

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

SCRUTINY REPORT 34

10 SEPTEMBER 2019

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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*; and
- (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 bill and offers no comment on it:

ENERGY EFFICIENCY (COST OF LIVING) IMPROVEMENT AMENDMENT BILL 2019

This Bill amends the *Energy Efficiency (Cost of Living) Improvement Act 2012* to replace references to greenhouse gas emissions with energy savings, provide for priority households to be determined by disallowable instrument, and associated changes.

BILLS—COMMENT

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

COURTS (FAIR WORK AND WORK SAFETY) LEGISLATION AMENDMENT BILL 2019

This Bill amends the *Magistrates Court Act 1930* to facilitate the hearing of certain matters arising under the *Fair Work Act 2009* (Cwlth), and the *Work Health and Safety Act 2011* to place corporations in the same position as individuals in committal to trial in the Supreme Court and under the *Confiscation of Criminal Assets Act 2003*.

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

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

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW / THE EQUAL PROTECTION OF THE LAW WITHOUT DISCRIMINATION (SECTION 8 HRA)

Fair work small claims are able to be heard by the Magistrates Court in a less formal manner than fair work general claims. They are currently limited to claims of up \$20 000. The Bill provides that parties in fair work small claims can be represented by officials of industrial associations if the court grants the party leave. However, there is no provision for representation by officials of industrial associations in fair work general claims.

This distinction may limit the right to equality before the law protected by section 8 of the HRA. The explanatory statement recognises this potential limitation and sets out why it should be considered reasonable using the framework in section 28 of the HRA. The purpose and justification for the distinction is described as having to comply with the Commonwealth Fair Work Act, which also only provides for the possibility of representation by officials of industrial associations in fair work small claims.

The Committee recognises that Territory legislation must be consistent with Commonwealth legislation. However, consistency with Commonwealth legislation does not provide the basis for why any limitation of a right protected under the HRA can be considered reasonable and demonstrably justified in a free and democratic society, as required by section 28 of the HRA. Commonwealth legislation does not have to comply with the HRA or its equivalent. The Committee notes that the Commonwealth Fair Work Act does not require representation by officials of industrial organisations

in fair work small claims but only permits other jurisdictions to provide for such representation.¹ The Committee also notes that under the Bill a proceeding started in the Magistrates Court as a fair work small claim must continue as a proceeding for a fair work general claim where the court considers it to be such a claim, which would prevent any further representation by officials of industrial organisations.² Any justification for the distinction in who can represent a party to a fair work claim in the Magistrates Court should therefore be based, at least in part, on the difference between fair work small claims and fair work general claims and the appropriateness of taking a different approach depending on which type of claim is being considered.

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

RIGHT TO FREEDOM OF MOVEMENT (SECTION 13 HRA)

The Bill will require parties to a fair work claim in the Magistrates Court to attend a mediation before a Registrar at a stated time and place. The Magistrates Court can decide the claim if one party fails to attend.³ This may limit the right to freedom of movement protected by section 13 of the HRA. The explanatory statement accompanying the Bill recognises this potential limit and sets out a justification for why it should be considered reasonable using the framework in section 28 of the HRA. The Committee refers that statement to the Assembly.

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

FREEDOM OF INFORMATION AMENDMENT BILL 2019

This Bill amends the *Freedom of Information Act 2016* to make various amendments to the processing of information access applications and reviews.

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

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

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW (SECTION 8 HRA)

FREEDOM OF EXPRESSION (SECTION 16 HRA)

The Bill amends the right of access to government information in various ways which can be seen as limiting the freedom of expression protected by section 16 of the HRA. The Bill will also provide for the possible suspension or delay in processing requests where the applicant cannot reasonably be contacted, which may have an undue impact on applicants who are not contactable due to homelessness, incarceration or illness and hence limit the right to equality protected by section 16 of the HRA. Subject to the comment below, the explanatory statement recognises these potential impacts of the Bill and sets out why any limitation should be considered a reasonable limitation in accordance with the framework in section 28 of the HRA. The Committee refers that statement to the Assembly.

¹ See subsection 548(9) of the *Fair Work Act 2009* (Cwlth) and section 4.01 of the *Fair Work Regulations 2009* (Cwlth)

² See proposed section 266H.

³ See proposed section 266J.

The Committee notes that clause 13 of the Bill will substitute a new subsection 40(2) providing for the time in which respondents to a request for information (ie agencies or a Minister) have to respond. Generally, a respondent must decide an application within 20 working days or, where a respondent consults with a relevant third party whose information may be disclosed in responding to a request, within an additional 15 working days. The proposed subsection 40(2) will add the possibility of extending the time to respond to an application by the number of working days an applicant takes to respond to a request to clarify their request or to confirm or vary the application having been informed of the estimated fees that are likely to be payable. The timeframe for deciding an application is also extended by the number of days an agency or Minister takes to decide an application made under section 107 to waive any fees imposed.

The explanatory statement does not recognise the potential for the additional delays introduced by proposed new subsection 40(2) to engage the right to freedom of expression protected under section 16 of the HRA. In particular, the Committee notes that there is no time specified for deciding on whether to waive fees under section 107. While section 151B of the *Legislation Act 2001* may therefore apply to require any decision to be made as soon as possible, that might still involve an extended period. The Committee requests that consideration be given to amending the explanatory statement to include a justification for the possible human rights impact of clause 13 of the Bill.

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

HEALTH AMENDMENT BILL 2019

This Bill amends the *Health Act 1993* to add nurse practitioners to doctors, dentists and eligible midwives who are subject to a scope of clinical practice review under Part 5 of that Act.

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

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

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

The scope of clinical practice of a doctor, dentist or eligible midwife is defined under the Health Act as their right established by agreement with a health facility to treat patients or carry out procedures or use equipment or facilities at the health facility. The Clinical Practice Committee decides on the credentials of these health practitioners and defines their scope of clinical practice, substantially affecting their capacity to work in the ACT and, through arrangements with other jurisdictions, elsewhere. The Committee is able to request any information that is relevant to carrying out its functions, and any information provided honestly and without recklessness is, among other things, not a breach of confidence. The Committee has various obligations and discretions to share the information with other persons, including health facilities outside the ACT. The information provided can include protected information obtained in exercising a function under the Act through which the identity of a health practitioner is disclosed or can be worked out.

