Legislative Assembly for the Australian Capital Territory

Standing Committee on Legal Affairs (Legislative Scrutiny Role)

Scrutiny Report 20

Legislative Assembly for the Australian Capital Territory
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Approved for publication

11th Assembly
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About the committee

Establishing resolution

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

The Committee is responsible for the following areas:

> “(9) the Standing Committee on Legal Affairs is also to perform a legislative scrutiny role of bills and subordinate legislation by:
>
> (a) considering whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:
>
> (i) unduly trespass on personal rights and liberties;
>
> (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
>
> (iii) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
>
> (iv) inappropriately delegate legislative powers; or
>
> (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny; and
>
> (vi) consider whether any explanatory statement associated with legislation meets the technical or stylistic standards expected by the Assembly;
>
> (b) reporting to the Legislative Assembly about human rights issues raised by bills and subordinate laws presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*;
>
> (c) considering whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
>
> (i) is in accord with the general objects of the Act under which it is made;
>
> (ii) unduly trespasses on rights previously established by law;
>
> (iii) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
>
> (iv) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly; and
>
> (d) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Assembly;”.

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

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

Committee members

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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.

Contents

1. Bills

Bills—Comment

Crimes (Coercive Control) Amendment Bill 2026

1.1 The Committee notes that the Crimes (Coercive Control) Amendment Bill 2026 was presented to the Assembly on 28 May 2026, which was not in time for the Committee to scrutinise for this report. This Bill will be the subject of scrutiny in the Committee's next report.

Government response—Comment

City and Environment Legislation Amendment Bill 2026

1.2 The Committee has received a letter from the Minister for City and Government Services dated 21 May 2026 in relation to comments made by the Committee in *Scrutiny Report 18* (April 2026) about the City and Environment Legislation Amendment Bill 2026. The Committee had requested the attention of the Minister in relation to two matters.

1.3 The first was to request the Minister to address the impact of the removal of the mistake of fact defence under the *Heavy Vehicle National Law (ACT) Act 2013* ("HVNL ACT Act") (clause 12 and 13) on an individual's rights in criminal proceedings. The second was to request the Minister to explain how the amendment made by clause 13 of the Bill to the penalty calculation in section 6 of the *Road Transport (Offences) Regulation 2005* ("the Regulation") allows for technological advances in traffic offence detection (as asserted by the explanatory statement to the Bill).

1.4 In relation to the first matter, the Minister has explained how the amendment has no practical effect on an offence under the HVNL ACT Act as it removes the prohibition on using the mistake of fact defence for a repealed provision. Section 21 of the HVNL ACT Act contained a reference to a section of the Heavy Vehicle National Law that was repealed in 2016.

1.5 Consequently, although not expressly stated by the Minister, the implication from the explanation is that the amendment has no impact on an individual's rights in criminal proceedings. As the revised statement explains:

> To clarify, the bill does not remove the mistake of fact defence for an offence under the HVNL ACT Act; rather it removes the prohibition on using the mistake of fact defence for a repealed section of the Act and thus has no practical effect and only serves to tidy the statute book.

1.7 In relation to the second matter, the Minister has explained that the current wording in section 6(2) of the Regulation, by referring to an offence detected by a "traffic offence detection device" does not permit the penalty calculation in section 6 for corporations to capture offences detected by other mechanisms such as a dashboard camera or mobile phone footage. The amendment made by clause 13 of the Bill removes the reference to "traffic offence detection device" and so allows the penalty calculation for corporations in section 6(2) to be used for other technological (existing or future) mechanisms. The Committee thanks the Minister for the clear explanation provided in the revised explanatory statement.

1.8 The Committee thanks the Minister for their response and the revised explanatory statement noting that the Bill was passed by the Assembly on 27 May 2026.

