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Minister for Transport and City Services

Minister for Skills

Special Minister of State

Member for Murrumbidgee

Mr Jeremy Hanson CSC MLA

Chair

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

Scrutiny@parliament.act.gov.au

Dear Mr Hanson

I write in response to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its Scrutiny Report 8. The comments were in relation to the *Rail Safety National Law National Regulations (Modification of FOI Act) Variation Regulations 2021* (No 235 of 2021) which you tabled in the ACT Legislative Assembly on 3 August 2021.

I thank the Committee for its comments relating to the National Regulations and provide the following in response.

The Committee commented on the National Regulations explanatory statement which stated “*There are no human rights issues or climate change implications arising from this regulation*”. The Committee noted it did not discuss the potential engaging of the right to privacy and seeks further information from you as to the relevance (if any) of Section 12 of the Human Rights Act 2004 to these National Regulations.

‘Schedule – Rail Safety National Law’ (**RSNL**) in the *Rail Safety National Law (South Australia) Act 2012* (SA) provides a coordinated national approach to rail safety regulation in Australia. This law is adopted into force in the ACT through the *Rail Safety National Law (ACT) Act 2014* (ACT). Amendments to the RSNL, once agreed by the Infrastructure and Transport Ministers Meeting (ITMM), are progressed through the South Australian Parliament, published on the NSW Legislation Website, and then apply automatically in the ACT.

Section 8 of the ACT Rail Safety National Law Act provides that the *Freedom of Information Act 2016* (ACT) does not apply to the regulator. This is referring to the National Rail Safety Regulator

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appointed under the SA legislation. Accordingly, Freedom of Information (FOI) requests for any information held by the Regulator must be made under the SA FOI Legislation.

The proposed amendments to the National Regulations are to protect individuals' information that has been provided to the Regulator under compulsion. Section 20 of RSNL gives the Regulator power to compel information in relation to possible contraventions of the RSNL, or information that will assist to monitor or enforce compliance. The proposed amendments clarify that any document provided to the Regulator under Section 20 of the RSNL is exempt from being produced under FOI.

The proposed amendments also clarify that a Train Safety Recording is an exempt document for FOI purposes.

These amendments ensure individuals' privacy by prohibiting information provided to the Regulator under compulsion, regardless of whether it is self-incriminating or not, from being made available to the public through an FOI application. Individuals' privacy is also further protected by declaring all Train Safety Recordings are exempt documents under the SA FOI legislation.

Therefore, the proposed amendments provide further protections to individuals' privacy and do not infringe on the right to privacy set out in Section 12 of the Human Rights Act 2004.

I would like to thank the Committee for its positive comments on the explanatory statement, which although not required, has been provided with the National Regulations.

I trust the above response provides clarification and addresses the concerns raised.

Yours sincerely

Chris Steel MLA
Minister for Transport and City Services
5 October 2021