

Legislation Review Committee



PARLIAMENT OF
NEW SOUTH WALES

Legislation Review Digest



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Membership

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Guide to the Digest

The Legislation Review Committee has two broad functions set out in sections 8A and 9 of the *Legislation Review Act 1987* (**the Act**). Section 8A requires the Committee to scrutinise all Bills introduced into Parliament while section 9 requires the scrutiny of all regulations.

Part One: Functions Regarding Bills

The Committee's purpose is to assist all members of Parliament to be aware of, and make considered decisions on, the rights implications of legislation. The Committee does not make specific recommendations on Bills and does not generally comment on government policy.

The Committee's functions with respect to Bills as established under section 8A of the Act are as follows:

- a) to consider any Bill introduced into Parliament, and
- b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - (i) trespasses unduly on personal rights and liberties
 - (ii) makes rights, liberties and obligations unduly dependent upon insufficiently defined administrative powers
 - (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions
 - (iv) inappropriately delegates legislative powers, or
 - (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

The terms of section 8A are not defined. However, the types of issues the Committee typically addresses in its Digests include, but are not limited to:

Trespass unduly on personal rights and liberties:

- retrospectivity
- self-incrimination and the right to silence
- reversal of the onus of proof
- procedural fairness
- rule of law and separation of powers
- extraterritoriality
- strict liability and penalty notice offences
- search and seizure without warrant
- confidential communications and privilege
- wide regulatory powers
- access to vote
- ability to engage in public life and public elections
- equal application of laws
- freedom of expression and free speech
- freedom of religion and belief
- freedom of contract
- right to personal and real property
- privacy and protection of personal information
- right to personal physical integrity
- legislative interference in standing judicial matters

Insufficiently defined administrative powers:

- insufficiently defined or wide powers

Non-reviewable decisions:

- excludes access to review
- limits type of evidence available to a decision-maker
- provides decision-maker is not required to provide reasons for a decision
- decisions made in private

Inappropriate delegation of legislative powers:

- provides the executive with unilateral authority to commence an Act (i.e. commencement by proclamation)
- wide power of delegation
- wide regulation-making powers (e.g. creation of offences or setting penalties)
- Henry VIII clauses (clauses that allow amendment of Acts by regulation)
- imposition of tax or levy by regulation

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny

- subordinate legislation not tabled in Parliament and not subject to disallowance
- insufficient disallowance period
- significant matters which should be set by Parliament (e.g. definitions)
- incorporating rules or standards of other bodies in force not subject to disallowance

In practice, the Committee highlights issues of concern and takes into consideration the potential reasons for introducing such a provision and any safeguards in place. The Committee determines if the provisions may be reasonable in the circumstances or should be referred to Parliament for further consideration.

Under section 8A(2) of the Act, Parliament may pass a Bill whether or not the Committee has reported on it. However, this does not prevent the Committee from reporting on any passed or enacted Bill.

Part Two: Functions Regarding Regulations with Comments

The Committee's functions regarding regulations are established under section 9 of the Act:

- (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament, and
- (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
 - (i) that the regulation trespasses unduly on personal rights and liberties
 - (ii) that the regulation may have an adverse impact on the business community
 - (iii) that the regulation may not have been within the general objects of the legislation under which it was made
 - (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made
 - (v) that the objective of the regulation could have been achieved by alternative and more effective means
 - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act
 - (vii) that the form or intention of the regulation calls for elucidation, or
 - (viii) that any of the requirements of sections 4, 5 and 6 of the [Subordinate Legislation Act 1989](#), or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and

- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

The Committee may write to the relevant Minister for further information or, as with Bills, refer particular matters to the Parliament for further consideration. As above, the Committee may also recommend that Parliament disallow a regulation that has been made.

Part Three: Regulations without Comment

The Committee reviews all disallowable regulations which have been tabled in Parliament. However, unlike Bills, the Committee is only required by statute to report on those regulations with identified issues under section 9, rather than reporting on every regulation made.

Part Three to the Digest contains a brief summary of the regulations that do not engage with any issues under section 9 or, in the Committee's view, do not warrant further comment.

Conclusions on Bills and Regulations

Part One of the Digest contains the Committee's reports on Bills which were introduced into Parliament. Under the section titled 'Issues considered by the Committee', the report includes commentary about whether the Bill engages with one or more of the five criteria for scrutiny set out in section 8A(1)(b) of the Act. This will include either:

- Where no issues set out in section 8A(1)(b) are identified, that 'The Committee makes no comment in respect of the issues set out in section 8A of the LRA.'
- Where issues set out in section 8A(1)(b) are identified, a distinct comment on each issue identified.

Part Two of the Digest contains the Committee's reports on regulations and other statutory instruments which are tabled in Parliament and are still subject to disallowance. As noted, the Committee only reports on regulations and other statutory instruments with identified issues under section 9 of the Act, and those instruments which don't have identified issues are listed in Appendix Two of the Digest. Like Bill reports, the Committee's regulation reports includes a distinct comment on each issue identified under the section titled 'Issues considered by the Committee'.

For every issue identified in a report, the Committee's comment will conclude either that the Committee 'refers/notes the matter to Parliament' or 'makes no further comment'.

Where the Committee concludes to **refer/notes the matter to Parliament**, the Committee considers that it requires a response or further comment by the Member with carriage of the Bill (for Bill reports) or the responsible Minister (for regulation reports).

Where the Committee concludes to **make no further comment** on an identified issue in the report, the Committee considers that the issue may technically engage with the criteria under section 8A or 9 of the Act but, given counterbalancing considerations (e.g. legislated safeguards), it is unlikely in practice to raise the issues under the relevant section. The Committee invites but does not otherwise require the Member with carriage (for Bill reports) or the responsible Minister (for regulation reports) to comment on these identified issues.

Digest Snapshot

PART ONE – BILLS

[1. Biodiversity Conservation Amendment \(Biodiversity Offsets Scheme\) Bill 2024](#)

Issue identified	Conclusion of Committee
Ministerial opinion of appropriateness – exemption from biodiversity development assessment report requirement	No further comment
Significant reform matters deferred to regulations	No further comment
Incorporating external publications not subject to disallowance	No further comment

[2. Child Protection \(Offenders Registration\) Amendment Bill 2024](#)

Issue identified	Conclusion of Committee
Extension of registrable offences and reporting requirements – right to privacy, protection of personal information, and freedom of movement	No further comment
Presumption of mental element of knowledge – custodial penalty for absolute liability offence	Referred
Enhanced police powers to enter and search premises – wide regulatory powers impacting personal rights and liberties	No further comment
Commencement by proclamation	Referred

[3. Environmental Trust Amendment Bill 2024](#)

No issues identified

[4. Ports and Maritime Administration Amendment Bill 2024](#)

Issue identified	Conclusion of Committee
Licensed service determinations not subject to parliamentary scrutiny	Referred
Presumption of innocence - reversal of onus of proof - liability of vehicle owners for parking offences	No further comment
Wide regulatory power impacting right to privacy	No further comment
Absolute liability offences – provision of licensed services	No further comment
Strict liability offences	No further comment
Continuing offences	No further comment
Wide regulation-making powers	No further comment

5. Strata Managing Agents Legislation Amendment Bill 2024

Issue identified	Conclusion of Committee
Absolute liability offences	No further comment
Commencement by proclamation	No further comment

6. Summary Offences Amendment (War Memorials and Other Protected Places) Bill 2024*

No issues identified

PART TWO – REGULATIONS WITH COMMENT

1. Cemeteries and Crematoria Amendment (Interment Service Levy) Regulation 2024

Issue identified	Conclusion of Committee
Cemeteries Agency may refuse application to remove cemetery from license	No further comment

2. Greyhound Racing Amendment (Appointment of Administrator) Regulation 2024

Issue identified	Conclusion of Committee
Broad ministerial discretion – procedural fairness	Referred

3. Industrial Relations Commission Amendment (Industrial Court) Rules 2024

Issue identified	Conclusion of Committee
Contempt of court	Referred

4. Local Government (General) Amendment (Elections) Regulation 2024

Issue identified	Conclusion of Committee
Right to participation in public elections - limitation of technology assisted voting	No further comment

5. Police Amendment Regulation 2024

Issue identified	Conclusion of Committee
Henry VIII clause	Referred

6. [Work Health and Safety Amendment \(Engineered Stone\) Regulation 2024](#)

Issue identified	Conclusion of Committee
Absolute liability offences	No further comment
Incorporating external publications	No further comment

Summary of Conclusions

PART ONE – BILLS

1. Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Ministerial opinion of appropriateness – exemption from biodiversity development assessment report requirement

The Bill seeks to amend the *Biodiversity Conservation Act 2016* to allow the Minister to exempt an application for development consent from the requirement to obtain a biodiversity development assessment report. Subsection 7.7(2) of the Act currently requires an application for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* to be accompanied by a biodiversity development assessment report, if the development is likely to significantly affect threatened species. Under the proposed subsection 7.7(3)(b), the Minister may exempt an application if, 'in the Minister's opinion, there are exceptional circumstances that make it appropriate to exempt the application'.

The Bill does not specify the matters that the Minister must consider when determining whether the circumstances are 'appropriate', nor does it define or narrow the ordinary meaning of 'exceptional'. This would grant the Minister a broad discretionary power to exempt proposed developments from key requirements of the Biodiversity Offsets Scheme, where those developments are likely to significantly affect threatened species. An application exempted under subsection 7.7(3) would also be exempted from other requirements, including those relating to serious and irreversible impacts on biodiversity.

However, the Committee acknowledges that there may be limited circumstances such as natural disasters that warrant flexibility in the application of the Scheme, particularly in regional areas. The Committee also notes that the Bill proposes several safeguards to improve transparency around the exercise of this discretionary power. For example, the exemption order must be published in the Gazette, and it must set out the Minister's reasons for making the order. The Bill would also require public registers to be kept in relation to orders made under subsection 7.7(3). Therefore, in the circumstances, the Committee makes no further comment.

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Significant reform matters deferred to regulations

The Bill seeks to insert subsection 6.16(1A) into the *Biodiversity Conservation Act 2016*, which would allow the regulations to make provision for a range of matters that are fundamental to the reform of the Biodiversity Offsets Scheme. These include the principles that would apply in relation to the taking of genuine measures to avoid and minimise the impact of proposed development, as well as the assessment standards against which genuine measures must be assessed.

The Bill would also amend subsection 6.30(2) to allow the regulations to prescribe the circumstances in which development proponents are unable to meet their offset obligations

through payment into the Biodiversity Conservation Fund. Limiting the ability of development proponents to meet their offset obligations in this way is a key reform that is intended to facilitate greater participation in the biodiversity credit market.

The Committee generally prefers substantive matters such as these to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight. This is particularly important where the matters deferred to the regulations constitute significant aspects of the reforms.

However, the Committee acknowledges that deferring these matters to the regulations may provide necessary flexibility in the regulatory framework to support the functioning of the biodiversity credit market. The Committee also acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. Therefore, in the circumstances, the Committee makes no further comment.

**Insufficiently subjects the exercise of legislative power to parliamentary scrutiny:
s 8A(1)(b)(v) of the LRA**

Incorporating external publications not subject to disallowance

The Bill proposes to insert section 6.29A into the *Biodiversity Conservation Act 2016*, which would allow a person to undertake biodiversity conservation measures prescribed by regulations as an alternative to retirement of biodiversity credits. The Bill also proposes to amend section 6.30, which relates to payment into the Biodiversity Conservation Fund as an alternative to the retirement of biodiversity credits. Both proposed sections would allow regulations made under those sections to incorporate a publication of the Environment Agency Head.

The Committee notes that there does not appear to be any requirement for such a publication to be tabled in Parliament. The publication, and any revisions to it, are therefore not subject to parliamentary scrutiny. The Committee generally prefers that substantive matters are set out in legislation where they can be subjected to a greater level of parliamentary scrutiny.

However, the Committee recognises that the incorporation of a publication on these matters may provide necessary flexibility so that it can be updated to reflect changing regulatory advice and practices, particularly in relation to the functioning of the biodiversity credit market. Therefore, in the circumstances, the Committee makes no further comment.

2. Child Protection (Offenders Registration) Amendment Bill 2024

Trespasses unduly on personal rights and liberties: LRA s8A(1)(b)(i)

Extension of registrable offences and reporting requirements – right to privacy, protection of personal information, and freedom of movement

The Bill seeks to amend the *Child Protection (Offenders Registration) Act 2000* to extend its application to over 90 additional offences ('registrable offences'). The Bill proposes that people sentenced by a Court for offences under this expanded list of registrable offences must comply with reporting obligations, including regular reports to the Commissioner of Police about changes to relevant personal information (e.g. their address, work status and instances of contact with children). A person who does not comply with the mandatory reporting obligations is guilty of an offence under the Act. The Bill also proposes a savings clause to ensure that the addition of the new reportable offences would not apply retrospectively.

The Committee notes that by expanding the scope of offenders that may be subject to the application of reporting requirements, the Bill would significantly impact the right to privacy, protection of personal information and freedom of movement of people sentenced to the extended definition of a 'registrable offence' by compelling them to regularly provide information to the Commissioner of Police and restrict their movement.

However, the Committee acknowledges the Minister's comments that the Bill is intended to give Police the tools they need to monitor recidivist child sex offenders and respond to risks to the community. It also notes that the Bill's inclusion of new registrable offences would not apply retrospectively. For these reasons, the Committee makes no further comment.

Presumption of mental element of knowledge – custodial penalty for absolute liability offence

The Bill seeks to amend the *Child Protection (Offenders Registration) Act 2000* to require a Court to give written and verbal notice to a registrable person during sentencing about their reporting obligations and the consequences of any failure to comply with those obligations. If the person is not physically present in Court, for example if they appear by audio-visual link, the form of the notice is delegated to regulations. The Committee notes that the notice requirements proposed by the Bill, or by future regulations, may not adequately account for language and cultural barriers, disability, or reportable people not being physically present in Court.

The Bill also proposes amendments that provide that a registrable person can be assumed to know their reporting period and obligations if they were given notice by a Court during sentencing. Failure to comply with reporting requirements is an offence unless the registrable person can prove they had a reasonable excuse. The Bill may therefore create an absolute liability offence where the absence of the mental element of knowledge of wrongdoing is no longer considered a 'reasonable excuse.' The maximum penalty for this offence is \$55,000 (500 penalty units) or imprisonment for five years, or both.

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

The Committee acknowledges the Minister's comments that the Bill is intended to reduce the complexity of the child protection registration offenders scheme and create certainty for convicted offenders and police. The Committee also notes that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance, which, in this case, is intended to protect children.

However, the proposed amendments would create absolute liability offences with significant maximum penalties, including a custodial penalty. Further, notice to registrable persons appearing for sentencing by way of audiovisual link will have the form of their notice prescribed by regulations, which are not subject to the same level of parliamentary scrutiny as primary legislation. For these reasons, the Committee refers this issue to Parliament for its consideration.

Enhanced police powers to enter and search premises – wide regulatory powers impacting personal rights and liberties

The Bill seeks to amend the *Child Protection (Offenders Registration) Act 2000* to allow police to enter and search the residential premises of a registrable person, without notice, twice a year rather than once a year, or more than twice a year with the permission of a superintendent or higher ranking officer. The proposed amendments would also allow police to search a registrable person's vehicles and electronic devices, and the registrable person would be obliged to assist

the police in accessing their electronic data. This entry power would only be exercisable by police for the purpose of verifying relevant personal information of the registrable person or determining if the person is complying with the Act.