By adding nurse practitioners to those subject to a scope of clinical practice review, the Bill will allow personal information about the nurse practitioners that may go beyond their professional conduct to be obtained, even where that information was protected as confidential, and potentially disclosed to others. The reputation of the nurse practitioner may also be affected by the reporting and decisions made in relation to any review. The Bill will therefore potentially limit the protection against unreasonable and arbitrary interference with privacy and reputation provided by section 12 of the HRA.

The explanatory statement accompanying the Bill refers to the support for the right to equality provided by the Bill's equal treatment of nurse practitioners. However, in the Committee's view, the potential for the effect of the Bill to engage with rights protected under section 12 of the HRA should be identified in the human rights consideration included in the explanatory statement along with why any limitation should be considered reasonable using the framework set out in section 28 of the HRA. The Committee requests that consideration be given to amending the explanatory statement to provide such a statement.

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

OFFICIAL VISITOR AMENDMENT BILL 2019

This Bill will amend the *Official Visitor Act 2012* and the five operational Acts of the ACT Official Visitor Scheme (*Children and Young People Act 2008*, *Corrections Management Act 2007*, *Disability Services Act 1997*, *Housing Assistance Act 2007* and *Mental Health Act 2015*) to give effect to the legislative recommendations from the 2017 Review of the Official Visitor Scheme.

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

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

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW (SECTION 8 HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

Clause 10⁴ of the Bill amends the Official Visitor Act to allow the official visitor to inspect health and other records of entitled persons without that person's consent where: the official visitor has taken reasonable steps to find out if the entitled person consents, they believe the entitled person may not be able to decide if they consent or communicate their decision; they reasonably believe that access to the record is necessary and appropriate to allow them to exercise their functions; and the entitled person has not indicated to them that they do not consent. This provision limits the protection of privacy accorded by section 12 of the HRA, and to the extent it may apply to persons with limited capacity to consent or communicate their consent also limits the right to equality protected by section 8 of the HRA.

The explanatory statement accompanying the Bill recognises these potential limitations and why they should be considered reasonable using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly. In particular, the Committee notes that the official visitor must take reasonable steps to inform the entitled person that their records were inspected, the operating entity must keep a record of access to records under these circumstances and report on that access, and that the access does not extend to sensitive information under the Children and Young People Act.

⁴ Note that the explanatory statement accompanying the Bill refers in various places, including the human rights considerations and when outlining amendments to other legislation, to the relevant clause being clause 11 of the Bill.

The Bill also amends the Disability Services Act and the Mental Health Act in similar terms to clause 10 to extend the consent of an entitled person to a visit by an official visitor (see clauses [1.8] and [1.23]). There are also amendments to the Housing Assistance Act authorising the visit of an official visitor to a visitable place without notice to the operating entity, and in some circumstances without consent of the entitled person, where there is a risk of abuse or harm. However, the Committee notes that the potential impact of these amendments is not discussed in the explanatory statement in the human rights considerations arising under the Bill, and does not include the various privacy and accountability safeguards provided under clause 10. Consideration should be given to amending the explanatory statement to include a justification for any human rights limitations provided by these amendments.

The Bill will also insert a new section 23DB into the Official Visitor Act to require the relevant director-general for a visitable place to keep a register, which may include the names of each entitled person, and the names, phone numbers and email addresses of an employee or volunteer based at the place or two employees. The register must be given to various people on request, including the official visitor, but can also be given to specified other people, including anyone approved by the director-general, when the director-general is satisfied giving the information is reasonable in the circumstances. A justification for the potential limitation of this provision on the protection of privacy provided by section 12 of the HRA should be provided in the explanatory statement.

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

PLANNING AND DEVELOPMENT (COMMUNITY CONCESSIONAL LEASES) AMENDMENT BILL 2019

This Bill will amend the *Planning and Development Act 2007* and *Planning and Development Regulation 2008* to provide a framework for the granting of Community Concessional Leases to provide access to leases at concessional rates for community organisations for community uses.

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

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

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

The Bill will require community organisations that have been granted a community concessional lease to report to the Planning and Development Authority on the usage of the land in question or other requested information and to make all records relating to the use of the land available to an auditor appointed by the Authority or independent of the lessee where the Authority has required the lessee to commission an audit of their use of the land in question.

The explanatory statement accompanying the Bill recognises that the disclosure of records of the use of land may disclose personal information or otherwise limit the protection against unreasonable or arbitrary interference with privacy protected by section 12 of the HRA. As the explanatory statement sets out, the auditor will be subject to the *Information Privacy Act 2014*, and is limited to confirming the use of the land in question to the purposes for which the concessional community lease was granted. The Committee refers the Assembly to that statement.

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

RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE, RELIGION AND BELIEF (SECTION 14 HRA)

RIGHT TO FREEDOM OF EXPRESSION (SECTION 16 HRA)

CULTURAL AND OTHER RIGHTS OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES AND OTHER MINORITIES (SECTION 27 HRA)

The Bill may also limit various other rights protected under the HRA due to providing for an additional basis on which community groups may have their lease terminated. The Bill will amend section 382 of the Planning and Development Act to allow a lease to be terminated where the lessee has received a compliance reminder notice and fails to comply with the notice. A compliance reminder notice may relate to failing to provide reports or requested information to the Authority or commissioning an audit. It will also be a condition of a community concession lease that the land be used for required uses, including possibly minimum requirements for how frequently and for how long the service must be provided.

The explanatory statement recognises these potential limits and justifies them through the aim of the Bill in attempting to maximise the community benefit from use of community sites. The Committee refers the Assembly to that statement.