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 DI2026-34 being the Race and Sports Bookmaking (Sports Bookmaking Events) Determination 2026 (No 1) made under section 20(1) of the** *Race and Sports Bookmaking Act 2001* **revokes DI2015-104 and details various national and international sporting and other events that a sports bookmaking licence may offer.**
- **Disallowable Instrument DI2026-36 being the Commissioner for Sustainability and the Environment Appointment 2026 made under section 4 of the** *Commissioner for Sustainability and the Environment Act 1993* **appoints a specified person as Commissioner for Sustainability and the Environment.**
- **Disallowable Instrument DI2026-37 being the Major Events (AFL GWS Giants v North Melbourne Kangaroos Match) Notice 2026 made under section 9 of the** *Major Events Act 2014* **applies the provisions of the Act to the AFL GWS Giants v North Melbourne Kangaroos match at Manuka Oval on Sunday, 26 April 2026.**
- **Disallowable Instrument DI2026-38 being the Heritage (Council Member) Appointment 2026 (No 1) 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 DI2026-39 being the Heritage (Council Member) Appointment 2026 (No 2) 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 DI2026-40 being the Heritage (Council Member) Appointment 2026 (No 3) made under section 17 of the** *Heritage Act 2004* **appoints a specified person to be a member of the ACT Heritage Council.**
- **Disallowable Instrument DI2026-53 being the Children and Young People (Care and Protection Organisations) Guidelines Revocation 2026 made under sections 62, 352F, and 352T of the** *Children and Young People Act 2008* **revokes DI2019-95, DI2018-96 and DI2018-97 and supports the day-to-day operation of the legislation and articulates regulatory principles used in the assessment, intervention and monitoring of care and protection organisations.**
- **Disallowable Instrument DI2026-64 being the Legal Profession (Bar Council Fees) Determination 2026 made under subsection 84(2) of the** *Legal Profession Act 2006* **revokes DI2025-63 and determines fees payable for applications for the grant or renewal of a barrister practising certificate.**
- **Disallowable Instrument DI2026-58 being the Veterinary Practice (Board) Appointment 2026 (No 1) made under section 93 of the** *Veterinary Practice Act 2018* **appoints a specified person to the Veterinary Practitioners Board as a veterinary practitioner member for a period of three years.**

Disallowable Instruments—Comment

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

Fees determinations

- **Disallowable Instrument DI2026-35 being the Road Transport (Public Passenger Services) Maximum Fares for Taxi Services Determination 2026 (No 1) made under section 60 of the** *Road Transport (Public Passenger Services) Act 2001* **revokes DI2025-214 and determines the maximum fares relating to the hiring or use of a taxi.**

- **Disallowable Instrument DI2026-44 being the Road Transport (General) (Driver Licence and Related Fees) Determination 2026 (No 1) made under section 96 of the** *Road Transport (General) Act 1999* **revokes DI2025-224 and determines fees payable for the purposes of the Act.**

- **Disallowable Instrument DI2026-45 being the Road Transport (General) (Fees for Publications) Determination 2026 (No 1) made under section 96 of the** *Road Transport (General) Act 1999* **revokes DI2025-62 and determines fees payable for the purposes of the Act.**

- **Disallowable Instrument DI2026-46 being the Road Transport (General) (Numberplate Fees) Determination 2026 (No 1) made under section 96 of the** *Road Transport (General) Act 1999* **revokes DI2025-303 and determines fees payable for the purposes of the Act.**

- **Disallowable Instrument DI2026-47 being the Road Transport (General) (Parking Permit Fees) Determination 2026 (No 1) made under section 96 of the** *Road Transport (General) Act 1999* **revokes DI2025-188 and determines fees payable in accordance with the Act.**

- **Disallowable Instrument DI2026-48 being the Road Transport (General) (Pay Parking Area Fees) Determination 2026 (No 1) made under section 96 of the** *Road Transport (General) Act 1999* **revokes DI2025-263 and determines fees payable in accordance with the Act.**

- **Disallowable Instrument DI2026-49 being the Road Transport (General) (Refund and Dishonoured Payments Fees) Determination 2026 (No 1) made under section 96 of the** *Road Transport (General) Act 1999* **revokes DI2025-187 and determines fees payable for transactions relating to refunds and the handling of dishonoured cheque and credit cards.**

- **Disallowable Instrument DI2026-50 being the Road Transport (General) (Road Safety Contribution) Determination 2026 (No 1) made under section 96 of the** *Road Transport (General) Act 1999* **revokes DI2025-182 and determines the road safety contribution payable with the registration of all vehicles, other than a trailer, or for the issue of a trader's plate.**

- **Disallowable Instrument DI2026-51 being the Road Transport (General) (Vehicle Impounding and Seizure/Speed Trial Fees Determination 2026 (No 1) made under section 96 of the** *Road Transport (General) Act 1999* **revokes DI2025-304 and determines fees payable for the purposes of the Act.**

