



Minister for Advanced Technology and Space Industries  
Minister for the Environment and Heritage  
Minister for Planning and Land Management  
Minister for Police and Emergency Services  
Manager of Government Business

Member for Brindabella

Obj # 19/05102

Mrs Giulia Jones MLA  
Chair  
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)  
ACT Legislative Assembly  
London Circuit  
CANBERRA ACT 2601

Dear Mrs Jones

I write in response to the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) Scrutiny Report 34, which was released on 10 September 2019. Specifically, this letter addresses comments made by the Committee on the Planning and Development (Community Concessional Leases) Amendment Bill 2019. The Committee commented on the use of a “Henry VIII clause”, as section 513 of the Bill authorises transitional regulations which may modify the transitional provision in the Bill.

Section 513 contains two different regulation making powers. Section 513(1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act’s purpose.

A regulation made under section 513(2) may only modify chapter 26 of the Act, and only if the Executive is of the opinion that the chapter does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation. The clause is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly.

Section 513 (3) gives a regulation under section 512 (2) full effect according to its terms. A provision of chapter 26 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation.

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The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of chapter 26 of the Act has no ongoing effect after the expiry of that chapter.

I thank the Committee for its comments on the Bill and I trust this information is of assistance.

Yours sincerely

Mick Gentleman MLA  
Minister for Planning and Land Management