



# **Legislative Assembly for the Australian Capital Territory**

Standing Committee on Legal Affairs  
(Legislative Scrutiny Role)

## **Scrutiny Report 2**

Legislative Assembly for the Australian Capital Territory  
Standing Committee on Legal Affairs (Legislative Scrutiny Role)

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Approved for publication

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11th Assembly  
February 2025



# About the committee

## Establishing resolution

The Assembly established the Standing Committee on Legal Affairs (Legislative Scrutiny Role) on 3 December 2024.

The Committee is responsible for the following areas:

- “(9) the Standing Committee on Legal Affairs is also to perform a legislative scrutiny role of bills and subordinate legislation by:
  - (a) considering whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:
    - (i) unduly trespass on personal rights and liberties;
    - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
    - (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
    - (iv) inappropriately delegate legislative powers; or
    - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny; and
    - (vi) consider whether any explanatory statement associated with legislation meets the technical or stylistic standards expected by the Assembly;
  - (b) reporting to the Legislative Assembly about human rights issues raised by bills and subordinate laws presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*;
  - (c) considering 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):
    - (i) is in accord with the general objects of the Act under which it is made;
    - (ii) unduly trespasses on rights previously established by law;
    - (iii) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
    - (iv) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; and
  - (d) 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 Assembly;”.

You can read the full establishing resolution [on our website](#).<sup>1</sup>

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<sup>1</sup> [https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees-11th-assembly/LA\\_Scrutiny](https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees-11th-assembly/LA_Scrutiny).

## Committee members

Peter Cain MLA, Chair

Taimus Werner-Gibbings MLA, Deputy Chair

Shane Rattenbury MLA

## Secretariat

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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.

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# 1. Bills

## Bills—No comment

### Appropriation Bill 2024-2025 (No 2)

- 1.1 This Bill will appropriate money for the purposes of the Territory for the financial year beginning on 1 July 2024.

### Health Legislation Amendment Bill 2025

- 1.2 This Bill is an omnibus bill, which amends several pieces of legislation within the health portfolio to address minor and technical issues. The amendments include:
- a) substituting references throughout health portfolio legislation to the “Commonwealth administrative appeals tribunal” with the “Commonwealth administrative review tribunal”, following a change in name of this Commonwealth entity;
  - b) substituting a reference under the *Gene Technology (GM Crop Moratorium) Act 2004* to the ACT Administrative Appeals Tribunal with the ACT Civil and Administrative Tribunal (ACAT) and inserting standard provisions that deal with the review of decisions by ACAT. ACAT replaced the ACT Administrative Appeals Tribunal in 2008; and
  - c) making other technical amendments to ACT legislation to correct minor errors and make technical improvements.

### Justice and Community Safety Legislation Amendment Bill 2025

- 1.3 This Bill is an omnibus bill, which amends several pieces of legislation within the Attorney-General’s and Minister for Gaming Reform’s portfolios to address minor and technical issues. The majority of amendments update cross-references, omit redundant definitions and make consequential amendments.

## Bills—Comment

### Crimes (Child Sex Offenders) Amendment Bill 2025

- 1.4 This Bill expands the definition of child-related employment in section 124 of the *Crimes (Child Sex Offenders) Act 2005* (the Act) to include the provision of legal services related to a child, provided by Legal Aid ACT. The Act establishes a child sex offenders register for the ACT. Those convicted of particular sexual offences against children (registrable offenders) are placed on the register and are subject to a number of requirements, including a prohibition on child-related employment.

## Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee resolution of appointment paragraph (9)(a)(i)

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

Protection of the family and child (section 11 HRA)

Right to privacy and reputation (section 12 HRA)

Right to liberty and security of person (section 18 HRA)

Right to work and other work-related rights (section 27B HRA)

- 1.5 The Bill may limit the right to work as it expands the list of proscribed child-related employment areas for registrable offenders.
- 1.6 The Bill may limit the right to privacy as it expands the list of child-related employment areas where a person is required to disclose a pending charge for a registrable offence to an employer or prospective employer.
- 1.7 The Bill may limit the right to liberty and security of person as it expands the child-related employment areas to which existing offences carrying penalties of imprisonment will apply. Sections 126 and 127 of the Act provide that it is an offence to either apply for or engage in child-related employment. Each of these offences is subject to a maximum penalty of imprisonment for two years and, upon conviction, a person may be sentenced to a period of imprisonment.
- 1.8 The explanatory statement accompanying the Bill recognises these potential limitations and provides a fulsome discussion on why they should be considered reasonable using the framework set out in section 28 of the HRA. The Committee draws particular attention to the statement's explanation on how the Bill's approach is intended to be the least restrictive possible. The explanatory statement also discusses the Bill's promotion of the right to equality and non-discrimination and the right of protection of family and children. The Committee refers that statement to the Assembly.
- 1.9 **The Committee draws this matter to the attention of the Assembly but does not require a response from the Minister.**

## Building and Construction Legislation Amendment Bill 2025

- 1.10 This Bill will amend a number of acts governing the ACT's building and construction regulatory system. The Bill:
  - a) establishes a compliance framework for regulation of medical gas systems;
  - b) imposes offences for failing to comply with the regulatory framework for medical gas systems; and
  - c) updates the ACT's building regulatory system to reflect current drafting practices and administrative processes aimed at reducing administrative burden on Government and industry.



## Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee resolution of appointment paragraph (9)(a)(i)

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

Right to privacy and reputation (section 12 HRA)

Rights in criminal proceedings (section 22 HRA)

- 1.11 The Bill engages the right to privacy in two ways. The *Construction Occupations (Licensing) Act 2004* permitted public safety agencies to give public safety information to other public safety agencies. The Bill adds the chief health officer to the list of public safety agencies, thereby expanding the scope of information sharing and limiting privacy. Secondly the Bill provides inspectors under the *Gas Safety Act 2000* with right of entry powers in relation to medical gas systems. These provisions limit the right to privacy through the collection, storage, use and disclosure of personal information and entry onto premises that may be a person's place of residence.
- 1.12 The Bill may limit rights in criminal proceedings as it expands four existing strict liability offences in the *Gas Safety Act 2000* to cover gas fitting work on medical gas systems. By imposing strict liability, where an individual may be liable without having to establish fault, the Bill may limit the presumption of innocence which is protected as a right in criminal proceedings in section 22 of the HRA.
- 1.13 The explanatory statement accompanying the Bill recognises these potential limitations and provides for why they should be considered reasonable using the framework set out in section 28 of the HRA.
- 1.14 **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 insufficiently subject the exercise of legislative power to parliamentary scrutiny?—Committee resolution of appointment paragraph (9)(a)(v)

Displacement of subsections 47(5) and (6) of the *Legislation Act 2001*

- 1.15 The Bill adds two provisions to the *Building Act 2004*<sup>2</sup>, and one to each of the *Construction Occupations (Licensing) Act 2004*<sup>3</sup> and the *Water and Sewerage Act 2000*<sup>4</sup>, enabling applying, adopting or incorporating documents in regulations. Where the document is not a law, Australian Standard or Australian/New Zealand Standard the director-general must ensure that that instrument is available on the ACT Legislation Register, for inspection at an ACT government office or on or through an ACT government website. For a law, Australian Standard or Australian/New Zealand Standard, however, the provisions disapply section 47(5) and (6) of the *Legislation Act 2001*, which would otherwise make laws or standards notifiable instruments.

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<sup>2</sup> ss139A and 151A.

<sup>3</sup> s 128A.

<sup>4</sup> s 46.

1.16 The explanatory statement accompanying the Bill states that:

This disappication will allow a consistent approach to the declaration of documents as recognised standards whether copyrighted or not or otherwise publicly available. There may also be instances where it is not practical to publish information due to its volume and inefficient due to it being otherwise publicly available. The Bill supports transparency for processes and decision-making and provides for the use of the ACT Government’s planning website to provide easier access to information. This will allow for the community to have easy access to updated information.

1.17 The Committee notes that the Bill will require the director-general to ensure that any incorporated instrument is either on the legislation register, available for inspection without charge during ordinary business hours at an ACT government office, or accessible on an ACT government website. Any incorporated instrument will not be enforceable unless made accessible in accordance with those requirements. The Committee commends this approach to the use of incorporated instruments, but remains concerned about the general lack of notification requirements for standards incorporated through regulation. In circumstances where it is not certain if standards may be able to be notified due to copyright or other concerns, then provision may be made for regulations to exclude the operation of section 47(6) of the Legislation Act. In those circumstances an explanation for why a particular incorporated instrument cannot be notified would be expected to be set out in the explanatory statement accompanying the regulation and subject to scrutiny by the Committee.

1.18 In particular, the Committee notes that the Acts to which these amendments apply, include regulation making provisions that allow for the creation of offences.<sup>5</sup> In those circumstances, the Committee considers that the incorporated standards should be publicly accessible without charge.

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond with sufficient time to allow the Committee to consider the response prior to the Bill being debated.

## Planning (Territory Priority Project) Amendment Bill 2025

1.19 This Bill adds “a development proposal related to a public health facility” and “a development proposal related to public housing” to the meaning of “territory priority project” under the *Planning Act 2023*. A “territory priority project” is exempt from third party ACAT review.<sup>6</sup>

### Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee resolution of appointment paragraph (9)(a)(i)

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

##### Right to a fair trial (section 21 HRA)

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<sup>5</sup> See s129 (5) *Construction Occupations (Licensing Act) 2004* or s 152 (6) *Building Act 2004*.

<sup>6</sup> Item 1, Schedule 6.2, *Planning Act 2023*.

