



Legislative Assembly for the Australian Capital Territory

Standing Committee on Justice and Community Safety
(Legislative Scrutiny Role)

Scrutiny Report 18

Legislative Assembly for the Australian Capital Territory
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Approved for publication

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About the committee

Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) on 2 December 2020.

The Committee is responsible for the following areas:

- (10) the Standing Committee on Justice and Community Safety 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 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](#).

Committee members

Peter Cain MLA, Chair

Marisa Paterson MLA, Deputy Chair

Andrew Braddock MLA

Secretariat

Julia Agostino, Committee Secretary

Kathleen de Kleuver, Assistant Committee Secretary

Sophie Milne, Assistant Committee Secretary

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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—Proposed Amendments

Bills—No comment

Statute Law Amendment Bill 2022

- 1.1. This Bill makes minor or technical amendments to 43 Acts to enhance and maintain the standard of the Territory's laws. It includes amendments to the *Territory Records Act 2002* to remove the implication in the *Territory Records Act 2002* requiring Ministerial approval for the Director of Territory Records to take extended periods of leave.

Bills—Comment

Climate change and Greenhouse Gas Reduction Amendment Bill 2022

- 1.2. This Bill amends the *Climate Change and Greenhouse Gas Reduction Act 2010* to restrict emissions offsets to sources within Australia, prioritise the functions of the Minister, require assessment of the operation of the Act by an independent entity every five years, and amend the membership and role of the Climate Change Council.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties? — Committee Resolution of Appointment paragraph (10)(a)(i)

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

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

- 1.3. The Bill will require the Minister to consider the advice of the Climate Change Council (the Council) when determining additional interim emissions targets. Membership of the Council will also be amended. The Council will have to include an Aboriginal or Torres Strait Islander person. Rather than, as at present, merely representing a range of different interests, members will have to include people with extensive knowledge and expertise in a range of areas, including climate change science, climate change adaptation, and interests of the community, business and people who are socially or financially disadvantaged.
- 1.4. By restricting membership of the Council, the Bill may limit the right to take part in public life protected by section 17 of the HRA. The Bill recognises this potential limit and sets out why any limit should be considered reasonable using the framework in section 28 of the HRA. The Committee refers that statement to the Assembly.
- 1.5. **The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.**

Integrity Commission Amendment Bill 2022

- 1.6. This Speaker's Bill amends the *Integrity Commission Act 2018* in relation to parliamentary privilege. It will ensure any requirement to provide information to the Integrity Commission is consistent with the ability of members, former members or anyone holding information on behalf of the Assembly to be able to make a claim in relation to parliamentary privilege and any claims for parliamentary privilege to be dealt with by the Assembly in line with standing orders.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties? — Committee Resolution of Appointment paragraph (10)(a)(i)

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

Right to a fair trial (section 21 HRA)

- 1.7. The Bill will introduce specific procedures in relation to the handling of what it defines as 'Assembly information'. Assembly information will be defined to mean information created for or by, or received by, the Legislative Assembly (including a committee of the Assembly), the Office of the Legislative Assembly, and a current or former member of the Assembly in the course of their parliamentary duties. In carrying out a preliminary investigation, the Commission will have to ask the Speaker rather than heads of a public sector entity for Assembly information, and the Speaker will have to pass on the request to any related member or former member. If a head of a public sector entity, a person issued with a preliminary inquiry notice or a person summoned to appear before the Commission considers that the Commission is asking for Assembly information, then that person is restricted from disclosing the information unless authorised by the Speaker. The Bill will also establish procedures for securing information from inspection when subject to a claim of parliamentary privilege and preventing further examination of information discovered to be Assembly information.
- 1.8. The Committee is concerned that the Bill may require individuals to deal with Assembly information in a particular way in circumstances where they are not aware it is Assembly information. The definition of Assembly information is not restricted to documents or items of evidence that were provided to the Assembly or a member or former member. A head of a public sector entity, for example, may be asked to disclose information to the Commission which, in substance if not in form, has also been disclosed to an Assembly committee during an inquiry on an unrelated matter. The Bill will restrict the Commission from asking for that information in a preliminary investigation (see amendments to subsection 89(1)). It is not clear to the Committee whether, in those circumstances, the protection and immunity provided to the head of a public sector entity by subsection 89(4) would apply. Similarly, amendments in the Bill to subsection 195(2) will limit the general authorisation for a head of a public sector entity to disclose information to the Commission to not include Assembly information unless the Speaker has authorised the disclosure.

