

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

SCRUTINY REPORT 16

3 APRIL 2018

COMMITTEE MEMBERSHIP

Ms Elizabeth Lee MLA (Chair)
Ms Bec Cody MLA (Deputy Chair)
Ms Nicole Lawder MLA
Mr Chris Steel MLA

SECRETARIAT

Ms Julia Agostino (Secretary)
Ms Anne Shannon (Assistant Secretary)
Mr Stephen Argument (Legal Adviser—Subordinate Legislation)
Mr Daniel Stewart (Legal Adviser—Bills)

CONTACT INFORMATION

Telephone 02 6205 0173
Facsimile 02 6205 3109
Post GPO Box 1020, CANBERRA ACT 2601
Email scrutiny@parliament.act.gov.au
Website www.parliament.act.gov.au

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*; and
- (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.

Table of Contents

BILLS	1
BILLS—COMMENT	1
Domestic Animals Legislation Amendment Bill 2018.....	1
Health (Improving Abortion Access) Amendment Bill 2018.....	3
Justice and Community Safety Legislation Amendment Bill 2018.....	4
Road Transport Reform (Light Rail) Legislation Amendment Bill 2018	6
SUBORDINATE LEGISLATION	9
DISALLOWABLE INSTRUMENTS—NO COMMENT	9
DISALLOWABLE INSTRUMENTS—COMMENT	11
NATIONAL REGULATIONS—COMMENT	13
GOVERNMENT RESPONSES	16
GOVERNMENT RESPONSES—COMMENT	17
OUTSTANDING RESPONSES	19

BILLS

BILLS—COMMENT

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

DOMESTIC ANIMALS LEGISLATION AMENDMENT BILL 2018

This Bill amends the *Domestic Animals Act 2000* and *Domestic Animals Regulation 2001*, and makes minor amendments to the *Domestic Animals (Racing Greyhounds) Amendment Act 2017*, to align recent amendments made to the legislation with respect to racing greyhounds and dangerous dogs, and to allow issue of fines under the infringement framework by stating or reframing offences as strict liability offences.

***Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—
Committee terms of reference paragraph (3)(a)***

PROPERTY RIGHTS

The Bill amends provisions of the Domestic Animals Act to allow the removal of racing greyhounds or to restrict the way in which racing greyhounds are owned, kept or used. The Bill will therefore authorise interference with property rights over such animals. As described in the explanatory statement accompanying the Bill, the interference with property rights is generally conditioned on demonstrating the harm caused by the animal, there is a lack of effective control over the animal or there is a potential risk to public safety. There are also a range of other protections in place before the property rights can be affected. The limitations on property rights can therefore be considered a proportionate response in meeting the legislation's legitimate objectives and is therefore not, in the committee's view, an undue trespass on a person's property rights. The Committee refers the Assembly to the justification provided for interference with property rights in the explanatory statement.

The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.

***Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—
Committee terms of reference paragraph (3)(a)***

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

RIGHT TO THE PRESUMPTION OF INNOCENCE (SECTION 22 HRA)

The Bill will amend a large number of existing offences under the Domestic Animals Act to make them strict liability offences to facilitate their enforcement through the use of infringement notices (see the list provided on page 6 of the explanatory statement). As strict liability offences reduce the elements of an offence necessary to establish guilt, they are considered a limitation on the right to the presumption of innocence protected under section 22 of the HRA. As the explanatory statement accompanying the Bill notes, the strict liability offences generally involve imposing requirements that the owner or carer should reasonably be taken to be aware of, either because of the general requirements associated with ownership of a dog or through having been informed of, and in some

cases agreeing to, the conditions, including as an alternative to having the dog seized. The strict liability offences have also been drafted in compliance with the *Guide to Drafting Offences*,¹ including the recommended maximum penalty of 50 penalty units. The limitation on the presumption of innocence associated with the imposition of strict liability offences can therefore be considered reasonable and proportionate. The Committee notes the assessment of the limitation of the presumption of innocence provided in the explanatory statement using the framework set out in section 28 of the HRA and refers the Assembly to that assessment.

The Committee, however, is concerned over provisions in the Bill which amend the range of conditions which can be imposed on licences, breach of which will be the basis of strict liability offences. Section 21 of the *Domestic Animals Act 2000* allows the registrar to impose conditions on a multiple dog licence. Subsection 26(3) provides for the conditions that may be included. It is an offence to fail to comply with those conditions, with a maximum penalty of 50 penalty units. Clause 12 of the Bill will amend that section to enable conditions on multiple dog licences to be prescribed in regulations or other condition the registrar considers appropriate. Clause 13 of the Bill will make failing to comply with conditions a strict liability offence.

A list of prescribed conditions is included in the Bill as part of amendments to the *Domestic Animals Regulation 2001* (clause 70). As described in the explanatory statement accompanying the Bill, it would generally be clear and straightforward to establish if there is a breach of those conditions. However, establishing a breach of future conditions imposed by the regulations may not be similarly straightforward, and there is no such limitation on the nature of the conditions imposed by registrar.

In the Committee's view, it is not clear that the Domestic Animals Act currently allows the registrar to impose conditions outside the examples given in the relevant subsections. In any event, any justification for the Bill's limitation of the right to the presumption of innocence due to introduction of a strict liability offence needs to go beyond reference to the conditions currently proposed to be included in regulations. Allowing the possible conditions which may form an element of the strict liability offence to be left to regulations or the discretion of the registrar also should be justified using the framework set out in section 28 of the HRA.

The Committee also notes that allowing conditions which form an element of a strict liability offence to be prescribed in regulations without specifying the nature of those conditions may be considered an inappropriate delegation of legislative powers.² Similarly, allowing the registrar to impose any conditions they consider to be appropriate may be considered as imposing an obligation unduly dependent upon insufficiently defined administrative powers.³ Further justification needs to be provided in the explanatory statement for why the range of conditions able to be imposed by the registrar is determined in the way proposed by the Bill.

A similar approach to the imposing of conditions on licences is taken in clause 15 with respect to the issue of dangerous dog licences under section 26. The Committee notes, however, that there does not appear to be an offence associated with breach of conditions imposed on a dangerous dog licence and the Bill does not propose to add an offence, of strict liability or otherwise, and hence no further justification is needed.