- 1.20 In placing restrictions on review rights the Bill may limit the right to a fair trial protected under section 21 of the HRA. These concerns were raised by the Committee in the Tenth Assembly in its consideration of the Planning Bill 2022<sup>7</sup>, a response was requested from the Minister and was duly provided.<sup>8</sup>
- 1.21 The explanatory statement accompanying the Bill recognises this potential limitation and provides for why it should be considered reasonable using the framework set out in section 28 of the HRA.
- 1.22 **The Committee draws this matter to the attention of the Assembly but does not require a response from the Minister.**

## Assisted Reproductive Technology Amendment Bill 2025

- 1.23 This Bill amends the *Assisted Reproductive Technology Act 2025* (the Act) to expand transitional provisions to cover additional groups of people and to correct some technical errors. The Act places various requirements on Assisted Reproductive Technology (ART) providers including gathering information from donors, limiting the number of families that may be created from one donor and creating a register of donor gametes and embryos. Transitional provisions suspended some of these requirements for certain groups of people.
- 1.24 The explanatory statement to the Bill states that:
- Transitional provisions are necessary in the introduction of any new legislative scheme to ensure that people operating under previous rules and laws are considered. Transitional provisions are used to set out how to deal with something that has been started prior to an introduction of a law, but not completed before the law commenced. The proposed amendments enable people who had started their ART journey by having already been allocated gametes before the ART Act had commenced (or during the transitional period of the ART Act) to be able to complete their ART journey in a manner that would have been legally permissible prior to the introduction of the ART regulatory scheme but would now be in breach of the ART Act. The proposed amendments will also enable people who have created embryos or who have already become pregnant prior to the end of the transitional period to be able to complete their family using gametes from the same donor, enabling siblings to be genetically related.

## Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee resolution of appointment paragraph (9)(a)(i)

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

#### Right to life (section 9 HRA)

#### Protection of the family and children (section 11 HRA)

- 1.25 The Act places limits on the use of gametes which are intended to protect the health, safety and wellbeing of donor conceived people, and thereby promote their right to life. Extending the transitional provisions to cover additional groups of people mean that more donor conceived people will be born without the protections of the Act, including limits on gamete usage to lower the risk of consanguineous relationships and provisions for information gathering.

<sup>7</sup> [Scrutiny Report 21](https://www.parliament.act.gov.au/_data/assets/pdf_file/0006/2083434/Scrutiny-Report-21-4-October-2022.pdf), October 2022. [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0006/2083434/Scrutiny-Report-21-4-October-2022.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0006/2083434/Scrutiny-Report-21-4-October-2022.pdf).

<sup>8</sup> [Response to Scrutiny Committee](https://www.parliament.act.gov.au/_data/assets/pdf_file/0006/2183154/Gentleman-Chair-reponse-to-Scrutiny-Committee-redacted.pdf), Minister for Planning and Land Management, 21 February 2023. [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0006/2183154/Gentleman-Chair-reponse-to-Scrutiny-Committee-redacted.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0006/2183154/Gentleman-Chair-reponse-to-Scrutiny-Committee-redacted.pdf).

- 1.26 Section 11(2) of the HRA states that every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind. By extending the transitional provisions the Bill may permit the creation of a group of donor conceived people who have limits on their right to know their genetic identity. With the transitional provisions suspending the requirements around information gathering about donors, protections in the Act which promote a donor conceived person’s right to the protection of family and the child will not apply.
- 1.27 The explanatory statement accompanying the Bill recognises these potential limitations and provides for why they should be considered reasonable using the framework set out in section 28 of the HRA.
- 1.28 **The Committee draws this matter to the attention of the Assembly but does not require a response from the Minister.**

## Proposed amendments—No comment

### Justice and Community Safety Legislation Amendment Bill 2024 (No 2)

- 1.29 On 21 January 2025, the Committee received proposed government amendments to the Justice and Community Safety Legislation Amendment Bill 2024 (No 2).
- 1.30 The amendments extended the deadline for the Minister for Gaming Reform to report to the Assembly on reviews of the gaming machine authorisation cap and trading scheme. These amendments were agreed by the Assembly on 4 February 2025.

## Government response—Comment

- 1.31 In its Report No 1 of 28 January 2025 the Committee examined the *COAG Legislation Amendment Bill 2024*. The Committee commented on the use of a “Henry VIII clause”, a section that enabled the Minister to make regulations amending the primary Act without reference back to the Assembly.
- 1.32 The Committee requested that the Minister respond as to:
- why provision for transitional regulations in the terms included in the Bill are considered necessary in the context of this Bill and the particular Acts being amended, including:
    - a) why the power to prescribe transitional matters necessary or convenient because of the enactment of the Bill is considered insufficient;
    - b) why further express limits could not be put on the scope, subject matter and duration of any regulations which may modify primary legislation and their impact on rights, privileges or liabilities; and
    - c) what alternatives to the provisions were considered and why those alternatives were not considered sufficient.

1.33 The Minister responded<sup>9</sup> on 30 January 2025:

The transitional provisions have been included in the Bill to ensure any decisions made by the Council of Australian Government (COAG), the National Cabinet or the National Federation Reform Council (NFRC), as well as the Standing Council or any Ministerial Council Meetings have effect after the Act commences and can be finalised. The transitional provisions do not give any additional powers to, or alter the intent of, the relevant Acts. Transitional provisions are commonly used to ensure government business is not disrupted as laws change. There is no intention that the rights or interests of individuals be affected by these provisions.

1.34 The Committee thanks the Minister for the response. However, the Committee notes that the Minister's response failed to address the points raised by the Committee and provided no evidence that alternatives were considered or that the provisions could not have been further limited in scope, subject matter and duration. The Committee does not consider the response to have been adequate.

