



Legislative Assembly for the Australian Capital Territory

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

Scrutiny Report 33

Legislative Assembly for the Australian Capital Territory
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

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About the committee

Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) on 2 December 2020.

The Committee is responsible for the following areas:

- (10) the Standing Committee on Justice and Community Safety 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 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](#).

Committee members

Peter Cain MLA, Chair

Marisa Paterson MLA, Deputy Chair

Andrew Braddock MLA

Secretariat

Hamish Finlay, Committee Secretary

Frieda Scott, Assistant Secretary

Daniel Stewart, Legal Adviser (Bills)

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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. Subordinate Legislation

Disallowable Instruments—No comment

- 1.1. The Committee has examined the following disallowable instruments and has no comments on them:
- **Disallowable Instrument DI2023-137** being the Canberra Institute of Technology (CIT Board Member) Appointment 2023 (No 1), made under section 9 of the *Canberra Institute of Technology Act 1987* and section 78 of the *Financial Management Act 1996*, appoints a specified person as a non-elected member of the CIT Board, with expertise and knowledge of industry and business
 - **Disallowable Instrument DI2023-145** being the Canberra Institute of Technology (CIT Board Member) Appointment 2023 (No 2), made under section 9 of the *Canberra Institute of Technology Act 1987* and section 78 of the *Financial Management Act 1996*, appoints a specified person as a non-elected member of the CIT Board, with expertise and knowledge of industry and business
 - **Disallowable Instrument DI2023-146** being the Canberra Institute of Technology (CIT Board Member) Appointment 2023 (No 3), made under section 9 of the *Canberra Institute of Technology Act 1987* and section 78 of the *Financial Management Act 1996*, appoints a specified person as a non-elected member of the CIT Board, with expertise and knowledge of industry and business
 - **Disallowable Instrument DI2023-148** being the Canberra Institute of Technology (CIT Board Member) Appointment 2023 (No 4), made under section 9 of the *Canberra Institute of Technology Act 1987* and section 78 of the *Financial Management Act 1996*, appoints a specified person as a non-elected member of the CIT Board, with expertise and knowledge of industry and business
 - **Disallowable Instrument DI2023-149** being the Canberra Institute of Technology (CIT Board Member) Appointment 2023 (No 5), made under section 9 of the *Canberra Institute of Technology Act 1987* and section 78 of the *Financial Management Act 1996*, appoints a specified person as a non-elected member of the CIT Board, with expertise and knowledge of industry and business
 - **Disallowable Instrument DI2023-161** being the Rates (Objections Period) Determination 2023 made under paragraph 71(2)(b) of the *Rates Act 2004* determines the period for the lodging of an objection by an eligible owner.
 - **Disallowable Instrument DI2023-163** being the Taxation Administration (Amounts Payable—Home Buyer Concession Scheme) Determination 2023 made under section 139 of the *Taxation Administration Act 1999*
 - **Disallowable Instrument DI2023-165** being the Taxation Administration (Amounts Payable—Pensioner Duty Concession Scheme) Determination 2023 made under section 139 of the *Taxation Administration Act 1999*

- **Disallowable Instrument DI2023-166** being the Taxation Administration (Amounts Payable—Disability Duty Concession Scheme) Determination 2023 made under section 139 of the *Taxation Administration Act 1999* revokes DI2017-228 and determines, for the purposes of the Disability Duty Concession Scheme, the types of eligible property, determination of amounts and the eligibility requirements
- **Disallowable Instrument DI2023-167** being the Duties (Pensioner Duty Deferral Scheme) Determination 2023 made under section 75AG of the *Duties Act 1999* determines a scheme for the deferred payment of duty by a pensioner and their domestic partner (if any) on an eligible transaction
- **Disallowable Instrument DI2023-172** being the Planning and Development (Lease Variation Charges) Determination 2023 made under paragraph 276C(2)(a) and subsection 276E(1) of the *Planning and Development Act 2007* revokes DI2017-176 and determines lease variation charges for the purposes of the Act
- **Disallowable Instrument DI2023-173** being the Legislative Assembly (Members' Staff) Members' Salary Cap Determination 2023 (No 1) made under subsections 10(3) and 20(4) of the *Legislative Assembly (Members' Staff) Act 1989* revokes DI2021-276 and determines the conditions under which non-executive members may, on behalf of the Territory, employ staff and engage consultants or contractors.
- **Disallowable Instrument DI2023-174** being the Legislative Assembly (Members' Staff) Speaker's Salary Cap Determination 2023 (No 1) made under subsections 5(3) and 17(4) of the *Legislative Assembly (Members' Staff) Act 1989* revokes DI2021-277 and determines the conditions under which the Speaker may, on behalf of the Territory, employ staff and engage consultants or contractors.
- **Disallowable Instrument DI2023-198** being the University of Canberra Council Appointment 2023 (No 1) made under section 11 of the *University of Canberra Act 1989* appoints a specified person as a member of the University of Canberra Council.
- **Disallowable Instrument DI2023-199** being the University of Canberra Council Appointment 2023 (No 2) made under section 11 of the *University of Canberra Act 1989* appoints a specified person as a member of the University of Canberra Council.
- **Disallowable Instrument DI2023-200** being the University of Canberra Council Appointment 2023 (No 3) made under section 11 of the *University of Canberra Act 1989* appoints a specified person as a member of the University of Canberra Council.
- **Disallowable Instrument DI2023-204** being the Emergencies (Multi-Hazard Advisory Council Members) Appointment 2023 (No 1) made under section 127 of the *Emergencies Act 2004*
- **Disallowable Instrument DI2023-207** being the Board of Senior Secondary Studies Appointment 2023 (No 2) made under section 8 of the *Board of Senior Secondary Studies Act 1997* appoints a specified person as a member of the ACT Board of Senior Secondary Studies, after consultation with business and industry representative organisations

- **Disallowable Instrument DI2023-208** being the Board of Senior Secondary Studies Appointment 2023 (No 3) made under section 8 of the *Board of Senior Secondary Studies Act 1997* appoints a specified person as a member of the ACT Board of Senior Secondary Studies, after consultation with business and industry representative organisations
- **Disallowable Instrument DI2023-209** being the Transplantation and Anatomy (Designated Officers) Appointment 2023 (No 57) made under section 5 of the *Transplantation and Anatomy Act 1978* appoints specified medical practitioners as Designated Officers at The Canberra Hospital
- **Disallowable Instrument DI2023-210** being the Transplantation and Anatomy (Designated Officers) Appointment Revocation 2023 (No 1) made under section 5 of the *Transplantation and Anatomy Act 1978* revokes DI2006-38 and DI2010-292
- **Disallowable Instrument DI2023-211** being the Architects Board (Academic Architect member) Appointment 2023, made under section 70 of the *Architects Act 2004*, appoints a specified person to the Australian Capital Territory Architects Board

Disallowable Instruments—Comment

- 1.2. The Committee has examined the following disallowable instruments and offers these comments on them:

No Human Rights Issues

- **Disallowable Instrument DI2023-112** being the Surveyors (Surveyor-General) Practice Directions 2023 made under section 55 of the *Surveyors Act 2007* revokes DI2013-217 and issues the Surveyor-General Practice Directions 2021 (No. 1)
- **Disallowable Instrument DI2023-154** being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Target) Determination 2023, including a regulatory impact statement, made under section 7 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* determines the energy savings targets for a specified compliance period
- **Disallowable Instrument DI2023-155** being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2023, including a regulatory impact statement, made under section 11 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* determines the energy savings contribution for a specified compliance period
- **Disallowable Instrument DI2023-156** being the Energy Efficiency (Cost of Living) Improvement (Penalties for noncompliance) Determination 2023, including a regulatory impact statement, made under section 22 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* determines the shortfall penalty for noncompliance for a specified compliance period
- **Disallowable Instrument DI2023-157** being the Energy Efficiency (Cost of Living) Improvement (Priority Household Target) Determination 2023, including a regulatory

impact statement, made under section 8 of the *Energy Efficiency (Cost of Living) Improvement Act 2012*

- **Disallowable Instrument DI2023-164** being the Taxation Administration (Off the Plan Unit Duty Exemption Scheme) Determination 2023 made under section 137E of the *Taxation Administration Act 1999*
 - **Disallowable Instrument DI2023-203** being the Utilities (Technical Regulation) (Listed Dams) Determination 2023 made under section 69 of the *Utilities (Technical Regulation) Act 2014* revokes DI2015-44 and determines specified dams owned by Icon Water and the ACT Government to be 'listed dams'
- 1.3. The first instrument mentioned above determines practice directions, for section 55 of the *Surveyors Act 2007*.
 - 1.4. The second, third, fourth and fifth instruments mentioned above determine various technical matters, for various provisions of the *Energy Efficiency (Cost of Living) Improvement Act 2012*.
 - 1.5. The sixth instrument mentioned above determines an 'Off the Plan Unit Duty Exemption Scheme, for section 137E of the *Taxation Administration Act 1999*.
 - 1.6. The seventh instrument listed above is made under section 69 of the *Utilities (Technical Regulation) Act 2014*. It determines certain specified dams owned by Icon Water and the ACT Government to be 'listed dams', for that Act.
 - 1.7. The Committee notes that the explanatory statements for each of the instruments mentioned above indicates that no human rights are engaged by the instrument.
 - 1.8. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for the instruments mentioned above.**
 - 1.9. **This comment does not require a response from the relevant Ministers.**