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

Do any provisions of the Bill inappropriately delegate legislative powers?—Committee terms of reference paragraph 3(d)

HENRY VIII CLAUSE

The Bill will insert a transitional chapter into the Planning and Development Act, which includes authority to make regulations dealing with any transitional matters necessary or convenient to be prescribed because of the Bill's enactment. Those transitional regulations may modify the transitional chapter, including in relation to another territory law. Such a regulation will have effect despite anything else where in the Act. By allowing regulations to modify primary legislation, the Bill may be considered to inappropriately delegate legislative powers in accordance with the Committee terms of reference paragraph 3(d).

As the Committee has stated previously, provisions of this type, referred to as Henry VIII clauses, should be justified in the explanatory statement accompanying the Bill. No such justification was provided in the explanatory statement accompanying the Bill. The Committee notes that the transitional regulations may only modify the transitional chapter, and that chapter will expire five years after the commencement day of the Act, meaning that any effect on primary legislation will have a limited duration. However, a justification for the use of a Henry VIII clause, its breath and the possible duration of any regulations prescribed under those provisions should be provided.

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

PLANNING AND DEVELOPMENT (CONTROLLED ACTIVITIES) AMENDMENT BILL 2019

This Private Members' bill will amend the *Planning and Development Act 2007* to prevent the ACT Administrative and Civil Tribunal from making an order that has the effect of staying a controlled activity order relating to a failure to keep a leasehold clean and make other amendments relating to requiring compliance inspections, when rectification work in relation to controlled activities must be completed, requiring an authorised person to enter premises where there has been a failure to rectify a failure to keep a leasehold clean, and requiring a person to pay twice the cost of any rectification work carried out by an authorised person relating to an ongoing controlled activity order.

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

Do any provisions of the Bill make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions?—Committee terms of reference paragraph (3)(c)

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

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW (SECTION 8 HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

RIGHT TO A FAIR TRIAL (SECTION 21 HRA)

Currently, Chapter 11 of the Planning and Development Act provides for the regulation of controlled activities such as failing to keep a leasehold⁵ clean,⁶ failing to comply with conditions of a lease, or undertaking development without approval. In these circumstances any person can apply for a controlled activity order, or the Land and Planning Authority can issue a controlled activity order on their own initiative (such as after investigating a complaint). Before making a controlled activity order, the Authority must consider any reasons why the order should not be made provided by the person to be subject to the order (such as the occupier of the land in question) and has to make a decision within a prescribed time (generally 20 days). An ongoing controlled activity order can be made where at least two controlled activity orders for failing to keep a leasehold clean have not been complied with within the previous five years. The controlled activity order can require a person to, among other things, clean up a leasehold and keep it clean. A person who is bound by a non-ongoing controlled activity order can apply to the Authority to have it revoked on the grounds that it is no longer necessary or appropriate.

⁵ A leasehold is defined as the land held under a lease granted by the *Planning and Development Act 2007* or the *Unit Titles Act 2001*. See Dictionary and section 235.

⁶ There is no definition of when a leasehold is unclean in the Planning and Development Act or Regulations. The Authority seems to have adopted the approach of assessing complaints relating to failing to keep a leasehold clean "only if more than 30% of the undeveloped portions of the block that are clearly visible from the public domain are covered in items. Long grass and overgrown foliage does not constitute an unclean leasehold and is not calculated as part of the 30%". See ACT Government, "Making a complaint", available at <https://www.planning.act.gov.au/build-buy-renovate/disputes-and-complaints/making-a-complaint>.

If the requirements of a controlled activity order have not been carried out within the period stated in the order, the Authority can direct rectification work be carried out. The lessee or occupier, or person who was carrying out the controlled activity, then has five working days to carry out the rectification work or any longer period stated in the notice provided. After that time the Authority can authorise another person to enter the premises in question and do anything required to carry out the rectification work in accordance with directions from an inspector. Inspectors and authorised persons may enter premises where rectification work is to be carried out during business hours with the consent of the occupier, or, where a rectification work order is in place, in some circumstances without consent. The reasonable cost of carrying out the rectification work by the authorised person has to be paid by the person subject to the rectification notice.

Contravening a properly notified controlled activity order, or failing to carry out rectification work, are strict liability offences.⁷ Contravention of a controlled activity order may also constitute grounds to terminate the lease under section 382.

Decisions of the Authority to issue a controlled activity order or to refuse to revoke a controlled activity order can be reviewed by ACAT.⁸ Section 53 of the *ACT Civil and Administrative Tribunal Act 2008* provides that ACAT can, before hearing an application for review, make interim orders. The Bill will insert proposed section 359A into the Planning and Development Act which will prevent ACAT from making an interim order which has the effect of staying the controlled activity order. The Bill will also amend the schedule of reviewable decisions to exclude on-going controlled activity orders from being reviewed by ACAT.

The explanatory statement provides that these amendments will limit the right to recognition and equality before the law protected by section 8 of the HRA. In justifying this potential limitation, the explanatory statement describes the purpose of the amendments as allowing:

... greater enforcement of leasehold conditions while matters were being heard and mean that individuals could not use the legal system to delay or prevent enforcement measures. There are significant health and safety factors that are relevant, not only to the property owner but also neighbouring residents.

The explanatory statement describes removal of the appeal to ACAT for ongoing controlled activity orders as making them similar to a strict liability offence, and provides:

Removing the appeal mechanism for ongoing controlled activity orders means that the order is enforceable and ACAT cannot be used as an excuse to delay or otherwise make the order invalid. The individual subject to the ongoing controlled activity order still retains their rights relating to the revocation of the ongoing controlled activity order and could still pursue the matter in the Supreme Court.

The seriousness of the ongoing controlled activity order is recognised through the repeated failure to comply with previous controlled activities orders. The making of an ongoing controlled activity order is based on recurring certain behaviours, and only after other options have been exhausted. The person is placed on notice about their behaviour through controlled activity orders and repeated contraventions, it is not unreasonable that legal principles apply similar to a strict liability offence.

⁷ *Planning and Development Act 2007*, sections 361 and 367.

⁸ Section 408A and Schedule 1, items 42, 44, 45 and 46.

However, in the Committee's view, this justification for the amendments to ACAT appeal rights is insufficient.