¹ Department of Justice and Community Services, *Guide for Framing Offences*, April 2010

² As relevant to paragraph (3)(d) of the Committee's resolution of appointment.

³ As relevant to paragraph (3)(b) of the Committee's Resolution of Appointment.

Clauses 40 and 43 (issue of a control order when dealing with an attacking, harassing or menacing dog under section 53CA), clauses 47 and 48 (home impoundment when investigating complaints about attacking, harassing or menacing dogs under section 56A), and clauses 50 and 51 (home impoundment of dogs otherwise seized under section 60), also provide for possible conditions to be prescribed in regulations or as considered appropriate by the registrar. The Committee recognises that these provisions will clarify existing discretions under the current Domestic Animals Act which are not expressly qualified. However, some justification for why it was considered appropriate for possible conditions to be set out in regulations or at the discretion of the registrar should be provided.

The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond.

HEALTH (IMPROVING ABORTION ACCESS) AMENDMENT BILL 2018

This Bill amends the *Health Act 2003* to increase the availability of termination of pregnancy services in the Territory.

Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?— Committee terms of reference paragraph (3)(a)

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

RIGHT TO LIFE (SECTION 9 HRA)

Part 6 of the Health Act currently requires abortions, or causing a women’s miscarriage, to be carried out by a doctor in an approved medical facility. The Minister may approve medical facilities on the basis of their suitability on medical grounds. Under existing section 84, no-one is under a duty to carry out or assist in carrying out an abortion and is entitled to refuse to assist in carrying out an abortion.

The Bill will amend the Health Act in two main ways: by allowing a doctor or nurse to supply or administer drugs which cause a pregnancy to end prematurely, or a pharmacist to supply a termination drug in accordance with a prescription, without having to be in an approved medical facility; and to require a doctor or nurse to carry out or assist with a surgical termination in an emergency where a termination is necessary to preserve the life of the pregnant person. The Bill will also amend the approval of medical facilities for carrying out surgical terminations by requiring approval where the Minister is reasonably satisfied that the medical facility is suitable.

By extending the premises in which a person can receive termination drugs, the Bill potentially decreases the availability of medical care should it be required as a consequence of the termination of the pregnancy. The Bill, therefore, limits the right to life protected under section 9 of the HRA in so far as that right extends to the provision of essential medical care.

The explanatory statement accompanying the Bill recognises the limit on the right to life and justifies that limitation using the framework set out in section 28 of the HRA, and the Committee refers the Assembly to that analysis. In the view of the Committee, there are a range of regulatory and professional requirements in addition to those proposed under the Health Act which restrict availability and administration of drugs which could lead to the termination of a pregnancy. The requirement that a termination drug only be administered by a doctor or nurse or supplied in accordance with a prescription therefore requires that there has been an assessment of the potential health consequences of taking the drug. The Bill’s proposed limit on the right to life can therefore be considered to be reasonable and justified in light of the legitimate objective of increasing access to termination drugs.

The Committee draws this matter to the attention of the Assembly, but does not require a response from the Member.

RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE, RELIGION AND BELIEF (SECTION 14 HRA)

The right to freedom of thought, conscience, religion and belief includes freedom from coercion which “would limit [a person’s] freedom to have or adopt a religion or belief in worship, observance, practice or teaching”.⁴ As the explanatory statement accompanying the Bill acknowledges, forcing a person to perform or assist with an abortion is likely to be considered a limitation on this right.

The Bill, however, largely preserves the ability to refuse to carry out or assist in carrying out an abortion, although it restricts that ability to a refusal on religious or other conscientious grounds. It provides that a doctor or nurse “must not refuse, only because of a conscientious objection, to carry out, or assist in carrying out, a surgical termination in an emergency where a termination is necessary to preserve the life of the pregnant person”.

The Bill also requires, in other than life threatening situations, a doctor or nurse refusing to administer or supply a termination drug or carry out surgery to tell the person making the request that their refusal is due to their conscientious objection. The Bill also does not provide any direct means to enforce these requirements, although they may impact on quality assurance measures and determinations of the scope of clinical practice otherwise provided for by the Health Act. However, the impacts of the Bill on the right to freedom of thought, conscience, religion and belief are justified in the explanatory statement as if they were directly enforceable.

Therefore any limitation on the right to freedom of thought, conscience, religion and belief is a reasonable and proportionate response to a threat to the life of a pregnant person. The explanatory statement in support of the Bill sets out a justification for this limitation using the framework set out in section 28 of the HRA, and the Committee refers the Assembly to that analysis.

The Committee draws this matter to the attention of the Assembly, but does not require a response from the Member.

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2018

This Bill amends various legislation relating to justice and community safety.

***Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—
Committee terms of reference paragraph (3)(a)***

RETROSPECTIVE EFFECT

Schedule 4 of the *Civil Law (Wrongs) Act 2002* provides for the creation of schemes to, among other things, limit various forms of liability of members of occupational associations arising from the performance of the member’s occupation.⁵ Currently, the Minister may extend the period for which a scheme is in force, only once and for no longer than 12 months, by issuing a notifiable instrument.⁶ Any instrument extending a scheme must be notified under the *Legislation Act 2001* prior to the day

⁴ Subsection 14(2) HRA.

⁵ See *Civil Law (Wrongs) Act* Schedule 4, sections 4.2 and 4.24.

⁶ *Civil Law (Wrongs) Act* Schedule 4, section 4.28

the period ends. The Bill will amend this requirement by allowing an instrument to be effective to extend the period for which a scheme is in force “even if the instrument is notified after the day the scheme ends.”.

The apparent effect of this amendment will be to allow an instrument to change the force of a scheme with effect prior to its notification under the Legislation Act. The instrument will therefore have retrospective effect. The effect of this retrospectivity may be to change what would otherwise be a limit on the liability of persons protected by the scheme. As acknowledged in the explanatory statement accompanying the Bill: “[t]he retrospectivity of a notifiable instrument extending the scheme will ensure that a claimant with a claim that arises during the time a scheme has lapsed will not be entitled to more damages than claimants whose claims arise at other times”.

