



Legislative Assembly for the Australian Capital Territory

Standing Committee on Legal Affairs
(Legislative Scrutiny Role)

Scrutiny Report 19

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Approved for publication

11th Assembly
May 2026

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](#).¹

¹ https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees-11th-assembly/LA_Scrutiny.

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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.

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1. Bills

Bills—Comment

Bail Amendment Bill 2026

- 1.1 This Bill amends the *Bail Act 1992* to provide for matters that a decision maker (court or authorised officer) must take into account when making a decision about bail.
- 1.2 The Bill also proposes consequential changes to the *Family Violence Act 2016* and the *Victims of Crime Act 1994*.
- 1.3 The amendments to the Bail Act in relation to matters to be considered when making a decision about bail are divided into several categories. The first category (new section 22) sets out matters that a decision maker *must* consider when making a decision about bail. These are mandatory considerations for all bail decisions, referred to in the explanatory statement as “core matters”.
- 1.4 The second category (new section 22A) provides that a decision maker *must* consider any matter they consider relevant to the matters listed in section 22 including any of the list of matters listed in new section 22A.
- 1.5 The third category (new section 22B) provides that in considering the matters in section 22, the decision maker *must* take into account the matters listed in section 22B in relation to an accused person who is an Aboriginal or Torres Strait Islander.²
- 1.6 The fourth category (new section 22C) provides that in considering the matters in section 22, the decision maker *must* take into account the matters listed in section 22C in relation to an accused person who has a disability³ or health condition.⁴
- 1.7 The fifth category (new section 22D) provides that in considering the matters in section 22, the decision maker *must* take into account the matters listed in section 22D in relation to an accused person who is a child.⁵
- 1.8 The sixth category (new section 23) provides that in considering the matters in section 22, the decision maker *must* take into account the matters listed in section 23 in relation to an accused who is pregnant.
- 1.9 In addition, new section 23A provides for how a victim’s views can be communicated in bail applications by setting out who can make representations, the nature of the representations and the obligations on the prosecutor and the court and other decision makers in relation to those representations. The section distinguishes between a “victim” and a “primary victim”.⁶ The Bill also amends section 47A to provide that certain matters must be conveyed by the informant to a police officer or member of staff of the Australian Federal Police assigned to liaise with victims of crime.

² Definition included in new section 22B(3).

³ New definition inserted by clause 6 of the Bill.

⁴ New definition inserted by clause 6 of the Bill.

⁵ Defined in the *Legislation Act 2001* to mean “if age rather than descendency is relevant, means an individual who is under 18 years old” (Dictionary).

⁶ A definition of “primary victim” is inserted in the *Bail Act* by clause 18 of the Bill and a revised definition of “victim” is inserted in the Dictionary to the *Bail Act* by clause 20 of the Bill.

- 1.10 The Bill also inserts new definitions relevant to the above amendments and makes consequential drafting changes to the Bail Act.
- 1.11 The amendments to the *Family Violence Act 2016* made by the Bill are to protect information given under the new bail provisions and the amendments to the *Victims of Crime Act 1994* are to clarify the requirements for sharing victim concerns about the need for protection and safety, and to align definitions of relevant terms in that Act that relate to bail.
- 1.12 The explanatory statement extensively discusses the rights that are promoted by the Bill. The statement also identifies two rights that are limited.

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

Right to privacy (section 12 HRA)

- 1.13 Section 12 of the HRA provides that every person has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily and not to have their reputation unlawfully attacked.
- 1.14 As the explanatory statement acknowledges and explains, the Bill limits the right to privacy because it creates provisions about the sharing of information relating to an individual in the following ways:

The proposed new dictionary definitions of primary victim and victims expands who can make representation about the need for protection from violence and harassment under new section 23A. New section 23A also provides for primary victims to make representations on a broader range of bail considerations than the concerns about need for protection from violence or harassment by the accused. Finally, as notification obligations under section 47A are directly related to the making of representations under section 23A, a broader cohort of victims will be entitled to be notified of bail decisions under section 47A. Expanding who can make representations about a defendant, what the representations can cover and who must be notified of a bail decision, impacts the defendant's right to privacy.

- 1.15 The explanatory statement explains that the purpose of the Bill is to ensure that a decision maker can make informed and appropriate bail decisions and contains a clear discussion on the rational connection between the limitation and the purpose of the amendments and the proportionality of the limitation. The Committee refers that discussion to the Assembly.
- 1.16 The Committee notes that the Bill limits the right to privacy through 2 other clauses too. Clauses 7 and 9 insert a new sub-section into each of section 15 (Deciding of questions by bail by authorised officers) and section 19 (Court Bail-General) respectively. These amendments provide that an informant must give the decision maker information about whether a family violence order has been made against the accused person. This amendment too limits the accused person's right to privacy.
- 1.17 The Committee notes that the discussion in the explanatory statement does not address the limits on the rights to privacy created by clauses 7 and 9. However, the Clause Notes to clauses 7 and 9 explain that this information is relevant to a number of the "core matters" listed in new section 22, as well as factors in new section 22A and, for clause 7, an assessment under current section 9F (presumptions regarding a person accused of a family violence offence).

- 1.18 **The Committee brings these matters to the attention of the Assembly but does not require a response from the Minister.**

Right to liberty and security (section 18 HRA)

- 1.19 Section 18 of the HRA provides that every individual has the right to liberty and security of person. This right includes the right not to be arbitrarily arrested or detained and for anyone who is awaiting trial not to be detained in custody as a general rule, and, if arrested or detained, be entitled to apply to a court so that the court can decide, without delay, the lawfulness of the detention. The proposed amendments in the Bill have the potential to limit these rights as they expand the mandatory matters that must be considered for bail decisions and expand the range of victims' concerns that may be considered. The explanatory statement explains:

As discussed above, sections 22, 22A, 22B, 22C, 22D and 23 of the Bill require a bail decision maker to consider a range of relevant subjective matters when deciding whether to grant bail and, if bail is granted, when determining the conditions that will be imposed, if any. The information that must be considered under sections 22 and 22A could weigh in favour of or against the grant of bail and could result in conditions being imposed on the accused person in order to manage any risk associated with the person....

In addition, section 23A facilitates the sharing of information with the decision maker about an expanded range of victims' concerns about the need for protection.