Fees determinations / Human Rights Issues

- **Disallowable Instrument DI2023-119** being the Water and Sewerage (Fees) Determination 2023 made under section 45 of the *Water and Sewerage Act 2000* revokes DI2021-80 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-120** being the Nature Conservation (Fees) Determination 2023 made under section 368 of the *Nature Conservation Act 2014* revokes DI2021-254 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-121** being the Heritage (Fees) Determination 2023 made under section 120 of the *Heritage Act 2004* revokes DI2021-78 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-122** being the Gas Safety (Fees) Determination 2023 made under section 67 of the *Gas Safety Act 2000* revokes DI2021-77 and determines fees payable for the purposes of the Act

- **Disallowable Instrument DI2023-123** being the Building (Fees) Determination 2023 made under section 150 of the *Building Act 2004* revokes DI2021-73 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-124** being the Electricity Safety (Fees) Determination 2023 made under section 64 of the *Electricity Safety Act 1971* revokes DI2021-75 and determines fees payable under the Act
- **Disallowable Instrument DI2023-125** being the Environment Protection (Fees) Determination 2023 made under section 165 of the *Environment Protection Act 1997* revokes DI2021-76 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-126** being the Construction Occupations (Licensing) (Fees) Determination 2023 made under section 127 of the *Construction Occupations (Licensing) Act 2004* revokes DI2021-253 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-127** being the Architects (Fees) Determination 2023 made under section 91 of the *Architects Act 2004* revokes DI2021-72 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-128** being the Water Resources (Fees) Determination 2023 made under section 107 of the *Water Resources Act 2007* revokes DI2021-71 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-129** being the Fisheries (Fees) Determination 2023 made under section 114 of the *Fisheries Act 2000*
- **Disallowable Instrument DI2023-130** being the Race and Sports Bookmaking (Fees) Determination 2023 made under section 97 of the *Race and Sports Bookmaking Act 2001*
- **Disallowable Instrument DI2023-138** being the Community Title (Fees) Determination 2023 made under section 96 of the *Community Title Act 2001* revokes DI2021-125 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-139** being the Planning and Development (Fees) Determination 2023 made under section 424 of the *Planning and Development Act 2007* revokes DI2021-126 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-140** being the Stock (Fees) Determination 2023 made under section 68 of the *Stock Act 2005* revokes DI2021-127 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-141** being the Stock (Levy) Determination 2023 made under section 6 of the *Stock Act 2005* revokes DI2021-128 and determines the levy amount per stock unit and the number of animals making up a stock unit
- **Disallowable Instrument DI2023-142** being the Surveyors (Fees) Determination 2023 made under section 80 of the *Surveyors Act 2007* revokes DI2021-130 and determines fees payable for the purposes of the Act

- **Disallowable Instrument DI2023-143** being the Stock (Minimum Stock Levy) Determination 2023 made under section 7A of the *Stock Act 2005* revokes DI2021-129 and sets the minimum stock levy
- **Disallowable Instrument DI2023-144** being the Unit Titles (Fees) Determination 2023 made under section 179 of the *Unit Titles Act 2001* revokes DI2021-131 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-147** being the Births, Deaths and Marriages Registration (Fees) Determination 2023 made under section 67 of the Births, Deaths and *Marriages Registration Act 1997* revokes DI2021-112 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-150** being the Health (Fees) Determination 2023 (No 1) made under section 192 of the *Health Act 1993*
- **Disallowable Instrument DI2023-151** being the Long Service Leave (Portable Schemes) Building and Construction Industry Levy Determination 2023 made under section 56A of the *Long Service Leave (Portable Schemes) Act 2009*
- **Disallowable Instrument DI2023-153** being the Victims of Crime (Fees) Determination 2023 (No 1) made under subsection 50(1) of the Victims of Crime Regulation 2000
- **Disallowable Instrument DI2023-158** being the Cemeteries and Crematoria (Fees) Determination 2023 (No 1) made under section 128 of the *Cemeteries and Crematoria Act 2020*
- **Disallowable Instrument DI2023-159** being the Emergencies, Road Transport (General), Waste Management and Resource Recovery (Embassy and Diplomatic Residence Fees) Determination 2023, made under section 37 of the *Australian Capital Territory (Self-Government) Act 1988*, section 201 of the *Emergencies Act 2004*, section 96 of the *Road Transport (General) Act 1999* and section 126 of the *Waste Management and Resource Recovery Act 2016*, determines fees payable, for the purposes of the Acts, in respect of services provided to an embassy or diplomatic residence
- **Disallowable Instrument DI2023-160** being the Taxation Administration (Amounts Payable—Rates) Determination 2023 made under paragraph 46(2)(f) of the *Rates Act 2004* and section 139 of the *Taxation Administration Act 1999*
- **Disallowable Instrument DI2023-162** being the Taxation Administration (Amounts Payable—Duty) Determination 2023 made under section 139 of the *Taxation Administration Act 1999*
- **Disallowable Instrument DI2023-168** being the Taxation Administration (Amounts Payable—Land Tax) Determination 2023 made under section 139 of the *Taxation Administration Act 1999*
- **Disallowable Instrument DI2023-169** being the Taxation Administration (Betting Operations Tax—Rate) Determination 2023 made under section 139 of the *Taxation*

Administration Act 1999 determines a rate to calculate the betting operations tax payable for the purposes of paragraph 10(3)(b) of the *Betting Operations Tax Act 2018*

- **Disallowable Instrument DI2023-170** being the Taxation Administration (Amounts Payable—Land Rent) Determination 2023 made under section 139 of the *Taxation Administration Act 1999* revokes DI2021-168 and determines the percentages and income threshold amounts for the purposes of the *Land Rent Act 2008*
- **Disallowable Instrument DI2023-171** being the Rates, Land Tax, Land Rent and Duties (Certificate and Statement Fees) Determination 2023, made under section 252AB of the *Duties Act 1999*, section 32 of the *Land Rent Act 2008*, section 43 of the *Land Tax Act 2004* and section 78 of the *Rates Act 2004*, revokes DI2021-170 and determines the fee payable to the Commissioner for ACT Revenue to apply for a certificate for the purposes of the Acts
- **Disallowable Instrument DI2023-175** being the Juries (Payment) Determination 2023 made under sections 49 and 51 of the *Juries Act 1967* revokes DI2021-136 and determines payments made to jurors for the purposes of the Act
- **Disallowable Instrument DI2023-176** being the Court Procedures (Fees) Determination 2023 made under section 13 of the *Court Procedures Act 2004* revokes DI2021-154 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-177** being the Guardianship and Management of Property (Fees) Determination 2023 made under section 75 of the *Guardianship and Management of Property Act 1991* revokes DI2021-155 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-178** being the Public Trustee and Guardian (Fees) Determination 2023 made under section 75 of the *Public Trustee and Guardian Act 1985* revokes DI2021-156 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-179** being the Unit Titles (Management) (Fees) Determination 2023 made under section 119 of the *Unit Titles (Management) Act 2011* revokes DI2021-84 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-180** being the Associations Incorporation (Fees) Determination 2023 made under section 125 of the *Associations Incorporation Act 1991* revokes DI2021-139 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-181** being the Casino Control (Fees) Determination 2023 made under section 143 of the *Casino Control Act 2006* revokes DI2021-140 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-182** being the Classification (Publications, Films and Computer Games) (Enforcement) (Fees) Determination 2023 made under section 67 of the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* revokes DI2021-241 and determines fees payable for the purposes of the Act

- **Disallowable Instrument DI2023-183** being the Co-operatives National Law (ACT) (Fees) Determination 2023 made under schedule 1 of the Co-operatives *National Law (ACT) Act 2017* revokes DI2021-142 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-184** being the Gaming Machine (Fees) Determination 2023 made under section 177 of the *Gaming Machine Act 2004* revokes DI2021-151 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-185** being the Land Titles (Fees) Determination 2023 made under section 139 of the *Land Titles Act 1925* revokes DI2021-143 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-186** being the Liquor (Fees) Determination 2023 made under section 227 of the *Liquor Act 2010* revokes DI2021-144 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-187** being the Lotteries (Fees) Determination 2023 made under section 18A of the *Lotteries Act 1964* revokes DI2021-157 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-188** being the Partnership (Fees) Determination 2023 made under section 99 of the *Partnership Act 1963* revokes DI2021-145 and determines the fee payable for an application for registration as an incorporated limited partnership
- **Disallowable Instrument DI2023-189** being the Registration of Deeds (Fees) Determination 2023 made under section 8 of the *Registration of Deeds Act 1957* revokes DI2021-146 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-190** being the Retirement Villages (Fees) Determination 2023 made under section 262 of the *Retirement Villages Act 2012* revokes DI2021-147 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-191** being the Traders (Licensing) (Fees) Determination 2023 made under section 52 of the *Traders (Licensing) Act 2016* revokes DI2021-148 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-192** being the Security Industry (Fees) Determination 2023 made under section 50 of the *Security Industry Act 2003* revokes DI2021-149 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-193** being the Sex Work (Fees) Determination 2023 made under section 29 of the *Sex Work Act 1992* revokes DI2021-150 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-194** being the Unlawful Gambling (Charitable Gaming Application Fees) Determination 2023 made under section 48 of the *Unlawful Gambling Act 2009* revokes DI2021-153 and determines the fee to accompany an

application by a charitable organisation to conduct charitable gaming for the purposes of the Act