As the Committee has accepted previously, even where the retrospective operation of a Bill does not limit the protection against retrospective criminal laws in section 25 of the HRA, any prejudicial operation may amount to an undue trespass on personal rights and liberties under the terms of paragraph (3)(a) of the Committee’s terms of reference.

The explanatory statement suggests that retrospective operation is needed to prevent an administrative error in notification of the instrument leading to a different cap on damages being applicable. However, the ability to retrospectively extend the operation of a scheme is not limited to correction of administrative errors. It may potentially allow an extension to occur up to 12 months after the expiry of the scheme. There is also no requirement that any extension to a scheme be made immediately. In the Committee’s view, further justification for the possible retrospective extension of a scheme is required.

The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond.

The Bill also amends the *Heavy Vehicle National Law (ACT) Act 2013* (‘ACT Act’) to retrospectively validate various amending regulations. The ACT Act adopts the Heavy Vehicle National Law as a law in the ACT. The Heavy Vehicle National Law in turn provides for regulations to be made and amended through publication published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.⁷ Under section 8 of the ACT Act, and in accordance with section 64 of the *Legislation Act 2001*, any such national regulations have to be presented to the Assembly within six sitting days after publication on the NSW legislation website. If not, the regulations are taken to be repealed.⁸

The Bill refers to two amending regulations: the Heavy Vehicle (General) National Amendment Regulation (NSW); and the Heavy Vehicle National Amendment Regulation 2017 (NSW). As discussed later in this report, these regulations were not tabled in the Assembly within six sitting days of their publication on the NSW legislation website. They were therefore repealed from the sixth sitting day after their publication. They no longer had effect from the date of their repeal, and any amendments they made to the previous version of the regulations were reversed.⁹

⁷ See section 733 of Schedule 1 to the *Heavy Vehicle National Law Act 2012* (Qld), as applied by section 7 of the Heavy Vehicle National Law.

⁸ See Legislation Act subsection 64(2).

⁹ See section 66 Legislation Act.

The Bill inserts a new Part 10 into the ACT Act which provides that the national regulations made for the Heavy Vehicle National Law are taken to be amended by the two amending regulations as if they had been presented to the Assembly in accordance with the Legislation Act, section 64(1) (ie within six sitting days), and had not been taken to be repealed. The effect of this provision is apparently to retrospectively restore the legal effect of the amending regulations so that they had a continuous legal effect from the date of their commencement.

As commented on above, even where the retrospective operation of a Bill does not limit the protection against retrospective criminal laws in section 25 of the HRA, any prejudicial operation may amount to an undue trespass on personal rights and liberties under the terms of paragraph (3)(a) of the Committee's terms of reference. The explanatory statement recognises the retrospective effect of the Bill's amendments to the ACT Act but suggests that the amending regulations "give effect to a number of minor and technical amendments that amount to a lessening of regulation. The amendments have no significant impact on heavy vehicle operators and tidy up existing national regulations." This suggests that the prejudicial effect of the amendments will not be significant, though in the Committee's view, a more detailed explanation of the effect of the amendments and a justification for any prejudicial effect would have been preferred.

The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.

Do any provisions of the Bill insufficiently subject the exercise of legislative power to parliamentary scrutiny—Committee terms of reference paragraph (3)(e)

Clause 8 of the Bill will substitute a new paragraph 8(2)(b) in the Heavy Vehicle National Law. The effect of this clause will be to extend the period in which national regulations for that National Law published on the New South Wales legislation website have to be presented to the Assembly from the current 6 sitting days to 20 sitting days. The explanatory statement suggests that this extension is needed "to allow sufficient time for identification of regulations and arrangements for presentation to the Legislative Assembly to occur." The Committee is concerned that extending the time for presentation to the Assembly to 20 sitting days may mean that changes to the national regulations may not be subject to scrutiny by the Assembly, and will continue to have legal effect, for possibly over six months. While the Committee recognises the general need for national laws to remain, in that sense, national, it is still essential for national regulations to be subject to parliamentary scrutiny by the Assembly in a timely fashion. The Committee therefore requests further explanation as to why the period for presentation to the Assembly should be extended to 20 sitting days.

The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond.

ROAD TRANSPORT REFORM (LIGHT RAIL) LEGISLATION AMENDMENT BILL 2018

This Bill amends the road transport legislation to establish the regulatory framework for the operation of the light rail as a public passenger service as well as amending the *Rail Safety National Law (ACT) 2014* ('ACT Rail Safety Act') to incorporate national amendment regulations.

***Do any provisions of the Bill amount to an undue trespass on personal rights and liberties?—
Committee terms of reference paragraph (3)(a)***

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

RETROSPECTIVE EFFECT

RETROSPECTIVE CRIMINAL LAWS (SECTION 25 HRA)

The Bill inserts a new Part 11 into the ACT Rail Safety Act to validate the effect for the purpose of the ACT of various amending regulations, namely, the Rail Safety National Law National Regulations (Fees and Returns) Variation Regulations 2017 (NSW); the Rail Safety National Law National Regulations (Miscellaneous) Variation Regulations 2017 (NSW); and the Rail Safety National Law National Regulations (Queensland Fatigue Provisions) Variation Regulations 2017 (NSW).

As described later in this report, and similar to the Heavy Vehicle National Law amending regulations discussed above in relation to the Justice and Community Safety Legislation Amendment Bill 2018, the effect of the ACT Rail Safety Act is to give automatic application as a law of the ACT to any national rail safety regulations published on the NSW legislation website. However, any such national regulations have to comply with section 64 of the Legislation Act. The various amending regulations in question were not tabled in the Assembly within six sitting days of their publication and hence were taken to be repealed.

Under the proposed section 122 inserted by the Bill, the amending regulations are given effect as if they were presented to the Assembly in accordance with section 64 of the Legislation Act and were not repealed under subsection 64(2). The effect of this provision is apparently to retrospectively restore the legal effect of the amending regulations so that they had a continuous legal effect from the date of their commencement on 30 June 2017 and 1 July 2017.

