

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

SCRUTINY REPORT 14

29 MARCH 2022

# THE COMMITTEE

## COMMITTEE MEMBERSHIP

Mr Peter Cain MLA (Chair)  
Dr Marisa Paterson MLA (Deputy Chair)  
Mr Andrew Braddock MLA

## SECRETARIAT

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## ROLE OF COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

## RESOLUTION OF APPOINTMENT

- (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;

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# BILLS

## PROPOSED AMENDMENTS

### ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021

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On 15 March 2022, the Committee received proposed amendments to the *Road Transport Legislation Amendment Bill 2021 [No 1]* to be proposed by Jo Clay MLA. These proposed amendments differed slightly from the proposed amendments provided to the Committee on 4 March 2022 and reported on in the Committee's Report 13. The Bill, as amended by the proposed amendments, was passed by the Assembly on 23 March 2022 and, as of 24 March 2022, is awaiting notification.

The Bill will amend the offence of negligent driving in section 6 of the *Road Transport (Safety and Traffic Management) Act 1999*. The amendment will add an aggravated penalty of 50 penalty units, imprisonment for six months or both where the driving in question occasions actual bodily harm. The proposed amendments to the Bill will remove reference to six months imprisonment as part of the Bill's proposed maximum penalty, leaving the maximum penalty of 50 penalty points. The proposed amendment will also amend the *Road Transport (Offences) Regulation 2005* to provide for an infringement notice penalty in the amount of \$900 and three demerit points.

The explanatory statement accompanying the proposed amendments recognises how retention of an infringement notice penalty, and the ability to issue that penalty without having to establish criminal guilt, may limit rights in criminal proceedings protected by section 22 of the *Human Rights Act 2004* (HRA). As an infringement notice penalty is included in the Bill, an increased infringement notice penalty in the proposed amendment will not impose substantial further limits.

The explanatory statement does not, however, include discussion of why demerit points is included in the proposed penalty. The Committee recognises that the penalty for negligent driving where the driving in question does not lead to grievous bodily harm or death is 20 penalty units, an infringement penalty of up to \$398 and three demerit points. Accumulating demerit points may result in a person having their ACT licence suspended for up to five months,<sup>1</sup> or may result in similar suspensions in other Australian jurisdictions. By amending the Bill to provide for demerit points to be incurred, the Bill may limit the freedom to movement protected by section 13 of the HRA or, where having a licence is a qualification for employment, the right to work protected by section 27B of the HRA.

Recognising that this proposed amendment has already been passed by the Assembly, the Committee requests further information from the Member for why demerits points were included as part of the amended penalty as soon as possible.

**The Committee draws this matter to the attention of the Assembly, and requests a response from the Member before the next meeting of this Committee on 26 April 2022.**

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<sup>1</sup> See *Road Transport (Driver Licensing) Act 1999* Div 2.3.

## SUBORDINATE LEGISLATION

### DISALLOWABLE INSTRUMENTS—NO COMMENT

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

- **Disallowable Instrument DI2022-4 being the Long Service Leave (Portable Schemes) Governing Board Appointment 2022 (No 3) made under section 79E of the *Long Service Leave (Portable Schemes) Act 2009* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member of the Long Service Leave Governing Board, representing employer organisations.**
- **Disallowable Instrument DI2022-5 being the Long Service Leave (Portable Schemes) Governing Board Appointment 2022 (No 2) made under section 79E of the *Long Service Leave (Portable Schemes) Act 2009* and sections 78 and 79 of the *Financial Management Act 1996* appoints a specified person as an independent member and deputy chair of the Long Service Leave Governing Board.**
- **Disallowable Instrument DI2022-6 being the Long Service Leave (Portable Schemes) Governing Board Appointment 2022 (No 1) made under section 79E of the *Long Service Leave (Portable Schemes) Act 2009* and sections 78 and 79 of the *Financial Management Act 1996* appoints a specified person as an independent member and chair of the Long Service Leave Governing Board.**
- **Disallowable Instrument DI2022-8 being the Nature Conservation (Scientific Committee) Appointment 2022 (No 1) made under sections 36 and 37 of the *Nature Conservation Act 2014* revokes DI2021-256 and appoints various specified persons as members and chair and deputy chair of the Scientific Committee.**
- **Disallowable Instrument DI2022-11 being the Road Transport (General) Application of Road Transport Legislation (Manuka Oval) Declaration 2022 (No 1) made under section 12 of the *Road Transport (General) Act 1999* provides that section 205 of the *Road Transport (Road Rules) Regulation 2017* does not apply to a specified area during the Dettol T20 International cricket series for the period 11 to 20 February 2022.**