- **Disallowable Instrument DI2023-195** being the Agents (Fees) Determination 2023 made under section 176 of the Agents Act 2003 revokes DI2021-138 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-196** being the Emergencies (Fees) Determination 2023 made under section 201 of the Emergencies Act 2004 revokes DI2021-113 and determines fees payable for the purposes of the Act
- **Disallowable Instrument DI2023-197** being the Firearms (Fees) Determination 2023 made under section 270 of the Firearms Act 1996 revokes DI2021-114 and determines fees payable for the purposes of the Act

1.10. Each of the (over 50) instruments mentioned above determines fees (and, in a few cases, levies, rates, duties and payments to jurors), for various Acts. As the Committee noted (most recently) in *Scrutiny Report 32* of the 10th Assembly (22 August 2023), the Committee expects to consider in excess of 100 such instruments at this time of the year, as new fees, etc. are determined for the new financial year.

1.11. As the Committee also stated in *Scrutiny Report 32*, in recent years, the Committee has been pleased to observe that the standard of fees determinations (and their explanatory statements) is much-improved (in terms of them meeting the Committee's long-held views about fees determinations¹) from, say, ten years ago. This improvement is again evident in this batch of instruments. The Committee notes that the requirement in relation to setting out the 'old' and 'new, fees has been consistently met. The Committee also notes that, in the batch of instruments mentioned above, there is a high degree of consistency in the explanations provided for the various fees increases. In addition, there are some instruments that provide for different increases/explanations, in the circumstances of particular Acts. These issues are discussed below.

Consistency in explanations for fee increases

1.12. The Committee notes that the explanatory statement for the first instrument mentioned above (DI2023-119), which determines fees for the *Water and Sewerage Act 2000*, states:

The regulatory fees in the determination, which applied in the 2022-23 financial years have been increased by 3.75% for the 2023-24 financial year, based on the wage price index as per government's advice. Administration fees relating to refunds are increased by 3.75% (the wage price index), as per the Government's Fees and Charges Policy and Guidelines. This increase is applied to the amended fees

¹ Set out in the Committee's document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps*, available at https://www.parliament.act.gov.au/data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf

previously published as part of *Water and Sewerage (Fees) Determination 2022 (No 2) (DI2002-210)*,² which commenced on 1 September 2022.

- 1.13. A slight variation on this explanation is set out in the explanatory statement for the second instrument mentioned above (DI2023-120), which determines fees for the *Nature Conservation Act 2014*:

Fees in the determination have been increased by 3.75% for the 2023-24 financial year based on the wage price index as per government's advice.

- 1.14. Another slight variation appears in the explanatory statement for the tenth instrument mentioned above (DI2023-128), which determines fees for the *Water Resources Act 2007*:

The regulatory fees (excluding water abstraction charge) in the determination have been increased by 3.75% for the 2023-24 financial year based on the wage price index (WPI) and then appropriate rounding has been applied in relation to increases. The Government will index the Water Abstraction Charge (WAC) by 3.00% as per the decision in the 2016-17 Budget. This increase is applied to the amended fees previously published as part of *Water Resources (Fees) Determination 2022 (No 2) (DI2002-194)*, which commenced on 1 September 2022.

- 1.15. Yet another slight variation appears in the twentieth instrument mentioned above (DI2023-147), which determines fees for the *Births, Deaths and Marriages Registration Act 1997*:

The new determination sets the fees that will apply beginning on 1 July 2023 and repeals the *Births, Deaths and Marriages Registration (Fees) Determination 2022 DI2022-88*.

It provides for fee increases in line with annual adjustments to the Wages Price Index (WPI) of 3.75%, rounded down to the nearest dollar for most fees, with the exception of fees that have been consecutively rounded down in previous years by more than \$1.00 in which case have been rounded up to the nearest dollar.

This approach aligns with the 2022 Treasury Guidelines for Fees and Charges.

- 1.16. The Committee notes that the explanatory statements for the majority of the instruments mentioned above use one of the examples identified above. Some wider variations on that explanation, for particular Acts, are discussed below.

- 1.17. In relation to the methodology behind fees increases, the Committee notes the following explanation, provided by the Minister for Transport and City Services, in response to comments made by the Committee in *Scrutiny Report 26* of the 10th Assembly (14 March 2023):

Changes to fees and charges, levies and taxes by annual decisions or different indexation arrangements are driven by a range of policy considerations. Indexation is largely linked to growth in wages to cover the cost of Government employees providing services to the community, while ensuring the indexation does not create

² Should refer to DI2022-210. The citation is correct in the instrument itself.

undue cost of living pressures. Where a different indexation is used, it usually reflects the changes in prices of goods and services acquired by households (i.e., the Consumer Price Index), or seeks to align with the intended policy objectives of the fees and charges.³

Act-specific explanations for fees increases

- 1.18. The explanatory statements for the following determinations indicate that the relevant fees are determined in relation to the particular circumstances of the relevant Act:

Environment Protection (Fees) Determination 2023 (DI2023-125)

This determination also includes amendments to the following matters for which a fee is payable, as listed in column 2 of the schedule of the 2022-23 fee instrument (DI2022-208):

- Operation of an incineration facility
- Conduct of a crematorium
- Transport of controlled waste
- Treatment, handling or storage of more than 1,000 cubic metres of contaminated soil
- Treatment of more than 10,000 cubic metres of contaminated soil
- Acceptance of soil on land

The above matters for which a fee is payable, as listed in column 2 of the schedule for this 2023-24 fee instrument, are amended as follows:

- Operation of an incineration facility for the destruction of waste by thermal oxidation
- Conduct of a crematorium by means of thermal oxidation
- Transport of controlled waste between States and Territories
- Treatment, handling or storage of contaminated soil
- Treatment of contaminated soil
- Acceptance of soil on certain land

Fisheries (Fees) Determination 2023 (DI2023-129)

The purpose of this instrument is to determine the fees for licences issued under the Act for the 2023-24 financial year.

The regulatory fees in the determination, which applied in the 2022-23 financial year, have been increased by 3.75% for the 2023-24 financial year based on the

³ Available at https://www.parliament.act.gov.au/_data/assets/pdf_file/0009/2199015/Road-TransportPublic-Passenger-Services-Maximum-Fares-for-taxi_Redacted.pdf.

wage price index as per government's advice. Appropriate rounding has been made in relation to increases.

The determination also includes amendments to the following matters for which a fee is payable, as listed in column 3 of the schedule of the 2022-23 fee instrument (DI2022 140):

- Sale of fish by commercial fishers
- Undertaking aquaculture using a facility over the aquaculture capacity limit
- Importing or exporting live fish or both
- Trafficking in a commercial quantity of fish of a priority species
- Taking a commercial quantity of fish of a priority species
- Possessing a commercial quantity of fish of a priority species

The above matters for which a fee is payable, as listed in column 3 of the schedule for this 2023-24 fee instrument, are amended as follows:

- Application by commercial fisher for licence to sell fish
- Application for licence to undertake aquaculture using a facility that exceeds the aquaculture capacity limit
- Application for licence to import or export live fish or both – for a commercial purpose only
- Application for licence to traffic in a commercial quantity of fish of a priority species
- Application for licence to take a commercial quantity of fish of a priority species
- Application for licence to possess a commercial quantity of fish of a priority species

Surveyors (Fees) Determination 2023 (DI2023-142)

The regulatory fees in the determination have been increased by 3.75% for the 2023 24 financial year, based on the wage price index as per government's advice. Appropriate rounding has been made in relation to increases.

The determination also includes amendments to the following matters for which a fee is payable, as listed in column 3 of the schedule of the 2022-23 fee instrument (DI2022-116):

- Application for Reciprocal Registration from Interstate
- Continuation notice for joint registration as a surveyor in the ACT and in NSW

The above matters for which a fee is payable, as listed in column 3 of the schedule for this 2023-24 fee instrument, are amended as follows:

- Application for Reciprocal Registration from Interstate and New Zealand
- Joint registration as a surveyor in the ACT and in NSW.

Health (Fees) Determination 2023 (No 1) (DI2023-150)

The Determination comes into effect on 1 July 2023 and reproduces Determination DI2022-69 except for:

- items on Attachment A, which have increased by the Wage Price Index of 3.75% (subject to rounding);
- items on Attachment B, which have increased by indexation rates as advised by the Commonwealth;
- items on Attachment C; which have increased or decreased by other factors, such as a review of cost of delivery or alignment with market rates;
- items on Attachment D, which have been removed or added to the fee determination;
- the inclusion of exemptions at (10) Attendance, Testing or Treatment at Sexual Health Centre for Medicare Non-eligible Patients and (11) Multi-Disciplinary Clinic meeting for Medicare Non-eligible Patients;
- minor wording, numbering and lettering changes; and
- the date of effect.⁴

Long Service Leave (Portable Schemes) Building and Construction Industry Levy Determination 2023 (DI2023-151)

Under section 56A of the [*Long Service Leave (Portable Schemes) Act 2009*] the Governing Board for the Long Service Leave Authority may determine the levy payable by employers for each quarter if:

- the Board recommends a change to the levy; and
- the change is, together with any other changes made to the levy in the 12 months before the determination is made, less than or equal to a variation of 40 basis points.

