STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY (LEGISLATIVE SCRUTINY ROLE)

SCRUTINY REPORT 39

10 NOVEMBER 2015

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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

The Standing Committee on Justice and Community Safety when performing its legislative scrutiny role shall:

(1) consider 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):

  (a) is in accord with the general objects of the Act under which it is made;

  (b) unduly trespasses on rights previously established by law;

  (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or

  (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;

(2) 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 Committee;

(3) consider whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:

  (a) unduly trespass on personal rights and liberties;

  (b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;

  (c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;

  (d) inappropriately delegate legislative powers; or

  (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;

(4) report 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*;

(5) report to the Assembly on these or any related matter and if the Assembly is not sitting when the Committee is ready to report on bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

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BILLS

BILL—NO COMMENT

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

ELECTORAL AMENDMENT BILL 2015

This is a Bill to amend the *Electoral Act 1992* to rectify an anomaly that has arisen following the inclusion of a new Communication Allowance in the salary of Members of the Legislative Assembly by the Remuneration Tribunal in Determination No 7 of 2014.

HOLIDAYS AMENDMENT BILL 2015

This is a Bill to amend the *Holidays Act 1958* to provide that Easter Sunday is a public holiday in its own right.

REVENUE LEGISLATION AMENDMENT BILL 2015

This is a Bill to amend various Territory laws concerned with taxation to improve their administration.

STATUTE LAW AMENDMENT BILL 2015 (NO 2)

This is a Bill to amend a number of ACT acts and subsidiary laws for statute law revision purposes only.

BILLS—COMMENT

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

ANIMAL DISEASES (BEEKEEPING) AMENDMENT BILL 2015

This is a Bill for an Act to amend the *Animal Diseases Act 2005* to provide for the registration of beekeepers in the ACT where a beekeeper's hives are always located in the ACT; in particular to allow for the efficient and effective identification of beekeepers and their hives in the Territory in the event of a biosecurity incident.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—paragraph (3)(a) of the terms of reference

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

THE RIGHT TO PRIVACY (HRA SECTION 12) AND THE COLLECTION AND DISSEMINATION OF PERSONAL INFORMATION ABOUT A BEEKEEPER

By proposed section 62C (see clause 4) an application by a person to be a registered beekeeper must include "[the] applicant's name, address, email address and phone number". This information must be updated if necessary (proposed section 62E). This information must be kept on a register, and must be made available to "an authorised person" and, for a biosecurity risk, "a person who the director-general is satisfied on reasonable grounds requires access to the register to respond to the risk" (proposed section 62K).

With apparent reference to these provisions (and to others that also require provision of certain kinds of information), the Explanatory Statement refers to HRA section 12 and offers a justification for limitations on section 12 according to the framework stated in HRA section 28. The Committee refers Members of the Assembly to this Statement.

The Committee draws these matters to the attention of the Assembly and does not call for a response from the Minister.

THE RIGHT TO THE PRESUMPTION OF INNOCENCE (HRA SUBSECTION 22(1)) AND THE IMPOSITION ON A DEFENDANT OF A LEGAL BURDEN OF PROOF IN RELATION TO A MATTER OF DEFENCE

Proposed subsection 62(1) would create an offence where a person is a beekeeper, the hives are located in the ACT, and the person is not registered. Subsection 62B(2) provides that it "is a defence to a prosecution for an offence against subsection (1) if the person proves" certain matters (being registration under New South Wales law). This imposes a **legal** burden of proof on a defendant (see paragraph 59(b) of the *Criminal Code 2002* (noting the example given).

The Explanatory Statement characterises the burden as evidential only, but this is mistaken. The Committee recommends that the Explanatory Statement reworks its justification for the limitation of section 22 involved.

The Committee draws these matters to the attention of the Assembly and recommends that the Minister respond.

COURTS LEGISLATION AMENDMENT BILL 2015 (NO 2)

This is a Bill to amend a number of ACT Acts and subsidiary laws in relation to the operation of courts and tribunals.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—paragraph (3)(a) of the terms of reference

Report under section 38 of the *Human Rights Act 2004*

The Explanatory Statement identifies a number of respects in which it might be argued that a provision of the Bill limits the right to a fair trial stated in HRA section 21, and offers a justification according to the framework stated in HRA section 28. The Committee refers Members of the Assembly to this Statement.

The Committee draws these matters to the attention of the Assembly and does not call for a response from the Minister.

REVENUE (CHARITABLE ORGANISATIONS) LEGISLATION AMENDMENT BILL 2015

This is a Bill for an Act to amend various laws of the ACT, and in particular the *Taxation Administration Act 1999*, to exclude specific types of politically-oriented or professional bodies operating in the ACT from obtaining charitable status, with the object of ensuring the sustainability of existing tax exemptions for not-for-profit charitable providers, while also ensuring ACT revenue is protected.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—paragraph (3)(a) of the terms of reference

THE TAX LIABILITY OF ORGANISATIONS EXCLUDED FROM THE DEFINITION OF "CHARITABLE ORGANISATION" AND THE COMMON LAW PRINCIPLE AGAINST THE RETROSPECTIVE OPERATION OF NON-CRIMINAL LAWS

HRA section 25 applies only in respect of criminal laws, but, as the Explanatory Statement acknowledges, a common law principle applies in respect of non-criminal laws, and is reflected in section 84 of the *Legislation Act 2001.*

The Explanatory Statement explains carefully how the amendments proposed to the Taxation Administration Act run contrary to these principles and offers a justification for this limitation. The Committee refers Members of the Assembly to this Statement.

The Committee draws these matters to the attention of the Assembly and does not call for a response from the Minister.

ROAD TRANSPORT (PUBLIC PASSENGER SERVICES) (TAXI INDUSTRY INNOVATION) AMENDMENT BILL 2015

This is a Bill to amend the *Road Transport (Public Passenger Services) Act 2001* to allow for the entry of new businesses into the on-demand public transport market by introducing the concept of ridesharing and defining its associated participants; and for regulating ridesharing through appropriate licensing, accreditation and insurance requirements for on-demand transport providers.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—paragraph (3)(a) of the terms of reference

Report under section 38 of the *Human Rights Act 2004*

THE COMPENSATION ISSUE[1]

In its report *Regulation of the Taxi Industry,*[2] the Productivity Commission noted that the value of taxi plates "is essentially a reflection of scarcity created by the entry restrictions to the industry (the so-called 'quota rent'). Thus, the value of taxi plates could potentially fall substantially—possibly to zero—if entry restrictions were abolished" (at 27). The reform to the scheme for regulation of the taxi industry proposed in the Bill does not abolish restrictions, but introduces competing players, and there will be some significant effect on the value of taxi plates. The Commission also noted that "[t]he case for compensating incumbent plate holders for the diminution in the value of their asset is complex", and that one of the factors was "whether governments should protect the value of those 'property rights' which owe their existence to regulation" (ibid).

In the comments that follow, the Committee does not undertake a multi-factored approach to the policy question whether the reforms of the Bill should be enacted. Rather, its concern is to identify the rights issue involved, and to leave it to the Assembly to weigh its significance.

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[1] A report at page 2 of the *Canberra Times* on 4 November 2015 provides context.

[2] Productivity Commission 1999, *Regulation of the Taxi Industry*, Ausinfo, Canberra. http://www.pc.gov.au/research/completed/taxi-regulation/taxiregulation.pdf

In a comment applicable to the Territory, in *P J B v Melbourne Health*,[3] Bell J (of the Victorian Supreme Court) said:

> 93 ... the right to ownership and peaceful enjoyment of property is an ancient feature of the common law, established by the time of *Magna Carta* 1297, which is still in force in Victoria. According to Blackstone, the right of property is inherent in every person and 'consists in the free use, enjoyment and disposal of all his acquisitions, without any control of diminution, save only by the laws of the land'. [William Blackstone, *Commentaries on the Laws of England* (1765) vol 1, 134] In *Grey v Harrison*, [[1997] 2 VR 359 at 366] Callaway JA (Tadgell and Charles JJA agreeing) said 'it is one of the freedoms which shape our society, and an important human right, that a person should be free to dispose of his or her property as he or she thinks fit'. Protecting the right to property is a purpose of the civil and criminal law, as is protecting the personal integrity of the individual.
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> 94 Protecting the right to own and peacefully enjoy property is encompassed by the principle of legality in the interpretation of legislation, which I will later apply. Bennion says the principle is that 'by the exercise of state power the property and other economic interests of a person should not be taken away, impaired or endangered, except under clear authority of law.' [Francis Bennion, *Bennion on Statutory Interpretation* (5th ed, 2008) 846] Early in the life of the Australian federation, Griffith CJ held in *Clissold v Perry* [[1904] HCA 12] that statutes 'are not to be construed as interfering with vested [property] interests unless that intention is manifest'. Referring to that authority, French CJ recently said *in R & R Fazzolari Pty Ltd v Parramatta City Council*: [[2009] HCA 12 at [44]]
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> > [the] application to property rights of this long-standing interpretive principle is consistent with international developments in the recognition of human rights since World War II ... the right to property was recognised in the Universal Declaration of Human Rights an in various other international instruments. [*Universal Declaration of Human Rights* 1948, Art 17; *American Declaration of the Rights and Duties of Man* 1948, Art 23; *European Convention for the Protection of Human Rights and Fundamental Freedoms* 1950, Protocol 1, Art 1; *American Convention on Human Rights* 1969, Art 21; *African Charter on Human and Peoples' Rights* 1981, Art 14 (footnote in quoted text). Article 17 of the *Universal Declaration of Human Rights* (GA Res 217A (iii), UN Doc A/810 at 71 (1948)) provides: '(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property']

Bell J also commented:

> [Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms] specifies a right to the peaceful enjoyment of possessions as well as the non-deprivation principle. There is a significant body of authority in the courts in the United Kingdom and Europe] on this right. ... It is well-established that a formal expropriation is not required (although it does suffice) and a de facto expropriation is sufficient. Citing earlier authorities, in *Zwierzynski v Poland* the European Court of Human Rights gave this statement of principle:

[3] [2011] VSC 327 at [93]ff.