An accused person who is denied bail is deprived of their liberty pending a further bail hearing or the outcome of the criminal charge/s against them. An accused person subject to bail conditions designed to prevent the accused from engaging in certain conduct and/or designed to protect a victim or other person is also denied their full liberty.

- 1.20 The Committee refers the Assembly to the discussion on purpose, connection and proportionality in the explanatory statement. The Committee also notes the following safeguards identified in the explanatory statement.

The bail process will continue to have its inherent safeguards. An accused person retains the right to legal representation. If a person has been refused bail by an authorised officer, the person must be brought before the court in accordance with section 17 of the Bail Act. Bail applications in court are public, supporting the principle of open justice. Section 19(4) of the Bail Act provides that a court must deal with an application in relation to bail as soon as reasonably practicable. The Bill does not make any amendments to limit the number of applications an accused may make in relation to bail. The Bill does not limit the obligation on a police officer, when exercising a function under a Territory law, to act consistently with human rights under section 40B of the Human Rights Act.

- 1.21 **The Committee refers these matters to the Assembly and does not require a response from the Minister.**

Better Regulation Legislation Amendment Bill 2026

- 1.22 This Bill is an omnibus Bill that amends the following Acts and Regulations:
- *ACT Teacher Quality Institute Act 2010 and ACT Teacher Quality Institute Regulation 2010;*
 - *Architects Act 2004 and Architects Regulation 2004;*
 - *Board of Senior Secondary Studies Act 1997;*
 - *Building Act 2004;*
 - *Cemeteries and Crematoria Act 2020;*
 - *Climate Change and Greenhouse Gas Reduction Act 2010;*
 - *Construction Occupations (Licensing) Act 2004;*
 - *Domestic Animals Act 2000 and Domestic Animals Regulation 2001;*
 - *Food Act 2001;*
 - *Gambling and Racing Control Act 1999;*
 - *Gaming Machine Act 2004;*
 - *Gas Safety Act 2000;*
 - *Legislation Act 2001;*
 - *Medicines, Poisons and Therapeutic Goods Act 2008;*
 - *Pool Betting Act 1964;*
 - *Professional Engineers Act 2023;*
 - *Public Health Act 1997;*
 - *Race and Sports Bookmaking Act 2001 and Race and Sports Bookmaking Regulation 2001;*
 - *Radiation Protection Act 2006;*
 - *Utilities (Technical Regulation) Act 2014;*
 - *Veterinary Practice Act 2018;* and
 - *Waste Management and Resource Recovery Act 2016.*
- 1.23 One of the main purposes of the Bill is to establish new public registers under the legislative regime of many of the above Acts that enable certain information to be accessed by the public electronically on an ACT government website or to provide that certain existing public registers be accessible electronically by the public.
- 1.24 The explanatory statement summarises other amendments as follows:
- amendments to the *Legislation Act 2001* to provide for payment neutrality;
 - amendments to the *Medicines, Poisons and Therapeutic Goods Act 2008* to remove administrative burdens on businesses and the regulator by removing an offence provision so a licence-holder no longer has to return a licence if it is amended;
 - updating gender references in the *Pool Betting Act 1964* to provide for gender-neutral language; and

- amendments to the *Waste Management and Resource Recovery Act 2016* to align the legislation with regulator best practice, remove regulatory burdens, and provide for a more agile regulatory framework for licence and registration holders. To increase transparency, a number of amendments will also see more reviewable decisions added to the Act.

- 1.25 The Committee notes that clauses 118 to 122 of the Bill insert new reviewable decisions or amend existing reviewable decisions in the *Waste Management and Resource Recovery Act 2016*, as identified in the previous paragraph. As the subject of non-reviewable decisions are a topic within the terms of reference of the Committee, the Committee notes that the Clause Notes for these Clauses state that the amendments are either to align the reviewable decisions with other amendments to the *Waste Management and Resource Recovery Act 2016* or align the reviewable decision with reviewable decisions already provided for in the Act.
- 1.26 The Committee has assumed from these statements that there is no restriction on existing reviewable decisions in the Act imposed by the Bill.
- 1.27 **The Committee requests the Minister to confirm that there is no impact on the reviewable decisions.**

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

- 1.28 The explanatory statement also identifies that the Bill makes technical amendments to several offences:
- three offences in the *Public Health Act 1997* (see clauses 76, 81 and 88)
 - a strict liability offence for the contravention of a container approval condition in the *Waste Management and Resource Recovery Act 2016* (clause 117) that, Clause Note 117 states, replaces previous section 64V(8) and (9).
- 1.29 The explanatory statement states that these amendments to these offences do not make any change to the existing offences or associated penalty units and the revised wording is for clarity or to align with other amendments in the Bill.
- 1.30 The Committee notes that:
- a) Clause 34 of the Bill also amends a strict liability offence in section 97 of the *Food Act 2001* which provides that a proprietor of the food business commits an offence if there is a change in the details of registration or operation of food business and the proprietor does not within 7 days give written notice to the chief health officer. The amendment made by the Bill removes the requirement for return of a certificate of registration. Clause Note 34 explains that this requirement will:
- ... no longer be relevant as this Bill introduces amendments to the Food Act to make the food business register accessible electronically to the public. The removal of the requirement to have a physical certificate will reduce administrative burden for businesses.

- b) Clause 57 of the Bill amends section 176 of *Gaming Machine Act 2004* to provide that in a prosecution for an offence under that Act, a certificate issued by the commission will not only be evidence of the holder of a licence or authorisation certificate but also evidence of whether gaming or peripheral equipment for a gaming machine was approved under section 69 of the Act.
 - c) There are multiple amendments proposed by the Bill to move some administrative elements from the *Gaming Machine Act 2004* and *Race and Sports Bookmaking Act 2001* into the Gambling and Racing Control Act which the explanatory statement explains is considered a more appropriate legislative framework.
- 1.31 The Bill also makes drafting and correction amendments, amendments to incorporate gender neutral language, amendments to provide for the transition of the amendments, and amendments to, as explained by the explanatory statement or Clause Notes, improve the clarity of legislation and to reduce regulatory burden.
- 1.32 The proposed amendments in the Bill that require the new public registers to contain certain publicly accessible information or for certain public registers to be accessible electronically to the public, and the creation of two new strict liability offences in the *Domestic Animals Act 2000* raise human rights considerations.

