



Legislative Assembly for the Australian Capital Territory

Standing Committee on Legal Affairs
(Legislative Scrutiny Role)

Scrutiny Report 14

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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.

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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—Comment

Crimes Legislation Amendment Bill 2025 (No 2)

1.1 This Bill amends the following Acts to, the explanatory statement states, “support the efficient and effective function of the ACT criminal justice system”.

- (a) *Confiscation of Criminal Assets Act 2003*
- (b) *Corrections Management Act 2007*
- (c) *Crimes (Child Sex Offenders) Act 2005*
- (d) *Crimes (Restorative Justice) Act 2004*;
- (e) *Crimes (Sentence Administration) Act 2005*;
- (f) *Crimes (Sentencing) Act 2005*;
- (g) *Evidence (Miscellaneous Provisions) Act 1991*;
- (h) *Magistrates Court Act 1930*;
- (i) *Mental Health Act 2015*; and
- (j) *Victims of Crime Act 1994*.

1.2 The Bill also repeals the Crimes (Sentence Administration) (Sentence Administration Board) Appointment 2024 (No 2) which is consequential to the amendment made by clause 29 of the Bill to the *Crimes (Sentence Administration) Act 2005* regarding the composition of the Sentence Administration Board.

1.3 The amendments to each of the above Acts are addressed in turn.

(a) *Confiscation of Criminal Assets Act 2003*

1.4 The Bill amends this Act to extend the timeframe by two years for completion of a statutory review of the unexplained wealth provisions of the Act and any other territory law relating to the provisions.

(b) *Corrections Management Act 2007*

1.5 The Bill amends this Act to provide that exclusions from disclosure of certain corrections policies and operating procedures and access to correctional centres include a commissioner exercising functions under the *Human Rights Commission Act 2005*. The Clause Notes of the explanatory statement explain that these amendments are to ensure consistency across the Act and to recognise all the commissioners established by the *Human Rights Commission Act 2005*. The Bill also makes amendments to the Dictionary consequential to these amendments.

(c) *Crimes (Child Sex Offenders) Act 2005*

1.6 The Bill amends this Act to:

- (i) insert a new section 10(4) to ensure that a class 1 or class 2 offence does not cease to be a registrable offence only because it is amended or repealed and remade;
- (ii) provide that a police officer taking a photo of a registrable sex offender need only be the same sex as the offender as far as practicable;

- (iii) amend the definition of “child-related employment” to remove the reference to Legal Aid ACT which has the effect of extending the definition of “child-related employment” to all employment involving contact with a child in relation to the provision of legal services; and
 - (iv) update and amend the list of offences that trigger an obligation to register a person as a child sex offender to ensure descriptions accurately reflect the corresponding offences, and to add offences to address an oversight in that some Commonwealth Criminal Code offences were not listed as registrable offences despite relating to conduct very similar to conduct captured by existing offences.
- 1.7 The Bill also makes amendments consequential to the substantive amendments and minor drafting and technical amendments.
- 1.8 The explanatory statement identifies that the Bill limits the right to privacy, freedom of movement, work, and liberty in various ways and provides a detailed analysis for the manner in which particular amendments impact a right. For ease of reference, this Report adopts the structure of the statement.

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

Right to privacy (section 12 HRA)

- 1.9 First, the amendments that provide that a police officer taking a photo of a registrable sex offender need only be the same sex as the offender “as far as practicable” limits the right to privacy as it extends the circumstances in which a photo may be taken (i.e. enables the photo to be taken by a person of a different sex). The purposes of these amendments are described in the statement as follows.

The amendment to section 79 (1) (a) aims to remove impediments to the efficiency of the offender registration process and thereby enhance the integrity of the offender registration scheme. The amendment to section 79 (3) also aims to achieve efficiency in the registration process, as well as to mitigate occupational safety risks to police officers involved in the registration process. In helping to reduce these risks, the amendments promote the right to life and work-related rights (safe, just and favourable conditions of work).

- 1.10 The Committee refers the Assembly to the discussion in the explanatory statement on the rational connection between the limitation and the purpose and the proportionality of the limitation. In summary, the statement explains:

The amendments represent the least restrictive approach to achieving the objectives of enhancing the efficiency of offender registration, protecting the safety of police officers and the registrable offender. The amendments do not create any general authorisation for officers or other persons of a different sex to a registrable offender to be involved in the process of photographing the offender. Rather, they permit a person of a different sex to photograph the offender, and/or for a police officer of a different sex to be present where the photograph is taken, only in circumstances where compliance with current requirements would be operationally inefficient or would result in safety risks. It is envisaged that in most cases the process of taking a photograph of an offender will conform to current requirements.

- 1.11 The Committee also notes that the explanatory statement refers to the “safeguard” of existing section 79(2) which prohibits a police officer from requiring an offender to expose certain areas of the body for a photograph.
- 1.12 **The Committee refers the discussion in the explanatory statement to the Assembly and does not require a response from the Minister.**

Right to work (section 27B HRA)

Right to privacy (section 12 HRA)

Right to liberty and security (section 18 HRA)

- 1.13 Second, the amendment to remove the reference to Legal Aid ACT in the definition of “child-related employment” limits the rights to work, privacy and liberty. This is because the removal expands the definition of “child-related employment” which has consequences for the operation of other sections of the Act. The explanatory statement explains:

This amendment expands the scope of the list further, by removing the restriction of legal services provided only by Legal Aid ACT, and expands it to include all legal services related to a child. This amendment will apply to all professional legal services related to a child where contact with children is a feature of the employment position and necessary for the provision of legal services to occur, such as providing legal advice to a child charged with a criminal offence. This amendment covers not only the legal profession, but other staff involved in the provision of legal services related to a child.

- 1.14 The amendment limits the right to work as there are offences in the Act with respect to a registrable offender’s ability to engage in “child-related employment” (See sections 126 and 127).
- 1.15 The amendment limits the right to privacy as it expands the scope of Act disclosure requirements for registrable offenders.
- 1.16 The amendment limits the right to liberty as it expands the child-related employment areas to which existing offences that carry penalties of imprisonment will apply.
- 1.17 The explanatory statement explains that the purpose of the amendment is primarily to increase the protection of children. The statement explains:

Without this amendment, a registrable offender working in a law firm (whether as a legal practitioner or support staff) may be able to provide child-related legal services, which could bring them into contact with children and increase the risk to the safety of those children.

- 1.18 The explanatory statement contains a discussion on the proportionality of the limitation on each right, and the Committee refers the Assembly to that discussion. The statement also notes:
- the amendment was recommended by the statutory review on the *Crimes (Child Sex Offenders) Amendment Act 2025*;
 - registrable offenders are provided with information about their obligations under the Act upon registration; and
 - the clause in the Bill making this amendment (clause 17) will not commence until 3 months after the notification of the Bill (if enacted).

- 1.19 **The Committee refers the Assembly to the discussion in the explanatory statement and does not require a response from the Minister. Given nothing has been identified in the explanatory statement, the Committee understands that no strict liability offences are impacted. If this understanding is incorrect, the Committee requests that the Minister inform the Assembly.**

Right to privacy (section 12 HRA)

Right to freedom of movement (section 13 HRA)

- 1.20 Third, the Bill amends the *Crimes (Child Sex Offenders) Amendment Act 2025* to update the list of offences in the schedules to the *Crimes (Child Sex Offenders) Amendment Act 2025* that trigger an obligation to register a person as a child sex offender and to add some Commonwealth Criminal Code offences. Persons convicted of offences in the schedules are added to the Child Sex Offender Register. Updating and adding to relevant child sex offences limits the right to privacy and freedom of movement because, as the explanatory statement explains:

These amendments will engage and limit the right to privacy (section 12 of the HR Act) and the right to freedom of movement (section 13 of the HR Act) because some of the amendments broaden the range of offences captured under the CSO Act and, by virtue of that expand the persons who are required to be on the child sex offender register. Registrable offenders must also comply with a range of restrictions and reporting requirements, which will reduce the person's privacy and restrict their movements.

- 1.21 The statement further explains:

The inclusion of the additional offences addresses an oversight whereby offences in the Commonwealth Code were not listed as registrable offences despite their close similarity to offences that are listed. Addressing this oversight will help to ensure the child sex offender registration scheme operates as intended.

Other amendments to the schedule of offences are technical only and have no impact on human rights.

- 1.22 **The Committee refers the Assembly to the more detailed discussion in the explanatory statement and does not require a response from the Minister.**

(d) *Crimes (Restorative Justice) Act 2004*

- 1.23 The Bill amends the reporting requirements of the director-general to each "referring entity"² contained in Division 9.2 (Reporting and Records) in Part 9 of the Act. It substitutes existing section 68 with new sections 68 and 68A.
- 1.24 New section 68 changes the frequency of reporting of the director-general from quarterly to yearly. In addition, the new section 68 requires the director-general to report on specific matters listed in (a) to (d) of new section 68, rather than on "the progress of restorative justice for the offence during the quarter" (existing section 68).
- 1.25 The Clause Notes explain that the new section 68A supplements the annual reporting required by new section 68 by granting the director-general a discretionary power ("may") to report to a referring entity at any time on specific matters listed in (a) to (c) of the new section 68A in relation to an offence the entity referred for restorative justice. The Clause Notes explain that this power means that referring entities "can be informed of when their referral has concluded".

² For the purposes of the reporting sections in Division 9.2, see section 22 of the *Crimes (Restorative Justice) Act 2004*.

1.26 The Bill also makes consequential amendments to the Dictionary of the Act.

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

Right to privacy (section 12 HRA)

1.27 The explanatory statement identifies that the new sections 68 and 68A have the potential to limit the right to privacy given the information that the director-general is required or permitted to report on. The statement explains:

The purpose of introducing new narrowly targeted reporting provisions in section 68A of the CRJ Act is to remove any confusion about the circumstances in which the director-general may report on the outcomes of restorative justice to a referring entity. Section 68 provides clarity to referring entities about the limited circumstances and information that can be provided about the outcomes of restorative justice.

...

The introduction of targeted reporting provisions is rationally connected to the overarching goal of providing referring entities with information they require to perform their functions in the criminal justice system.

1.28 The explanatory statement provides a discussion of why the limitations on the right to privacy are reasonable and proportionate to achieve the purpose. The Committee notes the comments in the statement that the provisions are “narrowly targeted and sufficiently precise so that where restorative justice has been finalised, only limited information and circumstances are provided to the relevant referring entity.” The statement also refers to existing safeguards in the Act regarding confidentiality including the secrecy provisions - sections 64 and 65 - and to the *Information Privacy Act 2014* which it states that referring entities are bound by.

1.29 **The Committee refers the Assembly to the discussion in the explanatory statement and does not require a response from the Minister.**

(e) *Crimes (Sentence Administration) Act 2005*

1.30 The Bill amends this Act to add the chief police officer as a standing member of the Sentence Administration Board, to authorise the chief police officer to delegate their functions on the Board to a police officer of the rank of superintendent or higher, and to make minor drafting and consequential amendments.

(f) *Crimes (Sentencing) Act 2005*

1.31 The Bill amends Section 41(1) of this Act to insert a new sub-section to authorise a pre-sentence report where a defendant indicates an intention to plead guilty to an offence in a proceeding in the Magistrates Court.³ New sections 43A and 43B provide for the circumstances in which a pre-sentence report provided before an offender enters a plea of guilty are admissible and creates a new offence where a person publishes “sensitive information” (being information related to the report).

³ Pre-sentence report matters are defined in section 40A of the *Crimes (Sentencing) Act 2005*.

