Legislative Assembly for the Australian Capital Territory
Standing Committee on Legal Affairs (Legislative Scrutiny Role)

Scrutiny Report 13

Legislative Assembly for the Australian Capital Territory
Standing Committee on Legal Affairs (Legislative Scrutiny Role)

Approved for publication

11th Assembly
November 2025

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

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

Committee members

Chiaka Barry MLA, Chair

Taimus Werner-Gibbings MLA, Deputy Chair

Shane Rattenbury MLA

Secretariat

Hamish Finlay, Committee Secretary

Frieda Scott, Assistant Secretary

Melissa Trpkovski, Administration Officer

Stephen Argument, Legal Adviser (Subordinate Legislation)

Jacinta Dharmananda, Legal Adviser (Bills)

Contact us

Mail Standing Committee on Legal Affairs (Legislative Scrutiny Role)
Legislative Assembly for the Australian Capital Territory
GPO Box 1020
CANBERRA ACT 2601

Phone (02) 6205 0171

Email scrutiny@parliament.act.gov.au

Website parliament.act.gov.au/parliamentary-business/in-committees

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—No comment

Government Procurement Amendment Bill 2025

1.1 This Bill amends the *Government Procurement Act 2001* and the *Government Procurement Regulation 2007*.

1.2 The explanatory statement to this Bill notes that substantial changes to the *Government Procurement Act 2001* (Act) and *Government Procurement Regulation 2007* (Regulation) had previously been made and commenced on 1 July 2024. The explanatory statement to the Bill explains that those changes were delivered under the Procurement Reform Program to ensure that ACT Government procurements "continue to be undertaken in alignment with community values, conducted with transparency, fairness and rigour, and achieve value for money". Since these changes commenced, the statement goes on to say, the ACT Government has identified further changes to the legislation needed "to better align it with policy objectives" and this Bill makes those further changes.

1.3 The amendments proposed by the Bill are intended to effect those changes including by distinguishing between procurements with an estimated total consideration of $500 or more and those under $500, clarifying what constitutes "confidential text" for notifiable contracts, establishing less onerous procurement requirements when a Territory entity[2] is dealing with a certified Aboriginal or Torres Strait Islander entity, or an entity that is a small or medium business entity based in the ACT or surrounding region and clarifying the procurements that require review by the Government Procurement Board (Board).

1.4 The explanatory statement states that the Bill has the potential to promote an individual's right to privacy and reputation under section 12 of the *Human Rights Act 2004* and to promote the right to equality and non-discrimination under section 8 of the *Human Rights Act 2004*. The Committee refers the Assembly to that discussion.

Bills—Comment

Assisted Reproductive Technology Amendment Bill 2025 (No 2)

1.5 This Bill amends the *Assisted Reproductive Technology Act 2024* ("ART Act"). The most substantive amendment of the Bill is to the circumstances in which donor conceived persons and parents of those persons can receive donor information, and the type of information, on the donor register ("the register"). The explanatory statement explains that the primary focus of the amendments is to address significant gamete supply issues that have arisen following commencement of the ART Act.

1.6 The Bill:

- amends the age of access at which donor conceived people may receive donor information from the register (section 66) by increasing the age of access from 16 to 18 years for mandatory donor information, which includes mandatory identifying and non-identifying information, but retaining the right of access for donor conceived people aged under 18 years who have been assessed by a counsellor to mandatory identifying and non-identifying information;[3]

---

[2] Defined in *Government Procurement Act 2001* s 6.

[3] What constitutes "mandatory information" for the register is provided in section 53 of the ART Act.

- inserts new section 66A which retains access for people 16 or 17 years old who have not been assessed by a counsellor, but only in relation to non-identifying mandatory information unless the donor consents in writing;
- amends section 67 regarding access by the parent of a donor-conceived person by limiting the information available to them to non-identifying mandatory information (currently all mandatory information) unless the donor consents in writing (in addition to other exceptions, such as the information being voluntarily given, currently in the ART Act); and
- makes consequential, technical and editorial amendments.

1.7 What constitutes "mandatory information" for the register is provided in section 53 of the current ART Act. The explanatory statement for the Bill helpfully divides this information into mandatory identifying information (name, date and place of birth and home address) and mandatory non-identifying information to assist in explaining the changes proposed by the Bill.

1.8 The Bill promotes and limits a number of human rights. The explanatory statement notes that the Minister engaged the ACT Human Rights Commission and the Justice and Community Safety Directorate Human Rights Scrutiny on an ongoing basis to assess the proposed amendments.

1.9 The Committee refers the Assembly to the discussion on the promotion of certain human rights (right to privacy and right to equality/non-discrimination) and makes the following comments on the limitations.

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

Right to protection of family and children (section 11 HRA)

Right to privacy (section 12 HRA)

Right to freedom of opinion and expression (section 16 HRA)

1.10 These rights are addressed together as the matters raised by the Bill overlap all three.

1.11 Section 11 of the HRA provides that every child has the right to the protection needed by the child. The explanatory statement notes that, under the United Nations Convention on the Rights of the Child, this includes a child's right to preserve their identity and to know their genetic origins. In addition, section 16 of the HRA protects the right to freedom of expression which includes the freedom to seek and receive information. Section 12 of the HRA provides the right of an individual not to have their privacy, family or home interfered with unlawfully or arbitrarily. The explanatory statement notes the origins of this right is the International Covenant on Civil and Political Rights.

1.12 As a result of the restrictions to the circumstances in which, and the type of information donor conceived children and parents of donor conceived children can receive information about a donor from the register, these three rights are limited.

1.13 The explanatory statement recognizes these limitations and provides an explanation of their purpose, rational connection between the limitation and the purpose and their proportionality.

1.14 The Committee thanks the Minister and their Directorate for the clear and fulsome explanation in the explanatory statement of the policy behind the Bill, the consultations made, the consideration of alternative pathways to achieve the policy and the detailed discussion of the human rights implications.

1.15 **The Committee refers the Assembly to the discussion in the explanatory statement on the human rights implications and does not require a response from the Minister.**

Building and Construction Legislation Amendment Bill 2025 (No 2)

1.16 This Bill amends the following legislation:

- *Building Act 2004;*
- *Building (General) Regulation 2008;*
- *Construction Occupations (Licensing) Act 2004;*
- *Construction Occupations (Licensing) Regulation 2004;*
- *Gas Safety Act 2000;*
- *Professional Engineers Act 2023;* and
- *Property Developers Act 2024.*

1.17 In Schedule 1, the Bill also makes consequential amendments to the following subordinate legislation:

- *Civil Law (Sale of Residential Property) Regulation 2004;* and
- *Residential Tenancies Regulation 1998.*

(a) Building Act 2004

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

Rights in criminal proceedings (section 22 HRA)

1.18 The Bill makes various drafting and clarifying amendments to the building work provisions of the Building Act and to the provisions of the Building Act relating to swimming pools, including the insertion of new definitions for compliance.

1.19 The Bill also amends section 83M and section 83OB of the Building Act which each create strict liability offences.

1.20 Strict liability offences displace the burden on the prosecution to establish the elements of the offence in the Bill. This impacts the presumption of innocence which is an aspect of the rights in criminal proceedings in section 22 of the HRA. The ACT Guide for Framing Offences states that there must be a "demonstrable and legitimate aim" for the creation of strict liability offences.[4]

1.21 The explanatory statement does not address the impact of the amendments on the limitation on human rights created by the amended offences.

[4] ACT Guide for Framing Offences (April 2010, version 2) p28.

1.22 The Committee recognizes that the Bill amends existing strict liability offences in sections 83M and 83OB. But given that the amendments do change the elements for the strict liability offences, it is desirable for the amendments to be addressed in the explanatory statement. The Committee notes that "relevant documents" is a new concept introduced into section 83M and that the criteria for lodgement have changed. The Committee also notes that similar changes are made to section 83OB.

1.23 The Committee also notes that section 83OB, inserted by the *Building (Swimming Pool Safety) Legislation Amendment Act 2023*, has not yet commenced.[5] Consequently, section 83OB does not appear in the current version of the *Building Act 2004* on the ACT Register. As section 83OB was inserted by a previous Assembly, this made it difficult for the Committee to find section 83OB, requiring it to research earlier amendments to the Building Act. While the *Building (Swimming Pool Safety) Legislation Amendment Act 2023* is referred to in the explanatory statement, it was not made clear that section 83OB, amended by this Bill, was still inoperative.