The Bill would allow police to conduct more searches of a registrable person's home, vehicle and devices without notice. Police may exercise this power for the broad purpose of verifying reportable information and investigating compliance. Therefore, the Bill proposes a wide regulatory power that impacts on personal rights and liberties.

However, the Committee notes that this police search power may only be exercised twice a year without authorisation from a high ranking officer. The Committee also acknowledges the Minister's comments that the Bill is intended to give Police additional tools to monitor registerable persons and prevent child sex offences. For these reasons, the Committee makes no further comment.

Inappropriate delegation of legislative powers: LRA S 8A(1)(b)(iv)

Commencement by proclamation

The Bill commences by proclamation by proposed Schedule 2. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions, particularly where the provisions would affect individual rights or obligations.

The Committee acknowledges that there may be practical reasons for including a flexible start date, including to allow time for interagency planning and communication about administering the updated registration scheme.

However, the Committee notes that the Bill would introduce new and amended offence provisions, and it would also significantly expand the scope of persons that would be subject to new reporting requirements, thereby significantly impacting the personal rights and liberties of a larger group of people. For these reasons, the Committee refers this issue to Parliament for its consideration.

3. Environmental Trust Amendment Bill 2024

The Committee makes no comment in respect of the issues set out in section 8A of the Legislation Review Act 1987.

4. Ports and Maritime Administration Amendment Bill 2024

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

Licensed service determinations not subject to parliamentary scrutiny

The Bill proposes to insert Part 4B, Division 2 into the *Ports and Maritime Administration Act 1995*, which would empower the Port Authority of New South Wales to make determinations on requirements and standards that apply to the provision of licensed services at pilotage ports. Under the proposed Division 3, a licence holder must comply with any relevant licensed service determinations when providing licensed services at pilotage ports. The maximum penalty for non-compliance would be a \$22,000 fine (200 penalty units).

Proposed subsection 46C(2) only requires the Authority to publish licensed service determinations on 'a publicly available website', which is not defined further in the Act. The Committee generally prefers that substantive matters are included in regulations to ensure an

appropriate level of parliamentary oversight. This is because regulations must be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

The Committee also notes that licensed service determinations may have effect from when they are published, and, if no determination period is stated, the determination would apply until revoked. This would effectively give the Authority the power to make determinations for an indefinite period without being subject to parliamentary scrutiny or review.

The Committee acknowledges that allowing the Authority to publish determinations online may be intended to build flexibility into the regulatory framework. However, the Committee notes that there are significant criminal penalties for non-compliance, and a licence holder may not understand the requirements and standards that they are required to comply with in order to avoid a penalty. The Committee also notes that section 103 of the Act empowers the Authority, TfNSW, or members of their staff to bring proceedings against a licence holder for an offence. For these reasons, the Committee refers the matter to Parliament for further consideration.

Trespasses unduly on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Presumption of innocence - reversal of onus of proof - liability of vehicle owners for parking offences

The Bill proposes to insert section 104B into the *Ports and Maritime Administration Act 1995*, which would make vehicle owners automatically liable for certain parking offences. The section also proposes exceptions to these offences, which would require the vehicle owner to satisfy the court or an authorised officer that the vehicle was stolen or illegally used.

By requiring the vehicle owner to establish the elements of an exception, the Bill would reverse the onus of proof for the offence. In regard to criminal actions, a reversed onus may undermine a defendant's right to the presumption of innocence, as contained in Article 14 of the International Covenant on Civil and Political Rights. The right to the presumption of innocence protects an accused person's right to be presumed innocent until proved guilty according to law.

However, the Committee acknowledges that there are a range of practical benefits in allowing the offences to be dealt with by way of penalty notices issued to the vehicle owner. The Committee also acknowledges that it would be impractical and unduly burdensome to require the Port Authority to investigate whether an exception has been established before issuing a penalty notice or commencing proceedings. For these reasons, the Committee makes no further comment.

Wide regulatory power impacting right to privacy

The Bill seeks to insert section 46W into the *Ports and Maritime Administration Act 1995*, which would allow the Port Authority of New South Wales to issue information directions to licence holders, masters of ships, shipping agents and operators of stevedoring or other facilities. Under the proposed section, the Authority would be able to request information that it 'reasonably requires' from these persons for an 'allowable purpose'.

The Bill also proposes to insert section 46X, which would make it an offence to not comply with the Authority's information direction without reasonable excuse. Under subsection 46X(3), a person could not rely on a breach of a duty of confidentiality as a reasonable excuse for not complying. The Bill would therefore compel a person to provide information to the Authority, and may impact on their right to privacy.

However, the Committee acknowledges that there are limitations on the information that the Authority may require. Proposed subsection 46W(3) defines an 'allowable purpose' as monitoring compliance with Part 4B or another purpose prescribed by the regulations relating to licences or the provision of licensed services at a pilotage port. The Committee notes that these purposes are unlikely to require the disclosure of personal information by individuals and, therefore, would have a limited impact on their right to privacy. For these reasons, the Committee makes no further comment.

Absolute liability offences – provision of licensed services

The Bill proposes to introduce section 46D into the *Ports and Maritime Administration Act 1995*. Proposed subsection 46D(1) would make it an offence for a person to provide a licensed service at a pilotage port without a valid licence that authorises the person to provide that service. Proposed subsection 46D(2) would also make it an offence for a licence holder to not comply with the Act or regulations, any relevant licensed service determinations, or conditions of the licence when providing the service. The offences would each carry a maximum penalty of a \$22,000 fine (200 penalty units).

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Committee also notes that the Bill, and therefore the proposed offences, would commence on a day or days to be appointed by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons.

However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory settings in order to encourage compliance. The Committee also recognises that compliance with these provisions is important for ensuring that maritime services are carried out safely. Further, the Committee notes that the offences would carry monetary penalties rather than custodial penalties. For these reasons, the Committee makes no further comment.

Strict liability offences

The Bill proposes to introduce section 46X into the *Ports and Maritime Administration Act 1995*, which would make it an offence to not comply with an information direction from the Port Authority of New South Wales without reasonable excuse. The offence would carry a maximum penalty of a \$11,000 fine (100 penalty units).

The Committee generally comments on strict liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Committee also notes that the offences are to commence on a day or days to be appointed by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons.

However, the Committee acknowledges that strict liability offences are not uncommon in regulatory frameworks in order to encourage compliance. The Committee also notes that defence would be available if a person had a 'reasonable excuse' for not complying. Further, the Committee notes that the offences would carry monetary penalties rather than custodial penalties. For these reasons, the Committee makes no further comment.

Continuing offences

The Bill would introduce section 104A in the *Ports and Maritime Administration Act 1995*, which would make offences under the Act or the regulations 'continuing offences'. This would allow a

penalty to be applied for each day that a contravention continues, until the requirement under the relevant offence provision is complied with.

The Committee notes that allowing financial penalties to accumulate for each day that a person does not comply may result in an excessive financial penalty being applied for a single offence. In this way, continuing penalties may undermine principles such as proportionality and fair trial rights.

However, the Committee recognises that the provision is intended to promote compliance with time limit offences to reduce dangerous goods being left at ports. In the circumstances, the Committee makes no further comment.

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Wide regulation-making powers

The Bill seeks to amend the *Ports and Maritime Administration Act 1995* to defer a number of significant matters to the regulations. These include prescribing mandatory grounds on which the Port Authority of New South Wales must refuse (or refuse to renew) a licence, and prescribing an 'allowable purpose' for which the Authority may issue an information direction. The Bill would also allow the regulations to provide for 'any other matters relating to licences or the provision of licensed services'. There do not appear to be any words that limit the ordinary meaning of 'any other matters'.

The Committee generally prefers substantive matters to be set out in principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight. However, the Committee recognises that the provisions may be intended to build more flexibility into the regulatory framework, and to allow the Authority to better respond to changing circumstances, including conduct that warrants refusal of a licence or licence renewal. The Committee also acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. For these reasons, the Committee makes no further comment.

5. Strata Managing Agents Legislation Amendment Bill 2024

Trespasses unduly on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Absolute liability offences

The Bill proposes to insert new offences into the *Community Land Management Act 2021* and the *Strata Schemes Management Act 2015* to require agents of strata schemes to provide notice to an owners corporation about potential conflicts of interest in the provision of goods or services to those corporations. The Bill makes it an offence for an agent to fail to provide notice to an owners corporation that they have a connection with a person providing a service or commission. Similarly, the Bill also makes it an offence for an agent to fail to provide notice to an owners corporation when an agent becomes aware of the fact that: a supplier becomes connected with an agent, the owner becomes connected with the agent, or the agent acquires a direct or indirect pecuniary interest in the strata scheme. The offences are absolute liability offences and there are no defence provisions inserted by the Bill.

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Bill does not establish a mental element and there is no qualifying provision such as 'reasonableness' that a person may use as a defence. However, the Committee acknowledges

that absolute liability offences encourage compliance with legal obligations and may serve as a deterrent against agent misconduct. For these reasons, the Committee makes no further comment.

Inappropriate delegation of legislative powers: LRA S 8A(1)(b)(iv)

Commencement by proclamation

Proposed Schedule 2 provides that the Bill will commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions particularly where the provisions would affect individual rights or obligations.

The Bill amends the *Strata Schemes Management Act 2015*, the *Community Land Management Act 2021* and the *Property and Stock Agents Act 2002* to create new offences and increase maximum penalties, including penalty notice offence amounts. However, the Committee notes that the amendments would largely impact strata agents, building managers and the like to ensure that they are acting in the best interests of residents in strata and community land schemes. The Committee also acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the making of administrative arrangements. For these reasons, the Committee makes no further comment.

6. Summary Offences Amendment (War Memorials and Other Protected Places) Bill 2024*

The Committee makes no comment in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

PART TWO – REGULATIONS WITH COMMENT

1. Cemeteries and Crematoria Amendment (Interment Service Levy) Regulation 2024

Adverse impact on the business community: LRA s9(1)(b)(ii)

Cemeteries Agency may refuse application to remove cemetery from license

The Regulation amends the Cemeteries and Crematoria Regulation 2022 to allow the Cemeteries Agency to refuse an application by a cemetery operator to remove a cemetery from their license, in instances where this removal would result in a period where no operator held a licence over that cemetery. An operator whose application has been refused may apply for a review of this decision by the Cemeteries Agency, and then by the Civil and Administrative Tribunal.

The Regulation may adversely affect the business of cemetery operators by requiring them to run cemeteries even when it may not be in the best interests of the business to do so. The Committee generally comments where provisions may have an adverse impact on the business community.

However, the Committee acknowledges that businesses may apply to have a decision to refuse the removal of a cemetery from a license reviewed. The Committee also recognises that the Regulation may contribute to the consistent management of cemeteries across NSW. For these reasons, the Committee makes no further comment.

2. Greyhound Racing Amendment (Appointment of Administrator) Regulation 2024

Trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Broad ministerial discretion – procedural fairness

The Regulation inserts clause 22A into the Greyhound Racing Regulation 2019, which provides that the 'Minister having lost confidence in the Board' is a prescribed circumstance under section 22 of the *Greyhound Racing Act 2017*. This would allow the Minister for Gaming and Racing to remove all the directors of the Board of Greyhound Racing NSW and appoint an administrator if they have 'lost confidence in the Board'.

Unlike the existing grounds set out in the Act, this additional 'prescribed circumstance' would provide the Minister with a broad discretionary power to remove all directors based on a subjective determination. The Regulation does not define the circumstances or criteria upon which the Minister's confidence should be based and, therefore, upon which a determination should be made.

The Committee acknowledges that the Act provides for regulations to prescribe circumstances under which directors can be removed. The Committee also understands that confidence in a board is important for it to be able to effectively fulfill its duties.

However, the Regulation does not include any safeguards, defences or avenues of recourse for potentially affected directors. The Regulation would therefore allow broad and unfettered ministerial discretion that could impact on the procedural fairness owed to directors with respect to their removal. For these reasons, the Committee refers the Regulation to Parliament for further consideration.

3. Industrial Relations Commission Amendment (Industrial Court) Rules 2024

Trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Contempt of court

The Rules amend the Industrial Relations Commission Rules 2022 to allow the Industrial Court of the Industrial Relations Commission to exercise powers of arrest and detainment. New Rule 8A.3(1)(a) would allow the Industrial Court to direct that a person be kept in custody before the Industrial Court determines the matter of the charge 'as the Court determines'.

The Committee acknowledges that powers of commissions to deal with contempt are not uncommon to maintain order and facilitate their functions. It also recognises that these functions can only be performed by judicial members of the Commission with the appropriate legal qualifications.

However, the Committee notes that the Rules would enable the Industrial Court to exercise substantive powers to issue arrest warrants and detain people, which may impede on the right to liberty and freedom from arbitrary detention. The Committee further notes that the Rules allow the Industrial Court to detain someone 'as the Court determines' before a person has been charged with a contempt offence. This detention would apply before a person is given the opportunity to respond to the charge and appears to conflict with a person's right to the

presumption of innocence. For these reasons, the Committee refers the matter to Parliament for its consideration.

4. Local Government (General) Amendment (Elections) Regulation 2024

Trespasses on personal rights and liberties: s 9(1)(b)(i) of the LRA

Right to participation in public elections – limitation of technology assisted voting

The Regulation amends the Local Government (General) Regulation 2021 (the *Primary Regulation*) to limit the use of technology assisted voting at an election until 1 September 2028. Under the Primary Regulation, technology assisted voting is available to eligible voters for a broad range of reasons, including disability, illiteracy, and lack of proximity to a voting centre. The Regulation would limit technology assisted voting to telephone voting for voters who are blind or have low vision.

By restricting technology assisted voting to a very limited group of eligible voters, the Regulation impacts some individuals' right to vote and participate in public elections. The right to political franchise and democratic participation, contained in Article 25 of the International Covenant on Civil and Political Rights, protects the right of individuals to vote by universal and equal suffrage.

However, Article 25 also recognises that the right to vote may be subject to restrictions based on objective and reasonable criteria. The Committee acknowledges that technology assisted voting may present risks to electoral security and integrity, and that the limitation may be intended to mitigate these risks. The Committee further notes that the limitation is only for elections held before 1 September 2028, and that telephone voting remains a feasible voting option for electors who are blind or have low vision. In the circumstances, the Committee makes no further comment.

5. Police Amendment Regulation 2024

Objective could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Henry VIII clause

The Regulation inserts a savings and transitional clause into the Police Regulation 2015. This clause, in turn, amends the *Police Act 1990* so that certain industrial relations proceedings under that act are not bound by recent legislative changes made by the *Industrial Relations Amendment Act 2023*.

The Committee generally considers that primary legislation should not be amended by subordinate legislation because it reduces parliamentary scrutiny of those changes. Unlike primary legislation, subordinate legislation is not required to be passed by Parliament and the Parliament does not control when it commences. This means that while either House of Parliament may pass a resolution to disallow the statutory rule (under section 41 of the *Interpretation Act 1987*), the statutory rule may already have been in operation for some time before disallowance occurs. The Committee therefore refers this matter to the Parliament for its consideration.

