STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY (LEGISLATIVE SCRUTINY ROLE)

SCRUTINY REPORT 1

14 December 2016
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ROLE OF COMMITTEE

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

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

(1) consider whether any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
   
   (a) is in accord with the general objects of the Act under which it is made;
   
   (b) unduly trespasses on rights previously established by law;
   
   (c) makes rights, liberties and/or obligations unduly dependent upon non-reviewable decisions; or
   
   (d) contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly;

(2) consider whether any explanatory statement or explanatory memorandum associated with legislation and any regulatory impact statement meets the technical or stylistic standards expected by the Committee;

(3) consider whether the clauses of bills (and amendments proposed by the Government to its own bills) introduced into the Assembly:
   
   (a) unduly trespass on personal rights and liberties;
   
   (b) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
   
   (c) make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
   
   (d) inappropriately delegate legislative powers; or
   
   (e) insufficiently subject the exercise of legislative power to parliamentary scrutiny;

(4) report to the Legislative Assembly about human rights issues raised by bills presented to the Assembly pursuant to section 38 of the Human Rights Act 2004;

(5) report to the Assembly on these or any related matter and if the Assembly is not sitting when the Committee is ready to report on bills and subordinate legislation, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.
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SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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


Disallowable Instrument DI2016-190 being the Government Procurement (Non-Public Employee Member) Appointment 2016 (No 1) made under section 12 of the Government Procurement Act 2001 appoints a specified person as a part-time non-public employee member of the Government Procurement Board.

Disallowable Instrument DI2016-191 being the Government Procurement (Non-Public Employee Member) Appointment 2016 (No 2) made under section 12 of the Government Procurement Act 2001 appoints a specified person as a part-time non-public employee member of the Government Procurement Board.

Disallowable Instrument DI2016-192 being the Cemeteries and Crematoria (ACT Public Cemeteries Authority Governing Board) Appointment 2016 (No 1) made under section 29 of the Cemeteries and Crematoria Act 2003 and sections 78 and 79 of the Financial Management Act 1996 appoints specified persons as chair, deputy chair and members of the ACT Public Cemeteries Authority Governing Board.

Disallowable Instrument DI2016-193 being the Public Place Names (Belconnen District) Determination 2016 made under section 3 of the Public Place Names Act 1989 determines the names of the first two divisions within the west Belconnen development project in the District of Belconnen.


Disallowable Instrument DI2016-199 being the Road Transport (General) Public Passenger Services Licence and Accreditation Fees Determination 2016 made under section 96 of the Road Transport (General) Act 1999 revokes DI2015-297 and determines fees payable for the purposes of the Act.

Disallowable Instrument DI2016-200 being the Planning and Development (Land Agency Board) Appointment 2016 (No 5) made under section 42 of the Planning and Development Act 2007 and section 78 of the Financial Management Act 1996 appoints a specified person as an ordinary member of the Land Agency Board.

Disallowable Instrument DI2016-201 being the Planning and Development (Land Agency Board) Appointment 2016 (No 4) made under section 42 of the Planning and Development Act 2007 and section 78 of the Financial Management Act 1996 appoints a specified person as an ordinary member of the Land Agency Board.
Disallowable Instrument DI2016-206 being the Road Transport (Public Passenger Services) Bus Services—Service Standards 2016 (No 1) made under section 20B of the Road Transport (Public Passenger Services) Regulation 2002 sets the Service Standards for Bus Services.

Disallowable Instrument DI2016-207 being the Road Transport (Public Passenger Services) Demand Responsive Services—Service Standards 2016 (No 1) made under section 20B of the Road Transport (Public Passenger Services) Regulation 2002 sets the Service Standards for Demand Responsive Services.

DISALLOWABLE INSTRUMENTS—COMMENT

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

ARE THESE APPOINTMENTS VALIDLY MADE?

Disallowable Instrument DI2016-185 being the Board of Senior Secondary Studies Appointment 2016 (No 3) made under section 8 of the Board of Senior Secondary Studies Act 1997 appoints a nominee of the Australian Catholic University as a member of the ACT Board of Senior Secondary Studies.