This disallowable instrument relates to the building and construction industry and sets the levy at 2.35% of ordinary wages paid by employers to their employees. The instrument takes effect from 1 October 2023.

In making this determination the Long Service Leave Authority Governing Board has recommended a change to the current levy and the change determined by this instrument meets the criteria set out in section 56A of the Act.

Victims of Crime (Fees) Determination 2023 (DI2023-153)

The Minister delegated this function to the Director-General under his express delegation power in section 254A of the Legislation Act 2001, limited to the extent that the Director-General may determine fees only as commensurate with the Consumer Price Index (CPI) (instrument NI2018-337).

⁴ The attachments referred to are very detailed and helpful.

Schedule 1 of the instrument lists the amounts that service providers are to be paid, in accordance with their professional qualifications and the nature of the service provided. The payments which will apply from the date of commencement are listed in column 4. The payments which applied previously are listed in italics in column 3.

The fee increases reflect the ACT Treasury forecast of a CPI increase of 3.25% for 2023-24. Fees payable have been increased based on this forecast CPI rate and rounded to the nearest dollar.

Cemeteries and Crematoria (Fees) Determination 2023 (No 1) (DI2023-158)

This determination increases fees by approximately 3.75% for the majority of burial services provided for Wage Price Index (WPI).

In previous years, the Authority has permitted the purchase of memorial plaques as part of the overall cost of a burial or ashes interment allotment. Due to the length of time between the purchase of an allotment and the interment, in some cases more than a decade, it is no longer practicable to include the payment of a plaque fee in advance of the actual ordering of the plaque. An increase in the proportion of plaques that were pre-paid, where the price paid at the time of purchase no longer covers the actual production cost of the plaque many years later, resulting in a negative financial outcome. Plaque fees will increase by approximately 8.75% to cover 3.75% WPI and a 5% increase in plaque supplier production costs.

Fees have been developed for the Gungahlin Cemetery Ashes Memorialisation Garden (a new ashes garden opening in May 2024), and for the interment of ashes into crypts at the Woden Mausoleum.

Fees for cremation services will increase by approximately 3.75%. A discount in cremation fees is now offered to funeral directors who meet the requirements of early delivery on weekdays and for funeral directors who are based interstate.

Fees have been developed for the use of streaming services for cremation services, and for the collection of ashes outside of regular business hours.

The Authority will continue with the handling fees payment to funeral directors for cemetery services including cremations.

All fees are rounded for cash handling purposes.

Emergencies, Road Transport (General), Waste Management and Resource Recovery (Embassy and Diplomatic Residence Fees) Determination 2023 (DI2023-159)

The charging of fees for specific services rendered in relation to the premises of an embassy and residence of the head of an embassy is provided for under the Vienna Convention on Diplomatic Relations (Diplomatic Convention), which is relevantly implemented under s 7 of the *Diplomatic Privileges and Immunities Act 1967* (Cwlth), and the Vienna Convention on Consular Relations (Consular Convention), which is relevantly implemented under section 5 of the *Consular Privileges and Immunities Act 1972* (Cwlth).

.....

Determination of amounts

Fees are charged for provision and availability of the following specific services: emergency services, ACT Policing, roads and infrastructure, and waste and recycling.

The fees for specific services are determined based on the cost of delivery of the services as provided in the ACT Government's 2021-22 Budget and then indexed by forecast Wage Price Index (WPI) for subsequent years' annual charges. WPI applied for 2023-24 is 3.75 per cent. It is intended annual charges will be subject to a recalculation after 5 years.

Taxation Administration (Amounts Payable—Rates) Determination 2023 (DI2023-160)

Updates

Fixed charges and percentage rates (marginal rating factors) are updated for general rates and the {Fire and Emergency Services Levy} FESL.

As announced in the 2023-24 Budget, the FESL is to be amended to the Police, Fire and Emergency Services Levy. (This statement retains reference to the FESL as per the Act.)

The [Safer Families Levy] is increased by \$5.

Taxation Administration (Amounts Payable—Duty) Determination 2023 (DI2023-162)

Updates

The Government is continuing to implement reforms to the Territory's taxation system by reducing conveyance duty rates for transactions of residential properties, targeted at the lowest marginal tax rates for owner occupier transactions.

For the lowest threshold applying to eligible owner occupier transactions, the rate of duty is reduced.

The duty-free threshold for commercial transfers is increased to \$1,800,000. Drafting of part 3 of the instrument is also amended to take account of upcoming changes from the commencement of part 2 of the *Revenue Legislation Amendment Act 2023*.

The commissioner's discretion in relation to 'residence period' and 'residence start date' for eligible owner occupier transactions is clarified through technical amendments.

Taxation Administration (Amounts Payable—Land Tax) Determination 2023 (DI2023-168)

The Taxation Administration (Amounts Payable—Land Tax) Determination 2023 (the Land Tax Determination) determines the fixed charge and percentage rates (commonly referred to as 'marginal rating factors') for land tax and a flat percentage rate for the foreign ownership surcharge (the surcharge).

From 1 July 2018, land tax is imposed on a parcel of rateable residential land unless it is an owner's principal place of residence or the parcel is otherwise exempt from land tax. As a part of taxation reform, land tax has not been levied on commercial properties since 1 July 2012.

Taxation Administration (Betting Operations Tax—Rate) Determination 2023 (DI2023-169)

Under section 10 of the *Betting Operations Tax Act 2018* (BOT Act), the 'determined rate' of tax applying to net ACT betting revenue above a threshold amount is 15 per cent or another rate determined by the Minister under section 139 of the *Taxation Administration Act 1999*.

This instrument determines a rate, from 1 July 2023, of 25 per cent to calculate the betting operations tax payable – an increase of 5 percentage points from the rate prescribed under Taxation Administration (Betting Operations Tax—Rate) Determination 2022, DI2022-160.

The threshold amount for an operator's net ACT betting revenue for the financial year is \$150,000 (as provided under section 8 of the BOT Act).

Taxation Administration (Amounts Payable—Land Rent) Determination 2023 (DI2023-170)

Standard percentage (leases first granted before 1 October 2013)

This instrument determines that the standard percentage is 4 per cent (unchanged from the previous instrument). This is the annual amount of land rent as a percentage of the unimproved value of the parcel of land under a land rent lease. For example, if the unimproved value of a parcel of land is \$200,000, then the annual land rent for that parcel of land is \$8,000.

Discount percentage

This instrument determines that the discount percentage is 2 per cent (unchanged from the previous instrument). This is the amount of land rent as a discounted percentage of the unimproved value of the parcel of land under a land rent lease where a lessee is eligible under section 11 of the Land Rent Act. For example, if the unimproved value of a parcel of land is \$200,000, then the annual land rent for that parcel of land is \$4,000.

Relevant percentage

This instrument determines that the relevant percentage is 1.52 per cent (reduced from 5.45 per cent in 2022-23). This is the annual change in ACT full time adult Average Weekly Total Earnings [Average Weekly Earnings, Australian Capital Territory (Dollar)—Original], for the period November 2021 (\$2,025.50) to November 2022 (\$2,056.30) as reported by the Australian Bureau of Statistics.

The relevant percentage caps the increase in annual land rent, protecting households from large increases in land rent when growth in unimproved values is high.

Rates, Land Tax, Land Rent and Duties (Certificate and Statement Fees) Determination 2023 (DI2023-171)

This instrument determines the fee payable to the Commissioner to apply for a Certificate (incorporating a statement of amounts payable and payments made) under the above-mentioned provisions. The fee is only payable once per property as a single application for a Certificate may be made under all of the relevant provisions.

For 2023-24, regulatory fees and charges are indexed for a Wage Price Index of 3.75 per cent. Accordingly, for 2023-24, the fee has been increased from \$128 to \$133 (rounded to the nearest dollar).

The fee amount reflects the fact that the Certificate provides information on all ACT Revenue Office charges concerning a parcel of land, including outstanding rates, land tax, land rent and any deferred amounts.

Juries (Payment) Determination 2023 (DI2023-175)

Under section 49 of the *Juries Act 1967* the sheriff may order that each juror be paid the amount determined by the Minister for a meal. The allowance is only payable if the Sheriff orders that each juror be paid the allowance rather than being given refreshments. This meal allowance is listed in Schedule 1 of the instrument. No changes have been made to the payment amount.

Under section 51 of the *Juries Act 1967*, a person summoned or appointed to serve as a juror is entitled to be paid the amount determined by the Minister for the person's attendance at the court in accordance with the summons or appointment, whether or not the person serves as a juror. Schedule 2 of the instrument lists the amounts that a juror is to be paid under section 51.

