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

Scrutiny Report 16

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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.[1]

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

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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.

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1. Bills

Bill—Comment

Firearms (Firearm Prohibition Orders) Amendment Bill 2026

1.1 This Bill amends the *Firearms Act 1996* ("Firearms Act") to establish a "firearm prohibition order" ("FPO") scheme by inserting a new Division 12A. Under that new Division, a Magistrates Court, upon application by the Chief Police Officer, can make an order prohibiting a person from acquiring, possessing or using a firearm or a firearm-related item. The Court may make an interim order as well as a final order. The Chief Police Officer can only apply for an FPO in relation to an adult (section 183C).

1.2 As part of this FPO scheme, the new Division 12A:

- creates new enforcement provisions in relation to the FPO scheme. The Bill grants the police extraordinary powers to search a person the subject of an FPO, detain the person while a search is conducted, search the person's residence, other premises and various vehicles as well as providing for seizure powers in relation to items on the person or the premises or vehicle. Some search and seizure powers do not require a warrant;
- creates a number of offences that apply to a person the subject of an FPO, many of which are strict liability offences and some with potential terms of imprisonment; and
- imposes obligations on the police to record certain aspects of an FPO and reporting requirements on the Chief Police Officer and the Minister.

1.3 The Bill also makes consequential changes to the *Firearms Act* as a result of the new FPO, including amendments to definitions and the insertion of new definitions.

1.4 In addition, the Bill makes consequential amendments to the *Court Procedures Act 2004*, the *Magistrates Court Act 1930* and the *Ombudsman Act 1989*. The amendments displace certain provisions of the *Court Procedures Act* (right of entry to court premises) and the *Magistrates Act* (provisions relating to civil proceedings). Amendments to the *Ombudsman Act* include one providing that an additional function of the Ombudsman it to monitor compliance with the new Division 12A.10 (Enforcement) by the Chief Police Officer and other officers exercising functions under that division.

1.5 A more detailed summary of the Bill provisions is contained in pages 1 to 4 of the explanatory statement to the Bill. The statement also contains some background to the Bill.

1.6 As the explanatory statement identifies, the Bill limits the following rights under the *Human Rights Act 2004* ("HRA") in various ways:

- Section 8 – Recognition and equality before the law;
- Section 11 – Protection of family and children;
- Section 12 – Right to privacy and reputation;
- Section 13 – Freedom of movement;
- Section 15 – Peaceful assembly and freedom of association;
- Section 18 – Liberty and security of person;

- Section 21 – Right to a fair trial; and
- Section 22 – Rights in criminal proceedings.

1.7 The Committee notes that the human rights discussion in the explanatory statement is arranged by reference to features of the Bill. As the Committee has noted in previous reports, its preference is that the discussion of human rights in an explanatory statement is arranged by human right rather than by features of the Bill. This is particularly helpful where, as with this Bill, a particular human right may be limited by more than one feature of the Bill. That way the nature of the human right can be explained and how the Bill limits or engages with that right can be addressed in one place rather than requiring overlap/repetition.

1.8 However, as the explanatory statement is arranged by Bill feature, the Committee has adopted that structure for the purposes of this report for ease of reference to the explanatory statement.

1. Offence to enter or remain on certain premises

1.9 A person the subject of an FPO who enters or remains at "prohibited premises" commits an offence (section 183T). The phrase "prohibited premises" is defined in the Bill to mean any premises where a firearm or firearm-related item is stored, sold, repaired or manufactured and to include premises where a firearm or firearm related item might be typically found such as, for example, a collectors, hunting or shooting club, a paintball range or a shooting gallery or range.

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

Right to protection of family (section 11 HRA)

Right to privacy (section 12 HRA)

Right to freedom of movement (section 13 HRA)

Right to freedom of association (section 15 HRA)

1.10 The explanatory statement explains how the creation of this offence limits the above four human rights:

> Section 11 of the HR Act recognises the importance of the family unit and that families should not be subject to arbitrary interference or separation. The scope of 'prohibited premises' may result in circumstances where the normal social life of the family unit is disrupted. …
>
> … the offence provision may affect the individual's ability to form and maintain close or enduring relationships, limiting the right to privacy and reputation under section 12 of the HR Act….
>
> In addition, the condition not to enter or remain at prohibited premises limits the freedom of movement of a person subject to an FPO. Section 13 of the HR Act recognises the right to freedom of movement within the ACT…
>
> If an individual is a member of a collectors, hunting or shooting club, this may prevent them from meeting with the group or create a disincentive for membership, thereby limiting the right to freedom of association. …

1.11 The Committee also notes that the offence limits the right to work under section 27B of the HRA as it may restrict the ability of a person the subject of an FPO to attend a place of employment or business, though notes the safeguard identified in (i) below.

1.12 The explanatory statement states the purpose of these limitations is consistent with the overarching objective of the FPO scheme to:

> …provide police with additional tools to respond to, and prevent, gun crime by high risk individuals. The FPO scheme will provide for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage and reduce the threat of firearm-related violence and crime in the community.

1.13 The Committee notes that the statement (under the heading “Nature of the right and the limitation”) goes on to state:

> The purpose of including the condition as set out in sections 183O-183P on an FPO is to reduce the ability of an FPO subject to readily access firearms by entering or remaining at premises where firearms may be located and limit the risk of committing firearm-related offences.[2]

1.14 However, the Committee does not understand the reference to sections 183O or 183P or to an FPO condition. Section 183O concerns a condition about removal of a firearm or firearm related item, and section 183P grants to the Magistrates Court the ability to impose a condition where a person the subject of an FPO *may* enter or remain at prohibited premises.

1.15 The statement also suggests that it is a condition of an FPO that the person not enter or remain at prohibited premises. The Committee questions the accuracy of this statement. The FPO must contain information about the offence created by section 183T (see section 183K(2)) of entering or remaining at prohibited premises, but it is not clear where the Bill provides it to be a condition of the FPO.

1.16 **The Committee asks the Minister to clarify the relevance of the above quoted paragraph to the discussion in the statement on the limitation on rights created by the offence in section 183T.**

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

1.17 The explanatory statement contains a discussion about the connection between the limitations and the purpose and its proportionality. The statement notes various safeguards:

(i) Under section 183P the Magistrates Court may impose a condition on an FPO that the person may enter or remain at prohibited premises if satisfied the person has a “genuine reason”. The definition of “genuine reason” is limited to the matters listed in section 183P(3) which includes where the person is required to enter or remain on the premises in the course of their lawful employment or lawful business.

[2] Explanatory statement p. 12.

(ii) The offence does not apply if the person has a reasonable excuse (section 183T(3)) though the evidential burden of proving this is on the person.

(iii) The list of bullet point matters contained on page 13 of the explanatory statement, including that the Magistrates Court must consider a range of matters provided for in section 183B when making an FPO.

1.18 The explanatory statement concludes its human rights discussion on this aspect of the Bill as follows:

> In order to effectively limit such person's access to firearms, it is essential that such individuals be excluded from places that are likely to store firearms or related items or provide access to firearms or related items.[3]

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

2. Obligation to notify a change of premises

1.20 New section 183V proposed by the Bill provides that a person the subject of an FPO must notify the Chief Police Officer of a change in a particular relating to the person's residence or "any other premises owned, leased or occupied by the person." A person who does not so notify within seven days of the change commits an offence.

Right to privacy (section 12 HRA)

1.21 The obligation and offence created by the Bill limits the right to privacy as it requires a person to disclose personal information to the Chief Police Officer.

1.22 The explanatory statement explains the purpose:

> The purpose of the reporting requirements in section 183V is to ensure that police are able to locate persons subject to an FPO and are aware of any premises which are owned, leased or occupied by them where firearms or firearm-related items may be located.[4]

1.23 The explanatory statement contains a discussion on the proportionality and rational connection of the limitation to the purpose. It also notes that "the notification requirement and the attached maximum penalty in section 183W [sic] is similar to the system which is in place for a registerable offender under the *Crimes (Child Sex Offenders) Act 2005* (ACT)."[5]

1.24 The Committee notes that the discussion contains references to the offence in section "183W" (pages 14 and 15) whereas the offence is contained in proposed new section 183V.

1.25 **The Committee refers the discussion to the Assembly and requests the Minister to correct the references in the explanatory statement.**

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

[3] Explanatory statement p. 13.
[4] Explanatory statement p. 14.
[5] Explanatory statement p. 14.