6. Work Health and Safety Amendment (Engineered Stone) Regulation 2024

Trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Absolute liability offences

This Regulation inserts a number of new absolute liability offences into the Work Health and Safety Regulation 2017 concerning the processing of engineered stone, porcelain products and sintered stone. Failure to comply with these provisions can result in offences for an individual with maximum penalties ranging from \$4,400 (40 penalty units) to \$7,700 (70 penalty units).

The Regulation also inserts clause 529B, which requires the processing of engineered stone, porcelain products or sintered stone to be controlled by using reasonable safety measures to eliminate or reduce risks. The safety requirements include the use of respiratory protective equipment. A note within subclause 529B(2) states that clauses 44 to 46 of the Work Health and Safety Regulation 2017 apply to the new requirements under subclause 529B(1)(c). Failure to comply with the requirements under clauses 44 to 46 constitutes an absolute liability offence.

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Committee notes that referencing absolute liability offences in a note by citing other provisions may be unclear to a layperson, as it may be difficult for them to understand the practical effect of the note.

However, the Committee notes that absolute liability offences are not uncommon in regulatory settings to encourage compliance. In this case, the amendments may be intended to protect workers from the serious risks of exposure to crystalline silica from engineered stone. Further, the maximum penalty for the absolute liability offence is monetary, not custodial. In these circumstances, the Committee makes no further comment.

Objective could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Incorporating external publications

The Regulation inserts clause 689A into the Work Health and Safety Regulation 2017, which allows the regulator, Safe Work Australia, to exempt a type of engineered stone from the safety requirements under clause 529D. The Regulation also inserts clause 689E, which allows Safe Work Australia to issue a document setting out the matters to be considered when granting an exemption. Under subclause 689E(2), Safe Work Australia must publish the document on the Safe Work Australia website.

The Committee notes that there does not appear to be any requirement for such a publication to be tabled in Parliament. The publication, and any revisions to it, are therefore not subject to parliamentary scrutiny. The Committee generally prefers that substantive matters are set out in legislation where they can be subjected to a greater level of parliamentary scrutiny.

However, the Committee recognises that the incorporation of a publication on these matters may provide necessary flexibility so that it can be updated to reflect changing regulatory advice and practices, particularly in relation to the engineered stone industry. Therefore, in the circumstances, the Committee makes no further comment.

Part One – Bills

1. Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

Date introduced	15 August 2024
House introduced	Legislative Council
Member with carriage	The Hon. Penny Sharpe MLC
Portfolio	Environment

Purpose and description

1.1 The objects of this Bill are to:

- a) amend the *Biodiversity Conservation Act 2016* (the **Act**) to reform the biodiversity offsets scheme (the **Scheme**) and, in particular, to:
 - (i) establish the avoid, minimise and offset hierarchy as the key principle underpinning the framework for avoiding, minimising and offsetting the impact of proposed development, activity or clearing on biodiversity values,
 - (ii) provide that the Scheme will transition to net positive biodiversity outcomes and, for the purposes of giving effect to that objective, the Minister must make a strategy for the transitioning of the Scheme to deliver net positive biodiversity outcomes,
 - (iii) provide for standards against which developers must demonstrate measures taken to avoid and minimise the impact of proposed development, activity or clearing or land use on biodiversity values,
 - (iv) require the concurrence of the Minister administering the Act (the **Minister**) if a relevant authority proposes to impose conditions on State significant development consents and State significant infrastructure approvals other than conditions requiring the retirement of the same number and type of biodiversity credits as calculated in the relevant biodiversity development assessment report, except in particular circumstances,
 - (v) improve the operation and administration of the Biodiversity Conservation Fund (the **Fund**), including by:
 - A. requiring that each obligation to retire biodiversity credits for which a payment is made into the Fund be acquitted within 3 years and, if appropriate offsets are not secured within the 3 years, requiring the Biodiversity Conservation Trust (the **Trust**) to reach agreement with the Minister about how the obligation will be met,

- B. clarifying the operation of the Fund to ensure that money paid into the Fund can be applied to deliver strategic and timely biodiversity outcomes when securing offsets,
 - (vi) enable the regulations to limit the ability of proponents to satisfy offset obligations by paying money into the Fund in particular circumstances,
 - (vii) establish public registers of the following:
 - A. decisions to approve development, activity or clearing that is likely to have serious and irreversible impacts on biodiversity values,
 - B. exemptions from the scheme granted by the Minister in connection with natural disasters or other exceptional circumstances,
 - C. measures for avoiding and minimising impacts on biodiversity values set out in biodiversity development assessment reports and conditions of development consents and approvals,
 - (viii) enable the Environment Agency Head to issue directions to accredited persons relating to the preparation and modification of biodiversity assessment reports,
 - (ix) reduce administrative burden for small, low-impact developments by:
 - A. enabling the regulations to provide for revised biodiversity offsets scheme entry thresholds for local development,
 - B. enabling the regulations to provide for landholder-initiated biodiversity values map review process,
 - C. allowing the Minister to exempt local development from the Scheme in circumstances of natural disasters and other exceptional circumstances,
 - (x) make other minor administrative and consequential amendments, and
- b) make related and consequential amendments to the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Background

- 1.2 The Scheme provides a mechanism to avoid, minimise and offset the biodiversity impacts of development to ensure 'no net loss' of biodiversity in New South Wales. The Bill seeks to implement a number of reforms to transition the Scheme to deliver 'net positive' biodiversity outcomes.
- 1.3 The reforms have been developed as part of the Government's *NSW plan for nature*, which responds to the recommendations from the independent statutory review of the Act led by Dr Ken Henry AC.

- 1.4 In her second reading speech, the Hon. Penny Sharpe MLC, Minister for the Environment, noted that the Bill would emphasise the 'early avoidance' of biodiversity impacts in the planning process and improve transparency around the process of biodiversity assessment to inform decision-making processes.
- 1.5 The Statement of Public Interest tabled with the Bill noted that the amendments would align with the Government's commitments to 'strengthen and reform the Scheme', with a focus on four key reform areas:
- Improving biodiversity outcomes
 - Supporting a functioning biodiversity credit market
 - Increasing Scheme efficiency and transparency
 - Better balancing the application of the Scheme with biodiversity risks.
- 1.6 The key amendments proposed by the Bill include:
- requiring the development of a strategy to transition the Scheme to deliver net positive outcomes
 - requiring development proponents to take genuine measures to avoid and minimise biodiversity impacts
 - enabling limits to be imposed on the ability to pay into the Fund to facilitate greater participation in the biodiversity credit market
 - establishing new public registers to track commitments to avoid and minimise biodiversity impacts and increase transparency
 - granting the Minister for the Environment a new concurrence power for certain biodiversity offset decisions related to State significant infrastructure and developments
 - strengthening the processes, requirements and administration of the Fund to support the Trust in achieving biodiversity outcomes
 - reducing regulatory burden on lower-impact local developments in exceptional circumstances.
- 1.7 The Bill was referred to Legislative Council Portfolio Committee No.7 for inquiry and report on 15 August 2024.

Issues considered by the Committee

Makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers: s 8A(1)(b)(ii) of the LRA

Ministerial opinion of appropriateness – exemption from biodiversity development assessment report requirement

- 1.8 Subsection 7.7(2) of the Act currently provides that if a proposed development under Part 4 of the *Environmental Planning and Assessment Act 1979* is likely to significantly

affect threatened species, the application for development consent must be accompanied by a biodiversity development assessment report.

- 1.9 The Bill proposes to insert subsection 7.7(3) into the Act, which would grant the Minister the authority to exempt an application from the requirement under subsection 7.7(2) on certain grounds. One of those grounds is if, 'in the Minister's opinion, there are exceptional circumstances that make it appropriate to exempt the application from the requirement'.
- 1.10 The Minister noted that temporary legislative amendments were previously made to 'switch off' the Scheme in order to help communities affected by the 2019-20 bushfires. The proposed power to exempt applications will allow the Minister to 'respond more quickly to similar disasters and ensure there is some flexibility, especially in regional areas'.
- 1.11 Proposed subsection 7.7(4) would require the exemption order to outline the Minister's reasons for making the order, including the Minister's consideration of the facilitation of ecologically sustainable development.
- 1.12 Where an application is exempted under subsection 7.7(3), it would also be exempted from the proposed requirements relating to:
- consultation with the Minister administering the Act under subsection 7.11(2A)
 - development or activity that has serious and irreversible impacts on biodiversity under subsection 7.16(2)
 - modifications of planning approvals under subsection 7.17(2).
- 1.13 In line with the Government's 'commitment to improve transparency', proposed subsection 9.7(1)(e)(e1) would require public registers to be kept in relation to exemption orders made by the Minister under subsection 7.7(3).

The Bill seeks to amend the *Biodiversity Conservation Act 2016* to allow the Minister to exempt an application for development consent from the requirement to obtain a biodiversity development assessment report. Subsection 7.7(2) of the Act currently requires an application for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* to be accompanied by a biodiversity development assessment report, if the development is likely to significantly affect threatened species. Under the proposed subsection 7.7(3)(b), the Minister may exempt an application if, 'in the Minister's opinion, there are exceptional circumstances that make it appropriate to exempt the application'.

The Bill does not specify the matters that the Minister must consider when determining whether the circumstances are 'appropriate', nor does it define or narrow the ordinary meaning of 'exceptional'. This would grant the Minister a broad discretionary power to exempt proposed developments from key requirements of the Biodiversity Offsets Scheme, where those developments are likely to significantly affect threatened species. An application exempted under subsection 7.7(3) would also be exempted from other requirements, including those relating to serious and irreversible impacts on biodiversity.

However, the Committee acknowledges that there may be limited circumstances such as natural disasters that warrant flexibility in the application of the Scheme, particularly in regional areas. The Committee also notes that the Bill proposes several safeguards to improve transparency around the exercise of this discretionary power. For example, the exemption order must be published in the Gazette, and it must set out the Minister's reasons for making the order. The Bill would also require public registers to be kept in relation to orders made under subsection 7.7(3). Therefore, in the circumstances, the Committee makes no further comment.

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Significant reform matters deferred to regulations

1.14 The Bill seeks to insert subsection 6.16(1A) into the Act, which would allow the regulations to make provision for a range of matters that are fundamental to the reform of the Scheme, including:

- principles that would apply in relation to the taking of genuine measures to avoid and minimise the impact of proposed development,
- assessment standards against which genuine measures must be assessed,
- requirements to include this information in biodiversity assessment reports.

1.15 The Bill would also amend subsection 6.30(2) to allow the regulations to prescribe circumstances in which payment into the Fund cannot be used as an alternative to the retirement of biodiversity credits. As the Minister noted, the Fund is 'an important component of the Scheme' and limiting the ability of development proponents to meet their offset obligations in this way is a key reform that will 'facilitate greater participation in the biodiversity credit market'.

The Bill seeks to insert subsection 6.16(1A) into the *Biodiversity Conservation Act 2016*, which would allow the regulations to make provision for a range of matters that are fundamental to the reform of the Biodiversity Offsets Scheme. These include the principles that would apply in relation to the taking of genuine measures to avoid and minimise the impact of proposed development, as well as the assessment standards against which genuine measures must be assessed.

The Bill would also amend subsection 6.30(2) to allow the regulations to prescribe the circumstances in which development proponents are unable to meet their offset obligations through payment into the Biodiversity Conservation Fund. Limiting the ability of development proponents to meet their offset obligations in this way is a key reform that is intended to facilitate greater participation in the biodiversity credit market.

The Committee generally prefers substantive matters such as these to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight. This is particularly important where the matters deferred to the regulations constitute significant aspects of the reforms.

However, the Committee acknowledges that deferring these matters to the regulations may provide necessary flexibility in the regulatory framework to support the functioning of the biodiversity credit market. The Committee also acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. Therefore, in the circumstances, the Committee makes no further comment.

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

Incorporating external publications not subject to disallowance

- 1.16 The Bill proposes to insert section 6.29A into the Act, which would allow a person to undertake certain biodiversity conservation measures prescribed by regulations as an alternative to retirement of biodiversity credits.
- 1.17 The Bill also proposes to amend section 6.30, which relates to payment into the Fund as an alternative to the retirement of biodiversity credits.
- 1.18 Both proposed sections would allow regulations made under those sections to 'apply, adopt or incorporate a publication of the Environment Agency Head as in force from time to time'.

The Bill proposes to insert section 6.29A into the *Biodiversity Conservation Act 2016*, which would allow a person to undertake biodiversity conservation measures prescribed by regulations as an alternative to retirement of biodiversity credits. The Bill also proposes to amend section 6.30, which relates to payment into the Biodiversity Conservation Fund as an alternative to the retirement of biodiversity credits. Both proposed sections would allow regulations made under those sections to incorporate a publication of the Environment Agency Head.

The Committee notes that there does not appear to be any requirement for such a publication to be tabled in Parliament. The publication, and any revisions to it, are therefore not subject to parliamentary scrutiny. The Committee generally prefers that substantive matters are set out in legislation where they can be subjected to a greater level of parliamentary scrutiny.

However, the Committee recognises that the incorporation of a publication on these matters may provide necessary flexibility so that it can be updated to reflect changing regulatory advice and practices, particularly in relation to the functioning of the biodiversity credit market. Therefore, in the circumstances, the Committee makes no further comment.

2. Child Protection (Offenders Registration) Amendment Bill 2024

Date introduced	13 August 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Yasmin Catley MP
Portfolio	Police and Counter-Terrorism

Purpose and description

2.1 The object of this Bill is to make miscellaneous amendments to the *Child Protection (Offenders Registration) Act 2000* (the **Act**) following a review of the Act, including in relation to the following:

- a) the offences under New South Wales and Commonwealth legislation that, if committed by a person, make the person a registrable person with reporting obligations under the Act (**registrable offences**)
- b) the requirement for a Court to make an order that a person is a registrable person when sentencing the person for a registrable offence in certain circumstances (a **registrable person order**)
- c) the reporting obligations for registrable persons, including the period during which the obligations apply and the information that must be reported,
- d) the application of the Act to a person in New South Wales who may be a registrable person in another Australian jurisdiction or another country.

2.2 The Bill also makes a consequential amendment to the *Crimes (Sentencing Procedure) Act 1999*.

Background

2.3 The Bill seeks to amend the child protection registration framework, including which offences are registrable, reporting requirements for registrable people, and the role of Courts and police in enforcing reporting obligations.

2.4 In her second reading speech, the Hon. Yasmin Catley MP, Minister for Police and Counter-terrorism, explained that the proposed changes are for the purposes of:

'... protecting children from serious harm, ensuring the early detection of offences by recidivist child sex offenders, monitoring persons who are registrable persons and ensuring registrable persons comply with the Act.'

2.5 The Minister also stated that the proposed amendments were informed by comments in the 2019 Operation Tusk final report of the Law Enforcement Conduct Commission, and the subsequent review of the Act by the NSW Police Force.

- 2.6 The key amendments proposed by the Bill include:
- identifying additional state and commonwealth offences as registrable offences under the Act
 - requiring Courts that sentence a person for a registrable offence to make an order setting out the reporting requirements under the Act
 - creating additional reporting obligations for registrable persons
 - other changes to the Act that impose further restrictions and obligations on registrable persons.

