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Minister for Transport and City Services

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Mr Jeremy Hanson CSC MLA

Chair

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

ACT Legislative Assembly

GPO Box 1020

Canberra ACT 2601

Dear Mr Hanson

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislation Scrutiny Role) (Committee) in its Scrutiny Report 1 (Report) in relation to the Plastic Reduction Bill 2020.

I thank the Committee for its comments relating to the right to privacy and reputation, rights in criminal proceedings and the incorporation of instruments. The Committee's comments requesting a response are addressed below.

Right to privacy and reputation (section 12 *Human Rights Act 2004* (HRA))

The Committee raised concerns surrounding enforcement measures within the Bill extending to authorise intrusion into a person's private affairs, potentially limiting the protection of privacy provided by section 12 of the HRA. While the Committee recognised the limited basis on which any intrusion may occur, it sought that the explanatory statement be amended to include justification as to why any intrusion is considered reasonable.

Enforcement provisions, including powers of entry, are necessary to ensure that the Objects of the Bill are met to reduce the use of plastic, and reduce its impact on the environment and waste management and resource recovery systems.

I draw the Committee's attention to page 8 of the explanatory statement which sets out why a regulatory approach is considered the least restrictive way to achieve this, and that the Bill's

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enforcement mechanisms are considered the most effective and least intrusive way of making sure the statutory requirements are complied with. As requested by the Committee, this section of the explanatory statement has been revised to provide further justification for this potential limitation of section 12 of the HRA.

Further, Part 6 of the explanatory statement provides that, in the absence of an overarching Act that provides template enforcement provisions for all authorised officers in the ACT, each clause under Part 6 is included to ensure total clarity surrounding the enforcement provisions that apply so that Objects can be met.

Part 6 of the explanatory statement also details the significant support from peak local and national industry, business, environment and disability advocacy bodies via the Plastic Reduction Taskforce to ensure a high level of competitive neutrality and the need to prevent 'free-riders'. Free-riders are those that benefit from the triple-bottom-line impacts of the Bill without complying with it.

The Committee noted that an authorised officer who enters premises under the *Fair Trading (Australian Consumer Law) Act 1992* or the *Food Act 2001* (Food Act) will also be able to exercise powers under the Bill.

This compliance model, where the Bill would be regulated predominantly by Access Canberra and the Health Protection Service, was designed specifically to limit the regulatory burden, including any potential limitation of section 12 of the HRA. That is, existing authorised officers and compliance frameworks for the above Acts are being utilised for the Bill. These already engage with many Canberra businesses likely to be affected, covering both front and back-of-house for retail and food businesses. It is also very unlikely that circumstances will occur where entry to a business which is also a residential premises is needed.

For example, an authorised officer may undertake a routine inspection of a food business under the Food Act and while doing so may notice that the premises is supplying a prohibited single-use plastic item. It is most likely that entry will have occurred via consent under both the Food Act and the Bill, with protections in place to limit entry under the Bill without consent or via search warrant to extremely unlikely circumstances.

Access Canberra and the Health Protection Service compliance models also focus on a risk-based compliance approach. This approach preferences engagement and education prior to enforcement. Enforcement is then proportional to the harm or potential harm caused by non-compliance. For the first tranche of single-use plastic products phased out by the Bill, the harm or potential harm caused by non-compliance is limited. As additional products are phased out via regulation (see 'Incorporation of instruments' below) and understanding of the impacts of single-use plastics evolves, this harm or potential harm is expected to grow proportionally.

Incorporation of instruments

The Committee raised concerns and requested further information regarding why the authority to incorporate of instruments from time to time in regulations is warranted.

Research around how best to manage the issue of single-use plastics is constantly evolving and consequently policy will also likely change moving forward. The Plastic Reduction Bill has been deliberately drafted to allow for flexibility. This includes that any instrument adopted or incorporated into a regulation or disallowable instrument (for events declarations under Part 4, or exemptions under Part 5) may be applied as in force from time to time (if this is appropriate in the particular case) to reflect any changes in those instruments as the recommended approach evolves. Further, the inclusion of instruments as in force from time to time is based off, and consistent with, the existing *Plastic Shopping Bag Ban Act 2010* which will be repealed and incorporated into the Bill pending passage.

The incorporation of instruments as in force from time to time will also ensure that instruments are up to date and consistent between the Plastic Reduction Bill and other legislation, both within the ACT and elsewhere if necessary. This is particularly important given that most jurisdictions across Australia are also in various stages of policy and/or legislative development to take action to phase out single-use plastics. For example, the Australian Standards in the Bill are also provided in Queensland's Waste Reduction and Recycling (Plastic Items) Amendment Bill 2020 and South Australia's *Plastic Shopping Bags (Waste Avoidance) Act 2008*.

I trust the above responses provide the Committee with clarification and addresses their concerns.

Yours sincerely



Chris Steel MLA
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