1.24 **The Committee requests that the Minister amend the explanatory statement to address the impact of the amendments to sections 83M and 83OB on the right to the presumption of innocence in section 22 of the *Human Rights Act 2004*.**

1.25 **The Committee further makes the general request that where amendments are made to Act provisions that are not yet commenced (and so do not appear in the current version of the Act), that the explanatory statement notes this and refers in the explanatory statement to the relevant Amendment Act so that they can be easily located by the Committee.**

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

(b) Building (General) Regulation 2008

1.26 This amendment creates a standing exemption for all spas that have a lockable, child-resistant lid installed, regardless of their date of construction.

(c) Construction Occupations (Licensing) Act 2004

1.27 This Bill amends the *Construction Occupations (Licensing) Act 2004* to make various drafting amendments, to correct drafting oversights, make clarifications (such as to update terminology relating to insolvency) and consequential amendments. For example, clause 37 inserts references to the *Professional Engineers Act 2023* and the *Property Developers Act 2024* so that they become an "operational Act" for the purposes of the *Construction Occupations (Licensing) Act 2004* (bringing the Acts under certain compliance provisions of the *Construction Occupations (Licensing) Act 2004*, and re-structures section 28 about eligibility for licences by creating a new section 28A).

(d) Construction Occupations (Licensing) Regulation 2004

1.28 This Bill amends the *Construction Occupations (Licensing) Regulation 2004* to make drafting changes and amendments that are consequential to the amendments the Bill makes to the *Construction Occupations (Licensing) Act 2004.*

[5] See Building (Swimming Pool Safety) Legislation Amendment Act 2023 cl 2.

(e) Gas Safety Act 2000

1.29 This Bill amends section 12A of the *Gas Safety Act 2000* which is an offence provision directed towards gasfitters. Clause 53 of the Bill amends one element of the offence by providing that the gasfitter must give notice of an identified risk to the construction occupations register as well as the person responsible for the medical gas system. The explanatory statement to the Bill states that the amendment to the *Gas Safety Act 2000* is to "maintain a strong regulatory system".

(f) Professional Engineers Act 2023

1.30 This Bill amends the *Professional Engineers Act 2023* to include the *Property Developers Act 2024* as an "operational Act" for the purposes of the *Professional Engineers Act 2023* (bringing the Act under certain compliance provisions of the *Professional Engineers Act 2023*).

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

Right to freedom of expression (section 16 HRA)

Do any provisions of the Bill insufficiently subject the exercise of legislative power to parliamentary scrutiny?—Committee Resolution of Appointment paragraph (9)(a)(v)

1.31 Clause 55 of this Bill also amends section 87(1) of the *Professional Engineers Act 2023* which concerns a regulation or instrument that incorporates, applies or adopts a law or an Australian Standard in force from time to time, or another instrument. The amendment adds an instrument made under s 83 of the *Professional Engineers Act 2023* which is about the Minister determining the qualifications, experience and competencies for a person to be eligible to be a professional engineer.

1.32 Section 87(3) provides that sections 47(5) and (6) of the *Legislation Act 2001* do not apply (i.e. are displaced) in relation to a document incorporated, applied or adopted by an instrument referred to in section 87(1). These sections of the Legislation Act provide that instruments incorporated by reference, and any amendment or replacement of such an instrument, is taken to be a "notifiable instrument". A notifiable instrument must be notified on the ACT Legislation Register.

1.33 The Committee has always looked carefully at the disapplication of subsection 47(6) of the Legislation Act. Its fundamental concern is to ensure that any material relied on by legislation is easily accessible by users, at no cost. Where there is a disapplication, the Committee expects to see a justification in the explanatory statement.

1.34 The explanatory statement, as well as noting the displacement of sections 47(5) and (6), also notes that adding to the instruments that are not notifiable instruments limits the right to information which is an aspect of the right to freedom of opinion and expression.

1.35 In relation to this the explanatory statement provides:

> The change to allow Government to not publish certain documents referenced in an instrument constitutes a limitation on the right to access comprehensive information. However, this does not prevent the public from accessing the information, as it will remain publicly available via hyperlinks in the instrument to the referenced documents and federal legislation. Therefore, the limitation narrows the sources of access but still preserves the essence of the right.

> …
>
> The purpose of this legislative measure is to facilitate a practical and lawful approach to managing legislative documentation. Specifically, it aims to address circumstances where publishing certain instruments is not feasible or appropriate due to copyright restrictions or copyright ownership limitations, or where another jurisdiction's published legislation is referenced….
>
> The limitation is proportionate because it strikes an appropriate balance between respecting the right to access information and addressing legal, copyright, and jurisdictional constraints.

1.36 **The Committee refers these matters to the Assembly but does not require a response from the Minister.**

(g) Property Developers Act 2024

1.37 This Bill makes amendments to section 25 of the *Property Developers Act 2024* to remove some of the information that the registrar is required to keep on the register of licensed property developers about a licensee. The Bill also makes consequential and clarifying amendments.

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

Right to freedom of expression (section 16 HRA)

1.38 The amendments to section 25 remove the requirement for the registrar to include on the register the following:

- names and director identification numbers;
- any regulatory action (however described) taken against a licensee or an associated entity under a relevant law; and
- past and current residential development activities undertaken by the licensee and their associated entities.

1.39 As noted earlier in the report, an aspect of the right to freedom of expression under section 16 of the HRA includes the freedom to seek and receive information. The explanatory statement notes that the register is not yet operational. However, once operational, the amendments to section 25 limit this right by removing the obligation of the registrar to publish the above information.

1.40 The explanatory statement recognizes this limitation and provides the following explanation:

> The purpose of these limitations is to enable effective functioning of the public register by maintaining transparency while focusing on publishing information that is genuinely necessary for the public interest and manageable for the administrator. The government aims to uphold transparency and accountability, but also to avoid disclosing information that is superfluous, already available through other sources, or potentially prejudicial or misleading….
>
> …

> The limitations are proportionate because they carefully balance the rights of individuals and the community to access information with the government's objectives of maintaining fair, effective, and efficient regulation. By narrowing the scope of information to be published once the register is established, the amendments ensure that only relevant and essential details are disclosed for public oversight and understanding, while also safeguarding the privacy rights of licensees and their associated entities, such as their director identification numbers.

1.41 The explanatory statement also notes:

> Section 25 (4) of the *Property Developers Act 2024* remains, giving the Construction Occupations Registrar discretion to publish relevant information. This may include details of regulatory actions against a licensee or its directors, or past development issues related to defects.

1.42 The explanatory statement then more specifically addresses each of the categories of information that are to be removed.

1.43 **The Committee refers these explanations to the Assembly but does not require a response from the Minister.**

1.44 On a more minor matter, the Committee notes that in the Clause Notes, in clause 59 the reference to clause 55 should presumably be clause "56".

(h) Schedule 1 amendments to *the Civil Law (Sale of Residential Property) Regulation 2004* and the *Residential Tenancies Regulation 1998*

1.45 This Bill makes amendments to the *Civil Law (Sale of Residential Property) Regulation 2004* and the *Residential Tenancies Regulation 1998* that are consequential upon the amendments made by the Bill to the *Building Act 2004*.

Liquor Amendment Bill 2025

1.46 This Bill amends the *Liquor Act 2010* ("Liquor Act") and the *Liquor Regulation 2010* ("Liquor Regulation") to establish a new legislative framework for the same-day delivery of alcohol.

1.47 The Bill inserts a new Part 8A in the Liquor Act to introduce the new regulatory framework for same-day delivery of alcohol, including new offences (some of which are strict liability offences), notification and record keeping requirements, daily restrictions, new RSA certificate (see (i) below), requirements for verification of age and prohibitions on delivery to a child/young person/intoxicated person and protections for delivery people.

1.48 The Bill also makes the following amendments to the Liquor Act and the Liquor Regulation:

(i) In the Liquor Act, provides for requirements for a new type of responsible service of alcohol ("RSA") training for same-day delivery of alcohol (distinguished from the existing RSA training which the Bill provides is to be referred to as "general RSA" training) (in particular, see new Division 8A.4 of Part 8 and clauses 16 and 30 of the Bill).