> The Court recalls that in order to establish whether or not there has been a deprivation of possessions it is necessary not only to consider whether there has been a formal taking or expropriation of property, but also to look beyond appearances and investigate the realities of the situation complained of. Since the Convention is intended to guarantee rights that are 'practical and effective', it has to be ascertained whether that situation amounted to a de facto expropriation. [(2004) 38 EHRR 6, [69]]

There is a view that the regulatory change of the kind proposed in the Bill **does not** have any effect of property rights. The Productivity Commission quoted the following:

> Property rights arising in licences created by law ... are subject to the conditions created by law and to an implied condition that the law may change those conditions. Changes brought about by law may enhance the value of those property rights ... or they may diminish them … But an amendment of the law which by changing the conditions under which a licence is held, reduces the commercial value of the licence cannot be regarded as an attack on the property right in the licence — it is the consequence of the implied condition which is an inherent part of the property right in the licence (from Costello J in *Hempenstall et al v The Minister for the Environment* (1992) quoted in Kenny and McNutt 1998). [This quote has been edited by the Committee].

In *ICM Agriculture Pty Ltd v The Commonwealth*[4] Heydon J made a comment that was not directed to the kind of situation presented by the Bill, and he was in dissent on the particular issues in the case, but it may be quoted as the basis for an argument that the regulatory changes proposed in the Bill **do** amount to a limitation of the right to property. His Honour said:

> 176. In *Minister of State for the Army v Dalziel* Latham CJ said that s 51(xxxi) [of the Commonwealth Constitution] "is plainly intended for the protection of the subject". How does it protect the subject? In part, plainly, it does so simply because as a matter of justice compensation is to be given for something which the subject has lost as a result of the legislature having pursued a wider public goal. A democratic electorate would not regard expropriation without compensation in time of peace with equanimity. "What the public enjoys should be at the public, and not [at] private expense." That was certainly what Dixon J saw as the purpose of the "just terms" requirement: "to prevent arbitrary exercises of the power [of compulsory acquisition] at the expense of a State or the subject."
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> 177. There are, however, functions served by s 51(xxxi) which extend beyond the simple protection of the subject, whether this was intended by the framers or not, and whether contemporaries of the framers would have perceived them as being served or not. One of these functions was seen by Hayek as fundamentally significant. He said [*The Constitution of Liberty*, (1960) at 217-218]:
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> > "The principle of 'no expropriation without just compensation' has always been recognized wherever the rule of law has prevailed.[5] It is, however, not always recognized that this is an integral and indispensable element of the principle of the supremacy of the law. Justice

[4] [2009] HCA 51

[5] In a footnote, Heydon J said: "This is an extreme and not wholly accurate statement, but it does not stand alone. Thus in the Supreme Court of India, in The *State of Bihar v Maharajadhiraja Sir Kameshwar Singh of Darbhanga* [1952] SCR 889 at 1008, Chandrasekhara Aiyar J said that: "From very early times, law has recognized the right of Government compulsorily to acquire private properties of individuals for a public purpose ... But it is a principle of universal law that the acquisition can only be on payment of just compensation."

> requires it; but what is more important is that it is our chief assurance that those necessary infringements of the private sphere will be allowed only in instances where the public gain is clearly greater than the harm done by the disappointment of normal individual expectations. The chief purpose of the requirement of full compensation is indeed to act as a curb on such infringements of the private sphere and to provide a means of ascertaining whether the particular purpose is important enough to justify an exception to the principle on which the normal working of society rests. In view of the difficulty of estimating the often intangible advantages of public action and of the notorious tendency of the expert administrator to overestimate the importance of the particular goal of the moment, it would even seem desirable that the private owner should always have the benefit of the doubt and that compensation should be fixed as high as possible without opening the door to outright abuse. This means, after all, no more than that the public gain must clearly and substantially exceed the loss if an exception to the normal rule is to be allowed."
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> The requirement to provide just terms thus compels the legislature to consider the true cost of the legislation – not merely the political pain to be endured, which, where the persons whose property is being acquired have little electoral weight, may be quite small. [Footnotes omitted]

In conclusion, the Committee notes that in terms of whether the plate holders may be said to have a right to compensation for loss of a property right, the brief discussion above points to two key issues arising. The first is whether the licence plate is properly styled as an interest in property, and the second is if this is so, whether the limitation of the property right is important enough to justify an exception to the principle that provision should be made for compensation.

The Committee draws these matters to the attention of the Assembly and recommends that the Minister respond.

THE POWER OF A COURT THAT HAS FOUND A CORPORATION THAT IS A TRANSPORT BOOKING SERVICE GUILTY OF CERTAIN OFFENCES TO MAKE A RANGE OF ORDERS THAT REQUIRE THE CORPORATION TO TAKE ACTION— PROPOSED SECTION 36I (CLAUSE 10)

The description of proposed section 36I in the Explanatory Statement expresses succinctly its provisions, to which is added an explanation of its purpose. The matter in square brackets indicates Committee additions. (The Committee has also corrected references to "361" at Explanatory Statement page 12 to "36I".)

> **Section 36I Court may order transport booking service to take certain actions**
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> [Subsection 36I(1)] provides that where a court finds a corporation guilty of an offence against sections 32 (transport booking service – must be accredited), 34 (transport booking service – must comply with accreditation conditions) and 36G (transport booking service – responsibilities) that in addition to or instead of any other penalty imposed, the court may order a corporation to take specified actions. [The penalties stated in respect of the three offences, the commission of any one of which will trigger section 36I, are, in respect of sections 32 and 33, 50 penalty points ($37 500), and in respect of section 36G, 20 penalty points ($15 000).]
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> These [specified actions] are [see subsection 36I(2)]:
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> - to publicise the offence, its consequences and penalties imposed; and/or

- to perform specified acts or establish and/or carry out a specified project for the public benefit.

In the case of the latter, the project can be unrelated to the offence.

Subsection 36I(3) provides that the court may specify a period within which the order must be completed and may also impose any other requirements that it considers necessary or expedient for enforcement of the order or to make the order effective.

Subsection 36I(4) provides that the total cost to the corporation of compliance with orders under section 49E cannot be more than 6500 penalty units including any fine imposed for the offence. [At present, 6500 penalty units in respect of a corporation amounts to $4,875,000; see section 133 of the Legislation Act.]

Subsections 36I(5) and (6) provide that in making an order under section 36I, the court must take into account, as far as practicable, the severity and extent of consequences [arising] from the offence, any actions taken to rectify damage resulting from the offence, financial circumstances of the corporation and the burden that the order will impose. The court is not prevented, however, from making an order if it has been unable to ascertain the financial circumstances of the corporation.

Subsections 36I(7) and 36I(8) provide that if a corporation fails, without reasonable excuse, to comply with an order under subsection (2)(a) or (b), the court may on application of the road transport authority, order the director-general to carry out the order and to publicise the failure of the corporation to do so. The director-general must comply with such an order.

Subsection 36I(9) provides that an order to the director-general under subsection 36I(7) does not prevent contempt of court proceedings against a corporation that has failed to comply with an order under this section.

Subsection 36I(10) provides that reasonable costs incurred by the director-general of complying with an order under subsection 36I(7) will be a debt owed to the Territory by the corporation.

The opening of the ACT on-demand public passenger service market to greater competition may involve new entrants with significant differences in size, operating arrangements and funding capacity. While similar behaviours to which the court order may apply have to date been effected by fine only offences [and in practice applicable only to] local market participants, looking forward these [fines] may not be significant enough to provide a behavioural response from corporations with multinational interests. Accordingly, additional capacity to support compliance is to be provided through this section and to permit proportionate action commensurate with a corporation's financial capacity.

No human rights issues are raised by this section as it applies to corporations only.