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

Right to privacy (section 12 HRA)

Rights in criminal proceedings (section 22 HRA)

- 1.32 The amendments made by the Bill to this Act engage and limit the rights to privacy and the rights in criminal proceedings as explained in the explanatory statement:

[The amendments] could limit the right to privacy because information in the report may be revealed in circumstances that would not otherwise arise if the defendant chose to plead not guilty at a later stage, and could limit rights in criminal proceedings because the judiciary reading a report that may relate to omissions [sic] of guilt could limit the right to be presumed innocent until proven guilty according to law.

- 1.33 According to the statement, the purpose of the amendments to the Act is “to increase efficiency for court listings and reduce the number of times a defendant needs to attend court.”
- 1.34 The explanatory statement contains a discussion of the proportionality of the limitation on the right to privacy by virtue of the safeguards within the Bill, including the creation of the new offence of publishing sensitive information (“sensitive information offence”).
- 1.35 However, the statement does not expressly contain a discussion of the rational connection and proportionality in relation to the impact on the rights in criminal proceedings, specifically the right to be presumed innocent. In this regard, the Committee notes that, according to the Notes to the new section 43B, the defendant has the legal burden in relation to the defence provided in new sub-section (4) of section 43B.
- 1.36 **The Committee refers the discussion in the explanatory statement to the Assembly and requests the Minister to amend the explanatory statement to provide a discussion on the rational connection and proportionality in relation to the rights in criminal proceedings, particularly with respect to the legal burden for the defence in new section 43B.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

- 1.37 Relatedly, the Committee notes that the discussion about the right to privacy and the right to criminal proceedings are conflated in the explanatory statement for the amendments to the *Crimes (Sentencing) Act 2005*. The Committee notes its general preference for the discussion of the limitation of each right to be addressed separately. While in some instances a discussion of two or more rights together does have a logical basis, where, as here, the rights impacted are so distinct, it is sometimes more helpful if they are addressed separately. The Committee notes that that the discussion on rights were separated for many other discussions in the explanatory statement.

(g) *Evidence (Miscellaneous Provisions) Act 1991*

- 1.38 The Bill amends this Act to expand the circumstances in which pre-recorded evidence by dangerously ill witnesses is admissible in criminal proceedings by permitting admission when it is in the interests of the administration of justice. The Bill also makes a minor drafting amendment.

(h) *Magistrates Court Act 1930*

- 1.39 The Bill makes amendments to this Act to clarify information provided to a recipient of an infringement notice, providing for time limits and clarifications in relation to withdrawal of, and extensions of time for infringement notices and the process following refusal of withdrawal. The Bill also inserts new provisions for, or makes amendments related to, the notification and review of infringement notice decisions, the process for appointing authorised persons, and makes minor and technical and consequential amendments.

**Do any provisions of the Bill inappropriately delegate legislative powers?—
Committee resolution of appointment paragraph (9)(a)(iv)**

- 1.40 The Clause Notes explain that a new Division relating to review of infringement notice decisions is inserted into the Act because the Act “does not currently provide for a clear pathway to the review of decisions made about infringement notice decisions” (such as extension to pay, waiver, withdrawal etc). However, the Clause Notes also identify that new sections 134AA and 134AB, contained in the new Division (review of infringement notice decisions), provide that a “reviewable infringement decision” is an internal reviewer’s decision or an administering authority’s decision that is “prescribed by regulation.”
- 1.41 Neither the explanatory statement nor the Clause Notes explain why these reviewable decisions need to be prescribed by regulation.
- 1.42 **The Committee requests the Minister to amend the explanatory statement to explain why the identification of the decisions the subject of the new review framework is delegated to regulations.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

(i) *Mental Health Act 2015*

- 1.43 The Bill amends this Act to authorise the ACT Civil & Administrative Tribunal to make an order authorising police to apprehend a person subject to a conditional release order and return them to their approved facility, and to increase the information that the ACAT must have regard to when reviewing detention and considering release of a person and the information that the chief psychiatrist is required to tell ACAT. The Bill also amends the Act to extend powers of entry, apprehension, search and seizure currently existing in the Act to be exercised by the police under the new power to return a person under conditional release to an approved facility.
- 1.44 The Bill also provides for transitional provisions in relation to the amendments, providing that in certain circumstances where there has been a contravention of a conditional release order or of the order, the new provisions in the Act will apply even though the contravention occurred before the commencement day of amendments made to the Act by this Bill.
- 1.45 The Bill also makes minor and technical amendments as a consequence of the substantive changes made by the Bill.
- 1.46 The Committee notes that clauses 70, 71, and 72 of the Bill make technical amendments to, according to the Clause Notes, address drafting errors. However, the Committee notes that the Act already appears to contain the corrected versions (see the *Statute Law Amendment Act 2025*⁴).

⁴ *Statute Law Amendment Act 2025*, Schedule 3, Part 3.63.

1.47 The Committee refers this matter to the Minister and requests clarification with respect to the amendments in Clauses 70 to 72.

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

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

Right to equal protection (section 8(3) HRA)

1.48 New section 181A proposed by the Bill grants a new apprehension power to police to return a person to an approved mental health facility or approved community care facility at which they are required to reside in under their conditional release order.

1.49 These amendments limit the right to equality and non-discrimination. The explanatory statement explains that:

This amendment engages this right because a mental impairment may be considered a protected attribute. By introducing an apprehension power which only applies to people who breach a requirement of their CRO to reside in a facility, the amendment treats people with a mental impairment who are subject to this requirement differently from others with a mental impairment but who are not subject to this requirement.

However, this amendment does not limit this right because the reason for differential treatment is not based on the person's particular mental impairment, but rather an individualised assessment of the person's risks to themselves and/or the community.

In conducting this individualised assessment, the ACAT is required to have regard to the matters listed in section 180(3) of the MH Act.

1.50 The Committee notes that a law that targets a specific group of people but requires an individual assessment for each individual may still be considered discriminatory, although it might be considered indirect discrimination. Accordingly, the Committee queries the explanatory statement's conclusion that section 8 is not limited.

1.51 The primary source of the rights in section 8 of the HRA are Articles 2(1), 16 and 26 of the International Covenant on Civil and Political Rights.⁵ According to the Australian Human Rights Commission website:

Under the ICCPR, the UN Human Rights Committee has recognised that 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant'.

In determining the 'reasonable and objective' test, the Committee has proceeded on a case-by-case basis.⁶

1.52 The explanatory statement does not directly address the 'reasonable and objective' nature of the provisions impacting the equality of persons with a mental impairment using an individualised assessment. But the Committee notes that explanatory statement contains a discussion about the matters to be considered by ACAT in the individualised assessment, concluding that it is "ultimately a discretionary judgment for the ACAT to make..."

⁵ *Human Rights Act 2005*, Schedule 1.

⁶ <https://humanrights.gov.au/resource-hub/by-resource-type/publications/rights-and-freedoms/rights-equality-and-non-discrimination>.

- 1.53 **The Committee refers the discussion in the explanatory statement to the Assembly but does not require a response from the Minister.**

Right to privacy (section 12 HRA)

Right to liberty and security (section 18 HRA)

Right to freedom of movement (section 13 HRA)

- 1.54 As noted earlier in this report, where the human rights impacted are distinct it is the Committee's preference that each be addressed separately in the explanatory statement. As the statement addresses these three rights together, for ease of reference the Committee will follow that structure.
- 1.55 Proposed new section 181A limits the right to liberty as it provides for a new power to police to apprehend a person who has breached a condition of a conditional release order to reside in an approved mental health facility or approved community care facility. The Bill amendments to extend existing entry, apprehension, search and seizure powers to this new power also limits the right to liberty.
- 1.56 Similarly, the new power in section 181A limits the right to freedom of movement as it authorises the police to return persons to the facility they are required to reside in under a conditional release order.
- 1.57 The Bill amendments to extend existing entry, apprehension, search and seizure powers to the new section 181A power limit the right to privacy. The Committee notes that the amendment to section 180(3) extending the information to be given to the ACAT also potentially limits the right to privacy.
- 1.58 The explanatory statement explains that the purpose of the new powers is:
- ...to maintain public safety in circumstances where a high-risk individual is in breach of their CRO because they have failed to return to the approved facility at which they are required to reside. This amendment enables authorities to act promptly to prevent harm from occurring where there is a known risk to public safety.
- 1.59 The statement notes that this amendment addresses, in part, recommendations by the Chief Psychiatrist following an incident at the Australian National University in 2023 concerning an inpatient granted leave from a mental health facility.
- 1.60 The statement provides a discussion on how the limitations are reasonable and proportionate, including by identifying the restrictions on the power and the limitations of the entry, search and seizure powers that will apply.
- 1.61 The Committee notes that the statement provides a helpful discussion on the reasonable and proportionate nature of the amendments but that the discussion is primarily directly to the limitations on the rights to liberty and freedom of movement. The discussion does not directly address the limitations on the right to privacy, although the Committee can infer from the discussion how it might be addressed. This conflation of discussion is one of the reasons the Committee prefers that, where possible and not substantially duplicative, limited rights be addressed separately.
- 1.62 **The Committee refers the discussion on the limitations on the rights to the Assembly and does not require a response from the Minister.**

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

- 1.63 The Committee notes that the transitional provisions inserted by the Bill (clause 84) provide that the new section 181A and other provisions apply where a conditional release order was in force immediately before the commencement day of the Bill.
- 1.64 The Committee notes that the consequence of the transitional provisions is retrospective, in that it applies to already existing orders.
- 1.65 **The Committee brings this matter to the attention of the Assembly but does not require a response from the Minister.**

(j) *Victims of Crime Act 1994*

- 1.66 The Bill amends the current delegation power of the chief police officer in section 29A of this Act. The current version of section 29A permits delegation by the chief police officer of a function under the Act to a police officer. The proposed amendment extends the power of the chief police officer to delegate also to “a staff member of the Australian Federal Police whose functions include victim liaison”.

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

Right to privacy (section 12 HRA)

- 1.67 The explanatory statement states that this potentially limits the right to privacy as it “expands the category of people employed by the Australian Federal Police (AFP) who may have access to the personal information of victims, offenders and accused people.” The purpose of the amendment, the statement states, is to “include Victim Liaison Officers (VLOs) who work for the AFP within the category of people to whom the CPO can delegate” under section 29A so as to remove the “ongoing administrative burden” and to support the VLOs.
- 1.68 The statement contains a clear discussion about the rational connection between the purpose and limitation on the right to privacy and its proportionality, including identifying various safeguards.
- 1.69 **The Committee refers the Assembly to that discussion and does not require a response from the Minister.**

Family, Personal and Sexual Violence Legislation Amendment Bill 2025

- 1.70 This Bill amends several pieces of legislation in relation to ACT laws on domestic, family and sexual violence (“DFSV”).

(a) *Crimes (Sentencing) Act 2005 (CSA)*

- 1.71 The Bill amends section 34A of the CSA to provide that when a court is determining the sentence of an offender for a sexual offence against a child, the severity of the sentence will not be reduced because of an offender’s “good character”. Under the current CSA, this restriction only applied where the offender’s “good character” enabled the offender to commit the offence. The Clause Note for this amendment (clause 4) explains that the effect of this amendment is “that ‘good character’ evidence is wholly excluded as a mitigating factor for all child sexual offences.”

- 1.72 This amendment will expand the current application of section 34A to apply in sentencing for all child sexual offences.