- 1.9. The Committee therefore asks the Speaker for further information on how the various protections and immunities included in the Act will apply to the disclosure of information which is not readily identifiable as Assembly information.

The Committee draws this matter to the attention of the Assembly and asks the Speaker to respond with sufficient time to allow the Committee to consider the response prior to the Bill being debated.

- 1.10. The Bill will also amend the use of confidentiality notices used by the Commission to prevent restricted information being disclosed in a way which is likely to prejudice a preliminary inquiry, the safety or reputation of a person, or the fair trial of a person who has been or may be charged with an offence. The range of permitted disclosures in section 81 which will not breach such a confidentiality notice will be amended to include disclosures reasonably necessary for a claim of parliamentary privilege to be made or dealt with by the Assembly. The ability of the Commission to limit certain kinds of permitted disclosures of restricted information in subsection 80(2) will also be amended – the issue of a confidentiality notice will not be able to limit disclosures reasonably necessary for a claim of parliamentary privilege to be made or dealt with (under proposed paragraph 81(ea)), disclosures of Assembly information to the Speaker when dealing with a preliminary inquiry notice (under proposed section 90A) or an examination summons (under proposed section 147A).
- 1.11. By restricting the ability of the Commission to issue a confidentiality notice to protect against disclosures likely to prejudice the safety or reputation of a person or a fair trial, the Bill may limit the procedural fairness and fair trial rights protected by section 21 of the HRA. The Committee requests that the Speaker provide a justification for why any such limitation should be considered reasonable under the framework set out in section 28 of the HRA, and that the explanatory statement accompanying the Bill be amended to include that justification.
- 1.12. The Committee notes that the proposed amendments to section 80 restricting the Commission's ability to prohibit certain kinds of permitted disclosures do not extend to other amendments relating to disclosure of Assembly information: namely the requirement for the Speaker to pass on a request for Assembly information to a current or former member of the Assembly under the proposed amendments to section 89; and dealing with a request for Assembly information under the proposed section 89A. The Committee is not clear why the Commission may be able to prohibit these otherwise permitted disclosures, but not disclosures under proposed paragraph 81(ea), section 90A and section 147A. The Committee requires further information from the Speaker for why a different approach has been taken for these disclosures given their analogous relationship to claims of parliamentary privilege.

The Committee draws this matter to the attention of the Assembly and asks the Speaker to respond with sufficient time to allow the Committee to consider the response prior to the Bill being debated.

Justice and Community Safety Legislation Amendment Bill 2022

- 1.13. This Bill amends a range of legislation, primarily in the Attorney-General's portfolio. The Bill includes amendments to:
- the *Agents Act 2003* to authorise regulations relating to the sale of an agency business;
 - the *COVID-19 Emergency Response Act 2020* to remove requirements to report on emergency measures which have been amended so as to apply outside of a COVID-19 emergency or have been repealed;
 - the *Gaming Machine Act 2004* to allow an extra year to report on the operation of the gaming machine tax rebate due to the effects of the COVID-19 pandemic; and
 - the *Land Titles Act 1925* and *Residential Tenancies Act 1977* to correct technical issues.
- 1.14. The Bill will also amend the *Civil Law (Wrongs) Act 2002* and *Limitation Act 1985* to provide for the setting aside of child abuse settlement agreements and extension of the limitation periods in which to bring legal actions relating to child abuse. These amendments follow the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties? — Committee Resolution of Appointment paragraph (10)(a)(i)

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

Right to a fair trial (section 21 HRA)