- **Disallowable Instrument DI2026-52 being the Road Transport (General) (Vehicle Registration and Related Fees) Determination 2026 (No 1) made under section 96 of the** *Road Transport (General) Act 1999* **revokes DI2025-254 and determines fees payable for transactions relating to vehicle registration.**
- **Disallowable Instrument DI2026-54 being the Veterinary Practice (Fees) Determination 2026 (No 1) made under section 144 of the** *Veterinary Practice Act 2018* **revokes DI2025-40 and determines fees payable for the purposes of the Act.**

2.3 These instruments determine fees, for various Acts. They are early examples of numerous instruments that the Committee expects to see at this time of the year, determining fees and charges for various Acts.

2.4 The Committee notes its long-held expectations in relation to fees determination instruments – as set out in its document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps*[2] – in that the "old" and "new" fees should be identified, together with the magnitude of the increases and the reasons for the increases.

2.5 The Committee notes, with approval, that all the instruments mentioned above set out the "old" and "new" fees, etc.

2.6 The first instrument mentioned above, made under section 60 of the *Road Transport (Public Passenger Services) Act 2001*, determines maximum taxi fares. The Committee notes that the explanatory statement for this instrument states:

> In the ordinary course of events, maximum taxi fares are increased annually in line with the forecast Consumer Price Index (CPI) for the ACT. However, this instrument provides an additional temporary increase on top of the CPI increase to reflect the rise in fuel prices being experienced in the ACT and nationally. This additional increase recognises the direct impact fuel prices have on the taxi industry.
>
> Forecasted CPI increases of 2.75% for 2026-2027 have been applied beginning the day after notification day of the instrument and apply as normal to flagfall, kilometre, and waiting time rates and to the lift fee. While CPI increases generally commence 1 July each year, the 2026 CPI increases have been brought forward to April to account for the rise in fuel prices in addition to further temporary increases outlined below.
>
> Schedule 1 sets out a temporary 3.3% increase to kilometre rates and the waiting time rate for taxis to account for the rise in fuel prices, starting on the day after notification day of the instrument and ending on 30 June 2026. This increase is based on fuel prices rising by 33.33% and an assumption of 10% of the maximum fare covering fuel costs. Fuel consumption of various common taxi models was used in making this assumption based on data from the Green Vehicle Guide published by the Commonwealth Government. The waiting time rate is also increased because fuel is consumed while the taxi is idling. This temporary increase expires after 30 June 2026 and is not rolled into the fare amounts for the 2026-2027 financial year.
>
> Any increase in maximum regulated fares in this instrument is rounded off to the nearest five cents. The increases are made to the original amounts, not the rounded amounts, before the final fare is rounded to the nearest five cents in the instrument.

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

2.7 The second instrument mentioned above, made under section 96 of the *Road Transport (General) Act 1999*, determines fees or drivers licences. The explanatory statement for the instrument states:

> The fees for driver licences and have been increased by the estimated 2025-26 wage price index of 3.5% in accordance with rates published in Budget Memo 2025/32. Related fees have been indexed by 3.85% incorporating WPI of 3.5% and 0.35% additional indexation as per budget memo 2014/14. Fees have been rounded down to the nearest ten cents.

2.8 The third instrument mentioned above is also made under section 96 of the Road Transport (General) Act. It determines fees for various transport-related publications. The explanatory statement for the instrument states:

> The fees for ACT publications, except for the Canberra and Queanbeyan cycling and walking map, have been indexed by 3.85% incorporating WPI of 3.5% as per Budget Memo 2025/32 and 0.35% additional indexation as per budget memo 2014/14. The Canberra and Queanbeyan cycling and walking map has been increased by the estimated 2025-26 wage price index of (WPI) 3.5% in accordance with rates published in Budget Memo 2025/32. Fees have been rounded down to the nearest ten cents. The fee for the National Heavy Vehicle driver work diary has been increased from $30.00 to $31.00 based on advice from the National Heavy Vehicle Regulator.
>
> Indexing fees and charges annually maintains the cost of the product or service being provided.

2.9 The fourth to eighth instruments mentioned above are also made under the Road Transport (General) Act. They determine fees for various transport-related purposes. In each case the explanation provided in the explanatory statement for the fees increases provided for in the instrument is similar to the explanation provided in relation to the second instrument mentioned above.