Section 53 of the ACAT Act allows ACAT to make interim orders where it "is satisfied that, if an order under this section were not made before the hearing of the application, the party applying for the order would be disadvantaged or suffer harm". ACAT may make any order "it considers appropriate to protect the position of the party that applied for the order", and can vary or revoke the order at any time on application of either party. ACAT is not restricted in what it can take into account in deciding whether to vary or revoke an interim order, including, for example, public policy concerns relating to health and safety. Considerations of public health and safety could also be considered by the Supreme Court under section 381 of the Planning and Development Act in granting an injunction requiring a person to do something, such as cleaning up a leasehold, without placing the onus on the person subject to the controlled activity order to commence proceedings.

The possibility of challenging the decision in the Supreme Court under the *Administrative Decisions (Judicial Review) Act 1989* is also not, in the Committee's view, a sufficient alternative means to obtain a stay of controlled activity orders. The grounds on which a person can challenge a decision under that act are limited to grounds of legal error, and the applicant is generally liable for any costs incurred by other parties if they are unsuccessful. A stay of the original decision may be granted on the basis that the applicant agrees to bear any additional costs incurred due to the delay in enforcing the decisions in the event they lose their application for review.

The restrictions on appeals to ACAT are also not conditioned on protecting health and safety or otherwise not adapted to the purposes put forward for the amendments. When a leasehold is unclean is not defined in the Planning and Development Act or Regulations.⁹ There is no requirement that the state of cleanliness creates health and safety risks before it may be subject to a controlled activity order. The ability of ACAT to take into account the risks to health and safety in making or revoking an interim order will be removed by the amendments. In the Committee's view, therefore, the amendments cannot be considered necessary to give effect to the purpose set out in the explanatory statement.

The Committee also notes that the Authority can't authorise rectification work until the person subject to the original controlled activity order has had an opportunity to apply to ACAT for review of the decision to make the order and, if they have applied, ACAT has decided to uphold the decision to issue the rectification order or the application to the ACAT is withdrawn.¹⁰ Therefore, even where no stay of the controlled activity order is in place, rectification work cannot be carried out. However, other enforcement action, including prosecuting for strict liability offences of contravention of the controlled activity order, may still be carried out.

In this way, the restrictions on being able to stay the effect of a controlled activity order or review an on-going controlled activity order may undermine the very basis of being able to review the decision in the AAT, limiting a person's right to a fair hearing protected by section 21 of the HRA and makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions under the Committee terms of reference paragraph (3)(c). The potential to expose a person to a rectification direction and possibly entry by an authorised person into their home limits the protection of privacy and reputation provided by section 12 of the HRA.

⁹ See *Warren Gardner and Julie Beaver v ACT Planning and Land Authority (Administrative Review)* [2010] ACAT 64

¹⁰ Subsection 368(2).

The Committee asks for a further justification for the amendments to appeal rights to ACAT provided in the Bill so as to demonstrate their reasonableness in limiting the human rights set out above.

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

PUBLIC SECTOR MANAGEMENT AMENDMENT BILL 2019

This Bill amends the *Public Sector Management Act 1994* to provide for contact information of new employees to be shared with unions, to exclude public employees from the definition of employee in the *Long Service Leave Act 1976*, and other amendments.

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

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

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

RIGHT TO FREEDOM OF ASSOCIATION (SECTION 15 HRA)

The Bill will authorise providing the contact information of new public service staff to the relevant union. Contact information will include a person's full name, position in the service, where in the service they will work, their government email address and government phone number. As the explanatory statement accompanying the Bill sets out, although some or all of this information may be publicly available on the government gazette or discernible through the use of a common form of government email address, the collation of the information for presentation to unions may itself be considered disclosure of private information and hence a limit on the protection against the unreasonable interference with privacy protected under section 12 of the HRA. The provision may also engage the right to freedom of association by facilitating contact by union officials encouraging membership. The explanatory statement sets out a justification for any potential limits using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly, noting in particular that a reasonable opportunity to not have information shared has to be provided to all new staff before their contact information is shared.

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

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW (SECTION 8 HRA)

The Bill amends the dictionary definition of employee for the purposes of the Long Service Leave Act so that it will not apply to a public employee. The explanatory statement accompanying the Bill suggests that this change merely reflects the intended position under current enterprise agreements, and that any amendment will only apply prospectively with long service leave entitlements of existing employees calculated under the Long Service Leave Act where it is to their advantage. The explanatory statement recognises that by distinguishing public from other employees the Bill may limit the right to equality before the law protected by section 8 of the HRA and sets out why any limitation should be considered reasonable using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly, noting in particular the comparison of the different bases on which entitlements may be accrued or calculated under the respective schemes.

The Bill will also insert a new definition of permanent resident into the Public Service Management Act to mean a person who holds a permanent visa, or a New Zealand citizen who holds a special category visa, under specified sections of the *Migration Act 1958* (Cwlth). This definition will clarify the meaning of eligible person for appointment, engagement or employment as a public servant. This distinction on who qualifies as a permanent resident and hence is eligible to work as a public servant also potentially limits the right to equality before the law protected by section 8 of the HRA. Again, the explanatory statement provides a justification using the framework set out in section 28 of the HRA and the Committee refers the Assembly to that statement.

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

WORK HEALTH AND SAFETY AMENDMENT BILL 2019

This Bill amends the *Work Health and Safety Act 2011* and other legislation relating to the establishment and governance of the Office of the Work Health and Safety Commissioner (“WHS Commissioner”).

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

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

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW (SECTION 8 HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

RIGHT TO TAKE PART IN PUBLIC LIFE (SECTION 17 HRA)

The Bill will change the name of the existing Work Safety Council to the Work Health and Safety Council, amend the term of appointed members from three to four years, and limit their appointment to two consecutive terms, or eight years in total. This may be seen as discriminating against potential members who have already been appointed to two previous terms and hence limit their right to recognition and equality before the law protected by section 8 of the HRA.