1.35 The Committee notes that the *COAG Legislation Amendment Bill 2024* passed the Assembly on 4 February 2025.

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<sup>9</sup> The response is available at [https://www.parliament.act.gov.au/data/assets/pdf\\_file/0008/2788019/COAG-Legislation-Amendment-Bill-2024.pdf](https://www.parliament.act.gov.au/data/assets/pdf_file/0008/2788019/COAG-Legislation-Amendment-Bill-2024.pdf).

## 2. Subordinate Legislation

### Disallowable Instruments—No comment

2.1 The Committee has examined the following disallowable instruments and has no comments on them:

- **Disallowable Instrument DI2024-302 being the Major Events (Summer Sports Season Events) Notice 2024** made under section 9 of the *Major Events Act 2014* applies the provisions of the Act to 4 matches at Manuka Oval from 30 November 2024 to 23 January 2025. These matches form the Summer Sports Season in the ACT.
- **Disallowable Instrument DI2024-308 being the Public Health (Chief Health Officer) Appointment 2024** made under section 7 of the *Public Health Act 1997* appoints a specified person as the Chief Health Officer.
- **Disallowable Instrument DI2024-319 being the Taxation Administration (Amounts Payable—Ambulance Levy) Determination 2024** made under section 139 of the *Taxation Administration Act 1999* revokes DI2023-309 and determines RA for the reference months January 2025 to December 2025.

### Disallowable Instruments—Comment

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

#### No Human Rights Issues

- **Disallowable Instrument DI2024-301 being the Road Transport (General) Application of Road Transport Legislation (Manuka Oval) Declaration 2024 (No 2)** made under section 12 of the *Road Transport (General) Act 1999* disapplies section 205 of the Road Transport (Road Rules) Regulation to support parking arrangements for major sporting events at Manuka Oval from 30 November 2024 to 23 January 2025.
- **Disallowable Instrument DI2024-311 being the Climate Change and Greenhouse Gas Reduction (Greenhouse Gas Emissions Measurement Method) Determination 2024** made under section 11 of the *Climate Change and Greenhouse Gas Reduction Act 2010* revokes DI2023-273 and prescribes the method for measuring the amount of greenhouse gas emissions in the ACT.
- **Disallowable Instrument DI2024-312 being the Major Events (Summernats 37) Declaration 2024** made under section 6 of the *Major Events Act 2014* declares Summernats as a Major Event and to enliven powers and offences under the Act, Part 3 (Crowd Management) for police officers.
- **Disallowable Instrument DI2024-313 being the Unit Titles (Management) Rental Certificate Determination 2024** made under section 119 of the *Unit Titles (Management) Act 2011* determines information to be included in a unit title rental certificate.

- **Disallowable Instrument DI2024-314 being the Unit Titles (Management) Sale Certificate Determination 2024 (No 2) made under section 119 of the *Unit Titles (Management) Act 2011* revokes DI2024-219 and determines information to be included in a unit title sale certificate and a unit title sale update certificate.**
- **Disallowable Instrument DI2024-315 being the Unit Titles (Management) (Fees) Determination 2024 (No 2) made under section 119 of the *Unit Titles (Management) Act 2011* revokes DI2024-217 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2024-316 being the Health Records (Privacy and Access) (Fees) Determination 2024 (No 1) made under section 34 of the *Health Records (Privacy and Access) Act 1997* revokes DI2023-259 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2024-317 being the Radiation Protection (Fees) Determination 2024 (No 1) made under section 120 of the *Radiation Protection Act 2006* revokes DI2023-262 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2024-318 being the Animal Diseases (Varroa Mite Import Restriction) Revocation 2024 made under section 15 of the *Animal Diseases Act 2005* revokes DI2023-239 and declares an area outside of the ACT to be subject to an import restriction if the Minister has reasonable grounds for believing that an animal in the area is infected with an exotic disease.**

2.3 The Committee notes that the explanatory statement for each of the instruments mentioned above contains a statement to the effect that no human rights are engaged by the instrument or, in the case of DI2024-301, that the instrument “does not operate to the disadvantage of anyone by adversely affecting their rights or imposing liabilities on the person” and, in the case of DI2024-312, that the instrument “does not restrict peaceful assembly or gatherings, and the restrictions in the *Major Events Act 2014* do not apply to public protests.” In the case of DI2024-318, the Committee notes that the explanatory statement for the instrument refers to the fact that the instrument revokes an instrument that affected human rights.

2.4 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for these instruments.**

2.5 **This comment does not require a response from the relevant Minister.**

## Human Rights Issues

- **Disallowable Instrument DI2024-303 being the Public Place Names (Whitlam) Determination 2024 (No 3) made under section 3 of the *Public Place Names Act 1989* determines the name of a public place in the Division of Whitlam.**

2.6 This instrument is made under section 3 of the *Place Names Act 1989*, naming public places in the Division of Whitlam. The Committee notes that, similar to explanatory statements for similar instruments, the explanatory statement for the instrument discusses potential human rights implications for the instrument. The particular human right identified is the right to privacy and reputation, set out in section 12 of the *Human Rights Act 2004*:



## Human Rights

Section 12 of the *Human Rights Act 2004* creates a right to privacy and reputation.