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

Right to privacy (section 12 HRA)

- 1.33 As the explanatory statement identifies, section 12 of the HRA protects individuals from unlawful or arbitrary interference with their privacy, which protects personal and confidential information. The Bill limits the right to privacy as it requires certain personal information to be made available on the public registers that it establishes to be publicly accessible electronically, or for existing public registers to contain such information.
- 1.34 The statement explains that the overall objective of these public registers is:
- ...to improve public access to government information, increasing transparency and promoting the freedom of expression (s 16(2) HR Act) by allowing the public to seek and receive information from the government.
- The Acts which are proposed to be amended in this Bill to enshrine public registers are responsible for the regulation of individuals engaged in their relevant industry. Individuals who wish to engage in these industries are required to be registered and/or licensed by the relevant regulator. The public registers provide information on individuals who are appropriately licensed and regulated to work in these industries.
- The limitation on the right to privacy by publishing personal information regarding licensed individuals in their relevant industries is for the legitimate purpose of protecting consumers who engage individuals from these regulated industries, and to foster an improved culture of transparency and quality of services provided...
- 1.35 The statement goes on to state:
- The information that is required to be available on the public registers is only information that is necessary to enable consumers to make informed decisions about whether to engage with a particular professional in their field, and to provide sufficient information to protect consumers and the broader community.

- 1.36 The explanatory statement contains a useful and clear table identifying the requirement for personal information to be disclosed as provided by the amendments to 12 of the pieces of legislation that are amended by the Bill for this purpose.
- 1.37 In addition, the explanatory statement lists in a second table a number of “safeguards” in relation to the limitation on privacy for each of the pieces of legislation amended.
- 1.38 **The Committee refers the Assembly to the specific comments for each piece of legislation given in each table for the human rights discussion and does not require a response from the Minister.**

Rights in criminal proceedings (section 22 HRA)

- 1.39 The Bill introduces two new strict liability offences into the *Domestic Animals Act 2000*. New section 103A makes it an offence for a person who is a registered assistance animal trainer and is convicted or found guilty of an offence under that Act or other animal welfare legislation not to tell the registrar about the conviction or finding of guilt. New section 106AA makes it an offence for a person who is a registered assistance animal assessor, and is convicted or found guilty of an offence under that Act or other animal welfare legislation, not to tell the registrar about the conviction or finding of guilt. Both are strict liability offences with a maximum penalty of 50 penalty units.
- 1.40 As the explanatory statement identifies, strict liability offences restrict the right to be presumed innocent which is an aspect of the rights in criminal proceedings under section 22 of the HRA as they permit the imposition of criminal liability without the need for the prosecution to prove fault.
- 1.41 The explanatory statement explains the objective of these two new strict liability offences as follows.
- The objective of introducing these new offences for assistance animal trainers and assessors is to protect individuals who have registered, or are seeking to register, assistance animals, as well as ensuring animal welfare. Individuals using assistance animals are often vulnerable and the offences are considered legitimate in order to ensure public safety, and promote animal welfare protection. These amendments also promote the rights of people with disabilities and other vulnerable persons who rely on assistance animals in their daily lives.
- 1.42 The explanatory statement contains a detailed discussion on the human rights implications. The Committee highlights two points in that discussion. First:
- Applicants seeking to be registered as an assistance animal trainer or assessor are required to disclose if they have been convicted or found guilty of animal welfare offences in the previous two years at the time of application (see sections 100 and 104 of the Domestic Animals Act). Additionally, convictions or findings of guilt for an offence under the Domestic Animals Act or animal welfare legislation can result in the suspension or cancellation of an assistance animal trainer or assessor’s registration under the Act (see sections 101-102 and 105-106).

1.43 And secondly:

The Guide for Framing Offences provides that a strict liability offence should be used only for 'regulatory' offences and should not be framed to catch the general public for inadvertent breaches of the law. The proposed offences are in a licensing/registration context, which is appropriate for strict liability offences. As outlined, the new offence provisions will be communicated during the application process for professionals requesting new registrations, and by communications following the successful passage of the Bill for those professionals already registered.

1.44 **The Committee thanks the Minister for the clear and detailed human rights discussion in the explanatory statement and refers that discussion to the Assembly and does not require a response from the Minister.**

Fuel Legislation Amendment Bill 2026

1.45 The Committee notes that this Bill was enacted by the Assembly on 7 May 2026, before the Committee had an opportunity to scrutinise the Bill.

1.46 This Bill amends the following pieces of legislation:

- *Fuels Rationing Act 2019*;
- *Fair Trading (Australian Consumer Law) Act 1992*; and
- *Fair Trading (Fuel Prices) Act 1993*.

1.47 The Bill also creates the *Magistrates Court (Fuels Rationing Infringement Notices) Regulation*.

1.48 The amendments to the *Fuels Rationing Act 2019* grant power to the Minister to require by notice a fuel seller to give the Minister information relating to production, supply, use and consumption of fuel. The Bill further proposes, in new section 16A, that a failure to comply with that notice is a strict liability offence.

1.49 Second, the Bill amends the *Fuels Rationing Act 2019* to grant power to an inspector to require by notice certain information from a person who is subject to a fuel restriction. The Bill further proposes, in new section 19, that a failure to comply with that notice is a strict liability offence.

1.50 Third, the Bill amends the *Fuels Rationing Act 2019* to insert new provisions in relation to "protected information"⁷:

- a) Two new offences are created by new section 43A: (i) a person uses protected information about someone else and the person is reckless about whether the information is protected; and (ii) a person does something that discloses protected information about someone else and the person is reckless about whether the information is protected and that doing the thing would result in the information being disclosed to someone else. These new offences do not apply in certain circumstances.

⁷ Defined in new section 43A to mean "information about a person that is disclosed to, or obtained by, another person because of the exercise of a function under this Act by the other person or someone else."