Introduction: Scrutiny analysis where the actor affected by the law is a corporation

With respect to the last mentioned matter, the Committee's function is not confined to assessing whether a provision of a Bill limits a right stated in the Human Rights Act. It must also consider whether a provision is "an undue trespass on personal rights and liberties" (paragraph (3)(a) of the Committee terms of reference). The question of whether it can be said that a corporation has

personal rights or liberties requires further consideration by the Committee and will not be pursued further here.

The scope of the discretions conferred on the court consequent upon it finding a corporation guilty of certain offences

The Committee must consider whether a provision of the Bill "make[s] rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers" (paragraph (3)(b) of the Committee terms of reference), or whether it "make[s] rights, liberties and/or obligations unduly dependent upon non-reviewable decisions" (paragraph (3)(c) of the Committee terms of reference).

At three points, section 36I confers power on the court in terms that would confer a very wide discretion whether or not to exercise the power.

First, the opening words of subsection 36I(2) provide that the court "may order" the guilty corporation to do one or more of the actions stated in paragraphs (a), (b) and (c). The exercise of this power is structured by subsection 36I(5), which provides that the court must "take into account", as far as practicable, the severity and extent of consequences arising from the offence, any actions taken to rectify damage resulting from the offence, financial circumstances of the corporation and the burden that the order will impose.

> It is not clear whether subsection 36I(5) should be read as an exhaustive statement of the matters relevant to the exercise of the discretion stated in the opening words of subsection 36I(2). The Committee recommends that this be clarified.
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> **The Committee draws this matter to the attention of the Assembly and recommends that the Minister respond.**

The width of the discretion involved in the application of subsection 36I(2) is magnified when it is read with subsection 36I(3). This provides that the court may specify a period within which the order must be completed and may also impose any other requirements that it "considers necessary or desirable for enforcement of the order or to make the order effective".

> This discretion is stated in subjective terms, rather than, as is now common, in terms that the decision must be based on "reasonable grounds".
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> **The Committee draws this matter to the attention of the Assembly and recommends that the Minister respond.**

The practical adverse effect that an order may have on a corporation is emphasised by subsection 36I(4), which provides that the total cost to the corporation of compliance with orders under subsection 36I(2) cannot be more than 6500 penalty units including any fine imposed for the offence. This may appear beneficial, but it is to be noted that in respect of a corporation 6500 penalty units amounts to $4,875,000; see section 133 of the Legislation Act.

Secondly, under paragraph 36I(2)(c), the court may order the corporation to "do stated things or establish or carry out a stated project for the public benefit even if the project is unrelated to the offence". This is a very vaguely worded power, and given the words "even if the project is unrelated to the offence" makes it very difficult to put limits to the *kinds* of orders that maybe made. The factors stated in subsection 36I(5) do not address this question.

A court would be empowered to order the corporation to "do stated things or establish or carry out a stated project for the public benefit even if the project is unrelated to the offence". There appear to be two alternatives here; first, to order that the corporation to "do stated things", and secondly, to "establish or carry out a stated project for the public benefit".

Point for clarification. It may be that it is intended that the words "for the public benefit qualify the words "do stated things". If so, it is suggested that this intention be made clear. As it stands, the provision is ambiguous.

The "things" or the projects that may be ordered need have no relation to the nature of the relevant offence. The vagueness of these concepts is reflected also in the example appended to subsection 36I(2), being, in the case of paragraph (c), to "develop and operate a community service". This example[6] may—with respect to a project that was "a community service"—extend the reach of paragraph (c) beyond what it might otherwise be taken to convey. The word "operate" connotes an obligation to continue the project into the indefinite future (or at least until the corporation had expended $4,875,000).

The discretion of the court to make an order under paragraph 36I(2)(c) is at least structured by subsection 36I(5), which provides that the court must "take into account", as far as practicable, the severity and extent of consequences from the offence, any actions taken to rectify damage resulting from the offence, the financial circumstances of the corporation and the burden that the order will impose. There is no reference here to a consideration of whether the thing to be done or the project to be carried out is one that is ordinarily within the capacity of the corporation to perform. It might be seen as a dimension of the "burden" the order will impose.

These are very significant powers and are open to the objection that "[t]he broader and more loosely-textured a discretion is, whether conferred on an official or a judge, the greater the scope for subjectivity and hence for arbitrariness".[7]

Subject to the comments below, the Committee recommends that the Minister consider confining more closely the powers in section 36I.

The Committee draws these matters to the attention of the Assembly and recommends that the Minister respond.

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2015 (NO 2)

This is a Bill to amend some of the ACT road transport legislation to improve the administration and enforcement of the legislation, and in particular to: allow for electronic service of infringement notices, allow for infringement notice declarations to be completed online, create consistency in the appeal rights of drivers who face automatic disqualification of their driver licences for drink or drug driving offences, remove an existing police power of entry to arrest for a drink or drug driving offence and in its stead provide police with a limited power to enter premises to require alcohol or drug screening tests, and provide that police advice of an existing licence suspension is taken to be formal notification of that advice.

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[6] By subsection 132(1) of the Legislation Act, "[a]n example in an Act or statutory instrument— (a) is not exhaustive; and (b) may extend, but does not limit, the meaning of the Act or instrument, or the particular provision to which it relates". The example appended to subsection 36I(2) appears to extend the meaning of paragraph 36I(2)(c).

[7] A proposition quoted with approval in Justice M J Beazley and M Pulsford, "Discretion and the rule of law in the criminal justice system" (2015) 89 *Australian Law Journal* 158 at 159. Justice Beazley is the President of the NSW Court of Appeal.

POLICE ADVICE OF EXISTING LICENCE SUSPENSION (CLAUSES 12 AND 16 OF THE BILL) AND THE RIGHT TO FREEDOM OF MOVEMENT (HRA SECTION 13)

The Explanatory Statement summarises the relevant provisions in these words:

> The Bill (clauses 12 and 16) amends the *Road Transport (General) Act 1999* (the General Act) and the *Road Transport (Driver Licensing) Act 1999* (the Driver Licensing Act) to provide that police advice of an existing driver licence suspension under those Acts is formal notification of that fact, notwithstanding that the driver may claim to have not received the initial notice of suspension from the RTA.

The Explanatory Statement at pages 2 to 4 identifies the right to freedom of movement in HRA section 13 as the right engaged and arguable limited by these provisions, and offers a justification in terms of HRA section 28. The Committee refers Members of the Assembly to this Statement.

The Committee adds that regard might also be had to the rights to life (HRA subsection 9(1)) and the right to security of the person (HRA subsection 18(1)). These rights are engaged in the sense of being enhanced by these clauses.

The Committee draws these matters to the attention of the Assembly and does not call for a response from the Minister.

A point for consideration by the Minister. The Explanatory Statement states that

> [t]he purpose of the amendment is to ensure that individuals whose driver licences have been suspended but who claim not to have received the initial suspension notice from the RTA are not able to claim they are not aware of the status of their licences, once advised by a police officer. This will be relevant should the driver subsequently be detected driving during the period of suspension and charged with unlicensed driving, having been previously notified by police about the status of their licence.

In particular, a condition of the application of the rule in proposed subsection 19A(2) that "the person is taken to know that the person's driver licence is suspended", is that "the police officer tells the person that the person's driver licence is suspended" (paragraph 19A(1)(c)). It may be anticipated however that some of the drivers will claim that they were not given the relevant advice, and this raises the question of how it might be proved that the advice was given.

There is no provision for the recording of this advice from the police officer. It is noted (at Explanatory Statement page 14) that "[i]n practice, where a police officer advises a person that their licence is suspended they will also notify the RTA that this advice has been provided to the driver so that this information can be retained on RTA records".

This raises the question whether the fact that an RTA document records a statement by the police officer that advice was given is admissible to prove the truth that what the police officer asserted to be the fact. The RTA record of what the police-officer said is, in this context, second-hand hearsay. It may however be admissible to prove that the advice was given under section 69 of the *Evidence Act 2011*, which governs the admissibility of "business records".

The Committee draws this matter to the attention of the Minister and does not call for a response.

THE VESTING IN A POLICE OFFICER POLICE OFFICER OF POWER TO ENTER THE PREMISES, USING THE FORCE THAT IS NECESSARY AND REASONABLE IN THE CIRCUMSTANCES, FOR THE PURPOSE OF REQUIRING THE PERSON TO UNDERGO 1 OR MORE ALCOHOL SCREENING TESTS, AND THE RIGHT TO PRIVACY STATED IN HRA SECTION 12

The relevant provisions are clauses 5 and 6 of the Bill. The Explanatory Statement at pages 4 to 9 refers to HRA section 12 and to HRA section 28 and offers a justification for limitations on section 12 according to the framework stated in HRA section 28. The Committee refers Members of the Assembly to this Statement.

The Committee draws these matters to the attention of the Assembly and does not call for a response from the Minister.

SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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

Disallowable Instrument DI2015-265 being the Road Transport (General) Application of Road Transport Legislation Declaration 2015 (No. 7) made under section 12 of the *Road Transport (General) Act 1999* **declares that the road transport legislation does not apply to a road or road related area that is controlled by non-pay time limited permissive parking signs on specified dates.**

Disallowable Instrument DI2015-266 being the Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2015 (No. 1) made under section 25 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* **revokes DI2014-287 and approves the Energy Efficiency Improvement Eligible Activities Interim Code of Practice, August 2015.**

Disallowable Instrument DI2015-271 being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2015 (No. 1) made under section 11 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* **determines the energy savings contribution for specified compliance periods.**

Disallowable Instrument DI2015-272 being the Energy Efficiency (Cost of Living) Improvement (Penalties for Noncompliance) Determination 2015 (No. 1) made under section 22 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* **determines the shortfall penalty for specified compliance periods.**

Disallowable Instrument DI2015-274 being the Public Place Names (Moncrieff) Determination 2015 (No. 7) made under section 3 of the *Public Place Names Act 1989* **determines the names of four roads in the Division of Moncrieff.**

Disallowable Instrument DI2015-275 being the Emergencies (Bushfire Council Members) Appointment 2015 (No. 1) made under section 129 of the *Emergencies Act 2004* **appoints specified persons as members of the Bushfire Council.**

Disallowable Instrument DI2015-279 being the Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2015 (No. 6) made under subsection 21(1) of the *Race and Sports Bookmaking Act 2001* **revokes DI2014-258 and determines two Tabcorp ACT Pty Ltd temporary locations as sports bookmaking venues for services on Melbourne Cup day.**

Disallowable Instrument DI2015-280 being the Road Transport (General) Application of Road Transport Legislation Declaration 2015 (No. 8) made under section 12 of the *Road Transport (General) Act 1999* **declares that Australian Road Rules 213(3) and (4), requiring a motor vehicle to be made secure, do not apply to Coles Supermarket delivery vehicle.**

Disallowable Instrument DI2015-282 being the Road Transport (General) Application of Road Transport Legislation Declaration 2015 (No. 9) made under section 12 of the *Road Transport (General) Act 1999* **disapplies specified road transport legislation to a road or road related area that is a special stage of the Blue Range Sprint Rally.**

Disallowable Instrument DI2015-285 being the Civil Law (Wrongs) Professional Standards Council Appointment 2015 (No. 4) made under Schedule 4, section 4.38 of the *Civil Law (Wrongs) Act 2002* **appoints specified persons to be members of the Professional Standards Council, representing Tasmania and the Commonwealth.**

DISALLOWABLE INSTRUMENTS—COMMENT

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

DISAPPLICATION OF SUBSECTIONS 47(5) AND (6) OF THE LEGISLATION ACT 2001

Disallowable Instrument DI2015-267 being the Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2015 (No. 1) made under section 25 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* **revokes DI2013-265 and approves the Energy Efficiency (Cost of Living) Improvement Record Keeping and Reporting Code of Practice, August 2015.**

Disallowable Instrument DI2015-268 being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Target) Determination 2015 (No. 1) made under section 7 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* **determines the energy savings targets for specified compliance periods.**

The Committee notes that section 4 of the first instrument mentioned above disapplies subsections 47(5) and (6) of the *Legislation Act 2001* in relation to instruments applied, adopted or incorporated by the instrument. This means that there is no obligation to publish the texts of any instruments that are applied by this instrument, nor to publish any amendments to such instruments. Clearly, this limits the access of users of the instrument to all the material that is relevant to the operation of the instrument.

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

> **Clause 4 Disapplication of notification requirement**
>
> Clause 5 disapplies sections 47 (5) and 47 (6) of the *Legislation Act 2001*, so that published standards and codes that are relied on in the code of practice do not have to be notified on the ACT legislation register. This has been done for copyright reasons.
>
> Documents referenced in the code include Australian Standards, the Building Code of Australia (BCA) and the Plumbing Code of Australia (PCA). These documents are subject to copyright, making them inappropriate to notify on the legislation register. Australian Standards are available at www.standards.org.au. The BCA and PCA, including published State and Territory appendices, are available on the ABCB web site at www.abcb.gov.au.

The explanatory statement goes on to state:

> **Clause 5 Referenced documents**
>
> This clause provides advice regarding how the community can access the Australian Standards, the BCA and the PCA, including how they can freely access the BCA and PCA, considering that access to the standards and codes are generally otherwise by paid purchase or subscription.

Section 4 of the second instrument mentioned above is in similar terms. The explanatory statement for the instrument contains a similar explanation.

While it is not ideal that there are limitations on the access of readers of legislation to all the material that is relevant to the operation of the legislation, the Committee notes that the explanations provided are explanations that the Committee generally finds acceptable.

This comment does not require a response from the Minister.

EXERCISE OF POWERS PRIOR TO COMMENCEMENT OF EMPOWERING PROVISION

Disallowable Instrument DI2015-268 being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Target) Determination 2015 (No. 1), including a regulatory impact statement, made under section 7 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* **determines the energy savings targets for specified compliance periods.**

Disallowable Instrument DI2015-269 being the Energy Efficiency (Cost of Living) Improvement (Priority Household Target) Determination 2015 (No. 1) made under section 8 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* **determines the priority household target for the compliance period 1 January to 31 December 2016.**

Disallowable Instrument DI2015-270 being the Energy Efficiency (Cost of Living) Improvement (Emissions Multiplier) Determination 2015 (No. 1) made under section 9 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* **determines the emissions multipliers for specified compliance periods.**

The Committee notes that each of these instruments relies on a provision of the *Energy Efficiency (Cost of Living) Improvement Act 2012* that was inserted by the *Energy Efficiency (Cost of Living) Improvement Amendment Act 2015* but has not yet commenced. The Committee notes that (as it noted in *Scrutiny Report No. 37 of the 8th Assembly*) the making of the instruments prior to the commencement of the empowering provision is provided for by section 81 of the *Legislation Act 2001*. The Committee notes with approval that the reliance on section 81 is mentioned both in the instruments themselves and in the explanatory statements for the instruments, which contain a statement along the following lines:

> This instrument is made under section 7 of the Act as amended by section 4 of the *Energy Efficiency (Cost of Living) Improvement Amendment Act 2015* (Amendment Act). Section 4 of the Amendment Act is an uncommenced provision. The making of this instrument is done in accordance with section 81 of the Legislation Act. This instrument commences on the day after notification consistent with section 81 (6) of the Legislation Act.

The Committee commends this approach to other instrument-makers.

This comment does not require a response from the Minister.

RETROSPECTIVITY

Disallowable Instrument DI2015-273 being the Firearms (Club) Approval 2015 (No. 1) made under section 40 of the *Firearms Act 1996* **approves a specified club as an approved collectors, hunting or shooting club.**

Disallowable Instrument DI2015-278 being the Firearms (Club) Approval 2015 (No. 2) made under section 40 of the *Firearms Act 1996* **approves a specified club as an approved collectors club.**

The first instrument mentioned above, made under section 40 of the *Firearms Act 1996*, approves the Sporting Shooters' Association of Australia (ACT) as an approved collectors, hunting or shooting club. It is important to note that section 3 of the instrument provides that the approval has effect from 28 August 1998. This means that the instrument has a significant retrospective operation.

The explanatory statement for the instrument states:

> Advice has been received from the ACT Government Solicitor that there are currently only three valid firearms club approvals. These approvals do not include The Sporting Shooters' Association of Australia (ACT) Incorporated. In relation to this club, a search of repealed notifiable instruments in the ACT Legislation Register revealed that Mr Geoffrey Hazel, the then Registrar of Firearms, made a "Declaration of Approved Club" pursuant to section 15(2) of the Firearms Act, to declare SSAA (ACT) to be an approved club for the purposes of section 15 on an unspecified date in 1998.
>
> The Declaration was identified as a "notifiable instrument" as notified on 22 April 1998 (NI1998-85). The ACT Legislation Register states that the Declaration was repealed on 28 August 1998, with the reason noted on the ACT Legislation Register as "approvals under the ACT, s 15 (Approval of clubs) are disallowable instruments and must be presented to the Legislative Assembly."

However, this instrument was not presented to the Legislative Assembly within 15 sitting days and is therefore taken to be repealed (s 6(6) *Subordinate Laws Act 1989*). Accordingly, 28 August 1998 was the date upon which the Declaration ceased to have effect as this is the day after the last of the 15 sitting days from 1 April 1998.

To rectify this situation The Sporting Shooters' Association of Australia (ACT) Incorporated submitted a new Application to be an Approved Firearms Club on 10 September 2015. The Application has been reviewed and it has been determined that the club has satisfied all the requirements under the Act.

In relation to the retrospective clause, namely, for the approval to take effect from 28 August 1998, the advice from the ACT Government Solicitor is that this should be allowed as s 76(1) of the Legislation Act provides that a statutory instrument may provide that a non-prejudicial provision of the instrument commences retrospectively.

The second instrument mentioned above provides similar approval to the ACT Antique and Historical Arms Association Incorporated, with effect from the same date (ie 28 August 1998). The explanatory statement for the instrument provides the same explanation as is provided in relation to the first instrument.