Payments have been increased in Schedule 2 in accordance with the Consumer Price Index (CPI) of 3.25% for 2023-24. Amounts are generally rounded to the nearest ten cents.

General Explanatory Note: Payments have been increased as advised by ACT Treasury: Update on Indexation Rates, Consumer Price Index (CPI) of 3.25% for 2023-24. Payments are generally rounded to the nearest ten cents.

Court Procedures (Fees) Determination 2023 (DI2023-176)

The new determination sets the fees that will apply beginning on 1 July 2023 and repeals the *Court Procedures (Fees) Determination 2022 (No 2)* DI2022-105. In most cases, it provides for fee increases in line with annual adjustments to the Wages Price Index (WPI) of 3.75%, rounded down to the nearest dollar for most fees, with the exception of fees that have been consecutively rounded down in previous years by more than \$1.00 which have been rounded up to the nearest dollar.

This approach aligns with the 2022 Treasury Guidelines for Fees and Charges.

Explanatory notes in the determination list the fees previously determined to enable comparison.

Updates to the instrument

The fee item 1210 has been amended to increase the fee for transferring cases from the Magistrates Court to the Supreme Court for the sole purpose of processing a consent judgment that awards an amount of damages that exceeds the Magistrates Court jurisdiction. The increased fee ensures Plaintiffs pay the equivalent of the Supreme Court filing fee when a matter is transferred.

Guardianship and Management of Property (Fees) Determination 2023 (DI2023-177)

[The instrument] provides for fee increases in line with annual adjustments to the Wages Price Index (WPI) of 3.75%, rounded down to the nearest dollar for most fees, with the exception of fees that have been consecutively rounded down in previous years by more than \$1.00 in which case have been rounded up to the nearest dollar.

This approach also aligns with the 2022 Treasury Guidelines for Fees and Charges. Explanatory notes in the determination list the fees previously determined to enable comparison.

The fee for the hourly rate for the examination of accounts maintained by an external financial manager is GST exempt and, when rounded, would have been \$287.00. As this service is subsidised by Community Service Obligation funding, the Public Trustee and Guardian generally applies a 25% rebate to the fee. With the rebate applied, the fee would be \$215.00. Adjustments to this rebate can be made by the Public Trustee and Guardian under fee reductions and waivers provision in the *Public Trustee and Guardian Act 1985*.

Human rights issues

- 1.19. The Committee notes that the explanatory statement for the Water and Sewerage (Fees) Determination 2023 (DI2023-119) states:

Human Rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts, among other matters. In this case, no human rights are impacted.

- 1.20. Similar statements appear in the explanatory statements for DI2023-120, DI2023-121, DI2023-122, DI2023-123, DI2023-124, DI2023-125, DI2023-126, DI2023-127, DI2023-128, DI2023-129, DI2023-138, DI2023-139, DI2023-140, DI2023-142, DI2023-143 and DI2023-144.
- 1.21. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for the instruments mentioned immediately above.**

- 1.22. This comment (and the comments above) does not require a response from the relevant Ministers.

Consistency with Committee's terms of reference

- **Disallowable Instrument DI2023-131** being the City Renewal Authority and Suburban Land Agency (Agency Board Member) Appointment 2023 (No 2) made under section 45 of the *City Renewal Authority and Suburban Land Agency Act 2017* appoints a specified person as an expert member of the Suburban Land Agency Board
 - **Disallowable Instrument DI2023-132** being the City Renewal Authority and Suburban Land Agency (Agency Board Member) Appointment 2023 (No 3) made under section 45 of the *City Renewal Authority and Suburban Land Agency Act 2017* appoints a specified person as an expert member of the Suburban Land Agency Board
 - **Disallowable Instrument DI2023-133** being the City Renewal Authority and Suburban Land Agency (Agency Board Member) Appointment 2023 (No 4) made under section 45 of the *City Renewal Authority and Suburban Land Agency Act 2017* appoints a specified person as an expert member of the Suburban Land Agency Board
 - **Disallowable Instrument DI2023-134** being the City Renewal Authority and Suburban Land Agency (Authority Board Chair) Appointment 2023 (No 1) made under section 15 *City Renewal Authority and Suburban Land Agency Act 2017* appoints a specified person as Chair of the City Renewal Authority Board
 - **Disallowable Instrument DI2023-135** being the City Renewal Authority and Suburban Land Agency (Authority Board Member) Appointment 2023 (No 1) made under section 15 of the *City Renewal Authority and Suburban Land Agency Act 2017* appoints a specified person as an expert member of the City Renewal Authority Board
 - **Disallowable Instrument DI2023-136** being the City Renewal Authority and Suburban Land Agency (Authority Board Member) Appointment 2023 (No 2) made under section 15 of the *City Renewal Authority and Suburban Land Agency Act 2017* appoints a specified person as an expert member of the City Renewal Authority Board
 - **Disallowable Instrument DI2023-203** being the Utilities (Technical Regulation) (Listed Dams) Determination 2023 made under section 69 of the *Utilities (Technical Regulation) Act 2014* revokes DI2015-44 and determines specified dams owned by Icon Water and the ACT Government to be 'listed dams'
- 1.23. The first to sixth instruments mentioned above, made under section 15 of the *City Renewal Authority and Suburban Land Agency Act 2017*, appoints a specified person as a member of the City Renewal Authority Board. Five of the specified persons are appointed as an 'expert member', as provided for by paragraph 21(1)(c) of the Act, and one specified person is appointed as chair, for paragraph 21(1)(a) of the Act.
- 1.24. The seventh instrument mentioned above is made under section 69 of the *Utilities (Technical Regulation) Act 2014*. It determines certain specified dams owned by Icon Water and the ACT Government to be 'listed dams', for that Act.
- 1.25. The Committee notes that the explanatory statement for each instrument contains a statement in the following terms:

Scrutiny Committee Terms of Reference

The instrument is consistent with the Legislative Assembly's Scrutiny of Bills Committee Terms of Reference. In particular, the instrument:

- 1 Is made under a ministerial power found in the Act (see section 15 of the Act and section 78 of the [*Financial Management Act 1996*]).
- 2 Is in accordance with the general objects of the Act under which it is made. The appointment of a member to the board is integral to the authority's operations and achieving the objects of the Act.
- 3 Does not unduly trespass on rights previously established by law.
- 4 Does not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions. The instrument enables formal appointment of a member of the board.

1.26. **The Committee draws the attention of the Legislative Assembly to this statement, in the explanatory statements for the instruments mentioned above.**

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

Human Rights Issues

- **Disallowable Instrument DI2023-152** being the Public Place Names (Narrabundah) Determination 2023 made under section 3 of the *Public Place Names Act 1989*

1.28. This instrument, made under section 3 of the *Place Names Act 1989*, names a public place in Narrabundah. 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*. The explanatory statement states:

Human Rights

Section 12 of the *Human Rights Act 2004* creates a right to privacy and reputation. This determination does not have the potential to infringe this right because it does not name any place after a person.

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

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

Human Rights Issues

- **Disallowable Instrument DI2023-201** being the Road Transport (General) Application of Road Transport Legislation Declaration 2023 (No 6) made under section 13 of the *Road Transport (General) Act 1999*

1.31. This instrument is made under section 13 of the *Road Transport (General) Act 1999*, which allows the Minister to 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. The instrument provides that the *Motor Accident Injuries Act 2019* and various specified provisions of the motor traffic legislation do not apply in relation to the NBMS Test Day 2023, taking place on 14-16 July 2023.

- 1.32. The Committee notes that, consistent with similar instruments, the explanatory statement for the instrument discusses human rights issues:

Human rights implications

During the development of this instrument, due regard was given to its effect and the operation of the rally 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 itself restrict a person's freedom of movement within the Territory, however the operation of the event in closing parts of the forest in which the event 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 the event to operate as intended, vehicles will be travelling in parts of the forest in excess of the usual speed limits and in a manner not consistent with the road rules. As such, the restriction on the free movement of people in those parts of the forest 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.

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

No human rights analysis

- **Disallowable Instrument DI2023-202** being the Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023, made under section 514B of the *Children and Young People Act 2008*, determines risk assessment guidelines for that Act

1.35. This instrument is made under section 514B of the *Children and Young People Act 2008*, which provides:

514B Approved carers—director-general may approve

(1) The director-general may, in writing, approve a person as a carer (an **approved carer**) if satisfied that the person is an appropriate person to care for children or young people.

(2) However, if the director-general orally authorises a person under section 516 (Kinship carer—specific parental authority) or section 518 (Foster carer—specific parental authority) in relation to a child or young person, the director-general—

(a) may, at the same time, orally approve the person as an approved carer; and

(b) if the director-general approves the person under paragraph (a)—must, as soon as practicable, approve the person in writing.