- b) A provision permitting a Minister or inspector⁸ to give protected information to an entity of the Commonwealth or a State in certain circumstances.
- 1.51 Fourth, the Bill amends the *Fair Trading (Fuel Prices) Act 1993* to increase the maximum penalty for a section 5A offence from 20 to 50 penalty points and to provide that an offence under section 5A is a strict liability offence. Section 5A provides:
- A person commits an offence if the person—
- (a) uses a price board to display the price of a specified fuel sold by the person; and
 - (b) displays on the price board—
 - (i) a discounted fuel price; or
 - (ii) a fuel price that is lower than the price at the corresponding fuel pump.
- 1.52 Fifth, the Bill amends the *Fair Trading (Australian Consumer Law) Act 1992* to revise the definition of ‘fair trading legislation’ to include the *Fair Trading (Fuel Prices) Act 1993*. The explanatory statement states that this is to allow investigators appointed under section 36 to use their existing powers to enforce compliance with the *Fair Trading (Fuel Prices) Act 1993*.
- 1.53 Sixth, the Bill creates the *Magistrates Court (Fuels Rationing Infringement Notices) Regulation 2026*, which is contained in schedule 1 of the Bill. Clause 3 of the Regulation provides that the purpose of the regulation is to provide for infringement notices under the *Magistrates Court Act 1930* for the new strict liability offence under new section 16A of the *Fuels Rationing Act 2019* of not complying with a Minister notice. The Bill provides that the provisions set out in schedule 1 “are to be taken to be a regulation made under” section 321 of the *Magistrates Court Act 1930*. Section 321 provides that “[t]he Executive may make regulations for this Act”.
- 1.54 The Bill also makes technical and consequential amendments related to the above amendments.
- 1.55 The Committee notes that it is an unusual drafting technique for regulations to be made as part of a statute and for a deeming device to be used to characterise them as regulations. The Committee notes that clause 4 of the Bill provides that, despite this, the regulation may be amended or repealed ‘as if’ it had been made under section 321 of the *Magistrates Court Act 1930*.
- 1.56 The Committee assumes that this drafting mechanism was adopted to ensure passage of the Act and the regulation at the same time and to avoid the sitting day requirements under sections 64 and 65 of the *Legislation Act 2001* in the interests of expediency and urgency.⁹ However, given the unusual mechanism, it would be of assistance if the explanatory statement had explained the reason for its use, whether due to urgency or other reason.

⁸ New definition of “inspector” inserted by clause 21.

⁹ The Committee refers to the two letters from the Minister for Climate Change, Environment, Energy and Water to the Chair of the Committee both received on 4 May 2026 explaining the intention to suspend the standing orders for the Bill to be introduced and debated in the same sitting week.

- 1.57 **The Committee requests the Minister to provide a response on why this approach was taken.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond.

- 1.58 The explanatory statement notes that it is possible that a fuel seller subject to the Bill amendments could be a sole trader and so a natural individual. Consequently, the explanatory statement engages in a discussion on the limitation of the Bill on two human rights.

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

Right to privacy (section 12 HRA)

- 1.59 As noted above, new sections 16A and 19 in the *Fuels Rationing Act 2019* require the production of information by the Minister or inspector. This may limit a sole trader's right to privacy under section 12 of the HRA by having the potential to require personal information to be made available. In addition:

Including the Fuel Prices Act in the definition of fair trading legislation will (per section 43) allow investigators to use their existing powers to inspect, examine, or copy documents and to require the occupier or person on the premises to give the investigator reasonable help to exercise a power under Div 5.2 of the Fair Trading Act for the purposes of ensuring compliance with the Fuel Prices Act. It will also give investigators the power to make requests for information related to investigations (section 52). In effect, these powers require fuel sellers (including fuel sellers who are sole traders) to produce information related to compliance with the Fuel Prices Act. These powers also allow investigators to apply for a warrant from a magistrate to enter premises (section 41) and to seize materials related to the purpose for which the warrant was issued (section 43).

- 1.60 The explanatory statement explains that the purpose of the Bill is to protect consumers in cases of disruption to fuel supply in the ACT. The statement explains that the new provision requiring fuel sellers to provide information to the Minister is necessary for the Minister when considering whether to approve, declare or extend a fuel restriction scheme. The powers of the inspector to require information are necessary, says the statement, to ensure the investigators have the information needed to enforce the *Fair Trading (Fuel Prices) Act 1993*.
- 1.61 The explanatory statement contains a discussion on the rational connection between the limitation and purpose of the limitation and its rationality. In particular, the Committee points out that the new offences about failing to comply with notices requiring information do not apply in particular circumstances (see new section 43A(3) and (4)) and that the investigatory powers under the *Fair Trading (Australian Consumer Law) Act 1992* that are extended to the *Fair Trading (Fuel Prices) Act 1993* by the Bill are "calibrated to the purpose of enforcing fair trading legislation."
- 1.62 **The Committee refers the discussion on the limitation on the right to privacy in the explanatory statement to the Assembly and does not require a response from the Minister.**

Rights in criminal proceedings (section 22 HRA)

- 1.63 The Bill introduces two new strict liability offences (new sections 16A and 19) into the *Fuels Rationing Act 2019* and amends the existing section 5A offence in the *Fair Trading (Fuel Prices) Act 1993* to make it a strict liability offence. In addition, new section 43A creates a new offence with exceptions where the defendant has the evidential burden to prove they fall within an exception. These amendments limit the right to be presumed innocent, which is an aspect of the rights in criminal proceedings under section 22 of the HRA.
- 1.64 The explanatory statement contains a discussion on the limitation, rationality and proportionality in relation to the rights in criminal proceedings.
- 1.65 The statement notes:
- The strict liability offences are directed at conduct where a person knows, or ought to reasonably know, their legal obligations. The offences apply in circumstances where requirements are clearly communicated and within the control of the person subject to them.
- 1.66 The Committee questions whether the offences apply in circumstances where the “requirements are clearly communicated”. The new offences in sections 16A and 19 rely heavily on the notices themselves which refer to different categories of information and must stipulate how the information is to be given. These are arguably matters that could be the subject of dispute or ambiguity. Similar comments about potential ambiguity may be made in relation to the offence under section 43A. Consequently, the Committee does question whether the limitation on the rights in criminal proceedings is proportionate to the purpose of the provisions.
- 1.67 **The Committee brings these matters to the attention of the Assembly but, as the Bill has been passed, does not require a response from the Minister.**

Justice and Community Safety Legislation Amendment Bill 2026

- 1.68 This Bill amends the following Acts:
- *Aboriginal and Torres Strait Islander and Children and Young People Commissioner Act 2022*;
 - *Custodial Inspector Act 2017*;
 - *Electoral Act 1992*;
 - *Human Rights Commission Act 2005*;
 - *Inquiries Act 1991*;
 - *Oaths and Affirmations Act 1984*;
 - *Supreme Court Act 1933*; and
 - *Unit Titles (Management) Act 2011*.
- 1.69 The Bill also repeals the *Crimes (Child Sex Offenders) Amendment Act 2025*.
- 1.70 The explanatory statement explains that the Bill amendments are to “improve the ACT’s justice and community safety system.” However, as the amendments made to different Acts are quite distinct, the Committee addresses them separately (using the structure of the explanatory statement).

