

The Scrutiny Committee and the HRA

Legislation	Scrutiny Report	Government Response
Animal Welfare Legislation Bill 2007	Scrutiny Report 37 <ul style="list-style-type: none"> • s 21(1) potentially breached: discretion to grant licence is open-ended; absence of specific requirement of procedural fairness in renewing licence • ss 22(1), 28: strict liability offences are not listed in explanatory memorandum, but no particular rights problems with offences 	Scrutiny Report 40 <ul style="list-style-type: none"> • defends existing legislation as being consistent with <i>HRA</i> • notes that considerable discussion has taken place with Office of Parliamentary Counsel and Human Rights Unit in JACS, and that Compatibility Statement has been given • s 21: no breach because powers must be exercised according to purposes of Bill and because potential for review by AAT • ss 22, 28: although all offences not listed, EM provides rationale of how offences would function. Approach taken is consistent with that approved by earlier Scrutiny Reports
Children and Young People Amendment Bill 2007 (No 2)	Scrutiny Report 37 <ul style="list-style-type: none"> • ss 11, 12, 28: potential breach in scheme for pre-natal reporting. Notes that justifications provided in explanatory statement • ss 12 and 28: may not be proportionate to keep records and reports concerning pregnant women • ss 18, 19: commends the Minister for providing a search and seizure scheme for detainees that seeks to ensure that detainees are treated with humanity and respect for inherent dignity. 	Scrutiny Report 38 <ul style="list-style-type: none"> • s 12: scheme for pre-natal reporting a reasonable and proportionate intrusion on privacy: necessary to keep records for offence of making dishonest child protection orders; it will be an offence to reveal sensitive information • thanks Committee for its commendation of search and seizure scheme
Civil Partnerships	Scrutiny Report 37	No government response

Bill	<ul style="list-style-type: none"> • s 8: notes that purpose of the Bill is to provide equality for same-sex relationships • s 11(2): fact that no person or body has power to prevent or attach conditions to termination of a civil relationship in best interests of child may be a breach. This argument is buttressed by reference to <i>Convention on Rights of Child</i> 	
Corrections Management Bill	<p>Scrutiny Report 37</p> <ul style="list-style-type: none"> • ss 18(1), 22(1) and 28: strict liability offences may not be justifiable derogation from right to be presumed innocent and right to liberty where imprisonment as a punishment. • s 10(1)(b): imprisonment for strict liability offence may also breach prohibition against cruel, inhuman or degrading treatment • commends provision of reasonable diligence defence to ameliorate strict liability offence • in some cases, rights, liberties and obligations dependent upon undefined administrative powers • s 19: commends Minister for providing Bill that seeks to ensure that detainees are treated with humanity and respect for inherent dignity • s 18: use of force by an officer will breach right to security of person, but subjective judgment about use of force necessary for right to security of officer and others • s 21(1): clause may be a privative clause. Notes that s 21(1) buttresses Committee's longstanding objection to privative clauses • ss 12(a), 28: requiring chief executives to transmit 	<p>Scrutiny Report 41</p> <ul style="list-style-type: none"> • ss 18(1), 22(1), 28: considers that strict liability offences are justified. Purpose of the offence is to create cause for visitors to abide by reasonable directions: mental element has little bearing on purpose of the offence. • in relation to undefined powers, for Commissioner, argues that Bill is purposely silent on management structure to allow delegation so as to allow for flexibility required in corrections system. In relation to provision giving wide discretion in decision-making, argues that decision-maker must comply with HRA s 30 in making decision – ie, will require proportionate decision. • s 19: thanks the Committee for its compliment re government treatment of detainees. • s 18: argues that training will reduce the potential for use of undue force by officers. Discusses European Court case of <i>McCann</i> re use of force and argues that clause is consistent with this case. • s 21(1): argues that clause in question (cl 16(4))

	<p>any health reports concerning detainee may breach privacy; explanatory statement does not address whether this interference is arbitrary</p> <ul style="list-style-type: none"> • notes that if principles of proportionality are to guide application of certain clauses, this should be reflected in the text of the legislation and not just in the explanatory statement 	<p>is not a privative clause. Any attempt to draft a privative clause would have to specify the particular aspects intended to be exempt from judicial review.</p> <ul style="list-style-type: none"> • ss 12(a), 28: argues that interference with right to privacy is justified to protect right to life and is sufficiently proportionate etc. • discusses international case law in relation to proportionality. Argues that proportionality should not be codified within the HRA or within individual Acts, as will change test to matter of statutory interpretation and prevent development of case law.
Housing Assistance Bill	<p>Scrutiny Report 37</p> <ul style="list-style-type: none"> • ss 12, 16, 28: provision exempting information on housing assistance recipients from FOI may breach freedom of expression, in particular the right to receive information. But a rights analysis needs to take account of right to privacy – arguable that if the clause derogates, is justifiable. However, exemption of documents containing a list of housing assistance properties is not justifiable under right to privacy. 	<p>Scrutiny Report 40</p> <ul style="list-style-type: none"> • s 12, 16, 28: argues that exemption of housing assistance properties from FOI appropriate. List of addresses has been requested by various people and government has taken the extra precaution of specifically exempting the information.
Planning and Development Bill	<p>Scrutiny Report 37</p> <ul style="list-style-type: none"> • s 21(1): notes that various provisions conferring subjective discretion may be incompatible with s 21(1) • ss 12, 21, 28: provisions to end appointment of chief planning officer lack procedural fairness, 	<p>Scrutiny Report 40</p> <ul style="list-style-type: none"> • s 21: to address concerns about discretion given to Planning and Land Authority to keep draft plan variations secret, criteria to be inserted into legislation to guide decisions not to disclose information. New provision will provide that

	<p>Assembly debate about dismissal may cause damage to reputation, public discussion of allegations concerning Chief Executive impinge privacy</p> <ul style="list-style-type: none"> • ss 22(1), 28: offences of strict liability may breach presumption of innocence. Notes and commends the fact that Explanatory Statement identifies and justifies the provisions: offences are to protect health and safety of public; offences are an efficient and cost effective deterrent for breaches of regulatory provisions; fault element would affect level of resources needed to investigate and prosecute; low penalty and no provision for imprisonment 	<p>information to be published unless one of the criteria for non-disclosure applies.</p> <ul style="list-style-type: none"> • s 21: in relation to provision giving discretion to Supreme Court to issue injunctions, considers that no amendment necessary: argues that courts are frequently given wide legislative power to grant injunctions, judge must always take into account applicable legal principles in exercising discretion, jurisdiction of court to grant injunction depends on existence of an established legal or equitable right. • s 12, 21, 28: no amendment to removal of chief planning executive, for reasons outlined in government response to Planning and Environment Committee's report on the Bill • s 22(1): Bill's explanatory statement to be amended to give further explanation for strict liability offences and why due diligence defence not provided.
<p>Land (Planning and Environment) Legislation Amendment Bill 2007</p>	<p>Scrutiny Report 38</p> <ul style="list-style-type: none"> • ss 21(1), 28: agrees with explanatory statement that right to fair trial is satisfied by opportunities for input into planning and development applications and right to judicial review • ss 12, 28: agrees with explanatory statement that impacts of a development must be quite severe to constitute unlawful and arbitrary interference with right to privacy 	<p>Scrutiny Report 43</p> <ul style="list-style-type: none"> • notes that Committee report agreed with explanatory statement that right to fair trial not breached, and that impacts of a development must be severed to breach right to privacy
<p>Training and</p>	<p>Scrutiny Report 40</p>	<p>Scrutiny Report 41</p>

<p>Tertiary Education Legislation Amendment Bill 2007</p>	<ul style="list-style-type: none"> • s 12: right of owner to exclude others from premises is a fundamental CL right (<i>Coco v The Queen</i>). This may be a dimension of s 12 right to privacy, but even if not, Committee can have regard to CL rights when considering whether legislation amounts to undue trespass on rights and liberties. Provision giving chief executive power to visit employer’s premises without notice is arguably not reasonable adapted to purpose, as no reason that written notice can’t be given. • s 12: provision allowing chief executive to cancel training contract if an employer refuses to give information or produce a document may be undue trespass on CL privileges against self-incrimination or client legal privilege. Although these privileges are not explicitly recognized under the HRA, they may also be seen to be a dimension of the right to privacy. 	<ul style="list-style-type: none"> • s 12: argues that right of entry to premises is justified: trainees and apprentices need additional protection, as they occupy different status to ordinary workers and are usually young. Further, matter is a conflict between employer’s right to privacy and apprentice’s right to health and safety: obligation to safeguard life is paramount. • s 12: re privilege against self-incrimination, notes that similar provision have been operating under previous act without any problems. But takes Committee’s suggestion to amend legislation to add Note making it clear that common law privileges available.
<p>Water Resources Bill 2007</p> <p>Bill provides a new scheme for the management of the Territory’s water resources</p> <p>Comment: debate to be Tuesday, 5 June 2007</p>	<p>Scrutiny Report 41</p> <ul style="list-style-type: none"> • s 12: provisions allowing power of entry without warrant and seizure of goods may impact on right to privacy. Right to property contained in UDHR may also be impacted. Committee considers that provisions are not incompatible with HRA, as power to enter premises cannot be exercised in relation to residential part of premises. • s 12: Power to require person to state name and home address may also impact right to privacy. But not incompatible with HRA as can only be exercised where authorized officer believes that 	<p>Scrutiny Report 43</p> <ul style="list-style-type: none"> • Supplementary explanatory statement has been prepared to incorporate Committee’s recommendation and government amendments are proposed in relation to wide range of powers given to Environment Protection Authority.