### DISALLOWABLE INSTRUMENTS—COMMENT

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

#### FEES DETERMINATION

- **Disallowable Instrument DI2022-1 being the Court Procedures (Fees) Determination 2022 made under section 13 of the *Court Procedures Act 2004* revokes DI2021-154 and determines fees payable for the purposes of the Act.**

This instrument, made under section 13 of the *Court Procedures Act 2004*, determines fees for that Act. The Committee has a long-standing interest in fees determinations. The Committee notes that it has consistently required certain things of fees determinations. In its document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps*,<sup>2</sup> the Committee stated:

### FEES DETERMINATIONS

The Committee prefers that instruments that determine fees indicate (either in the instrument itself or in the Explanatory Statement) the amount of the “old” fee, the amount of the new fee, any percentage increase and also the reason for any increase (eg an adjustment based on the CPI). Given the importance of fees to the administration of the ACT, it assists the Committee (and the Legislative Assembly) if fees determinations expressly identify the magnitude of any fees increases.

The Committee also prefers that fees determinations expressly address the mandatory requirements of subsection 56(5) of the *Legislation Act 2001*, which provides that a fees determination must provide:

- by whom the fee is payable; and
- to whom the fee is to be paid.

For this instrument, the explanatory statement contains only the following, in relation to the fees determined:

The new determination updates the fees that applied from 1 July 2021 by including new fees in item 1209.3 and 1209.4 for publication of notice of intention to apply for a grant of probate, letters of administration (with or without a will), reseal of a foreign grant, and an amended or republished notice for this purpose.

There is no explanation in relation to the matters that the Committee usually expects to be addressed, in relation to a fees determination.

**The Committee draws the attention of the Legislative Assembly to this instrument under paragraph (10)(d) of the Committee’s Resolution of Appointment, on the basis that the explanatory statement for the instrument does not meet the technical or stylistic standards expected by the Committee.**

**This comment requires a response from the Minister, including an amended explanatory statement. The Committee would be grateful if the Minister could respond before 3 May 2022, when the Legislative Assembly’s capacity to move to disallow the instrument will expire.**

### COVID-19-RELATED INSTRUMENT / HUMAN RIGHTS ISSUES

- **Disallowable Instrument DI2022-2 being the Road Transport (General) (COVID-19 Emergency Response) Application Order 2022 (No 1) made under section 14 of the *Road Transport (General) Act 1999* varies two sections of the *Road Transport (Driver Licensing) Regulation 2000* to extend the expiry date of learner motorcycle licences for six months to ensure that members of the community are not disadvantaged due to the impact of the current health emergency.**

<sup>2</sup> [https://www.parliament.act.gov.au/\\_\\_data/assets/pdf\\_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf](https://www.parliament.act.gov.au/__data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf).

This instrument is made under section 14 of the *Road Transport (General) Act 1999*, which provides, in part:

**14 Application orders and emergency orders**

- (1) The Minister may order that the operation of regulations made under the road transport legislation, or a provision of such regulations—
  - (a) is suspended for a stated period; or
  - (b) is varied in the way stated in the order.

.....

The instrument relates to the COVID-19 pandemic. The explanatory statement for the instrument states:

This instrument continues two of the arrangements progressed in the *Road Transport (General) (COVID-19 Emergency Response) Application Order 2021 (No 1)* about driver licence expiry dates. This instrument orders that two sections of the *Road Transport (Driver Licensing) Regulation 2000* are varied to extend the expiry date of learner licences for six months to ensure that members of the community are not disadvantaged at this time due to the impact of the current health emergency on Government and non-Government services and the community in general.