(ii) In the Liquor Act, grants the Commissioner for Fair Trading the power to cancel a liquor licence if the licensee fails to pay a fee payable under the Liquor Act within 28 days after an immediate suspension notice, and removes the same power of the ACT Civil and Administrative Tribunal to cancel a licence by way of occupational discipline (clauses 5 and 21 of the Bill).

(iii) In the Liquor Act, amends Schedule 1 to add the Commissioner's decision to cancel a liquor licence as a reviewable decision.

(iv) In the Liquor Act, inserts transitional provisions in relation to RSA training courses and RSA certificates.

(v) In the Liquor Act, makes other minor and technical amendments including those required to distinguish between a "general RSA certificate" and the new "same-day delivery RSA certificate" and new definitions.

(vi) In the Liquor Regulation, provides for the minimum delay for same-day delivery (2 hours), the times of day for same-day delivery (10am to 10pm), for the records required to be kept by a same-day delivery provider in relation to supply or refusal to supply, and for exemption from delayed delivery in certain circumstances related to whether there was a meal, the amount of liquor and the amount paid.

1.49 This Bill also makes consequential amendments to the *Magistrates Court (Liquor Infringement Notices) Regulation 2010* to make the new same-day delivery offences part of the infringement notices scheme.

1.50 The Bill is to commence as an Act on a day fixed by the Minister by written notice. However, if certain provisions have not commenced within 18 months beginning on notification, they will commence on the first day after that period. In relation to those provisions, section 79 of the *Legislation Act 2001* is displaced.[6]

1.51 The explanatory statement observes that this Bill promotes several rights under the HRA but also limits some rights.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—Committee resolution of appointment paragraph (9)(a)(i))

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

Rights in Criminal Proceedings (Presumption of Innocence) (section 22 HRA)

1.52 Strict liability offences displace the burden on the prosecution to establish the elements of the offence in the Bill. This impacts the presumption of innocence which is an aspect of the rights in criminal proceedings in section 22 of the HRA. As noted above, the ACT Guide for Framing Offences states that there must be a "demonstrable and legitimate aim" for the creation of strict liability offences. Further, the Guide provides that a "common sense rule of thumb is that strict liability is used only for "regulatory offences" and "should not be framed to catch the general public for inadvertent breaches of the law".[7] Further, they are "usually employed in cases where it is necessary to ensure the integrity of a regulatory scheme, or some context where the behaviour is regulated".[8]

1.53 This Bill introduces numerous offences. The Committee notes that nearly all of these offences are strict liability offences.

[6] Section 79 provides that if a law does not commence within 6 months beginning on its notification day, it automatically commences on the first day after that period.

[7] Guide ibid p. 27.

[8] Guide p. 28.

1.54 The explanatory statement summarises these offences in a table and the Committee refers the Assembly to that table. By way of examples only, strict liability offences include:

- same day delivery provider fails to give notice to the commissioner of who sells liquor supplied by same-day delivery (new section 143K);
- a same-day delivery provider fails to delay before the delayed delivery period ends (2 hours under the Bill amendment to the Liquor Regulation 2010);
- delivery of liquor to certain public places;
- taking an order from a self-excluded person or marketing to a self-excluded person;[9]
- same-day delivery provider or delivery person do not have a same-day delivery RSA certificate, or same-day delivery provider fails to keep copy of the certificate;
- same-day delivery to a child or young person;
- same-day delivery to a person who is intoxicated;[10]
- leaving delivery unattended;
- abusing, threatening or intimidating a delivery person for refusal to supply liquor;
- taking or threatening to take detrimental action against a delivery person for refusing or proposing to refuse to supply same-day liquor;
- failing to keep records of refusal to supply; and
- a child or young person using a false identification document in order to place or receive same-day delivery of liquor.

1.55 The Committee also notes that the Bill makes it an offence for a child or young person to place a delivery order or take a delivery of liquor, on a same-day basis, though this is not a strict liability offence.

1.56 The Committee commends the Minister and the Attorney-General's Directorate for addressing each of the strict liability offences separately and clearly in the explanatory statement in relation to their limitation on the right to presumption of innocence.

1.57 A table in the explanatory statement also states the legitimate purpose for each of the proposed strict liability offences and the Committee refers the Assembly to that table.[11]

1.58 Another table in the explanatory statement outlines the rationale for the imposition of a strict liability offence (and so the limitation on the presumption of innocence) for each of the proposed strict liability offences and the Committee refers the Assembly refers to that table.[12]

1.59 More generally, the explanatory statement makes the following statements about the rational connection between the limitation imposed by strict liability offences and the purpose of the strict liability offences and their proportionality as follows.

> Strict liability provisions have been included in the Bill in instances where the significance for compliance is critical. They have been determined as critical for compliance due to their nature and ability to impede the efforts and intent of the scheme to protect the community from alcohol related harms arising from liquor supplied by same-day delivery or to protect delivery drivers from victimisation either from an employer or the public.
>
> …

[9] The term "self-excluded person" is defined in new section 143Q.
[10] The term "intoxicated" is defined in s 104 of the *Liquor Act 2010*.
[11] Explanatory Statement, pp. 12 to 14.
[12] Explanatory Statement, pp. 17 to 22.

> Where offences provide defences that impose an evidential burden on the accused, this limitation exists to ensure that the existence of the offence is not rendered futile. Should the prosecution be required to disprove all possible defences, even those that are irrelevant or fanciful, then prosecution of the offences would inevitably be impossible to pursue or rarely, if ever, succeed.
>
> …
>
> The strict liability offences in the Bill affect same-day delivery providers, delivery people, or the customer. In the respective contexts in which the offences are committed, each of the affected entities can be expected to have a high degree of awareness and understanding of the regulatory framework. Engaging in the physical elements prohibited by the offences is likely to require a high degree of premeditation and deliberate or wilful conduct. Therefore, in each case the relevant defendant can be reasonably expected to know what the requirements of the law are, and therefore the mental, or fault element can justifiably be excluded.
>
> A less restrictive approach (namely, making the offences not strict liability) would still enable enforcement, but would not be as effective a deterrent given the nature of the strict liability offences, and the effect the prohibited conduct would have on the enforceability of the same-day delivery regulatory scheme. A less restrictive approach would compromise the ability to protect the community from alcohol-related harms arising from liquor supplied by same-day delivery and to protect delivery drivers from victimisation either from an employer or the public.

1.60 The explanatory statement notes that some of the offences provide for exceptions that operate as a defence, such as section 143U (if the young person is at least 16 years old and shown an identification document identifying them as an adult).

1.61 **The Committee refers the Assembly to the justifications for the strict liability offences in the explanatory statement but does not require a response from the Minister.**

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

Right to Work (section 27B HRA)

1.62 The explanatory statement identifies that the requirements on a delivery person for same-day delivery of alcohol to verify identity, age and whether a person is intoxicated may expose the delivery person to an unsafe work environment and so may limit the right to work under section 27B of the HRA, an aspect of which is the right to enjoy just and favourable work conditions.

1.63 The explanatory statement explains:

> This limitation has a legitimate purpose as the amendment aims to promote community safety and reduce alcohol-related harms, by requiring a delivery person to refuse the supply of liquor to children and young people and individuals who are already intoxicated.

1.64 The explanatory statement further states that the limitation is proportionate for the following reasons, including the “safeguards” of the requirement for same-day delivery RSA training (new Div 8A.4) and the creation of offences related to the conduct of customers (see above discussion of offences created by the Bill).

> The amendments may subject a delivery driver to conflict from the customer if they determine that a delivery should be refused. This limitation is proportionate to the significant benefits that the same-day delivery framework will provide to the ACT community in terms of health promotion and reducing alcohol-related violence.
>
> The amendments are balanced with a safeguard that requires same-day delivery providers and delivery people to undertake mandatory RSA training specific to this scenario which is expected to mitigate some of these harms by providing tools such as de-escalation strategies.
>
> The Bill includes offences related to conduct of customers that might otherwise give rise to risks to delivery people, such as that in section 143Y regarding abusive, threatening or intimidating behaviour towards a delivery person.

1.65 **The Committee refers the Assembly to the discussion in the explanatory statement but does not require a response from the Minister.**

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

Right to Privacy and Reputation (section 12 HRA)

1.66 Section 12 of the HRA provides that every individual has the right not to have their privacy interfered with unlawfully or arbitrarily. This right is limited by the Bill as the Bill proposes amendments that require the delivery provider to collect and store customers' identification data, such as name, address, contact information or supply details.

