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

SCRUTINY REPORT 3

14 APRIL 2021
THE COMMITTEE

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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

BILLS—COMMENT

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

DOMESTIC ANIMALS LEGISLATION AMENDMENT BILL 2021

This Bill will amend the Domestic Animals Act 2000 and Domestic Animals Regulation 2001 to require dog registration to be renewed annually.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee Resolution of Appointment paragraph (10)(a)(i)

Report under section 38 of the Human Rights Act 2004 (HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

The Bill will require personal information to be provided upon registration and renewal, including any conviction or finding of guilt of the keeper within the last 10 years against an animal welfare offence or a non-excluded offence against the Domestic Animals Act. The Bill will also allow the Registrar to request a keeper of a registered dog to provide any information that is reasonably necessary for carrying out a function under the Act, with registration able to be cancelled if there is a failure to comply with the notice. The explanatory statement accompanying the Bill recognises that these requirements may limit the protection of privacy provided by section 12 of the HRA and provides a justification using the framework in section 28 of the HRA. The Committee refers that statement to the Assembly.

Right to the presumption of innocence (section 22 HRA)

Under the Bill, current life-time registration of dogs kept in the ACT will be converted to 12 months. The Registrar will be required to provide notice at least 14 days prior to the expiry of the registration. The Bill will create a strict liability offence of failing to comply with the reminder notice, with a maximum penalty of 10 penalty units. As the introduction of a strict liability offence removes the burden on establishing the fault element of the offence, the Bill may limit the right to the presumption of innocence protected by section 22 of the HRA. The explanatory statement accompanying the Bill refers to this potential limitation and outlines why it should be considered reasonable using the framework in section 28 of the HRA. The Committee refers that statement to the Assembly.

The Committee is concerned, however, that the elements of this strict liability offence are not clearly defined. Under proposed section 10, the Bill provides that the reminder notice must state various matters, including the registration end date, that the keeper is required to confirm or update registration information and how the keeper can access that information, the requirement for consent by a parent or guardian where appropriate, and how the keeper may comply with the notice. The strict liability offence in proposed section 10A is expressed as failing to comply with the reminder notice. It is therefore not clear whether complying with the reminder notice is restricted to confirming or updating registration information and providing parental consent where appropriate or may extend to other requirements not otherwise explicitly set out in the legislation. The Committee therefore asks that this be clarified.
The Committee also notes that under proposed section 10B the Bill will provide for registration to be renewed where a person complies with the reminder notice. It is not clear what happens if registration is not renewed, for example, due to a failure by the Registrar to comply with the requirements to send a reminder notice. Section 14 of the Domestic Animals Act provides that it is a strict liability offence for a person to keep an unregistered dog, subject to a penalty of 15 penalty units. The Committee is concerned that a person may be subject to a strict liability offence in circumstances where they have not received the reminder notice, and will have the burden of establishing a reasonable belief that the dog was registered. The Committee therefore requests that further information be provided on why it is considered necessary to have two strict liability offence relating to maintaining registration of dogs.

The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond.

REVENUE LEGISLATION AMENDMENT BILL 2021

This Bill will amend various legislation relating to the administration and operation of the ACT tax system.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee Resolution of Appointment paragraph (10)(a)(i)

The Bill will extend the current exemption from Land Tax for land made available for affordable community housing. The current exemption is due to expire on 30 June 2021. The amendment in the Bill to remove this expiry date is expressed to commence no later than 30 June 2021, meaning the Bill will have retrospective operation if notified after this date. The Committee notes, however, that this potential retrospective operation is recognised in the explanatory statement accompanying the Bill, and that the extension of the exemption will not adversely affect any person’s rights or impose liabilities.

The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee Resolution of Appointment paragraph (10)(a)(i)

Report under section 38 of the Human Rights Act 2004 (HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

The Bill will amend the current secrecy provisions in the Taxation Administration Act 1999 to extend the range of authorized recipients with whom taxation officers can share taxpayers’ information for specified purposes. These include various Commonwealth enforcement, regulatory and service and support bodies. Disclosure to a Minister will also be allowed to provide a response to a constituent about the constituent’s tax affairs. The Bill will also allow for disclosures to other persons to allow them to exercise a function for an authorized recipient in relation to the specified purpose of the disclosure.

As these provisions will extend the circumstances in which a taxpayer’s personal information may be shared, they potentially limit the protection of privacy and reputation provided by section 12 of the
HRA. The explanatory statement accompanying the Bill recognizes this potential limitation and provides a detailed description of its nature and justification using the framework set out in section 28 of the HRA. The Committee refers that statement to the Assembly, noting in particular the limitations on the purposes for which information can be disclosed and further protections provided by the Act against further disclosure of any information provided.

The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.

SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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

Disallowable Instrument DI2020-295 being the Legislative Assembly (Members’ Staff) Members’ Salary Cap Determination 2020 (No 3) made under subsections 10(3) and 20(4) of the Legislative Assembly (Members’ Staff) Act 1989 revokes DI2020-146 and determines the conditions under which a member may hire staff, contractors or consultants.

Disallowable Instrument DI2020-296 being the Road Transport (General) Application of Road Transport Legislation (Manuka Oval) Declaration 2020 (No 1) made under section 12 of the Road Transport (General) Act 1999 disapplies section 205 of the Road Transport (Road Rules) Regulation to support parking arrangements for major sporting events at Manuka Oval in 2020.


