], operational from 12:00 pm on 18 August 2021 to 5 pm on 2 September 2021.

The explanatory statement states:

This instrument provides economic support to licensees selling liquor for consumption on premises and liquor permit-holders with disrupted events. Economic support is provided through the waiver of application fees which allow on licensees to receive a commercial permit to sell liquor for takeaway consumption and commercial and non-commercial permit-holders to amend their permits to reschedule event dates.

This comment does not require a response from the Minister.

HUMAN RIGHTS ISSUES / ACCESS TO MATERIAL RELIED UPON BY INSTRUMENTS

- **Disallowable Instrument DI2021-210 being the Utilities (Technical Regulation) (Light Rail Regulated Utility (Electrical) Network Code) Approval 2021 made under section 14 of the *Utilities (Technical Regulation) Act 2014* revokes DI2016-18 and provides the code for technical requirements for a light rail regulated utility that provides a light rail regulated utility service.**
- **Disallowable Instrument DI2021-211 being the Utilities (Technical Regulation) (Light Rail Regulated Utility (Electrical) Network Boundary Code) Approval 2021 made under section 14 of the *Utilities (Technical Regulation) Act 2014* revokes DI2016-19 and defines boundaries between a light rail regulated utility (electrical) and other networks.**
- **Disallowable Instrument DI2021-212 being the Utilities (Technical Regulation) (Regulated Utility Coordination Code) Approval 2021 made under section 14 of the *Utilities (Technical Regulation) Act 2014* revokes DI2016-20 and clarifies the responsibilities of regulated utilities by facilitating coordination amongst regulated utilities and any light rail regulated utility network.**
- **Disallowable Instrument DI2021-217 being the Utilities (Technical Regulation) (Gas Safety and Network Operation Code) Approval 2021 made under section 14 of the *Utilities (Technical Regulation) Act 2014* approves the Gas Safety and Network Operation Code 2021.**
- **Disallowable Instrument DI2021-219 being the Utilities (Technical Regulation) (Gas Service and Installation Code) Approval 2021 made under section 14 of the *Utilities (Technical Regulation) Act 2014* revokes DI2013-172 and approves the Gas Service and Installation Code 2021.**
- **Disallowable Instrument DI2021-220 being the Utilities (Technical Regulation) (Gas Metering Code) Approval 2021 made under section 14 of the *Utilities (Technical Regulation) Act 2014* approves the Gas Metering Code 2021.**

Each of the six instruments mentioned above approves a “technical code”, under section 14 of the *Utilities (Technical Regulation) Act 2014*. The first three instruments mentioned above relate to the light rail network and the latter three instruments relate to gas safety, service, installation and metering.

The Committee notes that the explanatory statements for each of the instruments mention human rights implications and the Committee’s legislative scrutiny role. The Committee notes that, in each case, the explanatory statement states:

This instrument does not engage or limit any person’s human rights.

This instrument is consistent with the Terms of Reference for the Legislative Assembly’s Standing Committee on Justice and Community Safety (Legislative Scrutiny Role). In particular, the instrument:

- is made under a ministerial power found in the Act.
- is in accordance with the general objects of the Act under which the instrument is made.
- does not unduly trespass on rights previously established by law; and
- does not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

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

This comment does not require a response from the Minister.

The Committee notes that the explanatory statements for the latter three instruments mentioned above also address the issue of access to the various Australian/New Zealand Standards (AS/NZS) relied on by the instruments. For example, the explanatory statement for the fifth instrument mentioned above [DI2021-217] states:

The Code applies to a utility licensed to distribute gas through a gas distribution network and/or gas transmission network within the ACT. It provides that a utility must conform, at a minimum, with the following relevant national standards:

- (a) AS/NZS 4645 Gas distribution networks
- (b) AS/NZS 2885 Pipelines gas and liquid petroleum
- (c) AS 4564 Specification for general purpose natural gas

These standards may be purchased at www.standards.org.au. The copyright in Australian Standards is owned by a non-government organisation, Standards Australia. While it may be prohibitive for members of the public to purchase these standards, undue expense is minimised as the only parties materially affected by the Code are regulated utilities. Ensuring the safe, reliable and efficient delivery of utility services, in conformance with Australian Standards or Australian/New Zealand Standards is core business for the utilities. The public can access copies of many national standards at the National Library of Australia.