3. Creation of new offences – imprisonment and strict liability

1.26 The Bill creates many new offences. The explanatory statement identifies that the following offences carry a maximum penalty of some period of imprisonment.[6]

- acquire, possession or use of firearm etc (section 183Q) – maximum penalty: imprisonment for 10 years;
- fail to surrender of licence or permit (section 183R) – maximum penalty: imprisonment for 5 years;
- fail to surrender of firearm and firearm-related items (section 183S) – maximum penalty: imprisonment for 5 years;
- enter or remain at prohibited premises (section 183T) – maximum penalty: imprisonment for 1 year (or 100 penalty units, or both);
- dispose of firearm to person subject to order (section 183U(1)) – maximum penalty: imprisonment for 7 years;
- dispose of firearm-related item to person subject to order (section 183U(2)) – maximum penalty: imprisonment for 3 years;
- fail to notify change of address (section 183V) – maximum penalty: imprisonment for 5 years; and
- fail to comply with a closed court order or order prohibiting or restricting the publication of evidence or information (section 183ZH) – maximum penalty: imprisonment for 1 year (or 100 penalty units, or both).

1.27 In addition, the following offences (some of which carry a maximum penalty of imprisonment) are strict liability offences. These are:

- acquire, possession or use of firearm etc (section 183Q) – maximum penalty: imprisonment for 10 years;
- fail to surrender of licence or permit (section 183R) – maximum penalty: imprisonment for 5 years;
- fail to surrender of firearm and firearm-related items (section 183S) – maximum penalty: imprisonment for 5 years;
- enter or remain at prohibited premises (section 183T) – maximum penalty: imprisonment for 1 year (or 100 penalty units, or both);
- fail to notify change of address (section 183V) – maximum penalty: imprisonment for 5 years; and
- interfere with an item seized by police to which access has been restricted (section 183ZZF(2) - maximum penalty of 50 penalty units.

Right to liberty (section 18 HRA)

1.28 The offences created by the Bill identified above in paragraphs 1.26 and 1.27 that carry a maximum penalty of imprisonment limit the right to liberty and security of a person. As the explanatory statement identifies:

[6] Explanatory statement pp. 15-16.

> The right to liberty encompasses the right not to be arbitrarily arrested or detained… Detention may be 'arbitrary' if it is unreasonable, unjust, inappropriate or disproportionate in all the circumstances of the case or not in accordance with due process.[7]

1.29 The explanatory statement asserts that all the offences except section 183ZH offence (failure to comply with a closed court/publication order) are intended to promote the effectiveness of the overall scheme by creating a mechanism by which police can enforce the order. The statement asserts that the purpose of the section 183ZH offence is to "ensure the protection of information that, if disclosed, may interfere with the public interest or administration of justice and community safety."[8]

1.30 The statement rationalises the connection between the limitation and the purposes as:

- essential to deter individuals and to reflect the serious nature of the conduct;
- consistent with the existing framework of offences under the Firearms Act "except where a higher penalty is appropriate to reflect that a breach of an FPO should be considered more serious than other conduct."[9] The statement gives some examples on pages 16 to 17;
- comparable to those maximum penalties in similar schemes in other jurisdictions; and
- commensurate with maximum penalties used in the ACT in other contexts where non-compliance could have serious consequences such as under the *Crimes (Child Sex Offenders) Act 2005*.

1.31 The Committee notes that the some of these offences are drafted broadly. For example, section 183U (offence of disposing of firearm/item) extends to a person who "takes part" in the disposal. The section defines "take part" broadly.[10] Another example is section 183V (a strict liability offence where there is a failure to notify a change in residence/other premises) which extends to premises owned, leased or occupied by the person.

1.32 The statement identifies some "safeguards" that it asserts minimises the limitations on the right to liberty, including the defence of reasonable excuse to some offences, timeframes for compliance with, for example, surrender of firearms and maintaining the discretion of the court as to whether a term of imprisonment or a lesser penalty is appropriate.

1.33 **The Committee refers the discussion on the limitation on the right to liberty in the explanatory statement to the Assembly and does not require a response from the Minister.**

Rights in criminal proceedings (section 22 HRA)

1.34 A core component of the rights in criminal proceedings set out in section 22 of the HRA is the right to be presumed innocent until proved guilty according to law. As the explanatory statement identifies and as noted above in paragraph 1.27, many of these new offences are strict liability offences, and all but one (section 183ZZF(2)) have a maximum penalty of imprisonment.

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[7] Explanatory statement p. 16.

[8] Explanatory statement p. 16.

[9] Explanatory statement p. 16.

[10] To include taking a step in the process of disposal or causing a step to be taken for providing or arranging for finance for a step or providing access to premises where a step is taken. The Committee notes that limb (a) of the definition is circular in that it refers to "takes part in" as part of the definition of "takes part".

1.35 In each of the offences except for the offence created under section 183ZZF(2), strict liability applies in relation to the element of the offence that the person was subject to an FPO at the time of the relevant conduct. This means that criminal liability can be imposed in relation to this element without the need to prove fault.

1.36 In relation to the offence under section 183ZZF(2), the strict liability is in relation to the element that the person interferes with the seized thing. This means that the prosecution will not be required to establish that the person intended to interfere with the item but will be required to establish the two other elements.

1.37 The explanatory statement states that the purpose of strict liability for the Division 12A.4 offences (all but section 183ZZF) is to "reduce the ability of an FPO subject to readily access firearms and limit the risk of committing firearm-related offences."[11]

1.38 The statement rationalises the imposition of strict liability for the Division 12A.4 offences as follows:

> The inclusion of strict liability elements in offences in the FPO scheme supports the overall objectives of the Bill and enhances the effectiveness of the scheme by:
>
> - improving the mechanism by which police can enforce an order by streamlining prosecution processes for a person's failure to comply with an FPO; and
> - improving the ability to investigate an offence under the Firearms Act by streamlining prosecution processes for interfering with police seizures.
>
> Strict liability elements typically arise in a regulatory context where the defendant can reasonably be expected, because of their involvement in the regulated activity, to know what the requirements of the law are. The strict liability offences in the Bill (with the exception of section 183ZZF) apply to remove the mens rea in relation to a person knowing they are subject to an FPO. These strict liability elements are necessary to streamline prosecution processes for failure to comply with orders by removing the requirement to establish that a person knew they were subject to an FPO.[12]

1.39 For the section 183ZZF strict liability offence, the explanatory statement explains:

> …strict liability applies such that the prosecution does not need to establish that the person intended to interfere with an item that was seized. However, the prosecution does still need to prove that the person knew that access to the seized thing had been restricted and that the person did not have a police officer's approval to interfere with the thing. Ultimately this satisfies the desire for a defendant to know what the requirements of the law are (in that they knew it was seized) for strict liability offences. By removing the requirement to demonstrate intention to interfere with the seized thing, it will enhance the effectiveness of the FPO scheme by improving the ability to investigate an offence under the Firearms Act by streamlining prosecution processes for interfering with police seizures.[13]

[11] Explanatory statement p. 19.
[12] Explanatory statement p. 19.
[13] Explanatory statement pp. 19-20.

1.40 The explanatory statement states that the strict liability elements "are consistent with the *ACT Guide for Framing Offences*".[14]

1.41 This Committee in a recent report, *Scrutiny Report No 15*, identified key guiding principles regarding use of strict liability offences from the Guide, which is in turn informed by a Report of the ACT's Standing Committee on Legal Affairs following an inquiry into Strict and Absolute Liability Offences in 2008.[15]

1.42 The Committee notes that that the explanatory statement explains that the strict liability element of the Division 12A.4 offences is limited to whether a person was subject to an FPO at the relevant time and not to the other elements and so a person the subject of an FPO will be aware of their obligations under the order (including for an interim order as the FPO commences when the person is serviced with the order). This means that the risk of inadvertent breach, one of the considerations raised in the Guide, is low.

1.43 The Committee also notes that these offences are in a regulatory context.

1.44 However, the Committee also notes that *Scrutiny Report No 15* noted that:

- Strict liability offences should only be aimed at the less serious side of the criminal spectrum, and the maximum penalty should generally be limited to a monetary penalty (50 penalty units).
- In the exceptional case where imprisonment is considered appropriate, it should be a maximum of six months.
- Justifications for the limitation on the right to be presumed innocent based on the potential for "serious harm" and concerns in relation to prosecutorial difficulty are not valid justifications for a strict liability offence.

1.45 The strict liability offences created in new Division 12A.4 are, as the statement identifies, of a more serious nature and all of the new offences within that Division have maximum penalties of more than six months imprisonment.

1.46 In addition, as evident from the statement extract in paragraph 1.38 above, the justifications provided in the explanatory statement are based on streamlining prosecution processes and a broad purpose about reducing access of persons subject to an FPO.

1.47 **The Committee refers the discussion in the explanatory statement to the Assembly and requests the Minister to revise the explanatory statement to provide a clearer and more specific justification for the strict liability offences other than ease of prosecution and general deterrent and to provide a clear justification for the instances where the maximum penalty of imprisonment is beyond six months.**

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

[14] Explanatory statement p. 20.
[15] *Scrutiny Report 15* (February 2026), p. 4 (paragraph 1.28).

