

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. Agriculture Commissioner Bill 2024](#)

No issues identified

### [2. Crimes \(Domestic and Personal Violence\) and Other Legislation Amendment Bill 2024](#)

Issue identified	Conclusion of Committee
Procedural fairness - removal of rules of evidence	No further comment
Right to the presumption of innocence – procedural fairness	Referred
Freedom from arbitrary detention – requirement for electronic monitoring device	No further comment
Commencement by proclamation	No further comment

### [3. Environmental Planning and Assessment Amendment \(Certification\) Bill 2024](#)

No issues identified

### [4. Marine Safety Amendment Bill 2024](#)

Issue identified	Conclusion of Committee
Absolute liability offences	No further comment
Strict liability offences	No further comment
Wide regulation-making powers	Referred

### [5. Music Festivals Amendment Bill 2024](#)

Issue identified	Conclusion of Committee
Wide delegation of powers to the DCITHS and Health Secretaries	No further comment

### [6. Police Amendment \(Police Officer Support Scheme\) Bill 2024](#)

Issue identified	Conclusion of Committee
Interference with privacy rights	No further comment
Powers of Commission to require evidence – strict liability offence and right to silence	No further comment
Significant matters deferred to regulations	No further comment

### [7. Portable Long Service Leave Legislation Amendment Bill 2024](#)

No issues identified

**8. Road Transport Legislation Amendment (Speed Camera Detection) Bill 2024**

No issues identified

**PART TWO – REGULATIONS WITH COMMENT****1. Pipelines Amendment Regulation 2024**

<b>Issue identified</b>	<b>Conclusion of Committee</b>
Creation of offences	No further comment
Ministerial direction	No further comment

# Summary of Conclusions

## PART ONE – BILLS

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### 1. Agriculture Commissioner Bill 2024

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

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### 2. Crimes (Domestic and Personal Violence) and Other Legislation Amendment Bill 2024

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

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##### *Procedural fairness - removal of rules of evidence*

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The Bill seeks to amend the *Crimes (Domestic and Personal Violence) Act 2007* to create new preventative orders applicable to serious domestic violence offenders. The Bill seeks to expand the admissibility of evidence for a Court when determining a serious domestic abuse prevention order, by allowing hearsay evidence under the *Evidence Act 1995*.

The Committee notes the removal of the hearsay rule could lead to otherwise inadmissible evidence, such as out of Court written statements or assertions in oral testimony, being relevant to proceedings which may result in the imposition of strict orders with implications on freedom of movement, association and liberty. The Committee notes hearsay evidence is often excluded because of concerns about its reliability, specifically in examples of evidence that is made out of Court, not made under oath or affirmation as to its truth, and not able to be tested during cross-examination.

However, the Committee acknowledges that the proposed section would apply only in civil proceedings, and allows the incorporation of evidence which may be relevant to an assessment of danger to a protected person. The Committee also notes the removal of the hearsay rule is subject to safeguards, for example, that the Court must be satisfied that the evidence is from a reliable source, is relevant and probative. Notification of the proposed evidence must also be served on the person against whom the order is sought prior to its admission. In the circumstances, the Committee makes no further comment.

##### *Right to the presumption of innocence – procedural fairness*

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The Bill seeks to amend the *Crimes (Domestic and Personal Violence) Act 2007* to make provisions for the making of serious domestic abuse prevention orders. The Bill proposes to insert section 87B(1)(b)(ii), which would establish the requirements for making an application for a serious domestic abuse prevention order. The proposed section would permit the making of an application if a specified person has been charged with a serious domestic violence offence, or if a person has been tried and acquitted of such an offence, or had a conviction quashed or set aside.

The Committee acknowledges the grounds for bringing a prevention order are intended to capture high-risk offenders, who may demonstrate ongoing patterns of offending behaviour. The Committee further acknowledges that the orders are only applicable to specific alleged activities, those being serious domestic violence offences with a maximum penalty of 14 years or more. The

Committee also notes that the application is subject to a reasonable grounds test, which would provide that the prevention order would protect persons closely linked to a protected person, such as family members or intimate partners, who are often targeted in domestic violence incidents.

However, the Committee notes that the grounds for bringing an application will apply when a person has been charged, even in circumstances where a person has been tried and acquitted of an offence, or had a conviction set aside. The use of a charge, which is not yet proven, as a basis for a restrictive order, which can limit freedom of movement and association, may deprive a person of their presumption of innocence, as contained in Article 14 of the ICCPR. Further, the consideration of an acquittal or a conviction that has been quashed or set aside, obstructs fundamental guarantees in legal principles. For these reasons, the Committee refers this matter to Parliament for its consideration.

#### *Freedom from arbitrary detention – requirement for electronic monitoring device*

---

The Bill seeks to amend the *Bail and Other Legislation Amendment (Domestic Violence) Act 2024* to confirm and extend electronic monitoring requirements in the new bail framework for domestic violence offending. Proposed section 28B(2A) would create a requirement that when a person is granted bail with a condition of electronic monitoring, that person must remain in custody until they are fitted with an electronic monitoring device.

The Committee notes the effect of this provision may result in persons being deprived of their liberty for an extended period of time when they have otherwise been granted bail. The provision may therefore impact on a person's right to liberty and freedom from arbitrary detention contained in Article 9 of the ICCPR, which provides that holding accused persons in remand should not be the general rule.

However, the Committee notes that the requirement is subject to a limitation of 8 days, after which notice must be given to the Court that the accused person is still in custody. The Committee also acknowledges that monitoring is intended deter domestic violence offending and protect complainants, who are at increased risk of retributive violence. In these circumstances, the Committee makes no further comment.

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

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##### *Commencement by proclamation*

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Proposed section 2 states 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's provisions have the capacity to restrict the freedom of movement and association of certain persons and place positive obligations on them.

However, the Committee acknowledges the practical reasons for including a flexible start date, which include allowing time for interagency planning and training to administer the new scheme. In the circumstances, the Committee makes no further comment.

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### **3. Environmental Planning and Assessment Amendment (Certification) Bill 2024**

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

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## 4. Marine Safety Amendment Bill 2024

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

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#### *Absolute liability offences*

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The Bill proposes to introduce a number of new offences into the *Marine Safety Act 1998* relating to licensed activities, conduct around port seabeds and registration of vessels. The offences carry maximum penalties ranging from a \$220 fine (20 penalty units) to a \$1,100 fine (100 penalty units). The Committee notes that the new offences do not require a mental element to be proven.

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. However, the Committee recognises that absolute liability offences are not uncommon in regulatory settings in order to encourage compliance and safe practices. The Committee also acknowledges that the maximum penalties carried by these proposed offences would only be monetary and not custodial. In the circumstances and for those reasons, the Committee makes no further comment.

