



Legislative Assembly for the Australian Capital Territory

Standing Committee on Legal Affairs
(Legislative Scrutiny Role)

Scrutiny Report 3

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Approved for publication

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About the committee

Establishing resolution

The Assembly established the Standing Committee on Legal Affairs (Legislative Scrutiny Role) on 3 December 2024.

The Committee is responsible for the following areas:

- “(9) the Standing Committee on Legal Affairs 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 and subordinate laws 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;”.

You can read the full establishing resolution [on our website](#).¹

¹ https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees-11th-assembly/LA_Scrutiny.

Committee members

Peter Cain MLA, Chair

Taimus Werner-Gibbings MLA, Deputy Chair

Shane Rattenbury 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.

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1. Bills

Bills—No comment

Better Regulation (Repeal of Legislation) Bill 2025

- 1.1 This Bill is an omnibus bill, which repeals four acts, one regulation and 24 notifiable instruments. The legislation to be repealed and reasons given includes:
- a) *COVID-19 Emergency Response Legislation Amendment Act 2020* and *COVID-19 Emergency Response Legislation Amendment Act 2021*, as the relevant state of emergency has passed;
 - b) *Drugs in Sport Act 1999*, as it is now superseded by Commonwealth legislation;
 - c) *Hemp Fibre Industry Facilitation Act 2004*, as no hemp fibre industry is considered to be viable in the region;
 - d) *Magistrates Court (Fair Trading Motor Vehicle Repair Industry Infringement Notices) Regulation 2012*, as all offences under this regulation were repealed in 2016; and
 - e) twenty-four Instruments declaring disclosure officers made under the *Public Interest Disclosure Act 2012*, as a 2020 amendment removed the requirement for declarations of disclosure officers to be notifiable instruments.

Tobacco and Other Smoking Products (Vaping Goods) Amendment Bill 2025

- 1.2 This Bill is intended to remedy inconsistencies between the Commonwealth *Therapeutic Goods Act 1989* and the *Tobacco and Other Smoking Products Act 1927* (the TOSP Act). The Commonwealth Act and associated regulations are intended to limit the sale of vaping goods to therapeutic purposes and prohibiting sale for recreational uses. The Bill amends the TOSP Act by changing the definition of “personal vaporiser” and “personal vaporiser related product” and defines the terms “vaping good” and “therapeutic vaping good”. The Bill enables regulations under the TOSP Act to prohibit smoking products that have a “Distinctive fruity, sweet or confectionary-like character”. The Bill also makes consequential amendments to other acts and technical amendments to the TOSP Act.

Bills—Comment

Crimes Legislation Amendment Bill 2025

- 1.3 This Bill amends legislation to address matters arising from the raising of the minimum age of criminal responsibility (MACR) through the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023*. From 1 July 2025 the MACR will be 14, with limited exceptions for 12 and 13 years olds accused of specified serious offences.

- 1.4 The Bill amends the *Crimes Act 1900* to clarify the application of police powers with respect to a young person under the age of 14 years. The powers affected are:
- the preventative action powers of police acting under a warrant and without a warrant;
 - the search and seizure powers of police acting under a warrant;
 - the stop, search, or detain powers without a warrant; and
 - the discretionary power to transport a person under 14 years of age to their parent or another responsible person or appropriate agency, after stopping searching or detaining them.
- 1.5 The Bill also amends the *Crimes Act 1900* to expand the prohibition of specified types of information related to youth offences from being put before a Court during a proceeding. “Youth offence” is currently defined as an offence “against a territory law committed or allegedly committed by the person when under 12 years old”. The Bill expands this to prevent disclosure of offences against laws of the Commonwealth, States, or another Territory. This is intended to allow for equal application of the law across borders.
- 1.6 The Bill amends the *Spent Convictions Act 2000* to make technical corrections to the definition of “youth sexual offence conviction” and the provisions for applying for a Working with Vulnerable People check to address changes arising from the change to MACR.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee resolution of appointment paragraph (9)(a)(i)

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

Right to privacy and reputation (section 12 HRA)

Freedom of movement (section 13 HRA)

Right to liberty and security of person (section 18 HRA)

