



Minister for Aboriginal and Torres Strait Islander Affairs
Minister for Children, Youth and Families
Minister for Health
Minister for Urban Renewal
Member for Kurrajong

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mrs Jones

I write in relation to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (the Committee) in its Scrutiny Report 38 published on 4 February 2020 concerning disallowable instrument DI2019-320, being the Smoke-Free Public Places (Public Transport Interchanges) Declaration 2019 (No 1) (the Instrument).

I thank the Committee for its consideration of the Instrument and for the Committee's request for advice about the legal basis supporting the use of an educative approach by inspectors, as outlined in the Explanatory Statement to the Instrument.

The legal basis for enforcement of the Instrument is grounded in the strict liability offence provided by section 90 of the *Smoke-Free Public Places Act 2003* (the Act). The Explanatory Statement's reference to use of an 'educative approach' was aimed at raising community awareness about a newly declared smoke-free area and promote public health values. This approach is consistent with the implementation of other ACT smoke-free initiatives and aligns with the objective of the Act to promote public health.

Authorised officers from Access Canberra and ACT Policing have enforcement responsibility for declared smoke-free public places under the Act. These officers undertake extensive training in order to appropriately assess and respond to situations concerning alleged non-compliance. While an educative approach is referenced in the Explanatory Statement to the Instrument, this statement does not compromise an officer's ability to exercise professional discretion in performing regulatory functions under the Act.

In view of the Committee's comments on this matter, I will write to relevant agencies to ensure that authorised officers are appropriately exercising their professional discretion and have consideration to the *Human Rights Act 2004* when performing regulatory functions under the Act.

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Thank you again for the Committee's considered comments on this matter.

Yours sincerely

Rachel Stephen-Smith MLA