4. Criteria for FPO – prior unlawful acquisition, possession or use of firearm/item

1.48 New section 183B(1)(b) proposed by the Bill provides for matters that the Magistrates Court must consider before making an FPO. One of these matters is whether the respondent has, at any time, unlawfully acquired, possessed or used or attempted to acquire, possess or use a firearm or firearm-related item. The Court may be satisfied of this whether or not the respondent has been found guilty of an offence for the relevant conduct (section 183F(2) (interim order) and section 183H(2) (final order)).

Right to equality before the law and right to equal protection of the law without discrimination (section 8 HRA)

1.49 The explanatory statement explains that the requirement of the Magistrates Court to take into consideration the respondent's prior unlawful activities or attempted unlawful activity - regardless of whether they were found guilty of an offence – subjects the respondent to a disadvantage (risk of an FPO) where they do not necessarily have a criminal record and are not charged with an offence.

1.50 The explanatory statement contains a discussion on the purpose and rational connection with regard to the limitation of this right. Part of the explanation follows.

> Requiring a Magistrate to be satisfied that the respondent has unlawfully acquired, possessed or used or attempted to acquire, possess or use a firearm or firearm-related item reduces the scope of who can be subject to an FPO. Reducing the scope in this way ensures that only those who have or who have attempted to acquire, possess, or use a firearm or firearm-related item unlawfully can be subjected to an FPO, strengthening the link between the purpose of the FPO scheme (to ensure positive confirmation that high risk people are not in possession of firearms) and the rational evidence needed to support the making of an FPO.
>
> Allowing the Magistrate to reach this state of satisfaction where a person does not have a prior conviction ensures that public safety can be protected through the making of an FPO where police hold information reliably indicating unlawful activity but the person has not yet come into contact with the justice system or has not been prosecuted to final conviction. Such persons may still pose future risk.[16]

1.51 The explanatory statement appears to be making a distinction between where a person has been convicted of an offence and where a person has only 'unlawfully' done something. It would be helpful for the Committee to understand more clearly the nature of the conduct that might be "unlawful" in order for the Committee to better evaluate the impact on the right to equality.

1.52 The Committee assumes that breach of a civil law relating to a firearm might be considered "unlawful" but notes that the example given in the Clause Notes is where a person is charged with unlawful possession of a firearm but is awaiting trial.[17] The Committee queries how this can be considered "unlawful" without clearer explanation in the Bill or the explanatory statement of this term.

[16] Explanatory statement pp. 21-22.
[17] Clause Notes p. 48.

1.53 **The Committee refers the discussion on the limitation of the right to equality before the law in the explanatory statement to the Assembly and requests the Minister to revise the explanatory statement to explain the sorts of conduct (including through the provision of examples) that the Minister envisages the Court could consider as "unlawful" under section 183B.**

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

Rights in criminal proceedings (section 22 HRA)

1.54 The explanatory statement identifies and explains that the requirement of the Magistrates Court to consider the matters in section 183B(1)(b) limits rights in criminal proceedings:

> Although the respondent is not charged with an offence when an FPO application is made, this right may apply in civil or administrative proceedings that could be characterised as criminal under international human rights law. This ensures that people are not unjustifiably subjected to punitive measures.
>
> The FPO scheme limits the right to be presumed innocent because it envisages that the Magistrate may be satisfied of past unlawful conduct in relation to firearms in circumstances where the respondent has not been found guilty of a relevant offence.

1.55 The explanatory statement discusses the limitation on this right together with the limitation on the right to equality before the law discussed above, conflating the justification for both.

1.56 As the Committee noted at the beginning of this report, where the human rights impacted are distinct (such as here) it would be helpful if the discussion about the rationality and justification for the limitation on the right were addressed separately. In summary, the statement concludes for the limitations on both rights:

> Allowing the Magistrate to consider all relevant information about past conduct (even where illegality has not been proved to the criminal standard) is proportionate, because the broad discretion afforded to the Magistrate when making an FPO is exercised independently and impartially in the overarching interest of public safety.18

1.57 **The Committee refers the discussion on the limitation of the rights in criminal proceedings in the explanatory statement to the Assembly and, as above, requests the Minister to revise the explanatory statement to explain the sorts of conduct (including through the provision of examples) that the Minister envisages the Court could consider as "unlawful" under section 183B(1)(b).**

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

[18] Explanatory statement p. 22.

5. Interim FPO – absence of respondent/in private

1.58 The scheme added by the Bill permits, under section 183F, the Magistrates Court to make an interim FPO in certain circumstances, one of which is where the order must be made urgently to reduce a significant risk of serious harm to another person. An interim order can only be made for a maximum of 30 days and, once made, must be served on the respondent (new section 183I).

1.59 An interim order is made in the absence of the respondent. Applications for an interim order are not served on the respondent, but the respondent must be served with the application, interim order and timing notice, once the hearing is complete (new section 183E(4)).

1.60 The Committee notes that these matters are provided for under section 183E(2). However, the explanatory statement refers to section 183F(2), which is about unlawful conduct.[19]

1.61 In addition, section 183ZG proposed by the Bill provides that a hearing for an interim order is not only in the absence of the respondent (and their representative or any other interested party) but in private.

Right to a fair trial (section 21 HRA)

1.62 As the explanatory statement identifies and explains, the right to a fair trial:

> …is concerned with procedural fairness and ensuring that all parties in proceedings have the right to be heard and respond to any allegations made against them prior to a decision being made that will affect their rights and interests. The requirement that courts be competent, independent, and impartial is fundamental to the integrity of the decision-making process… public hearings are generally fundamental to the transparency and accountability of courts…[20]

1.63 Sections 183E and 183ZG limit the elements of a fair trial as they provide that the hearing for an interim FPO is ex parte, and do not provide the respondent with the ability to be heard and respond, and they are not in public.

1.64 The explanatory statement explains that the purpose of these features of interim FPOs hearings is:

> …to allow orders to be made by the court in urgent circumstances for a short period of 30 days where there is a significant risk of serious harm to another person. Closed court proceedings will ensure the protection of any intelligence material or other information which is relied upon by police in their application and which may not be possible to declassify in urgent timeframes.
>
> …
>
> Consideration of the application on an ex parte basis will alleviate concerns that giving an individual notice of an intention to seek an order against them may trigger a response and create a significant risk that the person would cause serious harm to another person or persons before the hearing of the application for a final order.[21]

[19] Explanatory statement p. 22.
[20] Explanatory statement p. 23.
[21] Explanatory statement pp. 23-24.

1.65 The explanatory statement discusses the "safeguards" built into the Bill to "minimise the frequency and extent of the limitation on the right to a fair trial," referring to the matters listed in new section 183F that the Magistrates Court is to be satisfied of:

(a) it is in the **public interest** to make the order; and

(b) the order must be **urgently made to reduce a significant risk of serious harm** to another person; and

(c) the making of the order in the **absence of the respondent is reasonable and justifiable**; and

(d) the respondent has, at any time, **unlawfully** acquired, possessed or used or attempted to acquire, possess or use a firearm or firearm-related item; and

(e) the making of the order is otherwise **reasonable and justifiable** in the circumstances.

(*bold added*)

1.66 The statement also refers to the matters that must considered for an FPO set out in section 183B and to other "safeguards" in the Bill.[22]

1.67 The Committee notes that all of the newly created offences in the Bill, including the strict liability offences with a maximum term of imprisonment, apply to a person the subject of an FPO. An FPO is defined in the Bill (in new section 183A) to mean an interim order or a final order. Consequently, a person the subject of an interim order is also the subject of these offences.

1.68 Secondly, the statement acknowledges that the new enforcement powers of the police created by the Bill (discussed below) apply to a person the subject of an interim order, the only exception being the power of the police to enter and search premises other than the person's residence without a warrant (section 183ZY(2)).

1.69 Finally, the Committee notes that much of the rationalisation for a private hearing without the respondent is based on protection of intelligence information or the risk to police investigations.

1.70 **The Committee refers the discussion in the explanatory statement to the Assembly and does not require a response from the Minister but suggests that the Minister revise the explanatory statement to correct the cross reference referred to above in paragraph 1.60.**

6. Closed Court – Special circumstances and security sensitive information

1.71 In new Part 12A inserted by the Bill, subdivision 12A.8.1 contains provisions about the hearing of an application for an order or decision under Part 12A. The default position (section 183ZF) is that hearings must be in public unless:

(a) it is an application for an interim order (*see discussion in point 5 above*);

(b) the court is satisfied there are special circumstances as provided under section 183ZH; and

(c) there is "security sensitive information" (section 183ZZP).

[22] Explanatory statement p. 25.