#### *Strict liability offences*

---

The Bill would introduce a number of new offences into the *Marine Safety Act 1998* for failing to comply with a notice or direction and removing a displayed notice 'without reasonable excuse'. The offences carry maximum penalties ranging from a \$110 fine (10 penalty units) and a \$1,100 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.

However, the Committee acknowledges that strict liability offences, like absolute liability offences, are not uncommon in regulatory frameworks in order to encourage compliance and safe practices. The Committee also notes that a 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.

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

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#### *Wide regulation-making powers*

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The Bill proposes to defer a number of significant matters to the regulations, including the conditions of marine safety licences and the circumstances in which the Minister may charge a person an exclusion zone fee.

The Committee generally prefers substantive matters to be dealt with in the principal legislation, rather than the regulations in order to facilitate an appropriate level of parliamentary oversight. The Committee acknowledges that the provisions may be intended to build more flexibility into the regulatory framework and to allow regulators to better respond to changing circumstances, including types of vessels and aquatic activities.

However, the Committee considers that the powers being deferred to the regulations, which include prescribing certain conditions of marine safety licences and circumstances in which the Minister may charge a person an exclusion zone fee, are sufficiently substantive powers that



impact marine safety licence holders, and the marine safety scheme generally. The Committee therefore refers the matter to Parliament for further consideration.

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## 5. Music Festivals Amendment Bill 2024

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

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#### *Wide delegation of powers to the DCITHS and Health Secretaries*

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The Bill seeks to amend the *Music Festivals Act 2019* to give the Department of Creative Industries, Tourism, Hospitality and Sport (DCITHS) Secretary the power to require music festival organisers to have an approved health and medical plan (H&M plan) in place. Under the Act, this power currently sits with the Independent Gaming and Liquor Authority. The H&M plan would be required to meet guidelines produced by the Department of Health, and be subject to changes and additions at the request of the Commissioner of Police. A decision to require a music festival to have an agreed H&M plan would be appealable.

The Bill may, therefore, provide for the delegation of wide regulatory powers to the DCITHS, the Health Secretary and the Commissioner of Police. The Committee generally prefers that regulatory powers delegated to the Executive are as discrete and limited as possible, in order to provide clarity as well as greater oversight of the exercise of a legislative power.

However, the Committee acknowledges that the regulatory powers in question are currently delegated to the Independent Gaming and Liquor Authority. The Committee also recognises that decisions of the DCITHS Secretary would be appealable, and that the Bill is intended to promote music festival viability in NSW. In the circumstances, the Committee makes no further comment.

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## 6. Police Amendment (Police Officer Support Scheme) Bill 2024

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

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#### *Interference with privacy rights*

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The Bill seeks to insert section 199K into the *Police Act 1990*, which would limit the application of privacy legislation, including the *Health Records and Information Privacy Act 2002* and the *Privacy and Personal Information Protection Act 1998*, for the purposes of the administration or operation of the new police officer support scheme. These laws protect the collection and use of an individual's health information and personal information. Therefore, the Bill may impact an individual's privacy rights by restricting the application of these protections.

However, the Committee acknowledges that the proposed amendments are intended to address the practical need to process and administer claims and payments under the new police officer support scheme. The Committee also notes that proposed subsection 199K(2) would limit the sharing of information to decision reviews by Insurance and Care NSW, and hearings and determinations by the Personal Injury Commission. Therefore, in the circumstances, the Committee makes no further comment.

#### *Powers of Commission to require evidence – strict liability offence and right to silence*

---

The Bill seeks to insert Schedule 3A into the *Personal Injury Commission Act 2020* which would establish a Police Officer Support Scheme Division to carry out the Personal Injury Commission's functions under the new police officer support scheme. Proposed subclause 6(1) of Schedule 3A would provide the Personal Injury Commission with powers to require evidence. This would

include powers to require any person to appear, give evidence, and answer relevant questions. Failure to comply with the Personal Injury Commission's request, without reasonable excuse, would be a strict liability offence under proposed subclause 6(2) with a maximum penalty of \$5,500 (50 penalty units).

The Bill may, therefore, grant the Personal Injury Commission significant investigative powers that may impact an individual's rights, including the right to silence, by compelling a person to provide evidence at the pain of criminal liability. Further, 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.

However, the Committee acknowledges that these powers may be intended to enhance workers compensation support for police officers who die or become permanently or temporarily incapacitated for work. It also notes that the Bill includes safeguards, including permitting a person to refuse to answer questions that may self-incriminate.

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

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

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#### *Significant matters deferred to regulations*

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The Bill seeks to insert section 199D into the *Police Act 1990*, which would allow the regulations to provide for a range of matters that are fundamental to the new police officer support scheme. These would include the scheme structure, payment eligibility, decision reviews, information sharing, and obligations for rehabilitation, retraining and redeployment.

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 new Scheme.

However, the Committee acknowledges that deferring these matters to the regulations may provide necessary flexibility in the regulatory framework to support the establishment of the police officer support scheme. 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.

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## **7. Portable Long Service Leave Legislation Amendment Bill 2024**

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

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## **8. Road Transport Legislation Amendment (Speed Camera Detection) Bill 2024**

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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

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### 1. Pipelines Amendment Regulation 2024

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

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##### *Creation of offences*

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The Regulation introduces a number of new offences into the Pipelines Regulation 2023 relating to the protection of pipelines and land used in the operation and construction of pipelines, the provision of information and documents, and Ministerial directions. The offences carry maximum penalties ranging from a \$110 fine (10 penalty units) to a \$25,003 fine (2,273 penalty units) for individuals.

The Committee generally prefers that penalties are set down in primary legislation to afford a greater level of parliamentary scrutiny. The Committee also notes that the new offences do not require a mental element to be proven. 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.

However, the Committee notes that the pipelines transporting primarily gas and petroleum are highly regulated and that it may be more administratively efficient to proceed by regulation. The Committee also notes that the penalties are more likely to be imposed on corporations as opposed to individuals, and are designed to promote safety around potentially hazardous substances. In the circumstances, the Committee makes no further comment.

#### **Form or intention calls for elucidation: s 9(1)(b)(vii) of the LRA**

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##### *Ministerial direction*

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The Regulation inserts section 38A into the Pipelines Regulation 2023, which enables the Minister to give a cyber security direction to licensees by written notice. The direction can require the licensee to take action that the Minister considers 'reasonably necessary' to either respond to the impact of a cyber security incident on the licensee's information technology systems, or to prevent a cyber security incident impacting the licensee's information technology systems. Failure to comply with the direction is an offence which carries a maximum penalty of a \$1,100 fine (100 penalty units) for individuals.