The Committee notes with approval the statements concerning the operation of section 76 of the *Legislation Act 2001* in relation to the retrospectivity provided for by the instruments.

This comment does not require a response from the Minister.

MINOR DRAFTING ISSUES

Disallowable Instrument DI2015-276 being the Cultural Facilities Corporation (Governing Board) Appointment 2015 (No. 2) made under section 9 of the *Cultural Facilities Corporation Act 1997* **and section 78 of the** *Financial Management Act 1996* **revokes DI2012-191 and appoints a specified person as a member of the Cultural Facilities Corporation governing board.**

Disallowable Instrument DI2015-277 being the Cultural Facilities Corporation (Governing Board) Appointment 2015 (No. 3) made under section 9 of the *Cultural Facilities Corporation Act 1997* **and section 78 of the** *Financial Management Act 1996* **revokes DI2012-191 and appoints a specified person as a member of the Cultural Facilities Corporation governing board.**

Each of the instruments mentioned above appoints a specified person as a member of the Cultural Facilities Corporation Governing Board. Both instruments contain a section 5 that revokes DI2012-191—Cultural Facilities Corporation Governing Board Appointment 2012 (No. 2). That instrument appointed both of the specified persons appointed by these two new instruments to the Governing Board. The Committee assumes that only one of the instruments could actually revoke the earlier instrument and that the second revocation is of no effect. However, the Committee also notes that both instruments are dated 17 September 2015 and both instruments were notified on the ACT Legislation Register on 24 September 2015, so there would appear to be little scope for the double revocation to cause any legal issues.

The Committee also notes that the explanatory statement for the second instrument states that "[t]he appointee is not a Public Servants …".

This comment does not require a response from the Minister.

IS THIS A DISALLOWABLE INSTRUMENT?

Disallowable Instrument DI2015-281 being the Electoral (Electoral Commission Member) Appointment 2015 made under section 12 of the *Electoral Act 1992* **appoints a specified person as a member of the ACT electoral commission.**

This instrument appoints a specified person as a member of the ACT Electoral Commission. The appointment is made by the Speaker of the Legislative Assembly for the ACT, under section 12 of the *Electoral Act 1992*.

Subsection 12(5) of the Electoral Act provides that such an appointment is to be made by disallowable instrument. However, the Committee notes that it is only the appointment of non-public servants that must be effected by disallowable instrument. The Committee notes that section 227 of the *Legislation Act 2001* provides that section 229 (which requires the making of statutory appointments by disallowable instrument) only applies to appointments of persons *other than* public servants. It is for this reason that the Committee has consistently maintained that instruments of appointment should clearly state that the appointee is not a public servant, in order to make clear that, in fact, the appointment should be made by way of disallowable instrument. In its document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps* (available at http://www.parliament.act.gov.au/__data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards.pdf), the Committee stated:

> Under paragraph 227(2)(a) of the *Legislation Act 2001*, an instrument of appointment is not disallowable if it appoints a public servant. As a result, it assists the Committee (and the Legislative Assembly), if the Explanatory Statement for an instrument of appointment contains a statement to the effect that "the person appointed is not a public servant".

There is no such statement in the explanatory statement for the instrument. As the Committee has consistently pointed out, this is not an onerous requirement.

The Committee draws the Legislative Assembly's attention to the instrument under principle (2) of the Committee's terms of reference, on the basis that the explanatory statement for the instrument does not meet the technical or stylistic standards expected by the Committee.

Further, the Committee would be grateful if the Speaker could confirm that the person appointed by the instrument is not a public servant.

This comment requires a response from the Speaker.

IS THIS A DISALLOWABLE INSTRUMENT?

Disallowable Instrument DI2015-283 being the Victims of Crime (Victims Advisory Board) Appointment 2015 (No. 1) made under section 22D of the *Victims of Crime Act 1994* **appoints a specified person as the lawyer member of the Victims Advisory Board.**

This instrument appoints a specified person as a member of the Victims Advisory Board of the ACT. The appointment is made under paragraph 22D(1)(d) of the *Victims of Crime Act 1994.*

The Committee notes that it is only the appointment of non-public servants that must be effected by disallowable instrument. The Committee notes that section 227 of the *Legislation Act 2001* provides that section 229 (which requires the making of statutory appointments by disallowable instrument) only applies to appointments of persons *other than* public servants. It is for this reason that the Committee has consistently maintained that instruments of appointment should clearly state that the appointee is not a public servant, in order to make clear that, in fact, the appointment should be made by way of disallowable instrument. In its document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps* (available at http://www.parliament.act.gov.au/__data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards.pdf), the Committee stated:

> Under paragraph 227(2)(a) of the *Legislation Act 2001*, an instrument of appointment is not disallowable if it appoints a public servant. As a result, it assists the Committee (and the Legislative Assembly), if the Explanatory Statement for an instrument of appointment contains a statement to the effect that "the person appointed is not a public servant".

There is no such statement in the explanatory statement for the instrument. As the Committee has consistently pointed out, this is not an onerous requirement.

In making this comment, the Committee notes that, in addition to what the Committee has set out above, subsection 22D(3) of the Victims of Crime Act expressly prohibits the appointment of public servants under various provisions, including paragraph 22D(1)(d). The Committee also notes that subsection 22D(4) disapplies Division 19.3.3 of the Legislation Act (which includes sections 227 and 229) in relation to appointments under various provisions but those provisions do not include paragraph 22D(1)(d).

The Committee draws the Legislative Assembly's attention to the instrument under principle (2) of the Committee's terms of reference, on the basis that the explanatory statement for the instrument does not meet the technical or stylistic standards expected by the Committee.

Further, the Committee would be grateful if the Minister could confirm that the person appointed by the instrument is not a public servant.

This comment requires a response from the Minister.

WHY IS THIS INSTRUMENT BEING RE-MADE?

Disallowable Instrument DI2015-284 being the Official Visitor (Children and Young People Services) Visit and Complaint Guidelines 2015 (No. 3) made under section 23 of the *Official Visitor Act 2012* revokes DI2015-255 and makes the Official Visitor (Children and Young People Services) Visit and Complaint Guidelines.

This instrument, made under section 23 of the *Official Visitor Act 2012*, makes guidelines for visits by "Official Visitors" and also for the handling of complaints in relation to persons held in institutions or staying in community facilities operated by the ACT Government. The instrument is dated 7 October 2015 and was notified on the ACT Legislation Register on 12 October 2015.

Section 5 of the instrument revokes a previous instrument, DI2015-244. According to section 5, the previous instrument was notified on the ACT Legislation Register on 20 August 2015. In fact, the previous instrument was *made* on 20 August 2015 and notified on 27 August 2015.

No information is provided, in relation to the new instrument, as to why the previous instrument is being revoked and re-made so soon after the making of the previous instrument. Further, the explanatory statement for the new instrument provides no information as to the differences between the new instrument and the previous instrument. Indeed, the explanatory statement for the new instrument is largely identical to the explanatory instrument for the previous instrument.

In looking into this issue, the Committee notes that the previous instrument itself revoked an earlier instrument, also made in 2015. The previous instrument revoked DI2015-120, made on 10 June 2015 and notified on the ACT Legislation Register on 15 June 2015. The Committee notes that the explanatory statement for DI2015-120 appears to be largely identical to the explanatory statements for the two most recent instruments.

The Committee seeks the Minister's advice as to why it has been necessary to revoke and re-make this instrument three times in five months. The Committee also seeks the Minister's advice as to the differences between the three versions of the instrument that have been made in 2015.

This comment requires a response from the Minister.

SUBORDINATE LAW—NO COMMENT

The Committee has examined the following subordinate law and offers no comment on it:

Subordinate Law SL2015-31 being the Planning and Development (Loose-fill Asbestos Eradication) Amendment Regulation 2015 (No. 1) made under the *Planning and Development Act 2007* **facilitates the resale of former loose-fill asbestos affected blocks back to former owners, who have elected to exercise their first right of refusal under the Scheme, following remediation.**

SUBORDINATE LAW—COMMENT

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

HUMAN RIGHTS ISSUES

Subordinate Law SL2015-30 being the Planning and Development Amendment Regulation 2015 (No. 1), including a regulatory impact statement, made under the *Planning and Development Act 2007* **makes the regulatory treatment of heritage and non-heritage property owners more consistent.**

This subordinate law amends section 1.14 of the Planning and Development Regulation 2008, to modify the effect of existing subsection 1.14(2). That subsection currently requires the owner of a heritage property to lodge a development application (DA) for works that would be DA-exempt if carried out on a non-heritage property. The explanatory statement for the subordinate law states that:

> … the effect of the amendment is to enable standard provisions for the exemption of minor developments from the need to apply for a DA to apply to heritage properties providing that the proposed development will not affect the heritage values of the property.