Issues considered by the Committee

Trespasses unduly on personal rights and liberties: LRA s8A(1)(b)(i)

Extension of registrable offences and reporting requirements – right to privacy, protection of personal information, and freedom of movement

- 2.7 The Bill proposes to insert section 2D and Schedules 1A and 1B into the Act, which would extend the definition of a 'registrable offence' to include over 90 additional offences under the Act, the *Crimes Act 1900*, the *Criminal Code Act 1995 (Cth)*, and the *Customs Act 1901 (Cth)*.
- 2.8 The Bill proposes to insert sections 10, 10A and 11, which reformat the existing mandatory reporting obligations for a person who has been sentenced by a Court for a registrable offence. These obligations would require a registrable person to regularly report to the Commissioner of Police on changes to their relevant personal information, such as their residential address, their place of work, vehicle ownership, travel outside of Australia, and instances of contact with children.
- 2.9 If a person fails to comply with the reporting obligations, they may be guilty of an offence under sections 17 and 18 of the Act.
- 2.10 The Bill also proposes to insert the unnumbered part 'Provisions consequent on enactment of *Child Protection (Offenders Registration) Amendment Act 2024*', which would ensure that the Bill does not retrospectively apply to offences that only became registrable after commencement.
- 2.11 In her second reading speech the Minister acknowledged that proposed sections 2D and Schedules 1A and 1B would apply mandatory reporting obligations to 'a greater range of serious offences against children.' She noted that these changes 'are intended to ensure the Act remains fit for purpose and that police are equipped with the information and tools they need to respond to risks to our children in the community.'

The Bill seeks to amend the *Child Protection (Offenders Registration) Act 2000* to extend its application to over 90 additional offences ('registrable offences'). The Bill proposes that people sentenced by a Court for offences under this expanded list of registrable offences must comply with reporting obligations, including regular reports to the Commissioner of Police about changes to relevant personal information

(e.g. their address, work status and instances of contact with children). A person who does not comply with the mandatory reporting obligations is guilty of an offence under the Act. The Bill also proposes a savings clause to ensure that the addition of the new reportable offences would not apply retrospectively.

The Committee notes that by expanding the scope of offenders that may be subject to the application of reporting requirements, the Bill would significantly impact the right to privacy, protection of personal information and freedom of movement of people sentenced to the extended definition of a 'registrable offence' by compelling them to regularly provide information to the Commissioner of Police and restrict their movement.

However, the Committee acknowledges the Minister's comments that the Bill is intended to give Police the tools they need to monitor recidivist child sex offenders and respond to risks to the community. It also notes that the Bill's inclusion of new registrable offences would not apply retrospectively. For these reasons, the Committee makes no further comment.

Presumption of mental element of knowledge – custodial penalty for absolute liability offence

- 2.12 The Bill seeks to insert section 3J into the Act, which would require a Court to give written and verbal notice to a 'registrable person' during sentencing about their reporting obligations and the consequences of failing to comply with them. If the person is not physically present in Court during sentencing, for example if they are attending by audio visual link, the form of the notice may be prescribed by regulations.
- 2.13 The Bill also proposes to insert section 3K, which would presume that a registrable person has knowledge of their reporting period and obligations if they were given notice by a Court during sentencing.
- 2.14 Section 17(1) of the Act creates an offence for registrable persons who fail to comply with their reporting obligations without a reasonable excuse. The maximum penalty for this offence is a \$55,000 fine (500 penalty units) or imprisonment for five years, or both.
- 2.15 In her second reading speech, the Minister explained that 'complexities in the current Act contributed to a significant number of errors being made in relation to the administration of the child protection offenders registration scheme'. She explained that the proposed changes to notice requirements and the presumption of knowledge would provide certainty to offenders and police, and reduce the risk of errors.

The Bill seeks to amend the *Child Protection (Offenders Registration) Act 2000* to require a Court to give written and verbal notice to a registrable person during sentencing about their reporting obligations and the consequences of any failure to comply with those obligations. If the person is not physically present in Court, for example if they appear by audio-visual link, the form of the notice is delegated to regulations. The Committee notes that the notice requirements proposed by the Bill, or by future regulations, may not adequately account for language and cultural

barriers, disability, or reportable people not being physically present in Court.

The Bill also proposes amendments that provide that a registrable person can be assumed to know their reporting period and obligations if they were given notice by a Court during sentencing. Failure to comply with reporting requirements is an offence unless the registrable person can prove they had a reasonable excuse. The Bill may therefore create an absolute liability offence where the absence of the mental element of knowledge of wrongdoing is no longer considered a 'reasonable excuse.' The maximum penalty for this offence is \$55,000 (500 penalty units) or imprisonment for five years, or both.

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

The Committee acknowledges the Minister's comments that the Bill is intended to reduce the complexity of the child protection registration offenders scheme and create certainty for convicted offenders and police. The Committee also notes that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance, which, in this case, is intended to protect children.

However, the proposed amendments would create absolute liability offences with significant maximum penalties, including a custodial penalty. Further, notice to registrable persons appearing for sentencing by way of audiovisual link will have the form of their notice prescribed by regulations, which are not subject to the same level of parliamentary scrutiny as primary legislation. For these reasons, the Committee refers this issue to Parliament for its consideration.

Enhanced police powers to enter and search premises – wide regulatory powers impacting personal rights and liberties

- 2.16 Section 16C of the Act allows police to enter and inspect the residential premises of a registrable person, without notice, for the purpose of verifying reportable personal information. This new entry power may be exercised twice in the initial 12-month period following sentencing, and then once during each following 12-month period.
- 2.17 The Bill seeks to replace the current section 16C with proposed sections 16C and 16D, which would authorise police to enter and inspect a registrable person's vehicle and electronic devices, in addition to their residential premises, without notice. This power could only be exercised to verify reportable personal information, or to monitor compliance with the Act. The registrable person would also be compelled to provide police with information and assistance to access the registrable person's electronic data during a search.
- 2.18 Proposed section 16D would allow police to undertake inspections twice each calendar year, or more than twice with the permission of a superintendent or higher ranking officer, or if a police officer has a reasonable suspicion that the registrable person has committed a fresh offence.

- 2.19 In her second reading speech the Minister described these amendments as a strengthening of existing police search powers, and explained that the Bill is designed to 'significantly strengthen' the current child protection registration regime.

The Bill seeks to amend the *Child Protection (Offenders Registration) Act 2000* to allow police to enter and search the residential premises of a registrable person, without notice, twice a year rather than once a year, or more than twice a year with the permission of a superintendent or higher ranking officer. The proposed amendments would also allow police to search a registrable person's vehicles and electronic devices, and the registrable person would be obliged to assist the police in accessing their electronic data. This entry power would only be exercisable by police for the purpose of verifying relevant personal information of the registrable person or determining if the person is complying with the Act.

The Bill would allow police to conduct more searches of a registrable person's home, vehicle and devices without notice. Police may exercise this power for the broad purpose of verifying reportable information and investigating compliance. Therefore, the Bill proposes a wide regulatory power that impacts on personal rights and liberties.

However, the Committee notes that this police search power may only be exercised twice a year without authorisation from a high ranking officer. The Committee also acknowledges the Minister's comments that the Bill is intended to give Police additional tools to monitor registerable persons and prevent child sex offences. For these reasons, the Committee makes no further comment.

Inappropriate delegation of legislative powers: LRA S 8A(1)(b)(iv)

Commencement by proclamation

- 2.20 Section 2 provides that the Bill commences (as an Act) on a day or days to be appointed by proclamation.
- 2.21 The Bill would implement significant changes to the administration and function of the child protection registration scheme. This may impact a person's rights and liberties, including their right to privacy and protection of personal information, and their access to justice.
- 2.22 In her second reading speech, the Minister stated that the Bill's commencement on proclamation is intended to ensure that appropriate 'supporting arrangements' between government agencies are in place prior to the Bill's provisions taking effect.

The Bill commences by proclamation by proposed Schedule 2. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions, particularly where the provisions would affect individual rights or obligations.

The Committee acknowledges that there may be practical reasons for including a flexible start date, including to allow time for interagency

planning and communication about administering the updated registration scheme.

However, the Committee notes that the Bill would introduce new and amended offence provisions, and it would also significantly expand the scope of persons that would be subject to new reporting requirements, thereby significantly impacting the personal rights and liberties of a larger group of people. For these reasons, the Committee refers this issue to Parliament for its consideration.

3. Environmental Trust Amendment Bill 2024

Date introduced	15 August 2024
House introduced	Legislative Council
Member with carriage	The Hon. Penny Sharpe MLC
Portfolio	Environment

Purpose and description

- 3.1 The object of this Bill is to amend the *Environmental Trust Act 1998* (the **Act**) to expand the membership of the Environmental Trust (the **Trust**) to 6 members to include an Aboriginal person appointed by the Minister.

Background

- 3.2 The Bill seeks to amend the Act to expand the membership of the Trust from 5 to 6 voting members. The additional member must be a person who identifies as Aboriginal and is appointed by the Minister administering the Act (currently the Minister for the Environment).
- 3.3 In her second reading speech, the Hon. Penny Sharpe MLC, Minister for the Environment, noted that the Trust delivers environmental grants programs that support Aboriginal communities to protect and restore landscapes. By expanding the membership of the Trust, the Bill will 'ensure that there is appropriate Aboriginal representation at the core of the Trust's decisions' where Aboriginal communities and interests are involved.
- 3.4 The Minister noted that the inclusion of Aboriginal membership will assist in 'creating formal partnerships and sharing decision making within government to empower Aboriginal and Torres Strait Island people', in line with the priority reforms set out in the National Agreement on Closing the Gap. It would also align the Trust with other government decision-making bodies within the Environment and Heritage portfolio, such as the NSW Coastal Council, the Heritage Council of NSW and the Biodiversity Conservation Trust.
- 3.5 The Bill also seeks to amend an outdated reference to the Chief Executive of the Office of Environment and Heritage to ensure the Act remains current and aligns with the government's current structure.

Issues considered by the Committee

The Committee makes no comment in respect of the issues set out in section 8A of the Legislation Review Act 1987.

4. Ports and Maritime Administration Amendment Bill 2024

Date introduced	15 August 2024
House introduced	Legislative Council
Member with carriage	The Hon. John Graham MLC
Portfolio	Roads

Purpose and description

4.1 The objects of the Bill are as follows:

- a) to amend the *Ports and Maritime Administration Act 1995* (the **Act**), the *Ports and Maritime Administration Regulation 2021* and the *Road Transport Regulation 2017* to implement recommendations arising from an independent review of the Act, including to:
 - (i) clarify the objectives of the Act in relation to the safety, and the responsible and effective management, of waterways and waterways infrastructure,
 - (ii) provide for continuing offences relating to dangerous goods remaining at port facilities beyond set time limits,
 - (iii) establish a statutory licensing scheme to regulate the provision of towage services, lines handling services and bunkering services (**licensed services**) at ports in which pilotage of vessels is compulsory under the *Marine Safety Act 1998* (**pilotage ports**),
 - (iv) provide for the offence of failing to comply with port operator directions and for penalty infringement notices for the offence,
 - (v) reduce mandatory notice periods for port operator directions from 2 weeks to 1 week to allow more timely responses to general safety or security issues at ports,
 - (vi) extend liability for parking offences at ports or on adjacent land owned or controlled by Transport for NSW (**TfNSW**) or the Port Authority of New South Wales (the **Authority**) to the relevant vehicle owner and enable vehicle registration information to be provided to port operators for the purposes of enforcing parking offences,
 - (vii) provide for information requirements relating to the environmental performance of vessels,
 - (viii) increase the required advance notice period for changes in port charges to:
 - A. for advance notice to the Minister - 40 business days,
 - B. for advance notice to the industry - 20 business days,

- (ix) provide for additional vessel manifest information requirements and improved information sharing mechanisms to improve the quality of information provided and enable more efficient data sharing,
 - (x) clarify the functions of TfNSW to reflect responsibilities for managing waterways infrastructure and the provision of maritime services across the State,
 - (xi) clarify key functions of the Minister in relation to the safety of, and the responsible and effective management of, waterways and waterways infrastructure,
 - (xii) expand the functions of the Maritime Advisory Council to include giving the Minister advice and recommendations about property and infrastructure to align with the expertise of Council members and the functions of TfNSW,
 - (xiii) allow the Port Corporation to engage in activities that are complementary to its principal objectives and functions with the Minister's approval, and
 - (xiv) make consequential, transitional and law revision amendments, including amendments to relocate particular provisions, omit redundant provisions and references, correct cross-references and enable particular documents and notices to be published or given electronically,
- b) to make consequential amendments to other Acts and regulations.

Background

- 4.2 In his second reading speech, the Hon. John Graham MLC, Minister for Roads, noted that the Bill would implement 12 of the 16 recommendations from an independent review of the Act. The Act sets out the framework for ports and maritime management across NSW, including relevant functions of the Authority, the two private port operators and TfNSW.
- 4.3 The review found that although the Act's policy objectives remain valid, there are 'opportunities for improvements to support the safety, efficiency and effective governance of NSW's ports and maritime environment'.
- 4.4 The Statement of Public Interest (**SPI**) tabled with the Bill sets out how the proposed amendments seek to address the recommendations relating to:
- dangerous goods time limit penalties
 - towage lines handling and bunkering services
 - enforcement of private port operator directions
 - notice of private port operator directions
 - traffic control at ports and wharves
 - vessel environmental performance information
 - port price monitoring scheme reporting requirements
 - vessel manifest information and data formats

- TfNSW functions
- Maritime Advisory Council functions
- the Authority objectives.

4.5 The SPI also outlines the extensive public consultation process that was undertaken as part of the review, which included a round of consultation on the findings and proposed amendments to the Act.

Issues considered by the Committee

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 8A(1)(b)(v) of the LRA

Licensed service determinations not subject to parliamentary scrutiny

- 4.6 The Bill proposes to insert Part 4B, Division 2 into the Act, which would allow the Authority to make determinations setting out the requirements and standards that must be followed in carrying out a licensed service in a pilotage port (**licensed service determinations**). Pilotage ports include Sydney Harbour, Botany Bay, Newcastle, Port Kembla, Yamba and Eden.
- 4.7 Proposed subsection 46C(2) would require the Authority to publish licensed service determinations on 'a publicly available website'.
- 4.8 Proposed subsections 46C(3) and (4) allow for the determinations to:
- a) have effect for a stated period of time,
 - b) be of general or limited application,
 - c) apply differently at certain times or places or in certain circumstances,
 - d) exempt a person or class of persons, or a thing or class of things from one or more of the requirements and standards set out in the determination (with or without conditions and wholly or to a specified extent),
 - e) take effect on the date it is published or a later date specified in the determination, and
 - f) remain in effect until the date stated in the determination or until it is revoked.
- 4.9 Proposed subsection 46D(2)(b) requires licensed services to be provided in accordance with 'any relevant licensed service determinations'. The maximum penalty for non-compliance with this provision is a \$22,000 fine (200 penalty units).

The Bill proposes to insert Part 4B, Division 2 into the *Ports and Maritime Administration Act 1995*, which would empower the Port Authority of New South Wales to make determinations on requirements and standards that apply to the provision of licensed services at pilotage ports. Under the proposed Division 3, a licence holder must comply with any relevant licensed service determinations when providing licensed services at pilotage ports. The maximum penalty for non-compliance would be a \$22,000 fine (200 penalty units).

Proposed subsection 46C(2) only requires the Authority to publish licensed service determinations on 'a publicly available website', which is not defined further in the Act. The Committee generally prefers that substantive matters are included in regulations to ensure an appropriate level of parliamentary oversight. This is because regulations must be

tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

The Committee also notes that licensed service determinations may have effect from when they are published, and, if no determination period is stated, the determination would apply until revoked. This would effectively give the Authority the power to make determinations for an indefinite period without being subject to parliamentary scrutiny or review.

