Dear Mrs Jones

I write in response to comments made by the Standing Committee on Justice and Community Safety (the Standing Committee) in Scrutiny Report 3 for 2017. The Committee has considered six Fees Determinations and provided comments. My response concerns Disallowable Instrument DI2016-294, the Court Procedures (Fees) Determination 2016 (No3) made under section 13 of the Court Procedures Act 2004, which revokes DI2016-101 and determines fees payable for the purposes of the Court Procedures Act.

The Committee notes that the Explanatory Statement for DI2016-294 provides no information about the ‘old’ fee in DI2016-101, the new fee and the percentage of the increase. This is correct – this is not the purpose of DI2016-294.

The Committee’s Guide to Writing an Explanatory Statement provides that the form and content of an explanatory statement is dictated by its purpose. Unlike the five other instruments identified by the Committee in Scrutiny Report 3, DI2016-294 changes none of the fees notified in the previous determination (DI2016-101). It reflects changes made to the ACT Civil and Administrative Tribunal Act 2008 and the Magistrates Court Act 1930 by the ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2), to give exclusive jurisdiction to the ACT Civil and Administrative Tribunal (the ACAT) to hear and determine civil disputes for claims of $25,000 or less. This is an increase from the previous $10,000 limit.
The Explanatory Statement for DI2016-294 therefore states:

‘The purpose of this determination is to reflect the *ACT Civil and Administrative Tribunal Act 2008* increased jurisdiction in civil disputes, which take effect on 15 December 2016 [...] The fee amounts are unchanged.’

The Committee notes on page 12 of Scrutiny Report 3 that, ‘(i)t is possible that ‘the fee amounts are unchanged’ is intended to refer to all the fees provided for by the instrument’, but that ‘this is not clear’. To clarify, recently amended fees are unchanged, but the jurisdictional limits have been increased. I note that this is confirmed by various Explanatory Notes in the instrument (for example, at items 1000, 1001 and 1107).

I note that the Committee’s general statement is that the explanatory statements associated with the six instruments do not meet the technical or stylistic standards expected by the Committee. It is not clear how the Explanatory Statement for DI2016-294 fails to meet technical or stylistic standards. However, I will consider including more information in explanatory statements for instruments like DI2016-294, which are made to give effect to specific reforms. I recognise that such information may assist members of the public to understand the operation and effect of subordinate legislation, making our laws more accessible.

Once again, I thank the Committee for its comments.

Yours sincerely

Gordon Ramsay MLA
Attorney-General