The explanatory statement also addresses the human rights implications of the amendments made by the subordinate law:

> **Human rights analysis**
>
> The Amendment Regulation has been reviewed in relation to the *Human Rights Act 2004*. The benefit of the amendment regulation as noted above is that it:
>
> - reduces an unnecessary regulatory burden on owners of heritage properties;
> - makes more consistent the regulatory treatment of heritage property owners and non-heritage property owners;
> - makes the development assessment process for heritage properties more efficient; and
> - maintains an appropriate level of protection for places or objects on the Register
>
> The amendment regulation is consistent with the ACT Government's commitment to reduce red tape and decrease regulatory burden and consistent with the objects of the Planning Act and the Heritage Act as noted above.
>
> Development proposals that require a DA must typically be publicly notified and the general public has a right to make representations on the DA. There is also a right to seek ACAT merit review of a decision on a DA in relation to the relatively more significant development proposals. These features do not apply to development proposals that are DA exempt as there is no application to notify and no DA decision that can be subject to merit review.
>
> The proposed amendment regulation will by broadening the circumstances in which development may occur without a DA will impact on the ability to comment on the development and seek ACAT merit review. As a result the amendment regulation could be seen as impacting on the following human rights:
>
> - "Right to privacy" (section 12 of the Human Rights Act); and
> - "Taking part in public life" (section 17); and
> - "Fair trial" (section 21).
>
> The objective of the amendment regulation is an important one for the reasons noted above, that is, for removing unnecessary regulatory burdens and making the regulatory position of heritage property and non-heritage properties owner more consistent where this can be done so without impacting on heritage significance. As noted above, the objective of the amendment regulation is consistent with the objects of the Heritage Act and the Planning Act. The amendment regulation is necessary and effective in meeting the stated objectives and there are no other reasonable means available for doing this.
>
> The types of changes proposed by the amending regulation are not considered to unduly impact on the abovementioned human rights. This is because the types of development that may be DA exempt as a result of the amendment regulation are relatively minor because they are works that:
>
> - would already be DA exempt under the Regulation but for the fact that the works are on a heritage property; and

- the Council advised would have no significant impact on heritage significance or are of a type already sanctioned under the Heritage Act.

A decision of the Council to provide written advice to the effect that a proposed development will not impact on the heritage significance of a heritage property or is already sanctioned under the Heritage Act will be subject to review by the Supreme Court under the *Administrative Decisions Judicial Review Act 1989* or the common law jurisdiction of the Supreme Court.

In relation to the section 21 human right, it would appear that case law from related jurisdictions indicates that human rights legislation containing the equivalent of section 21 does not guarantee a right of appeal for civil matters. Opportunities for input into planning and development applications and the existence of a right to judicial review have been held in many cases to satisfy the requirement of the right to a fair trial. Case law in relation to human rights legislation containing the equivalent of section 12 suggests that any adverse impacts of a development authorised through a planning decision must be severe to constitute unlawful and arbitrary interference with a person's right to privacy.

Consistent with the above it is concluded that to the extent that the amendment regulation does impact on rights afforded by the Human Rights Act, it is considered that these amendments must meet the proportionality test of section 28 of the Human Rights Act.

Section 28 states as follows.

28 Human rights may be limited

(1) Human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

(2) In deciding whether a limit is reasonable, all relevant factors must be considered, including the following:

(a) the nature of the right affected;

(b) the importance of the purpose of the limitation;

(c) the nature and extent of the limitation;

(d) the relationship between the limitation and its purpose;

(e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The Committee draws the above explanation to the attention of the Legislative Assembly.

This comment does not require a response from the Minister.

REGULATORY IMPACT STATEMENTS—COMMENT

The Committee has examined the following regulatory impact statements for the following instruments and offers these comments on them:

Disallowable Instrument DI2015-268 being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Target) Determination 2015 (No. 1).

Disallowable Instrument DI2015-269 being the Energy Efficiency (Cost of Living) Improvement (Priority Household Target) Determination 2015 (No. 1).

Disallowable Instrument DI2015-270 being the Energy Efficiency (Cost of Living) Improvement (Emissions Multiplier) Determination 2015 (No. 1).

Disallowable Instrument DI2015-271 being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2015 (No. 1).

Disallowable Instrument DI2015-272 being the Energy Efficiency (Cost of Living) Improvement (Penalties for Noncompliance) Determination 2015 (No. 1).

Subordinate Law SL2015-30 being the Planning and Development Amendment Regulation 2015 (No. 1) made under the *Planning and Development Act 2007***.**

Each of the legislative instruments mentioned above is accompanied by a regulatory impact statement (RIS). The first five instruments (disallowable instruments) share a RIS and the sixth instrument (a subordinate law) is unconnected to the first five and has its own RIS.

Chapter 5 of the *Legislation Act 2001* provides for RISs for subordinate laws and disallowable instruments. The basic requirement is set out in section 34 of the Legislation Act, which provides (in part):

> **34 Preparation of regulatory impact statements**
>
> (1) If a proposed subordinate law or disallowable instrument (the ***proposed law***) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law (the ***administering Minister***) must arrange for a regulatory impact statement to be prepared for the proposed law.

Section 34 goes on to provide for exemptions to the RIS requirements.

Section 35 provides for the content of RISs:

> **35 Content of regulatory impact statements**
>
> A regulatory impact statement for a proposed subordinate law or disallowable instrument (the proposed law) must include the following information about the proposed law in clear and precise language:
>
> (a) the authorising law;
>
> (b) a brief statement of the policy objectives of the proposed law and the reasons for them;
>
> (c) a brief statement of the way the policy objectives will be achieved by the proposed law and why this way of achieving them is reasonable and appropriate;
>
> (d) a brief explanation of how the proposed law is consistent with the policy objectives of the authorising law;
>
> (e) if the proposed law is inconsistent with the policy objectives of another territory law—

(i) a brief explanation of the relationship with the other law; and

(ii) a brief explanation for the inconsistency;

(f) if appropriate, a brief statement of any reasonable alternative way of achieving the policy objectives (including the option of not making a subordinate law or disallowable instrument) and why the alternative was rejected;

(g) a brief assessment of the benefits and costs of implementing the proposed law that—

(i) if practicable and appropriate, quantifies the benefits and costs; and

(ii) includes a comparison of the benefits and costs with the benefits and costs of any reasonable alternative way of achieving the policy objectives stated under paragraph (f);

(h) a brief assessment of the consistency of the proposed law with the scrutiny committee principles and, if it is inconsistent with the principles, the reasons for the inconsistency. [emphasis added]

Principle (2) of the Committee's terms of reference dove-tails with paragraph 35(h) of the Legislation Act, in that it requires the Committee to consider (among other things) whether any RIS associated with an instrument meets the technical or stylistic standards expected by the Committee.

The RIS that deals with the five instruments mentioned above contains no assessment of the consistency of the instruments with the Committee's scrutiny principles.

The Committee draws the Legislative Assembly's attention to the six instruments mentioned above under principle (2) of the Committee's terms of reference, on the basis that the regulatory impact statement for each of the instruments does not meet the technical or stylistic standards expected by the Committee.

This comment requires a response from the Minister.

GOVERNMENT RESPONSES

The Committee has received responses from:

- The Minister for Racing and Gaming, dated 26 October 2015, in relation to comments made in Scrutiny Report 38 concerning the Lotteries (Approvals) Amendment Bill 2015 (attached).
- The Attorney-General, dated 26 October 2015, in relation to comments made in Scrutiny Report 38 concerning the Crimes (Domestic and Family Violence) Legislation Amendment Bill 2015 (attached).
- The Minister for Justice, dated 2 November 2015 (attached), in relation to comments made in Scrutiny Report 36 concerning:
  - National Regulation (2015 No. 317) - Rail Safety National Law National Regulations (Fees) Variation Regulations 2015; and

  - National Regulation (2015 No. 318) - Rail Safety National Law National Regulations Variation Regulations 2015.

- The Treasurer, dated 9 November 2015 (attached), in relation to comments made in Scrutiny Report 38 concerning disallowable instruments:
  - DI2015-251 - Territory Records (Advisory Council) Appointment 2015 (No. 1);
  - DI2015-253 - Territory Records (Advisory Council) Appointment 2015 (No. 3); and
  - DI2015-254 - Territory Records (Advisory Council) Appointment 2015 (No. 4).

The Committee wishes to thank the Minister for Racing and Gaming, the Attorney-General, the Minister for Justice and the Treasurer for their responses.

Steve Doszpot MLA
Chair

10 November 2015

OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

Report 27, dated 3 February 2015
Public Sector Bill 2014

Joy Burch MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR POLICE AND EMERGENCY SERVICES
MINISTER FOR DISABILITY
MINISTER FOR RACING AND GAMING
MINISTER FOR THE ARTS

MEMBER FOR BRINDABELLA

Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety
(Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Doszpot

I write in response to Scrutiny Report 38 provided by the Standing Committee on Justice and Community Safety in its Legislative Scrutiny Role (the Committee) on 20 October 2015, which provides comment on the Lotteries (Approvals) Amendment Bill 2015 (the Amendment Bill).

I thank the Committee for their comments and provide the following in response.