The Committee acknowledges that allowing the Authority to publish determinations online may be intended to build flexibility into the regulatory framework. However, the Committee notes that there are significant criminal penalties for non-compliance, and a licence holder may not understand the requirements and standards that they are required to comply with in order to avoid a penalty. The Committee also notes that section 103 of the Act empowers the Authority, TfNSW, or members of their staff to bring proceedings against a licence holder for an offence. For these reasons, the Committee refers the matter to Parliament for further consideration.

Trespasses unduly on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Presumption of innocence - reversal of onus of proof - liability of vehicle owners for parking offences

- 4.10 The Bill proposes to introduce section 104B into the Act, which would make the owner of a vehicle automatically liable for parking offences, as if the owner of the vehicle were the actual offender guilty of the offence.
- 4.11 Section 104B would also create exceptions to this offence.
- 4.12 Where a penalty notice is issued for the offence, the vehicle owner would not be guilty if they:
- satisfy the authorised officer that, at the time of the offence, the vehicle was stolen or illegally taken or used, or
 - within 21 days of being served with the penalty notice, provide the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or
 - satisfy the authorised officer that they do not know, and cannot with reasonable diligence ascertain, the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence.
- 4.13 Where the offence is dealt with in court, the vehicle owner would not be guilty if they:
- satisfy the court that, at the time of the offence, the vehicle was stolen or illegally taken or used,
 - within 21 days of being served with a court attendance notice, provide the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence, or

- satisfy the court that they do not know, and cannot with reasonable diligence ascertain, the name and address of the person who was in charge of the vehicle at all relevant times relating to the offence.

4.14 In his second reading speech, the Minister noted that extending liability to vehicle owners would strengthen 'compliance with parking rules inside all ports' to 'address situations where the driver of a vehicle cannot be found'.

The Bill proposes to insert section 104B into the *Ports and Maritime Administration Act 1995*, which would make vehicle owners automatically liable for certain parking offences. The section also proposes exceptions to these offences, which would require the vehicle owner to satisfy the court or an authorised officer that the vehicle was stolen or illegally used.

By requiring the vehicle owner to establish the elements of an exception, the Bill would reverse the onus of proof for the offence. In regard to criminal actions, a reversed onus may undermine a defendant's right to the presumption of innocence, as contained in Article 14 of the International Covenant on Civil and Political Rights.¹ The right to the presumption of innocence protects an accused person's right to be presumed innocent until proved guilty according to law.

However, the Committee acknowledges that there are a range of practical benefits in allowing the offences to be dealt with by way of penalty notices issued to the vehicle owner. The Committee also acknowledges that it would be impractical and unduly burdensome to require the Port Authority to investigate whether an exception has been established before issuing a penalty notice or commencing proceedings. For these reasons, the Committee makes no further comment.

Wide regulatory power impacting right to privacy

4.15 Proposed section 46W would allow the Authority to issue a direction for information that it reasonably requires for monitoring compliance with Part 4B or another purpose prescribed by the regulations relating to licences. An information direction under section 46W may be issued to:

- a licence holder,
- the master of a ship,
- a shipping agent, or
- an operator of stevedoring or other facilities at a pilotage port or adjacent port facilities.

4.16 Proposed section 46X would make it an offence to not comply with an information direction without reasonable excuse. The maximum penalty associated with the offence is 100 penalty units (an \$11,000 fine). Subsection 46X(3) would prevent a person from relying on breach of a duty of confidentiality as an excuse for not complying with an information direction.

¹ United Nations, Office of the High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), 1966

The Bill seeks to insert section 46W into the *Ports and Maritime Administration Act 1995*, which would allow the Port Authority of New South Wales to issue information directions to licence holders, masters of ships, shipping agents and operators of stevedoring or other facilities. Under the proposed section, the Authority would be able to request information that it 'reasonably requires' from these persons for an 'allowable purpose'.

The Bill also proposes to insert section 46X, which would make it an offence to not comply with the Authority's information direction without reasonable excuse. Under subsection 46X(3), a person could not rely on a breach of a duty of confidentiality as a reasonable excuse for not complying. The Bill would therefore compel a person to provide information to the Authority, and may impact on their right to privacy.

However, the Committee acknowledges that there are limitations on the information that the Authority may require. Proposed subsection 46W(3) defines an 'allowable purpose' as monitoring compliance with Part 4B or another purpose prescribed by the regulations relating to licences or the provision of licensed services at a pilotage port. The Committee notes that these purposes are unlikely to require the disclosure of personal information by individuals and, therefore, would have a limited impact on their right to privacy. For these reasons, the Committee makes no further comment.

Absolute liability offences – provision of licensed services

- 4.17 Proposed subsection 46D(1) would make it an offence to provide a licensed service at a pilotage port without a valid licence that authorises the person to provide that service at the port.
- 4.18 Proposed subsection 46D(2) would make it an offence for a licence holder to provide the licensed service in breach of:
- a) the Act or regulations,
 - b) any licensed service determinations made under section 46C, or
 - c) any conditions of the licence.
- 4.19 The maximum penalty associated with the above offences is a \$22,000 fine (200 penalty units).

The Bill proposes to introduce section 46D into the *Ports and Maritime Administration Act 1995*. Proposed subsection 46D(1) would make it an offence for a person to provide a licensed service at a pilotage port without a valid licence that authorises the person to provide that service. Proposed subsection 46D(2) would also make it an offence for a licence holder to not comply with the Act or regulations, any relevant licensed service determinations, or conditions of the licence when providing the service. The offences would each carry a maximum penalty of a \$22,000 fine (200 penalty units).

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Committee also notes that the Bill, and therefore the proposed offences, would commence on a day or days to be appointed by proclamation. The Committee generally

prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons.

However, the Committee acknowledges that absolute liability offences are not uncommon in regulatory settings in order to encourage compliance. The Committee also recognises that compliance with these provisions is important for ensuring that maritime services are carried out safely. Further, the Committee notes that the offences would carry monetary penalties rather than custodial penalties. For these reasons, the Committee makes no further comment.

Strict liability offences

4.20 As noted above, proposed section 46X provides that a person must not, without reasonable excuse, fail to comply with an information direction from the Authority. The offence carries a maximum penalty of a \$11,000 fine (100 penalty units).

4.21 Proposed subsection 46X(3) would prevent a person from relying on breach of a duty of confidentiality as an excuse for not complying with an information direction.

The Bill proposes to introduce section 46X into the *Ports and Maritime Administration Act 1995*, which would make it an offence to not comply with an information direction from the Port Authority of New South Wales without reasonable excuse. The offence would carry a maximum penalty of a \$11,000 fine (100 penalty units).

The Committee generally comments on strict liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Committee also notes that the offences are to commence on a day or days to be appointed by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons.

However, the Committee acknowledges that strict liability offences are not uncommon in regulatory frameworks in order to encourage compliance. The Committee also notes that defence would be available if a person had a 'reasonable excuse' for not complying. Further, the Committee notes that the offences would carry monetary penalties rather than custodial penalties. For these reasons, the Committee makes no further comment.

Continuing offences

4.22 The Bill proposes to introduce section 104A into the Act, which would make offences under the Act or the regulations 'continuing offences'. This would allow a penalty to be applied for each day that a contravention continues, until the requirement under the relevant offence provision is complied with.

4.23 The Minister noted that, currently, the maximum penalty is reached on day four of overstaying the set time limit, and that this is not an adequate incentive for goods that have overstayed to be collected after this time. The Minister explained that the new section would 'facilitate changes to the dangerous goods in ports time limit penalty structure to ensure that there is an appropriate incentive for cargo owners to comply with the time limits for holding dangerous goods' at ports.

4.24 Under subsection 104A(3), the section does not apply if a requirement of a notice is revoked.

The Bill would introduce section 104A in the *Ports and Maritime Administration Act 1995*, which would make offences under the Act or the regulations 'continuing offences'. This would allow a penalty to be applied for each day that a contravention continues, until the requirement under the relevant offence provision is complied with.

The Committee notes that allowing financial penalties to accumulate for each day that a person does not comply may result in an excessive financial penalty being applied for a single offence. In this way, continuing penalties may undermine principles such as proportionality and fair trial rights.

However, the Committee recognises that the provision is intended to promote compliance with time limit offences to reduce dangerous goods being left at ports. In the circumstances, the Committee makes no further comment.

Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA

Wide regulation-making powers

4.25 The Bill proposes to defer a wide range of matters to the regulations, including the following substantive matters:

- a) Prescribing mandatory grounds on which the Authority must refuse to grant a licence (subsection 46G(4)).
- b) Prescribing matters the Authority must consider when deciding to renew a licence (subsection 46S(2)(d)).
- c) Prescribing mandatory grounds on which the Authority must refuse to renew a licence (subsection 46S(4)).
- d) Prescribing an 'allowable purpose' for which the Authority may issue an information direction (subsection 46W(3)(b)).
- e) Prescribing 'any other matters relating to licences or the provision of licensed services' (subsections 46ZD(1) and 46ZD(2)(l)).

The Bill seeks to amend the *Ports and Maritime Administration Act 1995* to defer a number of significant matters to the regulations. These include prescribing mandatory grounds on which the Port Authority of New South Wales must refuse (or refuse to renew) a licence, and prescribing an 'allowable purpose' for which the Authority may issue an information direction. The Bill would also allow the regulations to provide for 'any other matters relating to licences or the provision of licensed services'. There do not appear to be any words that limit the ordinary meaning of 'any other matters'.

The Committee generally prefers substantive matters to be set out in principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight. However, the Committee recognises that the provisions may be intended to build more flexibility into the regulatory framework, and to allow the Authority to better respond to changing circumstances, including conduct that warrants refusal of a licence or licence renewal. The Committee also acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the

***Interpretation Act 1987.* For these reasons, the Committee makes no further comment.**

5. Strata Managing Agents Legislation Amendment Bill 2024

Date introduced	14 August 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Anoulack Chanthivong MP
Portfolio	Better Regulation and Fair Trading

Purpose and description

- 5.1 The object of this Bill is to make miscellaneous amendments to various Acts and instruments about strata managing agents and for related purposes.

Background

- 5.2 The Bill proposes to amend three Acts related to the management and administration of strata schemes and their agents in NSW, the:

- a) *Strata Schemes Management Act 2015*
- b) *Community Land Management Act 2021*
- c) *Property and Stock Agents Act 2002*

- 5.3 It also proposes to amend their corresponding regulations.

- 5.4 The Hon. Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading, said that the Bill will increase confidence for owners corporations that their agents are acting in their best interests.

- 5.5 The Minister explained the Bill will benefit residents in strata and community land schemes by:

imposing stronger and more frequent disclosure requirements on agents; banning agents from receiving a commission for insurance products that an owners corporation secures independently; increasing the maximum penalties and penalty infringement notice amounts for agents' disclosure obligations; and strengthening NSW Fair Trading's compliance and enforcement powers, including introducing a broader enforceable undertaking power.

- 5.6 The Bill proposes to amend the *Strata Schemes Management Act 2015* to strengthen accountability and transparency in the administration of strata schemes, including in relation to the provision of services and commissions, and the decision making powers of owners' corporations. The proposed changes include:

- a) requiring owners corporation approval of a commission or training service to be given via a resolution at a general meeting

- b) requiring an agent to provide specific information in a notice to the owners corporation when it makes a decision about a service or commission. Information may include details about the relationship between the strata agent and a supplier.
 - c) requiring potential agents or building managers to provide information about their relationship with a supplier and the goods and services provided by the supplier
 - d) clarifying the information that a supplier must include when providing a quotation
 - e) increasing maximum penalties for failing to adhere to disclosure obligations.
- 5.7 In addition, the Bill proposes to amend the *Strata Schemes Management Regulation 2016* and the *Community Land Management Act 2021* to insert a definition of a 'principal person' for the purposes of managing conflicts of interest under the Act and increasing penalty amounts for offences under the Act.
- 5.8 The Bill also proposes to amend the *Community Land Management Act 2021* in a similar way to the *Strata Schemes Management Act 2015*, by inserting new disclosure and notice requirements. This is to ensure that the two regulatory regimes are consistent.
- 5.9 Further, the Bill proposes to amend the *Property and Stock Agents Act 2002* to:
- a) increase penalties for breaching rules of conduct
 - b) prohibiting an entitlement to a commission or expense without an agreement from a strata managing agency
 - c) authorising the Secretary of the Department of Customer Service to accept written undertakings from a licence holder in relation to their compliance and conduct under the Act. An undertaking may include refraining from unlawful conduct, paying money into the NSW Consumer Law Fund and taking action to resolve complaints against a licensee
 - d) enabling the Supreme Court to make orders directing a licensee to comply with the undertaking and other orders the Court considers appropriate.
- 5.10 Lastly, the Bill proposes to amend the *Property and Stock Agents Regulation 2022* to increase the maximum penalties under the Act and prohibit an agent from requiring payment of a commission for the purchase of insurance.

Issues considered by the Committee

Trespasses unduly on personal rights and liberties: s 8A(1)(b)(i) of the LRA

Absolute liability offences

- 5.11 The Bill proposes to amend the *Strata Schemes Management Act 2015* to impose new requirements and responsibilities on the managing agents of strata schemes. It

proposes to insert new sections 60(2A)-(2D) to require an agent to give notice to an owners corporation before entering into a contract for the purchase of goods or services if:

- a) under the contract, the commission or training service may be provided to or paid for the agent
- b) the contract is with a person who the agent is connected to.

5.12 The Bill proposes to make non-compliance with this requirement an offence with a maximum penalty of a \$11 000 fine (100 penalty units).

5.13 The Bill also proposes to require an agent to give written notice to an owners corporation as soon as practicable after becoming aware that:

- a) a supplier of goods or services to the strata scheme becomes connected with the agent
- b) the owner of the strata scheme becomes connected with the agent
- c) the agent acquires a direct or indirect pecuniary interest in the strata scheme.

5.14 The Bill provides that the offence of not complying with the notice requirement will carry a maximum penalty of a \$11 000 fine (100 penalty units).

5.15 The Bill proposes to insert similar offences with the same penalties in the *Community Land Management Act 2021*.

5.16 The Minister said that the 'penalties will serve as a powerful deterrent against agent misconduct' and further stated that the government 'will not tolerate agents looking to take advantage of consumers and hide their actions.'

The Bill proposes to insert new offences into the *Community Land Management Act 2021* and the *Strata Schemes Management Act 2015* to require agents of strata schemes to provide notice to an owners corporation about potential conflicts of interest in the provision of goods or services to those corporations. The Bill makes it an offence for an agent to fail to provide notice to an owners corporation that they have a connection with a person providing a service or commission. Similarly, the Bill also makes it an offence for an agent to fail to provide notice to an owners corporation when an agent becomes aware of the fact that: a supplier becomes connected with an agent, the owner becomes connected with the agent, or the agent acquires a direct or indirect pecuniary interest in the strata scheme. The offences are absolute liability offences and there are no defence provisions inserted by the Bill.

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Bill does not establish a mental element and there is no qualifying provision such as 'reasonableness' that a person may use as a defence. However, the Committee acknowledges that absolute liability offences encourage

compliance with legal obligations and may serve as a deterrent against agent misconduct. For these reasons, the Committee makes no further comment.