Special circumstances

1.72 Section 183ZH permits the Court to order that a hearing be heard in whole or in part in private, that only stated people be present, that evidence given at the hearing or a document mentioned not published or that it not be disclosed to a party to the proceeding. As noted in paragraph 1.26 above, failure to comply with the order is an offence.

1.73 In order to make any such orders, the Court must be satisfied that “it is in the public interest or the interests of justice.”

Right to a fair trial (section 21 HRA)

1.74 As the explanatory statement identifies and explains these provisions on hearings limit the right to a fair trial as they abrogate open justice and they limit or remove the opportunity for a respondent to respond to the allegations made against them. The purpose of these provisions is to:

> …support the objective of the FPO scheme by providing the court with discretion as to how it handles sensitive information that may be needed to protect public order, avoid prejudice to justice, or to preserve the privacy of the personal life of a respondent or any other person affected by a proceeding.[23]

1.75 The explanatory statement contains a discussion about the proportionality of the limitation and some “safeguards” in the Bill, including the discretionary nature of the power and the requirement for the Court to be satisfied that such a restricting order is in the public interest or interests of justice.

1.76 **The Committee refers the Assembly to the more detailed discussion in the explanatory statement and does not require a response from the Minister.**

Security sensitive information

1.77 Section 183ZZP in the new subdivision 12A.13 permits the Chief Police Officer to apply to the Magistrates Court for a decision about whether information intended to be used in a proceeding under new Part 12A is “security sensitive information”. Under this section, the application must be heard in closed court and in the absence of the person to whom the proceeding relates, unless the chief police officer agrees otherwise.

1.78 A definition of “security sensitive information” is inserted by Clause 17 of the Bill for the purposes of the Firearms Act. This definition is identical to the definition of the term that currently exists in the *Firearms Act*, except for the purposes of some sections only. The definition concerns information held by a law enforcement agency that relates to actual or suspected criminal activity.

1.79 The Committee notes that the current definition of the term is contained in sections 18A to 18C of the *Firearms Act*, not in the Dictionary as the explanatory statement states.

1.80 Section 183ZZP also permits the Court to decide if, and if so to what extent, the information can be disclosed to the person to whom the proposed proceeding relates.

[23] Explanatory statement p. 26.

Right to a fair trial (section 21 HRA)

1.81 The explanatory statement identifies and explains that this provision limits the right to a fair trial:

> as a person may not be provided with the opportunity to consider or respond to allegations in security sensitive information which is put before the court in proceedings for an FPO.[24]

1.82 The statement goes on to discuss the rational connection between the limitation and purpose and the proportionality of the statement. In summary, it states:

> The purpose of section 183ZZP regulating how security sensitive information is dealt with by the court and disclosed is not only for the purpose of protecting police investigative techniques and intelligence, but also protecting those informants who work with police whose life or physical safety may be endangered by their identification.[25]

1.83 The explanatory statement also refers to a High Court decision that upheld the validity of withholding the disclosure of criminal intelligence to an affected party and their legal representative, "so long as the court or tribunal retains discretion to independently assess classified information and determine whether it should be admitted in secret".[26]

1.84 **The Committee refers the discussion in the explanatory statement on hearings regarding security sensitive information and does not require a response from the Minister.**

7. Enforcement search/seize powers of police

1.85 The new Division 12A.10 inserted by the Bill provides for the enforcement powers of police officers under the FPO scheme in relation to a person the subject of an FPO (interim or final, unless otherwise stated). The existing Part 14 enforcement provisions in the *Firearms Act* are displaced unless otherwise stated in the new Division.

1.86 The new enforcement powers created by new Division 12A.10 grant the power to police to search a person (section 183ZX), search certain premises and vehicles, vessels, and aircraft (section 183ZY). Premises includes the person's residence and, if the person is subject to a final order, any other premises "owned, leased or occupied" by that person. A police officer may also search other premises (e.g. a person's workplace) and seize things if the officer believes certain things on reasonable grounds (section 183ZZ).

1.87 All of these enforcement powers can be exercised without a warrant and the search of premises and vehicles etc can be done at any time. However, a police officer may not exercise the power unless satisfied that exercising the power is "reasonably required" to determine whether the person the subject of the FPO has contravened the FPO (section 183ZW).

1.88 A summary of these powers is contained in the explanatory statement.[27]

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[24] Explanatory statement p. 28.
[25] Explanatory statement p. 29.
[26] Explanatory statement p. 30.
[27] Explanatory statement p. 31.

1.89 These provisions also permit a police officer to seize a firearm or firearm related item as well as any other thing if the officer is satisfied on reasonable grounds that the thing is "connected with an offence against this Act or a serious offence" and the seizure is "necessary to prevent the thing from being concealed, lost or destroyed" or "used to commit, continue or repeat the offence".

1.90 Further, these provisions permit a police officer to "detain the person being searched for as long as is reasonably necessary to conduct the search" and to detain the vehicle, vessel or aircraft "for as long as is reasonably necessary to conduct the search and any seizure".

1.91 In addition, new subdivision 12A.10.3 inserted by the Bill grants powers to the police to apply for a warrant in relation to entry to other premises not covered in new subdivision 12A.10.2. This subdivision contains provisions about the circumstances in which a warrant may be granted. The Committee notes a typographical error in the Clause Notes for section 183ZZB (warrant to enter) where the reference to who must consider the matters is omitted.[28]

Right to privacy (section 12 HRA)

Right to freedom of association (section 15 HRA)

Right to liberty (section 18 HRA)

1.92 The explanatory statement identifies that the search, entry and seizure provisions limit the right to privacy of a person the subject of an FPO as they allow the police to interfere with their private life, including the relatives and children who may reside at the premises or be present in the vehicle, by permitting a personal search and of the person and property (which may include, for example, property occupied by a third party).

1.93 The statement identifies that the search, entry and seizure and detaining powers limit the right to freedom of association of the person the subject of the FPO and third parties may limit the right to freedom of association and the right to privacy as :

> being in the presence of a person subject to an FPO, with the person in your vehicle or at your home, may enliven a police power of search. A person may be discouraged or inhibited from exercising a legitimate right to associate with others for fear of the legal repercussions associated with an FPO.[29]

1.94 The statement identifies that the provisions also limit the right to liberty of the person the subject of the FPO as they permit the person to be detained temporarily ("as long as is reasonably necessary") to conduct the search/seizure which deprives the person of their liberty.

1.95 The explanatory statement contains a discussion about the limitation of these rights and a rational connection and proportionality discussion. However, it addresses all of these rights together. Given that each of these rights is distinct, especially the right to liberty from the right to privacy/freedom of association, this leads to a conflated discussion in the statement. The Committee again refers to its preference in paragraph 1.7 above.

[28] Clause Notes p. 63.
[29] Explanatory statement p. 32.

1.96 In relation to the purpose of these provisions, the statement states that:

> The purpose of the enforcement powers in division 12A.10 is to promote the effectiveness of the overall scheme by creating mechanisms by which police can enforce and ensure compliance with the order.
>
> The FPO search powers will provide police with a direct power to conduct a search to enforce an FPO where reasonably required reflecting a preventive approach, and does not require them to obtain a warrant or to form a 'reasonable suspicion'.[30]

1.97 The explanatory statement then proceeds with its rationality and proportionality discussion. The Committee refers the Assembly to that discussion.

1.98 The statement acknowledges that these search powers add to the power that police already have under existing legislation with respect to firearms:

> The existing powers for police to search for these items are provided to police on a case-by-case basis through the warrant system, and through a range of common law and legislative search-without-warrant powers. Generally, this will require police to have sufficient evidence to form a 'reasonable suspicion' that the person has something unlawful in their possession, had committed a crime, or was about to commit a crime.
>
> …
>
> The FPO search powers are intended to be used where existing search powers cannot be used, such as where the threshold of a reasonable suspicion cannot be established because the need for intervention is based on criminal intelligence.
>
> …
>
> Search powers for third party residences and vehicles are also necessary in order to prevent the purpose of the scheme being frustrated by persons subject to FPOs using third party homes or vehicles to conceal firearms or render police searches unworkable.[31]

1.99 The statement identifies that:

> Warrantless searches of individuals, premises and vehicles by police premised on less than "reasonable suspicion" have been regarded as extraordinary powers that raise a real risk of arbitrary or disproportionate exercise of power.[32]

1.100 The statement refers to European human rights jurisprudence on this point and to examples from New South Wales and Victoria. The statement proceeds to acknowledge the incompatibility of the enforcement powers with these rights, especially the right to privacy, but balances that consequence against the operational viability of the FPO scheme, the matters that a Court must consider before an FPO is granted and other limits and safeguards in the Bill that are summarised in the statement.[33] The statement concludes that the safeguards reflect the least restrictive approach to the incompatibility with these rights.