Disallowable Instrument DI2020-299 being the Tobacco and Other Smoking Products (Fees) Determination 2020 (No 1) made under section 70 of the Tobacco and Other Smoking Products Act 1927 revokes DI2019-252 and determines fees payable for the purposes of the Act.


Disallowable Instrument DI2020-309 being the Health (Interest Charge) Determination 2020 (No 1) made under section 193 of the Health Act 1993 revokes DI2019-221 and determines the interest charged on the aggregate amount of fees and charges unpaid after the due date.

Disallowable Instrument DI2020-310 being the Legislative Assembly (Members’ Staff) Variable Terms of Employment Of Office-holders’ Staff Determination 2020 (No 1) made under subsection 6(3) of the Legislative Assembly (Members’ Staff) Act 1989 revokes DI2018-233 and determines the remuneration, entitlements, and terms and conditions of employment of the Executive Chief of Staff.

Disallowable Instrument DI2021-1 being the Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2021 (No 1) made under subsection 21(1) of the Race and Sports Bookmaking Act 2001 revokes DI2020-144 and determines the area within one metre of any selling terminal, owned and operated by Tabcorp ACT Pty Ltd and located within the places identified in the Schedule as a sports bookmaking venue.

Disallowable Instrument DI2021-2 being the Integrity Commission (Acting Commissioner) Appointment 2021 (No 1) made under section 25 of the Integrity Commission Act 2018 appoints a specified person as the acting ACT Integrity Commissioner.

Disallowable Instrument DI2021-3 being the Integrity Commission (Acting Commissioner) Appointment 2021 (No 2) made under section 25 of the Integrity Commission Act 2018 appoints a specified person as the acting ACT Integrity Commissioner.

Disallowable Instrument DI2021-5 being the Road Transport (General) Application of Road Transport Legislation (Manuka Oval) Declaration 2021 (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 for an area around Manuka Oval during certain times in January 2021.

Disallowable Instrument DI2021-7 being the Road Transport (General) Application of Road Transport Legislation (Manuka Oval) Declaration 2021 (No 2) 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 for a specified area during a certain time in January 2021.

Disallowable Instrument DI2021-8 being the Health (Fees) Determination 2021 (No 1) made under section 192 of the Health Act 1993 repeals DI2020-195 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2021-14 being the Children and Young People (Death Review Committee) Appointment 2021 (No 1) made under section 727D of the Children and Young People Act 2008 appoints specified persons as members of the Children and Young People Death Review Committee.

Disallowable Instrument DI2021-17 being the Road Transport (General) Application of Road Transport Legislation (Manuka Oval) Declaration 2021 (No 3) 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 for a specified area during certain periods in January 2021.

Disallowable Instrument DI2021-18 being the Land Tax (Affordable Community Housing) Determination 2021 made under paragraph 13A(5)(a) of the Land Tax Act 2004 revokes DI2020-277 and determines the eligibility criteria that an owner of a parcel of land must satisfy to be eligible for an exemption under section 13A of the Act.

Disallowable Instrument DI2021-19 being the Civil Law (Wrongs) Professional Standards Council Appointment 2021 (No 1) made under Schedule 4, section 4.38 of the Civil Law (Wrongs) Act 2002 appoints a specified person as a member of the Professional Standards Council.

Disallowable Instrument DI2021-20 being the Civil Law (Wrongs) Professional Standards Council Appointment 2021 (No 2) made under Schedule 4, section 4.38 of the Civil Law (Wrongs) Act 2002 appoints a specified person as a member of the Professional Standards Council.

Disallowable Instrument DI2021-21 being the Civil Law (Wrongs) Professional Standards Council Appointment 2021 (No 3) made under Schedule 4, section 4.38 of the Civil Law (Wrongs) Act 2002 appoints a specified person as a member of the Professional Standards Council.

Disallowable Instrument DI2021-24 being the Utilities (Licensing) Exemption 2021 made under section 22 of the Utilities Act 2000 exempts the Queanbeyan-Palerang Regional Council from the requirement to hold a utility licence for sewerage services provided in the ACT.

Disallowable Instrument DI2021-26 being the Heritage (Council Chairperson) Appointment 2021 (No 1) made under section 17 of the Heritage Act 2004 appoints a specified person as chairperson of the ACT Heritage Council.

Disallowable Instrument DI2021-27 being the Heritage (Council Deputy Chairperson) Appointment 2021 (No 1) made under section 17 of the Heritage Act 2004 appoints a specified person as deputy chairperson of the ACT Heritage Council.

Disallowable Instrument DI2021-28 being the Heritage (Council Member) Appointment 2021 (No 1) made under section 17 of the Heritage Act 2004 appoints a specified person as a member of the ACT Heritage Council.

Disallowable Instrument DI2021-29 being the Heritage (Council Member) Appointment 2021 (No 2) made under section 17 of the Heritage Act 2004 appoints a specified person as a member of the ACT Heritage Council.

Disallowable Instrument DI2021-30 being the Heritage (Council Member) Appointment 2021 (No 3) made under section 17 of the Heritage Act 2004 appoints a specified person as a member of the ACT Heritage Council.