	<p>person is committing/has committed an offence.</p> <ul style="list-style-type: none"> • s12: Provision allowing authorised officer to enter land, including residential premises, may be breach of s 12. Committee cites Canadian case law re need to balance government’s interest in law enforcement and academic article re need to balance expectation of privacy in relation to residence, and notes that explanatory statement does not address this issue. Committee is “not convinced” that requiring warrant to be issued by magistrate is not an effective means of balancing the competing interests. • ss 18, 22, 28: considers that strict liability offences are compatible with HRA, as offences are only “regulatory” in nature, and penalties are all less than 50 penalty points. However, notes that while most explanatory statements provide justification for strict liability offences, this explanatory statement does not provide any justification for strict liability. Also goes on to discuss comments relating to strict liability offences and HRA in <i>Hausmann v Shute</i> [2006] ACTSC 54, in particular that strict liability offences may be better seen as engaging right to liberty (s 18) than presumption of innocence (s 22). • s 12: vesting of power in environment protection authority to investigate whether a law has been breached does not affect right to privacy under 12(a), as whether a person has contravened law is not private matter. 	
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	<ul style="list-style-type: none"> • ss 12, 22: However, may engage s 12(b) (right to reputation). Discusses UN HRC’s General Comment as to when attack on reputation is unlawful and concludes that provisions may be incompatible because of wide discretion to investigate. Also discusses difference in wording between HRA s 12(b) and ICCPR art 17. Presumption of innocence in s 22 also relevant in considering whether provision creates undue trespass on rights. • s 22: displacement of privilege against self-incrimination is incompatible with s 22(2)(i) (right not to be compelled to testify against himself/herself). Explanatory statement is deficient, as does not reveal that the clause displaces the privilege, and does not attempt to justify. 	
Long Service Leave (Building and Construction and Contract Cleaning Industries) Legislation Amendment Bill 2007 Purpose of Bill is to improve administration of long service leave.	Scrutiny Report 42 <ul style="list-style-type: none"> • ss 18, 21, 28: strict liability offences created by Bill compatible with HRA, as regulatory in nature and penalties under 50 penalty points. Also “notes in appreciation” that explanatory statement has provided justification for strict liability (professionals employing people can be expected to be aware of duties and obligations to employees, hence defendant’s frame of mind irrelevant). 	Scrutiny Report 43 <ul style="list-style-type: none"> • thanks the Committee for its deliberations and support of strict liability offences in the legislation.
Building Legislation Amendment Bill 2007	Scrutiny Report 43	Scrutiny Report 44

<p>Comment: discussion of strict liability offences here is extremely detailed – change from earlier and later discussions of strict liability.</p>	<ul style="list-style-type: none"> • notes that comprehensive nature of justification for strict liability offences in explanatory statement provides opportunity for Assembly to discuss whether justified; Committee offers its own analysis to assist debate. • Considers that offences justified to protect health and safety of public, penalties are below 60 penalty points, and additional defences than normal defences to strict liability are provided. However, criticizes some other justifications given: re justification that strict liability offences are efficient and cost effective, considerations of cost and efficiency do not of themselves warrant derogation from “fundamental principles” of HRA. Similarly, arguments that evidence of intention may be hard to obtain is not a good argument. Fact that strict liability offences are used in other jurisdictions not relevant to HRA in ACT. 	<ul style="list-style-type: none"> • notes that Committee concluded that no issue of incompatibility with the strict liability offences. Notes Committee’s comments re additional justifications for the offences, and argues that the explanatory statement and Committee’s comments provide “a clear basis” for concluding that the offences are justified.
<p>Domestic Animals Amendment Bill 2007</p> <p>Provides for registration and microchipping of dogs, desexing of cats etc</p>	<p>Scrutiny Report 43</p> <ul style="list-style-type: none"> • ss 18, 21: strict liability offences seem justified on basis of public safety and low penalties. But notes that explanatory statement does not mention the HRA issues raised by strict liability offences or provide any justification. • ss 12, 28: provision requiring licence to keep four or more cats on residential premises arguably infringes right to privacy: right to privacy arguably includes “lifestyle choice” to own cats. Notes that explanatory statement does not address whether interference is justifiable. 	<p>Scrutiny Report 46</p> <ul style="list-style-type: none"> • notes that the Bill was drafted in consultation with the Human Rights Unit and that compatibility statement has been provided: “Consequently, I am confident that the strict liability offences created ... adequately accommodate the requirements of the HRA” • re strict liability offences, notes that s 28 HRA provides for reasonable limits on rights. Notes that strict liability provisions are predominantly regulatory, low penalties, and additional defences are provided in the act.

		<ul style="list-style-type: none"> • Explains why strict liability provisions are not an unreasonable restriction on rights. Requirement of registration tags for dogs are in public and animal's best interests and are central to taking action to control dogs that may be a threat to public safety. Compulsory desexing is in public interest because uncontrolled breeding can be deleterious to human health, safety and the environment; provisions should also be read alongside other provisions allowing breeding with a licence; threat to native wildlife from feral cats. • Re provision limiting keeping of 4 or more cats, again notes that rights may be limited under s 28. Argues that restrictions are reasonable and are in public interest. Also notes that equivalent regulation in relation to dogs has been in force since 2001: equal treatment of cat and dog owners is consistent with equality under s 8 HRA. • Re offences where Committee commented that explanatory statement did not mention human rights issues, explanatory statement has now been redrafted.
Planning and Development (Consequential Amendments) Bill 2007	Scrutiny Report 43 <ul style="list-style-type: none"> • ss 12, 28: provision for Planning and Land Authority to require Commissioner for Revenue to supply person's name, home address or contact details may breach s 12. Notes that explanatory statement identifies this issue and advances 	Scrutiny Report 44 <ul style="list-style-type: none"> • notes that Committee noted points made in explanatory statement: that information is limited to name and contact details, it can only be used to exercise a function under the Act, request can only be made if information is

	<p>justification (constraints on the nature of information to be collected and purposes for which it may be used; request can only be made if Authority has incomplete or inaccurate records).</p>	<p>already available, provision is drafted consistently with privacy legislation. Hence, clear that provision is justified under HRA.</p> <ul style="list-style-type: none"> • thanks the Committee for comments: “these comments have assisted with the review of these matters prior to their debate in the Legislative Assembly and will be of assistance in the debate itself”
<p>Surveyors Bill 2007 Bill to regulate land surveying.</p>	<p>Scrutiny Report 43</p> <ul style="list-style-type: none"> • s 21: discretion given to Chief Surveyor whether or not to register a person as a surveyor arguably too broad. Broad administrative power could result in incompatibility with HRA s 21. • ss 18, 21: strict liability offences justified for health and safety, low penalties and additional defences provided. Notes that explanatory statement does not mention HRA issues raised nor provide justification. 	<p>Scrutiny Report 45</p> <ul style="list-style-type: none"> • amendments have been made to address discretion given to Chief Surveyor • provides individual justifications for all of the strict liability offences in the Bill.
<p>Crimes (Street Offences) Amendment Bill 2007 Repeals existing offence of offensive behaviour and replaces it with offences strict liability offences of disorderly or offensive behaviour</p>	<p>Scrutiny Report 45</p> <ul style="list-style-type: none"> • notes that “these proposals give rise to a number of rights issues. How they might be resolved by a court is far from clear and the issues could be subject to extensive analysis. This report will do no more than draw attention to them. The Assembly is not of course bound to refrain from enacting a provision of a Bill where incompatibility with the HRA appears clear, nor, on the other hand, to enact the provisions if they are apparently compatible.” • ss 18, 21: proposed amendments would create 	

<p>and offensive language near a public place or school</p>	<p>strict liability offences. No explanatory statement yet to address the issue. Offences are not regulatory in the sense that other strict liability offences have been, but quite a low penalty, and able to rely on reasonable mistake of fact.</p> <ul style="list-style-type: none"> • ss 18(2), 25(1): vagueness of concepts of ‘disorderly’ and ‘offensive’. S 18(2) not further explored as imposition of fine may not amount to loss of liberty. However, vagueness of concepts might breach right to legal certainty in s 25(1): discussion of European Court case law on right to legal certainty and interpretation of term ‘insulting’ in <i>Coleman v Power</i>. Committee suggests that Assembly has two choices. It can either continue to enact laws with such expressions, which may need to be read down to be compatible with HRA, and courts can give the terms meaning in line with community standards, or it can draft the terms more precisely. • ss 16(2), 28: provision limits freedom of expression – question is whether limit is justified. Discusses analogy with freedom of political communication in Commonwealth Constitution. 	
<p>Electoral Legislation Amendment Bill 2007</p>	<p>Scrutiny Report 45</p> <ul style="list-style-type: none"> • s 12: law permitting registration of political party that includes the name of a living person may breach right to privacy • s 8: removal of ability of independent candidates to be listed together on ballot papers arguably engages s 8 (right to equality). Refers to Hansard 	<p>Scrutiny Report 47</p> <ul style="list-style-type: none"> • law permitting registration of political party name including name of living person engages right to privacy. But provision is justified: serves a legitimate purpose (supporting freedom of expression) and is rationally connected to that objective