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[30] Explanatory statement p. 32.
[31] Explanatory statement p. 33-34.
[32] Explanatory statement p. 34.
[33] Explanatory statement pp. 36-38.

1.101 The Committee notes the following points in relation to this discussion.

(i) The requirement that the police officer be satisfied, before exercise of a search/entry power, that exercising the power is “reasonably required” to determine that the person the subject of the FPO has contravened the FPO. The explanatory statement distinguishes this threshold from the grounds required for a warrant or the ground of “reasonable suspicion”. The statement also notes that in determining if something is “reasonably required” the police officer must have regard to the matters listed in section 183ZW(3) and may take into account the matters in section 183ZW(4). The Committee acknowledges that the statement addresses this threshold but remains unclear about how the information/evidence threshold requirement to exercise a search/entry power under the new Division differs from the threshold required under a warrant or “reasonable suspicion”. A more direct explanation of the distinction would assist with evaluation of the new Division.

(ii) The statement asserts that the powers used in this Division are used only within the context of the FPO scheme and “do not extend to purposes beyond the framework, such as the general investigation of crime”.[34] However the Committee notes that section 183ZX (search of person/seizure) permits things to be seized that are not only connected to an offence against the *Firearms Act* but that are also connected to “a serious offence”. A “serious offence” is defined in new section 183A as an offence punishable by imprisonment for 5 years or longer in the ACT or elsewhere. The Committee also notes the power of police to secure things under section 183ZZI if the thing is “connected with a serious offence”. Accordingly, the Committee queries the assertion in the explanatory statement.

(iii) For the exercise of the powers in section 183ZY (search of certain premises/seizure) and section 183ZZ (other premises) each of the sections provide that the police officer may use the force that is reasonably necessary to exercise their powers. The explanatory statement does not appear to incorporate this feature of the entry and search powers in the human rights analysis in the statement. It important for evaluating the impact of the provisions on human rights to address the rationale and proportionality of the ability to use force. The Committee’s view is that this is particularly pertinent to the limitation of the right to liberty.

1.102 **The Committee refers the Assembly to the detailed discussion in the explanatory statement about the limitation of these rights and requests the Minister to revise the explanatory statement to address the matters raised in (i), (ii) and (iii) paragraph 1.101 above.**

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

[34] Explanatory statement p. 37.

8. Enforcement – Seizure of things

1.103 As noted above, the police have power to seize and secure certain things under new Division 12A. These include the power to search persons and people without a warrant and the power to search premises with a warrant. New subdivision 12A.10.4 and new Division 12A.11 deal with the things seized, their access, return, forfeiture and destruction or disposal.

1.104 Section 183ZX (personal search) permits a police officer to seize any thing connected with a firearm or a "serious offence" and the power to search premises with a warrant and without a warrant permit a police officer to seize anything connected with an offence against the *Firearms Act*.

1.105 Section 183ZZI (in new subdivision 12A.10.4) allows a police officer to secure any thing found when exercising enforcement powers under the division if the thing is connected with a "serious offence." See paragraph 1.101 above for the definition of "serious offence". The police can apply to the Magistrates Court for an order that the thing be seized and, if made, the thing can be used in evidence in a proceeding for an offence with the leave of the Court. By way of example, the statement refers to where trafficable quantities of cocaine or child pornography is found during the exercise of search powers under the new division on FPOs.

Right to a fair trial (section 21 HRA)

Rights in criminal proceedings (self-incrimination) (section 22(2)(i) HRA)

1.106 As the explanatory statement identifies, these powers limit the right to a fair trial and the right to self-incrimination (an aspect of rights in criminal proceedings) as they may permit police to obtain information and evidence to use in criminal proceedings unrelated to the FPO or the *Firearms Act* which, without the FPO powers, would not have been available to police.

1.107 The explanatory statement states the purposes of these provisions as follows:

> The purpose of the seizure powers is to ensure that police are able to seize firearms and firearm-related items that are in the person's possession or on relevant premises, as well as any other thing that is associated with an offence against the Firearms Act where that seizure is necessary to prevent the concealment or commission of the offence. This purpose is related to the overall objective of the scheme and provides for proactive intervention and action by police by preventing and deterring criminal activity involving firearms at an early stage thereby reducing the threat of firearm-related violence and crime.
>
> The purpose of the power for police to seize items connected with a serious offence is to protect the safety of the community from criminal activity generally and to support the effective functioning of the police force.[35]

1.108 The explanatory statement contains a human rights analysis on the limitation of these rights. The Committee notes that the statement distinguishes between the ability to investigate an offence – the search powers cannot be used to investigate an offence unrelated to the Firearms Act – and seizure of materials - the search powers can lead to seizure of materials if they relate to Act offences or a serious offence and can be used in proceedings.

[35] Explanatory statement p. 39.

1.109 As part of its human rights discussion, the statement explains:

> … the power for police to seize items connected with a serious offence is limited to where the item is found during a personal search without a warrant or where the police have secured the item and subsequently applied to the court for an order to seize the item.
>
> …
>
> The threshold for police exercising seizure powers in relation to items which are not firearms or firearm-related items is an objective test of 'reasonable grounds'. The officer must also be satisfied that the seizure is necessary for one of the listed reasons including to prevent the commission of an offence. These safeguards ensure that the limitation on rights as a result of these powers is reasonable and proportionate.
>
> Where a police officer secures an item pursuant to section 183ZZL and subsequently applies to the court for an order to seize the item, there are restrictions on the admissibility of that item as evidence in criminal proceedings. The court must grant leave to admit the item as evidence and in deciding whether to grant leave, must have regard to whether the exercise of the powers under Division 12A.10 was lawful (section 183ZZI(4)). This safeguard ensures that the approach to seizure powers promotes the safety of the community from serious offences while limiting the impact on the rights of the person subject to an FPO in future criminal proceedings.[36]

1.110 While the Committee notes the safeguards and limitations identified in the explanatory statement, the Committee notes the purpose of the provisions, most notably those permitting use of seized things in non-*Firearm Act* offences, is expressed at a high level of generality – to protect the safety of the community from criminal activity generally. Given the significant abrogation of the rights in criminal proceedings and the right to a fair trial created by these provisions, the Committee queries whether this justification is of sufficient particularity.

1.111 **The Committee refers the discussion in the explanatory statement to the Assembly and requests the Minister to revise the explanatory statement to justify the restriction on these rights with more particularity than reference to community safety**.

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

9. Delegation of power to Minister

1.112 New section 183C(1) inserted by the Bill provides that the Chief Police Officer may apply to the Magistrates Court for an FPO. Sub-section (4) of that section grants power to the Minister to make guidelines about matters that the Chief Police Officer must consider before making an application (and the officer must consider it before making an application). The guidelines will be a notifiable instrument.

[36] Explanatory statement pp. 40-41.

Do any provisions of the Bill inappropriately delegate legislative powers?—Committee resolution of appointment paragraph 9(a)(iv)

1.113 The explanatory statement states that this power in section 183C:

> … is intended to provide an additional human rights safeguard to ensure the FPO scheme is being appropriately targeted to high risk individuals, such that the restrictions on human rights entailed in an FPO are reasonably justified.[37]

1.114 However, new section 183C does not specify any criteria or parameters for the power granted to the Minister, including no reference to human rights restrictions. Consequently, the Minister appears to have unspecified power to provide for additional matters that must be considered by the Magistrates Court. Given the importance of the grant of an FPO as a gateway to numerous consequences under the new Division 12A inserted by the Bill (including offences, search and enforcement powers) that have significant impacts on human rights, the Committee suggests that the criteria for the content of the guidelines should be expressly stated in the statutory power.

1.115 **The Committee draws this matter to the attention of the Assembly and requests the Minister to amend the delegation power in section 183C to provide for criteria that links its exercise to human rights.**

> This comment requires a response. The Committee asks the Minister to respond prior to the Bill being debated.

10. Limitation of Review

1.116 New Division 12A.6 inserted by the Bill includes section 183Z which provides that certain people may apply to the Magistrates Court for review of an FPO order. The people include the person the subject of the order but only with the court's leave. Further, the Court (under section 183ZA) may give leave to the person for review only in relation to:

(a) an administrative defect or error in the order;

(b) a change in the circumstances of the person; and

(c) the effect of the order, including any conditions of the order or the exercise of powers under division 12A.10 (Enforcement), which limits the human rights of the person in a way that is not reasonable or justifiable.

1.117 Further, the Court may only give leave for review if satisfied it is in the interests of justice to do so. New section 183ZB provides the options available to the Court when undertaking a review of an FPO.

1.118 In addition, section 183ZQ sets out the decisions and orders of the Magistrates Court that are appealable.

[37] Explanatory statement p. 6.