Disallowable Instrument DI2021-31 being the Heritage (Council Member) Appointment 2021 (No 4) made under section 17 of the Heritage Act 2004 appoints a specified person as a member of the ACT Heritage Council.
Disallowable Instrument DI2021-32 being the Heritage (Council Member) Appointment 2021 (No 6) made under section 17 of the Heritage Act 2004 appoints a specified person as a member of the ACT Heritage Council.

Disallowable Instrument DI2021-33 being the Heritage (Council Member) Appointment 2021 (No 7) made under section 17 of the Heritage Act 2004 appoints a specified person as a member of the ACT Heritage Council.

Disallowable Instrument DI2021-34 being the Medicines, Poisons and Therapeutic Goods (Medicines Advisory Committee) Appointment 2021 (No 1) made under section 635 of the Medicines, Poisons and Therapeutic Goods Regulation 2008 appoints specified persons as Chair and members of the Medicines Advisory Committee.

Disallowable Instrument DI2021-35 being the Medicines, Poisons and Therapeutic Goods (Medicines Advisory Committee) Appointment 2021 (No 2) made under section 635 of the Medicines, Poisons and Therapeutic Goods Regulation 2008 appoints a specified person as a member of the Medicines Advisory Committee as a consumer representative.

Disallowable Instrument DI2021-36 being the Integrity Commission (Commissioner Selection Criteria and Process) Determination 2021 made under section 27 of the Integrity Commission Act 2018 determines the selection process and selection criteria that apply to the appointment of the Integrity Commissioner.

Disallowable Instrument DI2021-37 being the University of Canberra Council Appointment 2021 (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 INSTRUMENTS—COMMENT

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

Human rights issues

Disallowable Instrument DI2020-301 being the Public Place Names (Whitlam) Determination 2020 (No 2) made under section 3 of the Public Place Names Act 1989 determines the names of 23 roads in the Division of Whitlam.

This instrument, made under section 3 of the Public Place Names Act 1989, names roads in the suburb of Whitlam. The Committee notes that the explanatory statement for the instrument includes a discussion of human rights issues:

Human Rights

Section 12 of the Human Rights Act 2004 creates a right to privacy and reputation.

Conceivably, the naming of a place has the potential to infringe the right to privacy and reputation of a person after whom a place is named. In this case the process through which places are named ensures that this right is not infringed and that only appropriate information is included in a determination. This process includes the consultation described above. Additionally, in relation to places named after people, only the names of deceased persons are determined.
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 DI2020-302 being the Road Transport (General) Application of Road Transport Legislation Declaration 2020 (No 8) 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, while being used to participate in a special stage of the 2020 Netier National Capital Rally from 27 November to 29 November 2020.

Disallowable Instrument DI2020-303 being the Road Transport (General) Application of Road Transport Legislation Declaration 2020 (No 9) 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, while being used to participate in a special stage of the Neal Bates Motorsport Test Day taking place on 30 November 2020.

The two instruments mentioned above, both made under section 13 of the *Road Transport (General) Act 1999*, disapply certain provisions of the road transport legislation, in relation to the holding of the Netier Capital Rally and the Neal Bates Motorsport Test Day, respectively.

The explanatory statement for the first instrument mentioned above addresses human rights issues arising from the instrument:

**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 rally in closing parts of the forests in which the rally 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 forests 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 forests 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 explanatory statement for the second instrument mentioned above contains a similar statement.

The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for these instruments.

This comment does not require a response from the Minister.

Minor drafting issue


Each of the two instruments mentioned above appoints (and, in the case of one of the specified persons reappoints) two specified persons as an “official visitor”, under paragraph 10(1)(b) of the Official Visitor Act 2012. The Committee notes that the instruments relate to the same two specified persons. The terms of appointment are the same. The Committee notes that the first instrument is dated 11 December 2020 and the second instrument, 16 December 2020.

The Committee notes that the explanatory statement for the second instrument mentioned above states:

[The two specified persons] were originally reappointed under DI2020-305. However, a procedural oversight was identified in relation to the Standing Committee consultation on these appointments. When the Standing Committee originally considered the proposed appointments, they were not authorised to do so under the s228 of the Legislation Act 2001. This oversight was corrected on 15 December 2020 when the Acting Speaker signed the nomination of committees for consultation on statutory appointments. The appointments of [the two specified persons] were then reconsidered by the duly authorised Standing Committee on 16 December 2020.

This comment does not require a response from the Minister.

Fees determination

This instrument determines fees for the *Cemeteries and Crematoria Act 2020*. 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*, 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

The Committee notes, with approval, that the instrument itself identifies the “old” and “new” fees. Further, the Committee notes that explanatory statement for the instrument states:

The determination increases fees by approximately 8.0% for the majority of services provided, this is to phase fee increases which were recommended in a report commissioned by the Regulator of the Act to ensure there is adequate funding in the Perpetual Care Trust Reserve to meet the requirements of the Act. Fees for ancillary services, including plaques, will increase by 2.0% WPI. All fees are rounded for cash handling purposes.

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

**Human rights issues**

Disallowable Instrument DI2021-4 being the *Working with Vulnerable People (Background Checking) Risk Assessment Guidelines 2021 (No 1)* made under section 27 of the *Working with Vulnerable People (Background Checking) Act 2011* repeals DI2018-223 and makes the *Working with Vulnerable People Commissioner’s Risk Assessment Guidelines*.