Disallowable Instrument DI2016-186 being the Board of Senior Secondary Studies Appointment 2016 (No 4) made under section 8 of the Board of Senior Secondary Studies Act 1997 appoints a nominee of the ACT Council of Parents and Citizens Association as a member of the ACT Board of Senior Secondary Studies.

Disallowable Instrument DI2016-187 being the Board of Senior Secondary Studies Appointment 2016 (No 5) made under section 8 of the Board of Senior Secondary Studies Act 1997 appoints a nominee of the Association of Parents and Friends of the ACT Schools as a member of the ACT Board of Senior Secondary Studies.

Disallowable Instrument DI2016-188 being the Board of Senior Secondary Studies Appointment 2016 (No 6) made under section 8 of the Board of Senior Secondary Studies Act 1997 appoints a nominee of the Canberra Business Chamber as a member of the ACT Board of Senior Secondary Studies.

Each of the instruments mentioned above appoints a specified person as a member of the ACT Board of Senior Secondary Studies. Each appointment is made under section 8 of the Board of Senior Secondary Studies Act 1997, which provides:

8 Membership of board

(1) The board must consist of the following members:

(a) a chair;

(b) 1 person appointed after consultation with the Canberra Institute of Technology;

(c) 1 person appointed after consultation with vocational education and training organisations;

(d) 1 person appointed after consultation with the Australian National University;
(e) 1 person appointed after consultation with the University of Canberra;

(f) 1 person appointed after consultation with the Australian Catholic University;

(g) 1 person appointed after consultation with the body known as the Association of Independent Schools;

(h) 1 person appointed after consultation with the ACT branch of the Australian Education Union;

(i) 1 person appointed after consultation with the body known as the Catholic Education Commission;

(j) 1 person appointed after consultation with the body known as the ACT Principals’ Association Inc.;

(k) 1 person appointed after consultation with the body known as the ACT Council of Parents and Citizens Associations;

(l) 1 person appointed after consultation with the Association of Parents and Friends of the ACT Schools Inc.;

(m) 1 person appointed after consultation with business and industry representative organisations in the ACT;

(n) 1 person appointed after consultation with the ACT Trades and Labour Council;

(o) the director-general.

(2) The Minister must appoint the board members (other than the director-general).

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with a Legislative Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

(3) The Minister may appoint a person to be a board member only if satisfied that the person has qualifications and expertise relevant to the functions of the board.

The appointment made by the first instrument is evidently made under paragraph 8(1)(f), as the Explanatory Statement for the instrument states:

This instrument appoints [the specified person] a nominee of the Australian Catholic University, as a member of the Board from the day after notification to 31 July 2019.

Similar statements are made in the Explanatory Statements for the other instruments mentioned above, identifying the relevant specified person as the “nominee” of one of the various organisations mentioned in paragraphs 8(1)(b) to (n). The Committee notes, however, that the power is not a power to appoint a “nominee” of one of the relevant organisations. It is a power to appoint a
person after consultation with the various organisations. While the fact that a person is a nominee of an organisation might be taken to imply that the Minister has consulted with the organisation, it would be preferable if the information provided in the Explanatory Statement more accurately reflected the power given by section 8 of the Board of Senior Secondary Studies Act.

This comment does not require a response from the Minister.

**Disapplication of subsections 47(5) and (6) of the Legislation Act 2001**


Each of the two instruments mentioned above approves a code of practice, under section 25 of the Energy Efficiency (Cost of Living) Improvement Act 2012. Section 4 of each of the instruments disapplies subsections 47(5) and (6) of the Legislation Act 2001 in relation to any instrument that is applied, adopted or incorporated by the codes of practice. The effect of subsection 47(5) is to make any law of another jurisdiction, or an instrument, that is applied by a subordinate law or by a disallowable instrument, as in force from time to time (ie rather than as it exists at the time that the subordinate law or disallowable instrument is made), a “notifiable instrument”. The effect of subsection 47(6) is to make any amendments or revisions of such (external) instruments, etc also notifiable instruments.