The Committee notes that section 38A may grant the Minister a wide discretionary power through the insufficiently defined term 'reasonably considers', which would benefit from further clarification. The Committee prefers provisions that affect rights and obligations of individuals to be drafted with sufficient precision so that their scope is clear. It also notes that the direction may be in force indefinitely or for as long as the direction provides.

The Committee acknowledges that it is important for the Minister to retain flexibility and discretion, as technology and cyber security is a rapidly evolving area. It further notes that actions required by directions are limited to responding to, or preventing circumstances around cyber security threats. In the circumstances, the Committee makes no further comment.

# Part One – Bills

# 1. Agriculture Commissioner Bill 2024

Date introduced	17 September 2024
House introduced	Legislative Council
Member with carriage	The Hon. Tara Moriarty MLC
Portfolio	Agriculture

## Purpose and description

1.1 The object of the Bill is to establish the office of the Agriculture Commissioner (the **Commissioner**) and to provide for the Commissioner's functions, which include the following:

- (a) to give advice about, and undertake reviews of, matters relating to agriculture, agricultural productivity, land use conflicts and food security,
- (b) to make recommendations about agricultural matters to the Minister for Agriculture and other relevant Ministers,
- (c) to monitor developments relating to agricultural matters,
- (d) to identify opportunities to improve agricultural productivity,
- (e) to promote a coordinated and collaborative approach across the Commonwealth Government, the NSW Government and local government in relation to agricultural matters.

## Background

1.2 The Bill would create a new Act that establishes NSW's first statutory Agriculture Commissioner that has the function of providing independent advice to the NSW Government on agricultural matters.

1.3 In her second reading speech, the Hon. Tara Moriarty MLC stated that the establishment of an independent statutory Commissioner would help farmers deal with significant challenges, such as 'the ongoing impacts from pests and weeds...the increasing impacts of climate change and competing land use pressures, particularly on high-quality farmland'.

1.4 The Minister also explained that the creation of the Commissioner was informed by a report prepared by the former non-statutory Agriculture Commissioner, Mr Daryl Quinlivan AO, in consultation with the agricultural sector.

1.5 The Statement of Interest tabled with the Bill summarises the broad effect of the Bill and specifically noted that the Commissioner would:

- support agricultural sector growth,
- increase knowledge of rural land assets, and

- improve management of land use conflict.

### **Issues considered by the Committee**

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

## 2. Crimes (Domestic and Personal Violence) and Other Legislation Amendment Bill 2024

Date introduced	17 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

### Purpose and description

- 2.1 The objects of this Bill are to:
- (a) amend the *Crimes (Domestic and Personal Violence) Act 2007* (the **Act**) to allow certain Courts, on application, to make a serious domestic abuse prevention order (**SDAPO**) for a person,
  - (b) amend the Act to create further offences for a person who breaches an apprehended domestic violence order (**ADVO**) in certain circumstances,
  - (c) make miscellaneous amendments to the Act, and
  - (d) make miscellaneous amendments to certain other Acts to protect persons from domestic and personal violence.

### Background

- 2.2 The Bill seeks to amend the domestic violence legislative framework to create a new scheme for serious domestic violence offences. The Bill seeks to increase penalties for contravening domestic violence court orders and introduce new measures to mitigate the risk of further domestic violence offending from persons who have significant domestic violence histories.
- 2.3 In his second reading speech, the Hon. Michael Daley MP, Attorney General, explained that the proposed changes provide:
- important additions to the legislative tools available to tackle high-risk perpetrators of domestic and family violence, allowing for more tailored responses to better hold perpetrators to account.
- 2.4 Further, the Attorney General explained that the aim of the amendments was to 'introduce laws and additional tools for our criminal justice agencies to target and respond to high-risk domestic and family violence offenders.' These tools seek to recognise and raise the seriousness with which domestic violence is treated and are modelled on other schemes that respond to serious and organised crime.
- 2.5 The key amendments proposed by the Bill include:

- a new civil protection order scheme for serious domestic abuse prevention orders
- new aggravated offences for breaches of ADVOs
- an updated definition of 'stalking' to include tracking or monitoring a person's activities, communications or movements by using technology or other methods.

2.6 The new protection order scheme for serious domestic abuse prevention orders is provided for by proposed section 87J, which states that proceedings for these orders are civil and not criminal, except in the event of a breach. The scheme, therefore, operates to a lower standard of proof, being the 'balance of probabilities', as opposed to the criminal standard of 'beyond reasonable doubt'.

2.7 The Bill also seeks to amend a number of other Acts to provide comprehensive changes to domestic violence related issues, and to address certain concerns of enforcement agencies. The changes include:

- implementation of bail reforms contained in the *Bail and Other Legislation (Domestic Violence) Act 2024*, to permit accused persons to appear in bail proceedings via audio-visual links
- amendments to the *Bail Act 2013*, to ensure relevant accused persons are not released until they are fitted with an electronic monitoring device
- amendments to the *Births, Deaths and Marriages Registration Act 1995* to allow sole parents with appropriate Family Court orders to change their child's name
- amendments to the *Criminal Procedure Act 1986* to allow the new offences to be dealt with summarily in the Local Court
- amendments to the *Firearms Act 1996* and the *Weapons Prohibition Act 1998* to ensure the automatic revocation of a firearms licence or prohibited weapons permit after the making of an abuse prevention order (to ensure it has the same effect as the conditions imposed by an AVO)
- consequential amendments to the *Evidence (Audio and Visual Links) Act 1998*.

## Issues considered by the Committee

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

#### *Procedural fairness - removal of rules of evidence*

2.8 The Bill proposes to insert Part 10A into the Act, to create a new scheme of serious domestic abuse prevention orders applicable to repeat and serious domestic violence offenders.

2.9 In his second reading speech, the Attorney General acknowledged that the proposed section is part of a scheme to 'target high-risk domestic violence offenders because of the risk they pose to the community at large and to people who may in the future become connected to the perpetrator.'



- 2.10 The Bill proposes to insert section 87B(7) into the Act, which would allow hearsay evidence to be admitted and taken into account in determining an application for a serious domestic abuse prevention order, even if this is contrary to rules of evidence established in the *Evidence Act 1995*.
- 2.11 Proposed section 87B(7)(a) and (b) would allow the evidence to be admitted and taken into account if the evidence is from a reliable source, relevant, and of probative value, after notice and service has been given to the person against whom the order is sought.

