ACT Government

Gordon Ramsay MLA

Attorney-General
Minister for the Arts, Creative Industries and Cultural Events
Minister for Building Quality Improvement
Minister for Business and Regulatory Services
Minister for Seniors and Veterans
Member for Ginninderra

Mrs Giulia Jones
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 (the Committee's) comments in relation to the *Magistrates Court (Heritage Infringement Notices) Regulation 2020* (the regulation).

I note the Committee's observation that the explanatory statement does not contain a discussion of the human rights implications of the regulation and that there is a lack of background to the regulation. I also note the Committee's view that the explanatory statement does not meet the technical and stylistic standards of the Committee.

I would like to take this opportunity to discuss the regulation's background and human rights implications. I would also like to take this opportunity to advise the Committee that future explanatory statements will include this information and address key matters of policy arising under such regulations.

The regulation establishes an infringement notice scheme for two strict liability offences under the *Heritage Act 2004*. These offences are:

- engaging in conduct that diminishes the heritage significance of a place or object (Heritage Act, s 74(3)); and
- engaging in conduct that causes damage to an Aboriginal place or object (Heritage Act, s 75(3)).

The regulation sets out the infringement notice penalties for the two offences, with different penalties applying to individuals and corporations.

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The Committee has sought my advice as to why a discussion of the human rights implications was not included in the regulation. This discussion was not provided because the regulation itself does not engage human rights. The regulation creates an infringement notice scheme for the practical enforcement of existing legal obligations.

The infringement notice scheme is for two long-standing strict liability offences under the Heritage Act. Strict liability offences do engage with the right to be presumed innocent under section 22 of the *Human Rights Act 2004*. However, the regulation does not create any new strict liability offences. The strict liability offence provisions that are subject to the infringement scheme in the regulation are currently within the Heritage Act. I note the Committee's support for including a discussion of the human rights implications in explanatory statements for subordinate laws. The Government will endeavour to ensure that where human rights are affected these impacts are addressed in explanatory statements for subordinate laws.

Drafting issue

The Committee also raises a possible drafting issue. The table in schedule one of the regulation sets out the Heritage Act infringement notice offences and penalties. I note the Committee's observation that there is no reference in sections seven or eight of the regulation to the penalty unit offence amounts in column three of the table. The way in which schedule one of the regulation is drafted reflects Parliamentary Counsel Office's standard drafting practice for infringement notice regulations. Column three expresses the penalty units contained in sections 74(3) and 75(3) of the Heritage Act as referenced in column two. I do not propose any further action in relation to this comment.

I thank the Committee for its consideration of the regulation and for bringing these matters to my attention.

Yours sincerely

Gordon Ramsay MLA
Attorney-General