(a) *Aboriginal and Torres Strait Islander and Children and Young People Commissioner Act 2022 and the Custodial Inspector Act 2017*

- 1.71 The Bill amends the *Aboriginal and Torres Strait Islander and Children and Young People Commissioner Act 2022* and the *Custodial Inspector Act 2017* to expand information sharing provisions currently contained within the *Aboriginal and Torres Strait Islander and Children and Young People Commissioner Act 2022* and to expand the cooperation obligations of the inspector under the *Custodial Inspector Act 2017*.
- 1.72 The information sharing provision of the *Aboriginal and Torres Strait Islander and Children and Young People Commissioner Act 2022* is amended to provide that the commissioner may disclose information currently permitted to be disclosed under section 34 to an “information sharing entity”. An “information sharing entity” is defined in the new section 34 to mean:
- (a) a member of the human rights commission; or
 - (b) the custodial inspector appointed under the *Custodial Inspector Act 2017*, section 9; or
 - (c) the ACT National Preventive Mechanism established under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (“NPM”).
- 1.73 The Bill amends section 31 of the *Custodial Inspector Act 2017* to provide that the existing obligation of the inspector to exercise their functions in a way that does not delay or unnecessarily duplicate the exercise of functions by certain other entities, now includes as an entity the commissioner appointed under the *Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022*.

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

Right to privacy (section 12 HRA)

- 1.74 The commissioner may disclose information to an information sharing entity if reasonably satisfied the information is relevant to the exercise of the entity’s functions, and the individual has given consent. The Bill amendment also provides that the commissioner may disclose personal information about an individual to an information sharing entity without the individual’s consent if the commissioner believes on reasonable grounds that the disclosure is necessary to ensure that a coordinated approach or effective advocacy is able to be undertaken in relation to an Aboriginal or Torres Strait Islander child or young person or effective advocacy is able to be undertaken.
- 1.75 In addition, the amendment to the *Custodial Inspector Act 2017* means, under existing section 35 of that Act, that the inspector may disclose to the commissioner relevant information held by the inspector to the extent that it is reasonably necessary for the part containing section 35.
- 1.76 By allowing disclosure of information without consent, the amendment limits the right to privacy under section 12 of the HRA.
- 1.77 The explanatory statement explains that the sharing of information proposed by the Bill is to:
- ensure that when matters of concern or overlapping jurisdiction occur ... the [Inspector of Custodial Services] and the NPM can effectively cooperate and share information with the Aboriginal and Torres Strait Islander Children and Young People Commissioner to enable the effective investigation and review of matters of concern.

- 1.78 The explanatory statement identifies two privacy safeguards:
- New section 34(3) provides that a “secrecy requirement”¹⁰ is taken to apply to information used by an information sharing entity.
 - Existing section 35 of the *Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022* which makes it an offence for an information holder to make a record of protected information or to disclose protected information in certain circumstances.
- 1.79 A similar offence regarding disclosure of protected information in existing section 37 of the *Custodial Inspector Act 2017*.
- 1.80 **The Committee refers the Assembly to the discussion on the limitation on the right to privacy in the explanatory statement and does not require a response from the Minister.**
- (b) Electoral Act 1992*
- 1.81 Existing section 216B(1) of the *Electoral Act 1992* provides that section 216B applies if, in the relevant period, a political entity receives a gift from a person that, together with any other gift given to the political entity by the person, is \$1000 or more for the period. Existing section 216B(2) provides that the financial representative of the entity must give the commissioner a return containing certain information not later than 7 days after the day the total amount received from the person reaches \$1000.
- 1.82 The Bill amends section 216B to provide that the financial representative of the entity must give the commissioner the return not later than 7 days after the amount received has reached \$1000 and not later than 7 days after any “additional gift”.
- (c) Human Rights Commission Act 2005*
- 1.83 The Bill amends the *Human Rights Commission Act 2005* to insert new provisions that require a complainant in relation to discrimination, retirement village, occupancy disputes, or conversion practices to seek the leave of the ACT Civil and Administrative Tribunal (“ACAT”) before being able to apply to ACAT to review a complaint that has been closed by the Human Rights Commission because the Commission was satisfied of one of the reasons in section 78(2)(c).
- 1.84 Section 78(2)(c) provides for the situations where the Commission is satisfied that (i) the complainant has been given a reasonable explanation and the complaint needs no further action; or (ii) the complaint is frivolous, vexatious or not made honestly; or (iii) the matters raised by the complaint have been, or are being, dealt with by a court or tribunal or have been dealt with by the commission; or (iv) the complaint lacks substance.
- 1.85 The Bill inserts new Notes to certain sections consequent on the above amendments.

¹⁰ Defined in new section 34(5) but substantially similar to the existing definition in the *Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022*.

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

Right to fair trial (section 21 HRA)

- 1.86 The right to a fair trial under section 21 of the HRA includes all stages of proceedings in a court or tribunal and extends to review processes in administrative decision-making. The Bill will limit the rights of complainants in relation to the matters listed in paragraph 1.83 to have the complaint heard by ACAT as it will require them to obtain the leave of ACAT first before being heard.
- 1.87 The explanatory statement identifies the limitation on the right to a fair trial and contains a discussion on that right. The statement explains that the purpose of the new provisions is to protect the integrity, efficiency and fairness of the Tribunal system and to prevent the abuse of Tribunal processes.
- 1.88 In relation to proportionality of the limitation, the statement says:
- The requirement to seek leave from the ACAT to determine whether a claim can proceed is only applicable in the legislation to a limited subset of complaints, being those that are closed by the Human Rights Commission under section 78(2)(c). There are limited claims seen by ACAT which fulfill this criteria.
- The amendment does not remove access to ACAT outright, rather it introduces a threshold procedural step to ensure that only claims with an arguable basis proceed to a hearing. The ACAT will retain discretion to determine they should proceed to consider a complaint even if the Commission has deemed it without merit.
- 1.89 **The Committee refers the discussion to the Assembly and does not require a response from the Minister.**