**The Bill seeks to amend the *Crimes (Domestic and Personal Violence) Act 2007* to create new preventative orders applicable to serious domestic violence offenders. The Bill seeks to expand the admissibility of evidence for a Court when determining a serious domestic abuse prevention order, by allowing hearsay evidence under the *Evidence Act 1995*.**

The Committee notes the removal of the hearsay rule could lead to otherwise inadmissible evidence, such as out of Court written statements or assertions in oral testimony, being relevant to proceedings which may result in the imposition of strict orders with implications on freedom of movement, association and liberty. The Committee notes hearsay evidence is often excluded because of concerns about its reliability, specifically in examples of evidence that is made out of Court, not made under oath or affirmation as to its truth, and not able to be tested during cross-examination.

However, the Committee acknowledges that the proposed section would apply only in civil proceedings, and allows the incorporation of evidence which may be relevant to an assessment of danger to a protected person. The Committee also notes the removal of the hearsay rule is subject to safeguards, for example, that the Court must be satisfied that the evidence is from a reliable source, is relevant and probative. Notification of the proposed evidence must also be served on the person against whom the order is sought prior to its admission. In the circumstances, the Committee makes no further comment.

*Right to the presumption of innocence – procedural fairness*

- 2.12 The Bill proposes to insert section 87B(1) into the Act to establish the grounds for making an application for a serious domestic abuse prevention order.
- 2.13 Proposed section 87B(1) provides that an application can be brought against a specified person if:
- (a) the person is at least 18 years of age
  - (b) during the previous 10 years, the person, when at least 16 years of age –
    - (i) has been convicted of 2 or more domestic violence offences (with a maximum penalty of 7 years imprisonment or more), or
    - (ii) has been involved in serious domestic abuse activity, and

- (c) there are reasonable grounds to believe that an order would protect:
  - (i) a family member,
  - (ii) a current, former or potential intimate partner of the person, or
  - (iii) a person in a domestic relationship with an intimate partner of the protected person.

2.14 Proposed section 87B(1)(b)(ii) provides that an application can be brought against a person if they have been 'involved in a serious domestic abuse activity' which is defined at proposed section 87A as 'anything done by a person that is or was at the time a serious domestic violence offence.'

2.15 The proposed definition also includes serious domestic violence offences for which the person has been charged, and operates in further circumstances, including whether, or not the person has been:

- (a) tried,
- (b) tried and acquitted, or
- (c) convicted, even if the conviction has been quashed or set aside.

**The Bill seeks to amend the *Crimes (Domestic and Personal Violence) Act 2007* to make provisions for the making of serious domestic abuse prevention orders. The Bill proposes to insert section 87B(1)(b)(ii), which would establish the requirements for making an application for a serious domestic abuse prevention order. The proposed section would permit the making of an application if a specified person has been charged with a serious domestic violence offence, or if a person has been tried and acquitted of such an offence, or had a conviction quashed or set aside.**

**The Committee acknowledges the grounds for bringing a prevention order are intended to capture high-risk offenders, who may demonstrate ongoing patterns of offending behaviour. The Committee further acknowledges that the orders are only applicable to specific alleged activities, those being serious domestic violence offences with a maximum penalty of 14 years or more. The Committee also notes that the application is subject to a reasonable grounds test, which would provide that the prevention order would protect persons closely linked to a protected person, such as family members or intimate partners, who are often targeted in domestic violence incidents.**

**However, the Committee notes that the grounds for bringing an application will apply when a person has been charged, even in circumstances where a person has been tried and acquitted of an offence, or had a conviction set aside. The use of a charge, which is not yet proven, as a basis for a restrictive order, which can limit freedom of movement and association, may deprive a person of their presumption**

**of innocence, as contained in Article 14 of the ICCPR.<sup>1</sup> Further, the consideration of an acquittal or a conviction that has been quashed or set aside, obstructs fundamental guarantees in legal principles. For these reasons, the Committee refers this matter to Parliament for its consideration.**

*Freedom from arbitrary detention – requirement for electronic monitoring device*

- 2.16 The Bill proposes to amend the *Bail and Other Legislation Amendment (Domestic Violence) Act 2024* to give effect to recent bail reforms that apply to accused persons charged with serious domestic violence offences.
- 2.17 The Bill proposes to amend section 28B(2) by inserting subsection (2A) to provide that if electronic monitoring is a condition of bail, the accused person must remain in custody until the person has been fitted with an electronic monitoring device.
- 2.18 The amendment also includes a Note to specify that should a person have custody of an accused person granted bail in these circumstances, they must give a court notice that the accused person is still in custody within particular timeframes. The Note makes reference to the relevant regulations and section 42 of the *Bail Act 2013*, which provides a limitation of 8 days in custody.

**The Bill seeks to amend the *Bail and Other Legislation Amendment (Domestic Violence) Act 2024* to confirm and extend electronic monitoring requirements in the new bail framework for domestic violence offending. Proposed section 28B(2A) would create a requirement that when a person is granted bail with a condition of electronic monitoring, that person must remain in custody until they are fitted with an electronic monitoring device.**

**The Committee notes the effect of this provision may result in persons being deprived of their liberty for an extended period of time when they have otherwise been granted bail. The provision may therefore impact on a person’s right to liberty and freedom from arbitrary detention contained in Article 9 of the ICCPR, which provides that holding accused persons in remand should not be the general rule.<sup>2</sup>**

**However, the Committee notes that the requirement is subject to a limitation of 8 days, after which notice must be given to the Court that the accused person is still in custody. The Committee also acknowledges that monitoring is intended deter domestic violence offending and protect complainants, who are at increased risk of retributive violence. In these circumstances, the Committee makes no further comment.**

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

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

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

*Commencement by proclamation*

- 2.19 Proposed section 2 of the Bill provides that the Bill commences (as an Act) on a day or days to be appointed by proclamation.
- 2.20 The proposed amendments in the Bill would implement significant changes to the domestic violence framework by creating a new scheme for serious domestic abuse prevention orders along with making significant changes to the ways in which the Courts can respond to domestic and family violence incidents.
- 2.21 The Bill creates new aggravated offences for breaching an ADVO and a new preventative scheme aimed at reducing ancillary impacts of domestic violence offending.
- 2.22 In his second reading speech, the Attorney General stated that the Bill's commencement by proclamation was intended to accommodate the 'novel' prevention order scheme, and to provide 'time ... for training and education for justice agencies'. The Attorney General also cited the 'impacts on the operating systems of the justice system' and the 'time [that] is needed to make necessary updates to these and other operating procedures' as additional reasons for the Bill to commence on proclamation.

**Proposed section 2 states 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's provisions have the capacity to restrict the freedom of movement and association of certain persons and place positive obligations on them.**

**However, the Committee acknowledges the practical reasons for including a flexible start date, which include allowing time for interagency planning and training to administer the new scheme. In the circumstances, the Committee makes no further comment.**

### 3. Environmental Planning and Assessment Amendment (Certification) Bill 2024

Date introduced	18 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Paul Scully MP
Portfolio	Planning and Public Spaces

#### Purpose and description

- 3.1 The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* (the **Act**) to provide that the Minister for Planning and Public Spaces (the **Minister**) may certify development in certain circumstances and to validate certain certificates.