	<p>debate on a similar provision in 2003.</p> <ul style="list-style-type: none"> • ss 17(a), 28: provision regulating spending for political purposes of persons who are not a party or candidate may breach right to take part in public conduct. Questions are not referred to in explanatory statement. The Committee does not offer a view on whether it is in breach, merely “raises the question for the Assembly to consider”. 	<ul style="list-style-type: none"> • argues that current provision allowing non-party groups to be listed together is a creature of statute anyway: removal of non-party groups gives voters a clearer picture of candidates’ backgrounds • argues that provisions re regulation of spending do not discourage participation in public affairs but make it easier to satisfy existing disclosure requirements
<p>Legal Profession Amendment Bill 2007</p>	<p>Scrutiny Report 45</p> <ul style="list-style-type: none"> • ss 18, 21, 28: strict liability offences justified by explanatory statement (regulatory context where defendant can reasonably be expected to be aware of requirements of the law) and low penalties. • s 21: wide discretionary powers to Supreme Court to assess costs may breach s 21. Although it could be argued that it is inappropriate to trammel discretion vested in Court, other clauses in Bill give list of relevant factors for exercise of discretion, even if open-ended. • notes that two other rights issues addressed in explanatory statement, but issues are not acute and explanatory statement advances adequate justification. 	
<p>Occupational Health and Safety Amendment Bill 2007</p> <p>Amendments in relation to OH&S</p>	<p>Scrutiny Report 45</p> <ul style="list-style-type: none"> • ss 18, 22, 28: justification provided for strict liability offences in explanatory statement is acceptable. However, Committee notes that offence is already onerous as it already has an element of absolute liability, and that punishment 	<p>Scrutiny Report 46</p> <ul style="list-style-type: none"> • argues that the offence is not onerous. Strict liability is required to develop safety culture in the workplace, and duty-holders should be aware of legislative obligations. Further, prosecution would still have to prove further elements of the

Council and safety duty offences.	<p>may not be proportionate.</p> <ul style="list-style-type: none"> • ss 10(b), 18(1): further question of whether penalty is so disproportionate to the offence that it breaches s 10 (cruel, inhuman or degrading treatment) or s 18 (deprivation of liberty pursuant to disproportionate sentence may be arbitrary). 	<p>offence.</p> <ul style="list-style-type: none"> • Argues that penalty is not disproportionate: requires a high risk of exposure to serious harm before the test for criminal negligence would be met; definition of ‘serious harm’ requires threat to human life.
Gaming Machine Amendment Bill 2007	<p>Scrutiny Report 47</p> <ul style="list-style-type: none"> • ss 18, 22: strict liability offences re display of gaming machines not incompatible with HRA. Justification provided by explanatory statement: licensee expected to know requirements under the law, laws important for gambling harm minimisation, six month delay before commencement of provision to give licensees time to comply 	<p>Scrutiny Report 48</p> <ul style="list-style-type: none"> • Notes that Committee did not consider strict liability offences incompatible with HRA. Also notes that compatibility statement was issued by Human Rights Unit. Reiterates that the offences are justified in context of gaming regulation.
Government Transparency Legislation Amendment Bill 2007	<p>Scrutiny Report 49</p> <ul style="list-style-type: none"> • ss 16, 17, 28: Removal of ability of decision-maker to issue conclusive certificates under Freedom of Information Act could enhance freedom of expression and right to take part in public life; refers to writers on international human rights law who argue that freedom of information is crucial to democracy. However, notes that s 28 allows derogation from rights and that issues such as secrecy of certain types of government information may justify issuing of conclusive certificate. Draws matter to Assembly’s attention. 	
Regulatory Services Legislation Amendment Bill 2007	<p>Scrutiny Report 49</p> <ul style="list-style-type: none"> • s 12: requirement for applicant for licence under <i>Agents Act</i> to provide police certificate may breach 	<p>Scrutiny Report 50</p> <ul style="list-style-type: none"> • s 12: requirement for criminal check for licence does not change check that is currently

<p>Bill amends number of Acts affecting operations and functions of Office of Regulatory Services</p>	<p>right to privacy and reputation, but notes that paucity of explanation in Explanatory Statement makes it “difficult for the Committee to do other than raise generally” concerns. Same issue arises re applications for licence under <i>Sale of Motor Vehicles Act 1977</i></p> <ul style="list-style-type: none"> • s 12, 28: search and entry powers, seizure powers and power to require person to state name and address not incompatible with HRA: premises that can be entered without a warrant are only those to which a licence relates and not residential premises, power to require person to state name can only be exercised where officer believes on reasonable grounds that person is committing or has just committed an offence, adequate protections to minimize damage to property and give compensation for damage. 	<p>undertaken, merely changes who obtains the check.</p> <ul style="list-style-type: none"> • s 12: supports the Committee’s findings that search and entry powers are not incompatible with HRA.
<p>Road Transport (Third-Party Insurance) Bill 2007</p>	<p>Scrutiny Report 49</p> <ul style="list-style-type: none"> • ss 22(1), 28: offence that reverses burden of proof derogates from presumption of innocence. However, provision is justified because pursues a legitimate objective in proportionate manner. • ss 18(2), 25(1): vaguely expressed offence provision may breach ss 18(1) and/or 25(1). Notes that it has discussed this issue already re Crimes (Street Offences) Amendment Bill 2007 (Report 45) and draws matter to attention of Assembly. • ss 21, 22: power given to regulator to impose \$50,000 penalty raises “substantial and complex” rights issue, although issue is not discussed in 	<p>Scrutiny Report 50</p> <ul style="list-style-type: none"> • notes that the Bill is based on similar legislation in NSW and QLD, and that current ACT Act is 60 years old and does not represent modern principles. • re burden of proof: thanks Committee for its support of the provision. Notes that the original provision was redrafted after consultation with the Human Rights Office. • re vaguely expressed offence provision: clause is based on NSW and QLD legislation. Argues that wording of clause adds clarity rather than confusion to the law. In addition, offence is

	<p>explanatory statement. Considers that Minister should provide Assembly with analysis of the rights issues to see whether HRA compatible.</p> <ul style="list-style-type: none"> • Search and entry and seizure powers are conferred by Bill but no issue of HRA compatibility. 	<p>appropriate and even expected in modern statutory insurance scheme.</p> <ul style="list-style-type: none"> • re penalties, recognizes genuine concern of Committee; amendments have been prepared and will be presented to Assembly.
<p>Sentencing Legislation Amendment Bill 2007</p>	<p>Scrutiny Report 49</p> <ul style="list-style-type: none"> • Ss 10(1)(b), 18(1): disproportionate penalty may breach s 10 (prohibition on cruel, inhuman or degrading punishment) or s 18 (disproportionate sentence may breach prohibition on arbitrary detention). Also notes that inflexibility in fixing non-parole periods may also be disproportionate penalty. Draws matter to attention of Assembly. 	
<p>Victims of Crime Amendment Bill 2007</p> <p>Amendment to provide that adults convicted of offences and having to pay a fine must also pay victims services levy of \$10</p>	<p>Scrutiny Report 49</p> <ul style="list-style-type: none"> • Notes that although explanatory statement states that the Bill is informed by human rights principles, this is not further elaborated. Compensation to victim of crime might be seen as enhancement of right to security of person is s 18(1). 	
<p>Disallowable Instruments DI2007-258 – DI2007-263 (made under Children and Young People Act 1999)</p>	<p>Scrutiny Report 49</p> <ul style="list-style-type: none"> • Explanatory statement to the instruments contains statement that prohibition against torture is not subject to any limitation and all of the instruments reflect this. Given that s 28 provides that rights may be limited, Committee seeks Minister’s advice as to the basis of that statement. 	<p>Scrutiny Report 51</p> <ul style="list-style-type: none"> • Explains that HRA s 28 needs to be read in conjunction with HRA pt 4. Further, argues that it is long established in international human rights law that there are no circumstances where torture and other cruel, inhuman or degrading treatment can be justified.

<p>Children and Young People Amendment Bill 2007</p> <p>Creates strict liability offence for tattooing and body piercing of children and young people</p>	<p>Scrutiny Report 50</p> <ul style="list-style-type: none"> ss 18, 22, 28: notes that explanatory statement does not mention rights issues in relation to strict liability offences, or provide justification for strict liability. Notes that offence could be classified as regulatory and that penalty is within range accepted by Committee as generally appropriate for strict liability offences. 	
<p>Gene Technology Amendment Bill 2007</p>	<p>Scrutiny Report 50</p> <ul style="list-style-type: none"> ss 18, 22, 28: whether strict liability justified: argues that justification provided by explanatory statement, that breach could cause serious harm to people and environment, not persuasive: reference to jurisprudence from South African Constitutional Court. However, also notes that Assembly might consider it a regulatory offence. Also notes that there is an issue as to whether penalty is proportionate. 	<p>Scrutiny Report 53</p> <ul style="list-style-type: none"> re comments on strict liability offences: notes that strict liability only applies to part of the offence; fault requirement remains for key element of offence and therefore level of penalty is not disproportionate. Also notes importance of maintaining conformity with national legislation.
<p>Government Transparency Legislation Amendment Bill 2007 [No 2]</p>	<p>Scrutiny Report 50</p> <ul style="list-style-type: none"> ss 16, 17, 28: repeats discussion in Scrutiny Report 49 in relation to Government Transparency Legislation Amendment Bill 2007 [No 1] re FOI and conclusive certificates. 	
<p>Human Cloning and Embryo Research Amendment Bill 2007</p>	<p>Scrutiny Report 50</p> <ul style="list-style-type: none"> notes the complexity of issues surrounding this area and refers to reports from Commonwealth Parliament ss 18, 22, 28: notes that explanatory statement does not mention rights issues in relation to strict 	<p>Scrutiny Report 53</p> <ul style="list-style-type: none"> re strict liability offences, notes that under the Criminal Code, an offence is only strict liability if identified as such. Hence, offences in question are not strict liability and retain a fault element; amendment is not required.