(d) Inquiries Act 1991

- 1.90 The Bill amends the *Inquiries Act 1991* to substitute the existing section 17 that prohibits the disclosure or use of certain information by a member, a member of the staff of a board or a lawyer assisting a board obtained or generated by a person exercising a function under the Act.
- 1.91 The amendment to the section 17 offence also provides that strict liability applies to one element of the offence – whether the person is or has been an “entrusted person” – and increases the maximum penalty from 50 penalty units, imprisonment for 6 months or both, to 50 penalty units, imprisonment for 1 year or both.
- 1.92 The Bill also amends section 26A in relation to proposed adverse comments in reports, minimum time periods and exclusion of certain materials in a report. The Bill also makes other minor technical amendments to the Act.

Right to freedom of expression (section 16 HRA)

- 1.93 The right to freedom of expression contained in section 16 of the HRA provides that this right includes the freedom to seek, receive and impart information and ideas of all kinds.

- 1.94 The explanatory statement states that the amendment to section 17 prohibiting an entrusted person from disclosing protected information obtained or generated by a person exercising a function under the Act limits the right to freedom of expression. The statement explains that this limitation is to prevent the premature or uncontrolled release of protected information gathered during an inquiry.
- 1.95 The explanatory statement contains a discussion justifying the limitation on the right to freedom of expression noting that the amendment only impacts the right to freedom of expression in relation to the disclosure, use or recording of “protected information” obtained or generated by an “entrusted person”.
- 1.96 **The Committee refers this discussion to the Assembly and does not require a response from the Minister.**
- 1.97 The Committee notes that the Bill, through the amendments to section 26A, also contains restrictions on comments by the board about an entity in a report or submissions made by that entity to the board.
- 1.98 The Committee assumes that the explanatory statement does not address the limitation on the right to freedom of expression created by these amendments because the ‘entity’ and the ‘board’ are not natural persons.
- 1.99 **The Committee requests the Minister to confirm that the Committee’s assumption about the impact of the amendments to section 26A on human rights is correct.**

[Rights in criminal proceedings \(section 22 HRA\)](#)

- 1.100 As noted above, the Bill amends section 17 concerning the offence of use or disclosure of protected information by an entrusted person to provide that strict liability applies for one element of the offence. The Bill also provides for exceptions to the offence which reverse the evidential burden in relation to those exceptions.
- 1.101 These amendments limit the right to the presumption of innocence which is an aspect of rights in criminal proceedings under section 22 of the HRA.
- 1.102 The explanatory statement justifies the limitations by, first, stating that the strict liability element is a factual condition that does not leave room for interpretation. The statement goes on to state that “[t]herefore, this subsection is not considered a limitation on the presumption of innocence.”
- 1.103 The Committee does not understand this assertion. The fact an element is a matter of fact may be a reason to justify a limitation on the right, but it is not correct to state that a consequence is that the right is not limited.
- 1.104 Second, in relation to the reversal of the evidential burden, the explanatory statement states that:

The accused person is best placed to produce evidence in relation to the matters in subsection (5) (i.e. whether they were exercising or assisting another person to exercise a function under the Act, if the information has already been made available to the public, or a circumstance prescribed by regulation). Accordingly, the limitation of a person’s rights under section 22 HRA resulting from imposing an evidential burden on the accused where an exception is raised is necessary to ensure that appropriate regulatory action can be taken if information confidentiality is breached.

- 1.105 The Committee does not understand this justification. An evidential burden places the defendant in the position of presenting evidence that the defence can be established. It is unclear how this is necessary or justified by a broad reference to “appropriate regulatory action”.
- 1.106 Third, the Bill amends the section 17 offence so that the maximum penalty can include up to 1 year imprisonment. In its *Scrutiny Report 15* and *Scrutiny Report 16*, the Committee distilled the key principles about the use of strict liability offences from the ACT Guide for Framing Offences and the Report of the ACT’s Standing Committee on Legal Affairs following an inquiry into Strict and Absolute Liability Offences in 2008. Two of the key principles are that:

Strict liability offences should only be aimed at the less serious side of the criminal spectrum, and the maximum penalty should generally be limited to a monetary penalty (50 penalty units)

In the exceptional case where imprisonment is considered appropriate, it should be a maximum of six months.

- 1.107 **The Committee requests the Minister to revise the explanatory statement to explain why imprisonment of 12 months is justified for this offence, which contains a strict liability element, and to respond to the two points raised above about the justifications for the revised section 17 offence.**

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

(e) Supreme Court 1933

- 1.108 The Supreme Court currently has the power under the *Supreme Court Act 1933* to declare a person to be a vexatious litigant on the application of the Attorney-General or an aggrieved person under section 67A. The Bill revises that section to provide that the Court can make a declaration on its own initiative, or on the application of the Attorney-General or an aggrieved person.

Right to a fair trial (section 21 HRA)

- 1.109 As noted above, the right to fair trial provides that everyone has a right to have the determination of rights and obligations recognised by law decided by a competent, independent and impartial court or tribunal after a fair and public hearing. As the explanatory statement identifies, the amendment will limit the right to fair trial because it may prevent a person from making or continuing a claim in court.
- 1.110 The statement explains:

The amendment is intended to improve the effectiveness of legal recourse for community members by supporting the proper administration of the Court by enhancing the Court’s ability to intervene early, reduce misuse of the legal system, and ensure that judicial resources are appropriately directed. It also protects persons who are harassed by vexatious litigation.

- 1.111 In the course of the discussion on the limitation on the right to a fair trial, the statement identifies certain safeguards:

After a person is declared a vexatious litigant, the Court may still give leave to a person to continue proceedings, with or without the conditions it considers appropriate (s 67A (4)). This pre-existing safeguard allows for the vexatious litigant to gain back their right to fair trial, in certain cases, when the court deems it appropriate to do so. Section 67A (11) also provides that a person declared to be a vexatious litigant may, without the leave of the court, apply to the court for the revocation or variation of the declaration (or its conditions).

