

Ms Chiaka Barry MLA
Chair
Standing Committee on Legal Affairs (Legislative Scrutiny Role)
scrutiny@parliament.act.gov.au

Our ref: GBC2025/0000669

Dear Ms Barry *Chiaka*

I am writing in response to comments of the Standing Committee on Legal Affairs (Legislative Scrutiny Role) (the Committee) in Scrutiny Report 13 of 26 November 2025. I thank the Committee for its engagement on the Tobacco and Other Smoking Products Amendment Bill 2025 (the Bill).

The explanatory statement for the Bill has been reviewed, including the analysis of its consistency with human rights as provided for under the *Human Rights Act 2004* (the HR Act).

I confirm that while the Bill engages with rights in criminal proceedings under section 22 of the HR Act, it does not specifically engage with the right to a fair trial under section 21 of the HR Act.

Right to a fair trial (section 21 of the HR Act) and rights in criminal proceedings (section 22 of the HR Act)

Section 21 of the HR Act provides that everyone has the right to a fair trial. It states that this applies to the determination of criminal charges or the determination of rights or obligations recognised by law. It requires that courts and tribunals making these determinations be competent, independent and impartial. The right includes a right to fair hearing, which relates to rights to procedural fairness, and encompasses notions of equality in proceedings. It also ensures appropriate appeal rights and requires that hearings must be made public unless special circumstances apply, such as to protect the interests of a child in a criminal process.

Section 22 of the HR Act provides a further range of protections specifically in respect of criminal proceedings. For example, section 22 provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

No engagement with the right to a fair trial

As identified and justified within the explanatory statement, the Bill proposes to establish strict liability offences, and otherwise limits rights in criminal proceedings under section 22 of the HR Act (specifically, the right to be presumed innocent, and the privilege against self-incrimination).

While the right to a fair trial under section 21 of the HR Act also applies to criminal proceedings, it is distinct from the rights under section 22 of the HR Act.

In development of the Bill, and the explanatory statement, careful consideration was given to whether there was any engagement with the right to fair trial. The Bill was found not to engage with this right, as it does not affect the requirement of a court or tribunal to be competent, independent and impartial, does not limit or impact rights to a fair hearing and it does not affect the general requirements around hearings being made public. Reference to the right to fair trial at pages 5 and 7 was in error.

The Explanatory Statement has now been amended accordingly, and a copy is attached for the Committee.

Thank you for identifying this issue and for the opportunity to respond to the Committee's comments prior to debate on the Bill.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R. Stephen-Smith', with a stylized flourish at the end.

Rachel Stephen-Smith MLA

2 December 2025

*Enc. Revised Explanatory Statement – Tobacco and Other Smoking Products Amendment Bill
2025*