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

Right to a fair trial (section 21 HRA)

1.119 The ability to review or appeal a decision is an element of the right to a fair trial.[38] The restrictions on a review of a decision to grant an FPO contained in new Division 12A.6 limit the right of review of an FPO. This is in circumstances where the grant of an FPO has significant consequences for the rights and liberties of the person the subject of the FPO (and in some circumstances third parties), as is evident from the discussion in this report.

1.120 The explanatory statement does not identify or discuss the potential limitation of these rights created by new Division 12A.6.

1.121 **The Committee refers this matter to the Minister and requests the Minister to amend the explanatory statement to address the limitation on these rights and provide an analysis on the impact on human rights in accordance with section 28 of the HRA.**

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

1.122 As noted above, new section 183ZQ lists the decisions and orders that are appealable.

1.123 By implication, this suggests that some decisions and orders made under new Division 12A are not appealable.

1.124 **The Committee requests clarification from the Minister as to whether the decisions and orders listed in section 183ZQ are a comprehensive list of all decisions and orders made under the new Division 12A that are appealable or whether some are not appealable and, if the latter, to specify the non-appealable decisions and to amend the explanatory statement to provide an analysis on the impact on human rights in accordance with section 28 of the HRA.**

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

[38] https://www.hrc.act.gov.au/humanrights/rights-protected-in-the-act/fair_and_public_hearing.

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 DI2026-1 being the ACT Teacher Quality Institute (Fees) Determination 2026 (No 1) made under section 95 of the** *ACT Teacher Quality Institute Act 2010* **revokes DI2024-77 and determines application fees for teacher registration and permit to teach applications, including annual renewal.**
- **Disallowable Instrument DI2026-2 being the Fair Trading (Australian Consumer Law) Fitness Industry Code of Practice 2026 made under section 23 of the** *Fair Trading (Australian Consumer Law) Act 1992* **revokes DI2009-65 and allows for approval of codes of practice. A code of practice may provide for the fair dealing between a particular class of suppliers and consumers and may, among other things, require an entity to be registered and prescribe conditions on registration.**
- **Disallowable Instrument DI2026-4 being the Land Titles (Fees) Determination 2026 made under section 139 of the** *Land Titles Act 1925* **revokes DI2025-119 and determines fees payable for the purposes of the Act.**
- **Disallowable Instrument DI2026-6 being the Animal Welfare (Standards and Guidelines for Sheep) Code of Practice 2026 made under sections 22 of the** *Animal Welfare Act 1992* **revokes DI1993-168 and approves the Standards and Guidelines for sheep.**
- **Disallowable Instrument DI2026-7 being the Animal Welfare (Standards and Guidelines for Cattle) Code of Practice 2026 made under sections 22 of the** *Animal Welfare Act 1992* **revokes DI1993-167 and approves the Standards and Guidelines for Cattle.**
- **Disallowable Instrument DI2026-8 being the Cemeteries and Crematoria Code of Practice 2026 (No 1) made under sections 123** *Cemeteries and Crematoria Act 2020* **revokes DI2025-86 and determines standards of operational activities undertaken by cemeteries and crematoria and provides guidance to licensees of these facilities.**
- **Disallowable Instrument DI2026-9 being the Long Service Leave (Portable Schemes) Governing Board Chair Appointment 2026 (No 1) made under section 79E and 78 of the** *Long Service Leave (Portable Schemes) Act 2009 and Financial Management Act 1996* **appoints a specified person as an independent member and Chair to the governing board of the Long Service Leave Authority.**
- **Disallowable Instrument DI2026-10 being the Building and Construction Industry Training Levy (Governing Board) Appointment 2026 (No 1) made under section 6 of the** *Building and Construction Industry Training Levy Act 1999* **and section 78 of the** *Financial Management Act 1996* **revokes DI2024-200 and appoints a specified person as a member of the Building and Construction Industry Training Fund Governing Board for a period of three years.**

Disallowable Instruments—Comment

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

Human rights issues

- **Disallowable Instrument DI2026-3 being the Major Events (National Multicultural Festival 2026) Declaration 2026 made under section 6 of the** ***Major Events Act 2014*** **which permits the Executive to declare that an event is a major event.**

2.3 This instrument, made under section 6 of the *Major Events Act 2014*, declares the National Multicultural Festival 2026 a "major event". As noted in the explanatory statement for the instrument, the effect of the declaration is "to enliven powers and offences under the [Major Events] Act, Part 3 (Crowd Management) for police officers".

2.4 The explanatory statement goes on to provide a detailed explanation of the impact of the declaration on human rights and the justification for any limitations on human rights, mentioning the right to privacy, the right to peaceful assembly, the right to liberty and security of the person and the right to presumption of innocence, protected by sections 12, 15, 18 and subsection 22(1) of the *Human Rights Act 2004*, respectively:

> While a major event declaration enlivens extraordinary powers for police officers, these additional crowd control powers will provide for the safe conduct of the event in 2026, considering the significant numbers of attendees.
>
> There has been a material change to the security environment that supports the public interest in a declaration for NMF 2026 compared to previous years. The threat of violent extremism and terrorism is highly dynamic and evolving. The Director-General of Security, Australian Security Intelligence Organisation has stated that politically motivated violence behaviours have become more common in Australia, and we can expect spikes in communal violence.
>
> **The attack in Bondi on 14 December 2025 was the deadliest terrorist attack in Australia's history. It came at the end of a year marked by unprecedented antisemitic attacks, vandalism and hatred towards Jewish communities.**
>
> **These events and the changing security environment also change how the ACT Government should approach its obligations to maintain community protection for crowded places and ensure the safe conduct of events for all participants.**
>
> The powers enlivened for a major events declaration and the reduced threshold for the exercise of powers engages and limits rights under the Human Rights Act 2004 (ACT; HR Act), including the right to privacy (s 12), right to liberty and security of the person (s 18), right to peaceful assembly (s 15) and right to presumption of innocence (s 22(1)).
>
> Section 28 of the HR Act provides that rights may be subject to reasonable limits that can be demonstrably justified in a free and open democratic society.
>
> The purpose of the limitation of human rights under a declaration is to ensure effective controls are in place to manage the threat of politically motivated violence or communal violence during the NMF 2026.

> The powers enlivened under a major events declaration have proportionate limitations on the duration and scope of their application to provide for the safe and secure conduct of the event.
>
> The power of detention by police officers is a power of last resort under a major events declaration to protect the community and event. Strict liability offences enacted apply only to conduct that may threaten safety or security at an event.
>
> This declaration supports the right to liberty and security of participants and people attending the event.
>
> This declaration takes the least restrictive means of achieving the objective under the legislation.
>
> It limits the period the declaration is in force and human rights are limited according to the times of the festival program.
>
> It limits the exercise of powers under the Act to police officers not other authorised persons.
>
> It excludes most prohibited items under s 12 of the Act to minimise the limitation on freedom of movement and right to privacy, liberty and security of the person.
>
> However, for the NMF 2026 these limits may also apply to people using the public thoroughfares to access other locations such as private business or primary places of residence. Public notice will occur through a range of communications channels prior to and during the event.
>
> A major events declaration does not restrict peaceful assembly or gatherings, and the restrictions in the Major Events Act 2014 do not apply to public protests. [emphasis added]

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

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

Human rights issues

- **Disallowable Instrument DI2026-5 being the Road Transport (General) Application of Road Transport Legislation (National Multicultural Festival) Declaration 2026 made under section 12 of the *Road Transport (General) Act 1999* disapplies certain parking provisions in specified areas to support the National Multicultural Festival event.**

2.7 This instrument, made under section 12 of the *Road Transport (General) Act 1999*, disapplies certain parking provisions in specified areas, to support the National Multicultural Festival event.

2.8 The explanatory statement for the instrument contains the following human rights statement:

> Human rights
>
> This instrument does not engage the rights of any individual in the Human Rights Act 2004, as the instrument only applies to corporations, which do not have human rights (see Human Rights Act 2004, section 6).

2.9 The Committee notes that section 6 of the Human Rights Act provides:

> **6 Who has human rights?**
>
> Only individuals have human rights.

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

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

Human rights issues

- **Disallowable Instrument DI2026-11 being the Water Resources Environmental Flow Guidelines 2026 made under section 12 of the** *Water Resources Act 2007* **revokes DI2019-190 and approves the environmental flow requirements needed to maintain aquatic ecosystems.**

2.12 This instrument, made under section 12 of the *Water Resources Act 2007*, approves guidelines for working out the flow of water that is needed to maintain aquatic ecosystems. The explanatory statement for the instrument contains the following human rights statement:

> **Human rights**
>
> Environmental flow guidelines in the ACT help fulfill the human right to a clean, healthy, and sustainable environment [for section 27C of the Human Rights Act 2004] by ensuring rivers maintain ecological health, water quality, and biodiversity essential for that right.