2.10 The ninth instrument mentioned above (i.e. DI2026-52), is also made under section 96 of the Road Transport (General) Act. It determines fees in relation to vehicle registration and similar purposes. The explanatory statement for the instrument states:

> This instrument determines fees, payable for transactions relating to vehicle registration and related fees under the road transport legislation.
>
> To prevent delays to implementing other registration fee changes, this instrument was notified without amendment to the Regulatory Component of heavy vehicle registration charges. This was due to the Regulatory Component of heavy vehicle registration charges having not been finalised at the time of notification of that instrument. The Regulatory Component of heavy vehicle registration charges in items 16.1 to 20.3 in Schedule 1 of the Instrument will be amended in line with advice from the National Transport Commission following agreement of the fees by the Infrastructure and Transport Ministers' Meeting through a later instrument.
>
> Emission-Based Registration charges in Items 1, 2, 7, 1A and 2A of Schedule 1 have been increased in line with decisions of the Expenditure Review Committee.

> Other fees are indexed by 3.85%, incorporating the estimated 2025/26 WPI of 3.5% in line with budget memo 2025/32 and an additional 0.35% as per Budget Memo 2024/14.
>
> The surcharge for short-term registration periods has not been increased.
>
> Fees are rounded down to the nearest ten cents.

2.11 The tenth instrument mentioned above (i.e. DI2026-54), made under section 144 of the *Veterinary Practice Act 2018*, determines fees for that Act. The explanatory statement for the instrument states:

> All fees have been increased by 3.25%. These increases are deemed to be reasonable and in line with the WPI rate.
>
> Fees have been rounded to the nearest whole dollar for cash handling purposes.

2.12 **This comment does not require a response from the relevant Ministers.**

Human rights issues

- **Disallowable Instrument DI2026-41 being the Road Transport (General) Application of Road Transport Legislation (Corroboree Group Oval Manuka) Declaration 2026 (No 1) made under section 12 of the** ***Road Transport (General) Act 1999*** **empowers the Minister to declare that a provision of the road transport legislation does not apply to a road or road related area.**
- **Disallowable Instrument DI2026-42 being the Building (ACT Appendix to the Building Code) Determination 2026 made under subsection 136(3) of the** ***Building Act 2004*** **revokes DI2023-304 and makes ACT appendix to the Building Code of Australia.**
- **Disallowable Instrument DI2026-43 being the Building (General) (Alternative requirements for unaltered parts) Determination 2026 made under section 24 of the** ***Building (General) Regulation 2008*** **revokes DI2024-83 and contains provisions relating to alternative requirements to the Building Code of Australia that apply to unaltered parts of substantially altered class 1, 10a or 10b buildings.**
- **Disallowable Instrument DI2026-57 being the Planning (Protected Matters) Declaration Revocation 2026 made under section 221 of the** ***Planning Act 2023*** **revokes DI2023-268 and provides that the Minister may declare a matter to be a protected matter.**

2.13 The Committee notes that the explanatory statement for each of the instruments mentioned above contains a statement that the instrument does <u>not</u> engage human rights.

2.14 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for these instruments.**

2.15 **This comment does not require a response from the relevant Ministers.**

Disapplication of subsection 47(6) of the *Legislation Act 2001* / Human rights issues

- **Disallowable Instrument DI2026-55 being the Water and Sewerage (ACT Appendix to the Plumbing Code) Determination 2026 made under subsection 44C of the** *Water and Sewerage Act 2000* **revokes DI2023-68 and makes the ACT appendix to the Plumbing Code of Australia.**
- **Disallowable Instrument DI2026-56 being the Building (ACT Appendix to the Building Code) Determination 2026 (No 2) made under subsection 136 of the** *Building Act 2004* **revokes DI2026-42 and makes the ACT appendix to the Building Code of Australia.**

2.16 The first instrument mentioned above, made under section 44C of the *Water and Sewerage Act 2000*, makes an ACT Appendix to the Plumbing Code of Australia. The Appendix enacts ACT-specific requirements, effectively amending the Plumbing Code of Australia (**PCA**), for its application to the ACT.

2.17 Section 5 of the instrument provides:

> 5 **Disapplication of notification requirement**
>
> The *Legislation Act 2001*, section 47(6), does not apply to this instrument.
>
> Note 1 Australian Standards are available for purchase at www.standards.org.au.
> There is also limited, free access to the Australian Standards catalogue for non-commercial purposes at https://readerroom.standards.org.au/.
>
> Note 2 Free copies of the National Construction Code, which incorporates the Plumbing Code of Australia, are available at www.abcb.gov.au.

