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 in response to the Standing Committee on Justice and Community Safety’s Scrutiny Report No 13 of 6 February 2018 which comments on Disallowable Instrument DI2017-263 – the Terrorism (Extraordinary Temporary Powers) Public Interest Monitor Panel Appointment 2017 (No 1) (the DI).

I refer to the Committee’s request for a response concerning confirmation that the specified person in the DI, Dr John Boersig, is not a public servant for the purposes of paragraph 227(2)(a) of the *Legislation Act 2001*. I can confirm that Dr Boersig is not a public servant and so the requirements of Division 19.3.3 of the Legislation Act, in particular, that the appointment is a disallowable instrument, have been appropriately met.

Section 62 of the *Terrorism (Extraordinary Temporary Powers) Act 2006* (TETP Act)provides that the Minister must appoint people to a public interest monitor panel. The note under s 62(1) indicates that for the making of appointments, see part 19.3 of the Legislation Act, which provides that certain ministerial appointments require consultation with an Assembly committee and are disallowable.

Division 19.3.3 of the Legislation Act sets out the requirements for Assembly consultation for appointments. Subsection 227(2) of the Legislation Act specifically provides for when the division does not apply to an appointment, with s 227(2)(a) providing that the requirements of the division do not apply to the appointment of a public servant to a statutory position.

A “public servant” is defined in the TETP Act as “a person employed in the public service”. The “public service” is defined in the TETP Act as the ACT Public Service, which is defined in the *Public Sector Management Act 1994* (PSM Act). Section 12 of the PSM Act provides that the ACT Public Service is made up of the administrative units established under section 13 of the PSM Act. Section 13 provides that the Chief Minister may establish administrative units. These administrative units are currently set out in the notifiable instrument Administrative Arrangements 2017 (No 1). Legal Aid ACT is not an administrative unit as established under the Administrative Arrangements instrument and so Dr Boersig, as an employee of Legal Aid ACT, is not a public servant for the purposes of the TETP Act.

I thank the Committee for its report and careful consideration of the Bill.

Yours sincerely

Gordon Ramsay MLA

Attorney-General