

Ms Chiaka Barry MLA  
Chair  
Standing Committee on Legal Affairs (Legislative Scrutiny Role)  
By email: [Scrutiny@parliament.act.gov.au](mailto:Scrutiny@parliament.act.gov.au)

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01 September 2025

Dear Ms Barry

I am writing in response to comments made by the Standing Committee on Legal Affairs (Legislative Scrutiny Role) in Scrutiny Report 8 about the Justice and Community Safety Amendment Bill 2025 (No 2).

I thank the Committee for its consideration of the amendments in the Bill. I provide the following responses in relation to the Committee's comments on the amendments to the:

- *Crimes (Sentencing) Act 2005*, new section 80ZBA
- *Discrimination Act 1991*, Dictionary
- *Information Privacy Act 2014*, new section 44B
- *Residential Tenancies Act 1997*, Dictionary, and
- *Retirement Villages Regulation 2013*, Schedule 1, section 1.15.

I **enclose** a Revised Explanatory Statement addressing the Committee's recommendations as appropriate. The Government will present this to the Legislative Assembly.

*Amendments to the Crimes (Sentencing) Act 2005*

The Committee noted that new section 80ZBA uses the term "Supreme Court", while the Dictionary to the Act currently defines the term "court" to mean the "Supreme Court". This reflects a deliberate drafting decision that it was important to specify which court was being identified in new section 80ZBA. The multiple references to different courts made it desirable, for narrative clarity on the face of the section, to specify the Supreme Court despite the scope of the Dictionary definition.

*Amendments to the Discrimination Act 1991*

The Committee has requested the Government to clarify the purpose of the amendment to the *Discrimination Act 1991* (**Discrimination Act**), which updates the definition of *irrelevant criminal record*.

I confirm that the amendment is solely intended to remove the existing inconsistency between the definition and the *Spent Convictions Act 2000 (SC Act)*. It does not reduce the substantive protection of the Discrimination Act and therefore it does not limit the right to equality. This is because the amendment merely confirms the current law, as it has been interpreted by the ACT Civil and Administrative Tribunal (the **Tribunal**).

As noted in the Explanatory Statement, the Tribunal interpreted the definition of *irrelevant criminal record* in [\*Complainant 202012 v ACT \[2023\] ACAT 17\*](#). The Tribunal identified (at [71]) the difficulty that the SC Act specifically permits convictions, even when spent, to be taken into account in decisions impacting vulnerable people (such as the care and supervision of children and young people), but the Discrimination Act appears to render such decisions discriminatory.

The Tribunal adopted a purposive approach to statutory interpretation (at [77] – [78], footnotes omitted):

Both the Discrimination Act and the SC Act are examples of legislation intended to help the vulnerable: in the Discrimination Act those who, because of one or more protected attributes, may receive treatment that is unfair; under the SC Act, those whose criminal history might otherwise pursue them through life. Section 19 of the SC Act identifies even more vulnerable groups, such as children and young people, to whom additional protection is provided. The purposive approach to statutory construction, reflected in the ACT by section 139 of the Legislation Act 2001 [...] does not easily enable the inconsistency to be resolved, especially given that the Discrimination Act requires that a construction be adopted that is beneficial to people with protected attributes; but giving effect to the clear intention in the SC Act that the protection of children and young people should be afforded additional protection seems to me the interpretation that would “best achieve the purpose of the Act”.

Taking all of the above into account, it is my view that the only sensible construction of the inconsistent sections from the two Acts is that the intention is that where the exclusions in section 19 of the SC Act are properly applied, it is not intended that the resultant actions or decisions would be unlawful under the Discrimination Act.

By amending the definition of *irrelevant criminal record* to add a specific exception linked to sections 16 and 19 of the SC Act, the Bill adopts the approach of the Tribunal and confirms that it is not discriminatory to consider a person’s spent conviction where the SC Act makes this permissible. This simply makes the existing relationship between the two Acts clearer on the face of the statute book.

The Committee noted that the proposed new definition in the Discrimination Act adds a further requirement that the circumstances of the offence must be directly relevant to the situation in which discrimination arises.

Again, the Bill is consistent with the approach in *Complainant 202012*, in which the Tribunal commented (at [78]) that a spent conviction should not be regarded as an “irrelevant criminal record” provided that the SC Act provisions were properly applied, “which means applied with tests for relevance and consideration of the weight any reference to a spent conviction ought to be given”. In that case the Tribunal concluded that unlawful discrimination occurred, because even though the SC Act permitted the complainant’s spent convictions to be taken into account by the decision-maker, those convictions were not in fact relevant to the decision at hand. The Bill explicitly imposes the relevance requirement in order to circumscribe the application of the exceptions in the SC Act and preserve the protective policy intent of the Discrimination Act as far as possible.