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

Rights in criminal proceedings (section 22 HRA)

Right to a fair trial (section 21 HRA)

- 1.73 The explanatory statement identifies that rights in criminal proceedings and the right to a fair trial may be limited by the amendment to the CSA. The statement explains:

Current law, both in the CSA and at common law, provide the court may consider ‘character’ of the offender at sentencing. Where an offender can provide evidence which, on the balance of probabilities ‘otherwise’ reflects on them ‘positively’, despite their criminal conduct, the court must take it into account in same way at sentence (although the weight given to this evidence will depend on all the circumstances of the case).⁷

- 1.74 The statement provides a detailed discussion about the background behind the amendment and its purpose and proportionality. The statement notes that the amendment “does not prevent the courts’ holistic analysis of each individual case and each offender’s personal circumstances in accordance with sentencing principles” and notes that section 33 of the CSA sets out some objective sentencing considerations.
- 1.75 **The Committee refers this discussion to the Assembly and does not require a response from the Minister.**

(b) *Evidence (Miscellaneous Provisions) Act 1991* (“EMPA”)

- 1.76 The explanatory statement summarises that the Bill amends the EMPA to:

- amend the protected confidences⁸ immunity to allow the counselled person to consent to the disclosure of protected confidence evidence in civil proceedings, thereby waiving the immunity;
- clarify that the protected confidences immunity applies in all proceedings where protected confidence evidence is sought to be disclosed, not only sexual and family violence offences;
- provide that in deciding whether to give leave for the disclosure of a protected confidence, the court needs to consider the impact on victims of family violence offences as well as victims of sexual violence offences;
- provide that the special requirements that apply in sexual offence proceedings under Chapter 4 of the EMPA are also to apply to proceedings for intimate image abuse offences under Part 3A of the *Crimes Act 1900* (Crimes Act);
- facilitate the return of audio copies of recorded statements provided to a self-represented accused person made in relation to a family violence offence proceeding; and
- make various technical, drafting error corrections and consequential amendments.

⁷ Explanatory statement p. 15.

⁸ In Division 4.4.3, a “protected confidence” is a counselling communication made by, to or about a person against whom a sexual offence or family violence offence was, or is alleged to have been, committed.

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

Right to a fair trial (section 21 HRA)

1.77 First, the explanatory statement addresses the amendments made to the provisions on protected confidences. The explanatory statement identifies that the right to a fair trial is limited by these amendments as it means that there are circumstances in which protected confidence evidence may be excluded, which could impact proceedings and the accused's case.

1.78 The statement refers to observations in recent case law to explain the purpose of the amendment:

Amendment is required to resolve the issues raised in these cases and make it clear that Division 4.4.3 applies in both civil and criminal proceedings where protected confidence evidence is sought to be disclosed. This is the intended application of the immunity and does not expand the operation of the immunity beyond what is already provided under Div 4.4.3. The Bill also ensures that a court considers how the disclosure of protected confidence evidence affects not only a victim-survivor of sexual offences but also a victim-survivor of family violence offences.

1.79 Second, the amendment to provide that the special requirements for sexual offence proceedings under chapter 4 also apply to proceedings for intimate image abuse offences under the *Crimes Act 1900* limits the right to a fair trial. This is because extending the protections to intimate image abuse offences could impact proceedings and the accused's case. The explanatory statement explains:

This is because the exclusion of evidence could impact proceedings and the accused's case. The amendment may also limit the right to fair trial if special protections are applied, such as giving evidence in a closed court and preventing the publication of the complainant's identity, as these may render the court proceedings less open, transparent and accountable to the public.

1.80 **The Committee refers the discussion on rationality and proportionality in relation to the limitation on the right to a fair trial imposed by these amendments to the CSA in the explanatory statement to the Assembly and does not require a response from the Minister.**

(c) *Family Violence Act 2016* (FVA) and the *Personal Violence Act 2016* (PVA)

1.81 The Bill makes similar amendments to both of these Acts to:

- clarify the status of a "relevant decision" made by a Registrar where a review of a Registrar's decision is sought. The FVA and the PVA provide that a decision of the registrar is a "relevant decision" if it is a decision to— (a) refuse to make an interim order; or (b) if section 54/section 49 of the FVA and PVA respectively (Respondent not present at return of application) applies—adjourn the proceeding; or (c) if the applicant for the protection order asks for a condition to be included in an interim order—refuse to include the condition in the interim order;
- provide that a person does not need to physically attend court to meet any requirement under the Act they are "present", and that a person may be "present" if they appear in court via remote technology;
- resolve inconsistencies and ambiguities regarding the service requirements for FVOs and PVOs;

- provide for a delay in the Minister’s review of the FVA in order to assess the effectiveness of the Family Violence Safety Notice Scheme established by this Bill (see (d) below); and
- make consequential amendments to the FVA and PVA.

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

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

1.82 The explanatory statement provides that “the right to security of a person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained.”⁹ The stay of a “relevant decision” while a review is sought may, depending on the decision, limit the right to security of a person by giving rise to safety risks to the applicant.

1.83 The explanatory statement explains that this amendment is to resolve an issue that has arisen following the introduction of the *Sexual, Family and Personal Violence Legislation Amendment Act 2024*. The statement notes:

The ACT Magistrates Court has advised that questions around the status of relevant decisions/interim orders have arisen in proceedings and that the court is unable to draw on legislation for guidance. Given the volume of applications for interim orders that Magistrates Court receives under the FV Act and PV Act, clarity on the status of interim orders in legislation is necessary.¹⁰

1.84 The explanatory statement contains a discussion on the rational connection between the limitation and its proportionality. In summary the statement states:

The possible limitations on right to security of a person are proportionate to the aim of clarity in proceedings for parties and in turn promote protected persons’ safety, and are the least restrictive means possible in the circumstances.

...

Additionally, as noted above, the clarification that the registrar’s decision is stayed pending review of the Magistrate does not deprive the applicant of protection they would have otherwise enjoyed should the decision not have been stayed.¹¹

1.85 The Committee refers the discussion in the explanatory statement to the Assembly and does not require a response from the Minister.

(d) *Family Violence Act 2016* (FVA)

1.86 This Bill also amends the FVA to establish the Family Violence Safety Notice (“FVSN”) Scheme to replace the After-Hours Family Violence Order (“AHFVO”) Scheme. The new FVSN is a short-term notice designed to provide immediate protection to persons at risk of family violence. The FVSN is to be issued by a “senior police officer”¹² of or above the rank of Sergeant. The FVSN may include conditions reasonably necessary for the safety and protection of the protected person and is in force for 14 days or until it is revoked by the Court or superseded by a FVO made by the Court. A FVSN cannot be renewed or extended.

⁹ Explanatory statement p. 13.

¹⁰ Explanatory statement pp. 13-14.

¹¹ Explanatory statement p. 14.

¹² Defined to mean “a police officer of, or above, the rank of sergeant”. This definition is inserted into the Dictionary of the FVA by Clause 86 of the Bill.

- 1.87 The explanatory statement provides a helpful discussion on the background to the FVSN, including details about the concerns raised by stakeholders such as the ACT Police about the operation of the existing AHFVO. The AHFVO, among other things, required a police officer to apply to a judicial officer outside of business hours. The statement explains:

The purpose of the FVSN Scheme is to provide police with an additional mechanism for immediate protection of persons experiencing or at risk of family violence, by issuing civil notices that impose conditions on a respondent's behaviour towards an affected person.¹³

- 1.88 The FVSN Scheme is detailed and extensive. But the explanatory statement identifies that it limits a number of human rights due to four key features of the scheme:
1. the process of police investigating the matter to determine whether to apply for and issue a FVSN;
 2. the conditions which a FVSN may include;
 3. the exercise of a power to detain a person during the application period for a FVSN; and
 4. the creation of an offence of breaching a condition of a FVSN.

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

Right to protection of family (section 11 HRA)

- 1.89 The explanatory statement identifies that the right to protection of the family as a group may be limited by the Bill amendments that permit conditions to be included in a FVSN as these conditions may prohibit or restrict a person the subject of the FVSN from being with the family unit. For example, a condition of the FVSN may be that the person is prohibited from being on the premises where the family lives or from contacting or locating them (see new section 13Q).

Right to privacy (section 12 HRA)

- 1.90 The explanatory statement identifies that the right to privacy is limited by the Bill amendments that grant the police the power to investigate whether there are grounds to apply for, and (for a "senior police officer") to issue, a FVSN. (See, for example, new sections 13B to 13E). This is because to adequately exercise these functions, police are likely to require information from the parties regarding their private life, family, home and communications.
- 1.91 In addition, police are required to keep written records of a range of matters during the stages of a FVSN being applied for and issued. (See, for example, new sections 13F, 13H and 13N). Further, a copy of a FVSN, which must include information about the respondent and the protected person (see new section 13I), must be given to the Magistrates Court (new section 13M), kept on police record, and given to a list of people including the chief police officer, registrar of firearms, a child's parent or guardian, and anyone else the issuing police officer is satisfied has a relevant interest (see new section 13T(1) and 13V).

Right to freedom of movement (section 13 HRA)

- 1.92 As noted above under the Right to Protection of Family, a FVSN may be the subject of conditions. Some of these conditions may limit the right of the respondent to move freely within the ACT. For example, there may be a condition that the respondent must maintain a particular distance from the protected person or a condition that the respondent must not be on premises where the protected person lives or works. (see examples in new section 13Q).

¹³ Explanatory statement p. 22.

Right to freedom of expression (section 16 HRA)

- 1.93 Similarly, the introduction of FVSNs may limit this right to freedom of expression through the imposition of conditions in a FVSN. For example, it is possible that a condition will prohibit the respondent from contacting a protected person or a child or causing someone else to attempt to contact the person or child. (See new section 13Q (g)).

Right to liberty and security (section 18 HRA)

- 1.94 The right to liberty and security may be limited under the new FVSN Scheme established by the Bill. First, new provision section 13C grants the power to the police to detain a person for up to 4 hours in certain circumstances where a police officer applies or proposes to apply for a FVSN.
- 1.95 Second, the Bill in new section 13ZC provides that it is an offence for a respondent to engage in conduct that contravenes a condition of a FVSN. The maximum penalty for the contravention is 200 penalty units or 2 years imprisonment or both. The penalty for imprisonment limits the right to liberty.

Rational connection and proportionality discussion

- 1.96 The explanatory statement contains detailed discussion on why the limitations on each of the rights identified above have a rational connection to the purpose of the FVSN Scheme and their proportionality. The statement also provides a detailed discussion on the “safeguards” in the new Part establishing the FVSN Scheme to ensure that the limitation on the rights described above are reasonable and proportionate. The Committee refers the Assembly to that discussion, and notes in particular new section 13P that provides that a police officer issuing a FVSN must ensure that the conditions included in the FVSN are the “least restrictive of the personal rights and liberties of the respondent as possible that still achieve the objects of this Act and give effect to section 13O”. New section 13O provides that the paramount consideration in deciding FVSN conditions is the safety and protection of the affected person and any child affected.
- 1.97 **The Committee refers the Assembly to the discussion on the limitation of the identified human rights in the explanatory statement and does not require a response from the Minister.**

Other and consequential amendments

- 1.98 As part of the new FVSN Scheme, the Bill also inserts new Divisions 2A.5 and 2A.6 which contain provisions about (i) service and explanation of FVSNs, and (ii) amendment and revocation of FVSNs respectively. New Division 2A.7 provides for the new offence of contravention (referred to above), and inserts provisions regarding firearm licence suspension if a FVSN is issued, and that a FVSN stays in force when a child becomes an adult.
- 1.99 The Bill also amends the FVA to:
- insert new Part 25 which contains transitional provisions regarding “after-hours orders” and “protection orders” in force immediately before the commencement day of the Bill; and
 - a range of amendments to the FVA consequential upon the new FVSN Scheme including drafting, definition and other amendments.