	<p>liability offences, or provide justification for strict liability. Offences may be classified as regulatory and therefore justified. However, notes that maximum penalty is imprisonment: where this is the case, explanatory statement should state specific justification.</p>	<ul style="list-style-type: none"> • Notes Committee's concerns re strict liability offences where imprisonment is a penalty, and that Explanatory Statement should state specific justifications in such cases. Notes that it is important to ensure consistency with national regulatory scheme. Minister is satisfied with compatibility statement issued by JACS and does not believe amendment necessary.
<p>Human Rights Act Amendment Bill 2007</p>	<p>Scrutiny Report 50</p> <ul style="list-style-type: none"> • Notes that amendment to s 28 setting out list of factors to be considered is in contrast to A-G's earlier opinion in response to report on Corrections Management Bill. • Notes that there are divergent views on whether Supreme Court should be able to award damages for breach of human rights by public authority • Commends the explanatory statement to the Bill. 	<p>Scrutiny Report 51</p> <ul style="list-style-type: none"> • The purpose of amending s 28 is to clarify the operation of the proportionality test. Amendment will not exclude changes in case law etc because of its relation with s 31 (use of international law and foreign judgments). The list of factors is drawn directly from international case law. • Notes Committee's comment that there are divergent views on awarding of damages. Given divergent views, not appropriate for damages to be awarded for breach of human rights, although amendments do not affect any existing rights to damages • Thanks the Committee for its commendation.
<p>Justice and Community Safety Legislation Amendment Bill 2007 (No 2)</p>	<p>Scrutiny Report 50</p> <ul style="list-style-type: none"> • ss 18, 22, 28: notes that explanatory statement does not mention rights issues in relation to strict liability offences, or provide justification for strict liability. Notes that offence could be classified as regulatory and that penalty is within range accepted by Committee as generally appropriate for strict liability offences 	<p>Scrutiny Report 51</p> <ul style="list-style-type: none"> • Notes the Committee's comments in relation to strict liability offence. However, notes that amendment of s 10 does not involve creation of offence, as offence has existed since 2004, merely amends offence by including an additional defence. Notes that justification for this offence has been previously raised by

	<ul style="list-style-type: none"> • s 8, 21: removal of exclusion of blind and deaf persons from juries promotes right to equal treatment but may also compromise right to fair trial. Disappointing that explanatory statement makes no reference to the rights issues involved. Refers to NSW Law Reform Commission report. 	<p>Committee and addressed, and notes that inclusion of additional defence only enhances HRA compatibility.</p> <ul style="list-style-type: none"> • In relation to juries, assures Committee that human rights issues were considered by officers within JACS. Agrees with Committee that including the information would provide additional assurance; extra information will be included in revised explanatory statement. <p>Scrutiny Report 51: Committee’s further comments arising from A-G’s response</p> <ul style="list-style-type: none"> • reiterates Committee’s view that it must exercise its function even if provision of Bill merely restates existing law. Particularly here, as only parts of the provision were amended, Committee’s view is that it should review the whole new provision. Although this may give a more expansive view as to the effect of the HRA than the A-G’s view, there is advantage in this because the HRA is beneficial legislation. • Although A-G assured Committee that human rights issues were addressed by officers within the department, Committee argues that this information is of interest to Committee, the Assembly and the general public; including this material in explanatory statement is critical to dialogue under the HRA.
<p>Long Service Leave (Private Sector) Bill 2007</p>	<p>Scrutiny Report 50</p> <ul style="list-style-type: none"> • ss 18, 21, 28: notes that explanatory statement 	

	<p>does not mention rights issues in relation to strict liability offences, or provide justification for strict liability. Notes that offence could be classified as regulatory and that penalty is within range accepted by Committee as generally appropriate for strict liability offences</p> <ul style="list-style-type: none"> • s 22: civil penalty clause may be a criminal penalty. Although explanatory statement does not refer to this issue, Committee considers that there are complex rights issues. Refers to case law under European Convention on Human Rights re classification of penalty as civil or criminal; compares civil penalty offence to other criminal offences in the legislation and argues is a criminal penalty. This does not mean that the provision is HRA incompatible, but that protections in s 22 must apply to proceedings. • ss 12, 28: search and entry powers infringe s 12, but proportional under s 28 (in particular, only applies to employer premises, only during business or work hours etc) 	
<p>Medicines, Poisons and Therapeutic Goods Bill 2007</p>	<p>Scrutiny Report 50</p> <ul style="list-style-type: none"> • ss 18, 22, 28: explanatory statement offers rationale for derogation from HRA. On the face of it, offences could be classified as regulatory, with one exception: draws this matter to attention of Assembly. Although most penalties are proportionate, one penalty of imprisonment may not be proportionate, and no specific justification given in explanatory statement. 	<p>Scrutiny Report 54</p> <ul style="list-style-type: none"> • strict liability offence with greater penalty should have been justified separately. Thanks Committee for pointing out this discrepancy. • Similarly, the strict liability offence which was not of a regulatory nature should have been justified separately. Argues that this offence, although not regulatory itself, is part of a broader regulatory scheme. Strict liability is important

	<ul style="list-style-type: none"> • s 12, 28: no issue of compatibility for search and seizure grounds, but draws attention to some specific matters. First, cl 102(1)(b) is not restricted to non-residential premise; without this restriction may be incompatible. Second, unusual basis on which premises may be entered; however, explanatory statement offers a justification for this power and Committee considers justification sufficient. Other powers (including powers on entry, seizure powers, power to destroy things) not undue trespass on rights. 	<p>for circumstances where intent cannot be proved.</p> <ul style="list-style-type: none"> • In relation to lack of justification given for offence where maximum penalty is imprisonment, notes that ‘I understand the purpose of an explanatory statement is to explain the effect and operation of legislation and not to justify policy positions or the operation of laws’.
<p>Crimes Amendment Bill 2008</p>	<p>Scrutiny Report 51</p> <ul style="list-style-type: none"> • s 11(2) : proposed amendment to Children and Young People Act to remove procedural safeguards for admissions etc when being questioned in relation to infringement notices. Explanatory statement argues that the procedural safeguards are not necessary here, as the offences are only relatively minor. Committee notes that explanatory statement doesn’t refer to the right of the child, however it provides a good framework for discussion. Draws the matter to the attention of the Assembly. • S 16(2): offence when a person fixes placards etc, or makes a mark on certain private or public property breaches freedom of expression. Although the Committee accepts that the new clause simply modernizes the offence and does not alter its nature, this does not affect the need to consider human rights issues: explanatory statement does not address human rights issues or 	

	<p>articulate the objective of the law. May be accepted that the offences pursue legitimate objectives, but question of proportionality. Re ban on private property: may not be proportionate if alternative to absolute ban is possible. Re ban on public property, notes that law is analogous to law found inconsistent with freedom of expression in Canada. References to Canadian and NZ case law. Draws matter to Assembly's attention and recommends that Minister addresses issue of proportionality.</p> <ul style="list-style-type: none"> • Ss 18, 22, 28: strict liability offence. Notes that explanatory statement doesn't refer to HRA issues and that justification provided for strict liability offences doesn't address the right question. Penalties are within appropriate range. Draws matter to Assembly's attention. 	
Planning and Development Legislation Amendment Bill 2008	<p>Scrutiny Report 51</p> <ul style="list-style-type: none"> • Search and entry powers do not give rise to issue of HRA compatibility: refers Assembly to discussion in explanatory statement • Ss 18, 22, 28: explanatory statement doesn't refer to HRA issues or provide justification. Committee reiterates its call for explanatory statements to address rights issues in relation to strict liability offences. On the face of it, not easy to see how offence could be classified as regulatory; penalty is within appropriate range. 	
Justice and	Scrutiny Report 52	Scrutiny Report 54

<p>Community Safety Legislation Amendment Bill 2008</p>	<ul style="list-style-type: none"> • S 12: proposed amendments to Human Rights Commission Act, so that HRC no longer has to inform the subject of a complaint about a complaint if the complaint is frivolous, vexatious, lacks substance, or Commission decides not to consider complaint, may breach right to privacy: complaint often reflects adversely on reputation and the person should be in a position to deal with the allegations. 	<ul style="list-style-type: none"> • The explanatory statement will be amended to make clear the circumstances in which the HRC does not have to inform subject of complaint. • Frivolous and vexatious claims: agrees that privacy and reputation are important, but they must be balanced with ‘in a practical sense, the respondent’s desire not to have their time wasted by HRC bureaucratic processes’ • Complaints referred to other offices: the person complained about would usually be notified by the other appropriate office about the complaint
<p>Tobacco Amendment Bill</p>	<p>Scrutiny Report 52</p> <ul style="list-style-type: none"> • S 16, 28: Bans on smoking advertisements, display of tobacco products, promotion and competitions engage freedom of expression. Refers to Canadian case law to argue that right of free speech probably includes commercial free speech. However, restrictions probably justified: again refers to Canadian case law to conclude that legislation pursues legitimate objectives and refers to foreign jurisprudence to conclude that proportionate and justified in free and democratic society. • Ss 18, 22, 28: ‘very unlikely’ that there are incompatibility issues with strict liability offences: general justification provided in explanatory statement, offences are regulatory and penalty is within acceptable range. 	<p>Scrutiny Report 54</p> <ul style="list-style-type: none"> • ‘Curious’ that Committee spent so much time discussing commercial free speech. Notes that, unlike Canadian Charter, ACT HRA expressly applies to individuals only (s 6) – this provision was expressly recommended by Consultative Committee in response to Canadian tobacco advertising cases. Considers that it is highly improbable that ACT Supreme Court would find a right to commercial free speech, but notes Committee’s comments that it would likely be justifiable in any case. • Thanks Committee for its comments that strict liability offences are compatible. <p>Scrutiny Report 54: Committee’s further response</p> <ul style="list-style-type: none"> • Notes importance of explanatory statements, particularly under HRA: “The point of this exercise is not simply to inform the Committee,