Inappropriate delegation of legislative powers: LRA S 8A(1)(b)(iv)

Commencement by proclamation

5.17 The Bill commences (as an Act) on a day to be appointed by proclamation.

Proposed Schedule 2 provides that the Bill will commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions particularly where the provisions would affect individual rights or obligations.

The Bill amends the *Strata Schemes Management Act 2015*, the *Community Land Management Act 2021* and the *Property and Stock Agents Act 2002* to create new offences and increase maximum penalties, including penalty notice offence amounts. However, the Committee notes that the amendments would largely impact strata agents, building managers and the like to ensure that they are acting in the best interests of residents in strata and community land schemes. The Committee also acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the making of administrative arrangements. For these reasons, the Committee makes no further comment.

6. Summary Offences Amendment (War Memorials and Other Protected Places) Bill 2024*

Date introduced	15 August 2024
House introduced	Legislative Assembly
Member with carriage	Ms Robyn Preston MP
	*Private Members Bill

Purpose and description

- 6.1 The object of this Bill is to amend the *Summary Offences Act 1998* (the **Act**) to—
- a) make clear that all war memorials are included as protected places for the offence of damaging or desecrating protected places, and
 - b) increase the penalty for the offence of damaging or desecrating a protected place.

Background

- 6.2 The Bill seeks to extend the definition of a war memorial under the Act to include ancillary objects or areas within the vicinity of a war memorial, such as structures, integrated designs, gardens and pools.
- 6.3 The Bill also proposes to increase the penalty for damaging or desecrating a protected place from a \$4,400 fine (40 penalty units) to a \$5,500 fine (50 penalty units) or imprisonment for two years, or both.
- 6.4 In her second reading speech, Ms Robyn Preston MP said the Bill 'makes clear that all war memorials are included as "protected places"' and 'seeks to discourage the vandalism of Australia's war memorials through an increase in penalty units'.
- 6.5 The Bill seeks to reverse the current protection framework for war memorials, which allows the regulations to prescribe a war memorial as a protected place. Under the proposed changes, all war memorials in New South Wales would be subject to protection by default, unless excluded by the regulations.

Issues considered by the Committee

The Committee makes no comment in respect of the issues set out in section 8A of the *Legislation Review Act 1987*.

Part Two – Regulations with comment

1. Cemeteries and Crematoria Amendment (Interment Service Levy) Regulation 2024

Date tabled	LA: 6 August 2024 LC: 6 August 2024
Disallowance date	LA: 16 October 2024 LC: 22 October 2024
Minister responsible	The Hon. Stephen Kamper MP
Portfolio	Lands and Property

Purpose and description

- 1.1 The objects of this Regulation are to—
- amend provisions in the Cemeteries and Crematoria Regulation 2022 (the **Principal Regulation**) relating to the imposition of a general levy payable by cemetery operators under the *Cemeteries and Crematoria Act 2013* (**the Act**), and
 - allow cemetery operators to apply for an amendment to a licence granted under the Act, and allow the Cemeteries Agency established under the Act to make minor changes to licences on its own initiative, and
 - require a cemetery operator to disclose the fees for the transfer of an interment right to an applicant for an interment right before granting the right, and
 - prescribe certain offences under the Act as penalty notice offences.
- 1.2 This Regulation is made under the Act, including sections 24, 31, 54(8)(b), 111 and 142, the general regulation-making power.

Issues considered by the Committee

Adverse impact on the business community: LRA s9(1)(b)(ii)

Cemeteries Agency may refuse application to remove cemetery from license

- 1.3 Under section 4C(1)(b) of the Act a cemetery operator may apply to the Cemeteries Agency to remove a cemetery from their licence.
- 1.4 The Regulation amends the Principle Regulation by inserting section 4D(2A), which allows the Cemeteries Agency to refuse an application to remove a cemetery from a licence where, if the application were granted, there would be a period where no operator held a licence over that cemetery.

- 1.5 At sections 4P and 4Q of the Act, an operator whose application is refused can apply for a review of the decision by the Cemeteries Agency, and then by the Civil and Administrative Tribunal.

The Regulation amends the Cemeteries and Crematoria Regulation 2022 to allow the Cemeteries Agency to refuse an application by a cemetery operator to remove a cemetery from their license, in instances where this removal would result in a period where no operator held a licence over that cemetery. An operator whose application has been refused may apply for a review of this decision by the Cemeteries Agency, and then by the Civil and Administrative Tribunal.

The Regulation may adversely affect the business of cemetery operators by requiring them to run cemeteries even when it may not be in the best interests of the business to do so. The Committee generally comments where provisions may have an adverse impact on the business community.

However, the Committee acknowledges that businesses may apply to have a decision to refuse the removal of a cemetery from a license reviewed. The Committee also recognises that the Regulation may contribute to the consistent management of cemeteries across NSW. For these reasons, the Committee makes no further comment.

2. Greyhound Racing Amendment (Appointment of Administrator) Regulation 2024

Date tabled	LA: 6 August 2024 LC: 6 August 2024
Disallowance date	LA: 16 October 2024 LC: 22 October 2024
Minister responsible	The Hon. David Harris MP
Portfolio	Gaming and Racing

Purpose and description

- 2.1 The Regulation is made under section 22(2)(c) of the *Greyhound Racing Act 2017* (the **Act**).
- 2.2 The object of this Regulation is to permit the Minister for Gaming and Racing to remove all the directors of the Board of Greyhound Racing New South Wales (**GRNSW**) from office and appoint a person as the administrator of GRNSW if the Minister has lost confidence in the Board.

Issues considered by the Committee

Trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Broad ministerial discretion – procedural fairness

- 2.3 Section 22 of the Act currently allows the Minister to remove all the directors of the GRNSW Board and appoint a person as the administrator on certain grounds. These grounds include:
- If GRNSW has failed to exercise its functions in accordance with an operating licence or failed to comply with a written direction to rectify matters relating to its obligations under an operating licence
 - If a report is made regarding a contravention of the Act, the regulations, or the greyhound racing rules in relation to a meeting conducted by GRNSW
 - 'Such other circumstances' prescribed by the regulations.
- 2.4 The Regulation seeks to insert clause 22A into the Greyhound Racing Regulation 2019, which provides that the 'Minister having lost confidence in the Board' is a prescribed circumstance for the purposes of section 22 of the Act.

The Regulation inserts clause 22A into the Greyhound Racing Regulation 2019, which provides that the 'Minister having lost confidence in the

Board' is a prescribed circumstance under section 22 of the *Greyhound Racing Act 2017*. This would allow the Minister for Gaming and Racing to remove all the directors of the Board of Greyhound Racing NSW and appoint an administrator if they have 'lost confidence in the Board'.

Unlike the existing grounds set out in the Act, this additional 'prescribed circumstance' would provide the Minister with a broad discretionary power to remove all directors based on a subjective determination. The Regulation does not define the circumstances or criteria upon which the Minister's confidence should be based and, therefore, upon which a determination should be made.

The Committee acknowledges that the Act provides for regulations to prescribe circumstances under which directors can be removed. The Committee also understands that confidence in a board is important for it to be able to effectively fulfill its duties.

However, the Regulation does not include any safeguards, defences or avenues of recourse for potentially affected directors. The Regulation would therefore allow broad and unfettered ministerial discretion that could impact on the procedural fairness owed to directors with respect to their removal. For these reasons, the Committee refers the Regulation to Parliament for further consideration.

3. Industrial Relations Commission Amendment (Industrial Court) Rules 2024

Date tabled	LA: 6 August 2024 LC: 6 August 2024
Disallowance date	LA: 16 October 2024 LC: 22 October 2024
Minister responsible	The Hon. Sophie Cotsis MP
Portfolio	Industrial Relations

Purpose and description

- 3.1 The Industrial Relations Commissions Amendment (Industrial Court) Rules 2024 (the **Rules**) amend the Industrial Relations Commission Rules 2022. The Rules were issued under Part 6, subsection 185(1) of the *Industrial Relations Act 1996*.
- 3.2 The object of the Rules is to create rules for the re-established Industrial Court.
- 3.3 The Rules were published in the Government Gazette on 1 July 2024 and came into effect on the same day.

Issues considered by the Committee

Trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Contempt of court

- 3.4 The amendments to the Rules at new Part 8A deal with contempt in the face of, and in the hearing of, the Commission. The new Part gives the Industrial Court powers of arrest and detainment, including to:
- issue a warrant for the arrest of a person where it is alleged or the Industrial Court forms the view that the person is guilty of contempt committed in the face or in the hearing of the Commission (Rule 8A.1(b)),
 - direct that a person be kept in custody before the Industrial Court determines the matter of the charge (Rule 8A.3(1)(a)), and
 - issue a warrant for the arrest or detention in custody of a person charged with contempt where proceedings have commenced in the contempt matter and it appears that the person is likely to avoid proceedings or leave the jurisdiction (Rule 8A.10(2)(a)(b)).

The Rules amend the Industrial Relations Commission Rules 2022 to allow the Industrial Court of the Industrial Relations Commission to exercise powers of arrest and detainment. New Rule 8A.3(1)(a) would allow the Industrial Court to direct that a person be kept in custody before the Industrial Court determines the matter of the charge 'as the Court determines'.

The Committee acknowledges that powers of commissions to deal with contempt are not uncommon to maintain order and facilitate their functions. It also recognises that these functions can only be performed by judicial members of the Commission with the appropriate legal qualifications.

However, the Committee notes that the Rules would enable the Industrial Court to exercise substantive powers to issue arrest warrants and detain people, which may impede on the right to liberty and freedom from arbitrary detention. The Committee further notes that the Rules allow the Industrial Court to detain someone 'as the Court determines' before a person has been charged with a contempt offence. This detention would apply before a person is given the opportunity to respond to the charge and appears to conflict with a person's right to the presumption of innocence. For these reasons, the Committee refers the matter to Parliament for its consideration.

4. Local Government (General) Amendment (Elections) Regulation 2024

Date tabled	LA: 6 August 2024 LC: 6 August 2024
Disallowance date	LA: 16 October 2024 LC: 22 October 2024
Minister responsible	The Hon. Ron Hoenig MP
Portfolio	Local Government

Purpose and description

- 4.1 This regulation makes amendments to the Local Government (General) Regulation 2021 (the **Primary Regulation**) relating to the conduct of local government elections.
- 4.2 The objects of this regulation are as follows:
- a) to remove a provision that provides that every elector enrolled on the roll of electors for the City of Sydney is automatically qualified for a postal vote,
 - b) to remove the requirement that a postal vote certificate be printed on an envelope,
 - c) to provide that a pre-poll ballot-box is to be delivered to the returning officer as soon as practicable after 6pm on the day before election day, or at an earlier time specified by the election manager or returning officer,
 - d) to reduce the pre-poll voting period to between the seventh and first days before election day,
 - e) to extend the prohibition on the use of technology assisted voting, other than telephone voting for electors who are blind or have low vision, to 1 September 2028,
 - f) to clarify how the requirement for relevant names and addresses to be included on electoral material applies in relation to social media posts,
 - g) to create an offence of filming or photographing an election official if the filming or photographing is reasonably likely to cause the official to be intimidated or harassed, and clarify an existing prohibition on hindering or obstructing an election official,

- h) to provide that the election manager and each polling place manager may give directions to ensure the health and safety of electors and election officials at any election or any place where voting is occurring,
- i) to amend the method for the initial counting of votes for ballot-papers that use group voting squares,
- j) to remove obsolete references to the *City of Sydney Act 1988*,
- k) to adopt the *Electoral Act 2017*, section 187A for local government elections.

4.3 This regulation is made under the *Local Government Act 1993 (the Act)*, including section 748, the general regulation-making power, and Schedule 6, item 14.

Issues considered by the Committee

Trespasses on personal rights and liberties: s 9(1)(b)(i) of the LRA

Right to participation in public elections – limitation of technology assisted voting

- 4.4 The Regulation amends the Local Government (General) Regulation 2021 by inserting clauses 333M(1A) and (1B), which limit the use of technology assisted voting for elections until 1 September 2028.
- 4.5 Clauses 333M(1A) and (1B) create an exception for telephone voting by voters who are blind or have low vision. Under subsection (1A), the election manager may determine at any time that telephone voting cannot be used at a specified election, or during a specified period during an election. The determination must be in writing and published on a website maintained by the election manager. Part 11, section 275 of the Primary Regulation defines the election manager as a person appointed by the electoral services provider or the Electoral Commissioner, depending on who administers the election.
- 4.6 Under Part 11, Division 7A of the Primary Regulation, technology assisted voting is available for eligible voters and includes voting by an electronic device, whether networked or not.
- 4.7 Clause 333L of the Primary Regulation also allows the Electoral Commissioner to determine that technology assisted voting is not to be used at a specified election.

The Regulation amends the Local Government (General) Regulation 2021 (the *Primary Regulation*) to limit the use of technology assisted voting at an election until 1 September 2028. Under the Primary Regulation, technology assisted voting is available to eligible voters for a broad range of reasons, including disability, illiteracy, and lack of proximity to a voting centre. The Regulation would limit technology assisted voting to telephone voting for voters who are blind or have low vision.

By restricting technology assisted voting to a very limited group of eligible voters, the Regulation impacts some individuals' right to vote and participate in public elections. The right to political franchise and democratic participation, contained in Article 25 of the International

Covenant on Civil and Political Rights², protects the right of individuals to vote by universal and equal suffrage.

However, Article 25 also recognises that the right to vote may be subject to restrictions based on objective and reasonable criteria. The Committee acknowledges that technology assisted voting may present risks to electoral security and integrity, and that the limitation may be intended to mitigate these risks. The Committee further notes that the limitation is only for elections held before 1 September 2028, and that telephone voting remains a feasible voting option for electors who are blind or have low vision. In the circumstances, the Committee makes no further comment.

² United Nations, Office of the High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), 1966.

5. Police Amendment Regulation 2024

Date tabled	LA: 6 August 2024 LC: 6 August 2024
Disallowance date	LA: 16 October 2024 LC: 22 October 2024
Minister responsible	The Hon. Yasmin Catley MP
Portfolio	Police and Counter-terrorism

Purpose and description

- 5.1 The object of this regulation is to make a savings and transitional amendment to deal with the commencement of the *Industrial Relations Amendment Act 2023* ('**The Amendment Act**').

Issues considered by the Committee

Objective could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Henry VIII clause

- 5.2 The Amendment Act commenced by proclamation on 24 April 2024. It amended the *Industrial Relations Act 1996* by creating roles for special members of the Industrial Relations Commission who are Judges, or who have worked as a Judge of another Court ('judicial members').
- 5.3 The Amendment Act also made consequential changes to the the *Police Act 1990* (**the Police Act**) so that industrial relations disputes covered by Part 9, Division 1C of that act must be heard by a judicial member. Part 9, Division 1C of the Police Act relates to applications for review against a decision by the Police Commissioner to remove an officer from the NSW Police force ('removal reviews').
- 5.4 Schedule 1 of the Regulation inserts a savings and transitional clause into the Police Regulation 2015. This clause, in turn, amends the Police Act so that removal reviews commenced in the Industrial Relations Commission before the commencement of the Amendment Act are not bound by that act.
- 5.5 The effect of these changes is that removal reviews commenced in the Industrial Relations Commission before 24 April 2024 are not required to be heard by a judicial member.