The Committee notes that the explanatory statements for the fifth and sixth instruments mentioned above contain similar statements, referencing various other AS/NZS.

The Committee notes that the reliance on AS/NZS expressly authorised by section 14 of the Utilities (Technical Regulation) Act, which provides:

14 Technical codes—approval

- (1) The Minister may approve a technical code as recommended by the technical regulator if the Minister is satisfied on reasonable grounds that—

- (a) section 13 has been complied with; and
- (b) the technical code is—
 - (i) consistent with the objects of this Act; and
 - (ii) not inconsistent with another technical code.
- (2) An approved technical code may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.
- (3) The Legislation Act, section 47(6) does not apply in relation to an AS or AS/NZS applied, adopted or incorporated under subsection (2).

Note An AS or AS/NZS does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)). An AS or AS/NZS may be purchased at www.standards.org.au.

- (4) An approval is a disallowable instrument.

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

As indicated by the Note to subsection 14(3), above, without the disapplication of subsection 47(6) of the *Legislation Act 2001*, any AS/NZS relied upon by an instrument made under section 14 of the Utilities (Technical Regulation) Act 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 subsection 47(6) of the Legislation Act and seeks an explanation as to why disapplication is necessary, in a particular case. In this particular case, the disapplication comes from section 14 of the Utilities (Technical Regulation) Act, so an explanation is not required in relation to the particular instruments made under that section.

For the fourth, fifth and sixth instruments mentioned above, the Committee notes the statement, in the various explanatory statements, that “[t]he public can access copies of many national standards at the National Library of Australia.”

The Committee considers that it would be preferable if the explanatory statements for these instruments indicated whether, in fact, the particular AS/NZS relied on by the instruments can be accessed at the National Library of Australia. Given that a relatively small number of AS/NZS are relied upon, by these instruments, this would not seem to be an onerous requirement.

This comment does not require a response from the Minister.

MINOR DRAFTING ISSUE

- **Disallowable Instrument DI2021-215 being the Government Procurement (Non-Public Employee Member) Appointment 2021 (No 1) made under section 12 of the *Government Procurement Act 2001* appoints a specified person as a part-time non-public employee member of the Government Procurement Board.**

This instrument appoints a specified person as a “part-time non-public employee member” of the Government Procurement Board. The appointment is made under section 12 of the *Government Procurement Act 2001*. The Committee notes that section 12 provides only for the appointment of “members”, not “part-time members”. As the Committee noted in *Scrutiny Report 1* of the 10th Assembly (2 February 2020), in relation to two earlier instruments of appointment ([DI2020-270] and [DI2020-271]), the concept of members being “part-time” comes from section 11 of the Act.

This comment does not require a response from the Minister.

SUBORDINATE LAWS—COMMENT

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

HUMAN RIGHTS ISSUES

- **Subordinate Law SL2021-20 being the Births, Deaths and Marriages Registration Amendment Regulation 2021 (No 1) made under section 70 of the *Births, Deaths and Marriages Registration Act 1997* amends the *Births, Deaths and Marriages Registration Regulation 1998* to allow stated persons with parental responsibility to give consent to an application made by a transgender, intersex or gender diverse young person.**

This subordinate law amends the *Births, Deaths and Marriages Registration Regulation 1998* (BDMR Regulation). According to the explanatory statement, the amendments made by the subordinate law ...

... prescribe circumstances where stated persons with parental responsibility may provide consent to an application made by transgender, intersex or gender diverse young people under the BDMR Act:

- to change their given names under section 19A(b)(ii)(C); and/or
- to change registered sex under section 24(1)(a)(ii)(C); or
- for a recognised details certificate under section 29A(1)(a)(ii)(C).

The Committee notes that explanatory statement for the subordinate law considers the human rights implications of the subordinate law:

The [subordinate law] will ensure that young people who are in out of home care or other circumstances where parental responsibility has been re-allocated, will be able to access pathways for change of given name and registered sex with the consent of the people with long term parental responsibility in the same way as young people in the care of their birth parents.