		<p>the Assembly, the legal profession and the courts. An Explanatory Statement has the potential to be the vehicle for discourse between the promoter of the Bill and the general public, and thus enhance the growth of a human rights culture in the ACT. The work involved in writing an Explanatory Statement is tedious and difficult, but the outcome is of great value.”</p> <ul style="list-style-type: none"> • Just because corporations do not have rights, does not mean that right to freedom of expression does not include freedom of <i>commercial</i> expression: a lot of commerce and commercial speech is conducted by individuals, particularly in small business. Although it is not certain that freedom of expression will include commercial free speech, this is ‘the trend of the “international jurisprudence” if that is taken to refer to decisions of courts of the USA, Europe and the British Commonwealth.’
Planning and Development Regulation 2008	<p>Scrutiny Report 52</p> <ul style="list-style-type: none"> • Strict liability offence: explanatory statement does not explain justification. Committee draws to Assembly’s attention on the basis that might trespass unduly with previously established rights. 	<p>Scrutiny Report 55:</p> <ul style="list-style-type: none"> • Agreed that the Explanatory Statement failed to address the issues raised by the strict liability offence in the regulation. As the Explanatory Statement was inadvertently tabled, a Revised Explanatory Statement would be tabled as soon as practicable.
Children and Young People Bill 2008	<p>Scrutiny Report 53</p> <ul style="list-style-type: none"> • Notes that ‘on the part of the architects of the Bill there has been a systematic and thorough attempt to have its provisions conform to the right stated in 	<p>Scrutiny Report 55</p> <ul style="list-style-type: none"> • Argued that the strict liability offences are justified and cited the existence of the <i>Corrections Management Act 2007</i> as evidence

	<p>the <i>HRA</i>, various international rights instruments, and the common law.’ Commends explanatory statement for its level of detail.</p> <ul style="list-style-type: none"> • The Committee ‘has little to add to the way the Explanatory Statement has posed and dealt with the matter’ and extracts all of the sections of the explanatory statement dealing with HRA issues. It then makes particular comment on some issues in which the Committee has a particular emphasis. • Ss 18, 22, 28: most strict liability offences are regulatory and with penalties in the acceptable range. However, issues with strict liability offences of non-compliance with certain directions by Chief Executive punishable by 6 months imprisonment: justification not satisfactory, punishment arguably disproportionate, but notes that additional reasonable diligence offence. • Ss 8, 28: separate regime for decisions about Aboriginal and Torres Strait Island children breaches right to equality; whether justified depends on Assembly Member’s knowledge of history of Aboriginal and Torres Strait Islanders. • S 11: legislation should make clear that clause that best interests of child is paramount consideration applies to the whole legislation. • Notes that the definition of ‘Aboriginal’ in the legislation is vague and that this may ‘be to delay or stultify decision-making ... to the detriment of their human rights.’ • Ss 18, 25, 28: vagueness of offence provisions 	<p>of this, which is an Act of the same terms, and also argued that the offences referred to by the Committee were regulatory and not ‘criminal’ and so warrant the focus on the physical element of the offence.</p> <ul style="list-style-type: none"> • In regards to s 11(2) HRA, Government of the view that clause 512 of the Bill is justified on the basis that it is appropriately balanced with the child or young person’s right to protection under this section of the HRA. • The Government is also of the view that a separate regime for the making of decisions concerning ATSI children and young people is justified. The Government cited its reasons for this by way of reference to its reasons given to the Scrutiny of Bills Report 21 regarding the Children and Young People Amendment Act 2006. • In regards to the vagueness of the offence provisions (and the subsequent possible infringement of ss 18(2), 25(1) HRA, the Government conceded that it will consider whether amendment is necessary to remove doubt in relation to the meaning of an ‘adverse finding’. The Government came to a similar conclusion in regards to the meanings of ‘unreasonable discipline’ and ‘light work’. • In regards to the possible creation of a privative clause in contradiction with s 21(1) HRA, the Government is of the view that the timeframes
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	<p>may breach rights. There is doubt whether s 18 is relevant, as imposition of a fine may not amount to deprivation of liberty, but issue is not further explored. Refers to European case law to suggest that HRA s 25 (retrospective laws) may also encompass principle of legal certainty. Also discusses Canadian case law re vague laws. Hard to see how vague provisions could be justified under s 28.</p> <ul style="list-style-type: none"> • S 21: notes that short time limit to seek judicial review may amount to private clause. 	<p>for judicial review are justified and do not amount to a privative clause.</p>
<p>Classification (Publications, Films and Computer Games) (Enforcement) Amendment Bill 2008</p>	<p>Scrutiny Report 53</p> <ul style="list-style-type: none"> • Ss 18, 22, 28: strict liability offences are regulatory in nature and penalties are within acceptable range. 	
<p>Aboriginal and Torres Strait Islander Elected Body Bill 2008</p> <p>Creates body of 7 members to engage with community and government</p>	<p>Scrutiny Report 54</p> <ul style="list-style-type: none"> • Ss 8, 17, 28. Creation of a body such as this one gives effect to s 17 right to take part in conduct of public affairs. But, breaches s 8 right to equality because makes distinction based on race. Little justification is offered for this breach; Assembly Members will draw on their own knowledge of the history of Aboriginal and Torres Strait Islanders to decide whether this is adequate justification. 	<p>Scrutiny Report 56:</p> <ul style="list-style-type: none"> • Noted that not all differential treatment constitutes unlawful discrimination. The standard in s 8 HRA is not infringed by such treatment as long as it is based on objective and rational criteria and is intended to achieve a legitimate outcome. Considered that the creation of the Elected Body is based on objective and rational criteria and is intended to achieve a legitimate outcome for a group of people and therefore it can be argued that its creation is justified under s 28 HRA.
<p>Crimes (Forensic Procedures)</p>	<p>Scrutiny Report 54</p>	

<p>Amendment Bill 2008</p> <p>Facilitates creation of cross-jurisdictional DNA system throughout Australia</p>	<ul style="list-style-type: none"> • S 12: retention of forensic material may be incompatible with right to privacy. Notes that justification is provided in the explanatory statement and draws matter to Assembly’s attention. • S 12: right to privacy of persons providing samples has been addressed in explanatory statement: eg, ensuring that people of the same sex are present when certain samples are taken. 	
<p>Firearms Amendment Bill 2008</p>	<p>Scrutiny Report 54</p> <ul style="list-style-type: none"> • Ss 22, 28: provisions imposing legal burden on defendant to prove elements of a defence may breach right to presumption of innocence. Given the high penalties for the offence, issue of justifiability is more important: draws the matter to Assembly’s attention. • Entry, search and seizure powers do not give rise to an issue of HRA compatibility. Committee refers Assembly to discussion in explanatory statement. • Ss 18, 25, 28: vaguely expressed offence provisions may breach right to liberty and/or prohibition on retrospective laws. Notes observations from Canadian Supreme Court about test for vague laws. Notes, ‘There is a real question whether [this provision] is HRA compatible. If it is not, it is hard to see how it could be justified under HRA s 28.’ • Ss 18, 22, 28: strict liability offences are regulatory in nature and penalties are within the 	<p>Scrutiny Report 56:</p> <ul style="list-style-type: none"> • The Government argued that whilst the approach in s 63E(3) of the Bill engages the presumption of innocence in s 22(1) HRA (by imposing the legal burden of proof on the defence) the government considered this limitation to be justifiable in the circumstances: this section is not the only defence available to the offender. It is a defence provision that addresses the fact that dealers are in a position to check all prospective employees under the HRA.

	<p>acceptable range. No issue of HRA compatibility.</p> <ul style="list-style-type: none"> • Ss 9, 28: right to life in s 9 may include right to own or possess firearms, and thus may be infringed by the exclusion of a need for personal protection as a reason to obtain a firearms licence. Committee discusses Indian case <i>Bhatt</i>, where it was held that the right to bear arms is embedded in right to life, only an armed person could lead a life of dignity and peace and hence the law regulating licensing should be understood to require that a licence be granted unless there were exceptional reasons to the contrary. Committee notes that it is unclear whether Australian court would find that the right to life would guarantee a right to carry firearms. Further, prevailing social conditions in Australia are very different to those in India at the time of the decision, and so it would be more likely that a law restricting possession would be justifiable. 	
<p>Protection of Public Participation Bill 2008</p> <p>Allows court to dismiss proceedings against a defendant if proceedings are inconsistent with defendant's right to engage in public participation.</p>	<p>Scrutiny Report 54</p> <ul style="list-style-type: none"> • S 17: Right to public participation protected by the Bill is an aspect of s 17 right to take part in conduct of public affairs. • Ss 8, 21: Bill also engages right to equality and right to fair trial: should a plaintiff be subject to the Bill, only because cause of action is based on circumstances that include right to public participation? Draws matter to Assembly's attention. 	