The Regulation inserts a savings and transitional clause into the Police Regulation 2015. This clause, in turn, amends the *Police Act 1990* so that certain industrial relations proceedings under that act are not bound by recent legislative changes made by the *Industrial Relations Amendment Act 2023*.

The Committee generally considers that primary legislation should not be amended by subordinate legislation because it reduces parliamentary scrutiny of those changes. Unlike primary legislation, subordinate legislation is not required to be passed by Parliament and the Parliament does not control when it commences. This means that while either House of Parliament may pass a resolution to disallow the statutory rule (under section 41 of the *Interpretation Act 1987*), the statutory rule may already have been in operation for some time before disallowance occurs. The Committee therefore refers this matter to the Parliament for its consideration.

6. Work Health and Safety Amendment (Engineered Stone) Regulation 2024

Date tabled	LA: 6 August 2024 LC: 6 August 2024
Disallowance date	LA: 16 October 2024 LC: 22 October 2024
Minister responsible	The Hon. Sophie Cotsis MP
Portfolio	Work Health and Safety

Purpose and description

6.1 The object of this Regulation is to amend the Work Health and Safety Regulation 2017 (the **Principal Regulation**) to:

- a) remove Part 4.10, which prescribes worker protection in relation to manufactured stone cutting,
- b) insert new provisions to give effect to the Model Work Health and Safety Regulations (Engineered Stone) Amendment 2024, and
- c) insert corresponding penalty notice amounts for the new provisions in Schedule 18A.

6.2 This Regulation is made under the *Work Health and Safety Act 2011*, including section 276, the general regulation-making power, and Schedule 3.

Issues considered by the Committee

Trespasses unduly on personal rights and liberties: s 9(1)(b)(i) of the LRA

Absolute liability offences

6.3 This Regulation introduces a number of new absolute liability offences into the Principal Regulation relating to the processing of engineered stone, porcelain products and sintered stone. These provisions require a person conducting a business or undertaking to:

- not carry out, direct or allow a worker to perform work involving engineered stone benchtops, panels or slabs (new clause 529D)
- notify the regulator about particular processing activities involving engineered stone or any relevant updates (new clauses 529G to 529J)
- prevent uncontrolled processing of engineered stone other than benchtops, panels or slabs (new clause 529K), and

- prevent uncontrolled processing of porcelain products and sintered stone (new clause 529L).
- 6.4 Failure to comply with these provisions can result in a maximum penalty for individuals, ranging from fines of \$4,400 (40 penalty units) to \$7,700 (70 penalty units).
- 6.5 This Regulation also inserts new clause 529B into the Principal Regulation, which requires that the processing of engineered stone, porcelain products or sintered stone must be controlled by using reasonable safety measures to eliminate or reduce risks.
- 6.6 Under subclause 529B(1)(c), anyone at risk from the processing of these materials must be provided with respiratory protective equipment, which they must wear while the work is being carried out.
- 6.7 A note within subclause 529B(2) states that clauses 44 to 46 of the Principal Regulation will apply to the new provision and to the use of personal protective equipment, including the respiratory protective equipment required under subclause 529B(1)(c).
- 6.8 Clauses 44 to 46 of the Principal Regulation sets out the requirements for providing and using personal protective equipment to minimise health and safety risks at workplaces. Failure to comply with these requirements constitutes an absolute liability offence. For example, failure to provide or use personal protective equipment, under clause 44, can result in a maximum penalty of \$8,030 (73 penalty units) for an individual.

This Regulation inserts a number of new absolute liability offences into the Work Health and Safety Regulation 2017 concerning the processing of engineered stone, porcelain products and sintered stone. Failure to comply with these provisions can result in offences for an individual with maximum penalties ranging from \$4,400 (40 penalty units) to \$7,700 (70 penalty units).

The Regulation also inserts clause 529B, which requires the processing of engineered stone, porcelain products or sintered stone to be controlled by using reasonable safety measures to eliminate or reduce risks. The safety requirements include the use of respiratory protective equipment. A note within subclause 529B(2) states that clauses 44 to 46 of the Work Health and Safety Regulation 2017 apply to the new requirements under subclause 529B(1)(c). Failure to comply with the requirements under clauses 44 to 46 constitutes an absolute liability offence.

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. The Committee notes that referencing absolute liability offences in a note by citing other provisions may be unclear to a layperson, as it may be difficult for them to understand the practical effect of the note.

However, the Committee notes that absolute liability offences are not uncommon in regulatory settings to encourage compliance. In this case,

the amendments may be intended to protect workers from the serious risks of exposure to crystalline silica from engineered stone. Further, the maximum penalty for the absolute liability offence is monetary, not custodial. In these circumstances, the Committee makes no further comment.

Objective could have been achieved by alternative and more effective means: s 9(1)(b)(v) of the LRA

Incorporating external publications

- 6.9 The Regulation inserts new clause 689A into the Principal Regulation, which allows the regulator, SafeWork Australia, to exempt certain types of engineered stone from the requirements under clause 529D.
- 6.10 The Regulation also inserts clause 689E, which allows Safe Work Australia to issue a document setting out the criteria for granting such exemptions. Under subclause 689E(2), Safe Work Australia must publish the document on its website.

The Regulation inserts clause 689A into the Work Health and Safety Regulation 2017, which allows the regulator, Safe Work Australia, to exempt a type of engineered stone from the safety requirements under clause 529D. The Regulation also inserts clause 689E, which allows Safe Work Australia to issue a document setting out the matters to be considered when granting an exemption. Under subclause 689E(2), Safe Work Australia must publish the document on the Safe Work Australia website.

The Committee notes that there does not appear to be any requirement for such a publication to be tabled in Parliament. The publication, and any revisions to it, are therefore not subject to parliamentary scrutiny. The Committee generally prefers that substantive matters are set out in legislation where they can be subjected to a greater level of parliamentary scrutiny.

However, the Committee recognises that the incorporation of a publication on these matters may provide necessary flexibility so that it can be updated to reflect changing regulatory advice and practices, particularly in relation to the engineered stone industry. Therefore, in the circumstances, the Committee makes no further comment.



Part Three – Regulations without comment

Regulations without comment

Note: at the time of writing, the Committee makes no further comment about the following regulations.

1. [Casino Control Amendment \(Manager Appointment Extension\) \(No 2\) Regulation 2024](#)

The object of this Regulation is to extend the term of appointment of the manager of the casino operated by The Star Pty Limited at Pymont from 30 September 2024 to 31 March 2025.

The Regulation is made under the *Casino Control Act 1992*, including section 28(4).

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

2. [Child Protection \(Working with Children\) Amendment \(Fee Increase\) Regulation 2024](#)

The object of this Regulation is to amend the Child Protection (Working with Children) Regulation 2013 to:

- (a) update the application fee for certain worker clearances from \$80 to \$105
- (b) provide for the annual indexation of the application fee.

The Regulation is made under the *Child Protection (Working with Children) Act 2012*.

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

3. [Environment Planning and Assessment Amendment \(High Speed Rail Authority\) Regulation 2024](#)

The object of this Regulation is to prescribe the High Speed Rail Authority established under the *High Speed Rail Authority Act 2022* of the Commonwealth as a public authority for the purposes of the *Environmental Planning and Assessment Act 1979*.

The Regulation is made under the *Environmental Planning and Assessment Act 1979* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

4. [Environmental Planning and Assessment Amendment \(Consent Authority\) Regulation 2024](#)

The object of this Regulation is to provide, for development applications to which design excellence requirements apply, that certain functions of the consent authority may be exercised by the council on behalf of a district or regional planning panel or by the Secretary of the Department of Planning, Housing and Infrastructure on behalf of the Independent Planning Commission.

The Regulation amends the Environmental Planning and Assessment Regulation 2021 and is made under sections 4.7(2)(h) and 4.6(h) of the *Environmental Planning and Assessment Act 1979*.

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

5. [Environmental Planning and Assessment Amendment \(Development Levies\) Regulation 2024](#)

The object of the Regulation is to set the maximum percentage of development levy a consent authority may require an applicant to pay as a condition of development consent for development:

- (a) on certain land associated with the Western Sydney Aerotropolis in the City of Liverpool and the City of Penrith local government areas
- (b) on land in the Parkes Activation Precinct under State Environmental Planning Policy (Precincts - Regional) 2021, Chapter 3.

The Regulation is made under the *Environmental Planning and Assessment Act 1979* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

6. [Gaming Machines and Liquor Amendment \(Harm Minimisation Measures\) Regulation 2024](#)

The objects of this Regulation are to:

- (a) to amend the Gaming Machines Regulation 2019 as follows:
 - i to require the adoption of additional responsible practices for harm minimisation measures in relation to approved gaming machines, including appointing responsible gambling officers and keeping gambling incident registers and gaming plans of management
 - ii to prohibit the location of and signage for cash dispensing facilities at certain distances from gaming machines and to prohibit advertising for gaming machines on or visible from cash dispensing facilities
 - iii to add requirements about the location of approved gaming machines kept in hotels
 - iv to increase the responsible conduct of gambling training requirements for hoteliers, club secretaries and employees
 - v to extend the term of approvals for training providers for responsible conduct of gambling from 1 year to 5 years
 - vi to delay the payment of cash prizes above \$5,000 using electronic funds transfer

- vii to clarify that special provisions for clubs establishing adjacent to new development areas apply to newly registered clubs
- viii to set new time frames for the notification and making of applications for gaming machine threshold increases
- ix to update certain fees and include penalty infringement notices for new offences
- x to make other minor and consequential amendments.

(b) to amend the Liquor Regulation 2018 as follows:

- i to set 30 June as the expiry date for approvals to provide training courses
- ii to provide transitional arrangements for licences in relation to the additional responsible practices for harm minimisation measures under this regulation.

The Regulation is made under section 210 of the *Gaming Machines Act 2001* and section 159 of the *Liquor Act 2007*.

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

7. Government Sector Employment Amendment Regulation 2024

The object of this Regulation is to amend the Government Sector Employment Regulation 2014 to:

- (a) prescribe the Minister for Customer Service and Digital Government as an authorised person to whom certain functions under the *Government Sector Employment Act 2013* ('the Act') may be delegated, and
- (b) make other minor consequential changes.

The Regulation is made under sections 81 and 88 of the Act.

The Regulation does not appear to engage with any issues set out at section 9 of the *Legislation Review Act 1987*.

8. Government Sector Finance Regulation 2024

The object of this Regulation is to repeal and remake the Government Sector Finance Regulation 2018 which would have been repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2). This Regulation:

- (a) prescribes certain entities to be GSF agencies or separate GSF agencies for the purposes of the *Government Sector Finance Act 2018* (the **Act**), whether generally or for particular provisions, and
- (b) provides for the Secretary of the Department of Climate Change, Energy, the Environment and Water and the Secretary of the Treasury to be treated as the accountable authorities for certain GSF agency for the purposes of the Act, and
- (c) prescribes certain persons to be government officers for the purposes of the Act, and
- (d) prescribes particular matters as kinds of matters for which the Treasurer's directions are authorised to make provision, and
- (e) prescribes certain arrangements to be financial arrangements, borrowings and investments for the purposes of the Act, and
- (f) prescribes the criteria for use in determining:
 - (i) whether kinds of GSF agencies should be excluded from the definition of reporting GSF agency, and
 - (ii) whether kinds of former reporting GSF agencies should be exempted from preparing final annual GSF financial statements for the Act, section 7.7, and
 - (iii) whether kinds of former reporting GSF agencies should be exempted from preparing final annual reporting information for the purposes of section 7.14, and
- (g) prescribes certain kinds of GSF agencies not to be a reporting GSF agency for the purposes of the Act, section 7.3(2), and
- (h) prescribes the reporting exemption criteria for the purposes of determining whether to give a direction that an SDA account, or SDA account of a kind, should be exempted from the operation of the Act, section 7.8, and
- (i) prescribes particular reporting GSF agencies to which the Act, Division 7.3 does not apply, and
- (j) prescribes requirements for the presentation of annual reporting information, and
- (k) prescribes certain entities to be entities to whom certain delegations and subdelegations can be made under the Act, and
- (l) provides for the adjustment for consumer prices in an annual reporting period for the NSW Government of amounts appropriated under the annual Appropriation Act for the previous annual reporting period, and
- (m) prescribes particular kinds of government money received or recovered by a GSF agency to be deemed appropriation money for the purposes of the Act, and
- (n) prescribes the circumstances in which a GSF agency may establish and operate a working account in the Special Deposits Account for working account money received by the agency, and
- (o) prescribes particular kinds of income tax-equivalent regimes under which the Treasurer may:
 - (i) direct a GSF agency to pay amounts to the Treasurer, or
 - (ii) exempt an GSF agency from paying amounts to the Treasurer, and

- (p) prescribes particular entities to which the Treasurer may delegate the function of making act of grace payments.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

- (a) matters of a machinery nature, and
(b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

The Regulation largely remakes its previous iteration, but for the following notable changes:

- updates to the definitions under Part 1, Clause 3 to include terms defined in Parts 4-6
- sets out 'prescribed entities' in Schedule 1
- updates the definition relating to 'financial arrangements' under Clause 9
- inserts Clause 12 that prescribes guarantees and instruments of assurance (letters of comfort and letters of financial support) as joint ventures
- extends the prescribed reporting exemption criteria under Clause 13
- exempts zero income agencies from financial reporting requirements where they meet the other three requirements under clause 15(c)
- exempts Common Trusts from preparing financial statements and annual reporting information where it meets the requirements under Clause 16(d)
- repeals Division 4 and Schedule 3 effective from 1 July 2025
- prescribes a new kind of government money received or received by a Government Sector Finance agency as 'appropriation money' under Clause 34
- prescribes a new type of working account under Clause 35.

The Regulation is made under the *Government Sector Finance Act 2018*.

The Regulation does not make significant changes to the regulatory scheme and therefore does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

9. [Heavy Vehicle \(Adoption of National Law\) Amendment \(Infringement Notice Penalties\) Regulation 2024](#)

The object of this Regulation is to increase the amounts payable under infringement notices for offences under the Heavy Vehicle National Law (NSW), Heavy Vehicle (Fatigue Management) National Regulation (NSW) and Heavy Vehicle (Mass, Dimension and Loading) National Regulation (NSW) to ensure the amounts are consistent nationally.

The Regulation is made under the *Heavy Vehicle (Adoption of National Law) Act 2013*, including sections 12(6) and 28, the local regulation-making power.

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

10. Heritage Amendment (Applications) Regulation 2024

The object of this Regulation is to amend the Heritage Regulation 2012 to:

- (a) enable the Heritage Council to request additional information about an application for an excavation permit or historic shipwrecks permit, if the Council considers the information necessary to properly consider the application
- (b) prescribe the period of time that must not be taken into account in the period of determining an application for a permit.

The Regulation is made under the *Heritage Act 1977* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

11. Industrial Relations (General) Amendment (Fees) Regulation 2024

The object of this Regulation is to insert additional fees and increase existing fees payable under the Industrial Relations (General) Regulation 2020, including fees payable in relation to the recently re-established Industrial Court.

The Regulation is made under the *Industrial Relations Act 1996*, including sections 183 and 407, the general regulation-making power.

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

12. Mining Amendment (Base Rates of Royalty for Coal) Regulation 2024

The object of this Regulation is to increase the prescribed base rates of royalty for coal recovered by open cut mining, underground mining and deep underground mining.