### Amendments to the Information Privacy Act 2014

The Committee seeks additional justification as to the need for the offence proposed in s 44B of the *Information Privacy Act 2014 (IP Act)*. The new offence will apply where a party to an information privacy complaint fails (without reasonable excuse) to attend conciliation after being directed by the Information Privacy Commissioner (**IP Commissioner**) to attend. The Committee notes the apparent anomaly between this compulsory power to require attendance and the statutory rule (in proposed s 44A) that conciliation involves the willing participation of both parties.

The Government considers that the proposed offence strikes the right balance between ensuring the IP Commissioner can exercise their dispute resolution functions and preserving the voluntary nature of conciliation. The power to require attendance (backed by an offence) requires parties to take the IP Commissioner's processes seriously. However, should a person attend as required, and still be unwilling to participate, the IP Commissioner cannot compel them to do so.

The IP Commissioner sits within the ACT Human Rights Commission (the **Commission**). This balanced approach has applied in the Commission's other complaints jurisdictions since the Commission was created in 2005 (see sections 55 and 59 of the *Human Rights Commission Act 2005*). The Explanatory Statement for the relevant Bill justified it as follows:

Sometimes the commission may believe that a matter is suitable for conciliation and could be resolved through that process but one or both of the parties may be reluctant to attend. If the president thinks that a party would in fact willingly participate in conciliation if that party could be persuaded to come along and give it a try the president may require that party to attend. Although this provision gives the president the power to compel attendance it does not include power to compel participation in conciliation. As a result it is not inconsistent with the definition of conciliation in clause 55. A party who was compelled to attend but did not want to participate would be free to leave at any time. The power is consistent with existing provisions in the Discrimination Act 1991. To be effective it must be used only when the circumstances warrant it but it can be effective in overcoming a power imbalance between the complainant and the person complained about and can lead to resolution of conflict through conciliation.<sup>1</sup>

The Government continues to endorse this reasoning. The IP Commissioner's power to require attendance at conciliation contributes to the likelihood of successful dispute resolution outcomes for the community.

As a secondary matter, the Government sees merit in ensuring the Commission has a consistent set of powers to deal with complaints across its multiple jurisdictions. This is administratively efficient and reduces complexity for the public, especially given the significant overlap in some of the complaints jurisdictions (for example, an information privacy complaint under the IP Act and a human rights complaint under the *Human Rights Act 2004* concerning privacy).

Finally, I note that the respondents to information privacy complaints will usually be government officials (or contracted service providers). Requiring their attendance at conciliation supports appropriate oversight and accountability to the public.

The Revised Explanatory Statement sets out the justification for the new offence.

In addition to justification sought from the Committee in respect to s 44B of the IP Act, I regret, through error, the Note under s 44B contains a typographical error. This is a minor and technical error, that I have engaged with the Parliamentary Counsel's Office (**PCO**) to confirm that they will request the Clerk to

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<sup>1</sup> Human Rights Commission Bill 2005, [Explanatory Statement](#), clause 59.

authorise the correction under Standing Order 191, which will allow the change to be made on conversion of the Bill to an Act. I thank the Committee for bringing this to my attention.

*Amendments to the Retirement Villages Regulation 2013 (Schedule 1)*

The Committee sought an explanation for the amendment to section 1.15 of the *Retirement Villages Regulation 2013* (the **Regulation**). As the Committee is aware, the amendments in Schedule 1 of the Bill are minor and technical amendments to update the ACT statute book where it references the *Aged Care Act 1997* (Cth), since this Act has now been repealed and replaced with the *Aged Care Act 2024*. In certain instances, the Bill seeks to update terminology to better align with the 2024 Act.

The amendment to section 1.15 of the Regulation proposes to remove the concept of “assessment for admission” to Commonwealth aged care, because this language aligned with the 1997 Act. The Bill will replace it with the concept of “approval for access” as this aligns better with the 2024 Act, which treats the concept of an assessment of a person’s needs separately to the formal process of approval to enter an aged care facility.

Similar amendments (replacing language about assessment of eligibility with language about approval for access) are proposed to section 39 of the *Retirement Villages Act 2012* (see Schedule 1, clause 1.19 of the Bill).

Amended section 1.15 of the Regulation will preserve the current policy intent – that prospective residents into retirement villages are made aware through a specific clause in their contract that their entry into an aged care facility run by the same operator is subject to an approval process under Commonwealth law and cannot be guaranteed.

The distinction between “approval for access” (in the Regulation) and “approval of access” (in the 2024 Act) is a matter of drafting style only.

The Revised Explanatory Statement includes a brief explanation of this matter.

*Amendments to the Residential Tenancies Act 1997*

I regret that, through error, the clause notes for the Bill omitted an explanation for the amendment in clause 46. This is a minor and technical amendment to the *Residential Tenancies Act 1997* to confirm that the Act applies to the standard residential tenancy terms in Schedule 1.

The Revised Explanatory Statement now includes a clause note for clause 46.

I trust this information adequately addresses the Committee’s comments. Thank you once again for the Committee’s careful consideration of the Bill for the benefit of the Assembly and the public.

Yours sincerely



Dr Marisa Paterson MLA  
Acting Attorney-General