

Shane Rattenbury MLA



Member for Kurrajong

Minister for Climate Change and Sustainability
Minister for Justice, Consumer Affairs and Road Safety
Minister for Corrections
Minister for Mental Health

Mrs Giulia Jones

Chair

Justice and Community Safety Committee (Legislative Scrutiny Role)

ACT Legislative Assembly

GPO Box 1020

CANBERRA ACT 2601

Dear Mrs Jones

I write in relation to the Justice and Community Safety Committee (Legislative Scrutiny Role) comments on the *Co-operatives National Law (ACT) Bill 2017* contained in Scrutiny Report 3 published on 14 March 2017.

Thank you for your consideration of this national law adoption legislation. I note the Scrutiny Committee has sought my advice about the justification for the limitation on the privilege against self incrimination in section 503 of the *NSW Co-operatives (Adoption of National Law) Act 2012* (the NSW Act).

I note the observation that the privilege against self incrimination only applies if it is claimed in advance by the individual who is being compelled to make statements in response to questions asked by an inspector performing functions under the national law.

It is necessary that inspectors have sufficient regulatory powers to obtain information about the operations of co-operatives to determine whether the law has been breached. These are standard powers in a regulatory context, and are reasonable in the sense that people participating in the operation of a co-operative are on notice about their obligations.

Notice must be given in an approved form before a person can be asked to provide answers to questions, meaning they will be in a position to assess the likely implications of questions and seek legal advice before answering them. It is reasonable to limit the privilege against self incrimination in the regulatory context to situations where it is claimed, as only the person claiming the privilege will know whether the evidence might tend to incriminate them. In addition, the law does not remove existing powers to refuse to admit evidence under the *Evidence Act 2011*.

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Under section 500(1)(c)(ii) of the NSW Act questions can only be asked in relation to the 'promotion, formation, membership, control, transactions, dealings, business or property of the co-operative', rather than about the individual or their private conduct.

Where an inspector enters a place in undertaking their functions (e.g. with consent or under a warrant) there is a general privilege so that answering a question or producing a document other than one required to be kept under the Co-operatives National Law which would incriminate the person is a reasonable excuse for not complying with a direction to assist an inspector (s 507(4)).

Arguably, in determining the scope of the privilege, the application of the interpretation principles in s 30 of the Human Rights Act will apply to clarify that, where claimed, the privilege is a privilege against both direct and derivative use consistent with Victorian case law (*Re application under the Major Crime (investigative Powers) Act 2004* [2009] VSC 381 at 167).

I trust this additional information assists the Committee. Consistent with the Committee's recommendation I will table a revised explanatory statement setting out this justification.

Yours sincerely

Shane Rattenbury MLA
Minister for Justice, Consumer Affairs and Road Safety