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.**

Human rights issues

- **Disallowable Instrument DI2026-14 being the Urban Forest (Molonglo Town Centre) Declaration 2026 (No 1) made under section 137 of the** *Urban Forest Act 2023* **allows the Minister to declare that a provision of the Act does not apply to a stated entity or activity.**

2.15 This instrument, made under section 137 of the *Urban Forest Act 2023*, declares that the Act does not apply to activities undertaken or authorised by the Suburban Land Agency (**SLA**) for the purpose of subdivision on the land within the area marked designated land in Schedule 1 to the instrument – the Molonglo Town Centre. The explanatory statement for the instrument is up-front about the fact that the instrument corrects an error:

> **Overview**
>
> The Act commenced on 1 January 2024 and repealed and replaced the *Tree Protection Act 2005*. The revised explanatory statement (**the Act's ES**) that accompanied the bill stated that an objective was to extend protections to the most valuable trees in future urban areas. The Act's ES also stated that the legislation would extend this protection to "registered and remnant trees in future urban areas".

A drafting error has resulted in an unintended consequence of extending protection to all trees in future urban areas, rather than just registered and regulated trees. The way that protection is provided is:

Section 8 of the Act defines built up urban area for the purpose of application of the Act, which includes a number of zones identified in the Territory Plan. Specifically, residential zones (**RZ**), commercial zones (**CZ**), community facility zone (**CFZ**), industrial zones (**IZ**) and urban open space zone (**PRZ1**); and

Section 9 (a) (iii) of the Act includes within the definition of protected tree trees located in the built-up urban area on public land.

The blocks that are proposed to be developed into the Molonglo Town Centre (**MTC**) are public land and zoned various zones under the Territory Plan, with each block zoned at least one of the zones contained in section 8 of the Act. This has the result of including the land within the definition of built-up urban area and triggers section 9 (a) (iii), making all trees on the land protected trees.

The original intent to apply protection to only registered and remnant trees is reflected in section 9 of the Act, which defines what constitutes a protected tree, with paragraph (b) specifying that a protected tree includes a registered or remnant tree on land in a future urban area or an area that is the subject of a subdivision design application.

Despite the provisions applying in an unintended way, the Suburban Land Agency (**SLA**) has made significant effort to retain as many trees as possible. This has been done in line with the Urban Forest Strategy 2021-2045, which acknowledges that trees provide shade to cool urban areas, reduce stormwater flows and reduce airborne pollution and greenhouse gas emissions.

2.16 The explanatory statement for the instrument discusses human rights issues:

Human Rights

The HR Act requires public authorities to act consistently with human rights. Section 40B specifically makes it unlawful for a public authority to fail to give proper consideration to a relevant human right.

On 17 September 2025 the ACT Legislative Assembly passed the *Human Rights (Housing) Amendment Act 2025* (the **Housing Act**). The Housing Act introduces new section 27D into the *Human Rights Act 2004* (the **HR Act**). Section 27D recognises that everyone has a right to adequate housing. This provision will commence on 1 January 2027.

The development of the Molonglo Town Centre will provide additional housing for residents in the ACT, supporting access to housing. This instrument removes legislative barriers to permit removal of protected trees in order to allow development to occur.

Section 27C of the HR Act provides a right to a clean healthy and sustainable environment. The design of the town centre for Molonglo has taken environmental sustainability into account and aims to provide connected open green spaces.

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

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

Subordinate Laws—Comment

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

- **Subordinate Law SL2026-1 being the Legal Profession (Barristers) Rules 2026 made under subsection 579(1) of the** *Legal Profession Act 2006* **revokes SL2021-5 and makes the Legal Profession (Barristers) Rules.**

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

2.20 This subordinate law, made by the Bar Association of the ACT, under subsection 579(1) of the *Legal Profession Act 2006*, makes rules for or in relation to practice as a barrister, as an Australian-registered foreign lawyer and for incorporated legal practices and multi-disciplinary partnerships.

2.21 The Committee notes that the explanatory statement for the subordinate law contains no possible human rights issues raised by the subordinate law, to assist the Committee in its (expanded) role under section 38 of the *Human Rights Act 2004*. The Committee assumes that (at the very least) section 27B of the Human Rights Act, which protects the right to work and other work-related rights, would apply.

2.22 **The Committee draws the attention of the Legislative Assembly to this subordinate law, under principle (10)(d) of the Committee's resolution of appointment, on the basis that the explanatory statement for the instrument does not meet the technical or stylistic standards expected by the Committee.**

> This comment requires a response from the Minister. The Committee would be grateful if the Minister could respond before the Legislative Assembly's capacity to move to disallow the law expires.

National Law—Comment

2.23 The Committee has examined the following National Law and offers these comments on it:

- **Education and Care Services National Further Amendment Regulations 2025 (NSW), as adopted by the *Education and Care Services National Law (ACT) ACT 2011*.**

2.24 This National Law amends the Education and Care Services National Regulations (**National Regulations**), which apply in the ACT under the *Education and Care Services National Law (ACT) Act 2011*. The Committee notes with approval that the National Law is accompanied by a detailed and helpful explanatory statement, which indicates that the amendments made by this National Law build on earlier amendments, made in response to a document titled *Review of Child Safety Arrangements under the National Quality Framework*, published in December 2023 by the Australian Children's Education and Care Quality Authority.

2.25 The explanatory statement for the National Law provides the following explanation of the amendments made by this National Law:

> The [National Law amendments]:
>
> (a) increase the maximum penalties in the National Regulations threefold, ensuring penalties for offences against the regulations are commensurate with the maximum penalties in the National Law;

(b) make some existing requirements in the National Regulations into offences with penalties;

(c) expand the range of offences for which a penalty infringement notice can be issued;

(d) remove the ability for an approved provider to apply for a service waiver of the requirement in regulation 115 that centre-based service premises must be designed to facilitate supervision;

(e) require the approved provider of a family day care (FDC) service to conduct a risk assessment of areas outside but near a FDC residence or an approved FDC venue that are accessible to children;

(f) require the approved provider of a FDC service to formally approve the areas of the FDC residence that are suitable to be used to provide education and care to children (that is, the FDC service premises within that FDC residence) failure of which is a new offence with a maximum penalty of $6,600;

(g) prescribe information for the purposes of section 269B(2)(e) of the National Law that an approved provider must provide to the National Authority to be included on the National Early Childhood Worker Register (Register);

(h) prescribe the time periods within which the approved provider must provide information for the Register and inform the National Authority of changes to that information; and

(i) prescribe information to be kept in the written record of authorisation to possess or control a personal device while working directly with children as part of the service for the purposes of section 175J of the National Law and prescribe the retention period for that authorisation record..

2.26 The Committee notes (again, with approval) that the explanatory statement for the National Law contains a detailed discussion of human rights issues, by reference to the right to protection of the family and children (which is promoted), the right to privacy (limited) and the right to work (also limited), protected by sections 11, 12 and 27B of the *Human Rights Act 2004*, respectively.

2.27 In relation to the right to privacy, the explanatory statement for the National Law notes that amendments in the National Law support the establishment of a National Early Childhood Worker Register (**National Register**), to be created and maintained by the National Authority. The explanatory statement states:

> The National Register will contain personal information about nominated supervisors, staff members and volunteers, including names, dates of birth, qualification, and employment details. This information will be uploaded to the National Register by approved providers and will be accessible by the National Authority and Regulatory Authorities. Approved providers will be able to access the National Register to the extent that it applies to services they operate.

2.28 The explanatory statement states:

> The right to work and other work-related rights provides that everyone has the right to work, including the right to choose their occupation or profession freely, and is entitled to enjoy those rights without discrimination. The Register may also limit the right to work as the information updated may affect whether a person is able to work in an education and care service. If the information shows that a requirement has expired or is not up to date, the individual should not be rostered until the requirement is met.

2.29 By way of justification the explanatory statement states:

> The legitimate purpose of the amendment is to better facilitate information sharing amongst specified government entities, including Regulatory Authorities and Working with Children Check agencies, within and across jurisdictions. Effective information sharing is essential for managing risk posed by individuals who are not safe or need additional training to be working with children. The National Register will also facilitate monitoring of potentially unsafe individuals moving between services and participating jurisdictions. It supports child safety and risk management by ensuring that workforce safety requirements, such as training, qualifications and relevant registration status, are recorded and kept up to date.
>
> …..
>
> The information in the National Register is already accessible by Regulatory Authorities under existing provisions, but this does not facilitate monitoring of high risk individuals who may move across services and jurisdictions, including individuals subject to enforcement action. Including this information in the National Register is the only reasonable way to enable Regulatory Authorities to access essential information promptly, and share with relevant agencies, such as Working with Children Check agencies, to manage risk to children.