2.18 The disapplication of subsection 47(6) of the *Legislation Act 2001* means that external documents relied on by the instrument – including Australian Standards – are not required to be published on the ACT Legislation Register, as "notifiable instruments", for section 10 of the Legislation Act. The Committee has always looked closely at the disapplication of section 47(6), as the Committee considers that it is important that everything relevant to the operative content of legislation is freely available to the public. The requirement to publish on the ACT Legislation Register external material relied upon, as a notifiable instrument, is a key element of this.

2.19 The explanatory statement for the first instrument mentioned above states:

> Section 5 of the instrument displaces the requirement in the *Legislation Act 2001* (the ***Legislation Act***), section 47 (5). Section 47 (5) provides that the text of an instrument applied as in force at a particular time is taken to be a notifiable instrument made under the relevant instrument, and therefore, must be published on the Legislation Register. Copyright to the PCA is collectively owned by the Commonwealth, States and Territories.
>
> The arrangement between jurisdictions is that the PCA will be published on behalf of the jurisdictions in a single place by the ABCB. It would not be appropriate to publicly notify the PCA on an ACT Government website. The notes to section 5 of the instrument describe alternative access to the PCA, as it is not being notified on the Legislation Register.
>
> …………….

Clause 5 displaces the requirement in the Legislation Act, section 47 (5). Section 47 (5) provides that the text of an instrument applied as in force at a particular time is taken to be a notifiable instrument made under the relevant instrument, and therefore, must be published on the Legislation Register.

Copyright to the PCA is collectively owned by the Australian Government and the States and Territories. The arrangement between jurisdictions is that the PCA will be published on behalf of the jurisdictions in a single place by the [Australian Building Codes Board]. It would not be appropriate to publicly notify the code on an ACT Government website. The notes to section 5 of the instrument describe alternative access to the PCA as it is not being notified on the Legislation Register.

The PCA incorporates a number of Australian Standards, Australian/New Zealand Standards and International Standards. The standards are technical standards used by the building and construction sector to meet regulatory requirements across jurisdictions. The sector is generally expected to have knowledge of the standards relevant to undertaking their professional services. It is noted that there are often two or more versions of the Plumbing Code applicable to plumbing and drainage work at any one time and as such there are a significant number of Australian Standards and versions of Australian Standards that industry and regulators require access to.

The standards referenced in the PCA are available for purchase from www.standards.org.au. There are challenges relating to the ability to provide public access to Australian Standards due to copyright issues.

Standards Australia has recently released an initiative (***Reader Room***) that provides limited, no-fee access to the entire catalogue of Australian Standards for non- commercial purposes, that is for personal, domestic or household use. This initiative provides access for free to a maximum of three standards every 12 months, with access for 24 hours at a time. The Reader Room is available at https://readerroom.standards.org.au/.

2.20 The reference in the instrument to subsection 47(6), while the explanatory statement refers to subsection 47(5) – which is the provision that makes external material a notifiable instrument – is confusing. Nevertheless, the Committee understands the argument.

2.21 The Committee notes what the instrument states about free access to the external documents relied upon.

2.22 A similar issue arises in relation to the second instrument mentioned above. It is made under section 136 of the *Building Act 2004.* It makes an ACT Appendix to the Building Code of Australia (**BCA**). Section 5 of the instrument is similar to section 5 of the first instrument. A similar justification for section 5 is provided in the explanatory statement.

2.23 The Committee notes that the explanatory statements for both instruments discuss human rights issues. The explanatory statement for the second instrument mentioned above states:

Human Rights Impacts

During the development of the instrument, due regard was given to its engagement with human rights under the *Human Rights Act 2004* (the *HR Act*). This instrument engages with an individual's right to a healthy environment, under section 27C of the HR Act.

> The proposed provisions in BCA 2025 support reductions in building emissions from energy efficiency and improve air quality in our city, both inside and outside our buildings from reducing the consumption of fossil fuels.