<p>Road Transport (Alcohol and Drugs) (Random Drug Testing) Amendment Bill 2008</p>	<p>Scrutiny Report 54</p> <ul style="list-style-type: none"> • Notes that Bill is not accompanied by explanatory statement • Ss 12, 28: the administration of the tests will interfere with privacy of driver. Question under s 12 is then whether interference is unlawful or arbitrary. In deciding this, must take into account right to life and personal security of other road users. 	
<p>Water Resources (Validation of Fees) Bill 2008</p> <p>Bill retrospectively validates fees charged under the Water Resources Act during July 2007</p>	<p>Scrutiny Report 54</p> <ul style="list-style-type: none"> • Retrospective operation of law: notes that HRA s 25 provides against retrospective criminal laws, but there is also a general common law right against retrospective legislation. However, no undue trespass on rights here, as people who paid the fee thought they were legally obliged to do so, fees charged were properly related to services provided. 	<p>Scrutiny Report 58</p>
<p>Planning and Development Amendment Regulation 2008 (No 1)</p>	<p>Scrutiny Report 54</p> <ul style="list-style-type: none"> • Strict liability offence: notes that while the explanatory statement explains why the strict liability offence is justified, it doesn't address the issue of what defences might be available. • Committee also notes that the regulatory impact statement provides that the regulation is a temporary measure and that the strict liability offences will be transitioned to the Act itself, consistent with advice from JACS and the HRC. Committee commends this approach. 	<p>Scrutiny Report 58:</p> <ul style="list-style-type: none"> • Agreed with the Committee's view that the Explanatory Statement addressed the issue of why a fault element was not required for the offence but failed to address the issue of whether a defendant could rely on some defences other than the defence of reasonable mistake of fact allowed by the Criminal Code 2002.
<p>ACT Civil and</p>	<p>Scrutiny Report 55</p>	<p>Scrutiny Report 59:</p>

<p>Administrative Tribunal Bill 2008</p>	<ul style="list-style-type: none"> • Separation of powers: questions whether the proposed Tribunal can be empowered to hear “common law” causes of action, and if it does whether it violates s 38 HRA by unduly trespassing on personal rights and liberties. • Observes comments by Higgins CJ in <i>SI bhnf CC v KS bhnf IS</i> [2005] ACTSC 125 including that s 71 of the Cth Constitution sets limits to the kinds of laws that the Assembly may make so far as concerns Territory courts. • Brings to attention of committee this “rights issue”: tribunal does not have the degree of independence from the executive as possessed by courts; and its composition and procedure are also of concern. • Procedure of tribunal: questions whether the tribunal hearing a particular matter to fashion its own procedure for that matter is consistency with the s 21 HRA fair hearing requirement. • Draws to attention of committee that there is a danger that the principle of like cases be treated alike in outcome and procedure to ensure a fair hearing when a tribunal is permitted to operate on a different procedural regime each time it sits. • Clause regarding the restriction on public hearings: whether provision for hearings to be held in private wide enough to protect right to a fair trial under s 21 HRA. • Notes that it is problematic as common for courts and tribunals to make orders for private hearings 	<ul style="list-style-type: none"> • Government considered that the exceptions to the open court rule in the Bill have been drafted consistently with the s 21 HRA right to a fair trial, and allow sufficient scope for the closure of the court where the right to a public hearing is outweighed by competing interests. • The AG considered that the checks and balances the provisions provided concerning the execution of an arrest warrant by a police officer meant that the Bill complied with s 18 HRA (right to privacy and security of person).
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	<p>out of regard for the privacy or business interests of persons not party to the particular case and that in such cases, the court or tribunal must be alert to the need for such protection which it cannot do of its own initiative.</p> <ul style="list-style-type: none"> • Clause regarding arrest of person who has not appeared pursuant to a subpoena: questions whether it is compatible with s 18 HRA right to liberty and security. • Notes their discussion of a similar provision in Scrutiny Reports No 25 and No. 34 of 6th Assembly, and states that close attention must be paid to the circumstances in which the power to detain may be exercised, and the nature of the protections afforded to the person placed in detention. 	
<p>ACT Civil and Administrative Tribunal Legislation Amendment Bill 2008</p>	<p>Scrutiny Report 57</p> <ul style="list-style-type: none"> • There should be justification offered for the restriction on the right to a fair trial (s 21 HRA) involved in the provision of the provision of the Bill for a Minister to make a non-disclosure certificate. • Committee requested an explanation for what the intended effect was of the proposed subsection 22H(2), which provides that "...this division does not exclude the operation of the <i>Human Rights Act 2004</i>". The Committee queried whether this meant a party could argue that a Ministerial certificate has no effect if its result would be that 	<p>Scrutiny Report 59:</p> <ul style="list-style-type: none"> • AG argued that, in regards to the intended affect of s 22H(1), it does not affect the operation of the HRA.

	the party did not receive a fair trial as required by s 21(1) HRA.	
Civil Partnerships Amendment Bill 2008	<p>Scrutiny Report 57:</p> <ul style="list-style-type: none"> • Committee considered the issue arose as to whether these amendments are necessary to place persons seeking to enter into a civil partnership in a position similar to persons whose marriage is solemnized by authorized celebrant under the <i>Marriage Act 1961</i> (Cth) and in this way enhance the fulfillment of the rights to equality before the law and to the equal protection of the law without discrimination s 8 (HRA). 	
Crimes (Controlled Operations) Bill 2008	<p>Scrutiny Report 57</p> <ul style="list-style-type: none"> • The Committee queried whether, having regard to the rule of law, and/or to s 8(2) HRA, it is appropriate that a participant in an authorized operation is, if engaging in that conduct is an offence, and in defined circumstances, granted an immunity from both criminal and civil responsibility. • The Committee also queried, having regard to the Explanatory Memorandum which noted this issue, whether the Bill made adequate protection to guard against the danger that an authorized controlled operation could be conducted in such a way as to entrap a person into committing a breach of criminal law, and in this way derogate from the s 21(1) HRA right to a fair trial. • The Committee also queried the Assembly as to whether, per s 28 HRA (demonstrably justifiable 	

	<p>limitation to a right) restriction on the ability to authorize an controlled operation under this Amendment strikes the appropriate balance between: the need to ensure that criminal law enforcement is capable of affording protection to members of the public <i>and</i> the need to protect the health and safety of particular persons that may arise fro ma particular controlled operation.</p>	
<p>Justice and Community Safety Legislation Amendment Bill 2008 (No 2)</p>	<p>Scrutiny Report 57</p> <ul style="list-style-type: none"> • The Committee queried whether Cl 1.26 of Schedule 1 to amend the <i>Legal Profession Act 2006</i> to empower a judicial member of a disciplinary tribunal to issue a warrant for the arrest of a person who has not appeared pursuant to a subpoena, and for the person to be brought to the tribunal, compatible with s 18(1) HRA (right to liberty and security of person) and/or is this power inconsistent with separation of powers doctrine. 	
<p>Sexual and Violent Offences Legislation Amendment Bill 2008</p>	<p>Scrutiny Report 57:</p> <ul style="list-style-type: none"> • The Committee queried whether the provision that a trial judge may exercise a discretion to close the court to the public while a complainant or similar act witness in a sexual or violence offence proceeding is giving evidence a justifiable restriction on the s 21(1) HRA right to a fair and public hearing, and whether the nature of this section (s 39) meant that it overrode human rights principles. • It also notes that the Explanatory Memorandum 	<p>Scrutiny Report 59:</p> <ul style="list-style-type: none"> • In regards to s 39 of the Bill (discretion of the court to close to the public during a victims testimony), the AG argued that it has no legal effect (as it is a note to the Act) and is intended to guide the court and remind it of the principles under the HRA, in particular the s 21(1) HRA right to a fair hearing. According to the AG, it is not the intention of s 39(3) to override human rights principles and there is no express exclusion of the operation of the HRA in this subsection or any other provision of the

	<p>does not address the issue of whether, in light of s 8(3) HRA (equality before the law), it is appropriate that proposed s 39(4) of the Bill enable a prosecution witness giving evidence in a closed court to nevertheless choose that persons should remain in the court.</p>	<p>Bill.</p> <ul style="list-style-type: none"> The AG also considered that s 39(3) did not impact on the s 8(3) HRA equality before the law, as the accused is fully entitled to the presence of as many support people in the courtroom while they are giving their evidence, and is legally represented in the proceeding.
<p>ACT Civil and Administrative Tribunal Legislation Amendment Bill 2008 (No 2)</p>	<p>Scrutiny Report 58</p> <ul style="list-style-type: none"> Noted that the Explanatory Statement needs to make reference to the issue of the extent to which proposed s 184 provides that “ACAT must preserve the confidentiality” of certain kinds of information disclosed to or obtained by it. The Committee queried what was involved in the preservation of confidentiality – if it included non-disclosure of information of a relevant kind then this would engage s 21(1) HRA, which in turn should be addressed in the Explanatory Memorandum. 	<p>Scrutiny Report 59:</p> <ul style="list-style-type: none"> The AG argued that s 184 of the Utilities Act does not impact on the right to a fair trial under s 21(1) HRA – it simply protects information of a commercially significant nature obtained in the course of proceedings under the Utilities Act before the ACAT.
<p>Domestic Violence and Protection Orders Bill 2008</p>	<p>Scrutiny Report 59:</p> <ul style="list-style-type: none"> Having regard to Clause 20 of this Bill (excluding a child <10 years as a named respondent on an order), the Committee queried whether this clause adequately recognizes the s 11(2) HRA right (right of a child to protection). The Committee considered that it could be argued that this clause removes the ability of some other child – who is for example the target of the domestic or personal violence – to obtain an order against another child who is the perpetrator of the violence. 	

	<ul style="list-style-type: none"> • In this respect, the Committee argued that the object of the clause could be achieved in a way that accorded greater recognition to the interests of the victim child – by limiting the clause to circumstances where the child was incapable of undertaking in the order or the consequences of any breach of the order. • Noted also that the Explanatory Memorandum makes no reference to the HRA and does not given any indication of matters relevant to an assessment of whether Clause 75 of the Bill (detention of people against whom emergency orders sought) is a proportional limitation on the s 8 HRA right to liberty. 	
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7th Assembly

Legislation	Scrutiny Report	Government Response
Development Application (Block 20 Section 23 Hume) Assessment Facilitation Bill 2008	Scrutiny Report 1 <ul style="list-style-type: none"> • s 8(3) HRA possibly breached. The P & D Act contains provisions that would create a regime for assessment of a “new development application” that in certain respects varies from the manner which similar applications are dealt with under the P&D Act. • These provisions would, on the face of it, result in the more beneficial treatment of a person making a “new development application” than would be the case where another person makes another kind of development application under the P&D Act. 	

