

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

SCRUTINY REPORT 28

12 MARCH 2019

THE COMMITTEE

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ROLE OF COMMITTEE

The Committee examines all Bills and subordinate legislation presented to the Assembly. It does not make any comments on the policy aspects of the legislation. The Committee's terms of reference contain principles of scrutiny that enable it to operate in the best traditions of totally non-partisan, non-political technical scrutiny of legislation. These traditions have been adopted, without exception, by all scrutiny committees in Australia. Non-partisan, non-policy scrutiny allows the Committee to help the Assembly pass into law Acts and subordinate legislation which comply with the ideals set out in its terms of reference.

RESOLUTION OF APPOINTMENT

The Standing Committee on Justice and Community Safety when performing its legislative scrutiny role shall:

- (1) consider 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):
 - (a) is in accord with the general objects of the Act under which it is made;
 - (b) unduly trespasses on rights previously established by law;
 - (c) makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions; or
 - (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;
- (2) 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 Committee;
- (3) consider whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:
 - (a) unduly trespass on personal rights and liberties;
 - (b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
 - (d) inappropriately delegate legislative powers; or
 - (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;
- (4) report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the *Human Rights Act 2004*; and
- (5) report to the Assembly on these or any related matter and if the Assembly is not sitting when the Committee is ready to report on bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.

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BILLS

BILLS—COMMENT

The Committee has examined the following bills and offers these comments on them:

CRIMES (ANTI-CONSORTING) AMENDMENT BILL 2019

This Private Member's Bill will amend the *Crimes Act 1900* to introduce an offence of consorting.

***Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—
Committee terms of reference paragraph (3)(a)***

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

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW (SECTION 8 HRA)

FREEDOM OF ASSOCIATION (SECTION 15 HRA)

FREEDOM OF EXPRESSION (SECTION 16 HRA)

The Bill will make it an offence to consort with convicted offenders after having been given an official warning. It therefore directly limits the freedom of association protected by section 15 of the HRA. The explanatory statement accompanying the Bill also recognises that the Bill, by restricting discussion at public meetings and gatherings, has the potential to limit the freedom of expression protected by section 16 of the HRA, and by drawing distinctions based on association may also limit the right to equality before the law protected by section 8 of the HRA. The explanatory statement includes a statement about why the limitations on these rights imposed by the Bill might be considered reasonable and demonstrably justified consistently with section 28 of the HRA. However, the Committee has concerns over the adequacy of that statement and the Bill's compatibility with these rights.

The explanatory statement presents the Bill as a response to community concerns about intimidating, harassing and violent conduct stemming from increased Outlaw Motorcycle Gang (OMCG) activity. It will enable a police officer to provide an official warning, either orally or in writing, identifying individuals as convicted offenders and informing the person being warned that habitually consorting with convicted offenders is an offence. If a person consorts with 2 or more convicted offenders on at least 2 occasions, then they are taken to habitually consort with those offenders. It is an offence to habitually consort with offenders who were included in an official warning, with a maximum penalty of 150 penalty units, 3 years imprisonment, or both.

The Bill does not define consort other than as including consorting by electronic or other forms of communication. The general meaning of consort was considered by the High Court in *Johanson v Dixon*¹ as involving deliberate association rather than coincidental meetings. However, there is no need for any meeting to involve an unlawful or criminal purpose or intent.

¹ (1979) 143 CLR 376. This interpretation of the meaning of consort was recently accepted by the High Court in *Tajjour v New South Wales* [2014] HCA 35; (2014) 254 CLR 508 as applying to the consorting offence applying in NSW on which the Bill is based.

A convicted offender is defined as having been convicted of an indictable offence. There is no limit on how long ago the offence may have been committed. There is no need for that offence to be related to intimidating, harassing and violent conduct or for the offender to be associated with OMCG activity. It is possible for a person to meet two convicted offenders, separately and for the first time in respect to each offender, and then be given an oral official warning which would prevent them from meeting with both offenders again or, where the warning is given in the course of a second meeting, continuing to meet. There is no need for the offenders who are identified in the warning to have met each other or for there to be any intention for any further meetings or other communication in the future.