As commented above, even where the retrospective operation of a Bill does not limit the protection against retrospective criminal laws in section 25 of the HRA, any prejudicial operation may amount to an undue trespass on personal rights and liberties under the terms of paragraph (3)(a) of the Committee's terms of reference. The explanatory statement accompanying the Bill summarises the effect of the amending regulations. These include increases in various fees payable. The Rail Safety National Law National Regulations (Queensland Fatigue Provisions) Variation Regulations 2017, amends the prescribed requirements for fatigue risk management programs, where the failure to prepare and implement such a program in accordance with those prescribed requirements is an offence subject to a maximum penalty of \$50 000 in the case of an individual and \$500 000 in the case of a body corporate.¹⁰

The Committee therefore considers that a more detailed explanation of the retrospective effect of the amending regulations should have been provided, and a justification offered for the prejudicial effect of that retrospective impact. Given that the impact may include modifying the law applicable to an offence provision, an assessment should be provided of whether the amending regulations limit the protection against retrospective criminal laws provided by section 25 of the HRA and, if so, a justification for that limitation using the framework set out in section 28 of the HRA.

The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond.

¹⁰ See section 116 of the *Rail Safety National Law (South Australia) Act 2012* (SA).

RIGHT TO RECOGNITION AND EQUALITY BEFORE THE LAW / THE EQUAL PROTECTION OF THE LAW WITHOUT DISCRIMINATION (SECTION 8 HRA)

RIGHT TO PROTECTION OF THE FAMILY AND CHILDREN (SECTION 11 HRA)

RIGHT TO PRIVACY AND REPUTATION (SECTION 12 HRA)

RIGHT TO FREEDOM OF MOVEMENT (SECTION 13 HRA)

RIGHT TO LIBERTY AND SECURITY OF PERSON (SECTION 18 HRA)

RIGHT TO THE PRESUMPTION OF INNOCENCE (SECTION 22 HRA)

Each of these rights as protected under the HRA may be considered limited by various proposed provisions in the Bill. The explanatory statement provides a detailed examination of the impact of the Bill on each of these rights and justifies any limitation using the framework set out in section 28 of the HRA. As the Committee generally agrees with the approach taken in the explanatory statement and accepts any limitations as being reasonable and demonstrably justified it is not proposed to repeat or summarise the explanatory statement here. Rather the Committee commends the generally comprehensive analysis of the human rights implications of the Bill presented in the explanatory statement and refers the Assembly to that analysis.

The Committee draws this matter to the attention of the Assembly, but does not require a response from the Minister.

RIGHT TO FREEDOM OF EXPRESSION (SECTION 16 HRA)

Under the Bill, an authorised persons or police officers can direct a person to get off, or not on, a light rail vehicle (section 70AAL), or to leave a light rail stop (section 70AAN) on the basis, among other things, that the person is under the influence of liquor or a drug and causing, or is likely to cause, a nuisance or an annoyance to someone else. Failing to comply with the direction is a strict liability offence with a maximum penalty of 5 penalty units.

In *Evans v State of New South Wales* [2008] FCAFC 130, the Full Court of the Federal Court considered a similar provision, in that case in a regulation, enabling directions to be given to persons in a declared area to cease engaging in conduct that “causes annoyance”. It was held that conduct which causes annoyance may extend to “expressions of opinion which neither disrupt nor interfere with the freedoms of others, nor are objectively offensive in the sense traditionally used in State criminal statutes.”¹¹ The Court therefore considered that aspect of the regulation to affect freedom of speech.

While the Committee acknowledges that the Bill allows directions to be given to prevent annoyance only where a person is intoxicated, the intoxication need not be the reason why the conduct is considered annoying. By enforcing directions based on preventing annoyance the Bill can be seen as limiting the freedom of expression protected by section 16 of the HRA. A justification for any limitation on the right to freedom of expression should be provided using the framework set out in section 28 of the HRA.

The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond.

¹¹ *Evans v State of New South Wales* [2008] FCAFC 130 at [83]

Do any provisions of the Bill insufficiently subject the exercise of legislative power to parliamentary scrutiny—Committee terms of reference paragraph (3)(e)

Clause 2.1 of Schedule 2 of the Bill will substitute a new paragraph 7(2)(b) in the ACT Rail Safety Act. The effect of this clause will be to extend the period in which national regulations for that national law published on the New South Wales legislation website have to be presented to the Assembly from the current 6 sitting days to 20 sitting days. The explanatory statement suggests that this extension is needed to “ensure that there is sufficient time to identify and present national amendment regulations to the Legislative Assembly”. The Committee is concerned that extending the time for presentation to the Assembly to 20 sitting days may mean that changes to the national regulations may not be subject to scrutiny by the Assembly, and will continue to have legal effect, for possibly over six months. While the Committee recognises the general need for national laws to remain, in that sense, national, it is still essential for national regulations to be subject to parliamentary scrutiny by the Assembly in a timely fashion. The Committee therefore requests further explanation as to why the period for presentation to the Assembly should be extended to 20 sitting days.

The Committee draws this matter to the attention of the Assembly, and asks the Minister to respond.

SUBORDINATE LEGISLATION

DISALLOWABLE INSTRUMENTS—NO COMMENT

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

- **Disallowable Instrument DI2018-11 being the Heritage (Council Member) Appointment 2018 (No 1) made under section 17 of the *Heritage Act 2004* appoints a specified person, an expert in the discipline of architecture, as a member of the ACT Heritage Council.**
- **Disallowable Instrument DI2018-12 being the Heritage (Council Member) Appointment 2018 (No 2) made under section 17 of the *Heritage Act 2004* appoints a specified person, an expert in the discipline of archaeology, as a member of the ACT Heritage Council.**
- **Disallowable Instrument DI2018-13 being the Heritage (Council Member) Appointment 2018 (No 3) made under section 17 of the *Heritage Act 2004* appoints a specified person, an expert in the discipline of landscape architecture, as a member of the ACT Heritage Council.**
- **Disallowable Instrument DI2018-14 being the Heritage (Council Member) Appointment 2018 (No 4) made under section 17 of the *Heritage Act 2004* appoints a specified person, a public representative representing the community, as a member of the ACT Heritage Council.**
- **Disallowable Instrument DI2018-15 being the Heritage (Council Member) Appointment 2018 (No 5) made under section 17 of the *Heritage Act 2004* appoints a specified person, a public representative representing the Aboriginal community, as a member of the ACT Heritage Council.**
- **Disallowable Instrument DI2018-16 being the Heritage (Council Member) Appointment 2018 (No 6) made under section 17 of the *Heritage Act 2004* appoints a specified person, a public representative representing the property ownership, management and development sector, as a member of the ACT Heritage Council.**