#### Background

- 3.2 The Bill proposes to amend the Act to allow the Minister to certify development in specific areas and validate pre-existing development certificates.

- 3.3 The Hon. Paul Scully MP, Minister for Planning and Public Places, explained that the Bill:

Permanently re-introduces powers for essential specialist building certification services that were inadvertently removed by amendments to the Act in 2018.

- 3.4 The Minister explained that the changes will ensure that 'essential work building certification can continue in some of the most important areas of our state' and 'allow these services to continue unimpeded by establishing a permanent pathway for them in the Act...'. The Minister gave the examples of the alpine region and Sydney Harbour as some of these places.

- 3.5 The key amendments proposed by the Bill include:

- inserting a definition of 'certifier', which includes a council or registered certifier, or for developments for which the Minister has granted a development consent: the council, a registered certifier or the Minister
- prescribing a list of additional persons who can issue subdivision certificates to include a person prescribed by regulations, when it is in relation to developments prescribed by the regulations. In these instances it requires the person to notify the Planning Secretary when they issue a subdivision certificate

- inserting a new unnumbered part to provide for the validation of occupation certificates for specific developments, to the extent that they are currently invalid under the Act.

### **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. Marine Safety Amendment Bill 2024

Date introduced	18 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Jo Haylen MP
Portfolio	Transport

### Purpose and description

4.1 The object of the Bill is to amend the *Marine Safety Act 1998* (the **Act**) to address miscellaneous recommendations arising from a discussion paper published by Transport for New South Wales in October 2022 on the Marine Safety Regulation 2016 (the **Regulation**), including to:

- (a) expand the definitions of 'vessel', 'obstruction to navigation' and 'unsafe vessel',
- (b) insert new definitions, including for:
  - (i) the 'relevant owner' of a vessel, to replace the definition of the 'owner' of a vessel
  - (ii) the 'person responsible' for a vessel or a former vessel,
- (c) give the Minister responsible for administering the Act (the Minister) and authorised officers various powers in relation to:
  - (i) obstructions to navigation
  - (ii) unsafe vessels, including derelict vessels and certain former vessels,
- (d) provide for the grant, suspension and cancellation of marine safety licences, and the transfer of vessel registration certificates,
- (e) regulate certain activities conducted in or over navigable waters,
- (f) create offences, including in relation to the registration of vessels,
- (g) deal with the disturbance of, or interference with, the beds of certain ports, including the installation and removal of sea cables,
- (h) provide for the declaration of, and giving of directions in relation to, offshore anchorages for a port,
- (i) set out the requirements for the removal of disused sea cables from relevant ports,

- (j) require Transport for NSW to establish and keep a public register of vessels to which certain statutory notices relate.

## Background

4.2 In her second reading speech, the Hon. Jo Haylen, MP, Minister for Transport, stated that the Bill would amend the Act and the Regulation to:

...ensure the safe operation of vessels in ports and other waterways; promote the responsible operation of vessels in those waters to protect the safety and amenity of other users of those waters and the amenity of occupiers of adjoining land; provide an effective framework for the enforcement of marine legislation; provide for the investigation of marine accidents and for appropriate action following any such investigation; and consolidate the marine safety legislation.

4.3 The Minister noted that, in response to Transport for NSW's statutory review of the Regulation, the Bill included a 'head of power that will enable regulatory changes'. The head of power will, among other things, be authorised to remove or dispose of 'an unsafe vessel when a person responsible for it fails to comply' with the head of power's direction.

## Issues considered by the Committee

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

#### *Absolute liability offences*

- 4.4 The Bill would establish a number of new absolute liability offences, including for:
- a person conducting an aquatic activity without an aquatic licence for the activity (proposed subsection 18(1)(a) of the Act) (100 penalty units),
  - a person conducting an aquatic activity not in accordance with the conditions of their aquatic licence (proposed subsection 18(1)(b) of the Act) (100 penalty units),
  - a person disturbing or interfering with the bed of a relevant port, including to install a sea cable in the port, without the harbour master's approval (proposed subsection 19Z(1) of the Act) (50 penalty units),
  - a marine pilot licence holder failing to give written notice to the responsible regulator as soon as practicable after either they retire or have not been employed as a marine pilot by a pilotage service provider for a continuous period of 2 years (proposed subsection 38A(1) of the Act) (50 penalty units),
  - an owner of a registrable vessel allowing the vessel to be in State waters without the vessel being registered under the Act (proposed subsection 49(2) of the Act) (20 penalty units),
  - a relevant owner of a registered registrable vessel failing to notify the responsible regulator they disposed of the vessel in a form approved by the responsible regulator and giving the person acquiring the vessel a copy of the form (proposed subsection 54(1) of the Act) (20 penalty units), and



- a person who acquires a registered registrable vessel failing to do the following within 14 days after acquiring the vessel:
  - (a) notifying the responsible regulator of the acquisition in a form approved by the responsible regulator,
  - (b) paying the fee prescribed by the regulations,
  - (c) giving the responsible regulator evidence of the court order or process (if the vessel was acquired in accordance with an order of a court in Australia or another legal process) (proposed subsection 55(1) of the Act) (20 penalty units).

**The Bill proposes to introduce a number of new offences into the *Marine Safety Act 1998* relating to licensed activities, conduct around port seabeds and registration of vessels. The offences carry maximum penalties ranging from a \$220 fine (20 penalty units) to a \$1,100 fine (100 penalty units). The Committee notes that the new offences do not require a mental element to be proven.**

**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. However, the Committee recognises that absolute liability offences are not uncommon in regulatory settings in order to encourage compliance and safe practices. The Committee also acknowledges that the maximum penalties carried by these proposed offences would only be monetary and not custodial. In the circumstances and for those reasons, the Committee makes no further comment.**

#### *Strict liability offences*

4.5 The Bill would establish a number of new strict liability offences, including for:

- a person failing to comply with a notice or direction under subsection 18B(1) or (3) without reasonable excuse (proposed subsection 18B(4) of the Act) (10 penalty units),
- a person failing to comply with a direction under subsection 19X(1) without reasonable excuse (proposed subsection 19X(2) of the Act) (100 penalty units),
- a person failing to comply with the conditions of approval obtained under subsection 19Z(3) without reasonable excuse (proposed subsection 19Z(4) of the Act) (50 penalty units),
- a person failing to comply with a direction under subsection 19ZA(2) without reasonable excuse (proposed subsection 19ZA(3) of the Act) (50 penalty units),
- a person responsible for a vessel or former vessel failing to comply with a notice under subsection 47(3) without reasonable excuse (proposed subsection 47(4) of the Act) (50 penalty units), and

- a person removing a notice displayed in accordance with subsection 134(1A) without reasonable excuse (proposed subsection 134(1B) of the Act) (50 penalty units).