1.67 The proposed requirements include collection of personal information for individuals to self-exclude from liquor delivery services, requirement of a delivery provider to report certain incidents, requirement of a delivery provider to keep records of supply and refusal of supply.

1.68 The Committee thanks the Minister and the Justice and Community Safety Directorate for clearly setting out in the explanatory statement the specific provisions that impact this right to privacy, their purpose and the connection between the limitation and purpose. The Committee refers the Assembly to the two tables in the explanatory statement.[13]

1.69 The explanatory statement then justifies the limitation created by these provisions as follows.

> The limitations on the right to privacy and reputation are considered proportionate to the legitimate purposes. The amendments may subject a customer to having some personal data collected and stored by a same-day delivery provider. The amount and type of personal information required has been limited only to data that is for compliance and incident reporting purposes. The recording of information has been drafted to maintain consistency with information already required under the Liquor Act 2010. This is relevant for easier compliance with and enforcement of the scheme. It is also to ensure that recording requirements are not more burdensome for same-day delivery providers when compared to other classes of liquor licences.

1.70 The explanatory statement also notes that other safeguards exist under other laws. By way of example, the statement refers to the *Privacy Act 1988* (Cwlth). However, as the statement acknowledges, the Privacy Act only applies to entities with an annual turnover more than $3 million (subject to some exceptions).

[13] Explanatory statement p. 7 – 8.

1.71 The explanatory statement does not refer to any confidentiality obligations in the current Liquor Act, nor does the Bill impose any obligations of confidentiality on the same-day delivery provider under the sections limiting the right to privacy.

1.72 The Committee also notes that, for section 143ZB, the requirement to keep records of supply and refusal is a requirement to include information and in a way “prescribed by regulation”. Clause 47 of this Bill inserts a new regulation 30D into the *Liquor Regulation 2010* which prescribes that information including the name and volume of the liquor supplied/refused, the name of the customer, the address for delivery and reason for refusal (if applicable).

1.73 Given the sensitive nature of this personal information, the Committee would expect the explanatory statement to be more specific about the safeguards to protect this personal information.

1.74 **The Committee requests that the explanatory statement be amended, or that a response from the Minster be provided, to explain how the personal information that must be disclosed under the Bill will be kept confidential in circumstances where the *Privacy Act 1988* (Cwlth) does not apply.**

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

Magistrates Court (Indicative Sentencing) Amendment Bill 2025

1.75 This Bill amends the *Magistrates Court Act 1930* (“Magistrates Court Act”) to establish a legislative scheme that permits a defendant charged with an offence in the Magistrates Court to request an indication of the sentence the Court would impose if the defendant plead guilty.

1.76 The availability of so-called sentence indications is limited to the Magistrates Court and excludes a family violence offence, a sexual offence, the offence of negligent driving that occasions death, the jurisdiction of the Childrens Court and offences prescribed by regulation.

1.77 The Bill also makes consequential amendments to the *Crimes (Sentencing) Act 2005* to allow victim impact statements to be used for the purpose of indicative sentencing.

1.78 The explanatory statement identifies numerous purposes of the Bill including the objective to improve the experience of defendants, complainants and witnesses, to improve systematic deficiencies in the Magistrates Court by reducing delays and reducing the time taken for matters to be concluded.

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

Right to a Fair Trial (section 21 HRA)

Rights in Criminal Proceedings (Section 22 HRA)

1.79 The Bill limits the right to a fair trial protected by section 21 of the HRA which grants all individuals the right to have criminal charges decided by a court after a fair and public hearing. The explanatory statement explains that this right is recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

1.80 The Committee notes that the Bill provisions, in similar ways to the right to a fair trial, also limit the rights in criminal proceedings protected by section 22 of the HRA by impacting the evidence and procedures before a court.[14]

1.81 The explanatory statement recognizes that the right to a fair trial may be limited by the Bill amendments as the Bill affects the way that evidence is presented and the process of criminal proceedings. The explanatory statement contains a detailed explanation of the limitation and explains why the limitations are proportionate to the purpose of the limitation. In summary it states:

> The amendments limit the opportunity for parties to a proceeding having a reasonable opportunity to present their case, however, this limitation on the right to a fair trial is proportionate to the significant benefits the indicative sentencing scheme will provide to defendants by allowing them to have their matter resolved more quickly, complainants by avoiding the potentially re-traumatising effects of providing evidence and being subjected to cross examination at a hearing, as well as to the ACT community, such as easing time and resourcing pressures on the ACT justice system and ensuring timely resolution of criminal matters.

1.82 The explanatory statement also identifies various safeguards in the Bill to limit the restriction on the right to a fair trial. These include:

- the limitation on the proceedings in the Magistrates Court for which the indicative sentencing can occur;
- the requirement for the defendant to be properly informed of the process for, and effect of, a sentence;
- the requirement that an inference of guilt must not be drawn if the defendant withdraws an application or consent for a sentence indication or does not accept the indicated sentence;
- prohibition against using evidence of the defendant's application, the indicated sentence or any victim impact statement in the proceeding for an offence unless specific circumstances are met; and
- the provision that a sentence indication does not affect any party to the proceedings right to appeal against the sentence actually imposed.

1.83 The Bill provides that the Minister must review the operation of the Bill amendments within 3 years from the commencement of the Bill and that report must be presented to the Assembly.

1.84 The Committee notes that the Clause Note in the explanatory statement for Clause 7 of the Bill does not accurately reflect the amendment made by Clause 7 of the Bill. Clause 7 inserts four new definitions, whereas the Clause Note lists six and omits one of the new definitions inserted by the Bill.

1.85 **The Committee draws the discussion on human rights in the explanatory statement to the attention of the Assembly and recommends that the Minister amend Clause Note 7 to correctly reflect Clause 7 of the Bill.**

[14] See ACT Human Rights Commission website: https://www.hrc.act.gov.au/humanrights/rights-protected-in-the-act/rights-in-criminal-proceedings

Rights in criminal proceedings (presumption of innocence) (section 22 HRA)

1.86 The Bill inserts section 61F which creates a new offence of publishing certain sentence indication matters in certain circumstances. Subsection (3) provides for the reversal of the evidential burden for a defence created in subsection (3) and for the reversal of the legal burden (i.e. person charged with publication offence is required to prove the element) for the defences created in subsections (4) and (5) of section 61F.

1.87 The Committee notes that this impacts the right to be presumed innocent until proven guilty protected by section 22(1) of the HRA.

1.88 **The Committee draws these matters to the Assembly and recommends that the Minister revise the explanatory statement to address the limitation of this right imposed by new section 61F.**

Right to Privacy (section 12 of HRA)

1.89 The Bill amends the *Crimes (Sentencing) Act 2005* ("Sentencing Act") to allow victim impact statements to be used for the purpose of indicative sentencing and for the purpose of sentencing. As noted in the Clause Notes for Schedule 1 of the Bill, this change to section 52 "expands section 52 by providing for the use of victim impact statements where a defendant has applied for a sentence indication in a proceeding for an offence".

1.90 These amendments have the potential to limit the right to privacy of the maker of the statement.

1.91 **The Committee recommends that the Minister revise the explanatory statement to recognize this limitation and to provide a brief explanation regarding the rationale and proportionality.**

Do any of the provisions of the Bill make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions—Committee resolution of appointment paragraph (9)(a)(iii)

1.92 The Committee notes that the Bill provides that there is no right of appeal against an indicated sentence (new section 61C). However, the Bill also provides that the defendant may reject or accept an indicated sentence and, as noted above, provides that a sentence indication does not affect any party to the proceedings' right to appeal against the sentence actually imposed.

1.93 **The Committee draws this matter to the Assembly but does not require a response from the Minister.**

Tobacco and Other Smoking Products Amendment Bill 2025

1.94 This Bill amends the *Tobacco and Other Smoking Products Act 1927* ("Tobacco Act") and makes consequential amendments to the *Magistrates Court (Tobacco and Other Smoking Products Infringement Notices) Regulation 2010*.