The inability for transgender, intersex and gender diverse young people to obtain identification documents that accurately reflect their gender identity can create a range of difficulties and increases the chance of the transgender, intersex and gender diverse young people being subjected to discrimination, prejudice or bullying. Accordingly, the BDMR Amendment Regulation engages and promotes a number of human rights including:

- right to equality and non-discrimination;
- rights of children;

- right to privacy;
- right to life; and
- right to protection of family.

The explanatory statement concludes:

The [subordinate law] does not limit any rights under the HR Act.

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

This comment does not require a response from the Minister.

HUMAN RIGHTS ISSUES

- **Subordinate Law SL2021-21 being the Crimes (Sentencing) Amendment Regulation 2021 (No 1) made under the *Crimes (Sentencing) Act 2005* amends the name of the Canberra Men's Centre to EveryMan Australia Incorporated in the regulation to reflect the organisation's current trading name.**

This subordinate law amends section 3 of the *Crimes (Sentencing) Regulation 2006*, to reflect the change of name of the Canberra Men's Centre to "EveryMan Australia Incorporated". The effect of the amendment is that the re-named entity is a "criminal justice entity", for subsection 136(4) of the *Crimes (Sentencing) Act 2005*. The explanatory statement for the subordinate law states:

Section 136 of the Crimes (Sentencing) Act provides that criminal justice entities may exchange information contained on their records relating to an offence, including an alleged offence. It does not compel an entity to exchange information with another entity but rather creates an authority for criminal justice entities to share information to the extent of their responsibilities.

Section 136 was enacted to address concerns that some agencies had with sharing information with each other on the basis that they might be in breach of their obligations under the National Privacy Principles contained in the *Privacy Act 1988* (Cth) (now the Australian Privacy Principles), and that sharing information might otherwise prejudice the effective operation of their agency.

The explanatory statement discusses the human rights implications of the subordinate law. It states:

It is unlikely that the amending regulation will engage [*Human Rights Act 2004*] rights as it only updates the details of an existing criminal justice entity already prescribed for the purposes of s 136(4) of the *Crimes (Sentencing) Act 2005*, rather than assigning new rights or interests.

However the organisation's prescription as a criminal justice entity, and the information sharing scheme provided for under s 136 of the *Crimes (Sentencing) Act 2005*, have previously been found to engage and limit Section 12 – Right to privacy and reputation.

The discussion concludes:

The purpose of s 136 of the Crimes (Sentencing) Act, and related regulation, is to provide authority for criminal justice entities to exchange information to the extent of their responsibilities and allow for improved information sharing with other agencies in the criminal justice system, which is important and necessary. The limitation on the right to privacy related to the disclosure of personal information between criminal justice entities is justified and reasonable for this purpose.

Additionally, the engagement of the right is limited as the information sharing provisions are restricted and controlled by the Act. Prescribing the entities that can receive information ensures that the disclosure does not happen unlawfully or arbitrarily. This is the least restrictive means of supporting the purposes of the Act and the efficient and effective operation of information sharing between criminal justice entities. For these reasons, the amendment is a proportionate limitation on the right to privacy.

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

This comment does not require a response from the Minister.

HUMAN RIGHTS ISSUES / COVID-19-RELATED INSTRUMENT

- **Subordinate Law SL2021-22 being the Working with Vulnerable People (Background Checking) Amendment Regulation 2021 (No 1) made under the *Working with Vulnerable People (Background Checking) Act 2011* provides for further exemptions of Australian Defence Force personnel and public employees of Commonwealth, state or territory entities from registration under the Working with Vulnerable People Scheme, while engaged in regulated activities on behalf of the Territory for the purposes of supporting the COVID-19 emergency.**

This subordinate law amends the *Working with Vulnerable People (Background Checking) Amendment Regulation 2012*, “to provide for further exemptions from [Working With Vulnerable People] registrations for Australian Defence Force (ADF) personnel, and public employees of Commonwealth, State or Territory entities to support the ACT in the ongoing response to the COVID-19 emergency”. The explanatory statement for the subordinate law states:

ADF personnel and public employees are not ordinarily exempt from registration under the WWVP scheme. However, during the COVID-19 emergency, the ACT Government may request support be provided to the Territory. This means ADF personnel and other public employees may be required to directly interact with children and other vulnerable people in the ACT. An exemption from WWVP registration is required to assist their ability to engage in regulated activities in the ACT.