- 1.15. Prior amendments to the Limitation Act introduced by the *Justice and Community Safety Legislation Amendment Act 2016 (No 2)* removed any limitation period for a cause of action for death or personal injury which arises from sexual abuse suffered as a child. The Bill will extend the removal of the limitation period to include causes of action arising from physical abuse of a child. By removing the limitation period relating to child physical abuse the Bill may limit the right to a fair trial protected by section 21 of the HRA, in particular that a matter be heard expeditiously within a reasonable period and without undue delay. The explanatory statement accompanying the Bill recognises this potential limitation and provides a statement for why any such limitation should be considered reasonable using the framework in section 28 of the HRA. The Committee refers that statement to the Assembly.
- 1.16. **The Committee draws this matter to the attention of the Assembly but does not require a response from the Minister.**

Workplace Legislation Amendment Bill 2022

- 1.17. This Bill amends various legislation to strengthen workplace health and safety laws. It includes amendments to:
- the *Long Service Leave (Portable Schemes) Act 2009* to correct technical errors and inconsistent references;
 - the *Workers Compensation Act 1951* to expressly permit the taking and accrual of annual and long service leave while a worker is receiving workers' compensation payments, allow for increased penalties to be imposed in regulations, and change the procedure for ceasing weekly payments on certain grounds;
 - the *Work Health and Safety Act 2011* to implement nine recommendations of the 2018 review into the nationally agreed model work health and safety (WHS) laws. These include amendments requiring business operators to attend WHS training, strengthening provisions relating to the sharing and requesting of information, including a negligence fault element in certain offences, restricting contracts of insurance covering financial penalties under the Act for breach of duty, and improving the process and accountability for prosecutions under the Act. The Bill will also make changes to the incident notification provisions to include requirements for the person conducting a business or undertaking to notify the regulator on becoming aware of a suspected sexual assault in the workplace; and
 - the *Work Health and Safety Regulation 2011* to ensure details of statutory notices and operator training for amusement devices are included in the device's log books, and to make it clear that compliance with Australian Standards is not mandatory unless specifically stated.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties? — Committee Resolution of Appointment paragraph (10)(a)(i)

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

Right to privacy and reputation (section 12 HRA)

- 1.18. The Bill will amend the *Work Health and Safety Act* to add sexual assault to the range of incidents which must be notified to the regulator by a person who conducts a business or undertaking. A sexual assault incident will be defined as an incident (including a suspected incident) in relation to a workplace that exposes a worker or any other person at the workplace to a sexual assault. When notifying a sexual assault incident, the person conducting the business or undertaking need only give their name, a description of the workplace and whether the incident was reported to police. The Bill expressly provides that the notification must not give information disclosing the identity of any person involved in the incident.
- 1.19. The Committee is concerned that this restriction on disclosing the identity of any person involved in the incident may not be sufficient to protect their identity. The reference in the section to the information which a person 'need only give' in notifying a sexual assault incident does not necessarily limit the information which might be provided. The explicit restriction preventing the disclosure of the identity of any person involved in the incident

when notifying the regulator may not prevent the disclosure of information which may reasonably be used to identify persons involved, nor prevent the recording of the identity of persons involved in records of the incident required under subsection 238(7). The Committee notes that other provisions of the act extend protections against indirect disclosure of the identity of persons affected: the protection against access to personal records by a health and safety representative extends to information which could reasonably be expected to lead to the identification of the worker (see subsections 68(3) and 71(2)(b)).