This instrument makes “risk assessment guidelines”, under section 27 of the *Working with Vulnerable People (Background Checking) Act 2011*. The instrument revokes and re-makes an earlier set of risk assessment guidelines (ie DI2018-223). The explanatory statement for the instrument indicates that the revised guidelines reflect amendments to the Working with Vulnerable People (Background Checking) Act made in 2019 and in 2020 that commenced on 1 February 2021. The Committee notes that the revised guidelines were made on 12 January 2021 and their commencement is tied to the commencement of amendments to the Act.

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The Preamble to the guidelines made by this instrument offers the following background information:

The Working with Vulnerable People (Background Checking) Act 2011 (the Act), as amended, provides for background checking and registration of people who work with vulnerable people.

The intent of the Working with Vulnerable People (WWVP) scheme is to protect vulnerable people from harm. The intent is not to ensure that all individuals can engage in an activity of their choice, particularly if they are assessed as posing an unacceptable risk of harm to a vulnerable person.

It is important to note that the nature of some people’s criminal history and other relevant background information, including convictions which may be very old, spent, or quashed, may result in registration, or re-registration, being refused or cancelled.

Furthermore, the introduction of disqualifying offences through changes to the Act which were passed in 2019 and 2020 will result in some people, including those who may have previously been registered, no longer being able to maintain their existing registration or will result in some people no longer being able to gain registration in order to work or volunteer in certain regulated activities.

The Preamble goes on to state:

A risk assessment of a person seeking registration is conducted wherever there is criminal history or other information about offences or conduct which indicate the person may pose a risk of harm to vulnerable people.

The Act provides that the process of how such information is to be considered is to be outlined in “Risk Assessment Guidelines” (the Guidelines) which are made under section 27 of the Act.

It is evident that the subject matter of the guidelines has a human rights element, in terms of both the vulnerable persons who are intended to be protected and in terms of persons seeking to be registered to work with vulnerable people. This is reflected in pages 5 and 6 of the instrument, which refer to the Human Rights Act 2004 and, in particular, refer to the human rights assessments provided in relation to the 2019 and 2020 amendments to the Working with Vulnerable People (Background Checking) Act. This discussion is also reflected in the explanatory statement for the instrument, which states:

The human rights compatibility statements of both the 2019 and 2020 amendments to the Act acknowledge that the changes will impact on a small number of registrants and future applicants under the scheme. The compatibility statements for the 2019 changes to the Act noted that the amendments “will impact on the human rights of a small number of registrants under the Working with Vulnerable People Scheme...” That statement also notes that the changes to the Act “…seeks to protect the rights and dignity of vulnerable people by limiting their exposure to those who pose a risk to their safety and well-being” and concluded that “For the purpose of background checking, the person’s right to protection from harm was determined to be the prevailing right.” The human rights compatibility statement of the 2019 amendments to the Act also concluded that “While the WWVP
registration scheme is inherently discriminatory [toward some applicants or registered persons] as it draws a distinction between individuals who have been convicted, found guilty of, or charged (or to be charged) with certain offences, the reason for the differential treatment is proportionate to the risk.”

Additionally, the human rights compatibility statement of the 2020 amendments to the WWVP Act concluded that “the protection of children and other vulnerable people is the paramount consideration and is prioritised over the rights of others involved in the WWVP scheme, including applicants.” This compatibility statement went on to state that “It is therefore necessary to treat certain people differently to best protect the rights and freedoms of vulnerable people. The Guidelines and processes of background screening place the best interests of vulnerable people as the paramount consideration while also ensuring that natural justice and procedural fairness, within the constraints of the Act, are applied.

While this discussion of human rights issues is helpful, the Committee questions whether the human rights implications of this particular instrument might have been more directly addressed, in the explanatory statement for this instrument, by reference to the provisions of the instrument, rather than by reference to the explanatory material for the 2019 and 2020 amendments to the Working with Vulnerable People (Background Checking) Act.

In making this comment, the Committee (again) acknowledges the formal limitations on its jurisdiction (under section 38 of the Human Rights Act) in relation to subordinate legislation. As the Committee observed in Scrutiny Report 2 of the 10th Assembly (24 March 2021), in relation to the Litter (Amenity Impact) Code of Practice 2020 (No 1) [DI2020-287], the Committee has been pleased to observe that, in recent years, despite this (formal) jurisdictional limitation, explanatory statements for subordinate legislation increasingly (and expressly) address human rights issues arising from subordinate legislation. As previously indicated, the Committee has welcomed this development, which has assisted the Committee in its scrutiny of subordinate legislation, including by reference to the Committee’s consideration as to whether subordinate legislation “unduly trespasses on rights previously established by law”, for principle (10)(c)(ii) of the Committee’s terms of reference.

Given the clear indication that this instrument engages human rights, the Committee considers that (despite the absence of any express Human Rights Act jurisdiction, for the Committee, in this instance) the explanatory statement for this instrument ought to have substantively addressed the human rights issues engaged by the guidelines, by reference to the substantive guidelines, rather than by referring to explanatory material relating to amendments to the Vulnerable People (Background Checking) Act, on which the new guidelines are premised.

In making this comment, the Committee notes that, in Scrutiny Report 2, it made similar comments, in relation to the Litter (Amenity Impact) Code of Practice 2020 (No 1) but has received no response to those comments.

The Committee draws the attention of the Legislative Assembly to this instrument, under principle (10)(c)(ii) of the Committee’s terms of reference, on the basis that the instrument may unduly trespass on rights previously established by law.