1.100 In addition, in Part 3.2 and Schedule 1, the Bill makes amendments to numerous pieces of other legislation. In the Clause Notes, these amendments are described as consequential, clarifying or technical drafting amendments or the Notes state that the amendment does not alter existing power in the relevant Act or does not alter meaning or does not amend the scope of the relevant Act.

1.101 However, the Committee brings to the attention of the Assembly the following amendments which the Committee would not characterise as consequential, clarifying, or technical drafting amendments, or are not stated in the Clause Notes as not altering existing power or meaning.

- Amendments to the *Bail Act 1992* (clause 91) which addresses inconsistencies between the conditions of a bail order and the conditions of a FVSN.
- Amendments to the *Crimes Act 1900* (clause 113) which expands section 192 (Seizure of firearms—protection orders) to also apply to a FVSN so that, according to the Clause Note, police officers can exercise their powers to seize a firearm under section 192 as necessary to enforce a relevant condition of a FVSN.
- Amendment to the *Crimes (Restorative Justice) Act 2004* (clause 124) which substitutes the definition in section 12 of “less serious family violence offence” to include the offence of contravening a FVSN so that the offender may be referred to restorative justice.
- Amendment to the *Crimes (Sentencing) Act 2004* (clause 125) to amend section 34 so that a court must not reduce the severity of a sentence it would have otherwise imposed because a FVSN is in force against the offence in relation to the family violence offence.
- Amendment to the *Evidence (Miscellaneous Provisions) Act 1991* (clause 132) to amend the definition of “sexual offence proceeding” so that a proceeding for the offence of contravening a FVSN under new section 13ZB of the FVA is included if the FVSN was made because of a sexual offence or an alleged sexual offence against the protected person. This means the relevant protections under Chapter 4 of the EMPA (discussed in paragraph 1.76 above) which apply in sexual offence proceedings may apply in a proceeding for the offence of contravening a FVSN.
- Amendment to the *Residential Tenancies Act 1997* (clause 180) which extends the circumstances in which a protected person may apply to ACAT in relation to the termination of a residential tenancy agreement where there is a FVSN.
- Amendment to the *Victims of Crime (Financial Assistance) Act 2016* (clause 190) which extends the Victims of Crimes Financial Assistance Scheme to the new offence of contravening a FVSN.

1.102 The Committee notes that the above are substantive amendments. Consequently, its preference would be a discussion in the explanatory statement, including identifying any human rights implications.

1.103 **The Committee requests the Minister to consider amending the explanatory statement to address the above amendments, including identifying any potential human rights limitations.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

1.104 The Committee appreciates that this is a lengthy and complex Bill. However, the explanatory statement was sometimes hard to follow. This was in part due to the structure adopted and the lack of clarity of headings as to which Act amendments were being discussed for each human right limited. In some of the human rights discussion there was a lack of references to the specific clauses of the Bill subject to discussion. This made it difficult to identify, in such a long Bill, precisely the provisions the subject of the discussion.

Government Agencies (Campaign Advertising) Amendment Bill 2025

1.105 This is a Private Member's Bill that amends the *Government Agencies (Campaign Advertising) Act 2009* (the "Government Campaign Act"), the object of which is to prevent the use of public funds by the government for advertising or other communications for party political purposes.¹⁴

1.106 The explanatory statement, in providing background to the Bill, states that the ACT Human Rights framework has "significantly matured" since the enactment of the Government Campaign Act and so the statement examines the existing scheme together with the proposed amendments by the Bill in the context of human rights.

1.107 This Bill tightens, clarifies and extends the restrictions on use of public funds. A summary of the key substantive features of the Bill follows.

- Governments are restricted from using government resources for certain purposes. The Bill introduces the new term "party political purposes" which extends those purposes to the depicting, naming or identifying a member of the Legislative Assembly or a candidate, and provides for some exceptions.
- Introduces additional matters which must be included in the Guidelines for the Government Campaign Act.
- Introduces a new section that extends the prohibition on government campaigns in a pre-election period to a Commonwealth federal election (not just a Territory election as currently exists) unless the campaign during a Commonwealth pre-election period has the consensus approval of government, the Opposition and other party leaders in the Legislative Assembly.

1.108 The Bill also makes consequential and technical drafting amendments.

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

Right to take part in public life (section 17 of HRA)

1.109 The explanatory statement identifies that the amendments proposed by the Bill (and the current Government Campaign Act) both promote and limit the right to take part in public life. In relation to the limitations, the statement explains that the existing Government Campaign Act "limits the ability of individually elected members of the ACT who are in Executive Government to distribute communications to residents of the ACT, including its electors, using the resources of the Government".

1.110 The explanatory statement contains a clear discussion as to how the amendments proposed by the Bill are the least restrictive means to achieve the purpose of the Bill.

1.111 The Committee refers the discussion in the explanatory statement to the Assembly and does not require a response from the Private Member.

¹⁴ *Government Agencies (Campaign Advertising) Act 2009* s 5.

Juries (Peremptory Challenges) Amendment Bill 2025

1.112 This is a Private Member's Bill to amend *the Juries Act 1967* ("Juries Act") to reduce the permitted number of peremptory challenges to prospective jurors for expanded juries in some criminal trials.

Right to a fair trial (section 21(1) HRA)

1.113 As noted by the explanatory statement, being able to challenge jurors on peremptory basis allows the accused to have an input into the composition of the jury and the impartiality of the jury is important to promote a fair trial. As noted by the Victorian Law Reform Commission, peremptory challenges also "serve the important functions of enhancing parties' confidence in the jury, and providing a safeguard in the event other processes have failed to remove prospective jurors who are biased or who appear to be unwilling or unable to serve."¹⁵ However, there are also arguments that reducing peremptory challenges promotes a fair trial. The explanatory statement provides the following explanation for the Bill:

The Bill will reduce the number of peremptory challenges to prospective jurors. The intended purpose of the amendments is to address concerns that its use, based on the appearance of the juror, is arbitrary and relies on stereotypes and [sic] rather than fairness. Peremptory challenges can be discriminatory and impact the representative nature of juries by eliminating people with certain apparent characteristics.

It is not considered that the reduction to the number of peremptory challenges will limit the right to a fair hearing. The Bill does not alter the right to trial by jury for eligible offences and does not remove the power to challenge jurors for cause, which remains as a key procedural safeguard.

Unlike peremptory challenges, a challenge for cause requires a reason grounded in fact, not a stereotype or intuition.

1.114 **The Committee refers the Assembly to the more detailed explanation in the explanatory statement about the impact of peremptory challenges on the right to a fair trial and does not require a response from the Private Member.**

Justice and Community Safety Legislation Amendment Bill 2025 (No 3)

1.115 This Bill amends the:

- (a) *ACT Civil and Administrative Tribunal Act 2008*;
- (b) *Crimes Act 1900*;
- (c) *Crimes (Sentencing) Act 2005*;
- (d) *Criminal Code 2002*;
- (e) *Discrimination Act 1991*;
- (f) *Domestic Relationships Act 1994*;
- (g) *Human Rights Commission Act 2005*;
- (h) *Legal Profession Act 2006*;

¹⁵ Victorian Law Reform Commission, *Jury Empanelment: Report* (2014) [3.243].
<https://www.lawreform.vic.gov.au/publication/jury-empanelment-report-2/3-peremptory-challenges-and-the-crown-right-to-stand-aside/>

- (i) *Legislation Act 2001*;
- (j) *Major Events Act 2014*;
- (k) *Official Visitor Act 2012*;
- (l) *Wills Act 1968*; and
- (m) *Working with Vulnerable People (Background Checking) Act 2011*.

1.116 The explanatory statement explains that the Bill is intended to improve governance and institutional operation in the justice sector. A summary of its key features follows. The Bill amends:

- the *ACT Civil and Administrative Tribunal Act 2008* and the *Human Rights Commission Act 2005* with respect to the handling of matters before the ACT Civil and Administrative Tribunal (ACAT);
- the *Discrimination Act 1991* and the *Criminal Code 2002* to expand protections against vilification and serious vilification;
- the *Discrimination Act 1991* and the *Crimes Act 1901* to update language in relation to pregnancy so it is gender neutral, including to ensure that all pregnant people are captured by the protected attribute ‘pregnancy’;
- the *Domestic Relationships Act 1994* and *Legislation Act 2001* to make references to domestic partnership and civil partnerships more inclusive.
- the *Legal Profession Act 2006* to increase the fine limits for findings of unsatisfactory professional conduct of legal practitioners and to provide for transitional provisions for the increase;
- the *Major Events Act 2014* to broaden police search powers and to clarify and correct other provisions;
- the *Official Visitor Act 2012* to amend the eligibility requirements for the appointment of Official Visitors,¹⁶ to expand their conflict of interest obligations, and to validate the appointment of Clare Doube as an Official Visitor;
- the *Wills Act 1968* to facilitate a centralised will register for the ACT; and
- the *Working with Vulnerable People (Background Checking) Act 2011* regarding the protection of children in early education and care settings by improved information sharing between Access Canberra and the national body responsible for the national register of individuals subject to prohibition notices.

1.117 The Bill also makes consequential amendments to the *Working with Vulnerable People (Background Checking) Act 2011* and the *Crimes (Sentencing) Act 2005* in the light of the amendments made to the *Discrimination Act 1991* and the *Crimes Act 1900* regarding gender neutral language referred to above.

1.118 The first paragraph of the explanatory statement states that this Bill is *not* a significant Bill. However, the Bill does limit several human rights, which the statement discusses. Therefore, the Committee questions the characterisation of the Bill as not significant.

¹⁶ Section 6 of the *Official Visitor Act 2012* defines ‘official visitor’ as meaning, for a visitable place, a person authorised to visit the place under section 9A. A visitable place is a place mentioned in a specific legislation listed in section 9.

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

Right to privacy (section 12 HRA)

1.119 The explanatory statement identifies that the Bill has the potential to limit the right to privacy in two ways.

1.120 The first is that the amendments to the *Official Visitor Act 2012* require Official Visitors to disclose conflicts of interest throughout their period of appointment and to give notice to the Official Visitors Board of paid employment and other activities that may give rise to a conflict of interest. The explanation statement explains that:

The purpose of the amendment is to protect vulnerable people residing in visitable places by strengthening the Official Visitors Board's ability to monitor the independence of Official Visitors to ensure they are properly carrying out their functions.

... the amendment will support the Board's ability to advise the Minister in relation to their obligation under s12(2)(b) to terminate an Official Visitor appointment if they fail to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of their functions.

1.121 The second is that the amendments to the *Working with Vulnerable People (Background Checking) Act 2011* grant authority to the National Authority to disclose to the commissioner for fair trading a prohibition notice under the Education and Care Services National Law.¹⁷ The explanatory statement explains that a prohibition notice may contain personal information.

1.122 The statement explains that the purpose of this amendment is to:

better facilitate information sharing between Access Canberra and the national authority to ensure that people who are prohibited from working in early childhood education and care are known in each jurisdiction and prevented from working in those areas.

1.123 The Committee notes that the explanatory statement refers to Access Canberra. The relationship of Access Canberra to the amendment made by the Bill is not clear.

1.124 The explanatory statement contains a discussion about the rational connection and proportionality of the limitation. The statement also identifies the safeguard of section 273 of the National Law which contains a duty of confidentiality.

1.125 The Committee refers the Assembly to the more detailed discussion in the explanatory statement about the limitation on the right to privacy by these amendments and does not require a response from the Minister.

1.126 The Committee notes the right to privacy is also potentially limited by the amendments made to the *Major Events Act 2014* and the *Wills Act 1968*.