- 1.20. The Committee recognises that the Act includes various protections against access to and disclosure of personal information. There are restrictions on the use or disclosure of information or documents obtained by WHS entry permit-holders (section 148) and confidentiality of material otherwise obtained in exercising a power or function under the Act (section 271). However, the Committee is concerned that these protections are not sufficient to protect against the impact of the Bill on the privacy and reputation of persons involved in a sexual assault incident.
- 1.21. The explanatory statement accompanying the Bill describes the right to privacy provided by section 12 of the HRA as a right promoted by the Bill. It references the restriction on disclosure of the identity of persons involved in a sexual assault incident but does not discuss the possibility of the identity being disclosed indirectly or through other means. The explanatory statement also discusses the need for persons conducting businesses or undertakings to put in place appropriate arrangements to ensure the right to privacy of persons involved in sexual assault incidents is maintained in order to comply with obligations under the *Privacy Act 1988 (Cwth)* and the *Information Privacy Act 2014* in relation to the notification of the sexual assault in the workplace. The Committee notes that the *Health Records (Privacy and Access) Act 1997* may also be potentially relevant to records of a person's involvement to a sexual assault incident. However, the Committee is concerned that these protections are limited in their application to many businesses and undertakings who will be subject to notification requirements under the Bill.
- 1.22. The Bill will also add a new section 271A to the *Work Health and Safety Act*. This provision will provide for additional ways that a regulator may use and share information which the regulator has obtained or gained access to through exercising any power or function under the Act. Apart from sexual assault information, that new provision may authorise the sharing of personal information, including medical information, relevant to work place health and safety incidents. The new provision allows for the disclosure of information to any person or use of document for a variety of purposes, including administering, enforcing or monitoring compliance with the Act, administering or enforcing other territory laws prescribed by regulation or where necessary to lessen or prevent a serious risk to public health, or to exercise a function under corresponding WHS laws of other states and territories.
- 1.23. The explanatory statement accompanying the Bill does not mention this provision in relation to human rights compatibility. The outline of provisions states that this amendment is part of the nationally agreed model WHS laws, and that in exercising these

powers the regulator would be required to comply with the privacy obligations under the *Commonwealth Privacy Act*, the *Information Privacy Act 2014* and the *Health Records (Privacy and Access) Act*. In the Committee's view, the potential limitation of this provision on the protection of privacy provided by section 12 of the HRA should be recognised in the human rights compatibility statement included in the explanatory statement, and the purposes and limitations on disclosure and other protections of privacy available considered as part of that statement using the framework set out in section 28 of the HRA.

- 1.24. The Bill will also amend the *Work Health and Safety Regulation 2011* by requiring log books for amusement devices at a workplace to record the name of each person operating the device, the instruction and training they have received, and the name and qualifications of their instructor or trainer (see clause 50). The log book must be made available to any person who has control of the device (see clause 53). This recording of personal information may place some limits on an individual's privacy and reputation and should also be recognised in the Bill's human rights compatibility statement.
- 1.25. The Committee therefore requests further information from the Minister and an amendment to the explanatory statement setting out the various ways in which an individual's privacy may be limited by the Bill and why those limits should be considered reasonable using the framework set out in section 28 of the HRA. In particular the Committee asks for information on whether protection against disclosure which might reasonably identify a person involved in a sexual assault notification or other forms of protection of privacy and reputation were considered in developing the Bill.

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond with sufficient time to allow the Committee to consider the response prior to the Bill being debated.

Rights in criminal proceedings (section 22 HRA)

Strict liability offences

- 1.26. The Bill will add sexual assault incidents to the range of incidents which have to be notified to the regulator. Failure to notify the regulator immediately after becoming aware that a notifiable incident has occurred is an offence under section 38 of the Act. Under section 12A, strict liability applies to each physical element of this offence. The Bill will therefore add to the range of offences which include a strict liability element. As strict liability in an element of an offence affects the need in any prosecution to establish the fault elements of the offence the Bill may therefore limit the presumption of innocence protected as a right in criminal proceedings in section 22 of the HRA. The explanatory statement accompanying the Bill recognises this potential limitation and sets out why it should be considered reasonable using the framework in section 28 of the HRA. The Committee refers this statement to the Assembly.
- 1.27. The Bill will also introduce new offences which also include strict liability elements or otherwise may impact on rights in criminal proceedings. The Bill will make it an offence to

enter into a contract, insurance or other arrangement protecting against liability for a monetary penalty under the Act (see clause 45). Strict liability will apply to the physical elements of these offences. The offence will not be made out where the defendant has a reasonable excuse, but this places an evidential burden on the defendant which may also limit the presumption of innocence protected by section 22 of the HRA.