There are a number of exceptions to the offence in proposed section 85 of the Bill. These exceptions, which require only an evidentiary standard of proof to be met by the defendant before they have to be answered by the prosecution, include consorting with family members, lawful employment, training or education, health or welfare service, legal advice, and lawful custody. However, any consorting in those circumstances also has to be reasonable in the circumstances to avoid committing an offence.

The official warning lasts for a limited time – where the warning is given to a person over 18 years of age it expires after 2 years– but there is no limit on the length of time between meetings or how long after any meeting charges can be laid. Official warnings may be issued by any police officer. The terms of the warning are also potentially misleading – habitually consorting with convicted offenders generally is not an offence in itself.

The Committee is therefore concerned that the Bill does not represent a reasonable limit on the rights identified as required by section 28 of the HRA. While the consorting offence may prevent meetings between OMCG members and thus be rationally connected with the Bill's legitimate purpose of reducing criminal violence, the Bill does not include sufficient safeguards limiting the Bill to that purpose. Consideration should be given to limiting who may be subject to the warnings and the circumstances in which they are issued, requiring warnings to be given in writing or limiting their duration, extending the exceptions beyond specific categories to include a reasonable excuse, and otherwise limiting the broad discretion provided by the Bill in the issue of warnings and in taking action to enforce the offence.

The Committee notes the explanatory statement refers to the need to have parity with NSW laws to prevent the ACT becoming more attractive to criminal gangs. However, the concerns raised by the Committee relate to its impact outside of OMCG or related criminal activities. There is insufficient evidence presented in the explanatory statement to suggest that further confining the Bill through the possible amendments as set out above will make the ACT more attractive to criminal gangs.

The Committee draws these matters to the attention of the Assembly, and asks the Member to respond.

The Committee also notes the comments by the NSW Ombudsman in 2016 on the NSW consorting laws as they then operated:

The well recognised over-representation of Aboriginal or Torres Strait Islander (Aboriginal) people in the criminal justice system creates a substantially increased potential for Aboriginal people to be subject to the consorting law. The nature of relationships in Aboriginal communities, in combination with this over-representation, means that Aboriginal people are more likely to associate with friends, neighbours and other community members who have criminal convictions. Significant concern was expressed to us that the

consorting law's potential to criminalise these relationships may work to further marginalise Aboriginal people.²

The NSW Ombudsman also commented on the disproportionate impact of consorting laws on young people and other vulnerable members of society who may face homelessness or other disadvantage which increases their likelihood of public association with offenders.

The Bill includes additional measures beyond those considered by the NSW Ombudsman to reduce its impact on cultural and other rights of Aboriginal and Torres Strait Islander Peoples as protected by section 27 of the HRA. The exception provided in section 85 for consorting with family members extends, for a defendant who is an Aboriginal or Torres Strait Islander Person, to their extended family kin according to the indigenous kinship system of the defendant's culture. The explanatory statement also includes reference to making careful consideration of the circumstances related to Aboriginal and Torres Strait Islander people.

However, the Committee is concerned that the explanatory statement does not explicitly address the potentially unequal treatment of Aboriginal or Torres Strait Islanders or other vulnerable people or other impact of the Bill on the rights protected by section 27. Consideration should be given to including further discussion of the potential disproportionate effect of the Bill on these groups in the explanatory statement.

The Committee draws this matter to the attention of the Assembly, and asks the Member to respond.

RIGHT TO PROTECTION OF THE FAMILY AND CHILDREN (SECTION 11 HRA)

The proposed consorting offence will apply to any person who is 14 years old or older (proposed section 84(1)(a)). The explanatory statement is therefore incorrect where it states that the Bill does not apply to young persons at all.³ The Committee notes that an official warning given to young person will only have an effect for 6 months rather than the 2 years when given to a person over 18 years old, and that consorting with family members is an exception to the offence. However, the explanatory statement should be corrected to reflect the impact of the Bill on young persons including the right to protection of children in section 11 of the HRA.

The Committee draws this matter to the attention of the Assembly, and asks the Member to respond.