2.24 A similar statement appears in the explanatory statement for the first instrument mentioned above.

2.25 **The Committee draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statements for these instruments.**

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

Retrospectivity

- **Disallowable Instrument DI2026-58 being the Veterinary Practice (Board) Appointment 2026 (No 1) made under section 93 of the** *Veterinary Practice Act 2018* **appoints a specified person to the Veterinary Practitioners Board as a veterinary practitioner member for a period of three years.**

2.27 This instrument is made under subsection 13A(5) of the *Land Tax Act 2004*. It provides an exemption from land tax in relation to "affordable community housing", in certain circumstances.

2.28 Section 2 of the instrument provides that the instrument is "taken to have commenced" on 1 May 2026. Given that the instrument was not notified on the ACT Legislation Register until 11 May 2026, this means that it is retrospective in effect. Section 76 of the *Legislation Act 2000* limits retrospective operation in instruments to "non-prejudicial" operation.

2.29 The Committee notes, with approval, that the explanatory statement for the instrument states:

> **Retrospectivity**
>
> This instrument commences retrospectively on 1 May 2026.
>
> Pursuant to Section 76(1) of the *Legislation Act 2001*, a statutory instrument may provide that a 'non-prejudicial provision' of the instrument commences retrospectively.
>
> A 'non-prejudicial provision' means a provision that is not a 'prejudicial provision'. A 'prejudicial provision' means a provision that operates to the disadvantage of a person by adversely affecting the person's rights or imposing liabilities on the person.
>
> The instrument provides a land tax exemption for a parcel of land provided for affordable community housing. The update expands (not limits) the availability of the exemption by lifting the combined annual gross income limits in the eligibility criteria. This is beneficial to individuals whose income exceeded the previous income limit but is now equal to, or lower than, the increased income limit.
>
> The retrospective commencement date of 1 May 2026 is non-prejudicial (see sections 13A(1) and (2)).

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

Subordinate Laws—Comment

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

- **Subordinate Law SL2026-2 being the Water and Sewerage Amendment Regulation 2026 (No 1) made under the** *Water and Sewerage Act 2000* **the regulation makes amendments to the Water and Sewerage Regulation 2001 to remove the mandatory requirement for installing separated grey water piping in a new house or an extension to an existing house.**

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

Right to a healthy environment (section 27C HRA)

2.32 This subordinate law, made under section 49 of the *Water and Sewerage Act 2000*, makes amendments to the *Water and Sewerage Regulation 2001,* to remove the mandatory requirement for installing separated grey water piping in a new house or an extension to an existing house.

2.33 The explanatory statement for the subordinate law contains a detailed (7-page) discussion of human rights issues, by reference to the right to a healthy environment, protected by section 27C of the *Human Rights Act 2004*.

2.34 The explanatory statement states:

> **Rights engaged**
>
> This regulation removes the mandatory requirement to install separated grey water piping in new houses. As such, it may be considered a retrogressive step that engages and limits the following human right under the HRA:
>
> Section 27C – Right to a Healthy Environment.
>
> ***Nature of the right and the limitation (s28 (2) (a) and (c))***
>
> Clause 5 removes the mandatory installation of separated grey water piping in new houses and in extensions to existing houses. This was originally intended to support water security and sustainability by providing infrastructure that allows homeowners to easily install grey water use systems. While grey water readiness can reduce potable water demand, wastewater loads, and supports long-term sustainability; removing the mandate only indirectly affects immediate uptake and future water security. Therefore this measure amounts to a minimal limitation on section 27C of the HRA for the following reasons:
>
> The amendment does not prohibit the use of separated grey water piping or grey water systems. A voluntary pathway remains available to allow homeowners and industry to install such systems where they consider them appropriate.
>
> Households retain the capacity to achieve water-efficiency outcomes through alternative means such as voluntary grey water systems, albeit at much greater expense if needing to retrofit, and other existing measures (for example, installing rainwater tanks or diverting washing machine water for garden use via a hose).
>
> The regulation removes compulsion but preserves choice without removing the ability, therefore any impact on environmental outcomes is indirect, diffuse, and limited in extent when assessed against section 28 (2) (c) of the HRA.

The amendment identified in clause 5 only provides a sustainability benefit if the homeowner installs a grey water system.

The right to a healthy environment includes multiple substantive elements, including a safe climate and access to clean water. This right is necessary for the enjoyment of other human rights, including the right to life and the right to health. It requires safeguarding environmental conditions for the present generation while also ensuring ecological sustainability and stability for future generations.