In relation to the Committee's point of clarification about the result where a person conducting an exempt lottery breaches the condition in paragraph 6A(1)(e), a person may be liable under section 8(1) as an exempt lottery is subject to the conditions set out in new section 6A. Further, the ACT Gambling and Racing Commission (the Commission) has general powers under the *Gambling and Racing Control Act 1999* (the Control Act), including the power to investigate complaints in relation to any gaming law under section 31 of that Act.

The Committee raises a question whether the limitation is one that is set by law and, if so, whether that limitation is reasonable.

Paragraph 6A(1)(e) must be considered in the context of the *Lotteries Act 1964* (the Lotteries Act) as a whole, and more broadly, within the framework of the Control Act which underpins the suite of gambling regulation in the Territory. Section 7 of that Act provides a statutory obligation on the Commission to perform its functions in a way that best promotes the public interest, including promoting consumer protection.

ACT LEGISLATIVE ASSEMBLY

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CANBERRA

Conducting lotteries is illegal, except to the extent permitted by the Lotteries Act. In addition, the ability to advertise lotteries is prohibited except through section 9 of the Lotteries Act, which provides that it is not an offence to advertise an approved or exempt lottery. Therefore, paragraph 6A(1)(e) operates within those limits.

Given the diverse nature of the lottery products regulated by the Act and broad community engagement with those products, the conditions in new section 6A were developed to provide a flexible framework to uphold relevant community safeguards. They are matters to which a person wishing to conduct a lottery must give consideration.

The Commission has always had the power to modify proposed terms and conditions for a lottery as part of the approval process. The proposed conditions in section 6A were drafted giving careful consideration to the intent of the Amendment Bill, which is to reduce regulatory burden by allowing low-risk lotteries to be conducted without approval from the Commission. This does not mean, however, that those lotteries are exempt from all oversight.

The Territory would be out of step with New South Wales and Victoria (also a human rights jurisdiction) without the inclusion of the conditions in section 6A, including paragraph 6A(1)(e). For example, Victoria requires that a 'trade promotion lottery must be conducted in a manner that is not offensive and that is not contrary to the public interest'. NSW has advertising restrictions for lotteries that prohibit lottery advertising that 'is not conducted in accordance with decency, dignity and good taste'. NSW requires that prizes unsuitable for children should not be offered in a trade promotion and completely prohibits cosmetic surgery lottery prizes.

Importantly, the reach of paragraph 6A(1)(e) is not a limitation on expression in relation to lotteries generally. The reach of the provision is limited to the following circumstances:

- an individual seeking to conduct a lottery;
- the lottery must fit within the definition of an exempt lottery in the terms of section 6 of the Lotteries Act including, where relevant, having a total prize value under the relevant thresholds determined by the Commission; and
- the person conducting the lottery must do so in a way that is not considered offensive or inappropriate, *having regard to the lottery participants*.

The Commission currently receives over 5,000 applications for lotteries each year. Only 0.24%[8] of all approvals were granted to individuals (rather than corporations, whose rights are not protected under the *Human Rights Act 2004*).

Accordingly, the provisions will not engage the freedom of expression for the vast majority of lotteries nor for the wider community generally.

[8] Based on an analysis of the total number of all approvals over the period 9 June to 7 September 2015, and does not distinguish between the value of prizes to be awarded.

While giving due respect to the words of French CJ in *Monis v The Queen* [2013] HCA 4 at [47] ('*Monis'*), I note the decision in this case is considered to be of limited precedential value[9] given the Court was evenly divided, and that ultimately correspondence was found to be in breach of the *Criminal Code* (Cth) which prohibited the use of a postal or similar service in an offensive way.

I further note that *Monis* concerned freedom of expression in relation to political communication, which has a particularly well-recognised place in case law on freedom of expression in Australia. The provision in the Amendment Bill does not engage the freedom of expression as it relates to political communication, and it is arguable that *Monis* is distinguishable on those grounds.

Of perhaps more relevance to the issues here are the High Court's views in *Crowe v Graham* (1968) 121 CLR 375, particularly Windeyer J's judgment outlining that context is relevant when considering offensiveness and that it must be judged against:

> contemporary standards [which] are those currently accepted by the Australian community...and community standards are those which ordinary decent-minded people accept [at p 399].

Consideration was given to listing the types of lotteries that could be deemed to be inappropriate or offensive. On balance, it was considered that prescribing which lotteries may be considered offensive or inappropriate would not provide flexibility to respond to emerging market issues, and ultimately compromise the Commission's obligations under section 7 of the Control Act.

I consider that, to the extent that the provision imposes any limitation on freedom of expression, that limitation is reasonable and proportionate. Noting, however, the Committee's comments, I have decided to table a Revised Explanatory Statement to acknowledge the identified human rights aspects and provide an analysis in accordance with subsection 28(2).

I trust this response addresses the Committee's comments in relation to the Amendment Bill. I thank the Committee for its comments.

Yours sincerely

Joy Burch MLA
Minister for Racing and Gaming
October 2015

[9] Figg, Madeleine, "*Monis v the Queen*; *Droudis v the Queen* (2013) 295 ALR 259" [2013] UTasLawRw 6.

Simon Corbell MLA

DEPUTY CHIEF MINISTER

ATTORNEY-GENERAL
MINISTER FOR HEALTH
MINISTER FOR THE ENVIRONMENT
MINISTER FOR CAPITAL METRO

MEMBER FOR MOLONGLO

Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Doszpot

I write in response to the Standing Committee on Justice and Community Safety's Scrutiny Report No 38 of 20 October 2015 which contains comments on the *Crimes (Domestic and Family Violence) Legislation Amendment Bill 2015* (the Bill).

The Committee's report draws five matters to the attention of the Assembly and recommends that I respond. The Committee also seeks clarification on a number of issues.

By way of initial comment, I note the Committee's comments throughout the report in relation to domestic and family violence more broadly. It is important to note that domestic and family violence often occurs within a relationship of power and control that extends well beyond any physical incident. This relationship is particularly highlighted through the adversarial court process when the victim of such violence is often subjected to further abuse because of the inherent nature of the relationship. In particular, given the overwhelming imbalance of power and control that characterises abusive relationships, speaking out, pressing charges and giving evidence in court can be more overwhelming and traumatic for victims than the initial violent incident.

The Committee makes a number of comments, on the face of their report, that may not adequately consider the underlying nature of domestic, family and sexual abuse and the lasting psychological trauma it can cause for victims.

I thank the Committee for their comments (at page 10) seeking clarification in relation to certain sections of the explanatory statement. I propose to table a revised Explanatory Statement to clarify a number of issues raised. New section 79 is further explained, with additional clarification as to what the "form of questions and answers" means. In addition, the right to fair trial is discussed with reference to new section 80. A number of small amendments have also been made to clarify and improve the reading of the explanatory statement.

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Extension of domestic violence orders under a 'special interim order'
At page 4 of the report, the Committee queried the need to create a new scheme to allow interim domestic violence orders to be extended until the finalisation of criminal charges, referring to the ability to apply to the court for an extension of an order in s 41 of the *Domestic Violence and Protection Orders Act 2008* (DVPO Act).

The Committee's question does not take into account the nature of the threshold that currently applies. Section 41 is not an appropriate replacement for special interim orders because, under s 41, the court may only extend the interim order if 'it is satisfied that there are special or exceptional circumstances' that justify doing so. Having ongoing criminal charges that are related to an initial application for a DVO is not unusual, and so does not on its own amount to special or exceptional circumstances.

In addition, requiring a vulnerable person to attend court to give evidence about untried criminal charges, which is what the Committee is suggesting, is an extra unnecessary and burdensome step for the applicant as well as the respondent.

Evidence that may be given in a closed court – giving evidence
I note the Committee's comments at page 5 of their report in relation to the fact that 'evidence given on trial… may be, and usually is, months or even years after any interview' and, by implication, the witness is no longer vulnerable or able to be re-traumatised. This again fails to consider the dynamics of family, domestic and sexual violence and the trauma that can be associated with the criminal process. A closed court is appropriate where the evidence is given by way of hearing the pre-recorded statement, and if the complainant is giving additional evidence (either by way of cross-examination or evidence in chief).

The Committee requested clarification at page 5 of their report about whether more than one person can be nominated by the complainant to be in court when the witness gives evidence. This provision would be interpreted in accordance with s 145 of the *Legislation Act 2001*, which provides that a reference to a singular is a reference to a plural and so clarification is not required.

Evidence that may be given in a closed court – giving evidence
At page 6 of their report, the Committee expressed concern with proposed section 78 of the *Evidence (Miscellaneous Provisions) Act 1991*, and the ability to close the court. The Committee also considers that the discretion of the court under s 78 (3) is 'practically unconfined' and that the right to a fair trial is limited and unjustified in the explanatory material.

The provisions contained in the Bill are based on existing provisions which allow the court to consider hearing evidence in a closed court if it is in the interests of justice to do so. Section 78 (evidence may be given in closed court) only applies to the complainant giving evidence in a domestic violence offence proceeding.