- **Disallowable Instrument DI2018-17 being the Heritage (Council Chairperson) Appointment 2018 (No 1) made under section 17 of the *Heritage Act 2004* appoints a specified person as chairperson of the ACT Heritage Council.**
- **Disallowable Instrument DI2018-18 being the Heritage (Council Deputy Chairperson) Appointment 2018 (No 1) made under section 17 of the *Heritage Act 2004* appoints a specified person as deputy chairperson of the ACT Heritage Council.**
- **Disallowable Instrument DI2018-19 being the Children and Young People (Death Review Committee) Appointment 2018 (No 1) made under section 727D of the *Children and Young People Act 2008* revokes DI2015-12 and appoints specified persons as members of the ACT Children and Young People Death Review Committee.**
- **Disallowable Instrument DI2018-21 being the Public Trustee and Guardian (Investment Board) Appointment 2018 (No 1) made under paragraph 48(1)(b) of the *Public Trustee and Guardian Act 1985* appoints a specified person as a member of the Public Trustee and Guardian Investment Board.**
- **Disallowable Instrument DI2018-22 being the Long Service Leave (Portable Schemes) Governing Board Appointment 2018 (No 1) made under section 79E of the *Long Service Leave (Portable Schemes) Act 2009* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member representing employer organisations of the Long Service Leave Governing Board.**
- **Disallowable Instrument DI2018-23 being the Long Service Leave (Portable Schemes) Governing Board Appointment 2018 (No 2) made under section 79E of the *Long Service Leave (Portable Schemes) Act 2009* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member representing employer organisations of the Long Service Leave Governing Board.**
- **Disallowable Instrument DI2018-24 being the Long Service Leave (Portable Schemes) Governing Board Appointment 2018 (No 3) made under section 79E of the *Long Service Leave (Portable Schemes) Act 2009* and section 78 of the *Financial Management Act 1996* appoints a specified person as a member representing employee organisations of the Long Service Leave Governing Board.**
- **Disallowable Instrument DI2018-25 being the Road Transport (General) Application of Road Transport Legislation Declaration 2018 (No 3) made under section 13 of the *Road Transport (General) Act 1999* determines that the road transport legislation does not apply to an entrant vehicle, or the driver of an entrant vehicle, participating in a special stage of the Rallye des Femmes.**
- **Disallowable Instrument DI2018-26 being the Medicines, Poisons and Therapeutic Goods (Medicines Advisory Committee) Appointment 2018 (No 1) made under section 635 of the *Medicines, Poisons and Therapeutic Goods Regulation 2008* and section 194 of the *Medicines, Poisons and Therapeutic Goods Act 2008* appoints a specified person as a member of the Medicines Advisory Committee.**
- **Disallowable Instrument DI2018-27 being the Nature Conservation (Listed Migratory Species) Action Plan 2018 made under sections 104 and 105 of the *Nature Conservation Act 2014* sets out the final version of the action plan for listed migratory species for the purposes of the Act.**
- **Disallowable Instrument DI2018-28 being the Blood Donation (Transmittable Diseases) Plasma Donor Form 2018 (No 1) made under subsection 10(3) of the *Blood Donation (Transmittable Diseases) Act 1985* approves the Plasma Donor Questionnaire form.**

- **Disallowable Instrument DI2018-29** being the **Civil Law (Wrongs) Professional Standards Council Appointment 2018 (No 4)** made under Schedule 4, section 4.38 of the *Civil Law (Wrongs) Act 2002* appoints a specified person as a member of the ACT Professional Standards Council.
- **Disallowable Instrument DI2018-30** being the **Public Place Names (Watson) Determination 2018** made under section 3 of the *Public Place Names Act 1989* determines the name of four roads for specified public places in the division of Watson.
- **Disallowable Instrument DI2018-31** being the **Road Transport (General) Application of Road Transport Legislation Declaration 2018 (No 4)** made under section 13 of the *Road Transport (General) Act 1999* declares that certain parts of the road transport legislation do not apply to a designated vehicle or driver participating in the LCCC Blue Range Rally Sprint.
- **Disallowable Instrument DI2018-32** being the **Work Health and Safety (Work Safety Council Employer Representative) Appointment 2018 (No 1)** made under Schedule 2, section 2.3 of the *Work Health and Safety Act 2011* revokes DI2017-220 and appoints a specified person as a member of the Work Safety Council, representing the interests of employers.
- **Disallowable Instrument DI2018-33** being the **Animal Diseases (Exotic Diseases) Declaration 2018** made under section 12 of the *Animal Diseases Act 2005* revokes DI2011-296 and updates the list of declared exotic diseases in the ACT.
- **Disallowable Instrument DI2018-34** being the **Animal Diseases (Endemic Diseases) Declaration 2018** made under section 16 of the *Animal Diseases Act 2005* revokes DI2014-289 and updates the list of declared endemic diseases in the ACT.
- **Disallowable Instrument DI2018-35** being the **Board of Senior Secondary Studies Appointment 2018 (No 1)** made under section 8 of the *Board of Senior Secondary Studies Act 1997* appoints a nominee of the Australian National University as a member of the ACT Board of Senior Secondary Studies.
- **Disallowable Instrument DI2018-36** being the **Board of Senior Secondary Studies Appointment 2018 (No 2)** made under section 8 of the *Board of Senior Secondary Studies Act 1997* appoints a nominee of the Association of Independent Schools of the ACT as a member of the ACT Board of Senior Secondary Studies.
- **Disallowable Instrument DI2018-37** being the **Race and Sports Bookmaking (Sports Bookmaking Venues) Determination 2018 (No 1)** made under subsection 21(1) of the *Race and Sports Bookmaking Act 2001* revokes DI2017-31 and determines specified Tabcorp ACT Pty Ltd locations to be sports bookmaking venues for the purposes of the Act.