The Bill will also establish the role of the WHS Commissioner and require the person appointed to that position inform the Executive of their personal and financial interests within seven days after appointment, each financial year or a change to those interests. This disclosure of personal information may limit the protection against unreasonable disclosures of personal information provided by section 12 of the HRA.

The Bill will also prevent the WHS Commissioner from engaging in other paid employment without the prior approval of the Minister. This may act to limit the right to the opportunity to take part in public office protected by section 17 of the HRA.

The explanatory statement accompanying the Bill recognises these potential limits on the human rights mentioned and sets out why they should be considered reasonable. The Committee refers the Assembly to that statement.

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

REGULATORY IMPACT STATEMENT—NO COMMENT

The Committee has examined the regulatory impact statement accompanying the Energy Efficiency (Cost of Living) Improvement Amendment Bill 2019 and offers no comment on it.

PROPOSED GOVERNMENT AMENDMENTS

The Committee has examined proposed Government amendments to the following bills:

PLANNING AND DEVELOPMENT (COMMUNITY CONCESSIONAL LEASES) AMENDMENT BILL 2019

The Government has proposed two amendments to the Planning and Development (Community Concessional Leases) Amendment Bill 2019 to be moved prior to the debate. The Committee has considered these amendments and has no further comment.

DRUGS OF DEPENDENCE (PERSONAL CANNABIS USE) AMENDMENT BILL 2018

The Government has proposed 13 amendments to the Drugs of Dependence (Personal Cannabis Use) Amendment Bill 2018. The Committee has considered these amendments and has no further comment.

SENTENCING (DRUG AND ALCOHOL TREATMENT ORDERS) LEGISLATION AMENDMENT BILL 2019

The Government has proposed amendments to *Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Bill 2019*. The Committee has considered these amendments and has no further comment.

SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

The Committee has examined the regulatory impact statement:

- **Disallowable Instrument DI2019-181 being the Construction Occupations (Licensing) (Qualifications—Builder and Building Surveyor Licences) Declaration 2019 (No 2) made under section 13 of the *Construction Occupations (Licensing) Regulation 2004* revokes DI2019-14 and determines the qualifications for an individual to be eligible to be licensed in the construction occupations and associated occupation classes of builder and building surveyor.**
- **Disallowable Instrument DI2019-184 being the Waste Management and Resource Recovery (Fees) Determination 2019 (No 2) made under section 126 of the *Waste Management and Resource Recovery Act 2016* revokes DI2019-106 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2019-185 being the Juries (Payment) Determination 2019 made under sections 49 and 51 of the *Juries Act 1967* revokes DI2018-184 and determines payments made to jurors for the purposes of the Act.**
- **Disallowable Instrument DI2019-186 being the Road Transport (General) Application of Road Transport Legislation Declaration 2019 (No 7) made under section 13 of the *Road Transport (General) Act 1999* declares that certain parts of the road transport legislation do not apply to an entrant vehicle or the driver of an entrant vehicle participating in the Innate Test Day.**

- **Disallowable Instrument DI2019-187 being the Public Place Names (Coombs) Determination 2019 made under section 3 of the *Public Place Names Act 1989* determines the name of a public place in the Division of Coombs.**
- **Disallowable Instrument DI2019-188 being the City Renewal Authority and Suburban Land Agency (Suburban Land Agency Deputy Chair) Appointment 2019 made under section 45 of the *City Renewal Authority and Suburban Land Agency Act 2017* and sections 78 and 79 of the *Financial Management Act 1996* appoints a specified person as deputy chair of the Suburban Land Agency Board.**
- **Disallowable Instrument DI2019-189 being the City Renewal Authority and Suburban Land Agency (Suburban Land Agency Member) Appointment 2019 (No 2) made under section 45 of the *City Renewal Authority and Suburban Land Agency Act 2017* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member of the Suburban Land Agency, with skills or experience in the field of urban design and planning, and law, public administration and governance.**

DISALLOWABLE INSTRUMENTS—COMMENT

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

EXPLANATION OF FEES INCREASES

- **Disallowable Instrument DI2019-182 being the Road Transport (General) (Pay Parking Area Fees) Determination 2019 made under section 96 of the *Road Transport (General) Act 1999* revokes DI2018-183 and determines fees payable for the purposes of the Act.**

This instrument determines various parking fees. The Committee notes that the explanatory statement for the instrument states:

The disallowable instrument includes variable price increases rounded to the nearest whole dollar amount, where possible with default indexation of wage price index (WPI). WPI is 3% for the 2019-20 year. This annual fee increase framework was announced in the 2019-20 ACT Government Budget, to apply for four years 2019-20 to 2022-23. This decision balances the management of parking demand and pricing increases higher than WPI with cost of living pressures and impacts on lower income households.

In rounding the fees to whole dollar amounts, some pay parking areas will have lower maximum fees than in 2018-19, some will stay the same as in 2018-19, and most will have modest increases.

In *Scrutiny Report 33* of the 9th Assembly (6 August 2019), the Committee considered over 60 fees determinations. The Committee notes that, in the explanatory statements for those determinations, a WPI increase of 2.5% was relied upon.

The Committee seeks the Minister's advice as to why a WPI increase of 3% is relied upon, for this instrument.

This comment requires a response from the Minister.

FEES INCREASES NOT SUFFICIENTLY EXPLAINED

- **Disallowable Instrument DI2019-183 being the Veterinary Practice (Fees) Determination 2019 (No 2) made under section 144 of the *Veterinary Practice Act 2018* determines fees payable for the purposes of the Act.**

This instrument determines various fees for the *Veterinary Practice Act 2018*. The Committee notes that its expectations, in relation to fees determinations (and other matters) are set out in the Committee's document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps*.¹¹ In that document, the Committee states:

FEES DETERMINATIONS

The Committee prefers that instruments that determine fees indicate (either in the instrument itself or in the Explanatory Statement) the amount of the "old" fee, the amount of the new fee, any percentage increase and also the reason for any increase (eg an adjustment based on the CPI). Given the importance of fees to the administration of the ACT, it assists the Committee (and the Legislative Assembly) if fees determinations expressly identify the magnitude of any fees increases.