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

RIGHT TO FREEDOM OF MOVEMENT (SECTION 13 HRA)

The Bill will involve warnings being issued which includes disclosure of the criminal history of at least two persons, and are likely to be issued in circumstances which may imply an association with criminal activity. The Bill also provides for the ACT Ombudsman to review the operation of the first

² NSW Ombudsman, Professor John McMillan, 'The Consorting Law Report on the operation of Part 3A, Division 7 of the Crimes Act 1900' (April 2016) at page 24, available at:

https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0005/34709/The-consorting-law-report-on-the-operation-of-Part-3A,-Division-7-of-the-Crimes-Act-1900-April-2016.pdf.

³ Explanatory statement page 5.

two years of operation of the new consorting law and provide a copy to the Minister and chief police officer (proposed section 86). The Minister must present the review to the Assembly as soon as possible. As part of that review, the chief police officer must report on the official warnings issued, proceedings brought in prosecuting the new consorting law and provide other information to the Ombudsman. The Bill may therefore impact on the right to privacy and reputation protected by section 12 of the HRA.

The Bill may also discourage attendance at events or activities where it is known or reasonably anticipated that offenders included in previous warnings will be also attending. This may therefore limit the right to freedom of movement protected by section 13 of the HRA.

Neither of these rights are recognised in the explanatory statement as potentially limited by the Bill. The explanatory statement should be amended to include a justification for any limitation of these rights using the framework set out in section 28 of the HRA.

The Committee draws this matter to the attention of the Assembly, and asks the Member to respond.

ROLE OF THE OMBUDSMAN

As mentioned above, the Bill includes provision for the Ombudsman to carry out a review of the operation of the new consorting laws after two years. The Commonwealth Ombudsman also has various functions in relation to action taken by members of the Australian Federal Police under the Crimes Act as a whole, which may include investigating complaints about the issue of warnings or other action taken under the Bill. However, given the limited role of the Ombudsman it is not clear to the Committee that these functions constitute oversight of the operations of the entire Act as set out in the explanatory statement. Consideration should be given to amending the explanatory statement to include a more detailed description of the oversight role of the Ombudsman on the operation of the new consorting laws.

The Committee draws this matter to the attention of the Assembly, and asks the Member to respond.

RELEVANCE OF STATEMENTS BY THE HIGH COURT

The explanatory statement includes a discussion of the High Court case of *Tajjour v New South Wales*.⁴ That case was primarily concerned with the compatibility of a previous version of the NSW consorting laws with the constitutional freedom of political communication. The High Court did not consider the compatibility of the NSW legislation with any generally expressed freedom of communication nor any of the other rights protected under the HRA which may be implicated in the Bill. They were also not considering the extent any limitation on the freedom of political communication might be considered reasonable under the framework set out in section 28 of the HRA. The Committee therefore considers the High Court decision to have only limited relevance to the Human Rights issues presented by the Bill.

This comment does not require a response from the Member.

⁴ [2014] HCA 35; (2014) 254 CLR 508.

REVENUE LEGISLATION AMENDMENT BILL 2019

This Bill amends legislation about revenue collection: the *Betting Operations Tax Act 2018*; *Duties Act 1999*; *Land Rent Act 2008*; *Land Tax Act 2004*; *Planning and Development Act 2007*; *Rates Act 2004*; and *Taxation Administration Act 1999*. The amendments are largely minor or technical in nature. Amendments to the Land Tax Act insert an exemption from land tax for private properties rented through a community housing provider for the purpose of affordable community housing. Amendments to the Taxation Administration Act enable recovery of tax debts from mortgagees or credit providers.

***Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—
Committee terms of reference paragraph (3)(a)***

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

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW (SECTION 8 HRA)

RIGHT TO PROTECTION OF THE FAMILY AND CHILDREN (SECTION 11 HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

RIGHT TO A FAIR TRIAL (SECTION 21 HRA)

The Bill will amend the Taxation Administration Act to allow the Commissioner for ACT Revenue to apply to the Registrar-General for the registration of a tax debt as a statutory charge against a parcel of land owned by the taxpayer. These amendments will provide for mortgagees or credit providers to be notified of a person's tax debt, potentially limiting that person's right to equal protection before the law protected by section 8 of the HRA, and the protection against undue interference with privacy and reputation provided by section 12 of the HRA. By facilitating debt recovery through effectively incorporating debt into a person's mortgage, the Bill may also limit the protection of the family and children under section 11 of the HRA. Restricting the prior notice and hearing afforded to a person subject to the new provisions the Bill may also limit procedural fairness protections afforded by the right to a fair trial in section 21 of the HRA.