The Regulation is made under the *Mining Act 1992*, section 283(1)(a).

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

13. Museum of Applied Arts and Science Regulation 2024

The object of this Regulation is to repeal and remake, with minor changes, the Museum of Applied Arts and Sciences Regulation 2017, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following:

- (a) meetings of the trustees of the Museum of Applied Arts and Sciences
- (b) management of the Museum, including:
 - (i) the functions of the Chief Executive of the Museum
 - (ii) the borrowing of Museum exhibits and specimens
 - (iii) the days and times when the Museum is open to the public.

(c) other minor matters.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

- (a) matters of a machinery nature.
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

The Regulation does not make significant changes to the regulatory scheme and therefore does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

14. [National Disability Insurance Scheme \(Worker Checks\) Amendment \(Fee Increase\) Regulation 2024](#)

The object of this Regulation is to amend the National Disability Insurance Scheme (Worker Checks) Regulation 2020 to:

- (a) update the application fee for certain worker clearances from \$80 to \$105
- (b) provide for the annual indexation of the application fee.

The Regulation is made under the *National Disability Insurance Scheme (Worker Checks) Act 2018*.

The Regulation does not appear to engage with any issues set out at section 9 of the *Legislation Review Act 1987*.

15. [Notice of Reservation of a National Park \(2024-262\)](#)

The Notice of Reservation is made under the *National Parks and Wildlife Act 1974*. It reserves 4.31 hectares of unformed public road in the Parish of Wattamolla in the Sutherland Shire for the Royal National Park.

The Notice of Reservation does not appear to engage with any issues set out at section 9 of the *Legislation Review Act 1987*.

16. [NSW Admission Board Amendment \(Fees\) Rule 2024](#)

The object of this Rule is to amend errors in a previous notice of the same name regarding the amount of fees payable to the NSW Admission Board. It is made under the *Legal Profession Uniform Law Application Act 2014*.

The Rule changes a fee from \$115 to \$110. It also omits fees that relate to Public Notary services that were included in error.

The Rule does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

17. [NSW Admission Board Seventh Amendment Rule 2024](#)

The object of this Rule is to amend the NSW Admission Board Rules 2015 to permit the Legal Qualifications Committee, with the consent of the Executive Officer, to appoint

members of the staff of the Board as members of the Academic Exemptions Sub-Committee or Practical Training Exemptions Sub-Committee.

The Rule is made under the *Legal Profession Uniform Law Application Act 2014* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

18. NSW Admission Board Sixth Amendment Rule 2024

The object of this Rule is to amend the NSW Admission Board Rules 2015 to:

- (a) remove any reference to the Course Information Handbook,
- (b) specify that information on examination centres and examination dates and times is on the Board's website, and
- (c) correct various typographical errors in the Rule.

The Rule is made under the *Legal Profession Uniform Law Application Act 2014* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

19. Order Fixing Fees (n2024-1059)

This Order is made under section 15 of the *Passenger Transport Act 1990* and fixes fees for the application for the issue of a bus driver authority and the renewal of a bus driver authority. The Order takes effect on and from 1 August 2024 and expires on 31 July 2025.

The Order does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

20. Poppy Industry Regulation 2024

The object of this Regulation is to repeal and remake, with some changes, the Poppy Industry Regulation 2016, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation prescribes matters relating to the following under the *Poppy Industry Act 2016* (the **Act**):

- (a) the definitions of alkaloid poppy, interstate poppy licence and interstate processing licence
- (b) the test for determining whether a person is a fit and proper person to hold a poppy licence or poppy permit
- (c) the checks and requirements for persons employed or engaged in activities under a poppy licence or poppy permit
- (d) the requirements for identification cards for persons employed or engaged in activities under a poppy licence
- (e) conditions of poppy licences

- (f) the deadline for an application to renew a poppy licence
- (g) the date for payment of an annual fee for a cultivation licence
- (h) the period within which certain orders may be made following expiry, surrender or cancellation of a poppy licence
- (i) arrangements following the death of the holder of a poppy licence or poppy permit
- (j) penalty notice offences and penalties
- (k) the fees and costs of an audit under the Act.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

- (a) matters of a machinery nature
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

The Regulation does not make significant changes to the regulatory scheme and therefore does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

21. [Protection of the Environment Operations \(Waste\) Amendment \(Waste Facility Contributions\) Regulation 2024 \(No 2\)](#)

The object of this Regulation is to amend the Protection of the Environment Operations (Waste) Regulation 2014 to extend certain reductions of and exemptions to waste contributions payable by scheduled waste disposal facilities until 31 August 2025.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including sections 88(5), 286 and 323, the general regulation-making power.

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

22. [Public Notaries Amendment \(Fees\) Rule 2024](#)

The object of this Rule is to amend the Public Notaries Appointment Rules to increase the fees payable for the services provided by the Legal Profession Administration Board in relation to the appointment of public notaries and certificates of appointment of public notaries.

The Rule is made under the *Public Notaries Act 1997*.

The Rule does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

23. [Rail Safety National Law National Regulations \(Fees\) Amendment Regulations 2024](#)

The object of this Regulation is to amend the Rail Safety National Law National Regulations 2012 to update various fees payable under the Regulation. The fees relate to items such as accreditation for complex operations, rates per kilometre of track managed and project component fees.

The Regulation is made under section 264 of the *Rail Safety National Law 2012*.

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

24. [Sporting Venues \(Invasions\) Regulation 2024](#)

The object of this Regulation is to repeal and remake, with minor changes, the Sporting Venues (Invasions) Regulation 2016, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation prescribes sporting venues for the *Sporting Venues (Invasions) Act 2003*. The regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely the following:

- (a) matters of a machinery nature
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

The Regulation is made under section 15 of the *Sporting Venues (Invasions) Act 2003*.

The Regulation does not make significant changes to the regulatory scheme and therefore does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

25. [Supreme Court Practice Note SC EQ 07](#)

The Practice Note applies to the Probate and Family Provision List (previously the Succession and Probate List) in the Supreme Court Equity Division. The case management of all applications under the *Family Provision Act 1982*, chapter 3 of the *Succession Act 2006* and to specific probate proceedings including contentious proceedings are provided for in this Practice Note. It is made under the *Supreme Court Act 1970*.

This Practice Note was issued on 13 June 2024 and commenced on 17 June 2024. It replaces the previous iteration that was issued on 16 June 2023. This Practice Note largely remakes its previous iteration but for the following notable changes:

- (a) the list day for probate proceedings (including those combined with a family provision application) will be Tuesdays
- (b) the list day for family provision applications will be Thursdays
- (c) the Registrar in Probate will manage the lists and have the ability to refer matters to an available Judge
- (d) affidavits for costs must be calculated on an indemnity basis rather than an ordinary basis
- (e) the Registrar may give leave to issue a Subpoena
- (f) parties are required to be personally present at Court-annexed mediation (absent exceptional circumstances)
- (g) an order can be made for capping costs in matters with estates up to the value of \$1,000,000 (previously \$500,000).

The Practice Note does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

26. [Transport Administration \(General\) Amendment \(State Tax Exemption\) Regulation 2024 \(2024-222\)](#)

The object of this Regulation is to delay the repeal of clause 21A of the Transport Administration (General) Regulation 2018 by 12 months to 1 July 2025. Clause 21A exempts the Transport Asset Holding Entity from paying State tax.

The Regulation is made under the *Transport Administration Act 1988* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

27. [Transport Legislation Amendment \(Laboratories\) Regulation 2024](#)

The object of this Regulation is to amend various instruments relating to transport to:

- (a) include the laboratory at the NSW Health Pathology Forensic & Analytical Science Service at North Ryde as a laboratory at which certain blood, urine and oral fluid samples may be analysed
- (b) make minor related changes.

This Regulation is made under the following Acts:

- (a) *Marine Safety Act 1998*
- (b) *Passenger Transport Act 1990*, including Schedule 5, clause 3(1)(c)
- (c) *Rail Safety (Adoption of National Law) Act 2012*, including section 8(1)(c)
- (d) *Road Transport Act 2013*.

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

28. [Transport Legislation Amendments \(Penalties, Fees and Charges\) Regulation 2024](#)

This Regulation makes minor changes to fees payable in a number of road and maritime related regulations.

The objects of this Regulation are to:

- (a) amend various instruments relating to transport to increase certain fees, charges and penalty amounts for penalty notice offences generally consistent with the Consumer Price Index, and
- (b) introduce additional fee categories for vessel registration under the Marine Safety Regulation 2016 and increase vessel registration fees
- (c) increase licence fees for general boat driving and personal watercraft driving licences under the Marine Safety Regulation 2016
- (d) increase heavy vehicle registration fees under the Road Transport (Vehicle Registration) Regulation 2017 consistent with increases determined by the National Heavy Vehicle Regulator.

The regulation is made under the following Acts:

- (a) the *Driving Instructors Act 1992*, including sections 11(2), 30(2)(b) and 59, the general regulation-making power

- (b) the *Marine Safety Act 1998*, including sections 19K(1), 37 and 137, the general regulation-making power
- (c) the *Photo Card Act 2005*, including sections 5(3), 34(4) and 36, the general regulation-making power
- (d) the *Ports and Maritime Administration Act 1995*, including sections 85G and 110, the general regulation-making power
- (e) the *Road Transport Act 2013*, including sections 23, the general regulation-making power, 24 and Schedule 1
- (f) the *Roads Act 1993*, including sections 243 and 264, the general regulation-making power.

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

29. [Water Management \(General\) Amendment \(Access Licence\) Regulation 2024](#)

The object of this Regulation is to provide for an application for a local water utility access licence (the **licence**), with the following restrictions:

- (a) the application is made by Tamworth Regional Council
- (b) before the application is made, a notice of surrender of WAL 20953 is given under the *Water Management Act 2000*, section 77
- (c) the notice of surrender specifies that the surrender of WAL 20953 does not take effect:
 - (i) unless the licence is granted
 - (ii) until immediately after the licence is amended to nominate a specified water supply work or extraction point for the licence
- (d) the share component of the licence is the same as the share component of WAL 20953.

This regulation is made under the *Water Management Act 2000*, including section 61(1)(a).

The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

30. [Water Management \(General\) Amendment \(Water Supply Authorities\) Regulation 2024 \(2024-223\)](#)

The object of this Regulation is to replace the existing requirement for a water supply authority to seek the approval of the Minister administering the *Water Management Act 2000* (the **Act**) of certain planning and management documents.

From 1 December 2024, the water supply authority will instead be required to undertake strategic planning that the Secretary of the Department of Climate Change, Energy, the Environment and Water, or a person they nominate considers is 'effective and evidence-based'.

The Regulation is made under the Act and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

31. [Work Health and Safety Amendment \(Penalty Notices\) Regulation 2024](#)

The objects of this Regulation are to:

- (a) prescribe additional offences under this Regulation for which penalty notices may be issued
- (b) increase the amounts payable for penalty notices for offences under the *Work Health and Safety Act 2011* (the **Act**) and this Regulation that are currently prescribed as offences for which penalty notices may be issued.

The Regulation is made under the Act and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

32. [Workers Compensation Amendment \(Information Disclosure\) Regulation 2024](#)

The object of this Regulation is to amend the *Workers Compensation Regulation 2016* to provide that the State Insurance Regulatory Authority may disclose information to a person appointed under the *Government Sector Employment Act 2013*, section 82 to conduct a special inquiry into the Authority.

The Regulation is made under the *Workplace Injury Management and Workers Compensation Act 1998* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.



Appendices

Appendix One – Functions of the Committee

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

8A Functions with respect to Bills

- (1) The functions of the Committee with respect to Bills are:
- (a) to consider any Bill introduced into Parliament, and
 - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
 - (i) trespasses unduly on personal rights and liberties, or
 - (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
 - (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
 - (iv) inappropriately delegates legislative powers, or
 - (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny.
- (2) A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

9 Functions with respect to regulations

- (1) The functions of the Committee with respect to regulations are:
- (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
 - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
 - (i) that the regulation trespasses unduly on personal rights and liberties,
 - (ii) that the regulation may have an adverse impact on the business community,
 - (iii) that the regulation may not have been within the general objects of the legislation under which it was made,
 - (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,

- (v) that the objective of the regulation could have been achieved by alternative and more effective means,
 - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
 - (vii) that the form or intention of the regulation calls for elucidation, or
 - (viii) that any of the requirements of sections 4, 5 and 6 of the [Subordinate Legislation Act 1989](#), or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- (1A) The Committee is not precluded from exercising its functions under subsection (1) in relation to a regulation after it has ceased to be subject to disallowance if, while it is subject to disallowance, the Committee resolves to review and report to Parliament on the regulation.
- (2) Further functions of the Committee are:
- (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
 - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.
- (3) The functions of the Committee with respect to regulations do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

Appendix Two – Unconfirmed extracts of minutes

Meeting no. 19

TIME & DATE: 3:01PM, 16 SEPTEMBER 2024

LOCATION: ROOM 1254 AND WEBEX

MEMBERS PRESENT

Ms Voltz (**Chair**), Ms Stuart (**Deputy Chair**) (via Webex), Ms Davis (via Webex), **Mr Hagarty (via Webex)**, **Ms Higginson**, **Mr Layzell**, **Ms Munro** and Mr Murphy.

APOLOGIES

Nil.

OFFICERS PRESENT

Rohan Tyler, Kate McCorquodale, Alex Read, Alice Zwar, Mengyuan Chen, Oliver Sinclair, Elizabeth Hawken and Nicolle Gill.

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 12 August 2024 be confirmed.

2. ***

3. Consideration of bills with comment for Legislation Review Digest 18/58

Resolved, on the motion of Mr Layzell: That the Committee adopts the following draft bill reports *in globo*:

- a) Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024
- b) Child Protection (Offenders Registration) Amendment Bill 2024
- c) Ports and Maritime Administration Amendment Bill 2024
- d) Strata Managing Agents Legislation Amendment Bill 2024

4. Consideration of bills without comment for Legislation Review Digest 18/58

Resolved, on the motion of Ms Stuart: That the Committee adopts the following draft bill reports *in globo*:

- a) Environmental Trust Amendment Bill 2024
- b) Summary Offences Amendment (War Memorials and Other Protected Places) Bill 2024

5. Regulations with comment for Legislation Review Digest 18/58

Resolved, on the motion of Mr Murphy: That the Committee adopts the following draft regulation reports *in globo*:

- a) Cemeteries and Crematoria Amendment (Interment Service Levy) Regulation 2024
- b) Greyhound Racing Amendment (Appointment of Administrator) Regulation 2024
- c) Industrial Relations Commission Amendment (Industrial Court) Rules 2024
- d) Local Government (General) Amendment (Elections) Regulation 2024
- e) Police Amendment Regulation 2024
- f) Work Health and Safety Amendment (Engineered Stone) Regulation 2024

6. Regulations without comment for Legislation Review Digest 18/58

Resolved, on the motion of Mr Hagarty: That the Committee adopts the regulations without comment as Part Three to Digest 18/58.

7. Legislation Review Digest 18/58

Resolved, on the motion of Ms Munro:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts the Legislation Review Digest No. 18/58 and that it be signed by the Chair and presented to the House.

8. Regulations to be reviewed

The Committee noted the table listing the status of regulations and statutory instruments to be reviewed.

9. ***

10. Next meeting

The meeting adjourned at 3.04pm until 23 September 2024 at 3.00pm.