1.95 The amendments to the Tobacco Act are intended to make changes to enforcement provisions in the Tobacco Act primarily by expanding the powers of authorised officers to give directions to obtain information, to enter premises, to do certain things on entry to premises, to apply for a warrant to enter premises, and to seize things at those premises. The amendments also create new offences and provide for other matters related to the expanded powers.

1.96 The Bill also expands the meaning of "prohibited smoking product" in the Tobacco Act to include tobacco products that don't comply with a requirement of the *Public Health (Tobacco and Other Products) Act 2023* (Cwlth) and other prescribed Commonwealth law. This will expand the reach of the offence of sale of a prohibited smoking product under section 22(1) of the Tobacco Act. The Bill also makes consequential amendments and inserts new definitions relating to the expanded enforcement provisions.

1.97 The amendments to the *Magistrates Court (Tobacco and Other Smoking Products Infringement Notices) Regulation 2010* are to add a new item for the penalty associated with the offence created by section 22(1) of the Tobacco Act (prohibition on sale of prohibited smoking product), making the offence an infringement notice offence.

1.98 The explanatory statement explains:

> The purpose of the Bill is to complement the Vaping Goods Reforms and clarify and modernise existing enforcement powers under the Act to improve operational efficiency and legal certainty and to align its enforcement provisions with contemporary legislative standards in other ACT laws. In addition, by prohibiting tobacco products which do not meet requirements under Commonwealth laws, the Bill will also achieve better alignment between Territory and Commonwealth laws.

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

Right to Privacy (section 12 HRA)

1.99 The new enforcement provisions proposed by the Bill in Part 6 of the Tobacco Act will expand powers and offences in relation to identify cards, directions for information, powers of entry into premises, and seizure of things. These provisions limit the right to privacy protected under section 12 of the HRA.

1.100 The Committee notes that some of these powers in the Bill are predicated on the commission of an "offence" or being connected with an "offence". The word "offence" is defined in the new Division 6.1 of Part 6 to include "an offence that there are reasonable grounds for believing has been, is being, or will be, committed". This definition is similar to the existing definition of "offence" in Part 6, but is now applied in relation to the expanded powers proposed by the Bill.

1.101 The explanatory statement lists and explains each of the provisions of the Bill which limit the right to privacy.[15] The Committee thanks the Minister for this detailed discussion and refers the Assembly to that discussion.

1.102 Broadly, the explanatory statement notes the reason for the broader powers as follows:

> The Bill contains a power to enter premises which is more broadly scoped than the current section 35 of the Act. This is necessary because whilst the legal sale and supply of smoking products occurs via premises licensed under Part 7, the illicit sale of such items, including vaping products, occurs across a broader range of premises. Smoking products, particularly prohibited smoking products, have known public health risks and due to the chemicals and substances those goods may contain and can also pose significant risks to the environment if improperly sold, stored or disposed of.

[15] Explanatory Statement pp 8-9.

> To ensure that premises are not being used for the illegal acquisition, storage or subsequent sale of smoking products, it is important that the powers of entry are sufficiently broad to allow authorised officers to reasonably enter any premises accessible by the public, or for where there is a serious and urgent risk to the environment or public health (s 37 of the Bill). It is also necessary for the authorised person to be able to exercise their functions by being able to physically enter, inspect, seize goods or request information (ss 39, 41E and 41I of the Bill).

1.103 The explanatory statement further explains the proportionality of the restrictions:

> Where the exercise of enforcement powers occurs outside of the commercial context, for example an investigation of the sale of smoking products by an unlicensed provider (such as selling smoking products via social media with collection from a residential house or car), the scope of the powers have been appropriately circumscribed. In particular, the power to enter premises used only for residential purposes is limited under the Bill so that entry is permitted only with consent, or with a warrant (s 37(1)(b) and (d)). Requiring a warrant for residential only premises provides an additional safeguard, as it requires a magistrate to be satisfied that there are reasonable grounds for suspecting that a thing or activity is being engaged in at the premises in connection with an offence under the Act (s 41C).
>
> Even for non-residential premises, the Bill narrowly confines the circumstances where an authorised officer may enter premises not open to the public without consent or a warrant. Entry to premises not open to the public is only authorised where the authorised officer believes on reasonable grounds that an offence is being committed (or is likely to be) and when there is a risk to a person, the environment or public health that is so serious as to necessitate immediate entry.

1.104 The explanatory statement provides further details of the safeguards in the Bill to protect against arbitrary interferences with privacy. The Committee refers the Assembly to that detailed discussion.[16] The statement concludes that these safeguards ensure that the limitation on the right to privacy created by the Bill are "reasonable and proportionate to the purpose of ensuring effective regulation of smoking products".

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

Rights in Criminal Proceedings (Section 22 HRA)

1.105 The Bill contains provisions which will limit the right to be presumed innocent (one of the aspects of the rights in criminal proceedings in section 22 of the HRA). This is because, as the explanatory statement identifies, the Bill creates a number of offences that reverse the evidential burden (for example, section 34 of failing to comply with a direction) or provide that an offence is a strict liability offence. For example, the prohibition on the sale of a prohibited smoking product (section 22) and interfering with a thing seized (section 41G). As noted earlier in this report, strict liability offences displace the burden on the prosecution which impacts the presumption of innocence.

1.106 The explanatory statement lists and explains each of the provisions of the Bill which create such offences.[17] The Committee refers the Assembly to that discussion.

---

[16] Explanatory Statement pp. 11-12.
[17] Explanatory Statement pp12-14.

1.107 Also as noted earlier in this report, the ACT Guide for Framing Offences states that there must be a "demonstrable and legitimate aim" for the creation of strict liability offences.

1.108 The explanatory statement explains the rational connection between the limitation and the purpose of the strict liability and reverse onus offences as follows:

> For section 22, this change is necessary to ensure a swift and effective regulatory response to the sale of prohibited smoking products – including vaping goods prohibited by the Vaping Goods Reforms, and products prohibited under the Commonwealth Public Health Act. This ability to respond swiftly and effectively, is further supported by making section 22 an infringement notice offence.
>
> For the balance of strict liability and reverse onus offences, the limitation is necessary to ensure the effective enforcement of and compliance with the requirements of the Bill by enabling relevant offences, to be efficiently prosecuted.

1.109 The explanatory statement contains a discussion for each relevant provision as to why each limitation of the right is reasonable and justified.[18] The Committee refers the Assembly to that discussion. More generally the statement states:

> A less restrictive approach (namely making the offence not strict liability) would still enable enforcement but would not be as effective a deterrent given the nature of the strict liability offences. Further, if the prohibited conduct is unable to be prevented, it could have the effect of undermining the enforceability of the regulatory regime. A less restrictive approach may result in a failure to limit availability of prohibited smoking products, or ineffective enforcement of other important regulatory limitations on smoking products necessary to protect public health.

1.110 The Committee notes that the explanatory statement also states that "[t]he liability elements of each offence are consistent with the *Guide to Framing Offences"* but does not explain how that is the case. It would be helpful if the statement identified more particularly what aspects of the Guide reflect that consistency. The Committee thinks it is worth making the general comment that, given section 22 of the HRA, the imposition of strict liability should be used carefully and draw attention to comment made in *Scrutiny Report 38* of the Fifth Assembly on strict liability.[19]

1.111 The explanatory statement also recognizes that while the Bill does not abrogate a person's right to rely on legal professional privilege or the privilege against self-incrimination (an aspect of the rights in criminal proceedings under section 2 of the HRA), it does impact what the statement calls a "derived right" as follows:

> Whilst the Bill does not abrogate the rights to privilege, it impacts a derived right by removing existing protections requiring authorised officers to specifically advise people of these protections, and to require an authorised officer to request a signed written acknowledgement from a person asked to provide information (i.e. the occupier of the premises) that they have been told of their rights. The requirement that this written acknowledgement needs to be produced in evidence in order to admit information obtained under this enforcement provision in relation to enforcement proceedings, has also been removed.

[18] Explanatory Statement pp. 15-18.

[19] See pp. 1-15 of the report, accessible at: https://www.parliament.act.gov.au/__data/assets/pdf_file/0010/375670/Scrutiny38.pdf.

1.112 The explanatory statement provides two key reasons for this. First, because the protections that currently exist in the Tobacco Act were introduced prior to the inclusion of standard protections of the right to rely on legal privilege and the privilege against self-incrimination into the *Legislation Act 2001* in 2002. Second, because the authorised officers are mostly civilian enforcements officers, not police, which can lead to accidental non-compliance.

