



**ACT**  
Government

# Shane Rattenbury MLA

Minister for Climate Change and Sustainability  
Minister for Corrections and Justice Health  
Minister for Justice, Consumer Affairs and Road Safety  
Minister for Mental Health  
Member for Kurrajong

Mrs Giulia Jones MLA

Chair

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

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

Dear Mrs Jones

I write in response to the Standing Committee on Justice and Community Safety's Report No 36 of 15 October 2019, which comments on the Sentencing (Parole Time Credit) Legislation Amendment Bill 2019 (the Bill).

The Committee sought a response with respect to clause 18 of the Bill which inserts transitional chapter (Chapter 22).

### Five year duration of Chapter 22: transitional provisions

The inclusion of a five-year duration period for Chapter 22 is to maximise the number of people that will be able to access, and benefit from, the parole time credit scheme. It allows offenders the opportunity to benefit from the scheme if, on the commencement date of the Bill, they are:

- a. on parole, including on an order made under now repealed legislation (ss 1003 and 1005 of the Bill refer), or
- b. before the court awaiting sentence for a new offence committed while on parole (s 1004 of the Bill refers).

The five-year duration was chosen having regard to the length of time it may take for a matter to go through the full criminal justice process (including mistrials and lengthy investigation periods).

With respect to any concern that transitional regulations may be able to extend the period of operation of Chapter 22 of the Bill beyond 5 years, I note that in order to extend the length of the transitional period via regulation, the Executive would have to be of the opinion that the transitional period is not, or is not adequately or appropriately dealt with in the chapter.

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## Requirement for section 1006: transitional regulations

The transitional regulation provision in the Bill allows the Executive to respond in a temporary way to matters which may arise after the commencement of the Bill, particularly to ensure a smooth transition period, to the new legislative scheme. The Explanatory Statement makes clear the purpose of this provision is to deal with managing the effective operation of the Act and to address any unforeseen issues arising from the provisions.

While the Bill has been developed with extensive consultation and research, it involves relatively complex arrangements. As with any new legislative scheme, there is potential for unanticipated implications which emerge only once the provisions are operational, and which must be addressed without delay. Section 1006 ensures that any unforeseen issues can be dealt with swiftly to allow for the operation of the provisions within the scope of the proposed scheme.

The power to make transitional regulations only allows the Executive to respond to matters of a transitional nature. The regulation itself is disallowable.

Any modification to Chapter 22 provisions, in relation to another territory law, made by a transitional regulation under section 1006(2) would cease to have effect on the expiry of Chapter 22's provisions.

This is because, while section 88(1) of the *Legislation Act 2001* provides that the continuing operation of a transitional law is not affected only because the law is repealed (including by virtue of its expiry), section 88(2) is to the effect that subsection 88(1) ***does not apply to a transitional law because of modifications*** it makes to another law.

I consider that section 1006 is appropriate for inclusion in this Bill. However, I note the Committee's observation that the operation of this transitional provision for five years is longer than would ordinarily be the case. While that longer period is appropriate for other provisions of Chapter 22, I agree that a shorter period of operation would be more appropriate for section 1006. I will, therefore, propose a Government amendment to the Bill to the effect that section 1006 expires 12 months after the commencement day.

I thank the Committee for its careful consideration of the Bill and its comments.

Yours sincerely

Shane Rattenbury MLA  
Minister for Corrections and Justice Health