**The Bill would introduce a number of new offences into the *Marine Safety Act 1998* for failing to comply with a notice or direction and removing a displayed notice 'without reasonable excuse'. The offences carry maximum penalties ranging from a \$110 fine (10 penalty units) and a \$1,100 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.**

**However, the Committee acknowledges that strict liability offences, like absolute liability offences, are not uncommon in regulatory frameworks in order to encourage compliance and safe practices. The Committee also notes that a 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.**

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

##### *Wide regulation-making powers*

- 4.6 The Bill proposes to defer a wide range of matters to the regulations, including the following:
- prescribing the circumstances in which the Minister may charge a person an exclusion zone fee (proposed subsection 18B(7),
  - prescribing the conditions of marine safety licences, including the continuing education and training of licence holders (proposed subsection 37(2)(f) of the Act),
  - prescribing the circumstances in which an aquatic licence may be transferred to another person (proposed subsection 18(4) of the Act),
  - prescribing the boundaries of a relevant port (proposed subsection 19Y(b) of the Act),
  - prescribing what is, and what is not a vessel (proposed subsections 5(1)(a)(ii) and (b) of the Act),
  - prescribing what an aquatic activity is (proposed subsection 18A(4)(f) of the Act),
  - prescribing a type of marine safety licence (proposed subsection 29(i) of the Act),
  - providing for the rescission of transfers of vessel registration certificates, including:
    - (a) the return or issue of vessel registration certificates

(b) the refund of fees, and

- prescribing matters (including statutory notices) that must, or must not be included in the register (proposed subsection 70A(4) of the Act).

**The Bill proposes to defer a number of significant matters to the regulations, including the conditions of marine safety licences and the circumstances in which the Minister may charge a person an exclusion zone fee.**

**The Committee generally prefers substantive matters to be dealt with in the principal legislation, rather than the regulations in order to facilitate an appropriate level of parliamentary oversight. The Committee acknowledges that the provisions may be intended to build more flexibility into the regulatory framework and to allow regulators to better respond to changing circumstances, including types of vessels and aquatic activities.**

**However, the Committee considers that the powers being deferred to the regulations, which include prescribing certain conditions of marine safety licences and circumstances in which the Minister may charge a person an exclusion zone fee, are sufficiently substantive powers that impact marine safety licence holders, and the marine safety scheme generally. The Committee therefore refers the matter to Parliament for further consideration.**

## 5. Music Festivals Amendment Bill 2024

Date introduced	18 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. David Harris MP
Portfolio	Music and the Night-time Economy

### Purpose and description

5.1 The objects of this Bill are as follows:

(a) to amend the *Music Festivals Act 2019* (**the Act**) to:

- (i) replace the requirement for certain music festivals to prepare a safety management plan with a requirement to prepare an agreed health and medical plan (a **H&M plan**) that only relates to health and medical matters
- (ii) transfer responsibilities of the Independent Liquor and Gaming Authority (**ILGA**) under the Act to the Secretary of the Department of Creative Industries, Tourism, Hospitality and Sport (the **DCITHS Secretary**) and the Secretary of the Ministry of Health (the **Health Secretary**)
- (iii) provide that a music festival organiser may appeal to ILGA against a determination by the DCITHS Secretary requiring a music festival to be operated with an agreed H&M plan
- (iv) provide that the Commissioner of Police may propose to the DCITHS Secretary additional conditions to be included in an agreed H&M plan
- (v) provide for music festival organisers to apply to have charges payable for the attendance of members of the NSW Police Force, or the provision of ambulance services, at a music festival or other government charges in relation to a music festival reduced or waived

(b) to set out the Music Festivals Regulation 2024

(c) to amend the *Liquor Act 2007* to enable unaccompanied minors who are 16 years of age or older to attend licensed festivals if the licensee ensures sufficient control measures are in place to manage the risk of minors obtaining liquor.

### Background

5.2 The Bill seeks to amend the regulatory framework for music festivals in NSW, including how music festival organisers work with state government and police to promote health and safety while also ensuring the viability of the event.

5.3 In his second reading speech, the Hon. David Harris MP, Minister for Gaming and Racing (the **Minister**), explained the intention of the Bill as follows:

...the Government wants to ensure that it fulfils its commitment to remove red tape and create a more supportive regulatory environment for music festivals.

5.4 The Minister also commented that in order to 'refocus the regulatory framework towards health and medical matters,' the Bill proposes shifting decision-making for H&M plans from the Independent Liquor & Gaming Authority to the Department of Creative Industries, Tourism, Hospitality and Sport.

5.5 The key amendments proposed by the Bill include:

- Requiring music festival organisers to prepare H&M plans and have them approved by the DCITHS and Health Secretaries, with the input of the Commissioner of Police, when required
- Creating a waiver application scheme for music festival organisers required to fund user-pay government services, including police and ambulance, as part of their approved H&M plans
- Creating the Music Festivals Regulation 2024
- Amending the *Liquor Act 2007* so that minors over 16 do not need to be accompanied at music festivals if the licensee has sufficient measures in place to manage the risk of minors obtaining liquor during the music festival.

## Issues considered by the Committee

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

#### *Wide delegation of powers to the DCITHS and Health Secretaries*

5.6 The Bill proposes to insert sections 5 and 5A into the Act, which would give the DCITHS Secretary the power to require a music festival to have a H&M plan approved by the Secretary. Music festival organisers would, however, have the right to appeal a determination of the DCITHS Secretary that an event be required to operate with an agreed H&M plan.

5.7 The Bill also proposes to insert section 6A, which would require some music festival organisers to incorporate a law enforcement and safety schedule into their H&M plan. The schedule must be agreed to by the DCITHS Secretary, who would, in turn, be required by proposed section 6A(5)(c) to approve any conditions proposed by the Commissioner of Police.

5.8 H&M plans under the Bill would be required to meet the Guidelines for Music Festival Event Organisers, which is produced by the Ministry of Health.