(3) The director-general may approve a person as an approved carer only if—

(a) the person is registered under the Working with Vulnerable People Act to engage in a regulated activity; or

(b) the person—

(i) has applied for registration under the Working with Vulnerable People Act; and

(ii) may engage in a regulated activity under that Act, section 16(2) (When unregistered person may be engaged in regulated activity—kinship carer or foster carer); or

(c) the person is not registered under the Working with Vulnerable People Act to engage in a regulated activity and—

(i) the person is to be authorised as a kinship carer under section 516 or a foster carer under section 518 for a child or young person; and

(ii) the director-general is satisfied that—

(A) the person is a significant person for the child or young person; and

(B) the person has a familiar relationship with the child or young person; and

(C) given the familiar relationship, the person does not pose an unacceptable risk to the child or young person; and

(D) taking into account all the circumstances, it would be in the best interests of the child or young person to have the person authorised as their kinship carer or foster carer.

(4) In deciding whether a person has a familiar relationship with a child or young person, the director-general must consider the length of the relationship and the extent and degree to which the person engages with the child or young person.

(5) The Minister must make guidelines about matters the director-general must consider under subsection (3)(c)(ii).

(6) A guideline is a disallowable instrument.

(7) In this section:

"regulated activity" means a regulated activity mentioned in the Working with Vulnerable People Act, schedule 1, section 1.1 (Child protection services).

Note A decision under this section is a reviewable decision (see s 839).

1.36. The explanatory statement for the instrument states:

These guidelines address the areas that the Director-General may consider when assessing information under s514B of the *Children and Young People Act 2008* (CYP Act).

The Risk Assessment Guidelines are made pursuant to section 514B (Approved carers – Director-General may approve) of the CYP Act, which allows the Minister to make guidelines about matters the Director-General must consider under subsection (3)(c)(ii) of the CYP Act.

The CYP Act contains provisions for the Director-General to approve certain persons as approved carers.

The *Working with Vulnerable People (Background Checking) Act 2014* (WWVP Act) requires registration for persons who are engaged in a 'regulated activity'. This includes any activity conducted, or service provided, by a kinship carer or foster carer under the CYP Act.

While the WWVP Act is the primary law for background checking and risk assessment, it is not the only law. The CYP Act deals with the placement in out-of-home care of children and young people who are the subject of care and protection orders. The system for out-of-home care involves, and has always involved, its own form of background checking and risk assessment.

Under the CYP Act, the Director-General of the Community Services Directorate (CSD) is required to place children and young people who cannot live with their birth parents with an 'approved carer', who may be either a foster carer or kinship carer. To become an 'approved carer', an applicant must satisfy the Director-General that they are an appropriate person to care for children or young people.

To be an 'appropriate person', the applicant must undergo a suitability assessment that shares many of the features of the scheme under the WWVP Act.

1.37. The Committee notes that the *Human Rights Act 2004* is mentioned in the preamble to the instrument:

Child and Youth Protection Services (CYPS) involvement in a family's circumstances is guided by the *Children and Young People Act 2008* (the CYP Act) through graduated and proportionate steps (or thresholds). The thresholds act to balance the protection of children and young people against the protection of the family unit, within parameters set by the *Human Rights Act 2004*. These guidelines are intended to assist decision makers when they are assessing persons to provide foster or kinship care to children and young people (Carer Assessments).

1.38. It is also mentioned (on page 4 of the instrument) in the context of the 'protective framework' in which the instrument plays a part:

Other Acts, agencies, or schemes which play an integral role in this protective framework include:

- *Working with Vulnerable (Background Checking) Act 2011* (ACT);
- *Crimes Act 1900* (ACT);
- *Discrimination Act 1991* (ACT);
- *Disability Discrimination Act 1992* (Cwth);
- *Disability Services Act 1991* (ACT);
- *Human Rights Act 2004* (ACT);
- *National Disability Insurance Scheme Act 2013* (Cwth);
- *Senior Practitioner Act 2018* (ACT); and
- Reportable Conduct Scheme;

1.39. However, the Committee notes that the explanatory statement for the instrument contains no human rights analysis. In the circumstances (and without further explanation), the Committee is surprised by this. The Committee considers that, at the very least, the potential engagement with the rights of children to protection, provided for by subsection 11(2) of the Human Rights Act, should have been addressed. Given the relevance of 'kinship', it might also be suggested that the cultural and other rights of Aboriginal and Torres Strait Islander peoples, protected by section 27 of the Human Rights Act, might also have been addressed.

1.40. **The Committee seeks the Minister's views on the above comments.**

The Committee draws this matter to the attention of the Legislative Assembly, under paragraph 10(d) of the Committee's Resolution of Appointment, on the basis that the explanatory statement for this instrument may not meet the technical or stylistic standards expected by the Committee, and asks the Minister to respond before the Legislative Assembly's capacity to move to disallow the instrument expires.

Minor drafting issue

- **Disallowable Instrument DI2023-205** being the Legal Aid (Commissioner—ACTCOSS Nominee) Appointment 2023 made under section 16 of the *Legal Aid Act 1977* appoints a specified person, nominated by the executive committee of the ACT Council of Social Services, as a part-time member and commissioner of the board of the Legal Aid Commission
- 1.41. Section 3 of this instrument appoints a specified person as a ‘part-time member and commissioner of the board of the Legal Aid Commission’. The appointment is made under section 16 of the *Legal Aid Act 1977*. The Committee notes that there is no reference in section 16 to appointing ‘part-time members’ – only ‘members’. As the Committee has pointed out, several times, in relation to previous appointments under this provision, the only reference to ‘part-time’ is in subsection 16(4), which provides that ‘[a] person appointed as a member by the Minister is appointed on a part-time basis’. However, in a formal sense, this does not mean that persons are appointed as ‘a part-time member’.
- 1.42. The Committee made a similar comment in *Scrutiny Report 21* of the 10th Assembly (4 October 2022), in relation to appointments made by DI2022-185, DI2022-187 and DI2022-188).⁵ The Attorney-General responded to the Committee’s comments, in a letter dated October 2022 stating:⁶
- I consider the reference to ‘part-time member’ necessary and appropriate in the above instruments to distinguish the member appointments from the appointment of the Chief Executive Officer, who is not appointed to, and does not operate in, that role on a part-time basis. Moreover, the description ‘part-time’ aptly describes the nature and commitment of the role of a Legal Aid Board Commissioner. Commissioners meet once every quarter or out-of-session to determine the policies, priorities and strategies of the Legal Aid Commission. For absolute clarity, in the future, the Justice and Community Safety Directorate will endeavour to ensure that disallowable instruments for Legal Aid Commission Board appointments specifically refer to section 16(4) which specifies that members appointed by the Attorney General are appointed on a part-time basis.
- 1.43. **The Committee is disappointed to note that neither the instrument mentioned above nor its explanatory statement refer to subsection 16(4).**
- 1.44. **This comment requires a response from the Attorney-General.**

The Committee draws this matter to the attention of the Legislative Assembly, under paragraph 10(d) of the Committee’s Resolution of Appointment, on the basis that the

⁵ Available at https://www.parliament.act.gov.au/data/assets/pdf_file/0006/2083434/Scrutiny-Report-21-4-October-2022.pdf. See page 26.

⁶ Available at https://www.parliament.act.gov.au/data/assets/pdf_file/0017/2110166/Response-DI2022-185,-187-and-188.pdf.

explanatory statement for this instrument may not meet the technical or stylistic standards expected by the Committee and asks the Chief Minister to respond before the Legislative Assembly's capacity to move to disallow the instrument expires.

Retrospectivity

- **Disallowable Instrument DI2023-206** being the Remuneration Tribunal (Fees and Allowances of Members) Determination 2023 made under section 20 of the *Remuneration Tribunal Act 1995*
- 1.45. This instrument, made under section 20 of the *Remuneration Tribunal Act 1995*, determines the fees and allowances payable to members of the Remuneration Tribunal. Section 2 of the instrument provides that the instrument 'is taken to have commenced on 1 October 2022'. Given that the instrument was notified on the ACT Legislation Register on 14 August 2023, this means that it has a retrospective effect.
- 1.46. Section 76 of the *Legislation Act 2001* provides that, for 'statutory instruments' (defined in section 13 of the *Legislation Act* to include a disallowable instrument, such as this instrument), only a 'non-prejudicial' provision can commence retrospectively. That concept is, in turn, defined in subsection 76(4) of the *Legislation Act*, which provides:
- (4) In this section:
- "non-prejudicial provision"** means a provision that is not a prejudicial provision.
- "prejudicial provision"** means a provision that operates to the disadvantage of a person (other than the Territory or a territory authority or instrumentality) by—
- (a) adversely affecting the person's rights; or
- (b) imposing liabilities on the person.
- 1.47. Given this statutory prohibition on 'prejudicial retrospectivity in statutory instruments, the Committee has consistently required that, for subordinate legislation with a retrospective effect, there be an indication, usually in the explanatory statement, that the retrospectivity is 'non-prejudicial', for section 76 of the *Legislation Act*.⁷
- 1.48. **The Committee notes that there is no such statement in the explanatory statement for this instrument.**
- 1.49. **In making this comment, the Committee notes that it can be assumed, from the following statement in the explanatory statement for the instrument, that the instrument is beneficial in effect for the persons affected:**

⁷ See the Committee's document titled Subordinate legislation—Technical and stylistic standards—Tips/Traps, available at https://www.parliament.act.gov.au/data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf.

The remuneration increase maintains appropriate relativity with similar part-time public office holders in the ACT public sector, and to some extent, with similar tribunals elsewhere in Australia.