The Committee also prefers that fees determinations expressly address the mandatory requirements of subsection 56(5) of the *Legislation Act 2001*, which provides that a fees determination must provide:

- by whom the fee is payable; and
- to whom the fee is to be paid

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

This instrument sets out the fees payable to the board for the 2019-2020 financial year. This includes the renewal of registration of veterinary practitioners which are processed in advance of the financial year for continuity of registration purposes.

Schedule 1 provides details of the fee payable to the Board by the person requesting the service described in column 3. Column 4 of Schedule 1 is for comparison purposes only.

The fee payable for the 2019-2020 financial year is included at column 5. Fees have been increased by 2.5 percent based on advice from Treasury.

As the Committee recently noted, in *Scrutiny Report 32* of the 9th Assembly (23 July 2019), in relation to the Veterinary Practice (Fees) Determination 2019 (No 1) (DI2019-48), the explanation provided, here, does not indicate the **reason** for the 2.5% increase. The Committee considers that stating that the increase is "based on advice from Treasury" does not provide the **reason** for the increase, in the manner expected by the Committee.

¹¹ https://www.parliament.act.gov.au/__data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards.pdf.

In a letter dated 29 August 2019, the Minister for Recycling and Waste Reduction and Minister for City Services has responded to the Committee’s comments in relation to DI2019-48 (which is replaced by this instrument). The Minister’s response notes that the same issue arises in relation to the current instrument. The Minister advises that the explanatory statement of the current instrument “should have stated the increase by 2.5 percent is due to the forecast Wage Price Index as per budget memo 2019/09, rounded for cash handling and other purposes”. This response addresses the concerns that the Committee would otherwise have with this instrument.

This comment does not require a response from the Minister.

POSITIVE COMMENT

- **Disallowable Instrument DI2019-190 being the Water Resources Environmental Flow Guidelines 2019 (No 2) made under section 12 of the *Water Resources Act 2007* revokes DI2019-37 and approves the environmental flow requirements needed to maintain aquatic ecosystems.**
- **Disallowable Instrument DI2019-191 being the Water Resources (Water Available from Areas) Determination 2019 (No 2) made under section 17 of the *Water Resources Act 2007* revokes DI2019-39 and determines the total amounts of surface water and ground water that are available for taking from ACT water management areas.**

The Committee notes that the instruments mentioned above re-make instruments (DI2019-37 and DI2019-39) that were the subject of comment by the Committee in *Scrutiny Report 31* of the 9th Assembly (28 May 2019). In both cases, the comments related to the drafting of the instrument in question.

The Committee notes that the Minister for the Environment and Heritage responded to the Committee’s comments, in a letter dated 24 July 2019. In the response, the Minister indicated that he accepted the Committee’s comments and that he would re-make the relevant instruments.

The Committee notes, with approval, that the instruments mentioned above re-make the instruments in question, to address the Committee’s comments.

This comment does not require a response from the Minister.

HUMAN RIGHTS ISSUES

- **Disallowable Instrument DI2019-193 being the Road Transport (Public Passenger Service) Taxi Licence Exemption 2019 made under section 127 of the *Road Transport (Public Passenger Services) Act 2001* approves exemptions from taxi licence waiting list requirements for the purposes of the Act.**

This instrument, made under section 127 of the *Road Transport (Public Passenger Services) Act 2001*, provides for various exemptions from provisions of that Act. The explanatory statement for the instrument sets out, in some detail, the background to the exemptions, which (in short) relate to a review of the ACT taxi industry that the ACT Government undertook in 2015. The purpose of the review was to “examine the possible use of new technologies and how to reduce unnecessary regulation in the local taxi industry”. Reforms were introduced, in the light of the review. The effect of the reforms was evaluated in 2017-18, with further reforms recommended, in the light of the evaluation. The further reforms included amendments in relation to the operation of the taxi licence waiting list and the allocation of licences through that list.

The explanatory statement for the instrument states:

There is strong demand for and need for wheelchair-accessible taxis (WATs) and the ACT Government is committed to ensuring there is sufficient supply of these types of taxis for the community. The current legislative requirement that prevents a taxi licence holder who surrenders a taxi licence for apply for a licence or pre-approval for two years from the date of surrender was introduced to mitigate fluctuations in taxi supply from persons entering the industry and taking up licences for short periods. It was intended to promote consistency and availability of taxis to supply the market. However, it has resulted in a situation where WAT licensees who have surrendered their taxi licence for non-commercial reasons are being prevented from re-entering the market. To address this issue, this instrument removes this restriction for WAT licensees. The Evaluation Report noted the importance of ensuring adequate supply of WATs to the community and that a lack of adequate supply would be disadvantageous to the community.

The exemptions provided for by this instrument are intended to address those issues.

The explanatory statement for the instrument goes on to discuss the human rights implications of the instrument, by reference to the right to recognition and equality before the law, under section 8 of the *Human Rights Act 2004*.

The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues arising from the exemptions provided for by this instrument, set out in the explanatory statement for the instrument.

This comment does not require a response from the Minister.

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

- **Disallowable Instrument DI2019-194 being the Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2019, including a regulatory impact statement made under section 25 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* revokes DI2017-308 and approves the Energy Efficiency Improvement Eligible Activities Code of Practice.**
- **Disallowable Instrument DI2019-195 being the Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2019, including a regulatory impact statement made under section 25 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* revokes DI2017-309 and approves the Record Keeping and Reporting Code of Practice.**

Each of the instruments mentioned above approve a code of practice, for section 25 of the *Energy Efficiency (Cost of Living) Improvement Act 2012*. In each case the relevant code of practice relies on various Australian Standards and Australian/New Zealand Standards (for both instruments, see section 25 and also the Dictionary for the instrument) and the National Construction Code (for both instruments, see the Dictionary for the instrument).

Section 5 of the first instrument provides:

5 Referenced documents

- (1) Australian Standards are available for purchase at www.standards.org.au.

