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Ms Elizabeth Lee MLA

Chair

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

ACT Legislative Assembly

London Circuit

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Dear Ms Lee

I write in response to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) in its *Scrutiny Report 16* published on 3 April 2018 about the Justice and Community Safety Legislation Amendment Bill 2018 (the Bill).

I thank the Committee for its consideration of the Bill, and provide the following comments on the amendments to the *Civil Law (Wrongs) Act 2002* and the *Heavy Vehicle National Law (ACT) Act 2013*.

Civil Law (Wrongs) Act

I note the Committee's comment that further justification is required for the possible retrospective extension of a professional standards scheme that has expired in the ACT.

Two of the main objects of Schedule 4 of the Civil Law (Wrongs) Act are consumer protection and to enable the creation of schemes to limit the civil liability of professionals and others. A professional standards scheme ensures that professionals have professional indemnity insurance. This means that a consumer who suffers economic loss as a result of professional negligence will have access to compensation, even if the professional in question is bankrupt.

Professional standards schemes limit the amount of damages that may be recovered. This reduces the risk for insurers which results in lower insurance premiums for professionals. However, the limit on damages is often still very high - for example, the South Australian Bar Association professional standards scheme caps damages at \$1,500,000.

The amendment, by allowing the extension of an interstate professional standards scheme to operate retrospectively, will protect consumers by ensuring that professionals operating under the interstate scheme were required to have insurance for the time between the expiry of the scheme and its extension in the ACT.

By preventing a litigant from being able to make a claim for damages above the limit set out in the professional standards scheme, the amendment will also provide certainty to consumers and professionals about the maximum amount that may be claimed.

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The Committee's report considers the effect of the limit of the 12 month extension, and considers whether the amendment would allow an extension of a scheme to occur up to 12 months after the expiry of the scheme. While this is correct, the extension of the operation of the scheme could only be for up to 12 months from the expiry of that scheme. If a scheme were to be extended 11 months after its expiry, for example, it could only be extended for one more month into the future with a retrospective effect for the preceding 11 months.

In the case of an interstate scheme, the ACT is limited by the extension of that scheme in its originating jurisdiction. If another jurisdiction extends that scheme for six months, the ACT would not be able to extend the scheme's operation for longer than six months and would therefore not be in a position 12 months after its expiry to be able to extend it.

In a situation where the notification of an instrument extending an interstate professional standards scheme takes place the day before expiry in the originating jurisdiction (which may not allow the ACT sufficient time to also notify the scheme the day before expiry), this amendment allows for that extension to be applied in the ACT, to ensure the consumer protection benefits discussed above.

Heavy Vehicle National Law (ACT) Act

I note the Committee's concern that extending the time for presentation to the Assembly to 20 sitting days may mean that changes to the national regulations may not be subject to scrutiny by the Assembly, and will continue to have legal effect for possibly over six months.

Extending the tabling timeframe of national regulations in the ACT Legislative Assembly from six days to 20 days will enable and allow sufficient time for identification of regulations which need to be presented in the Assembly. In the absence of an automated system which advises the ACT that regulations are notified in other jurisdictions triggering the commencement of the six day period, this timeframe is posing unnecessary operational and presentation issues.

Extending the timeframe will also allow for proper arrangements for presentation to the Legislative Assembly to occur and presentation documentation such as explanatory statements and the like to be prepared to the Committee's standards and expectations. While every effort will be made to table the regulations in the shortest timeframe possible within the 20 days, this provision will provide adequate time to ensure that national regulations are not taken to be repealed if not tabled in the Assembly within six sitting days of their publication in New South Wales or other Australian jurisdiction as applicable.

I trust that this response addresses the Committee's comments in relation to the Bill.

Yours sincerely

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Attorney-General