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

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Dear Chair

Thank you for providing Scrutiny Report No. 24 of 28 November 2022 and the Standing Committee on Justice and Community Safety's comments on the following three disallowable instruments:

- Public Health (Notifiable Conditions) Determination 2022 (No 2) (DI2022-237)
- Public Health (Reporting of Notifiable Conditions) Code of Practice 2022 (No 2) (DI2022-238)
- Blood Donation (Transmittable Diseases) Blood Donor Form 2022 (No 1) (DI2022-239)

I thank the Committee for its thorough consideration of these instruments and offer the following comments in relation to the matters that the Committee has raised.

I note the Committee's request for further information that addresses any human rights issues arising from instruments DI2022-237 and DI2022-238, and discussion about DI2022-239 in the context of the instrument's interaction with the right to privacy under s12 of the *Human Rights Act 2004* (HRA). I recognise the potential for these instruments to impact on the human rights of individuals who may be subject to their operation.

Right to privacy and reputation

In regard to instrument DI2022-237, the expansion of the list of notifiable conditions to include Monkeypox engages the right to privacy under s12 of the HRA. This is by virtue of the instrument's requirement that certain personal information be disclosed. The disclosure is for the legitimate purpose of minimising the spread of disease. Providing this information to the Chief Health Officer will inform public health interventions. This aligns with the objectives of the *Public Health Act 1997* (PHA), which is to protect the public from and provide a rapid response to public health risks.

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Instrument DI2022-239 engages the right to privacy under s22 of the HRA as it relates to the collection, storage and use of personal information. The collection of this information is necessary to satisfy the instrument's objective of ensuring blood donations are safe and suitable.

The engagement with this right is limited and protected in accordance with the *Privacy Act 1988* (Cth) and *Health Records (Privacy and Access) Act 2002*. The instrument's engagement with the right to privacy is considered proportionate and appropriate to achieve the legitimate purpose of enabling safe blood donation.

Rights in criminal proceedings

Instruments DI2022-237 and DI2022-238 engage the right to the presumption of innocence under s22 of the HRA. While neither instrument creates any new offences, it is acknowledged that they engage an existing strict liability offence under s102A of the PHA, and therefore engage the presumption of innocence under the HRA. This engagement with the HRA is considered reasonable and necessary given the degree of public health harms that may arise from notifiable conditions and the legitimate need to support public health interventions.

Right to liberty and security of person

Both DI2022-237 and DI2022-238 engage the right to liberty due to existing offences under s20 and s103 of the PHA that carry potential terms of imprisonment. It is noted that any penalty requiring an individual's imprisonment under the PHA can only be imposed by a relevant Court following consideration of the totality of circumstances that relate to the offending behaviour. These engagements are considered reasonable and necessary given the degree of harm that may arise from failure to comply with these instruments.

As outlined by s28 of the HRA, engagements such as those outlined above may be reasonably justifiable in a free and democratic society. After having considered the HRA, the objectives of the Public Health Act, the *Blood Donation (Transmittable Diseases) Act 1985*, and the capacity for public health harm that may arise from notifiable diseases and unsafe blood donation, I consider the instruments' engagement with human rights to be appropriate and proportionate.

I note that discussion of the engaged human rights was not included in the associated explanatory statements, and I will endeavour to ensure such oversight does not reoccur.

I thank the Committee for its report and consideration of my response to the Committee's comments.

Yours sincerely

Rachel Stephen-Smith MLA