- (2) A copy of the National Construction Code, which incorporates the Building Code of Australia and the Plumbing Code of Australia, is available for inspection by members of the public between 9am and 4.30pm on business days at the Access Canberra shopfront, Dame Pattie Menzies House, 16 Challis Street, Dickson or for purchase at www.abcb.gov.au.

Section 5 of the second instrument is in similar terms.

The disapplication of subsections 47(5) and (6) of the *Legislation Act 2001* has long been a matter in relation to which the Committee has taken a keen interest, as the effect of this action tends to limit access, by those who have to operate in accordance with legislation, to material on which legislation relies. As a result, the Committee has tended to draw attention to any disapplication of subsections 47(5) and (6), to require a justification for the disapplication and (ideally) for some form of alternative access to be provided to the referenced material.

The Committee notes, with approval, that the explanatory statement for each instrument addresses the Committee's concerns, in some detail.

The explanatory statement for the first instrument states:

Section 4 – Disapplication of Legislation Act, s47 (5) and 47 (6)

This section allows the code of practice to apply, incorporate or adopt an instrument without the instrument having to be notified.

The effect of subsection 47(5) is to make any law of another jurisdiction, or an instrument, that is applied by a subordinate law or by a disallowable instrument, as in force from time to time, a 'notifiable instrument'. The effect of subsection 47(6) is to make any amendments or revisions of such (external) instruments also notifiable instruments.

The reason for disapplying the application of section 47(5) and (6) is to avoid breaching copyright. The code refers to Australian standards which would be required to be notified if s47 of the Legislation Act applied. Standards Australia is the nation's peak non-government, not-for-profit standards organization whose main responsibility is the development of standards. Australian Standards are protected by copyright and are sold and distributed worldwide by SAI Global Limited. To provide a Standard referred to in legislation as a notifiable instrument on the Act Legislation Register (that is make it available publically [sic] for free) would constitute a breach of Standards Australia's copyright in that particular standard. For this reason, the instrument disapplies s47(5) and (6) of the Legislation Act which requires the documents to be notified.

Disapplying s47 (5) and (6) means interested persons will be required to purchase the relevant standard. In relation to the cost associated with having to purchase a standard, the only people likely to have sufficient interest or need to purchase a Standard are those considering delivering activities as part of the Energy Efficiency Improvement Scheme (EEIS). Those parties include service providers such as electricians and plumbers who should already have access to the relevant Standards as part of their professions. The cost therefore should be minimal.

Additionally, many Australian and International Standards are available for viewing at the National Library of Australia (NLA). An online search of the NLA's catalogue can be undertaken to identify which Standards it has available.

In previous EEIS instrument updates, the Scrutiny of Bills Committee has drawn attention to the instruments on the basis that they disapply sections 47(5) and (6) of the *Legislation Act 2001*, which provide that any instrument that is applied as law in the ACT is taken to be a notifiable instrument. Consistent with EPSDD's previous advice to the Committee, the reason for disapplying the application of section 47(5) to these instruments is to avoid breaching copyright. The copyright in Australian Standards is owned by a non-government organisation, Standards Australia.

While it may be prohibitive for EEIS stakeholders to purchase all of the standards referred to in the instruments, there are several factors that minimise undue expense in the case of these standards. In particular, most interested parties will already have copies of the relevant standards, and copies of many standards are available at the National Library of Australia (NLA).

The committee has previously suggested two options for improving public access to the documents, but unfortunately, neither of these options provide a practical solution.

First, the committee suggested that the directorate might list specific standards that are available at the NLA. This would be problematic, as the instruments intentionally refer to "the relevant parts of ... standards ... as in force from time to time" so that any updates of the standards are automatically applied. As standards are updated, this would render inaccurate any advice provided about which standards are available in the NLA.

The committee's second suggestion was that the standards might be made available for viewing through the Access Canberra shopfront, as is the National Construction Code (NCC). This option is unfortunately unavailable due to copyright restrictions which do not apply to the NCC. That code is freely available online at www.abcb.gov.au/ncc-online/NCC. In contrast, the conditions of use for the ACT Government's access to Australian Standards provide that all copies of standards supplied are only for use within the organisation and may not be shared or distributed.

A similar discussion appears in the explanatory statement for the second instrument.

The Committee notes, with approval, that the discussion not only addresses the Committee's fundamental concerns (about the disapplication of subsections 47(5) and (6)) but also suggestions that the Committee has previously made, in relation to access to the referenced documents.

However, in that context, the Committee is a little concerned by the discussion of the "first" of the Committee's alternative options. In essence, the proposition is that it is not possible to be more specific, about which Standards are, in fact, available for viewing, in the National Library of Australia (NLA), because any updating of the relevant Standards "would render inaccurate any advice provided about which standards are available in the NLA". While that may, indeed, be a practical difficulty, the Committee suggests that this also flags a difficulty for users of the relevant legislation, in that (in the Committee's view) this tends to point to a difficulty faced by users, in being able to (easily) determine what are the "the relevant parts of ... standards", at any particular time.

The Committee seeks the Minister's views on the issue identified, immediately above.

Further, the Committee notes that, for both instruments (and both explanatory statements), subsection 5(1) refers to access to "Australian Standards" but, in both instances, the instrument also refers to various Australian/New Zealand Standards. The Committee can identify no basis on which the reference to "Australian Standards", in subsection 5(1), can also be taken to include a reference to Australian/New Zealand Standards.

The Committee seeks the Minister’s views on the issue identified, immediately above.

The Committee draws the attention of the Legislative Assembly to the discussion of the disapplication of subsections 47(5) and (6) of the *Legislation Act 2001*, set out in the explanatory statements for the instruments mentioned above.

This comment requires a response from the Minister.

