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Minister for Transport and City Services
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Member for Murrumbidgee

Mr Peter Cain MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
Scrutiny@parliament.act.gov.au

Dear Mr Cain

I am writing to address the Standing Committee on Justice and Community Safety's (Legislative Scrutiny Role) comments made in Scrutiny Report 20 in relation to the Urban Forest Bill 2022 (the Bill). The Committee's comments are addressed below.

Right to privacy and reputation (section 12 of the Human Rights Act 2004 (HRA))

The Committee addressed provisions in the Bill relating to authorised officers having the authority to enter a premises to confiscate personal property and to require disclosure of personal details. The Committee noted that the explanatory statement sets out why this limitation of the right to privacy and reputation in section 12 of the HRA is reasonable and refers the Assembly to the explanatory statement.

It was raised by the Committee that these provisions did not extend to the power given to the Director-General under section 50 to carry out work to repair damage done to a protected tree or replace the tree where a person fails to comply with a tree reparation direction. I can confirm that it is the intent of the Bill to apply the same safeguards and limitations to tree reparation directions as apply to authorised officers in relation to tree protection directions. I will be moving amendments to clarify that an authorised officer issuing, managing non-compliance and carrying out work in relation to a tree reparation direction must comply with the same notice requirements and entry safeguards that are outlined in sections 47 and 114 in relation to tree protection directions.

These safeguards set out conditions for entry including notice requirements and that the authorised officer must seek consent to enter or enter in accordance with a warrant and must not enter a part of the premises being used only for residential purposes. This limits this power to legitimate tree protection purposes by allowing the execution of tree reparation directions. I will be moving the outlined amendments to ensure clarity and consistency regarding powers of entry.

Rights in criminal proceedings (section 22, HRA)

It was noted that the Bill introduces a range of strict liability offences. The Committee noted the explanatory statement recognises that these offences may limit the right to presumption of innocence under section 22 of the HRA and refers the Assembly to the explanatory statement.

The Committee sought explanation of the establishment of offences with a fault element of negligence. The offences for negligent tree damage and prohibited groundwork allow enforcement of physical actions that fall substantially short of the standard of care for protected trees. Negligence also applies as a fault element for failure to comply with tree protection directions which outline what must or must not be done in relation to a protected tree. Culpability for negligent tree damage, prohibited groundwork or direction non-compliance relies only on assessment of objective circumstances. These offences are necessary to prevent environmental harms and to preserve the integrity of the legislative framework by penalising serious disregard for tree protection requirements. Further justification of these offences has been incorporated into the revised Explanatory Statement for the Bill.

Delegation of legislative power

The Committee raised concern around the inclusion of a power to make regulations which create offences noting that this power is limited to making minor offences with a maximum of 10 penalty units. I appreciate this issue being raised and will be moving an amendment to the Bill to remove section 144 subsection 2. This will maintain the ability for the Executive to make regulations for this Act whilst ensuring that all offences remain in the primary legislation.

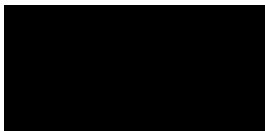
The Committee also raised concern around the inclusion of a provision to make transitional regulations that could modify the transitional part of the Act. The Committee noted the justification in the explanatory statement that such a provision is an important mechanism to allow responsive but limited modification to preserve the effective operation of the Bill in unforeseen circumstances. The Bill introduces several novel elements that have limited precedent due to the quickly evolving nature of urban forest governance in Australia. Given the scale and innovative nature of the proposed changes to tree protection laws, the inclusion of this provision was intended to mitigate the risk that the transitional provisions may not sufficiently capture unforeseen transitional flaws. I do, however, acknowledge the concerns raised by the Committee and will be moving an amendment to the Bill to limit the scope of this provision by removing the power for transitional regulations to modify the transitional part of the Act.

Displacement of section 47(6) of the Legislation Act 2001

The Committee raised concern around the potential displacement of the *Legislation Act 2001* (the Legislation Act, section 47(6)), in relation to the incorporation of an Australian Standard. The Legislation Act provides that an incorporated document is taken to be a notifiable instrument which must be notified on the legislation register. As noted by the Committee, Australian Standards may not be notified as they are subject to copyright. Australian Standards may be purchased over the internet; however, the directorate is not in a position to make these readily available. To address this, I will be moving an amendment to the Bill to remove new section 142(2) from the Bill. This will

maintain the ability to incorporate instruments under this Act whilst removing the ability to incorporate an Australian Standard in a way that displaces section 47(6) of the Legislation Act.

Yours sincerely



Chris Steel MLA
Minister for Transport and City Services
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