1.127 The amendments to the *Major Events Act 2014* include an amendment to the scanning search, ordinary search and frisk search powers of police. Clause 34 amends section 19(2) to substitute "major event venue" with "event venue". The Clause Note to clause 34 explains that this is to "allow for the application of this provision at both Major Events and important Sporting Events under the Act." This expands the scope of the search powers.

¹⁷ The explanatory statement refers to this as "Access Canberra" – see page 11.

1.128 The amendment to the *Wills Act 1968* inserts a new section 33 which allows the Legal Aid Commission to deposit wills made with their assistance with the public trustee and guardian and give them “identifying information”¹⁸ about the will. The amendment also requires the Legal Aid Commission to keep records on wills they deposit.

1.129 **The Committee requests the Minister to consider revising the explanatory statement to address these two additional potential limitations on the right to privacy or that the Minister provide an explanation for why they were not addressed in the explanatory statement.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

Right to freedom of expression (section 16 HRA)

1.130 The explanatory statement identifies that the Bill has the potential to limit the right to freedom of expression through the amendments made to the *Discrimination Act 1991* and the *Criminal Code 2002*, which expand protections against vilification and serious vilification.

1.131 Clauses 19 and 20 of the Bill amend section 67A of the *Discrimination Act 1991* which provides that it is unlawful for a person to incite hatred toward, revulsion of, serious contempt for, or severe ridicule of a person or group of people on the grounds listed. Clauses 19 and 20 add the attribute “sex” and add association with a person or group who are identified by reference to any of the list of attributes. Clauses 15 and 16 make similar amendments to the offence of “serious vilification” in section 750 of the *Criminal Code 2002*.

1.132 These amendments expand the scope of unlawful vilification and serious vilification, thereby limiting the right to freedom of expression.

1.133 The explanatory statement states:

Expanding these existing protections to additional grounds is the least restrictive way of achieving the objective of strengthening protections against vilification for these cohorts.

1.134 **The Committee refers the Assembly to the more detailed discussion in the explanatory statement about the limitation on the right to freedom of expression by these amendments and does not require a response from the Minister.**

Right to liberty and security (section 18 HRA)

1.135 Clause 25 of the Bill amends the *Human Rights Commission Act 2005* so that a complainant may, with leave of the commission, amend a complaint at any time. The Bill also expands the operation of two victimisation offences by extending the offences to circumstances where a person the subject of victimisation amends, or does not amend, a complaint. Both offences have a potential penalty of imprisonment.

1.136 The explanatory statement states:

The inclusion of 6 months imprisonment as a possible maximum penalty for these offences appropriately reflects the seriousness of the conduct and is necessary to deter people from victimising complainants. The offences are not strict liability. Expanding the existing offences in section 98 is the least restrictive way to achieve

¹⁸ Defined in the new section 33 to refer to existing section 32(4) which says it means information about the testator or will that the public trustee and guardian uses to maintain its register of legal records.

the objective of protecting complainants from victimisation in the described circumstances.

1.137 The Committee refers the Assembly to the more detailed discussion in the explanatory statement about the limitation on the right to liberty by these amendments and does not require a response from the Minister.

Right to work (section 27B HRA)

1.138 The amendments made by the Bill to the *Working with Vulnerable People (Background Checking) Act 2011* (which grant authority to the National Authority to disclose to the commissioner a prohibition notice – discussed above) have the potential to limit the right to work, which includes the right to choose occupation freely. The explanatory statement explains that prohibition notices bar individuals from working in early childhood education and care settings if they may pose an unacceptable risk of harm to children. Accordingly, the statement says:

If an individual's application for WWVP registration is refused on the basis of the individual being subject to a prohibition notice, this may limit the individual's right to work by restricting their ability to engage in regulated activities in Schedule 1 of the WWVP Act.

...

The legitimate purpose of the amendment is to better facilitate information sharing between Access Canberra and the national authority to ensure that people who are prohibited from working in early childhood education and care are known in each jurisdiction and prevented from working in those areas.

1.139 The Committee refers the Assembly to the more detailed discussion in the explanatory statement about the limitation on the right to work by these amendments and does not require a response from the Minister.

Nurse Practitioners Legislation Amendment Bill 2025

1.140 The Bill amends the following legislation:

- *Births, Deaths and Marriages Registration Act 1997* (BDMR Act);
- *Cemeteries and Crematoria Act 2020*;
- *Coroners Act 1997*; and
- *Medical Treatment (Health Directions) Act 2006* (Health Directions Act).

1.141 The explanatory statement states the purpose of the amendments is to make healthcare more accessible and efficient by removing some of the current limitations on the work of nurse practitioners in current ACT legislation. The statement explains that the Bills' amendments "form part of a broader program of ACT and Commonwealth reform to enable the practice authority for nurse practitioners to deliver health services to the full potential of their scope of practice".

1.142 The key features of the Bill are:

- To insert new section 35A in the BDMR Act to allow nurse practitioners to issue a cause of death certificate within 48 hours of death in certain circumstances (clause 7).

- To amend section 9 of the Health Directions Act to allow a nurse practitioner to witness a non-written health direction without requiring a doctor to be the second health professional witness (clause 23).

1.143 The Bill also makes consequential and structural drafting amendments in the light of the above two changes to all four Acts.

Human rights

1.144 The explanatory statement states that the Bill promotes but does not limit any human rights under the HRA. The Committee notes that new section 35 contains a strict liability offence for a doctor who does not give the registrar-general a cause of death certificate within the stipulated time. However, the statement explains that this does not affect the existing BDMR Act provisions:

This clause [7] replaces the existing strict liability offence at section 35, in order to make the consequential changes required because of the new section 35A. The amendment does not change the substantive operation of the provision. Therefore, although inserted as a new section to replace current section 35, clause 7 does not limit human rights.

1.145 The Committee refers the explanatory statement to the Assembly and does not require a response from the Minister.

Working with Vulnerable People (Background Checking) Amendment Bill 2025

1.146 The Committee notes that this Bill has passed the Legislative Assembly, was notified on 15 December 2025 and has commenced.

1.147 This Bill amends the *Working with Vulnerable People (Background Checking) Act 2011* (“WVP Act”) and the *Working with Vulnerable People (Background Checking) Regulation 2012*. The explanatory statement states that:

The purpose of the Bill is to ensure that individuals who have sought a WWCC in another jurisdiction and received a negative notice, or those who have had their registration to work with children in another jurisdiction cancelled, will be automatically unable to be registered to work with children in the ACT.

1.148 The Bill makes amendments to the WVP Act to extend its operation so that where a person has been issued a “negative notice”¹⁹ under a “corresponding law”²⁰ in relation to work with children, the person will be automatically unable to register to work with children in the ACT or there will be automatic cancellation of their registration. The existing five year restriction on re-applying will extend to negative notices and cancellations under a corresponding law.

1.149 As explained in Clause Note 13, the Bill also amends section 71(2A) of the WVP Act to displace section 47(3) of the *Legislation Act 2001* so that corresponding laws can be prescribed laws

¹⁹ Defined in section 40(2) of the WVP Act. The explanatory statement refers to it as the “outcome of a person’s application for clearance to work with children, when the application outcome was that clearance was rejected” or cancelled.

²⁰ The phrase “corresponding law” means (a) a law of another jurisdiction corresponding, or substantially corresponding, to this Act; or (b) a law of another jurisdiction prescribed by regulation as a corresponding law for this Act (*Working with Vulnerable People (Background Checking) Act 2011*, dictionary).

“as in force from time to time” rather than only at the time of being prescribed. The amendment in clause 13 also displaces the requirement to notify a corresponding law.

1.150 The Bill amends the *Working with Vulnerable People (Background Checking) Regulation 2012* to support the Bill amendments to the WVP Act by (i) providing for prescribed matters to be included in an application for registration to work with children, and (ii) prescribing Acts from other Australian jurisdictions as “corresponding law”.

1.151 The explanatory statement explains that:

The Bill strengthens protections for children in the WWVP Act by requiring that negative notices or registration cancellations issued in other Australian jurisdictions are automatically and immediately recognised in the ACT.

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

Right to equality and non-discrimination (section 8 HRA)

1.152 The right to equality and non-discrimination in section 8 of the HRA provides that everyone is equal before the law and to enjoy their rights without discrimination. The existing WVP Act discriminates against a person on the nature and extent of their criminal record by denying registration. The explanatory statement identifies that the Bill limits those rights:

The right to freedom from discrimination based on an irrelevant criminal record is relevant to the consideration of this Bill because the amendments will extend the scheme and limit the rights of people to work in the ACT, where they have received a negative notice or registration cancellation for WWCC from another jurisdiction. The right to non-discrimination would be limited if another jurisdiction were to change its list of disqualifying (Class A equivalent) offences to include offences that would not be considered relevant criminal offences in the ACT. Under the mutual recognition scheme, the ACT would still be required to recognise such a negative notice or registration from another jurisdiction.

At present, the offences leading to automatic ineligibility for a WWCC are broadly consistent across jurisdictions.

1.153 The explanatory statement provides a clear and comprehensive assessment of the rational connection of the limitation on this right, including identifying the key safeguards relevant to restricting the limitation as much as possible.

1.154 **The Committee refers the discussion in the explanatory statement to the Assembly and does not require a response from the Minister.**

Right to a fair trial (section 21 HRA)

1.155 The explanatory statement explains that the right to a fair trial includes all stages of proceedings in a court or tribunal and has been extended to include review processes in administrative decision-making. The right to a fair trial may be limited by this Bill, it explains, because:

... the amendments will introduce an automatic recognition of a negative notice or registration cancellation for working with children received in other jurisdictions. The Bill means a person who has a negative notice or registration cancellation from another jurisdiction will not be able to dispute that it applies in the ACT. The mutual recognition of a negative notice or registration cancellation from another jurisdiction will not be a reviewable decision.

1.156 The explanatory statement provides a clear and comprehensive human rights assessment of the limitation on this right by the Bill, including identifying the key safeguards relevant to restricting the limitation as much as possible and discussing the options that were considered to be less restrictive but determined to be not feasible.

1.157 The Committee refers the discussion in the explanatory statement to the Assembly and does not require a response from the Minister.

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

1.158 Everyone has the right to work under section 27B of the HRA. As explained by the explanatory statement, the Bill will limit the right to work:

... by allowing for immediate recognition in the ACT of a negative notice or registration cancellation from another jurisdiction. This may result in someone seeking to work in the ACT having their options limited to exclude working with children, or someone currently working in a child-related activity in the ACT being required to stop working in that position.

1.159 The explanatory statement provides a clear and comprehensive human rights assessment of the limitation on this right by the Bill, including identifying two key safeguards to restrict the limitation.

1.160 The Committee refers the discussion in the explanatory statement to the Assembly and does not require a response from the Minister.

Right to privacy (section 12 HRA)

1.161 The Committee notes that the Bill may also potentially limit the right to privacy. The Bill inserts new section 22A(3) which grants power to the commissioner under the WVP Act to require an application for registration to give the commissioner information that the commissioner “reasonably needs” to decide the application (Clause 6 of the Bill). In addition, the Bill inserts new section 4A of the *Working with Vulnerable People (Background Checking) Regulation 2012* which provides information that must be included in an application. Both provisions may permit the collection, storage, and use of personal information of the applicant.

1.162 The Committee notes that the power in new section 22A(3) is qualified by what is “reasonable”. The Committee further notes that the prescribed information required by new section 4A is specific and limited. Consequently, on the basis of the comprehensive discussion on the background and purpose of the Bill in the explanatory statement, the Committee anticipates that the limitation would be assessed as not significant. However, addressing the limitation on this right in the explanatory statement would have been preferable.