	<ul style="list-style-type: none"> • Explanatory Memorandum does not address whether the proponent of the Bill has shown that the limitation of s 8(3) HRA is “demonstrably justified in a free and democratic society” under s 28 HRA. • ADJR excluded from the Bill. Committee finds that exclusion may be in conflict with HRA s 21(1). Holds that while there doesn’t appear to be a significant rights issue here, ‘the question might be asked as to what is gained by excluding this means of review.’ (p. 8) 	
Crimes (Bill Posting) Amendment Bill 2008	<p>Scrutiny Report 2</p> <ul style="list-style-type: none"> • The Committee noted that the Explanatory Memorandum for this Bill did not address some of the free speech issues identified by the previous Committee in its comments on the Crimes Amendment Bill 2008 in Scrutiny Report 51 (see above p.20). • The Committee noted with disappointment that the Minister had yet to address it’s 6th assembly recommendation that the Minister should address the questions it raised in Scrutiny Report 51. • In regard to strict liability offences arising in the Bill, the Committee notes that the Explanatory Statement does not acknowledge that a rights issue arises (breach of s 18HRA), similarly as it did in the Crimes Amendment Bill 2008. In particular, the Explanatory Statement needs to justify why the prosecution need not be concerned to establish any degree of moral 	<p>Scrutiny Report 3:</p> <ul style="list-style-type: none"> • Noted that the Bill does not provide a blanked ban on Bill Posting and that it has been acknowledged in other jurisdictions that it is an accepted general principle that the prevention of visual pollution is a reasonable objective to justify some limits on free expression (see <i>Guinard v R</i> [2002] 1 SCR 472, Canada). • In light of this the Minister noted that in terms of the justifiability of the Bill per s 28 HRA, there is also a means under the <i>Road and Public Places (Removable Signs) Code of Practice 2005</i> whereby “community groups” can place up to 20 signs on public property to advertise their events. • In regards to the uncertainty as to what is “unlawful” Bill-posting, government has decided to clearly label authorized bill-posting sites accordingly.

	blameworthiness on the part of the defendant.	<ul style="list-style-type: none"> Re Strict Liability, the Minister considered that given the defence of mistake of fact is available (s 23(1)(b), s 36 Criminal Code 2002), and the factual elements of the offence and probative force of the evidence (eyewitness of physically placing posters to a wall etc) no added fault element is needed.
Crimes (Murder) Amendment Bill 2008	<p>Scrutiny Report 2</p> <ul style="list-style-type: none"> Committee considered that reform of s 12 of the Bill (to widen the current statute law and common law definition of murder) engages s 18(1) HRA, given that a conviction for murder will result in a loss of liberty and may not be justifiable under s 28 HRA. Noted the absence of a justification for the widening of ‘murder’ in the explanatory statement and that per s 28(2), the Attorney-General could achieve the objective of the Bill by redefining ‘murder’ through ‘any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.’ The Committee referred the AG to the LRC of WA proposal which it details in its report. 	<p>Scrutiny Report 3:</p> <ul style="list-style-type: none"> The Attorney-General argued that having experienced the law in its current form for 18 years, the gov’t is well placed to determine whether the amendment is needed. Argued that a view s 18(1) HRA would be prima facie incompatible with any offence punishable by imprisonment is overly simplistic and that it would make the sentence” In particular, no-one may be arbitrarily detained or arrested” redundant. Further the ECtHR has interpreted this right to mean that “no one should be deprived of his liberty in an arbitrary fashion.” In this respect, the Government does not believe convicting a person of murder on the basis of a <i>mens rea</i> intent to commit serious bodily harm is arbitrary.gmail
Dangerous Substance and Litter (Dumping) Legislation Amendment Bill 2008	<p>Scrutiny Report 2</p> <ul style="list-style-type: none"> Committee recommended the Minister provide the Assembly with advice addressing the rights issues that arise in this Bill, as the Explanatory Statement does not acknowledge that human 	

	<p>rights issues arise as a result of the Bill extending the impounding scheme to offences under the <i>Dangerous Substances Act 1999</i> and the <i>Litter Act 2004</i>.</p> <ul style="list-style-type: none"> • The Committee referred to similar concerns it raised in Scrutiny Report 28 of the 6th Assembly regarding the Road and Transport (Safety and Traffic Management) Amendment Bill 2006, where it considered that Bill to engage s 10 HRA (protection from torture and cruel, inhuman or degrading treatment etc) and s 12 HRA (right to privacy) [though note the Committee referred to the right to privacy as being s 10 HRA]. The Minister responded to that Committee's concerns and decided the Bill would be further reviewed in the second half of 2006. • In regards to the strict liability aspect of this Bill, the Committee noted the HRA was not considered and noted that its justification for strict liability offence for physically dumping litter was the critical feature of the offence, was unsatisfactory. It referred to its response to a similar claim in its Scrutiny Report No 53 of the 6th Assembly regarding the Children and Young People Bill 2008 (see above p. 24) in which the aspects of the HRA engaged by this Bill was discussed at length. It considered that the justification provided did not justify overriding s 12 HRA right to liberty and security of person. 	
<p>Education Amendment Bill 2008</p>	<p>Scrutiny Report 2</p> <ul style="list-style-type: none"> • The Committee drew the Assemblies attention to 	

	its comments in Scrutiny Report No 30 of the 6 th Assembly. In that report it noted that Article 13 ICESCR states principles that the Assembly might take into account, principles which concerned the adequacy of a system for providing primary and secondary education to children.	
Justice and Community Safety Legislation Amendment Bill 2009	<p>Scrutiny Report 3</p> <ul style="list-style-type: none"> • The Committee noted the Explanatory Memorandum made no mention of the HRA, despite this Bill engaging various rights, most obviously s 18 HRA. • However, the Committee did not consider that an issue of potential incompatibility arose subject to one matter: the committee considered that the Bill need to better define the powers of the magistrate under s 40A(3) of the Bill to be conditional on “reasonable grounds” of forensic evidence. Otherwise, the Committee considers that this section of the Bill will make the rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers (Committee term of reference (c)(ii)). 	<p>Scrutiny Report 15</p> <ul style="list-style-type: none"> • The AG noted that a statement of compliance with the HRA was tabled alongside the Bill. Argued that the power of courts to require basic security screening upon entry to their premises is well settled and essential to ensuring a fair trial. Argued that this ‘amendment will do no more than introduce language that prevents misinterpretations that would invent unreasonable limitations on the security of the courts where there are presently none.’
First Home Owner Grant Amendment Bill 2009	<p>Scrutiny Report 3</p> <ul style="list-style-type: none"> • The Committee noted that, from a rights perspective, the conferment of a discretion under s 24C of the Bill in terms that it must be exercised upon the Commissioner having “reasonable grounds” to be satisfied that certain matters exist, is preferable to a provision that allows simply that the Commissioner be “satisfied” of those matters. 	<p>Scrutiny Report 6</p> <ul style="list-style-type: none"> • The Minister agreed with the recommendation that there be an inclusion of “reasonable grounds” in the amendment and noted that amendments to this Bill that implement this recommendation was passed by the Legislative Assembly on 24 March 2009.

	<ul style="list-style-type: none"> • The Committee noted that it supported a similar move made to the Health Legislation Amendment Bill 2006 (No 2) in its Scrutiny Report No 34 of the 6th Assembly. • The Committee similarly noted that the Assembly agreed with its proposal in Scrutiny Report No 3 of the 7th Assembly concerning Justice and Community Safety Legislation Amendment Bill 2009 (see above p. 34) that the powers of a magistrate be conditioned on he or she having “reasonable grounds” for a particular belief. 	
Animal Diseases Amendment Bill 2009	<p>Scrutiny Report 5</p> <ul style="list-style-type: none"> • The Committee considered the Amendment (which allows vehicle inspection when vehicles are on a public road) to engage s 12 HRA (right to privacy). In this respect the committee considered that the Amendment may not be necessary as the current definition is not exhaustive and could also include a vehicle at any reasonable time when the vehicle is on a public road. The Amendment simply confirms this and therefore makes it clearer that the interference in the vehicle is not arbitrary (per s 18 HRA) or justified (s 28 HRA). • The Committee noted the Explanatory Memorandum does not convincingly explain the judgment call which allows entry to a publicly parked vehicle and recommended the Assembly provide greater clarity in this respect. 	<p>Scrutiny Report 7</p> <ul style="list-style-type: none"> • The Minister considered that the Committee correctly observed that the amendment is intended to clarify what constitutes a reasonable time at which a vehicle, in use on a public road, can be entered. The Minister agreed that this could be better dealt with in the Bill’s Explanatory Statement. • The Minister also noted that given the Committee’s comments he had arranged for a Revised Explanatory Statement to be prepared for the Bill.
Road Transport	Scrutiny Report 7:	Scrutiny Report 8:

<p>(Mass, Dimensions and Loading) Bill 2009</p>	<ul style="list-style-type: none"> • The Committee noted that clause 331 ('Protection from Self-Incrimination') of the Explanatory Memorandum may engage s 22(2)(i) of the HRA (right to not self-incriminate in criminal proceedings) but noted that it does engage the common law privilege against self-incrimination. • The Committee also noted for the Assemblies attention, that the Explanatory memorandum did not recognize that the placing of a legal burden on a defendant under s 196(4) of the Bill engages s22(1) HRA (right to be presumed innocent). 	<ul style="list-style-type: none"> • The Minister noted that all strict liability offences are assessed by the Human Rights and Criminal Law Units in JACS. • The Minister argued that in light of Canadian Courts recognizing that strict liability offences would be more readily justified when applied to regulatory offences which do not imply the same degree of moral blameworthiness or culpability as 'true crimes' (<i>Whoelsale Travel Group Inc v R</i> [1991] 3 SCR 154) that the bulk of the offences in the Bill were suitable to be made as strict liability offences as they were merely regulatory offences and not "true crimes". • Legal Burden: Minister agrees that s 22(1) HRA is engaged. However the Minister was of the same view as the Court in <i>Travel Group</i> where it found that requiring the Crown to prove or disprove matters in the peculiar knowledge of the defendant insurmountable and make enforcement of regulatory regimes impossible. In this respect, the limit is proportionate (per s 28 HRA). <p>Committee Reply in Scrutiny Report No 13:</p> <ul style="list-style-type: none"> • Considers that its concerns are now amplified after a Victorian Supreme Court decision (<i>Re an application under the Major Crime (Investigative Powers) Act 2004</i> [2009] VSC 381 (7 September 2009)(Warren CJ)) which, if
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		followed by ACT Courts, will call for an evaluation of existing provisions in Territory law, and for closer examination of relevant provisions in Bill, that do not deal with the privilege against self incrimination in the way held by Warren CJ to be necessary to comply with provisions of the Victorian Charter that are mirrored in the <i>Human Rights Act 2004</i> (ACT).
Crimes Legislation Amendment Bill 2009	<p>Scrutiny Report 10</p> <ul style="list-style-type: none"> • Committee noted that proposed s 38D(3) of this Bill engages ss 22(2)(d) and (g) HRA (rights in criminal proceedings). While noting that a Bill interlinked to this Bill, the Sexual and Violent Offences Amendment Bill 2008, argued these sections of the HRA were not engaged, justification nevertheless needs to be shown under s 28 HRA that the limitation or restriction on the s 22 HRA rights is reasonable and pursues a legitimate objective. • Committee recommended that the Explanatory Statement to this Bill make reference to the Explanatory Statement to the Sexual and Violent Offences Legislation Amendment Bill 2008. 	<p>Scrutiny Report 11:</p> <ul style="list-style-type: none"> • Minister noted that in considering whether the Sexual and Violent Offences Amendment Bill 2008 would impact upon s 22(2)(d),(g) HRA, the Explanatory Memorandum cites Canadian case law (absence of Canadian Case law also a criticism of the Committee in its Report).
Amendments proposed to the Legal Aid Act 1977	<p>Scrutiny Report 10:</p> <ul style="list-style-type: none"> • Committee noted that proposed s 35E(1) of the Amendment ('Admissibility of Evidence') would engage s 21 HRA (right to a fair trial). • Drew to the Assemblies attention that given s 21 HRA engaged, a restriction on the production of evidence to a court that is relevant to the 	

	resolution of a dispute before the court should be scrutinised closely to determine if it is demonstrably justified under s 28 HRA.	
Work Safety Legislation Amendment Bill 2009	<p>Scrutiny Report 10:</p> <ul style="list-style-type: none"> Noted Explanatory Statement did not address the issue that s 55A of the Bill would create a strict liability offence that engages s 18(1) HRA (right to liberty and security) and s 22(1) HRA (right to be presumed innocent). Noted that this derogation needs to be justified per s 28 HRA and so recommended the Minister address this issue. 	<p>Scrutiny Report 11:</p> <ul style="list-style-type: none"> In Response the Minister elaborated on the implications of s 55A creating a strict liability offence, but did not discuss the engagement of s 18(1) HRA or s 22(1) HRA.
Long Service Leave (Portable Schemes) Bill 2009	<p>Scrutiny Report 11:</p> <ul style="list-style-type: none"> Noted that the Explanatory Statement addresses the limitations imposed by the amendments as a human rights issue (and with ref. to the HRA) but also noted that several of the amendments trespass on rights previously established by law. Recommends the Assembly address the questions of whether the amendments “unduly” trespass on existing rights, and whether, having regard to the matters it set out in the Explanatory Statement, the Amendments “unduly” limit review rights. 	<p>Scrutiny Report 11</p> <ul style="list-style-type: none"> Did not appear to answer the questions raised in its response.
Adoption Amendment Bill 2009	<p>Scrutiny Report 12:</p> <ul style="list-style-type: none"> Noted that the Explanatory Memorandum addressed in depth the human rights issues this Bill engages by ref. to the HRA. Noted in particular its reference to s 8(2) HRA (right to equal protection of the law without discrimination) and drew to the Assemblies attention that the Bill (in partic. s 39G(2)(c)(i)) 	<p>Scrutiny Report 14</p> <ul style="list-style-type: none"> The Minister argued that a Human Rights Compatibility Statement had been issued. In the Compatibility Statement there was application of affirmative measures recognizing the history and needs of ATSI children, their families and community. Argued that ‘ideally all placements of ATSI children and young people will occur

	allows for a child to be placed with adoptive parents who are members of <i>any</i> community, and not necessarily one with which the child has a connection.	within their own community, involve consultation with relevant family and community representatives, and take into account relevant kinship rules...if it is not possible to meet this criteria, or if there are conflicting views, the best interests of the child principle will be invoked.”
Civil Partnerships Amendment Bill 2009	<p>Scrutiny Report 12:</p> <ul style="list-style-type: none"> Noted that the Explanatory Memorandum made reference to the HRA, but noted that it may nevertheless be incompatible with s 21(1) HRA (right to a fair trial) unless s 11A(2) of the Bill be amended to include that the administrative power be exercised only “if satisfied on reasonable grounds” 	
Dangerous Goods (Road Transport) Bill 2009	<p>Scrutiny Report 12:</p> <ul style="list-style-type: none"> Committee noted that 18 provisions of the Bill created strict liability offences and engaged s 18(1) HRA (right to liberty and security of person) and s 22(1) HRA (right to the presumption of innocence). Noted with concern that the level of the penalty that would attach to a conviction as a result of an offence under one of the 18 provisions raises questions about whether the provisions are demonstrably justifiable per s 28 HRA and the severity of the punishment might also engage also s 1091(b) HRA (right not to be treated or punished): “To imprison a person for committing an act they did not intend to commit might well 	<p>Scrutiny Report 13:</p> <ul style="list-style-type: none"> In regards to whether aspects of the Bill amounted to an undue trespass on rights, the Minister referred to his comments to the Road Transport (Mass, Dimensions and Loading) Bill 2009 (see above, p. 36) the Minister considered that the limitation is proportionate and justifiable. <p><i>Committee Reply in Scrutiny Report No 13:</i> Considers that its concerns are now amplified after a Victorian Supreme Court decision (<i>Re an application under the Major Crime (Investigative Powers) Act 2004</i> [2009] VSC 381 (7 September 2009)(Warren CJ)) which, if followed by ACT Courts, will call for an evaluation of existing</p>

	<p>be regarded as breaching this right.”</p> <ul style="list-style-type: none"> • Noted that it raised, on many prior occasions, concerns regarding imprisonment as a result of a strict liability offence being an unjustifiable derogation per s 28 HRA. • Drew these concerns to the Assembly and noted that it raised similar concerns in Scrutiny Report No 38 of the 5th Assembly. Recommended the Minister address this issue. 	<p>provisions in Territory law, and for closer examination of relevant provisions in Bill, that do not deal with the privilege against self incrimination in the way held by Warren CJ to be necessary to comply with provisions of the Victorian Charter that are mirrored in the <i>Human Rights Act 2004 (ACT)</i>.</p>
<p>Subordinate Law SL2009-39 being the Planning and Development Amendment Regulation 2009 (No. 10)</p>	<p>Scrutiny Report 12:</p> <ul style="list-style-type: none"> • Committee notes that the Explanatory Memorandum discusses the HRA implications in great detail. Nevertheless it considers that the additional matters in Schedule 1 of the Planning and Development Regulation (which includes schools to have no required development approval, not be subject to 3rd part appeal etc) trespasses on rights previously established by law. • Question to Assembly: whether the amendments “unduly” trespass on existing rights and also “unduly” limit review rights (s 12 HRA, right to privacy; and s 21 HRA, right to a fair trial). 	
<p>Education Amendment Bill 2009</p>	<p>Scrutiny Report 13:</p> <ul style="list-style-type: none"> • Noted that the proposed amendment (increasing school suspension from 5 to 10 days) raises the issue of whether sufficient recognition has been given to the right of the child (s 11(2) HRA) and recommends that a member of the Assembly may wish to take into account the interests of other 	

	children who attend the relevant school.	
Building and Construction Industry (Security of Payment) Bill 2009	<p>Scrutiny Report 14:</p> <ul style="list-style-type: none"> • Committee noted with disappointment that the Explanatory Statement did not provide adequate explanation of the provisions of the Bill, given that the Bill establishes a procedure for the expeditious recovery of construction work progress payments, it raises the issue of whether the Bill is compatible with s 21 HRA (right to a fair trial). • Committee considered it necessary to assist the Assembly in ‘get[ting] to grips’ with the rights issues raised and noted that it expected the Minister to respond with an explanation of how the scheme of the Bill would work, and the relevant rights issues raised. • It assisted the Assembly by way of reference to the Committee’s comments in its Scrutiny Report No 55 of the 6th Assembly of the ACT Civil and Administrative Tribunal Bill 2008 (see above p. 29) (see pp. 3-13 of Report No. 14). 	