DISALLOWABLE INSTRUMENTS—COMMENT

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

WHAT IS THE BASIS FOR THIS INSTRUMENT BEING MADE?

Disallowable Instrument DI2018-20 being the **Nature Conservation (Lower Cotter Catchment) Reserve Management Plan 2018 (No 1)** made under sections 183 and 184 of the *Nature Conservation Act 2014* determines the Lower Cotter Catchment Reserve Management Plan 2018 for the purposes of the Act.

This instrument, which approves a draft reserve management plan for the Lower Cotter Catchment, states that it is made under sections 183 and 184 of the *Nature Conservation Act 2014*. Section 183 provides:

183 Draft reserve management plan—Minister to approve, return or reject

- (1) This section applies if—
 - (a) a Legislative Assembly committee refers a draft plan back to the Minister under section 181 (4); or
 - (b) the Minister may take action under section 182 (3); or
 - (c) a custodian resubmits a draft plan to the Minister under section 185 (Draft reserve management plan—Minister’s direction to revise etc).
- (2) If the Legislative Assembly committee has made a recommendation about the draft plan, the Minister must consider the recommendation.
- (3) The Minister must, not later than the required time—
 - (a) approve the draft plan; or
 - (b) return the draft plan to the custodian and direct the custodian to take 1 or more of the following actions in relation to it:
 - (i) if the Legislative Assembly committee has made a recommendation about the draft plan—consider the recommendation;
 - (ii) carry out stated further consultation;
 - (iii) consider a revision suggested by the Minister;
 - (iv) revise the draft plan in a stated way; or
 - (c) reject the draft plan.
- (4) In this section: required time means 45 working days after—
 - (a) if subsection (1) (a) applies—the day the committee tells the Minister about the recommendation under section 181 (4); or
 - (b) if subsection (1) (b) applies—the end of the 6-month period mentioned in section 182 (3); or
 - (c) if subsection (1) (c) applies—the day the custodian resubmits the plan to the Minister.

Section 184 is not relevant, for the purposes of this comment.

Subsection 183(1) sets pre-conditions for the making of an instrument under section 183. The explanatory statement for the instrument does not indicate which of the pre-conditions apply, in this case. The Committee considers that, to assist in the scrutiny of the instrument (by the Committee and by the Legislative Assembly), it would be helpful if the explanatory statement identified which of the pre-conditions in subsection 183 (1) applies, in this case.

The Committee draws the attention of the Legislative Assembly to this instrument, under principle (2) of the Committee’s terms of reference, 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.

NATIONAL REGULATIONS—COMMENT

The Committee has examined the following national regulations and offers these comments on them:

RAIL SAFETY NATIONAL LAW NATIONAL REGULATIONS

- **Rail Safety National Law National Regulations (Fees and Returns) Variation Regulations 2017 (2017 No 257), made under the Rail Safety National Law.**
- **Rail Safety National Law National Regulations (Miscellaneous) Variation Regulations 2017 (2017 No 258), made under the Rail Safety National Law.**
- **Rail Safety National Law National Regulations (Queensland Fatigue Provisions) Variation Regulations 2017 (2017 No 259), made under the Rail Safety National Law.**

These National Regulations were tabled in the Legislative Assembly on 22 March 2018. The Committee notes with approval that an explanatory statement was provided for each of the National Regulations and that the Minister also made a statement, covering all three National Regulations.

As noted in the explanatory material, each of the National Regulations are made under the *Rail Safety National Law (ACT) Act 2014*. The Minister, in his statement, notes:

Section 7 of the *Rail Safety National Law (ACT) Act 2014* provides that any amendment to the national rail safety law national regulations must be tabled in the Legislative Assembly.

Section 7 of the Rail Safety National Law (ACT) Act provides:

7 Exclusion of Legislation Act

- (1) The Legislation Act does not apply to the Rail Safety National Law (ACT).
- (2) However, the Legislation Act, chapter 7 (Presentation, amendment and disallowance of subordinate laws and disallowable instruments) applies to a national regulation as if—
 - (a) a reference to a subordinate law were a reference to a national regulation; and
 - (b) a reference to ‘notification day’ in the Legislation Act, section 64 (Presentation of subordinate laws and disallowable instruments) were a reference to ‘published’ as mentioned in the Rail Safety National Law (ACT), section 265 (1) (Publication of national regulations); and
 - (c) any other necessary changes were made.
- (3) Also, the Legislation Act, section 104 (References to laws include references to instruments under laws) and section 191 (Offences against 2 or more laws) apply to the Rail Safety National Law (ACT) as if that Law were an Act.
- (4) This section does not limit the application of the Legislation Act to the local application provisions of this Act.

Section 64 of the *Legislation Act 2001* provides:

64 Presentation of subordinate laws and disallowable instruments

- (1) A subordinate law or disallowable instrument must be presented to the Legislative Assembly not later than 6 sitting days after its notification day.
- (2) If a subordinate law or disallowable instrument is not presented in accordance with subsection (1), it is taken to be repealed.
- (3) This section is a determinative provision.

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

As indicated by the explanatory material that has been tabled by the Minister in the Legislative Assembly, subsection 265(1) of the Rail Safety National Law (ACT) is relevant to the operation of section 64 of the Legislation Act to these National Regulations. Section 265 (which is actually set out in this South Australian Act

[https://www.legislation.sa.gov.au/LZ/C/A/RAIL%20SAFETY%20NATIONAL%20LAW%20\(SOUTH%20AUSTRALIA\)%20ACT%202012/CURRENT/2012.14.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/A/RAIL%20SAFETY%20NATIONAL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202012/CURRENT/2012.14.AUTH.PDF)) provides:

265—Publication of national regulations

- (1) The national regulations are to be published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.
- (2) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

This means that, for the National Regulations mentioned above, their “notification day”, for section 64 of the Legislation Act is the date that the National Regulations were published on the NSW legislation website. As indicated by the explanatory statement for each of the National Regulations (and as confirmed by a search of the NSW legislation website), each of the National Regulations were published on 9 June 2017. Each of the explanatory statements state:

This Regulation was published on the NSW website on 9 June 2017 and commenced on 1 July 2017 in all jurisdictions where the Rail Safety National Law applies, including the ACT.