The effect of making an instrument a “notifiable instrument” is to require that it be published on the ACT Legislation Register. Publication of such material operates to enhance public access to the external material on which legislation sometimes relies. Disapplication of the publication requirement, obviously, limits public access to that material. While, in the past, the Committee has been prepared to accept that there are justifications for the disapplication of the publication requirement—the reference to copyright material and the need to respect the rights of copyright owners is the obvious example—the Committee has also required that a justification be provided. Further, the Committee has generally looked for a mechanism to be provided that allows public access to relevant documents, in a way that also protected the rights of copyright owners (eg making a copy available for public inspection, at a particular location, during office hours).

In the case of these instruments, the Committee notes that, in each case, the Explanatory Statement for the instrument simply states:

**Section 4 – Disapplication of Legislation Act, s47 (5) and 47 (6)**

This section allows the code of practice to apply, incorporate or adopt an instrument without the instrument having to be notified.

**Section 5 – Referenced documents**

This section contains information about documents which the code of practice refers to. Links to the relevant references documents are also provided.
Section 5 of the first instrument states:

5 Referenced documents

(1) Australian Standards are available at www.standards.org.au.

(2) A copy of the National Construction Code, which incorporates the Building Code of Australia and the Plumbing Code of Australia, is available for inspection by members of the public between 9am and 4.30pm on business days at the Access Canberra shopfront, Dame Pattie Menzies House, 16 Challis Street, Dickson or for purchase at www.abcb.gov.au

Section 5 of the second instrument states:

5 Referenced documents

(1) Australian Standards are available for purchase at www.standards.org.au.

(2) A copy of the Building Code of Australia is available for inspection by members of the public between 9am and 4.30pm on business days at the Access Canberra shopfront, Dame Pattie Menzies House, 16 Challis Street, Dickson, or for purchase at www.abcb.gov.au.

The Committee notes the difference in wording between the two provisions above and, in particular, the addition of “available for purchase” in subsection 5(1) of the second instrument.

Section 25 of the first instrument mentioned above refers to “Australian Standard ISO 10002-2006”. A search of the Standards Australia website (which is referenced in the instrument) reveals “no results” for such a standard.

Paragraph 54(2)(e) of the first instrument refers to “AS/NZS 5601”, an Australian Standard / New Zealand Standard. The Standards Australia website advises that Australian Standards “are sold and distributed worldwide by SAI Global Limited”. AS/NZS 5601 is available for purchase from SAI Global for $1,520.64 (including GST) (see https://infostore.saiglobal.com/en-au/Standards/Plumbing-and-Gas-Set-2016-1845071/).


Paragraph 132(6)(d) of the first instrument refers to “AS 2293”, an Australian Standard. That standard is available from SAI Global at no cost.

The Dictionary to the first instrument indicates that a total of 17 standards are relied upon by the instrument. Without researching the cost (if any) of each of the standards, it is relatively clear that some considerable expense would be involved in gaining access to all of the extrinsic material on which the instrument relies.

The Dictionary to the second instrument mentioned above refers to a total of 12 standards that are relied upon by that instrument. Again, without researching the cost (if any) of each of the standards, it is relatively clear that some considerable expense would be involved in gaining access to all of the extrinsic material on which the second instrument relies.
This being the case, the Committee considers that there should have been greater justification for the disapplication of subsections 47(5) and (6) of the Legislation Act to these instruments. In addition, the Committee queries why (free) public access to the various standards relied upon could not have been provided, in the way that subsection 5(2) of each of the instruments provides access to the National Construction Code, the Building Code of Australia and the Plumbing Code of Australia, at the Access Canberra shopfront.

The Committee seeks the Minister’s advice as to the justification for the disapplication of subsections 47(5) and (6) of the Legislation Act 2001 to these instruments. The Committee also seeks the Minister’s advice as to whether (free) public access to the various standards relied on by the instruments could, nevertheless, be provided.

This comment requires a response from the Minister.