The explanatory statement discusses human rights implications of the subordinate law, by reference to the right to liberty and security of the person, protected by section 18 of the *Human Rights Act 2004*. The explanatory statement states:

The Regulation engages this right because the Commissioner for Fair Trading (the Commissioner) will engage in a higher level of risk by exempting ADF personnel and public employees to provide the workforce capacity required to deliver an effective and urgent response to the public health emergency.

The explanatory statement states that the subordinate law does not limit this right

... because ADF personnel and public employees are subject to other regulatory obligations, including police checks and security clearances. Exempt individuals are also limited to engaging in regulated activities for the purposes of supporting the ACT Government’s response to the COVID-19 public health emergency. In addition, these individuals are subject to all other reporting obligations.

The explanatory statement goes on:

The Commissioner maintains the power to revoke the exemption in relation to any person during the period of a public health emergency, 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.

It is also important to note that the explanatory statement points out:

The new amendment will expire after the cessation of the public health emergency and by notification of the responsible Minister.

This limitation is reflected in new subsection 4A(4) of the Working with Vulnerable People (Background Checking) Amendment Regulation, inserted by section 4 of this subordinate law.

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

This comment does not require a response from the Minister.

RESPONSES

GOVERNMENT RESPONSES

The Committee has received responses from:

- The Chief Minister, dated 29 September 2021, in relation to comments made in Scrutiny Report 8, concerning the COAG Legislation Amendment Bill 2021.

[This response¹](#) can be viewed online.

- The Minister for Transport and City Services, dated 1 October 2021, in relation to comments made in Scrutiny Report 8, concerning the Rail Safety National Law National Regulations (Modification of FOI Act) Variation Regulations 2021.
- The Minister for Transport and City Services, dated 27 October 2021, in relation to comments made in Scrutiny Report 9 concerning the Heavy Vehicle National Legislation Amendment Regulation 2021.

[These responses²](#) can be viewed online.

¹ https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/JCS_Scrutiny/responses-to-comments-on-bills.

² https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/JCS_Scrutiny/responses-to-comments-on-subordinate-legislation.

PRIVATE MEMBER'S RESPONSE

The Committee has received a response from:

- Ms Lee (Leader of the Opposition), dated 5 October 2021, in relation to comments made in Scrutiny Report 4 concerning the Crimes (Stealthing) Amendment Bill 2021.

[This response³](#) can be viewed online.

The Committee wishes to thank the Chief Minister, the Minister for Transport and City Services and Ms Lee for their helpful responses.

Jeremy Hanson MLA
Chair

2 November 2021

³ https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/JCS_Scrutiny/responses-to-comments-on-bills.

OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

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

- **Report 7, dated 4 May 2021**
 - Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2) [response required prior to the Bill being debated].

- **Report 9, dated 28 September 2021**
 - Disallowable Instrument DI2021-186 Racing Appeals Tribunal Appointment 2021 (No 1) [response required before 11 November 2021, when the Legislative Assembly's capacity to move to disallow the instruments will expire].
 - Disallowable Instrument DI2021-187 Racing Appeals Tribunal Appointment 2021 (No 2) [response required before 11 November 2021, when the Legislative Assembly's capacity to move to disallow the instruments will expire].
 - Disallowable Instrument DI2021-196 ACT Teacher Quality Institute Board Appointment 2021 (No 1) [response required before 11 November 2021, when the Legislative Assembly's capacity to move to disallow the instruments will expire].
 - Disallowable Instrument DI2021-197 ACT Teacher Quality Institute Board Appointment 2021 (No 2) [response required before 11 November 2021, when the Legislative Assembly's capacity to move to disallow the instruments will expire].
 - Disallowable Instrument DI2021-201 Public Trustee and Guardian (Investment Board) Appointment 2021 (No 2) [response required before 11 November 2021, when the Legislative Assembly's capacity to move to disallow the instruments will expire].