Shane Rattenbury MLA
Attorney-General
Minister for Consumer Affairs
Minister for Water, Energy and Emissions Reduction
Minister for Gaming

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Mr Jeremy Hanson CSC MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Hanson

I write in response to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its *Scrutiny Report 11* about the proposed amendments to the *Legal Aid Act 1977* (the Act) contained within the *Justice and Community Safety Legislation Amendment Bill 2021* (the Bill).

I note the Committee's interest in the use and value of anonymised or deidentified data, including to support the reporting requirements of national partnership agreements, such as the *National Legal Assistance Partnership 2020-25* (the NLAP).

With respect to compliance with national partnership agreements regarding legal assistance services, Schedule D of the NLAP requires the Commission to provide unit-level client services data to the Commonwealth. To support the Committee's consideration of this amendment, Schedule D is enclosed with my response.

The strict drafting of section 92 of the Act, and the narrow exceptions currently contained in section 92A, mean that even in circumstances where unit-level data is anonymised or de-identified, it would likely still meet the threshold of constituting information concerning 'the affairs of a person' and consequently trigger the application of section 92 because it is reported at the unit rather than aggregated level. As such, the ACT Government considers that the amendment is necessary to support the Commission to comply with its reporting requirements under the NLAP.

Even in circumstances where data is anonymised or de-identified, unit-level data still carries with it a risk of identification particularly where a combination of demographic datasets may result in an

individual being identifiable because of the Territory's comparatively small population size. For clarity, I confirm that as a matter of practice, due to the small population size of the Territory, any disclosed data will be de-identified to the best of the Commission's ability. However, to manage this risk, the amendment's requirement of compliance with the disclosure Guidelines (the Guidelines) is considered necessary to ensure that any request for information is considered holistically and privacy risks across the lifecycle of the data are considered and mitigated where possible.

I also draw the Committee's attention to **Clause D17 of Schedule D** which allows legal assistance providers not to report client demographic information for individual services where the collection would reasonably be considered inappropriate or result in the alienation of clients, which may mitigate the risk of a client being identified from the disclosure of unit-level legal assistance service data.

In relation to research projects to support access to justice outcomes, I note that without the amendment, the Commission would be restricted to only providing aggregated data to research projects which may result in generalised research findings which lack nuance and accuracy and have limited insight into the Territory's current and emerging areas of legal need.

I also note the Committee's interest in why additional privacy protections are proposed to be Guidelines rather than the Bill itself.

The ACT Government recognises that the protection of the Commission's clients' right to privacy is of critical importance. The inclusion of the privacy protections in the Guidelines, as opposed to the Bill, supports decision-making being flexibly tailored to the terms of a potential disclosure which responds to the unique context of individual disclosure requests. Furthermore, with the sophistication of technology rapidly advancing, the inclusion of privacy protections in the Guidelines allows for the Government to respond more swiftly to emerging issues and ensures that privacy considerations can be outlined prescriptively, and areas of nuance highlighted, to support the Commission's decision-making in response to a data disclosure request.

I also note the Committee's question on why disclosure to non-Commonwealth entities has not been subjected to the requirement to comply with the equivalent of the Australian Privacy Principles (APPs) or Territory Privacy Principles (TPPs). As drafted, the Bill requires that the Chief Executive Officer of the Commission be satisfied that requesting Commonwealth entities are required to comply with the APPs before granting access to such information. It does not bind the Commonwealth but sets a statement of expectation of how the Territory expects this information should be treated. I can confirm that the terms and use of disclosed data by non-Commonwealth entities will be considered as a part of the Guidelines, and where considered appropriate, may involve the Commission requiring an entity to comply with the equivalent of the APPs or TPPs.

I trust that this response addresses the Committee's comments in relation to the Bill.

Yours sincerely

Shane Rattenbury MLA
Attorney-General