- 1.112 **The Committee refers the discussion in the explanatory statement to the Assembly and does not require a response from the Minister.**

- 1.113 The Bill also contains technical and drafting correction amendments to the *Oaths and Affirmations Act 1984* and the *Unit Titles (Management) Act 2001*.

Long Service Leave (Portable Schemes) Amendment Bill 2026

- 1.114 This is a private member bill that amends the *Long Service Leave (Portable Schemes) Act 2009* to insert a new section 13A which provides that, despite the Act, an employer in the hairdressing and beauty services industry or in the accommodation and food services industry is not an employer for the services industry. The effect of this amendment would be that employers in these industries would not be subject to the portable long service leave scheme.
- 1.115 The new section 13A also provides that the exclusion is temporary and that before it is removed (no earlier than 1 July 2027) the Minister must conduct an independent review relating to whether applying the portable long service leave scheme under the Act will cause material adverse effects on business viability or employment in the ACT.

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

Right to equality (section 8 HRA)

Right to work (section 27B)

- 1.116 The explanatory statement to the Bill recognizes that the Bill may limit the right to work and, relatedly, the right to equality.
- 1.117 Although not noted in the explanatory statement these are rights under section 27B and section 8 of the HRA. The right to work under section 27B includes the right to the enjoyment of just and favourable conditions of work and the right under section 8 includes the right of an individual to enjoy their human rights without distinction or discrimination of any kind.
- 1.118 The explanatory statement notes that the amendment proposed by the Bill would only be a temporary exclusion and then states that “to the extent any human rights are engaged, the limitation is reasonable, proportionate and directed to a legitimate purpose.”
- 1.119 A statement accompanying a bill about the limitation on human rights should contain a discussion as to how and why the limitation is reasonable, proportionate and directed to a legitimate purpose. While the requirement for a statement containing this assessment is, strictly speaking, only an obligation of a Minister presenting a Bill (under section 37 of the HRA) and not a private member, such a discussion is a key component of the scrutiny process and greatly assists the scrutiny of the Committee and the deliberation of the Assembly.

- 1.120 The Committee requests the Private Member to amend the explanatory statement to present a justification for the limitation on the human rights in terms that satisfy the requirements of section 28 of the HRA.

Proposed amendment—Comment

Liquor Amendment Bill 2025

- 1.121 The Committee has received from Laura Nuttall MLA a proposed amendment to the Liquor Amendment Bill 2025 currently before the Assembly, together with a supplementary explanatory statement.¹¹
- 1.122 The amendment proposes a clause which provides a revised “Objects of Act” provision for the *Liquor Act 2010*. The purpose of the new provision is to make harm minimisation the main object of the Act, with the other objects being secondary objectives.
- 1.123 The supplementary explanatory statement states that the amendment promotes several human rights, but the proposed clause does not limit any human rights under the HRA.
- 1.124 **The Committee brings these matters and the supplementary explanatory statement in relation to the Bill amendment to the attention of the Assembly.**

Government response—Comment

- 1.125 The Committee has received a letter from the Minister for Planning and Sustainable Development dated 30 April 2026 in relation to comments made by the Committee in *Scrutiny Report 18* (April 2026) about new section 63(1A) proposed by the Planning Legislation Amendment Bill 2026. The Committee had requested the Minister to explain how the timing regarding the provision of a copy of a notice under that section could be inferred as being at the commencement of the consultation period, as the explanatory statement stated.
- 1.126 The Minister has explained that this section relies on section 151B of the *Legislation Act 2001* that provides that, where no time is provided for doing something, the thing must be done as soon as possible.
- 1.127 The Committee thanks the Minister for their response. The Committee notes that the Bill was passed by the Assembly on 6 May 2026.

¹¹ The Liquor Amendment Bill was the subject of this Committee’s *Scrutiny Report 13* (November 2025).

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 DI2026-28 being the Civil Law (Wrongs) The Surveyors Australia Professional Standards Scheme 2026 made under Schedule 4, section 4.10 of the *Civil Law (Wrongs) Act 2002* gives notice of the Professional Standards Council of New South Wales' approval of The Civil Law (Wrongs) The Surveyors Australia Professional Standards Scheme.**
 - **Disallowable Instrument DI2026-29 being the Civil Law (Wrongs) Australian Institute of Building Surveyors Professional Standards Scheme 2026 made under section 4.10 of Schedule 4 of the *Civil Law (Wrongs) Act 2002* gives notice of the Professional Standards Council of New South Wales' approval of the Australian Institute of Building Surveyors Professional Standards Scheme.**
 - **Disallowable Instrument DI2026-33 being the Taxation Administration (Amounts Payable—Utilities (Network Facilities Tax)) Determination 2026 made under section 139 of the *Taxation Administration Act 1999* revokes DI2025-34 and determines a new rate for the calculation of Utilities Network Facilities Tax payable under the *Utilities (Network Facilities Tax) 2006*.**

Disallowable Instruments—Comment

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

Human rights issues

- **Disallowable Instrument DI2026-24 being the Road Transport (General) Application of Road Transport Legislation (Lime Electric Scooter) Declaration 2026 made under section 13 of the *Road Transport (General) Act 1999* provides that the Minister may 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 circumstances stated in the declaration.**
- 2.3 This instrument, made under section 13 of the *Road Transport (General) Act 1999*, disapplies a limitation in subparagraph 18A(a)(vii)(A) of the *Road Transport (Road Rules) Regulation 2017*, relating to personal mobility devices (PMDs). The limitation is that a PMD must not exceed 1,250mm in length.
- 2.4 The instrument applies to the Lime Network Pty Ltd (Lime), which will be operating a shared micromobility scheme in the ACT (i.e. electric scooters), using a permit under the *Public Unleased Land Act 2013*. Lime's electric scooters have a length of 1,320mm which exceeds the maximum length prescribed.

2.5 The explanatory statement for the instrument states:

To allow the Lime electric scooters to legally operate as PMDs and be subject to additional PMD road rules that allow safe use of the shared micromobility service, this declaration allows the maximum length of Lime's electric scooters to be more than 1250mm, but less than 1350mm in length. The allowance of 30mm is to account for any variance in manufacturing.

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

Human Rights

This instrument engages with rights under the *Human Rights Act 2004* (the HRA).