**The Bill seeks to amend the *Music Festivals Act 2019* to give the Department of Creative Industries, Tourism, Hospitality and Sport (DCITHS) Secretary the power to require music festival organisers to have an approved health and medical plan (H&M plan) in place. Under the**

**Act, this power currently sits with the Independent Gaming and Liquor Authority. The H&M plan would be required to meet guidelines produced by the Department of Health, and be subject to changes and additions at the request of the Commissioner of Police. A decision to require a music festival to have an agreed H&M plan would be appealable.**

**The Bill may, therefore, provide for the delegation of wide regulatory powers to the DCITHS, the Health Secretary and the Commissioner of Police. The Committee generally prefers that regulatory powers delegated to the Executive are as discrete and limited as possible, in order to provide clarity as well as greater oversight of the exercise of a legislative power.**

**However, the Committee acknowledges that the regulatory powers in question are currently delegated to the Independent Gaming and Liquor Authority. The Committee also recognises that decisions of the DCITHS Secretary would be appealable, and that the Bill is intended to promote music festival viability in NSW. In the circumstances, the Committee makes no further comment.**

## 6. Police Amendment (Police Officer Support Scheme) Bill 2024

Date introduced	18 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Yasmin Catley MP
Portfolio	Police and Counter-Terrorism

### Purpose and description

- 6.1 The objects of this Bill are to:
- (a) amend the *Police Act 1990* (the **Police Act**) to establish the police officer support scheme (the **Scheme**) to provide payments to or in relation to police officers who die or become permanently or temporarily incapacitated for work, and
  - (b) amend the *Personal Injury Commission Act 2020* (the **Commission Act**) to establish the Police Officer Support Scheme Division (the **POSS Division**) to hear and determine disputes in relation to the scheme.

### Background

- 6.2 The Bill seeks to establish an 'enhanced workers compensation support scheme' to provide 'on and off duty payments, and death cover' for officers who die or are injured for work, subject to the approval of the Minister for Police and Counter-terrorism (the **Minister**) and the concurrence of the Treasurer.
- 6.3 In her second reading speech, the Hon. Yasmin Catley MP, Minister for Police and Counter-Terrorism, noted that the Bill is intended to modernise the outdated Police Blue Ribbon Insurance Scheme. The Minister said that the new Scheme would address the 'concessional superannuation cap problem' for police officers, and 'facilitate return-to-work outcomes and support early intervention'.
- 6.4 The key amendments proposed by the Bill are:
- replacing the current income protection insurance scheme with a new scheme that avoids adverse tax implications and maintains access to government benefits for NSW police officers,
  - streamlining injury management claims to improve support for recovery and return-to-work, and providing an improved safety net for police officers and their families,
  - introducing catastrophic or exceptional extension payments in certain circumstances,

- enabling Insurance and Care NSW (**ICNSW**) to review decisions made under the new Scheme,
- granting the Personal Injury Commission (the **Commission**) the authority to determine disputes and appoint medical assessors,
- creating a new POSS Division under the Commission Act, which sets out its composition and functions, and
- making consequential amendments to other related legislation.

## Issues considered by the Committee

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

#### *Interference with privacy rights*

- 6.5 The Bill seeks to insert section 199K into the Police Act, which would limit the application of privacy laws, including the *Health Records and Information Privacy Act 2002* (the **HRIP Act**) and the *Privacy and Personal Information Protection Act 1998* (the **PPIP Act**), to the extent that the information is necessary for the purposes of the administration or operation of the new Scheme.
- 6.6 The purpose of the HRIP Act promotes the fair and responsible handling of an individual's health information while the PPIP Act protects personal information from being unlawfully collected or shared.
- 6.7 Proposed subsection 199K(2) specifies circumstances where these privacy laws would not apply, including:
- decision reviews by ICNSW, and
  - hearings and determinations by the Commission.
- 6.8 In her second reading speech, the Minister explained that this amendment would facilitate the necessary sharing of information between parties to 'process and administer claims and payments'. The potential parties may include ICNSW, its agents, police, the Commission and medical practitioners.

**The Bill seeks to insert section 199K into the *Police Act 1990*, which would limit the application of privacy legislation, including the *Health Records and Information Privacy Act 2002* and the *Privacy and Personal Information Protection Act 1998*, for the purposes of the administration or operation of the new police officer support scheme. These laws protect the collection and use of an individual's health information and personal information. Therefore, the Bill may impact an individual's privacy rights by restricting the application of these protections.**

**However, the Committee acknowledges that the proposed amendments are intended to address the practical need to process and administer claims and payments under the new police officer support scheme. The Committee also notes that proposed subsection 199K(2) would limit the sharing of information to decision reviews by Insurance and Care NSW, and hearings and determinations by the Personal Injury Commission.**



**Therefore, in the circumstances, the Committee makes no further comment.**

*Powers of Commission to require evidence – strict liability offence and right to silence*

- 6.9 The Bill seeks to insert Schedule 3A into the Commission Act, which would establish a POSS Division to carry out the Commission's functions under the new Scheme.
- 6.10 Proposed subclause 6(1) of Schedule 3A would provide the Commission powers to require evidence. This would include the powers to require any person to appear, give evidence, and answer relevant questions.
- 6.11 Failure to comply with the Commission's request, without reasonable excuse, would be an offence under proposed subclause 6(2), carrying a maximum penalty of \$5,500 (50 penalty units).
- 6.12 Proposed subclause 6(3) clarifies that a persons would not be required to answer any question that may incriminate them in an offence.

**The Bill seeks to insert Schedule 3A into the *Personal Injury Commission Act 2020* which would establish a Police Officer Support Scheme Division to carry out the Personal Injury Commission's functions under the new police officer support scheme. Proposed subclause 6(1) of Schedule 3A would provide the Personal Injury Commission with powers to require evidence. This would include powers to require any person to appear, give evidence, and answer relevant questions. Failure to comply with the Personal Injury Commission's request, without reasonable excuse, would be a strict liability offence under proposed subclause 6(2) with a maximum penalty of \$5,500 (50 penalty units).**

**The Bill may, therefore, grant the Personal Injury Commission significant investigative powers that may impact an individual's rights, including the right to silence, by compelling a person to provide evidence at the pain of criminal liability. Further, 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.**

**However, the Committee acknowledges that these powers may be intended to enhance workers compensation support for police officers who die or become permanently or temporarily incapacitated for work. It also notes that the Bill includes safeguards, including permitting a person to refuse to answer questions that may self-incriminate.**

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

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

#### *Significant matters deferred to regulations*

6.13 The Bill seeks to insert section 199D into the Police Act, which would allow the regulations to make provisions for a range of matters that are fundamental to the new Scheme, including:

- structure requirements of the new Scheme,
- eligibility for payments and contributions,
- procedures for reviewing decisions and resolving disputes,
- guidelines for information sharing,
- the obligations of the Commissioner, police officers and former police officers, regarding rehabilitation, retraining and redeployment of incapacitated police officers and former police officers.