- 1.28. The Bill will also amend the Work Health and Safety Regulation to include an offence for a person in control of an amusement device not making the log book for the device available when relinquishing control of the device to another person. Strict liability would also apply to each physical element of this offence (see section 6A of the Regulations).
- 1.29. The explanatory statement accompanying the Bill does not recognise the possible limitation of rights in criminal proceedings presented by these new offences. While the strict liability for physical elements of offences included in the Act and Regulations may have been justified when originally introduced,¹ the application of strict liability to amended or additional offences requires its own justification. The Committee therefore requests that the Minister amend the explanatory statement set out why strict liability or the imposition of an evidential burden should be considered reasonable using the framework in section 28 of the HRA.

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

Use of negligence as a fault element

- 1.30. The *Work Health and Safety Act* includes offences relating to a failure to comply with health and safety duties imposed by the Act. The most egregious are described as category 1 offences. These indictable offences have a maximum penalty of up to \$600 000 or imprisonment for 5 years for individuals conducting a business or undertaking. Category 1 offences are committed when a person owes a health and safety duty to another person and, without reasonable excuse, exposes that other person to a risk of death or serious injury or illness. To commit the offence, a person must at least be reckless as to the risks of death or serious injury or illness. Recklessness involves acting despite knowing that there is a substantial risk of death or serious injury or illness in circumstances where that risk is unjustifiable (see section 20 of the *Criminal Code 2002*).
- 1.31. The Bill will amend the Act to expand what constitutes a category 1 offence to include where a person engages in conduct (which exposes another person to a risk of death or serious injury or illness) with negligence. Under the *Criminal Code*, for the purposes of an offence a person is negligent where their conduct falls so far short of the standard of care that a reasonable person would exercise in the circumstances and involves such a high risk that harm will occur that their conduct merits criminal punishment.

¹ See, for example, the explanatory statement for the *Work Health and Safety Regulation 2011*, SL2011-36 as presented on 19 December 2011.

- 1.32. Under the *Criminal Code*, where an offence doesn't specify the fault element for an offence which is based on the circumstances or results of conduct rather than the conduct itself, the fault element is presumed to be recklessness (see section 22). By allowing for negligence as a fault element the Bill will expand the circumstances in which a person may be found guilty of a category 1 offence, allowing criminal culpability to be established based on an objective standard applied to the conduct of the accused rather than their state of mind. The defence of mistake or ignorance of facts is also not available where the fault element is negligence (see section 35 of the *Criminal Code*). The Committee is therefore concerned that the presumption of innocence protected as a right in criminal proceedings under section 22 of the *HRA* may be indirectly limited or the rights and liberties of the accused otherwise affected.
- 1.33. The Committee notes that the fault element of negligence is being introduced for offences potentially involving a significant period of imprisonment. The negligence standard will also apply to conduct which in turn is defined as exposing someone to a risk of harm, leading to some uncertainty in the application of the standard in circumstances where there is a high risk of some harm occurring but that harm may be minimal.
- 1.34. The explanatory statement accompanying the Bill describes the inclusion of a negligence fault element as based on a recommendation of the review of model Work Health and Safety laws conducted in 2018 by Safe Work Australia at the request of relevant Commonwealth, State and Territory Ministers.² In making the recommendation that negligence be included as a basis for category 1 offences the review stated:
- Introducing 'gross negligence' as a fault element of the Category 1 offence will maintain the risk-based approach and will add that extra deterrent into the model WHS offence framework...
- This change to the model *WHS* Act will assist prosecutors to secure convictions for the most egregious breaches of duties. This will assist in addressing community concerns that many [persons conducting businesses or undertakings] accused of serious WHS breaches are escaping punishment because the bar for conviction is set too high.
- 1.35. The Committee is concerned that this explanation does not recognise the potential impact of the change on the rights of an accused nor set out why it should be considered reasonably necessary given the operation of the Act in the Territory. The Committee therefore requests that the Minister provide further information on why the introduction of a negligence standard is justified and amend the explanatory statement to include that justification.

