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

ACT Legislative Assembly

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Dear Chair 

I am writing to respond to comments made by the Committee in relation DI2023-202, the Children and Young People (Kinship and Foster Carers Risk Assessment) Guidelines 2023, specifically the issue of the revised explanatory statement not being made available within the required timeframe. I wish to thank the Committee for the possible solutions put forward to prevent this issue from recurring.

To prevent recurrence and ensure revised explanatory statements are tabled in the Legislative Assembly within the disallowance period in the future, whole of ACT Government directorate guidance material has been reviewed and updated. The information now includes clearer guidance regarding the timeframe for tabling of a revised explanatory statement being the same as the requirement to provide a response to the Committee within the disallowance period.

The Committee also suggested the *Legislation Act 2001* could be amended 'to remove the limitation on registering amended explanatory statements, outside of the disallowance period'. The main purposes of explanatory statements are to:

- a. provide the Legislative Assembly with information about the purpose and effect of proposed legislation that is before the Assembly, to assist it in its deliberations on the legislation; and
- b. aid in the interpretation of the legislation once it has taken effect.

The Parliamentary Counsel notes explanatory statements tabled after the disallowance period do not achieve either of these main purposes and publishing them is potentially misleading. This is because deliberation on the legislation associated with explanatory statements provided outside of the disallowance period has concluded. Further, a court interpreting a law would only consider

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explanatory statements tabled while a law is before parliament. This is recognised in the *Legislation Act 2001*, section 142. As such, the Government does not intend to amend the *Legislation Act 2001* in response to the Committee's suggestion.

I note the Committee's comment regarding the possibility of the Committee adopting a practice similar to the Federal Government to move a 'protective notice of motion to disallow', which would grant an additional disallowance period to resolve any outstanding matters. It is at the discretion of the Committee as to whether or not to adopt this practice and to consider any legislative change which may be required to facilitate such a practice.

Thank you for the opportunity to respond to the comments and suggestions of the Committee.

Yours sincerely



Rachel Stephen-Smith MLA
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