Conceivably, the naming of a place has the potential to infringe the right to privacy and reputation of a person after whom a place is named. In this case the process through which places are named ensures that this right is not infringed and that only appropriate information is included in a determination. This process includes the consultation described above. Additionally, in relation to places named after people, only the names of deceased persons are determined.

2.7 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this instrument.**

2.8 **This comment does not require a response from the Minister.**

## **Fees determinations**

- **Disallowable Instrument DI2024-304 being the Tobacco and Other Smoking Products (Fees) Determination 2024 (No 1) made under section 70 of the *Tobacco and Other Smoking Products Act 1927* revokes DI2023-261 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2024-305 being the Health (Fees) Determination 2024 (No 2) made under section 192 of the *Health Act 1993* revokes DI2024-188 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2024-306 being the Public Health (Fees) Determination 2024 (No 1) made under section 137 of the *Public Health Act 1997* revokes DI2023-265 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2024-307 being the Medicines, Poisons and Therapeutic Goods (Fees) Determination 2024 (No 1) made under section 197 of the *Medicines, Poisons and Therapeutic Goods Act 2008* revokes DI2023-263 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2024-309 being the Food (Fees) Determination 2024 (No 1) made under section 150 of the *Food Act 2001* revokes DI2023-264 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2024-321 being the Road Transport (Public Passenger Services) Public Transport Fares Determination 2024 (No 1) made under section 23 of the *Road Transport (Public Passenger Service) Act 2001* revokes DI2018-284 and provides the maximum fares payable for travel on regular route bus services provided by Transport Canberra and on light rail services.**

2.9 Each of the instruments mentioned above determines fees (or fares), for the relevant Acts, (mostly) payable from 1 January 2025. The Committee notes, with approval, that each instrument (with its explanatory statement) meets the long-held expectations of the Committee in relation to fees determination instruments – as set out in its document titled [Subordinate legislation—Technical and stylistic standards—Tips/Traps](https://www.parliament.act.gov.au/_data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf)<sup>10</sup> – in that the “old” and “new” fees are identified, together with the magnitude of the increases and the reasons for the increases.

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<sup>10</sup> [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf).



2.10 This comment does not require a response from relevant Ministers.

## Retrospectivity

- **Disallowable Instrument DI2024-310 being the Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2024 (No 3) made under subsections 10(3) and 20(4) of the *Legislative Assembly (Members' Staff) Act 1989* revokes DI2024-141 and provides conditions under which Members may employ staff and engage consultants and contractors, including revised salary allocations, for the 2024-2025 financial year.**
- 2.11 The *Legislative Assembly (Members' Staff) Act 1989* provides for the employment of staff, and the engagement of consultants or contractors, by members of the Legislative Assembly. Subsections 10(1) and 20(1) of the Act give members the authority to employ staff, and engage consultants and contractors, respectively. Subsections 10(3) and 20(4) provide for the Chief Minister to determine, in writing, by disallowable instrument, the conditions within which members may exercise that authority. This instrument determines conditions, with effect from 31 October 2024 (see section 2 of the instrument), despite the fact that it was not made until 25 November 2024. This means that it has a retrospective effect.
- 2.12 The Committee notes, with approval, that the explanatory statement for the instrument indicates that this retrospective effect is non-prejudicial, addressing the prohibition on prejudicial retrospective operation of subordinate legislation, set out in section 76 of the *Legislation Act 2001*. The Committee notes that this is in accordance with the approach suggested in the Committee's document titled [\*Subordinate legislation—Technical and stylistic standards—Tips/Traps\*](#).<sup>11</sup>
- 2.13 This comment does not require a response from the Chief Minister.

## Human Rights Issues

- **Disallowable Instrument DI2024-320 being the Road Transport (General) Exclusion of Road Transport Legislation (Summernats) Declaration 2024 (No 1) made under section 12 and 13 of the *Road Transport (General) Act 1999* provides that the Minister may declare that the road transport legislation, or a provision of the road transport legislation, does not apply to a road or road related area or to a vehicle, person or animal in a place or circumstances stated in the declaration.**
- 2.14 This instrument is made under sections 12 and 13 of the *Road Transport (General) Act 1999*. Paragraph 12(1)(b) of the Act provides that the Minister may declare that the road transport legislation, or a provision of the road transport legislation, does not apply to a road or road related area. Subsection 13(1) of the Act provides that the Minister may declare that the road transport legislation, or a provision of the road transport legislation, does not apply to a vehicle, person or animal in a place or circumstance stated in the declaration. Subsection 13 (3) of the Act makes such a declaration a disallowable instrument. Subsections 12(3) and 13(3) of the Act, respectively, provide that such declarations are a disallowable instrument.

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<sup>11</sup> Available at [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf).

- 2.15 This instrument applies to the Summernats 37th Car Festival (**Summernats 37**), held at Exhibition Park in Canberra (**EPIC**) from 2 January 2025 to 5 January 2025. The explanatory statement for the instrument states:

The event consists of a number of competitive motor vehicle events, including burnouts, and horsepower performance tests. The vehicles competing in these events may be highly modified registered or unregistered vehicles which, due to their modifications, may be unable to comply with Australian Vehicle Standards or Australian Design Rules or be operated by interstate drivers with high powered vehicle restrictions on their interstate driver licence.