**DISAPPLICATION OF SUBSECTION 47(5) OF THE LEGISLATION ACT 2001?**

Disallowable Instrument DI2016-198 being the Road Transport (Public Passenger Services) Maximum Taxi Fares for NSW Taxis in ACT Region Determination 2016 made under section 60 of the Road Transport (Public Passenger Services) Act 2001 determines maximum fares for the hiring or use of a NSW-licensed taxi operating within the ACT region.

This instrument, made under section 60 of the Road Transport (Public Passenger Services) Act 2001, determines maximum fares for hiring or use of NSW taxis within the ACT. Section 3 of the instrument provides:

3 Determination

I determine that the maximum fares for the hiring or use of a NSW taxi licensed under the Passenger Transport Act 1990 (NSW) and operating subject to section 221P of the Road Transport (Public Passenger Services) Regulation 2002 are as follows:

(a) from 1 August 2016 to 30 April 2017—the amount chargeable for the hiring in accordance with the Fares Order for Taxi Services Determination of Maximum Fares for Taxis under section 125 of the Passenger Transport Act 1990 (NSW);


(b) from 1 May 2017—the amount chargeable for the hiring in accordance with the Road Transport (Public Passenger Services) Act 2001; and

(c) where no maximum fare is prescribed under the Passenger Transport Act 1990 (NSW)—the amount chargeable for the hiring is in accordance with the Road Transport (Public Passenger Services) Act 2001.

The Committee is curious about the proposition in the note to paragraph 3(a) of the instrument and the proposition that “[t]he Legislation Act, s47(5) does not apply to this instrument”.

Subsection 47(5) of the Legislation Act 2001 provides:

(5) If a law of another jurisdiction or an instrument is applied as in force at a particular time, the text of the law or instrument (as in force at that time) is taken to be a notifiable instrument made under the relevant instrument by the entity authorised or required to make the relevant instrument.
Subsection 47(7) of the Legislation Act provides:

(7) The authorising law or, if the relevant instrument is a subordinate law or disallowable instrument, the relevant instrument may provide that—

(a) subsection (5) or (6) does not apply to the relevant instrument; or

(b) subsection (5) or (6) applies with the modifications stated in the authorising law or relevant instrument.

The issue is whether, in fact, subsection 47(5) has been disapplied, as allowed by subsection 47(7).

Section 60 of the Road Transport (Public Passenger Services) Act 2001, under which the instrument is made, does not deal with the issue of disapplication of subsection 47(5) of the Legislation Act. However, the regulation-making power, set out in section 126 of the Road Transport (Public Passenger Services) Act addresses the issue in the context of regulations. It provides:

(2) A regulation may apply, adopt or incorporate a law of another jurisdiction or an instrument, or a provision of a law of another jurisdiction or instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

This means that there is nothing in the Act to disapply subsection 47(5) in relation to regulations. That being so, it would be surprising if the provision was disapproved (by the Act) in relation to determinations under section 60 (ie on the basis that such determinations are a lower order of legislative instrument). In any event, the Committee can identify no provision that disapplies subsection 47(5) of the Legislation Act, in relation to the instrument.

This being so, the Committee wonders whether the Note to paragraph 3(a) of the instrument is intended to disapply subsection 47(5). That would not appear to be possible, given that section 127 of the Legislation Act provides that “[a] footnote, endnote, or other note, in or to an Act or statutory instrument is not part of the statutory instrument”.

The Committee seeks the Minister’s advice as to how subsection 47(5) of the Legislation Act 2001 has been disapproved in relation to this instrument.

This comment requires a response from the Minister.

MINOR DRAFTING ISSUES

Disallowable Instrument DI2016-202 being the Road Transport (Public Passenger Services) Rideshare Services—Service Standards 2016 (No 1) made under section 20B of the Road Transport (Public Passenger Services) Regulation 2002 approves the Service Standards for Rideshare Services.

Disallowable Instrument DI2016-203 being the Road Transport (Public Passenger Services) Transport Booking Services—Service Standards 2016 (No 1) made under section 20B of the Road Transport (Public Passenger Services) Regulation 2002 revokes DI2010-202 and DI2001-244 and approves the Service Standards for Transport Booking Services.
Disallowable Instrument DI2016-204 being the Road Transport (Public Passenger Services) Taxi Services—Service Standards 2016 (No 1) made under section 20B of the Road Transport (Public Passenger Services) Regulation 2002 revokes DI2010-203 and approves the Service Standards for Taxi Services.