The explanatory statement identifies the Bill's potential limitation of these rights and includes a detailed statement of why any limitations should be considered reasonable and justified using the framework set out in section 28 of the HRA. The Committee refers the Assembly to that statement.

The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.

RETROSPECTIVE OPERATION

The Bill will amend section 31 of the Taxation Administration Act. Section 31 provides for the amount of penalty tax imposed after a default in paying a taxation liability. Currently the Commissioner may increase the penalty from its default of 25% of the amount unpaid to 50% where they are satisfied that the default was caused by the taxpayer's failure to take reasonable care without a reasonable excuse. The Bill will amend this to allow the Commissioner to increase the penalty to 50% where they are satisfied the default was caused by the taxpayer delaying payment of tax, delaying providing information required to assess taxation payable, providing incorrect, incomplete or misleading information or they have previously had a tax default in relation to the same or similar or related tax liability (see clauses 1.45 and 1.46). In other words, a 50% penalty can

be imposed whenever the default was caused, even in minor part, by a delay in payment or providing accurate information regardless of whether the default was reasonable or the taxpayer had a reasonable excuse for the delay.

The amendments to section 31 commence on the 1 July 2019, irrespective of when the Bill is passed by the Assembly and notified. The Committee recognises the need for certainty in the operation of taxation provisions to allow individuals to change their affairs to reflect any changes to their future taxation liability. However, proposed section 31(2) will also allow the new 50% penalty rate to be applied to a tax default in the same way whether the tax default happened before or after 1 July 2019. It is therefore possible that a person liable to pay a penalty tax due to a tax default prior to the introduction of the Bill will be subject to an increased penalty rate after 1 July 2019.

In the Committee's view, the Bill's potential to increase the liability of the taxpayer to a 50% penalty for a default that occurred prior to the introduction of the Bill should be recognised in the explanatory statement and a justification provided.

The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond.

ROYAL COMMISSION CRIMINAL JUSTICE LEGISLATION AMENDMENT BILL 2019

This Bill amends various legislation relating to the reporting of child sexual assault and non-accidental physical injury to implement recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and related purposes.

***Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—
Committee terms of reference paragraph (3)(a)***

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

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW (SECTION 8 HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE, RELIGION AND BELIEF (SECTION 14 HRA)

The Bill will amend the *Children and Young People Act 2008* to include a minister of religion, religious leader or member of the clergy of a church or religious denomination within the definition of mandated reporter. They will therefore be subject to the offence in section 356 of failing to report to the director-general a belief on reasonable grounds that a child or young person has experienced sexual abuse or non-accidental physical injury. The Bill will also make it clear that they can't refuse to make a mandatory report because it contains information communicated during a religious confession.

The Bill will also amend the *Crimes Act 1900* to make it an offence for a person not to report to police information which leads the person to reasonably believe that a sexual offence has been committed against a child. This offence is subject to a number of exceptions, including acting contrary to the wishes of the alleged victim once they are an adult, reporting would endanger the alleged victim, that they have reported the information as a mandatory reporter under the *Children and Young People Act*, or have another reasonable excuse. Information communicated during religious confession has to be reported. The Bill provides protection against disciplinary action or

criminal or civil liability where the information is reported honestly and without recklessness, but doesn't protect a breach of legal professional privilege.

The Bill will also amend the *Ombudsman Act 1989* to align provisions relating to the reportable conduct scheme under that Act with the other amendments in the Bill relating to offences of failing to report. It includes requirements that information obtained in a religious confession has to be reported to the Ombudsman, but only where it relates to sexual abuse against a child or non-accidental physical injury to a child.

