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Cultural Events
Minister for Building Quality Improvement
Minister for Business and Regulatory Services
Minister for Seniors and Veterans
Member for Ginninderra

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mrs Jones

I write in response to the Committee's comments in its Scrutiny Reports 46 (dated 21 July 2020) and 47 (dated 28 July 2020) in relation to the following Disallowable Instruments and Subordinate Law:

- Disallowable Instrument DI2020-130 – the *Gambling and Racing Control (Governing Board) Appointment 2020 (No 2)*;
- Disallowable Instrument DI2020-131 – the *Gambling and Racing Control (Governing Board) Appointment 2020 (No 1)*;
- Disallowable Instrument DI2020-132 – the *Lotteries (Fees) Determination 2020 (No 1)*;
- Disallowable Instrument DI2020-171 – the *Lotteries (Fees) Determination 2020 (No 2)*; and
- Subordinate Law SL2020-20 – the *Court Procedures Amendment Rules 2020 (No 3)*.

ACT Gambling and Racing Commission Governing Board appointments

As the Committee has noted in Scrutiny Report 46, the *Gambling and Racing Control (Governing Board) Appointment 2020 (No 2)* [DI2020-130] and the *Gambling and Racing Control (Governing Board) Appointment 2020 (No 1)* [DI2020-131] appoint two specified persons as member and chair and as a member, respectively, of the ACT Gambling and Racing Commission Governing Board (the Board).

The Committee has expressed the view that the Explanatory Statements for DI2020-130 and DI2020-131 do not meet the technical or stylistic standards expected by the Committee. The Committee has noted that the explanatory statements for the two instruments do not address the limitations on eligibility for appointment to the Board as set out in subsection 12(2) of the GRC Act.

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The Committee has observed that:

'While it might be assumed that the Minister would not have made the relevant appointments if any of the various limitations on eligibility applied—and while it might also be assumed that this Committee, which was consulted on the appointments, in its non-legislative scrutiny role, would also have considered these matters—the Committee considers that it is always preferable that explanatory statements for appointments address such limitations on eligibility for appointment.'

The Committee has also noted that the formal parts of both Disallowable Instruments refer to sections 78 and 79 of the *Financial Management Act 1996*. The Committee has observed that:

'Section 78 of the Financial Management Act applies, generally, to the appointment of the members of the governing board of a territory authority, other than the CEO... Section 79 of the Financial Management Act deals, generally, with the appointment of chairs and deputy chairs of governing boards of territory authorities... The Committee cannot identify a reason why section 79 is relied upon, in relation to [DI2020-131] (i.e. because it relates only to the appointment of the specified person as a member of the relevant board).'

The Committee has asked that I respond to these comments.

I acknowledge the Committee's comments and offer the following response.

Mr Baxter and Ms Franklin have declared that none of the disqualifying factors identified in subsection 12(2) of the GRC Act apply to the appointments made by DI2020-130 and DI2020-131. Both appointees are eligible to be members of the Board.

I have asked the Justice and Community Safety Directorate to ensure that future Explanatory Statements for appointments to the ACT Gambling and Racing Commission Governing Board address eligibility of the appointees under subsection 12(2) of the Act.

I acknowledge that Disallowable Instrument DI2020-131 contains an inadvertent and unnecessary reference to section 79 of the *Financial Management Act 1996*, which relates to the appointment of chairs and deputy chairs of governing boards of territory authorities. I note that DI2020-131 relates only to the appointment of the specified person as a member of the Board and thank the Committee for its identification of this superfluous reference.

Lotteries (Fees) Determinations

In Scrutiny Report 46, the Committee has provided comments in relation to the Explanatory Statement to the *Lotteries (Fees) Determination 2020 (No 1)* [DI2020-132]. The Committee has expressed the view that the Explanatory Statement does not meet the technical or stylistic standards expected by the Committee. The Committee has commented on the brevity of the Explanatory Statement and noted specifically that the fees in the new Fees Determination [DI2020-132] appear to be the same as the "old" fees in the *Lotteries (Fees) Determination 2019 (No 1)* [DI2019-100].