1.113 The removal of these additional requirements is, states the explanatory statement, the "minimum step required to achieve consistency with other similar regulatory regimes".

1.114 **The Committee refers the Assembly to the detailed discussion in the explanatory statement on the limitation of these rights and does not require a response from the Minister.**

Right to a Fair Trial (section 21 of the HRA)

1.115 The Committee notes that the explanatory statement states on pages 5 and 7 that the right to a fair trial under section 21 of the HRA is also limited. But there is no discussion in the explanatory statement of how the Bill limits this right or the justification for doing so.

1.116 **The Committee requests the Minister to clarify whether the right to a fair trial is limited by the Bill and, if so, to revise the explanatory statement to address the limitation of this right.**

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

Proposed amendments—Comment

Public Sector (Closing the Gap) Legislation Amendment Bill 2025

1.117 The Public Sector (Closing the Gap) Legislation Amendment Bill 2025 was the subject of the Committee's comments in *Scrutiny Report No 8* (August 2025) and the Committee requested the Member presenting the Bill, Mr Thomas Emerson MLA, to revise the explanatory statement to address the potential for limitation on the right to work under section 27B of the *Human Rights Act 2004*. The Member provided a revised explanatory statement addressing the Committee's request. This was acknowledged in *Scrutiny Report No 10* (September 2025).

1.118 The Bill proposes amendments to the *Annual Reports (Government Agencies) Act 2004* and the *Public Sector Management Act 1994*.

Amendments proposed by Mr Emerson MLA provided to the Committee on 17 November 2025

1.119 The proposed amendments by Mr Emerson include an amendment to the date of commencement of the Bill to the specified date of 1 July 2026.

1.120 Otherwise, the amendments to the Public Sector (Closing the Gap) Legislation Amendment Bill 2025 proposed by Mr Emerson are in relation to the *Public Sector Management Act 1994*. The proposed amendments:

- delete clause 6 of the Bill which imposes an additional duty on a "public servant" to do their job in accordance with the closing the gap principle, and replace it with a new clause that creates new section 8(3A) that will only impose that duty on an SES member. (An "SES member" is defined in the *Public Sector Management Act 1994* as meaning "a member of the service in the senior executive service".);

- amend Clause 7 of the Bill to provide for a new definition of the "closing the gap principle" that refers to an SES member rather than a "public servant" and increases the responsibility of senior executives in relation to that principle;
- insert a new clause 8 in the Bill to provide that the duty on an SES member under the new section 8(3A) will apply to a statutory office-holder as if they are an SES member; and
- insert a new clause 9 to provide under a new section 253 for a review of the amendments made by this Bill as soon as practicable after 1 July 2027 and that the review report must be presented to the Assembly within 6 months after the start of the review;

1.121 Mr Emerson has presented a supplementary explanatory statement with the proposed amendments.

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

Right to work (section 27B HRA)

1.122 The explanatory statement notes that the amendment to narrow the scope of the "closing the gap principle" obligations to only SES members and statutory office-holders and the amendment to the "closing the gap principle" definition "slightly increases the level of responsibility on those senior staff" to implement the principle, which includes the principles of the National Agreement on Closing the Gap. This limits the right to work under section 27B of the HRA for SES members and statutory office-holders.

1.123 In relation to this limitation, the explanatory statement states:

> In the absence of a general 'closing the gap principle' obligation being imposed on all public sector staff, it is reasonable and proportionate that a higher degree of responsibility should be imparted on senior executives and statutory office holders.
>
> The increased level of responsibility on senior executives and statutory office holders under the 'closing the gap principle' is consistent with the level of responsibility allocated to those senior public sector employees under other areas of the PSM Act.

1.124 **The Committee refers the revised explanatory statement to the Assembly for more detailed explanation of the proposed amendments and does not require a response from the Member.**

Government amendments proposed by the Chief Minister provided to the Committee on 17 November 2025

1.125 The amendments to the Public Sector (Closing the Gap) Legislation Amendment Bill 2025 proposed by the Chief Minister are in relation to both the *Annual Reports (Government Agencies) Act 2004* and the *Public Sector Management Act 1994*.

1.126 The proposed amendments amend the date of commencement of the Bill to the specified date of 1 July 2026.

1.127 In relation to the *Annual Reports (Government Agencies) Act 2004,* the Chief Minister's proposed amendments:

- delete clause 4 of the Bill which inserts a new section on reporting on implementation of the National Agreement on Closing the Gap, and inserts new subsections into section 5 (State of the Service Report by the head of service) to provide that the report must include a statement about the measures taken within the public service to assist SES members and statutory office-holders to do their jobs in accordance with the closing the gap principle; and to make consequential amendments to refer to relevant defined terms;

- delete current section 6(2) (Director-General Annual Report) and insert a new section 6(2) providing that the annual report include statements about measures taken by administrative units in relation to human rights and to implement the National Agreement on Closing the Gap;
- insert new subsections or substitutes subsections to provide additional requirements for public sector bodies and territory entities to include in their annual reports measures in relation to human rights and/or the National Agreement on Closing the Gap;
- amend section 9 (Minister consultation about annual report direction) to require the Minister to ask the Aboriginal and Torres Strait Islander Elected Body for any recommendations for matters relating to Aboriginal or Torres Strait Islanders and makes consequential amendments to section 9; and
- inserts new definitions into the Dictionary as a consequence of the proposed amendments.

1.128 In relation to the *Public Sector Management Act 1994*, the Chief Minister's proposed amendments:

- delete clause 6 of the Bill which imposed an additional duty on a "public servant" to do their job in accordance with the closing the gap principle, and replaces it with a new clause that creates new section 8(3A) that will only impose the duty on an SES member;
- creates new section 9(3B) which provides that the obligation on an SES member under the new section 8(3A) does not affect the operation of any other Act or create or affect any other legal right;
- amend Clause 7 of the Bill to provide for a new definition of the "closing the gap principle" that refers to an SES member rather than a "public servant". The supplementary explanatory statement accompanying the proposed amendments states this new definition is to "more precisely capture the nature of cultural capability as a process of lifelong, continuous learning";
- inserts new definitions of the terms "cultural safety" and "institutional racism";
- inserts a new clause 8 in the Bill to provide that the duty on an SES member under the new section 8(3A) will apply to a statutory office-holder as if they are an SES member; and
- inserts a new clause 9 in the Bill to provide under a new section 253 for a review of the amendments made by this Bill as soon as practicable after 1 July 2028 and that the review report must be presented to the Assembly within 6 months after the start of the review.

1.129 The Committee notes that the supplementary explanatory statement that accompanies the proposed amendments states that to mitigate the potential legal risk or civil action against the Territory arising from a SES member or statutory office-holder failing to comply with the closing the gap principle, "the Government amendments make it clear beyond all doubt that…An act or decision is not invalid merely because a person fails to comply with the "closing the gap principle" and that "[n]othing in the new "closing the gap principle" requirement creates in any person a legal right or gives rise to a civil cause of action".

1.130 The Committee assumes that these statements are based on the new section 8(3B) proposed by the amendments. However, it is not clear to the Committee how proposed new subsection (3B) leads to the assertion about invalidity when the subsection refers to the creation or the effect on legal rights.

1.131 **The Committee draws this matter to the attention of the Assembly and requests the Chief Minister to clarify the asserted impact of proposed new subsection 8(3B).**

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

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

Right to work (section 27B HRA)

1.132 The supplementary explanatory statement that accompanies the proposed amendments refers to the revised explanatory statement presented by Mr Emerson in response to the Committee's comments on the right to work in its *Scrutiny Report No 10* (referred to above). The statement then states:

> The Government amendments to the Bill will not limit any rights.
>
> However, the insertion of a PSM Act provision providing that an act or decision is not invalid merely because a person fails to comply with section 8 could be viewed as reducing the extent to which the Bill promotes human rights. Notwithstanding this, Government is of the view that the amendment is not of itself a limitation of rights.