These amendments will therefore impose additional reporting requirements on religious bodies and individuals within them, including reporting information obtained during religious confessions. These amendments will limit the right to freedom of thought, conscience, religion and belief protected by section 14 of the HRA. To the extent that protection of religious confession is an element of some but not all recognised religions the Bill indirectly limits the right to recognition and equality before the law protected by section 8 of the HRA. The reporting requirements relating to highly sensitive personal matters and protection from liability including for breach of confidence will also limit the protection against undue interference with privacy and reputation provided by section 12 of the HRA.

The explanatory statement sets out the Royal Commission's findings of the role of mandatory reporting, including reporting of information obtained in religious confessions, in supporting the rights of children and young people to be protected against sexual abuse. The importance of extending this protection to protection against non-accidental physical abuse is also outlined. The Committee commends the Minister on the detailed consideration in the explanatory statement of the human rights implications of the Bill. The Committee refers the Assembly to that statement and, recognising the difficulties inherent in balancing rights of religious freedom against those of children and young people to be protected from sexual and physical abuse or those who have suffered such abuse as a child, leaves the question of the appropriateness of that balance to the Assembly.

The Committee draws these matters to the attention of the Assembly, but does not require a response from the Minister.

RETROSPECTIVE CRIMINAL LAWS (SECTION 25 HRA)

Section 68 of the Crimes Act currently makes it clear that there is no presumption that a person is incapable of engaging in sexual intercourse due to their age. The Bill will extend this removal of such presumptions to offences or alleged offences committed prior to the commencement of that section. This will have the effect of retrospectively amending the operation of a common law presumption that males under 14 years old were not capable of intercourse. The Bill will therefore limit the protection against retrospective criminal laws provided by section 25 of the HRA. The explanatory statement sets out a justification for the limitation of this right using the framework set out in section 28 of the HRA, including a detailed discussion of the nature and history of the common law presumption and its role identified by the Royal Commission in preventing successful prosecutions of historical sexual abuse cases. The Committee refers this statement to the Assembly.

The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.

PROPOSED AMENDMENTS

ELECTORAL AMENDMENT BILL 2018

The Committee has considered amendments to the Electoral Amendment Bill 2018 to be moved by Caroline Le Couteur MLA. The amendments to the Bill include:

- Adjusting the basis on which expenditure caps on electoral spending is calculated;
- Restricting administrative expenses for political parties to a maximum of five times the maximum amount payable for one member of the legislative assembly;
- Extending the range of donors whose gifts are subject to additional restrictions to include gambling businesses, defined to mean licensees under various gambling-related legislation as well as corporations that carry on a business involving wagering, betting or gambling;
- Extending the definition of close associate to include a lobbyist for a prohibited donor; and
- Changing the distance canvassing during polling hours is restricted from 100m to 6m from a building or boundary of a polling place.

By restricting the amount made available for electoral spending and extending the restrictions on donations to political entities to be introduced by the Bill on the basis of who can make those donations, these amendments will limit the right to freedom of expression protected by section 16 of the *Human Rights Act 2004* (HRA) and potentially the right to take part in public life protected by section 17 of the HRA. By distinguishing donations by gambling businesses, the Bill may also limit the right to equality before the law protected by section 8 of the HRA.

The Committee was not provided with an explanatory statement to accompany the proposed amendments nor any indication of why these amendments should be considered a reasonable limit that can be demonstrably justified under the framework set out in section 28 of the HRA. In particular, the Committee is concerned to ensure there is evidence to support the various restrictions placed by the amendments on donations by gambling businesses and the extension of the definition of close associates to include lobbyists. While the Committee recognises that Private Members are generally not required to provide explanatory statements for proposed amendments to Bills, as these proposed amendments have potentially significant impacts under the HRA, the Committee asks the Member to provide such a statement.

The Committee draws this matter to the attention of the Assembly, and asks the Member to respond.

The Committee has also reviewed amendments to the Electoral Bill 2018 to be moved by Alistair Coe MLA. The amendments to the Bill include:

- Adding “donation entities” to the list of “associate entities” who, along with property developers, are restricted by the Bill from providing gifts to political entities. A donation entity is a body to which the property developer has given a financial contribution so the body can give gifts to political entities, received more than \$1 000 000 over 10 years, or is able to be influenced by the property developer to provide a gift to a political entity
- Prohibits gifts of more than \$10 000 in a year from any person and their related entities, including family, broadly related body corporates, lobbyists and donation entities, or as an

alternative prohibits gifts of more than \$10 000 in a year from non-individuals generally and their related entities, including family, lobbyists and donation entities.

