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Mr Jeremy Hanson MLA

Chair

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

By email: LACommitteeJCS@parliament.act.gov.au

Dear Chair

I write in relation to the comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its Scrutiny Report 11 dated 19 November 2021 in relation to the Emergencies Amendment Bill 2021 (the Bill).

The Committee raised concerns with new section 225 (Transitional regulations), specifically section 225 (2), which provides that a transitional regulation may modify chapter 12 to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter. The Committee queried why a clause of this nature (a Henry VIII clause) was included in the Bill, and why it was not restricted to matters necessary to be prescribed because of the enactment of the Bill.

Transitional provisions have been included in the Bill, including the provision in question, to resolve any unforeseen issues which may arise as a result of operationalising the amendments provided for in the Bill.

The power to make transitional regulations does not extend to amending the primary legislation or amending other primary legislation by way of subordinate legislation. It only allows the Executive to respond in a temporary way to matters of a transitional nature which may come up within one year after commencement, particularly to assist the smooth transition of arbitration agreements, to the new legislative scheme.

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The 'amendments' in a transitional regulation do not actually amend the words of the law they 'amend', but rather operate to modify their effect temporarily. The regulation itself is disallowable. As the power to make transitional regulations is limited in its scope to transitional matters, it does not represent an inappropriate delegation of Territory powers and the power is not beyond the law-making power of the Legislative Assembly.

In relation to why the provision was not further restricted, this is a reflection of the *Emergencies Act 2004* itself, which provides for a broad, all-hazards approach to a range of incidents and emergencies. An unduly restricted scope may inadvertently undermine a comprehensive, responsive and flexible legislative infrastructure supporting emergency management — which is by nature an operating environment characterised by unforeseen and uncertain variables (which makes effective transitional capabilities an important back-up mechanism).

Therefore, on balance, it was considered preferable (in the interests of good emergency management) to take a less restrictive approach to the transitional provision (with the safeguard of an imminent expiry).

I also note the Committee provided its comments in the context of amendments that were described as being of 'limited nature'. I would respectfully disagree that the amendments were limited in nature and consider that this assessment overlooks the operational implications of many of these changes.

I thank the Committee for its consideration of the Bill.

Yours sincerely

Mick Gentleman MLA
Minister for Police and Emergency Services