MINOR DRAFTING ISSUE—USE OF DOCUMENTS AS “PRECEDENTS” OR “TEMPLATES”

- **Disallowable Instrument DI2019-197 being the Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2019 (No 4) made under subsection 21(1) of the *Race and Sports Bookmaking Act 2001* determines a specified Tabcorp ACT Pty Ltd temporary location to be sports bookmaking venue for the purposes of the Act.**

This instrument determines a specified area of Manuka Oval as a “sports bookmaking venue”, for subsection 21(1) of the *Race and Sports Bookmaking Act 2001*. The determination is time-limited, operating for a single day: 9 August 2019. Such determinations are generally made in relation to particular sporting events, including the Melbourne Cup and sporting events taking place at Manuka Oval (among other places). The effect of this determination is to allow Tabcorp ACT Pty Ltd to operate a “selling terminal” (ie a TAB outlet) at Manuka Oval, on 9 August 2019.

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

The determination has been provided as a result of Tabcorp ACT Pty Ltd requesting to temporarily locate one (1) TAB mobile van at the Manuka Oval, Griffith **during the Sydney Thunder Big Bash League match on 9 August 2019**. [emphasis added]

The Committee notes that the sporting event that was *actually* held at Manuka Oval on 9 August 2019 was **the AFL match between the GWS Giants and Hawthorn**.

The Committee notes that this (minor) error is not replicated in the instrument itself.

The Committee assumes that the explanatory statement for an earlier instrument (relating to a Sydney Thunder Big Bash League match) has been used as a “template” or “precedent” for the drafting of the explanatory statement for this instrument, without all the necessary modifications being made. In the Committee’s publication *Subordinate legislation—Technical and stylistic standards—Tips/Traps*,¹² the Committee cautions against this approach, stating:

ISSUES ARISING FROM THE USE OF TEMPLATES AND PRECEDENTS

The Committee often identifies issues that appear to arise from the use of previous instruments as templates or precedents for new instruments. The kinds of issues that arise are references to the plural in instruments that appoint only 1 person (and vice versa) and references to, say, provisions relating to the appointment of chairs and deputy chairs to governing boards when the particular instrument appoints a person only as a member. This suggests to the Committee that a previous instrument (or the Explanatory Statement for a previous instrument) has been used as a template or a precedent, without sufficient care being taken to ensure that the previous

¹² https://www.parliament.act.gov.au/__data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards.pdf.

instrument or Explanatory Statement is adapted to fit the new situation. The Committee accepts that instruments and Explanatory Statements will be used as templates and precedents but cautions instrument makers that caution must be taken to ensure that the earlier document is adapted to fit the new situation.

The Committee reminds Ministers and agencies of the need to be careful in the use of existing documents as “templates” or “precedents”.

This comment does not require a response from the Minister.

SUBORDINATE LAW—NO COMMENT

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

- **Subordinate Law SL2019-19 being the Government Agencies (Land Acquisition Reporting) Regulation 2019 made under the *Government Agencies (Land Acquisition Reporting) Act 2018* prescribes two types of land acquisitions that are excluded from reporting for the purposes of the Act.**

REGULATORY IMPACT STATEMENTS—NO COMMENT

The Committee has examined regulatory impact statements for the following disallowable instruments and offers no comments on them:

- Disallowable Instrument DI2019-194 being the Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2019.
- Disallowable Instrument DI2019-195 being the Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2019.

GOVERNMENT RESPONSES

The Committee has received responses from:

- The Minister for Planning and Land Management, dated 8 August 2019, in relation to comments made in Scrutiny Report 32 concerning the Planning and Development (Design Review Panel) Amendment Bill 2019.
- The Minister for Health, dated 19 August 2019, in relation to comments made in Scrutiny Report 33 concerning Disallowable Instrument DI2019-102—Gene Technology (GM Crop Moratorium) Advisory Council Appointment 2019 (No 2).
- The Minister for Community Services and Facilities, dated 19 August 2019, in relation to comments made in Scrutiny Report 33 concerning Disallowable Instrument DI2019-176—Working with Vulnerable People Background Checking (Fees) Determination 2019 (No 1).
- The Minister for Climate Change and Sustainability, dated 20 August 2019, in relation to comments made in Scrutiny Report 33 concerning the regulatory impact statement accompanying Disallowable Instrument DI2019-75—Energy Efficiency (Cost of Living) Improvement (Priority Household Target) Determination 2019.

- The Minister for Recycling and Waste Reduction and Minister for City Services, dated 29 August 2019, in relation to comments made in Scrutiny Report 32 concerning the Litter Legislation Amendment Bill 2019, and Disallowable Instrument DI2019-48—Veterinary Practice (Fees) Determination 2019 (No 1).
- The Attorney-General, dated 6 September 2019, in relation to comments made in Scrutiny Report 33 concerning Subordinate Law SL2019-11—Court Procedures Amendment Rules 2019 (No 1).
- The Minister for Justice, Consumer Affairs and Road Safety, dated 9 September 2019, in relation to comments made in Scrutiny Report 33, Disallowable Instruments:
 - DI2019-89 Road Transport (General) Vehicle Registration and Related Fees Determination 2019 (No 1).
 - DI2019-92 Road Transport (General) Numberplate Fees Determination 2019 (No 1).
 - DI2019-93 Road Transport (General) Refund and Dishonoured Payments Fees Determination 2019 (No 1).
 - DI2019-94 Road Transport (General) Fees for Publications Determination 2019 (No 1).
 - DI2019-95 Road Transport (General) Driver Licence and Related Fees Determination 2019 (No 1).

These responses¹³ can be viewed online.

The Committee wishes to thank the Minister for Planning and Land Management, the Minister for Health, the Minister for Community Services and Facilities, the Minister for Climate Change and Sustainability, the Minister for Recycling and Waste Reduction and Minister for City Services, the Attorney-General and the Minister for Justice, Consumer Affairs and Road Safety for their helpful responses.

Giulia Jones MLA
Chair

10 September 2019

¹³ <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-justice-and-community-safety-legislative-scrutiny-role>.

OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

- **Report 27, dated 18 February 2019**
 - Electoral Amendment Bill 2018 (Government Response).
- **Report 28, dated 12 March 2019**
 - Electoral Amendment Bill 2018 (Private Member's amendments).
- **Report 33, dated 6 August 2019**
 - Disallowable Instrument DI2019-173 Victims of Crime (Fees) Determination 2019 (No 1.)