Disallowable Instrument DI2016-205 being the Road Transport (Public Passenger Services) Independent Taxi Services—Service Standards 2016 (No 1) made under section 20B of the Road Transport (Public Passenger Services) Regulation 2002 revokes DI2012-34 and approves the Service Standards for Independent Taxi Services.

Disallowable Instrument DI2016-208 being the Road Transport (Public Passenger Services) Hire Car Services—Service Standards 2016 (No 1) made under section 20B of the Road Transport (Public Passenger Services) Regulation 2002 approves the Service Standards for Hire Car Services (Includes Restricted Hire Car Services).

Each of the instruments mentioned above approves a service standard for a regulated (transport) service, under subsection 20B(1) of the Road Transport (Public Passenger Services) Regulation 2002.

In the case of the first, second and fourth instruments, the Explanatory Statement for the instrument states:

An approval under section 20B(1) is a disallowable instrument by virtue of section 20B(4).

The Explanatory Statement for the third instrument mentioned above incorrectly refers to subsection 20B(1) as the empowering provision. The Committee notes that, as a matter of common law, this incorrect reference does not invalidate the instrument, as long as there is a power to make the instrument (see Pearce, DC and Argument, S., Delegated Legislation in Australia, 4th edition, paragraphs 13.20 to 13.24), which there clearly is here. In addition, however, the Explanatory Statements for all five instruments are incorrect in referring to subsection 20B(4) as the provision that makes these instruments disallowable. The correct reference should be to subsection 20B(3). There is no subsection 20B(4).

In addition, the Committee notes that section 20B was inserted into the Road Transport (Public Passenger Services) Regulation by the Road Transport (Taxi Industry Innovation) Legislation Amendment Regulation 2016 (No 1) (Subordinate Law SL2016-20), which the Committee has also considered for this Scrutiny Report. The relevant provision of the Amendment Regulation commenced on 1 August 2016. However, each of the five instruments mentioned above was made on 29 July 2016 and expressed to commence on 1 August 2016. This means that each of the instruments was made prior to the commencement of the empowering provision.

The Committee notes that this exercise is empowered by section 81 of the Legislation Act 2001, which provides that certain powers can be exercised between the notification and commencement of legislation. Section 81 provides:

81 Exercise of powers between notification and commencement

(1) This section applies to a power to make an appointment or statutory instrument, or to do anything else, in the following situations:

(a) the power is given by a law (the authorising law) that has been notified but has not commenced;

(b) the power is given by a law (the authorising law) as amended by another law (the amending law) and the laws have been notified, but all or any of them have not commenced.
Examples—powers to which section applies

1  power to delegate a function
2  power to give or issue an approval, consent, licence, permit or other authority (however described)
3  power to make an acting appointment
4  power to issue guidelines

Note  An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see s 126 and s 132).

(2) To remove any doubt and without limiting subsection (1), this section applies to any of the following powers if the power is to be exercised in relation to an entity to be established by the authorising law or the authorising law as amended by the amending law:

(a) a power to make an appointment to the entity;
(b) a power to make a statutory instrument for the purposes of the entity;
(c) a power to do anything else in relation to the entity.

Example

This section applies to powers under an authorising law to be exercised in relation to the conduct of an election for members of a board to be established as a corporation by the authorising law.

(3) The power may be exercised at any time even though the authorising law, or the authorising law and amending law (or either of them), is not in force at the time.

(4) For the exercise of the power, the authorising law, or the authorising law and amending law, are taken to be in force at the time of the exercise of the power.

(5) Also, anything else may be done under the power at any time for the purpose of bringing, or in relation to bringing, the authorising law, or the authorising law as amended by the amending law, into operation.