1.163 The Committee refers this matter to the Assembly but, given that the Bill has already been enacted and commenced, does not require a response from the Minister.

Proposed amendments—Comment

Territory Records (Executive Records) Amendment Bill 2025

1.164 The Committee has received from the Chief Minister proposed government amendments to the Territory Records (Executive Records) Amendment Bill 2025,²¹ together with a supplementary explanatory memorandum.

²¹ This Bill was presented to the Legislative Assembly on 26 June 2025 and was the subject of comment by the Committee in its *Scrutiny Report No 8* (August 2025).

- 1.165 The proposed amendments amend clauses of the Bill relating to decision making for release (for the principal officer and Ombudsman), extensions of release, and review. The amendments also propose a new provision allowing the Ombudsman to require additional information from an applicant or the principal officers and insert transitional provisions, including a provision delaying the commencement of the new Ombudsman functions.
- 1.166 The supplementary explanatory statement notes that the explanatory statement that accompanied the Bill addresses how some Bill amendments limited the right to privacy and the right to freedom of expression. In its *Scrutiny Report 8* (August 2025), the Committee noted that the Bill also had the potential to limit the right to take part in public life (section 17 of the HRA). The Committee noted that this limitation is not identified in the explanatory statement but also notes that the comments in the explanatory statement on the right to freedom of expression are relevant to this limitation.
- 1.167 The government’s supplementary explanatory statement is somewhat equivocal about whether the amendments limit any human rights. It states:
- The amendments engage, promote *and limit* certain human rights under the HR Act:
- Right to privacy and reputation (promoted and limited)
 - Freedom of expression (promoted and limited)
 - Taking part in public life (promoted)
- The Government amendments to the Bill *will not limit* any human rights.
- However, the amendments to the Bill could be viewed as reducing the extent to which the Bill promotes human rights, specifically the right to freedom of opinion and expression as supported by the ability to access government information.
- Notwithstanding this, the Government is of the view that the amendment is not of itself a limitation of rights.
- 1.168 The Committee notes that, in any event, the discussion in the explanatory statement accompanying the Bill presented in June 2025 is not significantly impacted by the government amendments except in one respect. The government amendments propose a new section 31KA which permits the Ombudsman to require additional information reasonably needed from an applicant or principal officer before deciding on an application. This provision has the potential to limit the right to privacy (section 12 of the HRA) as the Ombudsman may require personal information.
- 1.169 **The Committee refers the supplementary explanatory statement to the Assembly and requests the Chief Minister to provide clarification on the scope of the new section 31KA and its impact on the right to privacy.**

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond prior to the Bill being debated.

Proposed amendments—No comment

Building and Construction Legislation Amendment Bill 2025 (No 2)

- 1.170 The Committee has received from the Minister for Planning and Sustainable Development a proposed government amendment to the Building and Construction Legislation Amendment Bill 2025 (No 2). The government amendment changes the commencement provisions of certain clauses of the Bill so that the clauses now commence on the day after the Act’s notification.

Government responses—Comment

Building and Construction Legislation Amendment Bill 2025 (No 2)

1.171 The Committee received a response from the Minister for Planning and Sustainable Development dated 15 January 2026 in relation to comments made in *Scrutiny Report No 13* (November 2025) on the Building and Construction Legislation Amendment Bill 2025 (No 2).

1.172 In its Report, the Committee noted that the Bill amends two strict liability offences in the Building Act but noted that the explanatory statement did not address the impact on the presumption of innocence which is an aspect of the rights in criminal proceedings under section 22 of the HRA.

1.173 In their letter, the Minister explains:

I advise that the amendments do not expand the scope of existing strict liability offences. They primarily update terminology to reflect current practice and clarify what documentation can be used to demonstrate compliance with swimming pool safety requirements. These changes make the process less cumbersome for pool owners, ensuring that obligations are clear and that compliance can be demonstrated more easily through a choice of specified documents.

1.174 The Minister has provided a supplementary explanatory statement to incorporate a human rights assessment on the limitation of the right to be presumed innocent. The statement also states that the amendments do not expand the scope of the existing strict liability offences. Despite that, the statement provides a human rights assessment on the amendments and the right to be presumed innocent. The Committee refers the Assembly to that discussion.

1.175 The Committee thanks the Minister for their response and the supplementary statement noting that the response and amended statement have been received prior to the Bill being debated by the Assembly. The Committee also thanks the Minister for being responsive to the Committee's request in its Report for greater clarity in an explanatory statement about uncommenced provisions.

Magistrates Court (Indicative Sentencing) Amendment Bill 2025

1.176 The Committee received a response from the Attorney-General dated 7 January 2026 in relation to comments made in *Scrutiny Report No 13* (November 2025) on the Magistrates Court (Indicative Sentencing) Amendment Bill 2025.

1.177 In its *Scrutiny Report No 13*, the Committee identified a potential error in Clause Note 7 of the explanatory statement and recommended that the limitation of the right to be presumed innocent (section 22 HRA) and the right to privacy (section 12 HRA) be addressed given the potential impact of some Bill amendments.

1.178 The Attorney-General has provided a response and a revised explanatory statement to address each of the Committee's points:

- The error in Clause Note 7 has been corrected;
- The Attorney-General has explained the reasons for the reversal of the evidential and legal burden in new section 61F of the *Magistrates Court Act 1930* proposed by the Bill and the revised explanatory statement now addresses the limitation; and

- The Attorney-General has acknowledged that the expansion of section 52 of the *Crimes (Sentencing) Act 2005* by the Bill has the potential to limit the right to privacy and the revised explanatory statement now addresses that limitation.

1.179 The Committee thanks the Attorney-General for their helpful response and the revised explanatory statement, noting that the response and amended statement have been received prior to the Bill being debated by the Assembly.

1.180 The Committee also thanks the Attorney-General for advising the Committee that, as the Bill is currently before the Standing Committee on Legal Affairs, the revised explanatory statement provided with her response may need to be further amended before debate.

Public Sector (Closing the Gap) Legislation Amendment Bill 2025

1.181 The Committee received a response from the Chief Minister dated 28 November 2025 in relation to comments made in *Scrutiny Report No 13* (November 2025) on the government amendments to the Public Sector (Closing the Gap) Legislation Amendment Bill 2025.

1.182 The Committee had requested the Chief Minister to clarify the impact of proposed new section 8(3B) in the *Public Sector Management Act 1994* as proposed by the government amendments to the Bill. The Chief Minister has explained the purpose and operation of new section 8(3B) as follows.

It is not intended that section 8(3B) curtail the ability of an SES member or statutory officeholder to fulfil their role in any aspect. Rather, the proposed amendment is intended to make it clear beyond all doubt that the new obligation in subsection 8(3A) is to be read subject to other legal rights or requirements. This is important as an SES member and statutory office-holder's functions in their job could appear to conflict with their subsection 8(3A) requirement on paper. This is a common way to clarify the interaction between laws that might seem to equally govern how a decision is made, or an authority is exercised. For example, in subsection 9(5) of the PSM Act.

The practical effect is that where a decision or action is undertaken by an SES member that might interact with the closing the gap principle, proposed section 8(3B) clarifies that the SES member's decision will not be rendered void if that decision does not align with the closing the gap principle. Equally, any lawful act or decision under another law will not be subject to legal challenge only because it is alleged to be noncompliant with subsection 8(3A).

1.183 The Chief Minister has provided a supplementary explanatory statement to reflect this explanation.

1.184 The Committee thanks the Minister for their response. The Committee notes that Public Sector (Closing the Gap) Legislation Amendment Bill 2025 has been passed by the Assembly and was notified on 15 December 2025.

Tobacco and Other Smoking Products Amendment Bill 2025

1.185 The Committee received a response from the Minister for Health dated 2 December 2025 in relation to comments made in *Scrutiny Report No 13* (November 2025) on the Tobacco and Other Smoking Products Amendment Bill 2025.

- 1.186 In its *Scrutiny Report No 13*, the Committee noted that the explanatory statement stated the right to a fair trial (section 21 HRA) may be limited by the Bill but did not provide an assessment for that statement. The Committee requested the Minister to clarify whether the right is limited and, if so, to revise the explanatory statement.
- 1.187 The Minister has clarified that the right to a fair trial is not limited by the Bill “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.” The Minister advises that the references to the right to a fair trial in the explanatory statement were in error and has provided a corrected version of the explanatory statement.
- 1.188 The Committee thanks the Minister for their response. The Committee notes that the Tobacco and Other Smoking Products Amendment Bill 2025 has been passed by the Assembly and was notified on 15 December 2025.

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 DI2025-283** being the Integrity Commission (Acting Commissioner) Appointment 2025 (No 2) made under section 40 of the *Integrity Commission Act 2018* appoints a specified person as acting ACT Integrity Commissioner.
- **Disallowable Instrument DI2025-284** being the Board of Senior Secondary Studies Appointment 2025 (No 5) made under section 8 of the *Board of Senior Secondary Studies Act 1997* appoints a specified person as a member of the ACT Board of Senior Secondary Studies for a period of three years.
- **Disallowable Instrument DI2025-286** being the Heritage (Council Member) Appointment 2025 (No 7) made under section 17 of the *Heritage Act 2004* appoints a specified person to be an expert member of the ACT Heritage Council.
- **Disallowable Instrument DI2025-287** being the Victims of Crime (Victims Advisory Board) Appointment 2025 (No 1) made under section 22D of the *Victims of Crime Act 1994* appoints a specified person as a victims services group member of the Victims Advisory Board.
- **Disallowable Instrument DI2025-288** being the Victims of Crime (Victims Advisory Board) Appointment 2025 (No 2) made under section 22D of the *Victims of Crime Act 1994* appoints a specified person as a victims services groups member of the Victims Advisory Board.
- **Disallowable Instrument DI2025-289** being the Victims of Crime (Victims Advisory Board) Appointment 2025 (No 3) made under section 22D of the *Victims of Crime Act 1994* appoints a specified person as a lawyer member of the Victims Advisory Board.
- **Disallowable Instrument DI2025-291** being the Children and Young People (Therapeutic Support Panel) Appointment 2025 (No 1) made under section 501E and 501H of the *Children and Young People Act 2008* appoints a specified person as a Deputy Chair and member of the Therapeutic Support Panel for Children and Young People for a period of 4 years.
- **Disallowable Instrument DI2025-292** being the Drugs of Dependence (Independent Reviewer) Appointment 2025 made under section 205B of the *Drugs of Dependence Act 1989* appoints a specified person as the independent reviewer of the operation of the amendments made by the Drugs of Dependence (Personal Use) Amendment Act 2022.
- **Disallowable Instrument DI2025-293** being the Road Transport (General) Application of Road Transport Legislation (NBMS Rally Test Day) Declaration 2025 (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 or the driver of the designated vehicle while participating in a special stage event.

Disallowable Instruments—Comment

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

Human Rights Issues

- **Disallowable Instrument DI2025-272 being the Children and Young People (Care and Protection Organisation) Standards 2025 (No 1) made under section 887 of the *Children and Young People Act 2008* revokes DI2018-124 and amends the existing Standards to reflect contemporary practice and clear expectations in the provision of services to promote the highest level of care for children and young people.**
- 2.3 This instrument is made under section 887 of the *Children and Young People Act 2008*, which allows the Minister to make standards for that Act. According to the explanatory statement for the instrument, the Standards apply to organisations that seek to be suitable entities for a care and protection purpose have been required to demonstrate they have the capacity to comply, and are likely to continue to comply, with the Standards. The explanatory instrument states:

The Standards provide a framework for creating child safe organisations. They are designed to drive cultural change to create, maintain and improve child safe practices and support the development of strong organisational cultures that keep children safe. The Standards will also support child centred and trauma informed service provision to children, young people and families; with a focus on promoting strengths-based approaches grounded in an understanding of, and responsiveness to, the impact of trauma.