As the explanatory statement for each of the National Regulations also states:

... the national regulations are required to be presented to the Legislative Assembly within six sitting days of being notified on the NSW Legislation website to have effect in the ACT (Section 7 of the *Rail Safety National Law (ACT) Act 2014*).

Clearly, these National Regulations were not tabled within six sitting days of the Legislative Assembly after their publication on the NSW legislation website. This means that subsection 64(2) of the Legislation Act applies and each of the National Regulations are “taken to be repealed”.

The Committee notes that a similar issue arose recently, in relation to the Heavy Vehicle National Amendment Regulation 2017 (2017 No 329) made under the Heavy Vehicle National Law as applied by the law of States and Territories, which the Committee discussed in *Scrutiny Report 10* of the 9th Assembly (30 October 2017) and *Scrutiny Report 13* of the 9th Assembly (6 February 2018). It is disappointing that the issue seems to have recurred.

There is evidently an additional problem, in that the three National Regulations mentioned above would also appear to have a retrospective operation (back to as early as 1 July 2017). That retrospective operation is not addressed in the explanatory material. However, this is a lesser problem, if the Committee is correct in identifying the issue with section 64 of the Legislation Act.

The Committee notes that the tabling issue appears to be addressed by amendments proposed in the Road Transport Reform (Light Rail) Legislation Amendment Bill 2018, which is currently before the Legislative Assembly. That Bill is considered elsewhere in this Scrutiny Report.

The Committee draws the attention of the Legislative Assembly to the three National Regulations mentioned above, on the basis that they may not be in accord with the general objects of the Act under which they are made, contrary to principle (1)(a) of the Committee’s terms of reference and also that they may unduly trespass on rights previously established by law, contrary to principle (1)(b) of the Committee’s terms of reference.

This comment requires a response from the Minister.

HEAVY VEHICLE NATIONAL REGULATIONS

- **Heavy Vehicle (General) National Amendment Regulation (2016 No 261), made under the Heavy Vehicle National law as applied by the law of States and Territories.**
- **Heavy Vehicle National Amendment Regulation 2017 (2017 No 329), made under the Heavy Vehicle National law as applied by the law of States and Territories.**

These National Regulations were tabled in the Legislative Assembly on 22 March 2018. The Committee notes with approval that an explanatory statement was provided for each of the National Regulations. Each of the National Regulations is made under the *Heavy Vehicle National Law (ACT) Act 2013*. Section 8 of the Heavy Vehicle National Law (ACT) Act provides:

8 Exclusion of Legislation Act

- (1) The Legislation Act does not apply to the Heavy Vehicle National Law (ACT).
- (2) However, the Legislation Act, chapter 7 (Presentation, amendment and disallowance of subordinate laws and disallowable instruments) applies to a national regulation as if—
 - (a) a reference to a subordinate law were a reference to a national regulation; and
 - (b) a reference to ‘notification day’ in the Legislation Act, section 64 (Presentation of subordinate laws and disallowable instruments) were a reference to ‘published’ as mentioned in the Heavy Vehicle National Law (ACT), section 733 (1) (Publication of national regulations); and
 - (c) any other necessary changes were made.
- (3) Also, the Legislation Act, section 104 (References to laws include references to instruments under laws) and section 191 (Offences against 2 or more laws) apply to the Heavy Vehicle National Law (ACT) as if that Law were an Act.
- (4) This section does not limit the application of the Legislation Act to the local application provisions of this Act.

Section 64 of the *Legislation Act 2001* provides:

64 Presentation of subordinate laws and disallowable instruments

- (1) A subordinate law or disallowable instrument must be presented to the Legislative Assembly not later than 6 sitting days after its notification day.
- (2) If a subordinate law or disallowable instrument is not presented in accordance with subsection (1), it is taken to be repealed.

(3) This section is a determinative provision.

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

Section 733 of the Heavy Vehicle National Law (which is actually set out in this Queensland Act <https://www.legislation.qld.gov.au/view/pdf/2017-07-01/act-2012-hvnlq>) provides:

733 Publication of national regulations

- (1) The national regulations are to be published on the NSW legislation website in accordance with *Part 6A* of the *Interpretation Act 1987* of New South Wales.
- (2) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

A note to the first National Regulation mentioned above states that it was published on the NSW legislation website on 20 May 2016. A note to second National Regulation mentioned above states that it was published on the NSW legislation website 30 June 2017.

The explanatory statement for both of the National Regulations mentioned above states:

... national regulations, and national amendment regulations, are required to be presented to the Legislative Assembly within 6 sitting days of notification on the NSW legislation register.

Clearly, these National Regulations were not tabled within six sitting days of the Legislative Assembly after their publication on the NSW legislation website. This means that subsection 64(2) of the Legislation Act applies and each of the National Regulations are “taken to be repealed”.

The Committee notes that a similar issue arose recently, in relation to the Heavy Vehicle National Amendment Regulation 2017 (2017 No 329) made under the Heavy Vehicle National Law as applied by the law of States and Territories, which the Committee discussed in *Scrutiny Report 10* of the 9th Assembly (30 October 2017) and *Scrutiny Report 13* of the 9th Assembly (6 February 2018). It is disappointing that the issue seems to have recurred.

There is evidently an additional problem, in that both of the National Regulations mentioned above would also appear to have a retrospective operation (back to as early as 1 July 2016). That retrospective operation is not addressed in the explanatory material. However, this is a lesser problem, if the Committee is correct in identifying the issue with section 64 of the Legislation Act.