- 1.7 The police powers detailed in the bill permit the police to search, with and without a warrant, to stop and detain, and to transfer a young person to a responsible person or agency. Powers of search and transfer interfere with the right to privacy while stop, detention and transfer powers place clear limits on freedom of movement and right to liberty, for the period of detention or transfer.
- 1.8 Clauses 9 and 10 of the Bill provide for the issuance of search warrants, including for persons under 14. The amendments provide additional protections where young people may be involved, requiring disclosure from the applicant on whether a young person may be searched or present and requiring the issuing officer must take into account the best interests of the young person when deciding whether or not to issue the warrant.
- 1.9 The Bill inserts new subdivision 10.7.1A providing for new conditions for the stopping, searching or detaining a person under 14 years old without a warrant. The Bill raises the requisite state of mind for officers before they can exercise their powers from suspicion on reasonable grounds to belief on reasonable grounds. It also introduces new mandatory considerations an officer must consider before exercising a power to prevent harm or serious or destructive behaviour.

- 1.10 The new subdivision clarifies police powers to transfer a person under 14 years old to a parent carer or agency, after the exercise of the power to stop, search or detain. This includes a requirement to notify the Aboriginal and Torres Strait Islander Commissioner, or the public advocate, where a person under 14 is transferred to an appropriate person or agency. This may limit the right to privacy.

Right to work and other work-related rights (section 27B HRA)

- 1.11 The changes to the *Spent Convictions Act 2000* require the disclosure of spent or extinguished convictions when applying for a different jurisdiction's equivalent of a Working with Vulnerable People certificate. This may limit the right to work as these disclosures could prevent a person from obtaining a certificate required for a paid or volunteer position.
- 1.12 The explanatory statement accompanying the Bill recognises these potential limitations and provides a discussion on why they should be considered reasonable using the framework set out in section 28 of the HRA. In particular, related to the clauses amending police powers, the statement says that the Bill does not create any new police powers but instead adds additional limits to police powers as they apply to persons under 14 years old.
- 1.13 **The Committee draws this matter to the attention of the Assembly but does not require a response from the Minister.**

Better Regulation Legislation Amendment Bill 2025

- 1.14 This omnibus Bill amends Acts and regulations as follows:
- a) *Agents Act 2003* - strengthen provisions in relation to electronic records and how they are kept;
 - b) *Architects Act 2004* – remove a provision which allows the Architects Board to require a complainant to verify all, or part of, a complaint via a statutory declaration;
 - c) *Associations Incorporation Act 1991* - remove the requirement for rules, other than model rules, to specifically address how cheques are drawn and used by the association;
 - d) *Cemeteries and Crematoria Act 2020* - remove 'or disinterment' from the definition of licensee receipt;
 - e) *Domestic Animals Act 2000* – remove references to cheques and broadens the types of payment failures that may occur to include credit card transactions that are not honoured or are reversed or cancelled;
 - f) *Domestic Animals Regulation 2001*- remove references to cheques and broadens the types of payment failures that may occur to include credit card transactions that are not honoured or are reversed or cancelled;
 - g) *Electoral Act 1992* - remove specific references to payment methods for a candidate's nomination deposit;
 - h) *Fair Trading (Motor Vehicle Repair Industry) Act 2010* - remove the obsolete industry advisory committee;

- i) *Security Industry Act 2003* - to insert a new provision to provide for the surrender of a security licence and to ensure that once a licensee voluntarily surrenders their licence, that licence is cancelled on the day stated by the commissioner for fair trading;
- j) *Waste Management and Resource Recovery Act 2016* - remove an obsolete power to require GPS devices to be fitted on registered waste transporting vehicles and require the waste manager to make information publicly available relating to the registers for licensed waste facilities and registered waste transporters; and
- k) *Waste Management and Resource Recovery Regulation 2017* – prescribe the information required to be included on the waste facility licence register and to prescribe the information that must be made publicly available for licensed waste facilities and registered waste transporters.