This Instrument contains five declarations under section 12(1) and 13(1) of the Act to support Summernats 37. These are:

Clause 3 - disapplying section 5B of the *Road Transport (Safety and Traffic Management) Act 1999*;

Clause 4 - disapplying provisions of the *Road Transport (Vehicle Registration) Act 1999* and *Road Transport (Vehicle Registration) Regulation 2000*;

Clause 5 - disapplying section 60 of the *Road Transport (Driver Licensing) Regulation 2000*;

Clause 6 - disapplying section 185 of the *Road Transport (Road Rules) Regulation 2017*; and

Clause 7 – disapplying the *Motor Accident Injuries Act 2019*.

The declarations at clauses 3-6 are the responsibility of the Minister for City and Government Services, while the declaration at clause 7 is the responsibility of the Minister for Finance.

- 2.16 The explanatory statement goes on to discuss human rights issues:

#### **Human rights implications**

During the development of this Instrument, due regard was given to its effect and the operation of Summernats 37 in relation to the compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

Section 28 of the HRA provides that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28 (2) of the HRA provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) the nature of the right affected
- b) the importance 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.

Section 13 of the HRA provides a right for people to move freely within the ACT.

The declarations in this Instrument do not of themselves restrict a person's freedom of movement within the Territory, however the operation of the event in closing parts of EPIC in which Summernats 37 will be conducted to members of the public will restrict the free movement of people in that area of the Territory during the event.

As parts of the road transport legislation are being disapplied for Summernats 37 to operate as intended, highly modified vehicles will be travelling in parts of EPIC in a manner not consistent with the road rules. As such, the restriction on the free movement of people in parts of EPIC at those times is considered reasonable and proportionate to ensure safety of non-participants and represents the least restrictive approach that enables the event to proceed.

- 2.17 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this instrument.**
- 2.18 **This comment does not require a response from the Minister.**

## Human Rights Issues

- **Disallowable Instrument DI2024-322 being the Civil Law (Wrongs) The Australian Computer Society Incorporated Professional Standards Scheme 2024 made under Schedule 4, section 4.10 of the *Civil Law (Wrongs) Act 2002* gives notice of the Professional Standards Council of New South Wales approval of The Australian Computer Society Professional Standards Scheme.**
- 2.19 This instrument gives notice of the approval, by the Professional Standards Council of New South Wales, of The Australian Computer Society Professional Standards Scheme. The explanatory statement for the instrument states:

Professional Standards Legislation (PSL) was developed on a national basis following the insurance crisis of 2002.

This legislation, which has been passed by all states and territories, involves a trade-off whereby professionals' occupational liability for negligence is limited in return for commitments to higher standards of service delivery and insurance. These standards are monitored by the ACT Professional Standards Council, which operates on a national basis as a part of the Professional Standards Councils.

- 2.20 A Scheme is subject to tabling in, and disallowance by, the Legislative Assembly, under section 4.10 of Schedule 4 to the *Civil Law (Wrongs) Act 2002*, which provides:

### **4.10 Schemes are subject to disallowance**

- (1) The Minister must—
- (a) give notice of—
- (i) the council's approval of the scheme; or

- (ii) for an interstate scheme—the approval of the scheme by the appropriate council for the jurisdiction in which the scheme was prepared; and
  - (b) include the approved scheme in the notice.
- (2) A notice is a disallowable instrument.
 

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act
- (3) In this section, a reference to an interstate scheme includes a reference to an instrument amending an interstate scheme.
 

*Note* Subsection (3) applies s (1) and s (2) to instruments that amend an interstate scheme. Those subsections already apply, by virtue of s 4.14 (5), to instruments that amend a scheme that is not an interstate scheme.

2.21 The explanatory statement for the instruments discusses human rights issues, focussing on the right to work, protected by section 27B of the *Human Rights Act 2004*:

#### Human rights implications

As noted above, when an interstate professional standards scheme has been approved by the appropriate council for the jurisdiction in which the scheme was prepared, the Attorney-General is required under schedule 4, section 4.10 of the *Civil Law (Wrongs) Act 2002* to give notice of the scheme.

The instrument engages the right to work (section 27B, *Human Rights Act 2004*).

The scheme is intended to promote high standards of service delivery and insurance for professionals and limit the occupational liability of a person to whom it applies.

2.22 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this instrument.**

2.23 **This comment does not require a response from the Minister.**

## Subordinate Laws—Comment

2.24 The Committee has examined the following subordinate laws and offers these comments on them:

- **Subordinate Law SL2024-35 being the Residential Tenancies Amendment Regulation 2024 (No 1) made under the *Residential Tenancies Act 1997* amends the *Residential Tenancies Regulation 1998* and prescribes a list of professionals capable of making a competent person declaration, prescribes the information which must be included and additional information that a landlord must disclose.**

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

Right to recognition and equality before the law (section 8 HRA)

Right to life (section 9 HRA)

Right to protection from cruel, inhuman or degrading treatment (section 10, HRA)

Right to protection of the family and children (section 11, HRA)

Right to liberty and security of person (section 18, HRA)

2.25 This subordinate law amends the *Residential Tenancies Regulation 1998 (RTR)* to:

- prescribe a list of professionals capable of making a “competent person declaration” under subsection 46I(4) of the *Residential Tenancies Act 1997 (RTA)*;
- prescribe the information which must be included in a “competent person declaration” under subsection 46I(3) of the RTA; and
- prescribe additional information that a landlord must disclose to a prospective tenant when advertising a property for rent and when entering into a residential tenancy agreement under paragraph 11A(4)(f).