In relation to the explanatory statement to DI2020-132, I offer the following response.

As identified in the Explanatory Statement to DI2020-132, the purpose of this Disallowable Instrument was to seek an authorising provision for the ACT Gambling and Racing Commission (the Commission) to waive, refund or remit fees under the *Lotteries Act 1964* where the conduct of the associated lottery had been impacted due to the COVID-19 pandemic or other unforeseen event.

This instrument was not intended to address annual fee increases. It was a special purpose fees determination to allow for requests to be processed, considering the difficult financial circumstances that COVID-19 has placed on businesses and individuals.

I note also the Committee's comments in Scrutiny report 47 on the revocation of DI2020-132 for the new Fees Determination, the *Lotteries (Fees) Determination 2020 (No 2)* [DI2020-171]. The Committee has sought my advice as to why it was necessary for DI2020-171 (made on 16 June 2020) to revoke and re-make the previous instrument, DI2020-132 (made on 26 May 2020), so soon after it was made.

As I have explained above, DI2020-132 was made to provide for the Commission's authority to consider requests from affected businesses seeking a refund or waiver because of the impact of COVID-19 on the prize offered. The Committee has noted that the fees in DI2020-132 were the same as the 'old' fees in the previous instrument [DI2019-100]. The re-made Fees Determination, DI2020-171, provides for annual increases to the relevant fees. As the Committee would be aware, these are typically notified towards the end of June, allowing for relevant fees to become effective on 1 July to cover the new financial year. DI2020-132 was made prior to the annual fees increase as it was deemed unsuitable to ask businesses to wait for refunds in order for the waiver/refund amendments to be rolled into the annual fee increase amendment.

I trust that this clarification is of assistance.

Court Procedures Amendment Rules 2020 (No 3)

As the Committee has noted in Scrutiny Report 46, the *Court Procedures Amendment Rules 2020 (No 3)* [SL2020-20] (repealed) amends the *Court Procedures Rules 2006* to insert notes regarding Australia's obligations under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in the Civil and Commercial matters, and to amend Schedule 4 in relation to transitional costs for work performed by a solicitor or clerk.

The Committee has noted the Explanatory Statement for SL2020-20, noting in particular that the amendment made by section 6 replaces a series of items in the table in Part 4.2 of Schedule 4, that deal with what can be charged in relation to 'attendances' by a solicitor or clerk, with a simplified version of those provisions. The Committee has observed that

'The basic charge rates appears to be unchanged from the earlier version of the provisions. However, there is no reference to this in the (very brief) explanatory statement for the subordinate law.'

The Committee has expressed its particular interest in relation to subordinate legislation that imposes fees and charges and its expectation that fees should be properly explained. The Committee has noted that

'there appears to be no increase in charges involved in the amendments made by this subordinate law. However, it would have been preferable if this had been made clear, in the explanatory statement for the subordinate law.'

The Committee has expressed its expectation that I respond to these comments. I acknowledge the Committee's comments and offer the following response.

The Rule-Making Committee (currently comprising the Chief Justice, Justice Elkaim, Acting Chief Magistrate and Magistrate Morrison) makes rules in relation to the practice and procedure of ACT Courts and their registries, pursuant to section 7 of the *Court Procedures Act 2004*. The Courts and the Joint Rules Advisory Committee continuously conduct a consultative review of the rules, which may result in amendments to the *Court Procedures Rules 2006* (the Rules). The Rules are made by the Judiciary and not by the Executive.

Schedule 4 of the Rules sets out the scale of costs allowed to be charged for tasks upon the taxation of a legal matter. SL2020-20 amends Schedule 4, Part 4.2, Division 4.2.6 of the Rules by collapsing several chargeable items undertaken by a solicitor into one item, allowing for a streamlined process in assessing allowable costs.

I note that this explanation is largely reflected in the Explanatory Statement issued with the authority of the Rule-Making Committee.

I trust this clarification is of assistance. I thank the Committee for its comments in relation to each of these instruments and for its ongoing work in the role of legislative scrutiny.

Yours sincerely

Gordon Ramsay MLA
Attorney General