The Committee notes that it dealt with the *Road Transport (General) (COVID-19 Emergency Response) Application Order 2021 (No 1)* in *Scrutiny Report 11* of the *10<sup>th</sup> Assembly* (19 November 2021), making a comment that required a response only in relation to the retrospective operation of the earlier instrument (which the Minister addressed in his response to the Committee).

The Committee notes that the explanatory statement for the instrument also addresses human rights implications of the instrument, indicating that the instrument “does not engage any human rights set out in the *Human Rights Act 2004*”.

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

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

STRICT LIABILITY OFFENCES / HUMAN RIGHTS ISSUES

- **Disallowable Instrument DI2022-3 being the Plastic Reduction (Public Event) Declaration 2022 (No 1) made under section 15 of the *Plastic Reduction Act 2021* provides that certain single-use plastic products cannot be supplied at specified public events.**

This instrument is made under section 15 of the *Plastic Reduction Act 2021*, which provides:

**15 Declaration of public events**

- (1) The Minister may declare that—
  - (a) a public event is an event to which this part applies (a **declared public event**); and



- (b) a single-use plastic product other than a prohibited plastic product (a **declared single-use plastic product**) must not be supplied at the event.

*Note* Part 3 deals with the supply of prohibited plastic products.

- (2) The Minister may only make a declaration under subsection (1) in relation to a public event that is not a government event if—
  - (a) the declaration is made not less than 3 months before the day the event starts; and
  - (b) the Minister is satisfied that—
    - (i) there is an alternative product to the declared single-use plastic product reasonably available to the organisers of the declared public event; and
    - (ii) the declaration will not have an unreasonable impact on the event.

**Examples—unreasonable impact**

- 1 supplies of the declared single-use plastic product have already been purchased by food vendors in advance of the public event
- 2 not having the declared single-use plastic product available for use at the public event would be incompatible with food safety requirements
- 3 the cost of the alternative product will make it unprofitable for food vendors to participate in the public event

- (3) A declaration is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) In this section:

**government event** means an event conducted by the Territory.

Section 3 of the instrument, in conjunction with column 1 of table 1 of the Schedule to the instrument, declares various events to be “public events”. They include Groovin the Moo 2022, Super Rugby and National Rugby League matches at GIO Stadium and Australian Football League and cricket matches at Manuka Oval, from 24 April 2022. Section 4 of the instrument, in conjunction with column 3 of table 1 of the Schedule to the instrument, prohibits the supply of single-use plastic straws, single-use plastic takeaway containers and single use plastic plates at these events.

The prohibition is subject to the exemption set out in section 5 of the instrument, which provides:

**5 Exemption**

A single-use plastic straw may be supplied upon request for a person who needs it for a medical reason. It is not a requirement of this exemption that any form of proof or evidence is required to access a single-use plastic straw.

The Committee notes that it dealt with a similar instrument – the Plastic Reduction (Public Event) Declaration 2021 (DI2021-270) – in *Scrutiny Report 13* of the 10<sup>th</sup> Assembly (15 March 2022), which declared a series of other events to be “public events”. The Committee’s comment did not require a response from the Minister.

The Committee notes that, under paragraph 15(2)(a) of the Plastic Reduction Act, a declaration must be made not less than three months before the day the event starts (unless the event is a government event). This instrument was made on 21 January 2022 and relates to events from 24 April 2022.

The Committee notes that the explanatory statement for the instrument (like the explanatory statement for the earlier instrument) contains the following discussion of human rights issues:

### **Human rights**

As a result of this instrument, certain conduct is made an offence under s 16 of the Act. This is a strict liability offence, which may be seen to engage the presumption of innocence. The Explanatory Statement for the *Plastic Reduction Bill 2020* addressed the human rights considerations related to the creation of the offence.