2.30 The explanatory statement goes on:

> The right to privacy provides that everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily. Regulation 67 of the [National Law] expand what must be assessed for each FDC residence by requiring consideration of areas within the residence, such as private bedrooms, as well as near the residence, such as garages. These requirements limit privacy by requiring formal assessment of a private residence and its surroundings.

2.31 The justification provided is as follows:

> The legitimate purpose of the amendment is to facilitate management of risk to children from physical environment when attending FDC services. It recognizes that hazards are not confined to the approved education and care service premises within the residence, and requires attention to other areas within the residence and areas outside that are accessible to children. Children have accessed areas outside the service premises, such as other areas of the residence, or near the residence, and sustained injuries or been exposed to hazards, such as chemicals stored in a shed.
>
> ….
>
> Approved FDC providers are already required to conduct risk assessments of FDC residences. Access to the entire residence and nearby areas accessible to children is necessary to ensure the safety, health and wellbeing of children attending FDC services. By requiring surrounding areas to be assessed, it reduces the likelihood of harm in environments that are partly private and not purpose-built for education and care. It also identifies any obscured areas and supports early risk control.

....

The assessment of the FDC service premises is limited to areas relevant to the safety of children. There is no less restrictive way to manage risks without considering all areas accessible to them. If nearby accessible areas are not considered, hazards may be missed, and the safety gap remains.

2.32 The explanatory statement then discusses strict liability offences which, oddly, are not identified as an issue in the introductory paragraphs of the human rights discussion:

> Strict Liability Offences
>
> Clauses 5, 41, 59 and 60 of the [National Law] create new strict liability offences for approved providers. These changes have been made to improve consistency within the National Regulations to ensure that, where appropriate, regulatory requirements have penalties attached, to align with other similar offences.
>
> **International human rights jurisprudence has found that strict liability offences are not inherently a breach of human rights.** [emphasis added]

2.33 The explanatory statement goes on:

> Under section 7 of the Adopting Act [ie the *Education and Care Services National Law (ACT) Act 2011*], the *Criminal Code 2002* is excluded from application to the National Law and Regulations. Consequently, the presumptions of interpretation in the ACT Criminal Code do not apply to the offences set out in the [National Law].
>
> It is [the Education Ministers Meeting's] intention that all offences set out in the National Law and Regulations are strict liability. This includes the offences set out in [the National Law]. However, the ultimate arbiter of the characterisation of the offence will be a relevant Court. Therefore, a presumption exists that all offences under the National Law are interpreted as strict liability, unless determined otherwise.
>
> An accepted argument against a limitation of human rights in the context of strict liability offences is that strict liability offences are crafted to address unlawful behaviour in a context where the person or entity knows, or ought to know, their legal obligations.
>
> This concept, known as the licensing concept or approach, is discussed by Cory J (judgment of L'Heureux-Dube and Cory JJ) in *R v Wholesale Travel Group Inc* [1991] 3 SCR 154 at [55]:
>
> > The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should, as part of the burden of Responsible conduct attending participation in the regulated field, be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere. Foremost among these implied terms is an undertaking that the conduct of the regulated actor will comply with and maintain a certain minimum standard of care. [p. 93]

> The new offences in the [National Law] will apply to individuals who are regulated under the National Law. Individuals seeking to be involved in the ECEC [early childhood education and care] sector must apply in some form to join the sector, are assessed for suitability in some form, must be appropriately qualified where relevant and are obliged to familiarise themselves with their obligations under the National Law. There is a community expectation that the education and care of children is closely monitored and proactively regulated.
>
> The strict liability offences meet a legitimate aim, namely the protection of the safety, health and wellbeing of children attending education and care services. The offences are also proportionate in the context of the high degree of knowledge expected of participants in the ECEC sector.
>
> Additionally, all statutory enforcement actions are subject to review rights and, where appropriate, show cause processes.

2.34 The Committee notes the arguments above in relation to the new strict liability offences created by this National Law. The Committee considers that the discussion might be interpreted as suggesting that the new offences do not need to be justified in the usual way.

2.35 First, the Committee notes that, regardless of section 7 of the *Education and Care Services National Law (ACT) Act 2011*, the Committee's scrutiny principles apply to this National Law. In particular, under principle 9(c)(ii) the Committee's resolution of appointment, the Committee is required to consider whether the National Law unduly trespasses on rights previously established by law. Strict liability offences generally attract the Committee's attention, under this principle.

2.36 The Committee's expectations in this regard are set out in the Committee's document titled *Subordinate Legislation—Technical and Stylistic Standards – Tips/Traps*:[39]

> **11. Strict and absolute liability offences**
>
> 11.1. As a rule, the Committee would prefer that any offences created by primary or subordinate legislation require that a mental element (ie intent) be evidenced before the offence is proved. Strict and absolute liability offences are, clearly, at odds with this preference. The Committee accepts, however, that practical reasons require that some offences involve strict or (in limited circumstances) absolute liability. What the Committee requires is that the explanatory statement for a subordinate law that involves strict or absolute liability expressly identify:
>
> the reasons a particular offence needs to be one of strict liability; and
>
> the defences to the relevant offence that are available, despite it being one of strict or absolute liability.

2.37 The Committee considers that it is appropriate that it have the same expectation in relation to a strict liability offence provided for by a National Law.

[39] Available at https://www.parliament.act.gov.au/__data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards-Revised-March-2022.pdf.

2.38 Second, there is the suggestion that section 7 of the *Education and Care Services National Law (ACT) Act 2011* in some way affects the scrutiny of strict liability offences provided for by a National Law. Section 7 provides:

> **7 Exclusion of territory laws**
>
> The following territory laws do not apply to the Education and Care Services National Law (ACT) or to the instruments made under that Law:
>
> (a) the *Criminal Code 2002*;
>
> (b) the *Freedom of Information Act 2016*;
>
> (c) the *Information Privacy Act 2014*;
>
> (d) the *Legislation Act 2001*.
>
> Subsection (1) (d) does not limit the application of the Legislation Act to this Act.
>
> The following territory laws do not apply to the Education and Care Services National Law (ACT) or to the instruments made under that Law, except to the extent that that Law and those instruments apply to the Regulatory Authority and the employees, decisions, actions and records of the Regulatory Authority:
>
> (a) the *Annual Reports (Government Agencies) Act 2004*;
>
> (b) the *Auditor-General Act 1996*;
>
> (c) the *Financial Management Act 1996*;
>
> (d) the *Ombudsman Act 1989*;
>
> (e) the *Public Sector Management Act 1994*;
>
> (f) the *Territory Records Act 2002*.

2.39 The Committee notes that the application of the *Human Rights Act 2004* is **not** excluded. This means that the effect of the new strict liability offences in relation to the right to be presumed innocent until proved guilty according to law, provided by subsection 22(1) of the Human Rights Act, ought to have been addressed (in the Committee's view).

2.40 The Committee notes that the explanatory statement for this National Law recognises that there is a strict liability offence issue. However, the Committee considers that the explanatory statement does not address the issue in the way that the Committee has come to expect.

2.41 **The Committee draws the attention of the Legislative Assembly to this National Law, under principle (9)(c)(ii) of the Committee's resolution of appointment, on the basis that it may trespass unduly on rights previously established by law, and also under principle (10)(d) of the Committee's resolution of appointment, on the basis that the explanatory statement for the instrument does not meet the technical or stylistic standards expected by the Committee.**

> This comment requires a response from the Minister. The Committee would be grateful if the Minister could respond before the Legislative Assembly's capacity to move to disallow the National law expires.

2.42 **The Committee also draws the attention of the Legislative Assembly to the discussion of human rights issues in the explanatory statement for this National Law.**

Government responses—No comment

2.43 The Committee received responses to the Committee's comment on the following subordinate legislation and has no further comment:

- Disallowable Instrument DI2025-272 being the Children and Young People (Care and Protection Organisation) Standards 2025 (No 1), from the Minister for Children, Youth and Families.
- Disallowable Instrument DI2025-295 being the University of Canberra Council Appointment 2025 (No 3), from the Minister for Economic Development.

2.44 The responses can be viewed online.[40]

2.45 The Committee thanks the Ministers for their responses.

Chiaka Barry MLA
Chair

10 March 2026

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

Outstanding responses

Bills/Subordinate Legislation

Report 15, dated 17 February 2026

Bill

- Firearms (Public Safety) Amendment Bill 2026.

Subordinate Legislation

- Disallowable Instrument DI2025-308 being the Motor Accident Injuries (Quality of Life Benefit) Guidelines 2023.

Responses received, to be considered in the next report:

- Crimes Legislation Amendment Bill 2025 (No 2).
- Family, Personal and Sexual Violence Amendment Bill 2025.