1.133 **The Committee refers the Assembly to the explanation of the proposed amendments in the supplementary explanatory statement and does not require a response from the Chief Minister.**

Planning (Territory Priority Project) Amendment Bill 2025

1.134 On 20 November 2025, the Committee received proposed Government amendments to the Planning (Territory Priority Project) Amendment Bill 2025 (the "Territory Priority Project Bill"). The Territory Priority Project Bill amends the *Planning Act 2023*. Although received beyond the cut off deadline for receipt of material, the Government requested the Committee to consider the amendments, if possible, given that debate on the Territory Priority Project Bill is planned for the next sitting week.

1.135 The Territory Priority Project Bill as presented was the subject of Committee comment in its *Scrutiny Report 2* (February 2025) and proposed amendments from Private Member, Ms Jo Clay MLA, were the subject of the Committee's comment in its *Scrutiny Report 12* (October 2025).

1.136 The Government's proposed amendments to the Territory Priority Project Bill:

- Amend clause 4 of the Bill to further amend section 216 of the Planning Act to insert a new (e) to provide that the definition of "territory priority project" ("TPP") includes " a development proposal related to community housing". This is in addition to the new (c) and (d) proposed by the Territory Priority Project Bill which include a development proposal related to a "public health facility" and a development proposal related to "public housing".
- Insert a new clause 4A in the Bill to add subsections (2) and (3) to section 216 to provide that a development proposal related public housing (d) or community housing (e) are not TPPs if (a) an EIS ("environmental impact statement"20) is required under section 105, or (b) the application for the proposal is required to be referred to the heritage council by a certain regulation that relates to certain Aboriginal objects or places.

[20] *Planning Act 2023* s 94(c).

- Amend clause 5 of the Bill to insert new sections 217C to provide for the definition of a development proposal "related to community housing" which contains various criteria, including the requirement for the proposal to be undertaken by a registered community housing provider that is an ACNC registered entity, and excluding from the definition other development proposals if they meet either of two quantitative criteria.
- Insert new clauses 6A to 6G to:
  - amend various sub-sections of section 218 of the Planning Act to make wording changes that mandate the Minister seek territory planning authority advice before a declaration, rather than being optional,
  - provide that before giving advice to the Minister the territory planning authority must, in certain circumstances, consult with the conservator of flora and fauna and the heritage council
  - provide for a review of the amendments made by the Bill as soon as practicable after 1 December 2028 and to present a report of the review to the Assembly before 30 June 2029.
- Amend the Bill to insert new definitions consequential upon the proposed amendments.

1.137 In its Scrutiny *Report 2* and its Scrutiny *Report 12*, the Committee noted that the expansion of the section 216 definition of TPP will mean that the developments now included in that definition will be exempt from third party appeal rights in the ACT Civil and Administrative Tribunal, and that this restricts the right to a fair trial protected under section 21 of the *Human Rights Act 2004.* The Committee refers the Assembly to those discussions.

1.138 The supplementary explanatory statement to the Government's proposed amendments recognizes that the expansion of the definition of TPP proposed by its amendments impose this limitation and the statement discusses its purpose and proportionality. The statement explains:

> Limiting the ability to review decisions of developments mentioned in clause 4A of the government amendments is justified on the basis that division 7.5.4 of the Act includes extensive public notification requirements for all DAs, including those related to TPPs. During this process, the decision-maker is required to consider all representations made during the public notification period. A further safeguard is that members of the public may still seek judicial review of development decisions where this is available under the *Administrative Decisions (Judicial Review) Act 1989*.
>
> Limiting the application of these changes to community housing, in addition to public health facilities and public housing proposed in the bill, helps achieve the legitimate purpose of assisting to deliver infrastructure that will be of significant benefit to the people of the ACT. Specifically, private housing developments continue to be excluded as these proposals account for the majority of housing development in the Territory. Their inclusion would exacerbate the limitation on the right to a fair trial where it would no longer be proportionate to the legitimate purpose.

1.139 **The Committee refers the discussion in the supplementary explanatory statement to the Assembly but does not require a response from the Minister.**

1.140 The Committee notes that the Clause Notes in the supplementary explanatory statement for the Government amendments appear to contain two Notes for Clause 4. One of these Notes appears to relate to Clause 4 of the Territory Priority Project Bill as originally presented and not to the Government proposed amendments.

1.141 **The Committee requests the Minister to amend the Clause Notes to the supplementary explanatory statement to refer only to the amendments proposed to 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.

Responses—Comment

Workplace Legislation Amendment Bill 2025 (No 3)

1.142 The Committee received a response from the Minister for Skills, Training and Industrial Relations dated 21 October 2025 in relation to comments made in *Scrutiny Report No 10* (September 2025) ("Report 10") on the Workplace Legislation Amendment Bill 2024 (No 3) ("Workplace No 3 Bill").

1.143 The Workplace No 3 Bill amends several pieces of legislation. In its Report, the Committee requested clarifications by the Minister, or revisions to the explanatory statement, in relation to comments it made with respect to some of the amendments to the *Long Service Leave Act 1976, the Workers Compensation Act 1951* and the *Work Health and Safety Act 2011*.

1.144 A summary of the Minister's response follows. Paragraphs refer to the paragraphs of Scrutiny Report 10.

Long Service Leave Act 1976

- [1.41] – the Minister has revised the explanatory statement to correct typographical cross-referencing errors in the Clause 5 Note.
- [1.42] – the Minister has clarified that new section 13CC(1) allowing an authorised officer to direct a person to give information is not limited to the provision of information only on the premises. The Minister has revised the explanatory statement to clarify this.
- [1.47] – the Minster has confirmed that section 13CC is not intended to displace the principle of legal professional privilege, referring to the *Legislation Act 2001* section 171.
- [1.56] – the Minister has explained how the powers granted under new sections 13C and 13CC are directly linked to the enforcement of workers' rights under the *Long Service Leave Act 1976*.
- [1.70] – the Minister acknowledges that in some instances information obtained under new section 13CD might include information that is self-incriminating under other legislation.

Workers Compensation Act 1951

- [1.94] – the Minister has clarified that the amendment to section 202 is a technical correction and refers the Committee to the *Legislation Act 2001* section 102(2).

- [1.101] – the Minister has referred the Committee to new section 84B for a regulation making power in relation to the meaning of a "family member" and confirms that any expansion will be considered pursuant to this power.

Work Health and Safety Act 2011.

- [1.115] – the Minister has clarified that the amendments to section 39 are not considered to expand the existing strict liability provision, and that this has been clarified in the revised explanatory statement.

1.145 The Committee thanks the Minister for their detailed and clear response and for the revised explanatory statement. In particular, the Committee thanks the Minister for highlighting the changes made to the explanatory statement for the Committee's ease of reference.

1.146 The Committee notes that Workplace No 3 Bill was passed by the Assembly on 28 October 2025.

Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025

1.147 The Civil Law (Wrongs) (Organisational Child Abuse Liability) Amendment Bill 2025 ("Wrongs Bill") was presented by Mr Shane Rattenbury MLA to the Legislative Assembly on 25 June 2025. The Committee commented on the Wrongs Bill in *Scrutiny Report 8* (August 2025) and requested the Private Member to revise the explanatory statement to address any potential limitations on human rights in the Bill.

1.148 The Committee also commented on proposed Government amendments to the Bill 2025, which were accompanied by a supplementary explanatory memorandum, in *Scrutiny Report 12* (October 2025).

1.149 On 29 October 2025, Mr Rattenbury provided a revised explanatory statement to Members in response to the Committee's request in *Scrutiny Report 8*. The revised explanatory statement states that the Bill does not give rise to human rights limitations.

1.150 The Committee thanks Mr Rattenbury for his response and notes that the Bill was passed by the Assembly on 30 October 2025.