Removing the mandatory measure removes one method that supports long-term sustainable water management and in doing so may be considered a retrogressive step. The nature and extent of this retrogressive step removes the ability for owners of future new houses to easily and cost effectively install a grey water system as water scarcity becomes more pressing and droughts become more often and longer lasting. However, this measure is necessary despite being seen as retrogressive due to the following reasons:

- Although the introduction of the mandatory requirement was to help incentivise the uptake of grey water use systems, this policy objective has not been realised and thereby created a cost that outweighs the benefits.
- an environmental sustainability benefit is only enlivened if the homeowner chooses to install the grey water system itself, and evidence shows that this uptake has been very low.
- there are more efficient and lower-cost measures available that homeowners can implement to use greywater regardless of a separate grey water piping being installed (e.g. draining laundry water by a hose into the garden).

Although this measure will likely lead to less protection of the right to a healthy environment, it is considered very minor considering the uptake of grey water systems has been limited to 0.2-1% of new homes. There is little evidence to suggest that uptake will be any different with the removal of the piping duplication requirement. Anecdotally, only very environmentally conscious homeowners install grey water recycling systems, so they are likely to continue to install them at the same rate.

2.35 After lengthy discussion, the explanatory statement concludes:

Proportionality (s 28 (2) (e))

The reform does not prohibit the use of grey water, nor does it remove other environmental management tools available to government or industry.

The purpose of this measure is to remove the mandatory grey water piping requirement due to its low uptake and high costs since the mandatory requirement was introduced. Evidence shows that despite the requirement being in place for nearly two decades, only a small number of households have activated their greywater systems with the majority remaining unused and effectively redundant. In considering alternatives, the Government examined whether increased public awareness such as highlighting water scarcity issues or promoting the potential cost benefits of grey water reuse could improve uptake. The Government considered that awareness alone would be ineffective due to the underlying practical and financial barriers to activation. Other alternatives included removing the grey water provisions entirely however this risked undermining the ACT’s long term water resilience strategy. The removal of the mandatory requirement whilst maintaining voluntary pathway to encourage grey water use is the least restrictive means reasonably available to achieve the purpose of this measure.

This reform represents a proportionate and evidence-based response to the very low uptake and limited practical utilisation of grey water systems in new homes. It forms part of a broader tranche of measures intended to streamline development processes and support more efficient and affordable housing delivery. By removing an under-used and costly mandatory requirement, the reform supports the government's objective of facilitating increased housing supply and lowering construction costs for the community. The Office of Water who is responsible for managing water wisely in the ACT, has indicated its support for the proposed change.

Under section 28 of the HRA, human rights may only be subject to reasonable limits that can be demonstrably justified in a free and democratic society. Applied here, the purpose of the limitation, the reduction of unnecessary construction costs, improved efficiency in development, and avoidance of technological lock-in, and thereby advancing housing affordability is of substantial importance in the current housing affordability and supply context. Moderating build costs and enabling compliance flexibility are legitimate public interests that support the delivery of more affordable housing.

The nature and extent of the immediate limitation on section 27C (right to a clean, healthy and sustainable environment) is comparatively modest. The reform does not prohibit the use of grey water, nor does it remove other environmental management tools available to government or industry. In the longer term, the limitation means that there will be fewer homes that can more easily retrofit grey water recycling systems. However, the likelihood of this becoming a significant limitation is considered low, due to the same reasons that low retrofit is occurring now.

Taken together, the importance of the objectives, the narrow scope of the limitation, and the retention of alternative pathways to support environmental outcomes indicate that the measure is a proportionate and reasonable limit on the right to a healthy environment and is necessary despite being retrogressive.

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

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

- **Subordinate Law SL2026-3 being the Firearms Amendment Regulation 2026 (No 1) made under the** *Firearms Act 1996* **amends the Firearms Regulation 2008 (Firearms Regulation) to provide that orders under the Workplace Protection Orders Act 2025 (Cwlth) (CWPO Act) must be considered in determining a person's suitability to hold a firearms licence.**

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

Right to life (section 9 HRA)

Right to a fair trial (section 22 HRA)

Cultural and other rights of Aboriginal and Torres Strait Islander peoples (section 27 HRA)

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

2.38 According to the explanatory statement, the purpose of this subordinate law is to amend the *Firearms Regulation 2008*, to provide that orders under the *Workplace Protection Orders Act 2025* (Cth) (**CWPO Act**) must be considered in determining a person's suitability to hold a firearms licence.