At page 6 of their report, the Committee quotes *Russell v Russell*[10] to emphasise the importance of conducting proceedings 'publicly and in open view'. Immediately following the quoted material, Gibbs J qualified his comments by stating:

> *Of course there are established exceptions to the general rule that judicial proceedings shall be conducted in public; and the category of such exceptions is not closed to the Parliament. The need to maintain secrecy or confidentiality, or the interests of privacy or delicacy, may in some cases be thought to render it desirable for a matter, or part of it, to be held in*

[10] *Russell v Russell* [1976] HCA 23; (1976) 134 CLR 495

closed court. If the Act had empowered the Supreme Courts when exercising matrimonial jurisdiction to sit in closed court in appropriate cases I should not have thought that the provision went beyond the power of the Parliament.

It is clear that the High Court of Australia acknowledges that there may be instances where it is appropriate to close a court, in particular in the interests of 'delicacy'. In ACT legislation there is already the ability for the court to hear evidence in private, for example:

- in sexual and violence offence proceedings the court can consider the needs of a witness and order the court to be closed while all or part of that evidence is given[11];
- the court can close the court to protect a person who made a protected confidence[12];
- the court can close the court if it considers that a witness has a vulnerability that affects their ability to give evidence[13]; and
- the court can consider the need to forbid publication of evidence, and direct that 'everyone except stated people remain outside the courtroom for a stated period'[14].

The limitations of the right to a fair trial are discussed in the revised explanatory statement at pages 29 to 30 and at pages 33 to 34.

Admissibility of evidence of a recorded statement – form of recorded statement

The Committee expressed concern at page 8 of their report that 'there is potential difficulty lying in the requirement that the statement must be made "in the form of questions and answers"', because s 81 (1) states that 'the hearsay rule and opinion rule do not prevent the admission or use of evidence of a representation in the form of a recorded statement only because it is in that form'.

The Committee raises two concerns with this:

1. that the witness may provide a narrative and therefore the evidence may not be in the form of questions and answers; and
2. if that occurs, the form of the recorded statement would not be admissible.

The explanatory statement has been amended to clarify that 'answers' can include a narrative.

Admissibility of evidence of a recorded statement – rights issues arising from proposed s 80

The Committee expressed concern at page 10 of their report that there is a limitation of the right to a fair trial because of the interaction with recorded statements and the ability for cross-examination of the witness. The Committee states:

If a complainant is obliged to give oral evidence to the same extent as contents of the recorded statement, the accused (usually through their legal representatives) has the opportunity to observe the manner in which the evidence is given. These observations might then be a basis for cross-examination and/or the making of submissions as to the reliability of the complainant's evidence. Where the recorded statement stands in the place of the oral testimony, the accused is denied this opportunity.

I acknowledge the Committee's suggestion that proposed section 80 of the Bill engages the right to fair trial. A component of the right to fair trial, as noted by the Committee, is that the accused has the opportunity to cross-examine the complainant's evidence. The Bill supports the right to fair trial for the accused, as the opportunity to cross-examine the complainant is maintained, a point that is also noted by the Committee.

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[11] *Evidence (Miscellaneous Provisions) Act 1991*, s 39

[12] *Evidence (Miscellaneous Provisions) Act 1991*, s 63

[13] *Evidence (Miscellaneous Provisions) Act 1991*, s 102

[14] *Evidence (Miscellaneous Provisions) Act 1991*, s 111

To clarify, if the complainant gives their evidence by way of a recorded statement, the statement will be, wherever possible, given by audiovisual recording. As a result, the accused will be able to observe the manner in which the evidence is given, as well as the content of that evidence, allowing for cross-examination on the basis of observations and reliability. The right to fair trial is further supported by the fact that the audiovisual recording of the complainant's evidence will be available for viewing before the trial, allowing the accused time to prepare their case.

The explanatory statement expressly addresses the right of an accused to cross-examine prosecution witnesses at page 29, and states:

> *A person charged with a criminal offence is also entitled to a number of minimum guarantees, including the ability to cross-examine prosecution witnesses. The amendments in new part 4.3 will engage an accused's rights in criminal proceedings, but will not limit them, as the substantive changes affect how complainants give evidence in chief. The amendments will not limit the ability of an accused to examine witnesses or adduce evidence for their own submissions.*

Similar provisions exist in relation to evidence given by children. They have been in use for children and people with an intellectual disability since 2008.

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

Yours sincerely

Simon Corbell MLA
Attorney-General

Shane Rattenbury MLA

MINISTER FOR TERRITORY AND MUNICIPAL SERVICES
MINISTER FOR JUSTICE
MINISTER FOR SPORT AND RECREATION
MINISTER ASSISTING THE CHIEF MINISTER ON TRANSPORT REFORM

MEMBER FOR MOLONGLO

Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
London Circuit
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Dear Mr Doszpot

Thank you for the Scrutiny Report No. 36 of 15 September 2015. I offer the following response in relation to the Committee's comments on the *Rail Safety National Law National Regulations (Fees) Variation Regulations 2015* and the *Rail Safety National Law National Regulations Variation Regulations 2015*.

The Committee noted that these national regulations commenced on 1 July 2015, (after being published on the NSW Legislation website on 19 June 2015) but were not tabled in the ACT Legislative Assembly until 6 August 2015. The Committee raised the retrospective operation of the regulations and sought advice as to whether the retrospectivity is "non-prejudicial", in terms of section 76 of the *Legislation Act 2001*.

The *Rail Safety National Law National Regulations Variation Regulations 2015* amends regulation 56 of the Rail Safety National Law National Regulations (the national regulations) relating to the requirements for information to be supplied periodically, relating to drug and alcohol testing, and also amends regulation 57, relating to the reporting of notifiable occurrences about drug and alcohol testing. The variations are primarily clarifying and technical in nature in regard to data that rail transport operators are required to provide monthly to the Office of the National Rail Safety Regulator (ONRSR).

The *Rail Safety National Law National Regulations (Fees) Variation Regulation 2015* amends Schedule 3 of the national regulations, which provides for the fees collected under these regulations. These fees support the regulatory operations required by the Rail Safety National Law and are updated annually. The variation is procedural in nature, providing for the annual adjustment to fees consistent with the approved cost recovery model.

The sole ACT based rail transport operator, the Australian Railway Historical Society - ACT Division (ARHS), was fully informed of the variation to the fees

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prior to their introduction on 1 July 2015 through the consultative processes that the ONRSR has with rail transport operators.

The Committee has stated that, because the regulations were not tabled in the Legislative Assembly until 6 August, they have retrospective operation. The regulations were notified on the NSW Legislation website on 19 June 2015 and, thereby, “notified” on that date for the purposes of their application in the ACT. They commenced on 1 July 2015 in all jurisdictions where the Rail Safety National Law applies, and had an impact on future rights and obligations after that date of commencement. As the regulations are not retrospective in operation, no issue arises as to whether they are non-prejudicial in terms of section 76 of the Legislation Act.

Section 7 of the *Rail Safety National Law (ACT) Act 2014* requires any amendment to the national rail safety regulations to be tabled in the ACT Legislative Assembly. However, the tabling of national regulations, which are brought into effect by notification on an interstate legislation website, will only be able to occur in the ACT after they have been so notified. In many cases it is likely that the commencement date for the regulations will have passed prior to there being an opportunity for the tabling of the regulations in accordance with section 7.

I acknowledge that while there is no formal requirement for an explanatory statement to accompany the tabling of the amending regulations, an explanatory statement would have assisted the Committee in its scrutiny role, including its understanding of the issues outlined above. I have therefore requested that when future amendments to national transport regulations are required to be tabled in the ACT Legislative Assembly, they be accompanied by an explanatory statement.

I thank the Committee for their consideration of the Disallowable Instrument.

Yours sincerely

Shane Rattenbury MLA
Minister for Justice

Andrew Barr MLA

CHIEF MINISTER

TREASURER
MINISTER FOR ECONOMIC DEVELOPMENT
MINISTER FOR URBAN RENEWAL
MINISTER FOR TOURISM AND EVENTS

MEMBER FOR MOLONGLO

Mr Steve Doszpot
Chair
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Dear Mr Doszpot

I am writing in relation to the Standing Committee on Justice and Community Safety's *Scrutiny Report 38*, in which the Committee commented on recent appointments to the Territory Records Advisory Council.

I have noted your comments regarding the technical and stylistic standards expected by the Committee for disallowable instruments. I can confirm that the following appointees are not ACT public servants:

- Mr David Brumby (Territory Records (Advisory Council) Appointment 2015 (No 1), Disallowable instrument DI2015–251)
- Mr Nicholas Swain (Territory Records (Advisory Council) Appointment 2015 (No 3), Disallowable instrument DI2015–253)
- Ms Amanda Harris (Territory Records (Advisory Council) Appointment 2015 (No 4), Disallowable instrument DI2015–254

Yours sincerely

Andrew Barr MLA
Treasurer

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