- 1.50. However, the Committee's long-held (and often-expressed) preference is for the non-prejudicial issue to be explicitly addressed, in the explanatory statement for a piece of subordinate legislation with retrospective effect.
- 1.51. **The Committee seeks the Chief Minister's assurance that the retrospectivity in this instrument is non-prejudicial.**
- 1.52. **This comment requires a response from the Chief Minister.**

The Committee draws this matter to the attention of the Legislative Assembly, under paragraph 10(d) of the Committee's Resolution of Appointment, on the basis that the explanatory statement for this instrument may not meet the technical or stylistic standards expected by the Committee and asks the Chief Minister to respond before the Legislative Assembly's capacity to move to disallow the instrument expires.

Subordinate Laws – No comment

- 1.53. The Committee has examined the following subordinate laws and has no comment on them:
- **Subordinate Law SL2023-15** being the Court Procedures Amendment Rules 2023 (No 1) made under section 7 of the *Court Procedures Act 2004* makes amendments to the Court Procedures Rules after a consultative review by the Courts and the Joint Rules Advisory Committee, requiring leave of the Court to be obtained before subpoenas for an appellate proceeding are issued
 - **Subordinate Law SL2023-18** being the Duties Regulation 2023, made under section 87 of the *Duties Act 1999*, prescribes that a person is not required to prepare an acquisition statement for a relevant acquisition in relation to landholder duty (under chapter 3 of the Act) if the rate of duty for the relevant acquisition is nil.

Subordinate Laws – Comment

- 1.54. The Committee has examined the following subordinate laws and offers these comments on them:

Human Rights Issues

- **Subordinate Law SL2023-12** being the Road Transport (Offences) Amendment Regulation 2023 (No 1) made under sections 23 and 233 of the *Road Transport (General) Act 1999* amends road transport legislation to increase infringement notice penalty amounts for most offences, and to make minor technical amendments to road transport regulations

1.55. This (340 page) subordinate law is made under sections 23 and 233 of the *Road Transport (General) Act 1999*. The explanatory statement for the subordinate law states that section 23 gives the power for a regulation to be made that prescribes an offence as an infringement notice offence and the amount of the penalty payable, including different amounts payable for different offences and different amounts payable for the same offence committed by different people. Then, section 233 gives the Executive the power to make regulations to prescribe matters that are necessary or convenient for the carrying out or giving effect to the Act, or another road transport Act, including to prescribe offences for contravention of a regulation (subsection 233(3)).

1.56. The subordinate law amends Schedule 1 of the *Road Transport (Offences) Regulation 2005*, which lists the offences contained in each relevant Act and Regulation that form part of the road transport legislation. The explanatory statement for this subordinate law states, by way of explaining the effect of the amendments:

If an offence may be dealt with by infringement notice, the schedule prescribes the infringement notice penalty amount that is payable. Most road transport infringement notice penalties other than those relating to parking offences and offences against the *Heavy Vehicle National Law (ACT)* (HVNL) include a component, not identified separately, accounting for the Victim Services Levy (VSL) applicable to the offence. The VSL is currently set at \$60.

Most infringement notice penalties, excluding the amount of the VSL, are being increased by the estimated 2022-23 Wage Price Index (WPI) of 3.75%.

The reason for indexation of infringement penalty amounts is to maintain the value of those penalties in real terms in order to preserve their deterrent effect. Any variation to that indexation is outlined below.

Government policy is that, in general, the infringement notice penalty for an offence should not exceed 20% of the maximum fine that may be imposed by a court for that offence (the 20% limit). The 20% limit is based on the existing penalty unit amount of \$160 for an offence committed by an individual.

Where an existing infringement notice penalty is not approaching the 20% limit the indexation has been undertaken by deducting \$60 from the existing infringement penalty amount, indexing that amount by 3.75% and then adding \$60.

Where an existing infringement notice penalty amount is near the 20% limit the indexation has been undertaken by deducting \$60 from the existing infringement penalty amount, indexing that amount by 3.75%, applying the 20% limit and then adding the VSL amount of \$60.

Where the existing infringement notice penalty, minus the VSL amount, for an offence is already at or above the 20% limit, the infringement notice penalty has not been increased.

For offences to which the VSL does not apply the infringement penalty amounts are indexed as above except for the VSL amounts.

All infringement notice penalty amounts are rounded down to the nearest dollar.

For offences against the Heavy Vehicle National Law (HVNL), maximum court-imposed penalties and infringement penalty amounts are indexed by provisions of the HVNL and the *Heavy Vehicle (General) National Regulation (NSW)* and published on the National Heavy Vehicles Regulator's (NHVR's) website. This amendment regulation does not adjust those amounts and the offences regulation directs readers to the NHVR's website.

The child rate infringement notice penalty amounts of \$75 for public passenger ticketing and conduct offences under the *Road Transport (Public Passenger Services) Regulation 2002* have not been increased. This amount continues to represent an appropriate deterrence for these offences.

The infringement penalty amount relating to section 236(4A) of the *Road Transport (Road Rules) Regulation 2017* about pedestrians engaging in commercial activities, such as window washing, at designated intersections has not been increased. This amount continues to represent an appropriate deterrence for these offences.

Infringement penalty amounts for items 1 to 4 of Part 1.12 about races, attempts to break speed records, speed and acceleration trials and trials intended to test the skill of a driver or reliability of a vehicle without approval from the road transport authority are not increased by this regulation.

1.57. The explanatory statement goes on to discuss human rights issues:

Human rights implications

During the development of this Regulation, due regard was given to its compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

The offences regulation does not, of itself, impose restrictions or limitations on a person's human rights. The proposed amendments to the offences regulation increase most infringement notice penalty amounts under the road transport legislation to maintain the value of those penalties in real terms and preserve their deterrence effect. The amendments do not change the infringement notice arrangements under the road transport legislation that offers people a choice of accepting a lesser penalty without admitting the offence or remaining liable for prosecution and diverts people away from the criminal justice system.

As such the amendments are not considered to be limiting any human rights.

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

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

Payments to victims of crime

- **Subordinate Law SL2023-13** being the Victims of Crime (Financial Assistance) Amendment Regulation 2023 (No 1) made under the *Victims of Crime (Financial Assistance) Act 2016* amends the Victims of Crime (Financial Assistance) Regulation 2016

to bring the payment amounts for victims of crime in line with the All Groups CPI (Canberra) for March 2021-March 2022

1.60. This subordinate law amends the *Victims of Crime (Financial Assistance) Regulation 2016*, which prescribes payment amounts and limitations for victims of crime under the *Victims of Crime (Financial Assistance) Act 2016*. As noted by the explanatory statement for the subordinate law, section 25 of the *Victims of Crime (Financial Assistance) Act* requires yearly Consumer Price Index (CPI) increases for payments provided to victims under four sections:

- a) maximum total financial assistance (section 24),
- b) recognition payment for primary victim (section 28),
- c) recognition payment for class A related victim (section 29), and
- d) recognition payment for class B related victim (section 30).

1.61. The Committee notes that the explanatory statement goes on to state:

This [subordinate law] will bring payment amounts under these sections in line with the All Groups CPI (Canberra) for March 2022 to March 2023 (as issued by the Australian Statistician) at 7 per cent.

Section 97 of the *Victims of Crime (Financial Assistance) Act 2016* requires yearly Wage Price Index (WPI) increases for limitations on lawyers legal costs under section 96.

This regulation will bring limitation amounts under this section into line with the All Groups WPI (Canberra) for March 2022 to March 2023 (as issued by the Australian Statistician) at 3.6 per cent.

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

Human Rights Issues / Matters more appropriate for parliamentary enactment

- **Subordinate Law SL2023-14** being the Health Infrastructure Enabling Amendment Regulation 2023 (No 1) made under the *Health Infrastructure Enabling Act 2023*

1.63. This subordinate law amends the *Health Infrastructure Enabling Regulation 2023* (SL2023-11), which the Committee commented on in *Scrutiny Report 32* of the 10th Assembly (22 August 2023). The explanatory statement for the (later) subordinate law states:

The *Health Infrastructure Enabling Regulation 2023* is subject to challenge in *Calvary Health Care ACT Limited v Australian Capital Territory* (SC 225 of 2023) which is presently in the ACT Supreme Court (Supreme Court). The [subordinate law] has been made in response to tentative concerns expressed in the Supreme Court proceeding.

The Regulation amends the *Health Infrastructure Enabling Regulation 2023* to further the obligation contained in s 10(1) of the *Health Infrastructure Enabling Act 2023* (the Act).

- 1.64. The relevant amendment would appear to be section 13 of this subordinate law, which inserts a new provision preserving the jurisdiction of the Supreme Court to determine questions of law and ensuring just terms. By way of explanation, the explanatory statement for the later subordinate law states:

Clause 13 Court to ensure just terms

This clause makes certain that nothing in the *Health Infrastructure Enabling Regulation 2023* is to operate to exclude the jurisdiction of a court of competent jurisdiction to determine a question of law or the just terms for any acquisition of property under the Act, if—

- the application of a provision of the regulation would result in just terms not being provided for the acquisition; or
- the regulation does not otherwise provide for it.