- 2.4 The instrument revokes and re-makes an existing instrument (DI2018-124). The explanatory statement for the instrument states:

The current standards commenced in the ACT in 2018. The review and update is timely to ensure the Standards reflect contemporary practice and clear expectations in the provision of services to promote the highest level of care for children and young people.

- 2.5 The explanatory statement for the instrument states:

The following purposes are prescribed as care and protection purposes:

- to provide kinship and foster care services;
- to provide residential care services;
- to provide placement prevention, reunification and supported contact services in a home or community setting;
- to provide placement prevention, reunification and supported contact services in a residential setting;
- to provide clinical services;
- to provide engagement, empowerment and advocacy services;
- to provide transition to adulthood services.

- 2.6 The Committee notes that the explanatory statement does not discuss potential human rights implications of the Standards. While the Committee acknowledges that the Standards apply to organisations delivering services, the Committee would expect at least some discussion of the potential impact of the Standards on human rights, including the right to protection of the family and children, provided for by section 11 of the *Human Rights Act 2004*.
- 2.7 The Committee seeks the Minister's views on this issue.

This comment requires a response from the Minister. The Committee would be grateful if the Minister could respond before the Legislative Assembly's capacity to move to disallow the instrument expires.

Human Rights Issues

- **Disallowable Instrument DI2025-276 being the Lifetime Care and Support (Catastrophic Injuries) Education Support Services Guidelines 2025 made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* revokes DI2014-210 and makes Guidelines to give effect to the operation of the LTCS Scheme.**
 - **Disallowable Instrument DI2025-277 being the Lifetime Care and Support (Catastrophic Injuries) Respite Care Services Guidelines 2025 made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* revokes DI2014-211 and makes Guidelines to give effect to the operation of the LTCS Scheme.**
 - **Disallowable Instrument DI2025-278 being the Lifetime Care and Support (Catastrophic Injuries) Prostheses Guidelines 2025 made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* revokes DI2014-216 and makes Guidelines to give effect to the operation of the LTCS Scheme.**
 - **Disallowable Instrument DI2025-279 being the Lifetime Care and Support (Catastrophic Injuries) Dental Treatment Guidelines 2025 made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* revokes DI2014-211 and makes Guidelines to give effect to the operation of the LTCS Scheme.**
 - **Disallowable Instrument DI2025-280 being the Lifetime Care and Support (Catastrophic Injuries) Medical Treatment Including Pharmaceuticals Guidelines 2025 made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014* allows the Lifetime Care and Support Commissioner of the Australian Capital Territory (LTCS Commissioner) to make Guidelines.**
- 2.8 Each of the instruments mentioned above is made under section 93 of the *Lifetime Care and Support (Catastrophic Injuries) Act 2014*, which allows the Lifetime Care and Support (LTCS) commissioner may make LTCS guidelines about any matter required or permitted by that Act. The first 4 instruments mentioned above revokes an existing instrument.
- 2.9 The subject matter of the various Guidelines is reflected in their titles, i.e.:
- (Catastrophic Injuries) Education Support Services;
 - (Catastrophic Injuries) Respite Care Services;
 - (Catastrophic Injuries) Prostheses;
 - (Catastrophic Injuries) Dental Treatment; and
 - (Catastrophic Injuries) Medical Treatment Including Pharmaceuticals.

- 2.10 The explanatory statement for each instrument addresses human right issues. The explanatory statement for the first instrument mentioned above states:

Consistency with Human Rights

The guidelines are considered to promote human rights, by providing guidance on the reasonable and necessary treatment and care needs available to a participant in the LTCS Scheme. It is to be noted the Scheme provides universal cover for a person's lifetime care needs, while also allowing the Commissioner to assess needs against the individual circumstances of a participant. It is considered these guidelines positively engage with section 8, Recognition and equality before the law, of the *Human Rights Act 2004*.

- 2.11 Similar statements appear in the explanatory statements for the other four instruments mentioned above.
- 2.12 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for the instruments mentioned above.**
- 2.13 **This comment does not require a response from the Minister.**

No Rights Issues

- **Disallowable Instrument DI2025-281 being the Road Transport (General) Application of Road Transport Legislation (Corroboree Group Oval Manuka) Declaration 2025 (No 1) made under section 12 of the *Road Transport (General) Act 1999* temporarily suspends certain parking rules in relation to certain sporting events at Corroboree Group Oval Manuka in December 2025.**
 - **Disallowable Instrument DI2025-282 being the Road Transport (General) Application of Road Transport Legislation (Manuka Oval) Declaration 2025 (No 2) made under section 12 of the *Road Transport (General) Act 1999* temporarily suspends certain parking rules in relation to certain sporting events at Manuka Oval in 2025 and 2026.**
- 2.14 Each of the instruments mentioned above is under section 12 of the *Road Transport (General) Act 1999* which allows the Minister to declare that a provision of the road transport legislation does not apply to a road related area. For these instruments, the Minister has declared that section 205 (Parking for longer than indicated) of the *Road Transport (Road Rules) Regulation 2017* does not apply to a road or road related area where a time limited permissive parking sign applies within the area identified in the schedule to the instruments. The declaration applies to cricket matches at Manuka Oval.
- 2.15 The explanatory statements for the instruments discuss rights issues. The explanatory statement for the first instrument mentioned above states:
- ... the temporary suspension of parking rules to support major sporting events at Corroboree Group Oval Manuka does not operate to the disadvantage of anyone by adversely affecting their rights or imposing liabilities on the person (see s 36 (1) of the Legislation Act).
- 2.16 A similar statement appears in the explanatory statement for the second instrument mentioned above.
- 2.17 **The Committee draws the attention of the Legislative Assembly to the discussion of rights issues in the explanatory statements for these instruments.**

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

No Human Rights Issues

- Disallowable Instrument DI2025-285 being the **Liquor (Fees) Determination 2025 (No 2)** made under section 227 of the *Liquor Act 2010* revokes DI2025-120 and determines fees payable for the purposes of the Act.

2.19 The Committee notes that the explanatory statement for this instrument states that there are no human rights implications arising from the instrument.

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

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

Human Rights Issues

- Disallowable Instrument DI2025-290 being the **Urban Forest (NBN Co) Determination 2025 (No 1)** made under section 137 of the *Urban Forest Act 2023* removes administrative barriers to the connection of NBN services across Canberra, where the connection works may impact protected trees.

2.22 This instrument, made under section 137 of the *Urban Forest Act 2023*, which allows the Minister to declare that a provision or provisions of the Act does not apply to a stated entity or activity. According to the explanatory statement, this instrument ...

... moderates the requirements of the Act in order to facilitate the connection of the NBN services. In doing this, the declaration disapplies as few provisions as possible. It also aligns the requirements on the NBN Co with the requirements on utility companies.

2.23 The explanatory statement for the instrument discusses human rights issues:

Human Rights

This declaration supports human rights by helping to protect the right to freedom of expression and the right to work. The instrument removes barriers to accessing telecommunications services enabling access to information and remote employment work opportunities, without compromising the objects of the *Urban Forest Act 2023*.

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

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

Subordinate Laws—Comment

2.26 The Committee has examined the following subordinate laws and offers these comments on them:

- Subordinate Law SL2025-21 being the **Ombudsman Amendment Regulation 2025 (No 1)** made under section 34A(1)(j) of the *Ombudsman Act 1989* enables the Ombudsman to share child safety information with an entity that exercises a function under a law of another Australian state or territory or the Commonwealth.

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

Right to protection of the family and children (section 11 HRA)

Right to privacy and reputation (section 12 HRA)

2.27 This subordinate law amends the ACT's reportable conduct scheme, administered by the ACT Ombudsman under the *Ombudsman Act 1989*, to allow the Ombudsman to share child safety information with an entity that exercises a function under a law of another Australian state or territory or the Commonwealth corresponding, or substantially corresponding, to a function of the Ombudsman under the Division 2.2A of the *Ombudsman Act*, if the Ombudsman is satisfied on reasonable grounds that information received under the *Ombudsman Act* is relevant to the safety, health or wellbeing of a child or a class of child.

2.28 The explanatory statement to the subordinate law discusses human rights implications of the subordinate law, by reference to the right to protection of the family and children and the right to privacy and reputation, protected by sections 11 and 12 of the *Human Rights Act 2004*, respectively.

2.29 The right to protection of the family and children is promoted. The right to privacy and reputation is limited, because the subordinate law provides for the disclosure of private information relating to individuals.

2.30 The discussion in the explanatory statement for the subordinate law concludes:

The Regulation is the least restrictive on the right to privacy and reputation to achieve the legitimate purpose. The Ombudsman must be satisfied on reasonable grounds that the information shared with a prescribed entity is relevant to the safety, health and wellbeing of children and young people (section 34A(1) of the Act). The information can only be shared with entities exercising a function that corresponds or substantially corresponds to a function of the Ombudsman division 2.2A of the Act.

In other jurisdictions, the corresponding legislation for their Reportable Conduct Schemes prescribes how information is obtained, investigated and disclosed. The overarching purpose of reportable conduct schemes across jurisdictions is to report and investigate reportable conduct matters with the core objective being to protect children and young people from harm and promote their health, safety and wellbeing. Any sharing of reportable conduct information by the ACT Ombudsman with other jurisdictions would be in line with this purpose. The use of the information by other jurisdictions would be guided by their reportable conduct scheme legislation which broadly echo the same purpose of protection of children and young people from harm and prescribe the role and functions of the reportable conduct scheme operators.

2.31 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.**

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

- **Subordinate Law SL2025-22 being the Civil Law (Sale of Residential Property) Amendment Regulations 2025 (No 1) made under section 40 of the *Civil Law (Sale of Residential Property) Act 2003* specifies exemptions from the property developer licensing requirements for individuals or entities who are on-selling an off-the-plan property that was previously purchased.**

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

Right to privacy and reputation (section 12 HRA)

2.33 The explanatory statement for this subordinate law states:

The purpose of this regulation is to create specific exemptions from the property developer licensing requirements for individuals or entities who are on-selling an off-the-plan property that was previously purchased. This typically refers to buyers that purchase a property from a developer before it is built and then on sold to another buyer before (or after) settlement, without ever occupying it.

This regulation ensures that subsequent, or 'second-hand sellers' are not captured by the requirements of the scheme, which were intended for the original property developer, provided they are not property developers themselves. To maintain transparency, the regulation imposes disclosure requirements on exempt sellers to ensure that the next purchaser is aware of the original licensed developer.

2.34 The explanatory statement for the subordinate law discusses the human rights implications of the subordinate law, by reference to the right to privacy and reputation, protected by section 12 of the *Human Rights Act 2004*:

This regulation could be seen to promote the right to privacy and reputation under section 12 of the HRA by exempting certain people from the property developer licensing process, which requires the provision and publishing of information on a property developer.

The disclosure requirements set out in the (uncommenced) section 19AD of the *Civil Law (Sale of Residential Property) Act 2003* are maintained if a seller is exempted from licence requirements. This does not further impact the right to privacy and reputation under section 12 of the HRA, as these details have already been disclosed by the original seller. The disclosure requirements established in the regulation are considered justified to achieve the objectives of the *Property Developers Act 2024*.