Plastic straws are required by some people because of a disability or medical need, and alternatives (such as paper or reusable straws) do not have all the same properties as plastic straws. Because of this, prohibiting the supply of single-use plastic straws at an event potentially affects human rights. Under s 8 of the *Human Rights Act 2004*, everyone has the right to equal and effective protection from discrimination, including discrimination because of disability. Because plastic straws are required by some people, prohibiting the supply of them could have the effect of limiting access for some people to food and drink services that are otherwise available to people at the event. However, the declaration avoids this outcome by having an exemption that allows a single-use plastic straw to be supplied to those who need them.

Under s 12 of the Human Rights Act, everyone has the right not to have his or her privacy interfered with unlawfully or arbitrarily. Making an exemption to enable access to straws for those with a disability or medical need has the potential to raise the question of whether a person has a disability or medical condition. To avoid this, the exemption states that it is not a requirement of the exemption that any form of proof or evidence is required to access a single-use plastic straw. The exemption in the declaration does not prevent those that need plastic straws from being able to access them, while still achieving the aim of reducing the number of single-use plastic straws used at the event.

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

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

### HUMAN RIGHTS ISSUES

- **Disallowable Instrument DI2022-7 being the Road Transport (General) Application of Road Transport Legislation Declaration 2022 (No 1) made under section 13 of the *Road Transport (General) Act 1999* provides that certain parts of the road transport legislation do not apply to a designated vehicle, or the driver of a designated vehicle, participating in a special stage of the White Wolf Racing Test Day.**

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 declaration provides that the *Motor Accident Injuries Act 2019* and various provisions of various other road transport regulations do not apply in relation to the White Wolf Racing Test Day, taking place on 9 February 2022.

The Committee notes that the explanatory statement for the instrument contains the following discussion of 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.

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

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

### HUMAN RIGHTS ISSUES

- **Disallowable Instrument DI2022-9 being the Crimes (Surveillance Devices) Body-worn Cameras Guidelines 2022 made under section 43C of the Crimes (Surveillance Devices) Act 2010 makes the Body-worn cameras Guidelines 2022 in relation to the use of body-worn cameras by police officers.**

This instrument, made under section 43C of the *Crimes (Surveillance Devices) Act 2010*, makes guidelines for the use of body-worn cameras (**BWCs**) by police officers. The explanatory statement for the instrument states:

... This is a publicly available guideline issued by the chief police officer in accordance with the Act, and provides guidance on the use of BWCs by police officers in the performance of their duties, and to assist the ACT community in understanding how police use BWCs and their rights involved in their use.

The guidelines detail when a BWC must/may be used, human rights considerations when making a decision to record, as well as storage, use and disposal requirements for BWC recordings. The guidelines are issued by the Chief Police Officer in consultation with the director-general. Police officers are required to comply with the requirements of the guidelines.

The explanatory statement goes on to discuss human rights issues:

#### *Part 8 – Human Rights*

This part addresses how the guidelines have been developed in accordance with the *Human Rights Act 2004* (ACT). The use of BWCs by police has a number of human rights benefits, including by improved accountability and transparency in police interactions with members of the community, by providing an accurate and detailed record of events and decision making processes by police in the performance of their duties.

BWC recordings can provide evidence that assists all parties in criminal proceedings, supporting a person's right in criminal proceedings. For instance, it is anticipated that the expanded use of BWCs by police inside private premises, within the reasonable limitations as set out in the guidelines, will support the human rights of victim-survivors of family violence by enabling recording in such settings.

This part also explains how a member of the public may make a complaint if they consider that a police officer's use of a BWC has unreasonably interfered or limited their human rights.

The Committee also notes that a more substantive discussion of the human rights implications is actually set out in Part 8 of the actual guidelines, which states:

### **8. Human Rights**

- 8.1. These guidelines have been developed in consideration of the *Human Rights Act 2004* (ACT).
- 8.2. As detailed in these guidelines, a decision to use or not use a BWC must be reasonable, necessary and proportionate in the circumstances, on consideration of the requirements under the Act and the human rights of persons impacted by BWC use.
- 8.3. The use of BWCs when dealing with members of the public, as well as the storage, access and use of the recordings, can constitute a reasonable, necessary and proportionate limitation to a person's human rights.
- 8.4. The use of, or decisions not to use, BWCs by police officers, in accordance with these guidelines and the Act, promotes the following rights:

- a) Section 10 – protection from torture and cruel, inhuman or degrading treatment;
  - b) Section 18 – liberty and security of person; and
  - c) Section 22 – rights in criminal proceedings.
- 8.5. These guidelines promote the above human rights through improved accountability and transparency in police interactions with members of the community, by providing an accurate and detailed record of events and decision making processes by police in the performance of their duties.
- 8.6. Additionally, BWC recordings can provide evidence that assists all parties in criminal proceedings, including a defendant, supporting a person’s right in criminal proceedings.
- 8.7. The use of, or decisions not to use, BWCs by police officers, in accordance with these guidelines and the Act, can engage and limit the following rights:
- a) Section 12 – Privacy and reputation.
- 8.8. Police use of a BWC can be reasonably expected to limit a person’s privacy in some circumstances by recording their actions and/or conversations, including in the privacy of their own home.
- 8.9. These guidelines clarify the circumstances in which police may or must use BWCs to ensure that any limitation on the right to privacy arising from the use of BWCs will be reasonable, necessary and proportionate in the circumstances, avoiding disproportionate or arbitrary limitations.
- 8.10. The limitation of the right to an individuals’ privacy in some circumstances is proportionate to the benefits of using BWCs, including improvements in evidence-gathering, community safety, and accountability and transparency.
- 8.11. If a person considers that a police officer’s use of a BWC has unreasonably interfered with or limited their human rights, they may submit a complaint in writing, by phone, via website, or by attending the relevant office, to the following:
- a) ACT Ombudsman;
  - b) Office of the Australian Information Commissioner; and
  - c) AFP (in accordance with Part 7).

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

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

#### HUMAN RIGHTS ISSUES

- **Disallowable Instrument DI2022-10 being the Planning and Development (Canberra Urban Lakes and Ponds) Land Management Plan 2022 made under section 328 of the *Planning and Development Act 2007* revokes DI2001-173 and approves the Canberra Urban Lakes and Ponds Land Management Plan.**

This instrument approves a Canberra Urban Lakes and Ponds Land Management Plan, under section 328 of the *Planning and Development Act 2007*. The Committee notes that the explanatory statement for the instrument contains the following discussion of human rights issues:

### **Human Rights**

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

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

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

## SUBORDINATE LAW—COMMENT

The Committee has examined the following subordinate law and offers these comments on it:

### HUMAN RIGHTS ISSUES

- **Subordinate Law SL2022-1 being the Crimes (Surveillance Devices) Amendment Regulation 2022 (No 1) made under the *Crimes (Surveillance Devices) Act 2010* expands the circumstances in which a surveillance device may lawfully be used by adding the *Surveillance Devices Act 2016 (SA)* to the list of corresponding laws.**

This subordinate law amends the *Crimes (Surveillance Devices) Regulation 2017*, which (under the *Crimes (Surveillance Devices) Act 2010*) is part of a legal framework for a surveillance device warrant scheme in the ACT. According to the explanatory statement for this subordinate law:

The scheme authorises the installation, use and maintenance of surveillance devices by law enforcement officers in the ACT as well as in other jurisdictions with corresponding laws. The [Crimes (Surveillance Devices) Act] allows jurisdictions with corresponding laws to use their surveillance devices warrants in the ACT. Laws in NSW, Victoria, Queensland, Tasmania and the Northern Territory have already been declared to correspond to the [Crimes (Surveillance Devices) Act].

Section 4 of this subordinate law inserts into the Crimes (Surveillance Devices) Regulation a new paragraph 3(f), the effect of which is to make the *Surveillance Devices Act 2016 (SA)* a “corresponding law”, except to the extent that it provides for a “surveillance device (emergency) authority” to be granted in relation to a “serious drug offence”. A note to the new provision states that a surveillance device (emergency) authority would otherwise be by a corresponding emergency authorisation.