The dispute resolution in s 33 of the in the *Health Infrastructure Enabling Regulation 2023* remains final and binding on the parties, but new section 33A ensures that a person has recourse to a court of competent jurisdiction under s 33(6)(b) on a question of law or where the application of a regulation has not resulted in just terms acquisition or has not otherwise provided for it.

- 1.65. The Committee notes that, in *Scrutiny Report 32*, it drew the earlier subordinate law to the attention of the Legislative Assembly, under subparagraph 10(c)(iv) of the Committee's Resolution of Appointment, on the basis that it may contain matter that, in the opinion of the Committee, should properly be dealt with in an Act of the Legislative Assembly. The Committee sought a response from the Minister before the time within which a motion to disallow the (earlier) subordinate law expires. No response has been received.
- 1.66. While the Committee acknowledges that there is not necessarily a direct correlation between the issue that has been identified in the Supreme Court proceedings⁸ and the concerns that the Committee expressed in relation to the earlier subordinate law, the Committee suggests that it might be argued that the content of the earlier subordinate law might have benefited from the closer scrutiny that would have been brought to bear, by the legislature, if it had been included in the primary legislation. On that basis, the Committee re-iterates the concerns expressed about the earlier subordinate law.
- 1.67. **The Committee seeks the Minister's views on the above comments.**

⁸ See *Calvary Health Care ACT Limited v Australian Capital Territory* [2023] ACTSCFC 1, available at <http://classic.austlii.edu.au/au/cases/act/ACTSCFC/2023/1.html>.

The Committee draws this matter to the attention of the Legislative Assembly, under subparagraph 10(c)(iv) of the Committee's Resolution of Appointment, on the basis that it may contain matter that, in the opinion of the Committee, should properly be dealt with in an Act of the Legislative Assembly, and asks the Minister to respond before the Legislative Assembly's capacity to move to disallow the subordinate law expires.

- 1.68. The Committee notes that the explanatory statement for the (later) subordinate law goes on to discuss human rights issues:

Consistency with Human Rights

The Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters. There are no human rights impacts related to this regulation. The Regulation does not engage with human rights under the *Human Rights Act 2004*.

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

- 1.70. **The comment immediately above does not require a response from the Minister.**

Human Rights Issues

- **Subordinate Law SL2023-17** being the Medicines, Poisons and Therapeutic Goods Amendment Regulation 2023 (No 2) made under section 184 of the *Medicines, Poisons and Therapeutic Goods Act 2008* supports the expansion of the COVID-19 vaccinating workforce at ACT Government-operated vaccination clinics

- 1.71. This subordinate law amends the *Medicines, Poisons and Therapeutic Goods Regulation 2008 (MPTG Regulation)*, to enable the Chief Health Officer (CHO) to declare (via notifiable instrument) a controlled medicine to not be within the scope of Division 13.1.2 of the MPTG Regulation, under which a person may apply to the CHO for approval to prescribe a 'controlled medicine', defined in subsection 11(2) of the *Medicines, Poisons and Therapeutic Goods Act 2008 (MPTG Act)* as 'a substance to which the medicines and poisons standard, schedule 8 applies'. In essence, this Schedule of the *Therapeutic Goods (Poisons Standard—July 2023) Instrument 2023*⁹ that relates to 'controlled drugs'.

- 1.72. The explanatory statement for the subordinate law states:

A person may not be required to seek approval to prescribe a controlled medicine if the prescription relates to an in-patient at a hospital or for short-term treatment not exceeding two months in length (standing approvals). Prescribers and pharmacists

⁹ Available at <https://www.legislation.gov.au/Details/F2023L00864/Download>.

are not currently obliged to consult the monitored medicines database before prescribing or dispensing controlled medicines.

On 3 February 2023, the Therapeutic Goods Administration (TGA) announced their final decision regarding the rescheduling of psilocybin and 3,4-methylenedioxy-methamphetamine (MDMA) in the Poisons Standard as a Schedule 8 substance (controlled medicine) in defined circumstances.

The TGA decisions will permit prescribing of MDMA for the treatment of post-traumatic stress disorder (PTSD) and psilocybin for treatment-resistant depression (TRD) by psychiatrists who are specifically authorised under the TGA's Authorised Prescriber scheme, effective from 1 July 2023.

Should MDMA or psilocybin be prescribed under an existing standing approval (Division 13.1.2), bypassing the CHO application pathway (Division 13.1.3), there is the potential for these medicines to be used in conjunction with other prescribed therapies. However, it is important to recognise that combining these substances with certain prescribed medicines can pose significant risks and potential harm to patients. It is this concern that has prompted the regulatory amendment.

1.73. The explanatory statement goes on to say:

The [subordinate law] will allow the CHO to declare MDMA and psilocybin to be exempt from Division 13.1.2, and therefore require CHO approval in all circumstances. Requiring CHO approval will ensure all prescriptions for MDMA and psilocybin are entered into the Monitored Medicines Database. This information will improve drug safety by enabling treating health practitioners to view a psilocybin or MDMA therapy approval in the Monitored Medicines Database and inform prescribing or dispensing decisions.

1.74. The explanatory statement goes on to discuss human rights issues, referring to the right to recognition and equality before the law, the right to life and the right to privacy and reputation, protected by sections 8, 9 and 12 of the *Human Rights Act 2004*, respectively:

Human rights considerations

During the development of the [subordinate law], due regard was given to its compatibility with the *Human Rights Act 2004* (HR Act).

The Amendment Regulation engages the following HR Act rights:

Section 8 – Right to recognition and equality before the law

The [subordinate law] engages the right to recognition and equality before the law under the HR Act. This is because the initial medications subject to the CHO declaration under the new section 556A will be used to treat mental health conditions. As these medications provide new treatment options that are not currently available for people with PTSD and TRD, it is considered that the [subordinate law] promotes equality.

Should other medications be declared by the CHO under section 556A, this may impact individuals with other health conditions. While acknowledging that the [subordinate law] encroaches on the right to equality, it is intended to promote patient safety.

Section 9 – Right to life

Ensuring the effective regulation of medicines and poisons in the ACT, the [subordinate law] as described above engages and promotes the right to life under the HR Act. The right to life is concerned with preventing the arbitrary deprivation of life and is relevant to the delivery of medical treatment.

The amendment has been prepared to improve patient safety for those prescribed MDMA or psilocybin as their treating health practitioners will be aware that the patient has taken these medications. This engagement is likely to also arise for any other future medicines that may be subject to a CHO declaration under new section 556A.

Section 12 – Right to privacy and reputation

The [subordinate law] outlined above engages the right to privacy and reputation under the HR Act. The right to privacy and reputation protects physical, psychological and bodily privacy, including the mandatory reporting of injuries or illnesses, as well as communication and informational privacy, such as the collection, use, retention and disclosure of personal or confidential information.

The right to privacy and reputation is engaged as the [subordinate law] will result in the mandatory reporting of all prescriptions for MDMA and psilocybin in the ACT. This engagement is considered to be reasonably restricted and necessary in order to pursue a legitimate aim of improved safety and quality use of medicines. These changes are considered to closely align with core objects of the MPTG Act including to protect public health and safety through minimising accidental and deliberate poisons, and medicinal misadventures relating to regulated substances.

Information collected by ACT Government relating to the prescription of controlled medicines, including information stored on the Monitored Medicines Database, is considered personal health information and subject to strict privacy protections under the *Health Records (Privacy and Access) Act 1997* and MPTG Act. The Monitored Medicine Database records information on those using the site including username, device and records accessed. This information is available for [ACT Health Directorate] to safeguard against unauthorised access of information.

- 1.75. **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.**
- 1.76. **The comment immediately above does not require a response from the Minister.**

Regulatory impact statements – No comment

1.77. The Committee has examined a (single, shared) regulatory impact statement for the following instruments and has no comments on it:

- **Disallowable Instrument DI2023-154** being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Target) Determination 2023, including a regulatory impact statement made under section 7 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* determines the energy savings targets for a specified compliance period.
- **Disallowable Instrument DI2023-155** being the Energy Efficiency (Cost of Living) Improvement (Energy Savings Contribution) Determination 2023, including a regulatory impact statement made under section 11 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* determines the energy savings contribution for a specified compliance period.
- **Disallowable Instrument DI2023-156** being the Energy Efficiency (Cost of Living) Improvement (Penalties for noncompliance) Determination 2023, including a regulatory impact statement made under section 22 of the *Energy Efficiency (Cost of Living) Improvement Act 2012* determines the shortfall penalty for noncompliance for a specified compliance period.
- **Disallowable Instrument DI2023-157** being the Energy Efficiency (Cost of Living) Improvement (Priority Household Target) Determination 2023, including a regulatory impact statement made under section 8 of the *Energy Efficiency (Cost of Living) Improvement Act 2012*

2. Outstanding responses

Bills

Report 12, dated 1 February 2022

Bills

- Electoral Amendment Bill 2021

Report 28, dated 3 May 2023

Bills

- Modern Slavery Legislation Amendment Bill 2023

Report 29, dated 23 May 2023

Bills

- Biosecurity Bill 2023
- Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023



Peter Cain MLA
Chair

4 September 2023