The Committee also notes that the tabling issue appears to be addressed by amendments proposed in the Justice and Community Safety Legislation Amendment Bill 2018, which is currently before the Legislative Assembly. That Bill is considered elsewhere in this Scrutiny Report.

The Committee draws the attention of the Legislative Assembly to the two National Regulations mentioned above, on the basis that they may not be in accord with the general objects of the Act under which they are made, contrary to principle (1)(a) of the Committee’s terms of reference and also that they may unduly trespass on rights previously established by law, contrary to principle (1)(b) of the Committee’s terms of reference.

This comment requires a response from the Minister.

GOVERNMENT RESPONSES

- The Minister for Health and Wellbeing, dated 10 March 2018, in relation to comments made in Scrutiny Report 14 concerning Disallowable Instruments:
 - DI2017-272—Food (Fees) Determination 2017 (No 1).

- DI2017-273—Medicines, Poisons and Therapeutic Goods (Fees) Determination 2017 (No 1).
- DI2017-274—Public Health (Fees) Determination 2017 (No 1).
- DI2017-275—Radiation Protection (Fees) Determination 2017 (No 1).
- DI2017-286—Health Records (Privacy and Access) (Fees) Determination 2017 (No 1).
- The Minister for Justice, Consumer Affairs and Road Safety, dated 19 March 2018, in relation to comments made in Scrutiny Report 14 concerning Subordinate Law SL2017-43—Road Transport (Road Rules) Regulation 2017.
- The Minister for Transport and City Services, dated 20 March 2018, in relation to comments made in Scrutiny Report 14 concerning Disallowable Instruments:
 - DI2017-311—Road Transport (Public Passenger Services) Regular Route Services Maximum Fares Determination 2017.
 - DI2017-313—Veterinary Surgeons (Acting Member) Appointment 2017.
- The Minister for Planning and Land Management, dated 20 March 2018, in relation to comments made in Scrutiny Report 14 concerning Disallowable Instrument DI2017-287—Construction Occupations (Licensing) Interval Metering Transitional Code of Practice 2017.

These responses can be viewed online at <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-justice-and-community-safety-legislative-scrutiny-role/response-to-comments-on-subordinate-legislation>.

The Committee wishes to thank the Minister for Health and Wellbeing, the Minister for Justice, Consumer Affairs and Road Safety, the Minister for Transport and City Services, and the Minister for Planning and Land Management for their helpful responses.

GOVERNMENT RESPONSES—COMMENT

DISALLOWABLE INSTRUMENTS DI2017-272, DI2017-273, DI2017-274 AND DI2017-275

In *Scrutiny Report 14*, the Committee commented on the above disallowable instruments, noting that explanatory statements for these instruments did not provide information as to the reasons for the various fees increases provided for in the instruments.

The Committee requested that the Ministers responsible for the instruments mentioned above provide the Committee with the reasons for the various fees increases.

In her letter of 10 March 2018, the Minister for Health and Wellbeing provided a response in relation to the fees provided for by the instruments mentioned. In addition to providing the information required by the Committee, the Minister's response states:

In respect of the *Legislation Act 2001*, I note that providing a reason for the increase of fees in a Disallowable Instrument is not listed in the mandatory requirements of subsection 56(5).

The Committee is aware that there is no statutory requirement to provide an explanation for fees increases. However, the Committee reminds the Minister that principle (2) of the Committee's terms of reference requires the Committee to 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. It has been a long-standing

requirement by the Committee that the explanatory statement for a fees instrument provide an explanation in relation to any fees increase, as to the magnitude of the increase and the reasons for the increase. As the Committee has stated, in its document titled *Subordinate legislation—Technical and stylistic standards—Tips/Traps* (available at https://www.parliament.act.gov.au/_data/assets/pdf_file/0007/434347/Subordinate-Legislation-Technical-and-Stylistic-Standards.pdf):

Given the importance of fees to the administration of the ACT, it assists the Committee (and the Legislative Assembly) if fees determinations expressly identify the magnitude of any fees increases.

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

SUBORDINATE LAW SL2017-43

The Committee commented on the above subordinate law in *Scrutiny Report 14*, noting that the strict liability offences provided for by the subordinate law were not justified, as the Committee has previously required. The Committee drew the Legislative Assembly's attention to the subordinate law, under principle (1)(b) of the Committee's terms of reference, on the basis that it may unduly trespass on rights previously established by law. The Committee also drew the Legislative Assembly's attention to the subordinate law under principle (2) of the Committee's terms of reference, on the basis that the explanatory statement for the subordinate law did not meet the technical or stylistic standards expected by the Committee. The Committee sought a response from the Minister.

The Committee notes with approval that the Minister for Justice, Community Affairs and Road Safety has responded to those comments, in a letter dated 19 March 2018. The Committee also notes that, on 20 March 2018, the Minister tabled in the Legislative Assembly a revised explanatory statement for the subordinate law that addresses the Committee's concerns.

The Committee also notes with approval that, similarly, the Minister has (without a Committee comment) tabled in the Legislative Assembly (on 20 March 2018) a revised explanatory statement for SL2017-45—Road Transport (Safety and Traffic Management Regulation) 2017 that addresses the same issue.

The Committee thanks the Minister for his attention to these issues.

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

Elizabeth Lee MLA
Chair

3 April 2018

OUTSTANDING RESPONSES

BILLS/SUBORDINATE LEGISLATION

- **Report 7, dated 18 July 2017**
 - Crimes (Intimate Image Abuse) Amendment Bill 2017 (PMB)

- **Report 8, dated 8 August 2017**
 - Crimes (Invasion of Privacy) Amendment Bill 2017 (PMB)

- **Report 12, dated 21 November 2017**
 - Crimes (Criminal Organisation Control) Bill 2017 (PMB)

- **Report 14, dated 19 February 2018**
 - Disallowable Instrument DI2017-308 - Energy Efficiency (Cost of Living) Improvement (Eligible Activities) Code of Practice 2017, including a regulatory impact statement
 - Disallowable Instrument DI2017-309 - Energy Efficiency (Cost of Living) Improvement (Record Keeping and Reporting) Code of Practice 2017, including a regulatory impact statement