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 DI2025-270 being the Public Place Names (Macnamara) Determination 2025 (No 3) made under section 3 of the** *Public Place Names Act 1989* **determines the names of public places in the Division of Macnamara.**
- **Disallowable Instrument DI2025-275 being the Workers Compensation (Prescribed Employers—Horse Racing Trainers and Attendance Activity) Fee Determination 2025 (No 1) made under section 116K of the** *Workers Compensation Act 1951* **determines fees payable in accordance with the Act.**

Disallowable Instruments—Comment

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

Human Rights Issues

- **Disallowable Instrument DI2025-271 being the Working with Vulnerable People (Background Checking) Declaration 2025 (No 1), made under section 12 of the** *Working with Vulnerable People (Background Checking) Act 2011*, **exempts international visitors from registration under the Working with Vulnerable People scheme, while engaged in a regulated activity for a purpose related to the 2025 World Boccia Challenger event in Canberra from 2 to 12 November 2025.**

2.3 This instrument, made under section 12 of the *Working with Vulnerable People (Background Checking) Act 2011*, exempts international visitors from registration under the Working with Vulnerable People scheme, while engaged in a “regulated activity” for a purpose related to the 2025 World Boccia Challenger event, hosted by Boccia Australia, at the Australian Institute of Sport, in the period 2 to 12 November 2025. “regulated activity” is defined in section 8 of the *Working with Vulnerable People (Background Checking) Act 2011.*

> **8 What is a regulated activity?**
>
> (1) In this Act:
>
> "regulated activity"—
>
> (a) means an activity or service—
>
> (i) mentioned in schedule 1; or
>
> (ii) that is an NDIS activity; or
>
> (iii) prescribed by regulation; but
>
> (b) does not include an activity or service declared by the Minister under subsection (2).
>
> (2) The Minister may declare that a stated activity or service is not a regulated activity.

(3) A declaration is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

2.4 The activities listed in Schedule 1 essentially relate to services provided to children and vulnerable people.

2.5 The explanatory statement for the instrument includes a discussion of human rights issues:

Human rights implications

During the development of this Instrument, due regard was given to its effect in relation to the compatibility with human rights as set out in the *Human Rights Act 2004* (HRA).

The Declaration engages the right to liberty and security of person (section 18 of the HRA) in relation to vulnerable people accessing regulated activities regarding their vulnerability.

The Declaration engages this right because the Commissioner for Fair Trading (the Commissioner) will engage in a higher level of risk by exempting international visitors.

The Declaration does not limit this right because international teams and support personnel are subject to other regulatory obligations, including conditions of entry to Australia and the framework for safeguarding vulnerable people which applies to all activities organised or authorised by Boccia Australia. Exempt individuals are also limited to engaging in a regulated activity for a purpose related to the Challenger.

The Commissioner maintains the power to revoke the exemption in relation to any person, where the individual is subsequently assessed as an unacceptable risk of harm to vulnerable people. This reduces the risk of potential harm to vulnerable people and protects the rights and dignity of vulnerable people by limiting their exposure to people who pose a risk to their safety, welfare and wellbeing.

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

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

No Rights Issues

- **Disallowable Instrument DI2025-273 being the Major Events (Cricket Season 2025-26 Events) Notice 2025 made under section 9 of the *Major Events Act 2014* applies the provisions to 6 cricket matches at Manuka Oval, from 29 October 2025 to 19 February 2026.**

2.8 This instrument, made under section 9 of the *Major Events Act 2014*, applies the provisions of the Act to 6 cricket matches to be held at Manuka Oval between 29 October 2025 and 19 February 2026. The Committee notes that the explanatory statement for the instrument states:

The effect of this notice is to apply powers and offences under the Act, Part 3 (Crowd Management). The application of crowd management powers does not affect the rights and duties of venue operators and property holders that apply under ACT or Commonwealth laws or the common law.

2.9 **The Committee draws the attention of the Legislative Assembly to the discussion of rights issues in the explanatory statement for this instrument.**

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

Human Rights Issues

- **Disallowable Instrument DI2025-274 being the Workers Compensation (Requirements for Operation of DI Fund—Horse Racing Training and Attendance Activity) Determination 2025 (No 1) made under section 116J of the *Workers Compensation Act 1951* gives power to the executive to determine matters in relation to prescribed employers and prescribed workers with respect to the Default Insurance Fund established by section 166 of that Act.**

2.11 This instrument, made under section 116J of the *Workers Compensation Act 1951*, determines matters under subsection 166J(1), in relation to prescribed employers and prescribed workers with respect to the objects of the Default Insurance Fund established by section 166 of that Act, for the purpose of an employer and worker mentioned in paragraphs 166A(2)(b) and (4)(b) of the Act. The explanatory statement for the instrument states:

> This determination sets out the following matters under section 166J (1) of the Act:
>
> - who the class of employer is that may apply to be a prescribed employer—a class of employer is an employer who employs prescribed workers and if not for this instrument would be required to purchase a compulsory insurance policy to cover activities performed in the industry of the Australian and New Zealand Standard Industrial Classification (ANZSIC) class 9129 (Other Horse and Dog Racing Activities)
> - the class of worker who is a prescribed worker—being a worker who carries out work as a horse attendant or trainer
> - how to apply to be a prescribed employer
> - conditions on prescribed employers, and
> - the maximum period for which an employer may be approved as a prescribed employer—being up to one year before an employer who continues to be in the class of employers able to apply to be a prescribed employer may apply for a further period of approval as a prescribed employer.

2.12 The explanatory statement goes on to discuss human rights issues:

> CONSISTENCY WITH HUMAN RIGHTS
>
> As discussed in the Further Revised Explanatory Statement for the Workplace Legislation Amendment Bill 2025 (No. 2) the amendments to the Default Insurance Fund promote the right to work and other work-related rights (section 27B of the *Human Rights Act 2004*) by ensuring that determined individuals or classes of employers/employees will be covered for workers compensation claims to be administered and paid using the claim management, funding and financial infrastructure established for the Default Insurance Fund. Meaning, under this arrangement, a worker will retain their rights in respect of workers' compensation.

Amendments to the Default Insurance Fund in this Bill do not impose any limitations on human rights. On the contrary, they reinforce and promote the right to work by clarifying the existing framework.

The amendments are not expected to affect the individual rights of workers, nor alter employers' fundamental obligations regarding workers compensation and entitlements for injured or ill workers.

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

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

Subordinate Laws—Comment

2.15 The Committee has examined the following subordinate law and offers these comments on it:

- **Subordinate Law SL2025-20 being the Property Developers Regulation 2025 made under the** *Property Developers Act 2024* **established a framework for licensing certain residential property developers and a regulatory scheme to bring these property developers into the regulatory chain.**

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

Right to privacy and reputation (section 12 HRA)

2.16 This subordinate law is made for section 122 of the *Property Developers Act 2024*, which "establishes a framework for licensing certain residential property developers, and a regulatory scheme to bring these property developers into the regulatory chain of accountability for building work they are involved in". According to the explanatory statement, the subordinate law:

a. Requires certain information to be included in a licence application and a licence renewal application for a property developer licence.

b. Requires that certain information that must be included on the publicly available register of property developers is included in licence applications.

c. Excludes certain types of people and entities from the broader definition of property developer that is applied in Part 5 of the Act. Excluded people include people providing professional advice, such as consultants, subcontractors, certifiers, and financiers.

d. Excludes directors of community housing providers and directors of wholly owned subsidiaries of community housing providers from the director liability provisions in Part 5 of the Act.

e. Excludes certain aged care providers from being subject to the Act by excluding buildings they construct from the Act's definition of regulated residential building.

f. Prescribes the Code of Practice under section 117 of the Act applies to all people who arrange for regulated residential building work.

2.17 The explanatory statement goes on to discuss human rights issues:

> **Consistency with Human Rights**
>
> The Standing Committee on Legal Affairs (Legislative Scrutiny Role) (the Scrutiny Committee) terms of reference require consideration of human rights impacts of subordinate legislation, among other matters, to be assessed for its compatibility with the *Human Rights Act 2004* (the HRA).
>
> A detailed human rights assessment is in the explanatory statement to the Property Developers Bill 2023, including consideration of the impact of introducing a property developer licensing scheme in the Territory.
>
> This regulation could be seen to engage and limit the right to privacy and reputation under section 12 of the HRA by setting out personal information required to be provided as part of a licence application, and published on the public register.
>
> The information gathering and publication requirements established in this regulation are considered demonstrably justified to achieve the objectives of the Act. Section 28 (1) of the HRA expressly provides that human rights may be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

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

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

Government response—No comment

2.20 The Committee received a response to the Committee's comment on the following subordinate legislation and has no further comment: Disallowable Instrument DI2025-246 being the Racing Appeals Tribunal Appointment 2025 (No 1).

2.21 The response can be viewed online.[21]

2.22 The Committee thanks the Minister for Gaming Reform for the response.

Chiaka Barry MLA
Chair

November 2025

[21] Available at https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees-11th-assembly/LA_Scrutiny/response-to-comments-on-subordinate-legislation.