As to the effect of making a law a “corresponding law”, according to the explanatory statement for the Crimes (Surveillance Devices) Bill 2010 (which was enacted as the *Crimes (Surveillance Devices) Act 2010*):

The scheme [put in place by the Crimes (Surveillance Devices) Act] will authorise the use of surveillance devices by law enforcement officer in the ACT that can also be used in other jurisdictions with corresponding law. Conversely, the Bill will enable other jurisdictions with corresponding law to use their surveillance devices warrants in the ACT.

The explanatory statement for this subordinate law states:

The *Surveillance Devices Act 2016 (SA)* has been declared as a corresponding law as it is broadly consistent with the ACT legislation and will assist with the facilitation of cross-border criminal investigations. The limitation on surveillance device (emergency) authorities for serious drug offences has been included as under the ACT legislation an emergency authorisation may only be made if a police officer suspects or believes on reasonable grounds that an imminent threat of serious violence to a person or substantial damage to property exists. In SA, a surveillance device emergency authority for drug offences can be granted in broader circumstances, which would not be the case in the ACT. To ensure consistency in the use of emergency authorities for drug offences committed in the ACT, this aspect of the SA law has been specifically excluded.

Section 5 of this subordinate law inserts into section 3 of the Crimes (Surveillance Devices) Regulation a new subsection 3(2), containing definitions of “serious drug offence” and “surveillance device (emergency) authority”, for the purposes of the exception specified in new paragraph 3(f).

The Committee notes that the explanatory statement for this subordinate law goes on to discuss human rights issues:

The amendments may limit human rights, including the right to privacy, as they expand the circumstances in which a surveillance device may be lawfully used by adding the South Australia legislation to the list of corresponding laws. The amendments are for the legitimate purpose of facilitating law enforcement and any limitation on rights is proportionate to the achievement of that aim. A safeguard has been incorporated to provide that a corresponding emergency authorisation cannot be granted in relation to a surveillance device (emergency) authority issued in South Australia for a serious drug offence as the ACT legislation does not allow emergency authorisations to be made in those circumstances. Section 45 of the Act authorises regulations in relation to the Act.

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

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

## RESPONSES

### GOVERNMENT RESPONSES

- The Minister for Transport and City Services, dated 18 March 2022, in relation to comments made in Scrutiny Report 13 concerning the Domestic Animals Legislation Amendment Bill 2022.
- The Minister for Health, dated 21 March 2022, in relation to comments made in Scrutiny Report 12 concerning the Public Health Amendment Bill 2021 (No 2).

- The Minister for Transport and City Services, dated 24 March 2022, in relation to comments made in Scrutiny Report 12 concerning the Road Transport Legislation Amendment Bill 2021 (No 2).

**[These responses](#)<sup>3</sup> can be viewed online.**

- The Minister for Industrial Relations and Workplace Safety, dated 22 March 2022, in relation to comments made in Scrutiny Report 13 concerning Subordinate Law SL2021-29—Workers Compensation Amendment regulations 2021 (No 1).

**[This response](#)<sup>4</sup> can be viewed online.**

The Committee wishes to thank the Minister for Transport and City Services, the Minister for Health and the Minister for Industrial Relations and Workplace Safety for their helpful responses.

Peter Cain MLA  
Chair

March 2022

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<sup>3</sup> [https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/JCS\\_Scrutiny/responses-to-comments-on-bills](https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/JCS_Scrutiny/responses-to-comments-on-bills).

<sup>4</sup> [https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/JCS\\_Scrutiny/response-to-comments-on-subordinate-legislation](https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/JCS_Scrutiny/response-to-comments-on-subordinate-legislation).



# OUTSTANDING RESPONSES

## BILLS/SUBORDINATE LEGISLATION

- **Report 2, dated 24 March 2021**
  - Drugs of Dependence (Personal Use) Amendment Bill 2021
- **Report 7, dated 4 May 2021**
  - Road Transport (Safety and Traffic Management) Amendment Bill 2021 (No 2) [response required prior to the Bill being debated]
- **Report 12, dated 1 February 2022**
  - Electoral Amendment Bill 2021
  - Financial Management Amendment Bill 2021 (No 2)
- **Report 13, dated 15 March 2022**
  - Crimes (Consent) Amendment Bill 2022