1.15 The Bill also makes minor and technical amendments to the above legislation.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee resolution of appointment paragraph (9)(a)(i)

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

Right to privacy and reputation (section 12 HRA)

Rights in criminal proceedings (section 22 HRA)

- 1.16 The Bill engages the right to privacy in amendments to the *Waste Management and Resource Recovery Act 2016* and the *Waste Management and Resource Recovery Regulation 2017*. These amendments prescribe the information that a licensee must provide for the register of waste facility licences and require that waste manager to make the register publicly available without charge. The prescribed information includes licensee’s name, business address, email address and telephone number. The requirement to provide this personal information, which will be disclosed publicly, may limit an individual’s right to privacy.
- 1.17 The Bill may limit rights in criminal proceedings as it provides for a strict liability offence in section 142 of the *Domestic Animals Act 2000*. Section 142 currently contains a strict liability offence and the Bill alters the drafting to, in the words of the explanatory statement, “make the elements of the offence and the defence clearer by separating them out into sub clauses”.
- 1.18 The explanatory statement accompanying the Bill recognises the potential limitations on privacy and reputation and provides for why they should be considered reasonable using the framework set out in section 28 of the HRA. The explanatory statement indicates in a heading on page 2 that the Bill limits rights in criminal proceedings but does not expand on this. The explanatory statement states that the Bill amends section 142 by adding a specific defence to the offence but does not specify what that defence is. Section 142 of the Act as currently drafted includes a defence of reasonable excuse.
- 1.19 **The Committee asks that consideration be given to amending the explanatory statement to include such a statement. The Committee draws this matter to the attention of the Assembly but does not require a response from the Minister.**

Government response—No comment

- 1.20 In its Report No 2 of 25 February 2025 the Committee examined the *Building and Construction Legislation Amendment Bill 2025*. The Committee requested the Minister respond on concerns about the availability of standards. The Minister responded on 28 February 2025.
- 1.21 The Committee thanks the Minister for his response.
- 1.22 This response can be viewed [online](#)².

² https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees-11th-assembly/LA_Scrutiny/responses-to-comments-on-bills.

2. Subordinate Legislation

Disallowable Instruments – No comment

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

- **Disallowable Instrument DI2025-1 being the Veterinary Practice (Fees) Determination 2025 (No 1) made under section 93 of the *Veterinary Practice Act 2018* revokes DI2022-251 and appoints a specified person as President of the Board.**
- **Disallowable Instrument DI2025-2 being the Gaming Machine (Determination of Surrender Obligations) Guidelines 2025 (No 1) made under section 10L of the *Gaming Machine Act 2004* provides that the Minister may make and apply any guidelines for the determination of surrender obligations for the purposes of the Act.**
- **Disallowable Instrument DI2025-5 being the Long Service Leave (Portable Schemes) Governing Board Appointment 2025 (No 1) made under section 79E and section 78 of the *Long Service Leave (Portable Schemes) Act 2009* and *Financial Management Act 1996* appoints a specified person as a member and Chair of the Long Service Leave Governing Board.**
- **Disallowable Instrument DI2025-6 being the Climate Change and Greenhouse Gas Reduction (Council Member) Appointment 2025 (No 1) made under section 20 of the *Climate Change and Greenhouse Gas Reduction Act 2010* appoints a specified person as a member of the Climate Change Council.**
- **Disallowable Instrument DI2025-7 being the Climate Change and Greenhouse Gas Reduction (Council Member) Appointment 2025 (No 2) made under section 20 of the *Climate Change and Greenhouse Gas Reduction Act 2010* appoints a specified person as a member of the Climate Change Council.**
- **Disallowable Instrument DI2025-8 being the Climate Change and Greenhouse Gas Reduction (Council Member) Appointment 2025 (No 3) made under section 20 of the *Climate Change and Greenhouse Gas Reduction Act 2010* appoints a specified person as a member of the Climate Change Council.**
- **Disallowable Instrument DI2025-9 being the Climate Change and Greenhouse Gas Reduction (Council Member) Appointment 2025 (No 4) made under section 20 of the *Climate Change and Greenhouse Gas Reduction Act 2010* appoints a specified person as a member of the Climate Change Council.**
- **Disallowable Instrument DI2025-10 being the Variation in Sex Characteristics (Restricted Medical Treatment) Assessment Board Appointment 2025 (No 1) made under section 31 of the *Variation in Sex Characteristics (Restricted Medical Treatment) Act 2023* revokes NI2024-702 and DI2023-319 and appoints a specified person as president of the Restricted Medical Treatment Assessment Board.**