The Committee also draws the attention of the Legislative Assembly to this instrument, under principle (10)(d) of the Committee’s terms of reference, 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.
Disallowable Instrument DI2021-6 being the Road Transport (General) Application of Road Transport Legislation Declaration 2021 (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 during the period of 14 January to 21 January 2021 inclusive, for the purpose of filming the motion picture ‘Blacklight’.

Disallowable Instrument DI2021-9 being the Road Transport (General) Application of Road Transport Legislation Declaration 2021 (No 2) 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 during the period of 14 January to 21 January 2021 inclusive, for the purpose of filming the motion picture ‘Blacklight’.

The 2 instruments mentioned above, made under section 13 of the Road Transport (General) Act 1999, disapply certain provisions of the road transport legislation to certain designated areas, during the period of 14 January to 21 January 2021 inclusive, for the purpose of filming a motion picture – “Blacklight”.

The Committee notes that the explanatory statement for the first instrument mentioned above addresses 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 closing parts of the Canberra CBD and surrounding roads, in which filming will be conducted, to members of the public will restrict the free movement of people in that area of the Territory during filming. Parts of the road transport legislation are being disapplied for filming to occur as vehicles will be travelling in parts of the Canberra CBD and surrounding roads 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 the film location at those times is considered reasonable and proportionate to ensure safety of civilians and represents the least restrictive approach that enables the event to proceed. [emphasis added]

The Committee notes that a similar statement (including the reference to “rally”) also appears in the explanatory statement for the second instrument mentioned above.

The Committee notes the reference (in the quote above) to “rally”, while the event in question is, evidently, not a rally but an event related to the filming of a movie. The Committee assumes that this indicates that the explanatory statements for the instruments have been based on similar instruments (such as DI302-2020 and DI303-2020, discussed elsewhere in this Scrutiny Report), which deal with car rallies. The Committee notes that it has consistently cautioned against the use of “templates”. In its document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps*, the Committee stated:

**ISSUES ARISING FROM THE USE OF TEMPLATES AND PRECEDENTS**

The Committee often identifies issues that appear to arise from the use of previous instruments as templates or precedents for new instruments. The kinds of issues that arise are references to the plural in instruments that appoint only 1 person (and vice versa) and references to, say, provisions relating to the appointment of chairs and deputy chairs to governing boards when the particular instrument appoints a person only as a member. This suggests to the Committee that a previous instrument (or the Explanatory Statement for a previous instrument) has been used as a template or a precedent, without sufficient care being taken to ensure that the previous instrument or Explanatory Statement is adapted to fit the new situation. The Committee accepts that instruments and Explanatory Statements will be used as templates and precedents but cautions instrument makers that caution must be taken to ensure that the earlier document is adapted to fit the new situation.

That issue aside, the Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for these instruments.

**COVID-19-related instruments / Retrospectivity – Positive comment**

Disallowable Instrument DI2021-12 being the Planning and Development (Lease Variation Charge Deferred Payment Scheme) Determination 2021 made under paragraphs 279AA(1)(b) and subsection 279AC(2) of the *Planning and Development Act 2007* revokes DI2020-225 and determines the amount of the lease variation charge to be deferred for the purposes of the Act.

Disallowable Instrument DI2021-13 being the Planning and Development (Remission of Lease Variation Charges—Construction Sector Recovery) Determination 2021 made under section 278 of the *Planning and Development Act 2007* determines the circumstances in which an amount of a lease variation charge for a chargeable variation of a nominal rent lease must be remitted, and determines the amount to be remitted.

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The instruments mentioned above, both made under the *Planning and Development Act 2007*, relate to deferral and remission of charges under that Act. The explanatory statements for the instruments make it clear that the relevant deferrals and remissions are part of the legislative response to the COVID-19 pandemic. The explanatory statement for the first instrument mentioned above indicates that it continues the effect of an earlier instrument ([DI2020-225]) that is revoked by this instrument.

Both instruments were made on 12 January 2021 and notified on the ACT Legislation Register on 20 January 2021. However, the Committee notes that section 2 of both instruments provides that the instrument “is taken to have commenced on 24 December 2020”. This means that the instruments have a retrospective effect.

The Committee notes, with approval, that the explanatory statement for the second instrument mentioned above states:

**Commencement and retrospectivity**

The Remission Determination has retrospective commencement from 24 December 2020 to allow for the continuation of LVC remission from the operation of the *Planning and Development (Remission of Lease Variation Charges—Construction Sector Recovery) Determination 2020*.

Section 76(1) of the *Legislation Act 2001* provides that a statutory instrument may commence retrospectively provided it is non-prejudicial, that it does not operate to the disadvantage of a person by adversely affecting the person’s rights or imposing liabilities on the person. This instrument provides a concession on the LVC payable for land that is developed in a manner that supports economic recovery from COVID-19. It is non-prejudicial and promotes a purpose which will be of overall benefit to the ACT community.

The explanatory statement for the first instrument mentioned above contains a similar statement about the non-prejudicial retrospectivity of the instrument and also indicates that the retrospective operation of the instrument is linked to the retrospective operation of the second instrument mentioned above.