2.39 The explanatory statement for the subordinate law contains a discussion of human rights issues, by reference to the right to life and the right to a fair trial, the cultural and other rights of Aboriginal and Torres Strait Islander peoples and the right to work and work-related rights, protected by sections 9, 22, 27 and 27B of the *Human Rights Act 2004*, respectively.

2.40 The right to life is promoted.

2.41 In relation to the right to a fair trial (which may be limited), the explanatory statement states:

> ***Nature of the right and the limitation (s28(a) and (c))***
>
> The amendments may limit the right to a fair trial (section 22). By providing that a person who is or has been subject to a final CWPO must be assessed as unsuitable to possess a licence (and accordingly be refused a licence or have an existing licence cancelled), the amendments may restrict a person's ability to challenge key administrative decisions of the Registrar.
>
> The Amending Regulation requires the Registrar to consider CWPOs that have been successfully appealed against as a discretionary criteria under section 18. This may also limit the right to a fair trial.
>
> The Amendment Regulation provides that the registrar must consider an order made under the CWPO even if the relevant order was made before commencement of the Regulation and, for a decision in relation to an application under the Act, the application was made before that day.
>
> This may appear to limit the right under section 25 of the Human Rights Act not to be subject to retrospective laws. However, the suitability provisions in ss 17 – 19 of the Firearms Act are not criminal offence provisions and a finding that a person is not suitable cannot be considered a punishment or penalty. Nonetheless, the transitional provision may result in retrospective operation, in that it will mean the Firearms Regulation may operate by reference to a CWPO made before commencement or before a relevant application under the Firearms Act. This is proportionate and justifiable. Further, the alternative is illogical and undermines the underlying policy rationale to ensure public safety.

2.42 In relation to the cultural and other rights of Aboriginal and Torres Strait Islander peoples, the explanatory statement states:

> The amendments may limit the cultural and other rights of Aboriginal and Torres Strait Islander peoples (section 27). First Nations communities may use firearms to hunt and conduct other activities on traditional lands. If a member of one of those communities is assessed as unsuitable to possess a firearm, their ability to participate in cultural activities may be compromised.

2.43 In relation to the right to work and work-related rights, the explanatory statement states:

> The amendments may limit the right to work and work-related rights (section 27B). Certain occupations, including primary production and the security industry, may require the use of firearms. If a person is assessed as unsuitable to possess a firearm, their ability to participate in their chosen occupation may be compromised.

2.44 The discussion goes on:

> ***Legitimate purpose (s28(b))***
>
> The underlying policy outcome of the Amendment Regulation is to maintain public safety. Specifically, it ensures that the Registrar must consider whether a CWPO has been made in relation to an individual to determine their suitability. It does so in a manner consistent with the existing approach in the Firearms Act.
>
> ***Rational connection between the limitation and the purpose (s28(d))***
>
> The behaviour and conduct that may constitute the basis for making a CWPO are relevant in determining suitability to hold a firearms licence, and subsequently acquire, possess or use a firearm. There is a direct rational connection between the imposition of stringent requirements on the management of highly regulated property, such as firearms, and the legitimate purpose of promoting public safety. By using evidence of a CWPO to determine a person's suitability to hold a firearms licence, the Amendment Regulation reduces the risk of firearms being used in an unlawful way or to cause harm to others.
>
> ***Proportionality (s28 (e))***
>
> The approach proposed is the least restrictive approach and is consistent with the existing approach in the Act.

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

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

Chiaka Barry MLA
Chair

2 June 2026

Outstanding responses

Bills/Subordinate Legislation/National Laws

Report 14, dated 27 January 2026

Bill

- Family, Personal and Sexual Violence Amendment Bill 2025 (an interim response was received on 5 March 2026).

Report 15, dated 17 February 2026

Bill

- Firearms (Public Safety) Amendment Bill 2026.

Report 16, dated 10 March 2026

Bill

- Firearms (Firearm Prohibition Orders) Amendment Bill 2026.

Report 18, dated 28 April 2026

Bill

- Planning (Missing Middle Housing) Amendment Bill 2026.

Report 19, dated 19 May 2026

Bills

- Better Regulation Legislation Amendment Bill 2026.
- Fuel Legislation Amendment Bill 2026.
- Justice and Community Safety Legislation Amendment Bill 2026.
- Long Service Leave (Portable Schemes) Amendment Bill 2026.