² Marie Boland, *Review of the model Work Health and Safety laws: Final Report*, December 2018, available at <https://www.safeworkaustralia.gov.au/doc/review-model-whs-laws-final-report>.

The Committee draws this matter to the attention of the Assembly and asks the Minister to respond with sufficient time to allow the Committee to consider the response prior to the Bill being debated.

Whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Committee—Committee Resolution of Appointment paragraphs (10)(a)(vi) and (10)(d)

Insufficiency of the outline of provisions

- 1.36. Some of the clause notes included in the explanatory statement accompanying the Bill contain very little information. For example, clause 28 inserts a new subsection 155(2A) into the Work Health and Safety Act expanding how a notice might be served requiring a person to give information, produce documents, or appear before the regulator. This is described in the explanatory statement as ‘This clause inserts a new provision at 2A’. Similarly, clause 33 adds four subsections to section 171 allowing an inspector to require production of information, answers to specified questions or attendance before the inspector for questioning. This is described as ‘This clause inserts provisions 2A, 2B, 2C and 2E’.
- 1.37. An outline of provisions or clause notes in an explanatory statement plays an important role in informing the reader about the purpose and operation of the amendments in the Bill. While a paraphrase of the clause itself may not always be useful, a general description of the clause and its impact on the Act being amended will generally assist the reader to understand why the clause has been included in the Bill, how it relates to other provisions of the Bill and existing legislation, and what impact the clause is likely to have. The Committee therefore requests that an amended explanatory statement be prepared providing further information on the operation of the individual clauses of the Bill.

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

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 DI2022-53** being the Official Visitor (Mental Health) Appointment 2022 (No 1) made under paragraph 10(1)(e) of the *Official Visitor Act 2012* appoints a specified person as an official visitor for the purposes of the Mental Health Act 2015 for a period of three years.

- **Disallowable Instrument DI2022-54** being the Gene Technology (GM Crop Moratorium) Advisory Council Appointment 2022 (No 2) made under section 11 of the *Gene Technology (GM Crop Moratorium) Act 2004* revokes DI2019-102 and appoints a specified person as a member of the ACT Gene Technology Advisory Council until 2 May 2025.
- **Disallowable Instrument DI2022-55** being the Gene Technology (GM Crop Moratorium) Advisory Council Appointment 2022 (No 3) made under section 11 of the *Gene Technology (GM Crop Moratorium) Act 2004* appoints a specified person as a member of the ACT Gene Technology Advisory Council until 2 May 2025.
- **Disallowable Instrument DI2022-56** being the Gene Technology (GM Crop Moratorium) Advisory Council Appointment 2022 (No 4) made under section 11 of the *Gene Technology (GM Crop Moratorium) Act 2004* appoints a specified person as a member of the ACT Gene Technology Advisory Council until 2 May 2025.
- **Disallowable Instrument DI2022-57** being the Animal Welfare (Advisory Committee Member) Appointment 2022 (No 1) made under section 109 of the *Animal Welfare Act 1992* appoints specified persons as members of the Animal Welfare Advisory Committee for a period of three years.
- **Disallowable Instrument DI2022-64** being the Public Health (Monkeypox—Temporary Notifiable Condition) Declaration 2022 (No 1) made under paragraphs 101(a) and (b) of the *Public Health Act 1997* declares Monkeypox to be a transmissible notifiable condition.