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

*Human rights issues*

**Disallowable Instrument DI2021-16 being the Nature Conservation (Fees) Determination 2021 (No 1) made under section 368 of the Nature Conservation Act 2014 revokes DI2020-232 and determines fees payable for the purposes of the Act.**

This instrument determines fees, under section 368 of the *Nature Conservation Act 2014*, in relation to entry to the Tidbinbilla Nature Reserve. The explanatory statement for the instrument states:

The instrument reinstates entry fees to Tidbinbilla Nature Reserve, which had been on temporary hold as part of the Government’s COVID-19 relief measures, but continues the waiver on daily entry fees to Tidbinbilla Nature Reserve on Australia Day, Reconciliation Day and Tidbinbilla Open Day.
The explanatory statement goes on to discuss human rights issues:

**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.

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

This comment does not require a response from the Minister.

**Human rights issues**

**Disallowable Instrument DI2021-22 being the Pest Plants and Animals (Pest Plants—Frogbit) Declaration 2021 made under section 7 of the Pest Plants and Animals Act 2005 determines a specified plant to be a pest plant.**

**Disallowable Instrument DI2021-40 being the Pest Plants and Animals (Pest Animal) Declaration 2021 (No 1) made under section 16 of the Pest Plants and Animals Act 2005 determines a specified animal to be a pest animal.**

This first instrument mentioned above, made under section 7 of the Pest Plants and Animals Act 2005, declares the *Limnobium laevigatum*, or “frogbit”, to be a “pest plant” for that Act. The effect of the declaration is that:

- the presence of the plant must be notified to the relevant director-general;
- the plant must be suppressed; and
- propagation and supply of the plant is prohibited.

The Committee notes that the explanatory statement for the first instrument mentioned above addresses human rights issues:

**Human Rights implications**

There are no human rights implications arising from the declaration of a pest plant. The instrument does not engage any rights under the Human Rights Act 2004.

The second instrument mentioned above, made under section 16 of the Pest Plants and Animals Act, declares the *Trogoderma granarium*, or “khapra beetle”, to be a pest animal (noting that the definition of “animal”, in the Pest Plants and Animals Act “includes .... a vertebrate and an invertebrate”). The effect of the declaration is that:

- the presence of the animal must be notified to the relevant director-general; and
- the supply or keeping of the animal is prohibited.

The Committee notes that the explanatory statement for the second instrument mentioned above contains a similar statement about human rights issues to that contained in the explanatory statement for the first instrument mentioned above.

The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for these instruments.

This comment does not require a response from the Minister.
COVID-19-related instrument


The Committee notes that this instrument extends (to 30 June 2021) the waiver of fees otherwise payable under the Liquor Act 2010. The relevant waiver was most recently made by Liquor (COVID-19 Emergency Response—Licence Fee Waiver) Declaration 2020 (No 2) [DI2020-238], which expired on 31 March 2021. That instrument continued in effect a waiver originally implemented by the Liquor (COVID-19 Emergency Response—Licence Fee Waiver) Declaration 2020 [DI2020-119] and the Liquor (Public Health Emergency—Licence Fee Waiver) Declaration 2020 [DI2020 45].

The explanatory statement for the instrument makes it clear that the relevant waivers are part of the legislative response to the effects of the COVID-19 pandemic. The explanatory statement states:

This instrument commences on the day after its notification and expires on 30 June 2021. The waivers for fees at items 501 (1) to (4) and 501 (5) (a) to (e) which commenced in the previous instrument [DI2020-45] expire on 31 March 2021, to ensure that they are in place for 12 months in total. The waiver for the fee for an application for a general licence at item 500 expires on 30 June 2021, as approved by the Treasurer.

This comment does not require a response from the Minister.

Human rights issues

Disallowable Instrument DI2021-25 being the Public Place Names (Belconnen District) Determination 2021 made under section 3 of the Public Place Names Act 1989 changes the name of a section of road in the district of Belconnen.

This instrument, made under section 3 of the Public Place Names Act 1989, revokes and re-makes an instrument that names a street in Belconnen. The explanatory statement for the instrument states:

On 28 November 2018 the ACT Legislative Assembly (the Assembly) called on the ACT Government to review a number of matters relating to the naming of public places, including a review of particular place names that had been the subject of community disquiet. Following the completion of the ACT Place Names Committee and Guidelines Review in June 2019, the Minister for Planning and Land Management (the Minister) announced his decision to change the name of William Slim Drive.

The explanatory statement goes on to discuss human rights issues:

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 places after people.

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 DI2021-39 being the Utilities (Improving Transparency and Comparability of Retail Electricity Offers) Ministerial Direction 2021 made under section 19 of the Utilities Act 2000 directs the Independent Competition and Regulatory Commission to establish an industry code which requires NERL retailers to provide clear advice about their offers to their customers.

This instrument is made under section 19 of the Utilities Act 2000, which allows the Minister to give a direction to the Independent Competition and Regulatory Commission (ICRC) about the results it must achieve by:

(a) licence conditions; or
(b) industry codes.

According to the explanatory statement for the instrument, this instrument ....

.... directs the ICRC to determine an industry code which establishes a requirement for retailers to provide “Clear Advice” about their offers to their customers. This instrument directs the ICRC to establish a new regulatory obligation on NERL retailers (who hold a retailer authorisation under the National Energy Retail Law (ACT)) to compare the annual price of their offers to the reference bill to enable customers to more easily compare electricity offers, and to regularly notify customers when there may be better offers available.

The explanatory statement goes on to discuss human rights issues:

There are no human rights implications arising from the ministerial direction. The instrument does not engage any rights under 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.