- Extending the electoral expenditure cap for third party campaigners to include acting in concert with another person;
- Add gambling businesses to property developers as prohibited donors.
- Changes the giving or receiving of gifts by or on behalf of property developers from offences to having to pay an amount to the Territory equal to the gift
- Amends the transitional restrictions on gifts from property developers to apply to gifts of more than \$1000, or alternatively omitting these restrictions
- Not applying the restrictions on gifts from property developers and close associates to gifts of less than \$1000 in a financial year.

Removing the offence provisions and replacing them with obligations to pay an equal amount to the Territory, and removing the restrictions on giving gifts less than \$1000 a year or during the transition period, will reduce the impact of the bill as discussed in the Committee's comment on the Bill in Report 26, including the rights to freedom of expression protected by section 16 of the HRA, and the right to take part in public life as protected by section 17 of the HRA. However, by extending the range of persons or bodies that are subject to the restrictions, the amendments will further limit those rights as well as the right to equal protection protected by section 8 of the HRA.

The Committee was provided with explanatory comments in lieu of nine separate explanatory statements to accompany the amendments. These comments included a brief statement setting out why these amendments should be considered a reasonable limit under the framework set out in section 28 of the HRA. As with the amendments to be introduced by Ms Le Couteur MLA, the Committee is concerned to ensure there is evidence to support the amendment's various restrictions on donations by gambling businesses and the extension of the definition of close associates to include lobbyists. The explanatory comments refer to substantial debate surrounding gambling entities and their impact on political entities but does not provide any evidence supporting this potential impact. As these proposed amendments have potentially significant impacts under the HRA the Committee asks the member to provide a more detailed statement setting out the evidence on which the human rights limitations introduced by the amendments should be considered reasonable under the framework set out in section 28 of the HRA.

The Committee draws this matter to the attention of the Assembly, and asks the Member to respond.

CONTROLLED SPORTS BILL 2018

The Committee has also considered proposed government amendments to the Controlled Sports Bill 2018. The Committee notes that the amendments to the Bill and the revised explanatory statement address or alleviate the concerns raised by the Committee in its Report 26, tabled on 29 November 2019. The Committee thanks the Minister for her comprehensive response to the Committee and the efforts taken to make it easy to identify the amendments and changes made to the revised explanatory statement. The Committee has no further comments.

This comment does not require a response from the Minister.

SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

The Committee has examined the following disallowable instruments and offers no comments on them:

- **Disallowable Instrument DI2019-9 being the Electricity Feed-in (Renewable Energy Premium) Requirements of Audit Determination 2019 made under section 11C of the *Electricity Feed-in (Renewable Energy Premium) Act 2008* determines the requirements for an audit of information provided by an electricity distributor under section 11B of the Act.**
- **Disallowable Instrument DI2019-10 being the Road Transport (General) (Application of Road Transport Legislation) Declaration 2019 (No 1) made under section 12 of the *Road Transport (General) Act 1999* suspends specific parking rules in specified areas to support the National Multicultural Festival event.**
- **Disallowable Instrument DI2019-11 being the ACT Teacher Quality Institute Board Appointment 2019 (No 1) made under sections 14 and 15 of the *ACT Teacher Quality Institute Act 2010* and sections 78 and 79 of the *Financial Management Act 1996* appoints a specified person as a member, nominated by the Association of Independent Schools of the ACT, of the Board of the ACT Teacher Quality Institute.**

NATIONAL REGULATIONS—COMMENT

The Committee has examined the following national regulation and offers comments on it:

RETROSPECTIVE OPERATION

- **Heavy Vehicle National Law as applied by the law of States and Territories—Heavy Vehicle (Mass, Dimension and Loading) National Amendment Regulation 2018 (2018 No 554), together with an explanatory statement.**

The Committee notes that the section 3 of the national regulation mentioned above states that it commences immediately after the commencement of section 12 of the *Heavy Vehicle National Law Amendment Act 2018*. The explanatory statement for the national regulation states that this provision commenced on 1 October 2018.