Disallowable Instruments – Comment

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

No Human Rights Issues

- **Disallowable Instrument DI2025-4 being the Road Transport (General) Application of Road Transport Legislation (National Multicultural Festival) Declaration 2025 made under section 12 of the *Road Transport (General) Act 1999* disappplies certain parking provisions in specified areas to support the National Multicultural Festival event.**
 - **Disallowable Instrument DI2025-11 being the Major Events (Winter Sports Season Events) Notice 2025 made under section 9 of the *Major Events Act 2014* applies the provisions of the Act to 25 sporting matches, which form the Winter Sports Season in the ACT, at GIO Stadium and Manuka Oval from 13 February 2025 to 30 August 2025.**
- 2.3 The first instrument mentioned above, made under section 12 of the *Road Transport (General) Act 1999*, disappplies certain parking provisions in specified areas, to support the National Multicultural Festival event, with effect from 28 January 2025. The Committee notes that the explanatory statement for the instrument states that the instrument “does not operate to the disadvantage of anyone by adversely affecting their rights or imposing liabilities on the person”.
- 2.4 The second instrument mentioned above, made under section 9 of the *Major Events Act 2014* applies the provisions of the Act to 25 sporting matches, that form the Winter Sports Season in the ACT, at GIO Stadium and Manuka Oval, from 13 February 2025 to 30 August 2025. The Committee notes that the explanatory statement for the instrument states:
- The effect of this notice is to apply powers and offences under the Act, Part 3 (Crowd Management). The application of crowd management powers does not affect the rights and duties of venue operators and property holders that apply under ACT or Commonwealth laws or the common law.
- 2.5 **The Committee draws the attention of the Legislative Assembly to the discussion of rights issues in the explanatory statements for these instruments.**
- 2.6 **This comment does not require a response from the Minister.**

Fees determination

- **Disallowable Instrument DI2025-3 being the Cemeteries and Crematoria (Fees) Determination 2025 (No 1) made under section 128 of the *Cemeteries and Crematoria Act 2020* revokes DI2024-135 and determines fees payable for the purposes of this Act.**
- 2.7 This instrument determines fees for the *Cemeteries and Crematoria Act 2020*, payable from 20 January 2025. The Committee notes, with approval, that the instrument (with its explanatory statement) meets the long-held expectations of the Committee in relation to fees determination instruments – as set out in its document titled [Subordinate legislation Technical and stylistic standards—Tips/Traps](https://www.parliament.act.gov.au/data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf)³ – in that the “old” and “new” fees are identified, together with the magnitude of the increases and the reasons for the increases.

³ https://www.parliament.act.gov.au/data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf.

2.8 The Committee notes that the explanatory statement for the instrument states:

On the 4th of December 2024, the Australian Taxation Office (ATO) introduced the Goods and Services Determination GSTD 2024/2. This determination requires that GST be removed for the sale of burial rights. To comply with this determination, the Authority has combined previously listed Allotment and Maintenance fees for burial allotment and ashes interment allotment products to establish Perpetual Burial Right and Perpetual Interment Right fees respectively. These fees are not subject to GST and on average lowers the total allotment sale fee for products by approximately 6 to 8 percent. The determination required that this change be implemented within 3 months from the 4th of December 2024.

This determination has been revised to include fees for the Sanctuary Creek Memorialisation Garden at Gungahlin Cemetery. Allotments in this garden are expected to be available for public sale in January 2025.

The fees for all ashes memorialisation products in Sanctuary Creek, including their memorial plaque options, were benchmarked where possible against similar memorialisation options in similar jurisdictions also including the current product offering by the Authority.

This determination has also been revised to include provision for sale of customised plaques to customers that are not included in the usual range of plaque products offered by the Authority. This is noted in Part 9 of the determination.

All fees are rounded for cash handling purposes.

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

Peter Cain MLA
Chair

March 2025