This instrument promotes the right to freedom of movement under section 13 of the HRA by facilitating greater mobility in public places. This instrument will enable riders who may be unable to use a motor vehicle, to access parts of Canberra life more easily and affordably through a shared micromobility service.

This instrument also promotes the right to a healthy environment under section 27C of the HRA by facilitating zero-emission transport options and reducing the need for motor vehicle use. A reduction of motor vehicle use will therefore reduce vehicle emissions and contribute to cleaner air in the ACT.

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

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

Minor drafting issue

- **Disallowable Instrument DI2026-25 being the ACT Teacher Quality Institute Board Appointment 2026 (No 1) made under sections 14 and 15 of the *ACT Teacher Quality Institute Act 2010* and sections 78 and 79 of the *Financial Management Act 1996* appoints a specified person as a member of the Board of the ACT Teacher Quality Institute.**
- **Disallowable Instrument DI2026-26 being the ACT Teacher Quality Institute Board Appointment 2026 (No 2) made under sections 14 and 15 of the *ACT Teacher Quality Institute Act 2010* and sections 78 and 79 of the *Financial Management Act 1996* appoints a specified person as a member of the Board of the ACT Teacher Quality Institute.**

2.9 Each of the instruments mentioned above appoints a specified person to the Board of the ACT Teacher Quality Institute Board. The formal parts of the instruments (and their explanatory statements) indicate that they are made under sections 14 and 15 of the *ACT Teacher Quality Institute Act 2010* and sections 78 and 79 of the *Financial Management Act 1996*.

2.10 The Committee notes that section 14 of the ACT Teacher Quality Institute Act establishes the Board and then section 15 provides for the appointment of members to the Board. Section 78 of the Financial Management Act applies generally to the appointment of the members of the governing board of a territory authority. Section 79 then applies generally to the appointment of a chair and a deputy chair of the governing board of a territory authority, if this is not provided for in the relevant Act.

- 2.11 The Committee notes that section 16 of the ACT Teacher Quality Institute Act provides that the Minister must not appoint a deputy chair to that Board.
- 2.12 The Committee notes that neither of the persons appointed by these instruments is appointed as the chair or the deputy chair. The Committee suggests that the reference to section 79 of the Financial Management Act is therefore redundant.
- 2.13 **This comment does not require a response from the Minister.**

Minor drafting issue

- **Disallowable Instrument DI2026-27 being the Education (Registration Standards Advisory Board) Appointment 2026 (No 1) made under section 78 of the *Education Act 2004* appoints a specified person as chair of the Registration Standards Advisory Board for a period of three years.**
 - **Disallowable Instrument DI2026-30 being the Education (Registration Standards Advisory Board) Appointment 2026 (No 2) made under section 78 of the *Education Act 2004* appoints a specified person as a member of the Registration Standards Advisory Board for a period of three years.**
 - **Disallowable Instrument DI2026-31 being the Education (Registration Standards Advisory Board) Appointment 2026 (No 3) made under section 78 of the *Education Act 2004* appoints a specified person as a member of the Registration Standards Advisory Board for a period of three years.**
 - **Disallowable Instrument DI2026-32 being the Education (Registration Standards Advisory Board) Appointment 2026 (No 4) made under section 78 of the *Education Act 2004* appoints a specified person as a member of the Registration Standards Advisory Board for a period of three years.**
- 2.14 The instruments mentioned above are all made under section 78 of the *Education Act 2004*. The first instrument mentioned above appoints a specified person as chair of the Registration Standards Advisory Board. The remaining instruments appoint specified persons as members of the Board.
- 2.15 The Committee notes, with approval, that the explanatory statement for each instrument clearly states that the person appointed is not a public servant.
- 2.16 The Committee notes that section 78 of the Education Act provides:

78 Registration standards advisory board—membership

- (1) The registration standards advisory board consists of the following members appointed by the Minister:
- (a) a chair;
 - (b) at least 1 and not more than 3 members chosen by the Minister;
 - (c) 1 member nominated by the director-general;
 - (d) 1 member nominated by the Association of Independent Schools of the ACT;
 - (e) 1 member nominated by Catholic Education, Archdiocese of Canberra and Goulburn.

Note For laws about appointments, see the Legislation Act, pt 19.3.

- (2) The Minister may appoint a member only if—
 - (a) satisfied that the person has qualifications, expertise and experience relevant to the functions of the board; and
 - (b) the person is registered under the *Working with Vulnerable People (Background Checking) Act 2011* to engage in regulated activities involving children; and
 - (c) any other requirements prescribed by regulation are met.
- (3) Also, the Minister may appoint a person under subsection (1) (a) or (b) only if—
 - (a) the Minister has consulted the following entities about the appointment:
 - (i) the Association of Independent Schools of the ACT;
 - (ii) Catholic Education, Archdiocese of Canberra and Goulburn; and
 - (b) the person is not any of the following:
 - (i) a public servant working in the directorate responsible for administering this Act;
 - (ii) an employee of a registered school;
 - (iii) a member of the governing body of a registered school;
 - (iv) a director of a corporation that is the proprietor of a registered school;
 - (v) a trustee of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn;
 - (vi) an employee of Catholic Education, Archdiocese of Canberra and Goulburn;
 - (vii) an employee of the Association of Independent Schools of the ACT.
- (4) A member's conditions of appointment are the conditions stated in the instrument of appointment.

2.17 The Committee notes that the explanatory statements for none of the instruments address the requirements in subsections 78(2) and (3), above. While it may be assumed that the Minister would not have appointed the specified persons unless satisfied that the relevant requirements were met, the Committee considers that, for instruments of appointment, it is always preferable that the explanatory statement explicitly addresses requirements such as these, to demonstrate that the Minister has turned their mind to these issues.

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

Chiaka Barry MLA
Chair
May 2026

Outstanding responses

Bills/Subordinate Legislation/National Laws

Report 14, dated 27 January 2026

Bill

- Family, Personal and Sexual Violence Amendment Bill 2025 (an interim response was received on 5 March 2026).

Report 15, dated 17 February 2026

Bill

- Firearms (Public Safety) Amendment Bill 2026.

Report 16, dated 10 March 2026

Bill

- Firearms (Firearm Prohibition Orders) Amendment Bill 2026.

Report 18, dated 28 April 2026

Bills

- City and Environment Legislation Amendment Bill 2026.
- Planning (Missing Middle Housing) Amendment Bill 2026.