The Committee notes with approval that the national regulation is accompanied by an explanatory statement.

The endnotes to the national regulation indicate that it was made (by the Queensland Governor, in accordance with the legislative scheme that operates under section 7 of the *Heavy Vehicle National Law (ACT) Act 2013*) on 24 September 2018. The endnotes indicate that the national regulation was published, on the NSW legislation website (again, in accordance with the legislative scheme) on 25 September 2018. This means that it can reasonably be argued that the national regulation does not have a retrospective operation.

This comment does not require a response from the Minister.

RESPONSES

GOVERNMENT RESPONSES

The Committee has received responses from:

- The Minister for Climate Change and Sustainability, dated 18 February 2019, in relation to comments made in Scrutiny Report 26 concerning the Fuels Rationing Bill 2018.
- The Minister for Sports and Recreation, dated 5 March 2019, in relation to comments made in Scrutiny Report 26 concerning the Controlled Sports Bill 2018.

[These responses⁵](#) *can be viewed online.*

- The Minister for Health and Wellbeing, dated 21 February 2019, in relation to comments made in Scrutiny Report 26 concerning Disallowable Instruments:
 - Disallowable Instrument DI2018-259 – Radiation Protection (Fees) Determination 2018 (No 1)
 - Disallowable Instrument DI2018-260 - Public Health (Fees) Determination 2018 (No 1)
 - Disallowable Instrument DI2018-261 - Food (Fees) Determination 2018 (No 1)
 - Disallowable Instrument DI2018-262 - Medicines, Poisons and Therapeutic Goods (Fees) Determination 2018 (No 1)
- The Minister for Justice, Consumer Affairs and Road Safety, dated 4 March 2019, in relation to comments made in Scrutiny Report 27 concerning Disallowable Instrument:
 - Disallowable Instrument DI2018-295 – Official Visitor (Children and Young People) Appointment 2018 (No 2)
- The Minister for Justice, Consumer Affairs and Road Safety, dated 7 March 2019, in relation to comments made in Scrutiny Report 26 concerning National Regulation:
 - Heavy Vehicle National Law as applied by the law of States and Territories—Heavy Vehicle (Registration) National Regulation (2018 No 298)
 - Heavy Vehicle National Law as applied by the law of States and Territories—Heavy Vehicle National Legislation Amendment Regulation 2018 (2018 No 299)

[These responses⁶](#) *can be viewed online.*

⁵ <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-justice-and-community-safety-legislative-scrutiny-role/responses-to-comments-on-bills>.

⁶ <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-justice-and-community-safety-legislative-scrutiny-role/response-to-comments-on-subordinate-legislation>.

PRIVATE MEMBER'S RESPONSES

The Committee has received a response from:

- Ms Caroline Le Couteur MLA, dated 20 February 2019, in relation to comments made in Scrutiny Report 27 concerning the Residential Tenancies Amendment Bill 2018 (No 2).

Giulia Jones MLA
Chair

12 March 2019

OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

- **Report 7, dated 18 July 2017**
 - Crimes (Intimate Image Abuse) Amendment Bill 2017 (PMB).
- **Report 8, dated 8 August 2017**
 - Crimes (Invasion of Privacy) Amendment Bill 2017 (PMB).
- **Report 12, dated 21 November 2017**
 - Crimes (Criminal Organisation Control) Bill 2017 (PMB).
- **Report 17, dated 4 May 2018**
 - Crimes (Consent) Amendment Bill 2018 (PMB).
- **Report 19, dated 24 July 2018**
 - Anti-corruption and Integrity Commission Bill 2018 (PMB).
- **Report 26, dated 5 February 2019**
 - Health Practitioner Regulation National Law—Health Practitioner Regulation National Law Regulation 2018 (No 166/2018)
- **Report 27, dated 18 February 2019**
 - Electoral Amendment Bill 2018 (Government Response)
 - Subordinate Law SL2018-28—Veterinary Practice Regulation 2018