Disapplication of subsections 47(3) and (6) of the Legislation Act 2001 / Human rights issues

Disallowable Instrument DI2021-38 being the Public Health (Public Health Risk Activity Licensing Exemption) Determination 2021 (No 1) section 22 of the Public Health Act 1997 determines the requirements for being approved as an approved collection centre that carries out a skin penetration procedure.

This instrument, made under section 22 of the Public Health Act 1997, relates to the power to exempt a person who carries on a “licensable public health risk activity” from the requirement to be licensed. The explanatory statement for the instrument states:

Section 22 of the [Public Health Act] provides that a person who carries on a licensable public health risk activity is exempt from the requirement to be licensed if they are accredited under an activity accreditation scheme for the activity. The Minister may determine via disallowable instrument what constitutes an activity accreditation scheme for licensable public health risk activities.

This instrument exempts pathology collection centres from requiring a public health risk activity licence under DI2005-302 because they are already adequately regulated by the Commonwealth Government. Pathology collection centres are highly regulated under
Commonwealth legislation to ensure that collection centres accessing Medicare benefits are of high quality and clinically relevant. This exemption is consistent with the objectives of the [Public Health Act], which include the protection of the public from public health risks not adequately controlled by another law of the Territory or a law of the Commonwealth.

The definition of “approved collection centre”, in section 4 of the instrument, relies on the definition of that term in section 23DA of the Health Insurance Act 1973 (Cth).

Section 5 of the instrument then provides:

5 Disapplication of Legislation Act, s 47 (3) and (6)

The Legislation Act 2001, s 47(3) and (6) do not apply to the Health Insurance Act 1973.

Note The Health Insurance Act 1973 does not need to be notified under the Legislation Act 2001 because s 47(3) and (6) do not apply (see Legislation Act, s 47(7)). The Health Insurance Act 1973 is available from the Federal Register of Legislation www.legislation.gov.au.

Section 47 of the Legislation Act 2001 deals with instruments that apply other laws or instruments by reference. Subsection 47(3) provides:

The relevant instrument may make provision about the matter by applying a law of another jurisdiction, or an instrument, as in force only at a particular time.

The disapplication of subsection 47(3) by section 5 of this instrument, means that the definition of “approved collection centre”, in section 23DA of the Health Insurance Act 1973 (Cth), is applied as it exists from time to time.

This would not appear to be strictly necessary, given that subsection 22(3) of the Public Health Act provides:

(3) A determination may apply, adopt or incorporate an instrument as in force from time to time.

Subsection 47(6) of the Legislation Act provides:

(6) If subsection (3) is displaced and a law of another jurisdiction or an instrument is applied as in force from time to time, the text of each of the following is taken to be a notifiable instrument made under the relevant instrument by the entity authorised or required to make the relevant instrument:

(a) the law or instrument as in force at the time the relevant instrument is made;
(b) each subsequent amendment of the law or instrument;
(c) if the law or instrument is repealed and remade (with or without changes)—the law or instrument as remade and each subsequent amendment of the law or instrument;
(d) if a provision of the law or instrument is omitted and remade (with or without changes) in another law or instrument—the provision as remade and each subsequent amendment of the provision.

This means that, unless disapplyed, subsection 47(6) would make the Health Insurance Act 1973 (Cth), and any amendments to it, “notifiable instruments”, for section 10 of the Legislation Act. Section 19 of the Legislation Act requires that notifiable instruments be published, on the ACT
Legislation Register. This is recognised in Notes 1 and 2 to subsection 22(3) of the Public Health Act.

Disapplying subsection 47(6) of the Legislation Act means that there is no requirement to publish the *Health Insurance Act 1973* (Cth), and any amendments to it, on the ACT Legislation Register.

The requirement to publish (external) instruments, etc relied upon by instruments covered by section 47 of the Legislation Act on the ACT Legislation Register ensures that users of legislation have free access to all the material that they need, in order to understand the full scope and effect of an instrument such as the one mentioned above. The Committee has always taken a strong view that such access is important. As a result, the Committee generally does not look favourably on the disapplication of subsections 47(6) (and (5)) of the Legislation Act and seeks an explanation as to why disapplication is necessary, in a particular case.

The Committee notes that the explanatory statement for this instrument does not address the issue of why it is necessary to disapply subsection 47(6) of the Legislation Act, in this case. While the disapplication of subsection 47(6) to the *Health Insurance Act 1973* (Cth) is relatively unproblematic – and while the Committee notes that the Note to section 5 of the instrument gives the website address for the Federal Register of Legislation, where the *Health Insurance Act 1973* (Cth) can be found – it would be preferable if this issue was expressly addressed in the explanatory statement for this instrument, in line with the Committee’s oft-stated preference.

The Committee notes that the explanatory statement for the instrument goes on to address human rights issues:

> This determination does not engage with an individual’s human rights within 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

**SUBORDINATE LAWS—NO COMMENT**

The Committee has examined the following subordinate laws and offers no comments on them:

**Subordinate Law SL2020-45 being the Court Procedures Amendment Rules 2020 (No 5) made under the *Court Procedures Act 2004* determines amendments to rules in relation to the practice and procedure of ACT Courts and their registries.**

**Subordinate Law SL2021-1 being the Work Health and Safety Amendment Regulations 2021 (No 1) made under the *Work Health and Safety Act 2011* corrects minor and technical errors in the Work Health Safety Amendment Regulation 2020 (No. 1).**
SUBORDINATE LAWS—COMMENT

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

COVID-19-related instrument / Human rights issues

Subordinate Law SL2020-46 being the Supreme Court Regulation 2020 made under the Supreme Court Act 1933 determines the day on which the COVID-19 emergency period ends for the purposes of the Act.

