Mrs Giulia Jones MLA

Chair

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

ACT Legislative Assembly

GPO Box 1020  
CANBERRA ACT 2601

Dear Mrs Jones

I write to you in relation to comments made by the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) (Scrutiny Committee) in its *Scrutiny Report 2* published on 7 February 2017 in relation to the *Discrimination Regulation 2016.*

Thank you for your consideration of this subordinate law. I note the Scrutiny Committee has sought my advice about the making of this Regulation in the *Discrimination Amendment Act 2016*. The Committee has described this as an ‘unusual making procedure’ and has asked for my comment on why this approach was adopted.

As indicated in the Explanatory Statement for the Discrimination Amendment Act, the amendments to the *Discrimination Act 1991* were made following recommendations for reform proposed by the ACT Law Reform Advisory Council (LRAC). The LRAC reviewed the scope and operation of the Discrimination Act and made several recommendations about the definition of disability, including that the definition of disability include reliance on a disability aid or assistance animal (rec 7.3). The requirements for a disability aid and assistance animal were transferred into a regulation, consistent with policy and drafting practice which uses regulations as a flexible mechanism for prescribing specifics about requirements for recognition under the law. This approach allows requirements for recognition of assistance animals or clarification about new technologies being disability aids to be updated quickly and efficiently.

A number of other amendments to the definition of disability were implemented in the Discrimination Amendment Act as a coherent set of reforms to improve coverage and consistency with the *Disability Discrimination Act 1992 (Commonwealth).* It made sense to include the regulation specifying requirements for disability aid and assistance animals in the legislation so it could be assessed in the context of the broader reforms, and the changes articulated in the same explanatory statement. This enhanced visibility of the changes for the community of people with disability and their supporters, as well as assisting the ACT Legislative Assembly and Scrutiny Committee.

The Assembly was ‘presented’ the regulation, as it formed part of the Bill, which was presented to the Assembly, and was subject to review by the Scrutiny Committee. The Assembly could have ‘disallowed’ the proposed regulation by voting against the adoption of the entire Bill or seeking to amend the Bill to omit the regulation requirements. The Bill also stated that the relevant presentation provisions of the Legislation Act did not apply.

I do not believe there was any resultant lack of opportunity for scrutiny and public debate of this regulation; as the report noted, this process ‘arguably enhances legislative scrutiny’. It also reduces time and resources involved in preparing a separate regulation and documentation, and in the Scrutiny Committee’s consideration of subordinate law.

I trust that this advice assists the Scrutiny Committee and again thank you and the Committee for your comments on this regulation.

Yours sincerely

Shane Rattenbury MLA

Minister for Justice, Consumer Affairs and Road Safety