



Shane Rattenbury MLA

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

Mrs Giulia Jones MLA
Chair - Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mrs Jones

I write in relation to Scrutiny Report Number 50 of the Standing Committee on Justice and Community Safety (the Committee) concerning its comments in relation to the Mental Health Amendment Bill 2020.

The Committee has requested an additional response to its comments on the displacement of the requirement for the adoption of laws or instruments of another jurisdiction to be notified on the Legislation Register. In particular, the Committee is concerned that not all instruments adopted in Guidelines would be publicly accessible.

The Committee is also concerned that *“by adopting laws of another jurisdiction or instruments generally as in force from time to time the Bill will also allow guidelines to be amended, with the effect of changing, without adequate notice, the requirements faced by mental health facilities and having to be considered in exercising functions under the Act.”*

This provision is included because it is prudent to do so, noting the ongoing appetite for cooperation between the Commonwealth, States and Territories to provide consistency for mental health consumers moving between jurisdictions.

In the circumstances that should an application or adoption of the law of another jurisdiction or instrument be made, the Chief Psychiatrist would retain the same obligation to ensure awareness of the Guideline and to provide education and support for the implementation of the Guideline, regardless of the notification of the Legislation Register.

It is undesirable to allow for circumstances to arise where the ACT is subject to a superseded version of a law or instrument that renders the Guideline moot, as the law or instrument from the originating jurisdiction is no longer in force.

The displacement does not prohibit the Guideline from being notified on the Legislation Register in circumstances where it is considered appropriate to do so.

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The adoption of a displacement clause within a guideline making power is a common legislative drafting tool incorporated in several pieces of legislation in the ACT.

The Committee has requested a response as to its comments on why the potential for disallowance would prejudice the effective operation of the Act as amended. The legislation seeks to strike an appropriate balance between the operational expertise of the Chief Psychiatrist and ensuring that there is appropriate transparency over the guidelines.

As indicated in my previous response to Scrutiny Report 48, the Explanatory Statement was amended to better reflect the rationale for the use of notifiable instruments.

Thank you to the Committee for its thoughtful scrutiny of this Bill and this opportunity to engage on the issues outlined in the Report.

Yours sincerely

Shane Rattenbury MLA
Minister for Mental Health