2.26 For subsection 46I(1) of the RTA, a “competent person declaration” is a declaration by a “competent person” “stating that a tenant, or a dependent child of the tenant, has experienced family violence”.

2.27 The explanatory statement for the subordinate law discusses human rights issues, by reference to the right to recognition and equality before the law, the right to life, the right to protection from cruel, inhuman or degrading treatment, the right to protection of the family and children and the right to liberty and security of person, protected by sections 8, 9, 10, 11 and 18 of the *Human Rights Act 2004*, respectively:

#### HUMAN RIGHTS IMPLICATIONS

This Regulation will support people who have experienced domestic or family violence to leave a tenancy early, without penalty, by providing supporting documentation from an appropriate professional. This promotes several rights including:

Right to recognition and equality before the law (section 8): Certain groups (including women, members of the Aboriginal and Torres Strait Islander community, people living with a disability, LGBTQIA+ people, people from culturally and linguistically diverse backgrounds and women on temporary visas) are disproportionately more likely to experience domestic violence. These groups are also more likely to rent, and may feel less comfortable engaging with formal court processes. These amendments will support the right to equality by supporting these groups to escape domestic or family violence quickly.

Right to life (section 9): In Australia, on average, one woman is killed every nine days by a current or former partner. This Regulation therefore directly promotes and supports the right to life of victim-survivors and their families by making it easier for them to leave situations of violence quickly and without penalty.

Right to protection from cruel, inhuman or degrading treatment (section 10): According to the International Committee on the Elimination of Discrimination against Women, ‘gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices.’[17] This Regulation promotes the right to freedom from cruel, inhuman or degrading treatment, by supporting victim-survivors to escape violence.

Right to protection of the family and children (section 11): This Regulation promotes the protection of children by allowing a tenant to escape violence by leaving a tenancy where they or their dependent child are experiencing domestic or family violence, thereby removing both the tenant and their child from the violent situation.

Right to liberty and security of person (section 18): A victim-survivor's right to liberty and security of person is breached when they experience domestic or family violence. By making it easier for victim-survivors to leave these situations, the Regulation promotes their agency, liberty and security of person.

2.28 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.**

2.29 **This comment does not require a response from the Minister.**

- **Subordinate Law SL2024-36 being the Medicines, Poisons and Therapeutic Goods Amendment Regulation 2024 (No 1) made under section 184 of the *Medicines, Poisons and Therapeutic Goods Act 2008* outlines the appropriate prescribing and supply of medicines and defines the concepts of deal, supply, prescribe and administer in relation to medicines.**

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

Right to life (section 9 HRA)

Right to privacy and reputation (section 12, HRA)

2.30 This subordinate law amends the *Medicines, Poisons and Therapeutic Goods Regulation 2008*, making changes in relation to:

- self-prescribing of monitored medicines;
- inclusion of date of birth (**DOB**) on prescriptions;
- emergency supply and administration of naloxone;
- removal of limits on membership of the Medicines Advisory Committee (**MAC**) established under section 194 of the *Medicines, Poisons and Therapeutic Goods Act 2008* (**MPTG Act**); and
- possession for industrial use of Schedule 7 (**S7**) poisons.

2.31 The explanatory statement for the subordinate law discusses human rights issues, by reference to the right to life and the right to privacy and reputation, protected by sections 9 and 12 of the *Human Rights Act 2004*, respectively:

### Human rights considerations

During the development of the Amendment Regulation, due regard was given to its compatibility with the *Human Rights Act 2004* (HR Act). Any limitations on human rights are justifiable as reasonable limits set by laws in a free and democratic society, as required by section 28 of the HR Act.

The Amendment Regulation is considered to support and strengthen the protection of several rights afforded under the HR Act as well as other statutory protections under the *Health Records (Privacy and Access) Act 1997* and MPTG Act. The human rights engaged by this Amendment Regulation are considered reasonable, necessary, proportionate and the least restrictive approach to achieve the overall policy objective.

#### **Rights engaged**

This Amendment Regulation engages and limits the following rights under the HR Act:

Section 12 – Right to privacy and reputation.

#### **Rights Promoted**

This Amendment Regulation promotes the following rights under the HR Act:

Section 9 – Right to life

Section 12 – Right to privacy and reputation.

### **2.32 In relation to the right to privacy and reputation, the explanatory statement states:**

#### **Section 12 - Right to privacy and reputation**

Section 12 (a) of the HR Act recognises that everyone has the right not to have their privacy interfered with unlawfully or arbitrarily.

This Amendment Regulation engages the right to privacy under the HR Act by requiring that a patient's DOB be a required field for prescriptions under the MPTG Act. A patient's DOB is considered personal information that may be used to identify the person. This requirement is therefore considered to engage the right to privacy under section 12 of the HR Act.

#### *Legitimate purpose (HR Act, s 28 (2) (b))*

The main objective of the MPTG Act is to promote and protect the public health and safety through minimising harm arising from the misuse, abuse or diversion of regulated substances and therapeutic goods.