2.35 The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.

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

- **Subordinate Law SL2025-23 being the Road Transport (Road Rules) Amendment Regulation 2025 (No 1) made under section 23 of the *Road Transport (General) Act 1999*, section 57 of the *Road Transport (Public Passenger Services) Act 2001* and section 33 of the *Road Transport (Safety and Traffic Management) Act 1999* supports implementation of the next phase of the Traffic Camera Expansion (TCE) initiative to expand mobile device detection cameras to detect seatbelts of drivers and passengers.**

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

Right to equality and non-discrimination (section 8 HRA)

Right to life (section 9 HRA)

Right to privacy and reputation (section 12 HRA)

Right to presumption of innocence (subsection 22(1) HRA)

2.37 This subordinate law (according to the explanatory statement) “supports the implementation of the next phase of the Traffic Camera Expansion (TCE) initiative to expand mobile device detection cameras to detect seatbelts of drivers and passengers”, which commenced on 3 November 2025.

2.38 The explanatory statement for the subordinate law states:

Amendments to the *Road Transport (Road Rules) Regulation 2017* (the Road Rules) and the *Road Transport (Offences) Regulation 2005* (the Offences Regulation) are made to:

Combine the two existing driver offences for not ensuring passenger compliance for different age groups into one offence to allow for infringement notices to be issued to the driver without knowing the age of the passenger (the existing offences being combined are the driver offence at section 265(3) for passengers over 16 and at section 266(1) for passengers under 16);

Include a clear definition of how to wear a seatbelt properly adjusted and fastened in line with existing policy and enforcement, the current model Australian Road Rules, and other jurisdictions;

Allow persons with a medical exemption to provide evidence of the exemption within 28 days of receiving the infringement notice (this is done indirectly by linking to the existing 28-day timeframe for applying for withdrawal or disputing an infringement notice); and

Make technical updates to the structure of the legislation to align with the current model Australian Road Rules where appropriate.

2.39 The explanatory statement for the subordinate law contains a detailed (16-page) discussion of the human rights implications of the subordinate law, by reference to the right to equality and non-discrimination, the right to life, the right to privacy and reputation and the right to presumption of innocence, protected by sections 8, 9, 12 and subsection 22(1) of the *Human Rights Act 2004*, respectively.

2.40 The right to life is promoted. The other rights identified are limited.

2.41 In relation to the right to equality and non-discrimination, the explanatory statement states:

The Amendment Regulation may disproportionately impact people of lower socioeconomic backgrounds due to the increased enforcement of existing road transport offences, including Aboriginal and Torres Strait Islander people and people with a disability. The Amendment Regulation restructures the existing requirements and offences for seatbelts and seating positions in vehicles to allow for traffic camera enforcement of these offences.

While no new offences are created, the Amendment Regulation enables implementation of the TCE initiative, which involves expanding existing mobile device detection cameras to also detect seatbelt compliance. The offences that will be enforced by traffic cameras are at section 264(1)(c) (driver not wearing a seatbelt properly adjusted and fastened) and section 265A(1) (driver not ensuring their passenger complies with the passenger requirements). This increases the risk of a driver receiving a \$574 fine and 3 demerit points and potentially multiple infringements from a single detection event.

- 2.42 After substantial discussion, by reference to the standard elements of human rights analysis (i.e. legitimate purpose, rational connection between limitation and purpose and proportionality), the discussion concludes:

There is no less restrictive means to support traffic camera enforcement of seatbelt requirements than the current drafting, which reflects how traffic cameras cannot detect the identity of the occupants and instead rely on the ability for the registered operator to nominate another driver or for the infringement notice to be withdrawn with evidence of an exemption.

The risks of improper seatbelt use are serious. The education and awareness campaign accompanying the TCE initiative will emphasise how to wear a seatbelt correctly and the dangers associated with improper use or not wearing a seatbelt at all. It is essential that exempt individuals and medical practitioners understand the risks associated with not wearing a seatbelt correctly when considering temporary or long-term exemptions for medical reasons.

The impacts on persons with medical exemptions from wearing a seatbelt will be monitored following implementation to assist in evaluation and to potentially identify non-legislative mechanisms that may further reduce any limitation on human rights.

- 2.43 The right to privacy and reputation is engaged because, while it does not directly contain provisions authorising traffic cameras to take images of drivers and passengers, “it [enables] the implementation of the expansion of traffic cameras to detect seatbelts.” Again, after substantial discussion, by reference to the standard elements of human rights analysis, the discussion concludes:

The ACT’s road safety camera program does not arbitrarily interfere with privacy and this will continue to be the case following the expansion to include seatbelt detection of drivers and passengers. The purpose of collecting personal information, its usage, and storage is closely and directly connected to the enforcement of seatbelt requirements with the aim of improving road safety. It is also specifically limited to the identification and location of persons who were identified as committing an offence by not correctly wearing a seatbelt or ensuring their passengers comply.

The information collected as part of seatbelt camera detection is consistent with information collected in other jurisdictions with similar systems and will be handled and stored in accordance with the Territory Privacy Principles as provided in the *Information Privacy Act 2014*.

The operations enabled by the Amendment Regulation are considered reasonable, necessary, and proportionate given the safeguards included in the existing legislative framework for the operation of traffic offence detection devices. For example, images captured by the seatbelt detection system are only taken if a seatbelt offence is identified by the technology and only as much of the driver and/or passenger as necessary is shown on the image to prove the offence took place, such as by cropping the image.

- 2.44 The discussion also refers to existing privacy safeguards in the existing legislation that apply to all traffic offence detection devices, including section 21 of the Information Privacy Act, which requires the ACT Government to only enter a contract with traffic offence detection device providers if the contract contains appropriate privacy protections.
- 2.45 The right to the presumption of innocence is engaged because the subordinate law involves new strict liability offences. Again, there is substantial discussion in the explanatory statement, by reference to the standard elements of human rights analysis. The discussion states:

The ACT's road safety camera program benefits the community by encouraging changes in behaviour that protect and support the safety of all road users. The TCE initiative to expand mobile device detection cameras to seatbelts discourages drivers from engaging in high-risk behaviours and promotes awareness of following the road rules for everyone's safety.

.....

Alternative methods of enhancing enforcement of seatbelt requirements would rely on enforcement by ACT Policing, which is subject to limited resources and is already in use. The use of police officers alone in enforcing seatbelt compliance is far less effective and less likely to contribute to achieving Vision Zero than complimenting this enforcement using the road safety camera program. This is due to the limited resources available to ACT Policing and the risks in directing resources to target seatbelts over other equally important road rules.

Introducing seatbelt detection to the existing cameras on ACT roads will provide ACT Policing with greater capacity to enforce offences under the road transport legislation in areas where the cameras are not located and for offences that cameras cannot enforce, increasing enforcement and compliance with the ACT's road transport laws.

.....

The amendments do not remove a person's right to contest the evidence of the seatbelt offence captured by a traffic camera. As is the current administrative practice for camera detected offences, a person may apply to Access Canberra to raise any issues they believe support the withdrawal of an infringement notice or dispute the infringement notice in court.

None of the amendments limit the right of a person to dispute an infringement notice in court and therefore will not limit rights to a fair trial under section 21 of the HRA. If a matter proceeds to court, the person may provide evidence contesting the infringement notice and the evidence provided. It will then be a matter for the court to determine whether an offence has been committed.

.....

To ensure that existing infringement review policies are reflective of human rights considerations while upholding road safety principles, the Road Transport (General) Withdrawal of Infringement Notices Guidelines 2019 (No 1) and Road Transport (General) Waiver of Infringement Notice Penalties Guidelines 2019 (No 1) and associated policies and legislation have been reviewed. The review confirmed the available safeguards are sufficient to ensure the road rules can be effectively enforced while the individual circumstances of people impacted can be fairly taken into account. The review identified minor updates that would improve the clarity of the guidelines but did not identify the need for policy changes.

A comprehensive communications campaign accompanies the TCE seatbelts initiative prior to and following 3 November 2025 aligning closely with that of NSW and QLD. Website materials will be updated and education and awareness activities will be rolled out to ensure the Canberra community is aware of the risk of multiple infringements.

2.46 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.**

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

- **Subordinate Law SL2025-24 being the Legal Profession (Solicitors) Conduct Rules 2025 made under section 580 of the *Legal Profession Act 2006* revokes SL2015-37 and reflect the efforts of the Law Council of Australia (LCA) and its constituent bodies to move towards a uniform set of professional conduct rules in Australia.**

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

Right to recognition and equality before the law (section 8 HRA)

Right to privacy and reputation (section 12 HRA)

Right to freedom of expression (section 16 HRA)

Right to a fair trial (section 21 HRA)

2.48 This subordinate law revokes and replaces the *Legal Profession (Solicitors) Conduct Rules 2015*. The explanatory statement for the subordinate law states:

The Rules reflect the efforts of the Law Council of Australia (LCA) and its constituent bodies to move towards a uniform set of professional conduct rules in Australia. On the 1st of February 2018, the LCA began a comprehensive review of the Australian Solicitors' Conduct Rules. In 2021, the amended Australian Solicitors' Conduct Rules were accepted and implemented by the LCA. The ACT began its own review of its Rules in 2022, with proposed changes going to Council in September 2022. The consultation period began in 2025 and was delayed due to a decision to await the LCA's announcement regarding the review of Rule 38 of the Australian Solicitors' Conduct Rules.

2.49 The explanatory statement for the subordinate law discusses human rights issues by reference to the right to recognition and equality before the law, the right to privacy and reputation, the right to freedom of expression and the right to a fair trial, protected by sections 8, 12, 16 and 21 of the *Human Rights Act 2004*, respectively. The explanatory statement states that only the right to freedom of expression is limited. The other rights identified are promoted.

2.50 The explanatory statement for the subordinate law states:

Nature of the right and the limitation (ss28(2)(a) and (c))

s16 of the *Human Rights Act 2004* (ACT) provides that everyone has the right to hold opinions without interference and to seek, receive and impart information and ideas of all kinds. This includes the right to express views publicly, including in the context of legal proceedings.

Rule 28 of the Rules limits this right by restricting public comment during current proceedings. This limitation applies to legal practitioners and is intended to prevent commentary that could prejudice the administration of justice or undermine the fairness of proceedings.

Legitimate purpose (s28(2)(b))

The restriction serves the legitimate purpose of protecting the integrity of the judicial process and ensuring the right to a fair trial is upheld. Public commentary by legal practitioners during active proceedings may influence public perception, compromise impartiality, or place undue pressure on parties and the court. The limitation is designed to safeguard the administration of justice and maintain public confidence in the legal system.

Rational connection between the limitation and the purpose (s28(2)(d))

There is a clear and rational connection between the limitation and its intended purpose. By prohibiting public comment during proceedings, the Rules reduce the risk of prejudicial statements that could affect the fairness of a trial or the perception of judicial impartiality. This supports the broader objective of ensuring that justice is administered fairly and without external influence.

Proportionality (s28(2)(e))

The limitation is proportionate to the objective it seeks to achieve. It applies only in the context of current proceedings and only to legal practitioners, who have a heightened duty to uphold the integrity of the justice system. The restriction does not prevent practitioners from expressing views outside the scope of active matters or engaging in broader legal discourse. As such, the limitation is narrowly tailored and represents the least restrictive means of achieving the intended purpose.

2.51 The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this subordinate law.

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

Taimus Werner-Gibbings MLA
Acting Chair
January 2026

Outstanding responses

Bills

Report 13, dated 25 November 2025

- Liquor Amendment Bill 2025
- Planning (Territory Priority Project) Amendment Bill 2025 (proposed amendments)