(6) If an appointment or statutory instrument made under this section declares that this subsection applies to it, then, unless the appointment or instrument commences on a different date or at a different time under another provision of this chapter, the appointment or instrument commences on—

(a) for an appointment or statutory instrument that is a legislative instrument—the day after its notification day; or
(b) for any other appointment or statutory instrument—the day after the day it is made or, if it is required under an Act or statutory instrument to be approved (however described) by the Executive, a Minister or any other entity, the day after the day it is approved.

(7) In any other case, an appointment or statutory instrument made under this section commences on the latest of the following:
(a) the commencement of the authorising law or, if subsection (1) (b) applies and the amending law commences after the authorising law, the commencement of the amending law;

(b) on the day or at the time the appointment or instrument would have commenced if it had not been made under this section.

(8) In the application of this section to a statutory instrument that is not a legislative instrument, a reference to the instrument being notified is a reference to the instrument being made or, if it is required under an Act or statutory instrument to be approved (however described) by the Executive, a Minister or any other entity, to the instrument being approved.

(9) This section is a determinative provision.

Note See s 5 for the meaning of determinative provisions, and s 6 for their displacement.

The Committee notes that the Amendment Regulation was notified on 26 July 2016, so there is no suggestion that section 81 of the Legislation Act cannot operate to allow the exercise of the relevant powers, by the Minister, on 29 July 2016. However, the Committee considers that the Explanatory Statements for the instruments mentioned above might have mentioned that section 81 is relied upon. This comment also applies to the Explanatory Statements for Disallowable Instrument DI2016-206 and Disallowable Instrument DI2016-207.

This comment does not require a response from the Minister.

SUBORDINATE LAWS—NO COMMENT

The Committee has examined the following subordinate laws and offers no comment on them:

Subordinate Law SL2016-18 being the Road Transport (Offences) Amendment Regulation 2016 (No 2) made under the Road Transport (General) Act 1999 and Victims of Crime Act 1994 increases infringement notice penalties for offences under ACT road transport law.

Subordinate Law SL2016-19 being the Leases (Commercial and Retail) Amendment Regulation 2016 (No 1) made under the Leases (Commercial and Retail) Act 2001 prescribes an exempt lease for the purposes of the Act.

SUBORDINATE LAW—COMMENT

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

STRICT LIABILITY OFFENCES / HUMAN RIGHTS ISSUES

This subordinate law amends the *Road Transport (Public Passenger Services) Regulation 2002*, and other regulations, to implement “an amended regulatory framework for the on-demand public transport industry” (ie bus services, taxi services, hire cars, etc). Among other things, the subordinate law introduces over 50 new strict liability offences. As the Explanatory Statement for the subordinate law notes:

A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for the physical elements of the offence to which strict liability applies. Essentially, this means that conduct alone is sufficient to make the defendant culpable.


**STRICT AND ABSOLUTE LIABILITY OFFENCES**

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.

The Committee notes that the Explanatory Statement for this subordinate law, under the heading “Human Rights”, addresses the Committee’s requirements in some detail, noting that the various new strict liability offences contained in this subordinate law “may be seen as engaging rights under the *Human Rights Act 2004* (the HRA) in relation to criminal proceedings (presumption of innocence until proven guilty)”, noting that “[s]ection 22(1) of the HRA provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.”

The Committee notes that the discussion of the strict liability offences in the Explanatory Statement for this subordinate law meets the requirements set out in the Committee’s Tips/Traps document.

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

**NATIONAL LAWS—COMMENT**

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

**Rail Safety National Law National Regulations Variation Regulations 2016 (2016 No 360) made under the *Rail Safety National Law (South Australia) Act 2012*.**

**Rail Safety National Law National Regulations (Fees) Variation Regulations 2016 (2016 No 361) made under the *Rail Safety National Law (South Australia) Act 2012*.**
The Committee notes with approval that, in line with comments made by the Committee in the previous Assembly, these National Laws are accompanied by a detailed Explanatory Statement.

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

**REGULATORY IMPACT STATEMENTS—NO COMMENT**

The Committee has examined regulatory impact statements for the following instruments and offers no comment on them:


Giulia Jones MLA
Chair
14 December 2016