This subordinate law, made on 18 December 2020, was made under subsection 68B(4) of the Supreme Court Act 1933. As it existed at that time, subsection 68B(4) provided (in part):

(4) In this section:

- COVID-19 emergency period means the period beginning on 16 March 2020 and ending on—
  - 31 December 2020; or
  - if another day is prescribed by regulation—the prescribed day.

The effect of this subordinate law is to prescribe 31 March 2021 as the end day for the COVID-19 emergency period.

The Committee notes that the effect of this subordinate law was subsequently superseded, by item [1.26] of Schedule 1 to the COVID-19 Emergency Response Legislation Amendment Act 2021, which inserted into the Supreme Court Act the following definition of COVID-19 emergency period:

COVID-19 emergency period means the period beginning on 16 March 2020 and ending on 30 June 2021.

The Committee notes that the explanatory statement for this subordinate law addresses human rights issues:

CONSISTENCY WITH HUMAN RIGHTS

Section 68B of the Supreme Court Act was amended by the COVID-19 Emergency Response Act 2020 to introduce subsections 68B (3A), (4) and (5). A detailed human rights analysis of those amendments can be found in the explanatory statement to the COVID-19 Emergency Response Bill 2020.

A Bill to extend these provisions was introduced in the ACT Legislative Assembly on 2 December. If passed, the COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 3) will extend the operation of section 68B (3A) of the Supreme Court Act to 30 June 2021. A human rights analysis relating to the extension of the measure can be found in the explanatory statement to this Bill.

The regulation is necessary to support the administration of justice in a COVID-safe manner, promoting the right to be tried without reasonable delay. To the extent the regulation may otherwise engage and limit the right to a fair trial and rights in criminal proceedings, it is justified for the reasons explained in the Explanatory Statements to the COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 3) and COVID-19 Emergency Response Bill 2020.
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.

REvised/supplementary explanatory statements—Comment

Disallowable Instrument DI2020-241 being the Canberra Institute of Technology (CIT Board Member) Appointment 2020 (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 to be a member of the CIT Board for a period of three years—Revised explanatory statement.

Disallowable Instrument DI2020-273 being the Financial Management (Territory Authorities) Guidelines 2020 (No 2) made under section 133 of the Financial Management Act 1996 revokes DI2020-182 and prescribes the entities that are territory authorities for the purposes of the Act—Revised explanatory statement.

Disallowable Instrument DI2020-283 being the Leases (Commercial and Retail) COVID-19 Emergency Response Declaration 2020 (No 2) made under section 177 of the Leases (Commercial and Retail) Act 2001 revokes DI2020-92 and adopts the National Code of Conduct for small to medium enterprises commercial leasing principles during COVID-19—Supplementary explanatory statement.

The Committee notes that the Government has tabled in the Legislative Assembly “revised” or “supplementary” explanatory statements for each of the three instruments mentioned above. The Committee notes, with approval, that, in the case of the first two instruments mentioned above, the revised explanatory statement addresses issues raised by the Committee in Scrutiny Report 1 of the 10th Assembly (2 February 2021).

In the case of the supplementary explanatory statement (ie for DI2020-283), the Committee notes that it also dealt with that instrument in Scrutiny Report 1 but did not make any substantive comment (ie requiring a response from the Minister).

The supplementary explanatory statement indicates that it is intended to “[clarify] the scope” of DI2020-283. It states:


Initially, the Commonwealth Government’s JobKeeper scheme was set to conclude at the end of September 2020. However, on 21 July 2020, the Commonwealth Government announced an extension of the JobKeeper scheme until 28 March 2021. On 7 August 2020 the Commonwealth Government announced new requirements for the extended JobKeeper scheme to operate from 28 September 2020.

Due to ACT caretaker conventions, the new Declaration had to be notified before 11 September 2020 to ensure a new declaration was in place before 28 September 2020. Accordingly, the new Declaration was notified before the Commonwealth’s amended Rules were made.

The new Declaration intended to apply to impacted tenants until 31 January 2021.

This means the new Declaration will also apply to an impacted tenant who has only qualified under Extension 2 for JobKeeper fortnights after 3 January 2021 and before 31 January 2021.

The Committee notes, with approval, that the Minister has proactively addressed potential issues with the original instrument.

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

**RESPONSE**

**GOVERNMENT RESPONSE**

The Committee has received a response from:


  *This response*³ can be viewed online.

The Committee wishes to thank the Attorney-General for his helpful responses.

Jeremy Hanson MLA

Chair

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OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

- Report 1, dated 2 February 2021
  - COVID-19 Emergency Response Legislation Amendment Bill 2020 (No 3)

- Report 2, dated 24 March 2021
  - Drugs of Dependence (Personal Use) Amendment Bill 2021
  - Disallowable Instruments DI2021-10 Taxation Administration (Payroll Tax—Businesses Not Permitted to Operate) COVID-19 Exemption Scheme Determination 2021 and DI2021-11 Taxation Administration (Payroll Tax) COVID-19 Exemption Scheme Determination 2021