Measures to include a patient's DOB on prescriptions for medicines are in pursuit of a legitimate purpose and further the objects of the MPTG Act. Including a patient's DOB on prescriptions improves patient identification and accuracy in health records. Enhanced accuracy in patient health records seeks to ensure appropriate access and safe use of prescription medicines, particularly monitored medicines. Including additional fields on prescriptions to correctly identify a patient is also considered to enhance the security of health records and reduce fraudulent activity. However, ACT Health does not have information available to demonstrate that this measure may reduce instances of fraud concerning prescription medicines.

#### *Proportionality (HR Act, s 28 (2) (e))*

A person's DOB is already collected by a range of government services to verify their identity and protect personal information. With exception to the ACT, all states and territories require a patient's DOB be recorded on a prescription for S8 medicines. This information is also collected by the Australian Government in providing Medicare services and is therefore routinely collected or validated by medical services such as GP clinics and hospitals when providing health services.

Given these arrangements, very few people could access prescription medicines without providing their DOB to one or more medical providers.

Inclusion of a person's DOB in health contexts is also subject to existing strict statutory controls under the *Health Records (Privacy and Access) Act 1997*. Identifying patient information is also protected from inappropriate access and use by health professionals under the MPTG Act (as it relates to the monitored medicines database), the *Health Practitioner Regulation National Law (ACT)* and the *My Health Records Act 2012* (Cwlth).

To ensure the operation of this Amendment Regulation operates in the least restrictive manner and ensure consumer access to a prescribed medicine is not inadvertently limited, new section 121 (2A) of the Amendment Regulation provides that a prescription is not invalid for failing to include a patient's DOB or address.

Furthermore, new subsection 41 (1) (da) allows a period for prescribers and dispensers to put in place arrangements with practice software providers to include patient DOB as a required field. This new requirement commences six months from the Amendment Regulation's notification day. This delayed commencement enables software providers to update medical prescribing and dispensing software to recognise patient DOB.

In recognising the existing statutory controls that govern the access and use of patient health information, the collective community benefits of including a patient's DOB be listed on prescriptions is considered reasonable, proportionate and in pursuit of a legitimate purpose.

2.33 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.**

2.34 **This comment does not require a response from the Minister.**

- **Subordinate Law SL2024-37 being the Court Procedures Amendment Rules 2024 (No 2) made under section 7 of the *Court Procedures Act 2004* describes amendments to the Court Procedures Rules 2006 as made by the rule making committee under section 7 of the Act and set out in the Court Procedures Amendment Rules 2024 (No 2).**

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

2.35 This subordinate law amends the *Court Procedures Rules 2006* (the **Rules**); made by the rule making committee under section 7 of the *Court Procedures Act 2004*. According to the explanatory statement for the subordinate law, the amendments:

- make minor changes in relation to the production of material under subpoena;
- ensure consistency in language in the rules relating to Appeals proceedings with previous amendments regarding the appointment and withdrawal of solicitors acting for an accused person (rules 5537(1)(a) and 5538 (1)(a));
- remove a reference to the repealed *Victims of Crime (Financial Assistance) Act 1983* (rules 6251(3)(l), 4739, Dictionary);



- change the reference to ‘The Queen’, on forms used in criminal proceedings, to refer to the ‘prosecuting entity’, reflecting that there are various entities that bring prosecutions in the ACT (Form 4.2, 4.3, 4.4, 4.4A, 4.5, 4.5A, 4.6, 4.6A, 4.7, 4.7A, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 6.16, 6.18, 6.19, 6.25, 6.26, 6.27, 6.29, 6.31, 6.32, 6.33, 81); and
- update the contact details for organisations that may be able to provide legal and financial assistance in enforcement proceedings (Form 2.49).

2.36 The explanatory statement goes on to discuss human rights issues:

#### **Human Rights**

The Amendment Rules are procedural and administrative in nature. The *Human Rights Act 2004* establishes a right to a fair trial (s 21) and rights in criminal proceedings (s 22). Neither of these rights, nor any other human right established by the *Human Rights Act 2004*, is engaged or impacted by the Amendment Rules.

2.37 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.**

2.38 **This comment does not require a response from the Minister.**

## **Government responses—No comment**

2.39 The Committee received responses to the Committee’s comments on the following subordinate legislation and has no further comments:

- Disallowable Instrument DI2024-273 being the Road Transport (Safety and Traffic Management) Protective Helmet for Bicycle Riders Approval 2024 (No 1);
- Disallowable Instrument DI2024-277 being the Legal Aid (Commission President) Appointment 2024;
- Disallowable Instrument DI2024-278 being the Legal Aid (Commissioner – Financial Management) Appointment 2024.

2.40 These responses can be viewed [online](#)<sup>12</sup>.

2.41 The Committee wishes to thank the Ministers for their helpful responses.

Peter Cain MLA  
Chair  
February 2025

<sup>12</sup> Available at [https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees-11th-assembly/LA\\_Scrutiny/response-to-comments-on-subordinate-legislation](https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees-11th-assembly/LA_Scrutiny/response-to-comments-on-subordinate-legislation).