Disallowable Instruments – Comment

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

Fees Determinations/Human Rights Issues

- **Disallowable Instrument DI2022-39** being the Utilities (Greenpower obligations) Exemption 2022 made under section 75G of the *Utilities Act 2000* exempts National Energy Retail Law (NERL) retailers operation within the ACT from having to comply with section 75E (1) (a) of the *Utilities Act 2000*.
- **Disallowable Instrument DI2022-58** being the Animal Welfare (Fees) Determination 2022 (No 1) made under section 110 of the *Animal Welfare Act 1992* revokes DI2021-94 and determines fees payable for the purposes of the Act.
- **Disallowable Instrument DI-2022-59** being the Clinical Waste (Fees) Determination 2022 (No 1) made under section 40 of the *Clinical Waste Act 1990* revokes DI2021-95 and determines fees payable for the purposes of the Act.
- **Disallowable Instrument DI-2022-60** being the Domestic Animals (Fees) Determination 2022 (No 1) made under section 144 of the *Domestic Animals Act 2000* revokes DI2021-96 and determines fees payable under the Act.

- **Disallowable Instrument DI2022-61** being the Public Unleased Land (Fees) Determination 2022 (No 1) made under section 130 of the *Public Unleased Land Act 2013* revokes DI2021-97 and determines fees payable for the purposes of the Act.
 - **Disallowable Instrument DI2022-62** being the Tree Protection (Fees) Determination 2022 (No 1) made under section 109 of the *Tree Protection Act 2005* revokes DI2021-98 and determines the fee payable for applications for reconsideration.
 - **Disallowable Instrument DI2022-63** being the Waste Management and Resource Recovery (Fees) Determination 2022 (No 1) made under section 126 of the *Waste Management and Resource Recovery Act 2016* revokes DI2021-99 and determines fees payable for the purposes of the Act.
- 2.3. The Committee notes that the instruments mentioned above determine fees, for the 2022-2023 financial year, for various Acts. The Committee notes, with approval, that in each case, the instrument and/or the explanatory statement for the instrument sets out the information required by the Committee, in relation to fees determinations, namely:
- the “old” fee;
 - the “new” fee;
 - the percentage of any increase in the fee; and
 - the reasons for any increase.
- 2.4. The Committee notes that the reasons for the fees increases are typified by this statement, in the explanatory statement for the first instrument mentioned above (i.e., the Animal Welfare (Fees) Determination 2022 (No 1)).
- This determination increases fees contained in DI2021-94 by a Wage Price index (WPI) of 3.25% as per advice from ACT Treasury, rounded for cash handling and other purposes.
- 2.5. Similar statements appear in the explanatory statements for the other instruments mentioned above. The Committee notes, with approval, that where there are deviations from this general increase, that is noted and explained.
- 2.6. The Committee notes that the explanatory statement for the Clinical Waste (Fees) Determination 2022 (No 1) also addresses human rights implications for the instrument, stating “no human rights are impacted”.
- 2.7. **The Committee draws this matter to the attention of the Assembly to the discussion of human rights issues in the explanatory statement for the Clinical Waste (Fees) Determination 2022 (No 1).**
- 2.8. **This comment does not require a response from the Minister.**

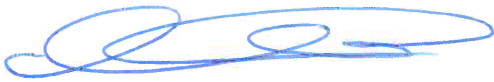
Responses

Government response

- Mr Rattenbury (Attorney-General), dated 16 July 2022, in relation to comments made in Scrutiny Report 16, concerning the Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022.

The responses can be viewed [online](#).

The Committee wishes to thank the Attorney-General for the helpful response.



Peter Cain MLA
Chair

27 July 2022

Outstanding responses

Bills/Subordinate Legislation

Report 2, dated 24 March 2021

- Drugs of Dependence (Personal Use) Amendment Bill 2021

Report 12, dated February 2022

- Electoral Amendment Bill 2021
- Financial Management Amendment Bill 2021 (No 2)

Report 16, dated 19 May 2022

- Health Legislation Amendment Bill 2022 [response required prior to the Bill being debated]

Report 17, dated 6 June 2022

- Education Amendment Bill 2022 – Government response
- Subordinate Law SL2022-5 being the Confiscation of Criminal Assets Amendment Regulation 2022 (No 1) [response required prior to 3 August 2022, when the Legislative Assembly's capacity to move to disallow the subordinate law will expire]