**The Bill seeks to insert section 199D into the *Police Act 1990*, which would allow the regulations to provide for a range of matters that are fundamental to the new police officer support scheme. These would include the scheme structure, payment eligibility, decision reviews, information sharing, and obligations for rehabilitation, retraining and redeployment.**

**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 new Scheme.**

**However, the Committee acknowledges that deferring these matters to the regulations may provide necessary flexibility in the regulatory framework to support the establishment of the police officer support scheme. 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.**

## 7. Portable Long Service Leave Legislation Amendment Bill 2024

Date introduced	18 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Sophie Cotsis MP
Portfolio	Industrial Relations

### Purpose and description

- 7.1 The object of this Bill is to preserve the continuity of long service leave for certain workers who worked at a Commonwealth place within the meaning of the *Commonwealth Places (Application of Laws) Act 1970* within New South Wales (a **NSW Commonwealth Place**) in the building and construction industry and the contract cleaning industry.

### Background

- 7.2 The Bill proposes to amend the following Acts (and related regulations) to ensure certain workers who worked at Commonwealth Places in NSW can access relevant portable NSW long service leave schemes:

- (a) *Building and Construction Industry Long Service Payments Act 1986* (**Building Act**)
- (b) *Contract Cleaning Industry (Portable Long Service Leave Scheme) Act 2010* (**Cleaning Act**)

- 7.3 The Hon. Sophie Cotsis MP, Minister for Industrial Relations, explained that the Bill seeks to address the situation whereby some workers in the construction and cleaning industries who work on NSW Commonwealth Places are at 'risk of losing access to the State's portable long service leave scheme.'

- 7.4 The Minister explained that there was a lack of recognition of credits for workers in the NSW Building and Construction Industry Portable Long Service Leave Scheme and the Contract Cleaning Portable Long Service Leave Scheme, stating that:

This is because the NSW Building and Cleaning Acts cannot apply of their own force to Commonwealth places in NSW. There is a constitutional prohibition on the ability to impose a levy to pay entitlements under both schemes.

- 7.5 The Bill seeks to amend the Building Act and the Cleaning Act to allow for the reinstatement of registration of people as 'prescribed workers' to restore an entitlement to receive service credits under those Acts for work performed on NSW Commonwealth Places.

- 7.6 The Bill proposes to amend the Building Act to provide a special circumstance that would warrant the reinstatement of the registration of a worker under section 19(6)(b)(i). It prescribes that special circumstance to be where:
- (a) the 'non-service day' used as the basis for cancelling the registration included days on which the worker performed building and construction work at a place that is a Commonwealth Place within the State
  - (b) the registration would not have been cancelled if that Commonwealth place days were days of service.
- 7.7 Further, the Bill seeks to make a similar amendment to the Building and Construction Industry Long Service Payments Regulation 2022 to provide that a day on which a worker performs building and construction work at a Commonwealth place in NSW is prescribed as a 'non-service day' for the purpose of section 19 of the Building Act.
- 7.8 Similarly, the Bill proposes to amend the Cleaning Act to provide for the reinstatement of a person's cancelled registration as a worker under section 30(1). It prescribes that the registration is reinstated if it would not have been cancelled had the days on which the worker performed the work at a Commonwealth place within NSW were not excluded from the non-service days used as the basis to cancel the registration.
- 7.9 Lastly, the Bill seeks to amend the Contract Cleaning Industry (Portable Long Service Leave Scheme) Regulation 2022 to provide that a day on which a worker performs cleaning work at a Commonwealth place in NSW is a prescribed non-service day for the purpose of sections 28 and 29 of the Cleaning Act.

### 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*.**

## 8. Road Transport Legislation Amendment (Speed Camera Detection) Bill 2024

Date introduced	18 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Jenny Aitchison MP
Portfolio	Roads

### Purpose and description

- 8.1 The object of this Bill is to amend the *Road Transport Act 2013* (the **Act**) to permit evidence of the average speed of a light vehicle between detection points to be used as evidence of the actual speed of the vehicle for the purposes of speeding offences.

### Background

- 8.2 The Bill seeks to amend the Act so that average speed detection cameras may be used to detect and enforce speeding offences on NSW roads.
- 8.3 In her second reading speech, the Hon. Jenny Aitchison MP, Minister for Regional Transport and Roads, explained that the proposed changes are intended to enforce speed limits on NSW roads for all vehicles, with the goal of 'significant reductions in traffic-related injuries and fatalities.'
- 8.4 The Minister also stated that the Act currently allows average speed detection cameras to be used as evidence of speeding by heavy vehicles, and that 'enforcement of average speeds is also generally considered a fair form of enforcement because drivers demonstrate intentional speeding behaviour over a long length of road or time, not just at a single point.'

### 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. Pipelines 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. Penny Sharpe MLC
Portfolio	Energy

## Purpose and description

- 1.1 The object of the Regulation is to amend the Pipelines Regulation 2023 to:
- (a) set out requirements for the protection of pipelines and land used in the construction or operation of pipelines,
  - (b) set out requirements for the provision of information, documents and evidence in relation to matters under the *Pipelines Act 1967*,
  - (c) provide for the making of directions in response to cyber security incidents,
  - (d) prescribe offences for matters referred to in paragraphs (a)-(c),
  - (e) remove the provision repealing the Pipelines Regulation 2023 on 1 September 2024.

## Issues considered by the Committee

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

#### *Creation of offences*

- 1.2 The Regulation introduces a number of absolutely liability offences, including for:
- a person failing to comply with a direction under subsection 26C(1) by the time specified in the direction for a relinquished area or on or before the expiration of the licence for a licenced area (subsection 26C(3)) (2,273 penalty units)
  - a licensee for a pipeline failing to maintain the pipeline in good condition and repair (subsection 28A(b)) (400 penalty units)

- a licensee for a pipeline failing to remove from the licence area all property not used, or not to be used, in connection with the operation of the pipeline (subsection 26B(1)(b)) (400 penalty units)
- a licensee for a pipeline failing to mark, and keep marked, the route of the pipelines in accordance with subsections 40(1)(a) and (b) (subsection 40(b)) (400 penalty units)
- a person failing to comply with a direction under subsection 43A(2) or 43B(2) (subsection 43A(3)(a) and 43B(3)(a)) (400 penalty units)
- a person giving information that is false or misleading (subsection 43A(3)(b)) (400 penalty units)
- a person giving or making available for inspection documents that are false or misleading (subsection 43B(3)(b)) (400 penalty units)
- a person failing to comply with an order under subsection 43C(1) (subsection 43C(3)) (400 penalty units)
- a licensee failing to comply with a direction under subsection 38A(1) (subsection 38A(3)(b)) (100 penalty units)
- a person damaging or removing a mark or sign, including a pipeline sign, required by section 40 (subsection 40(2)) (10 penalty units)
- a licensee for a pipeline removing the pipeline without removing all signs required by section 40 for the pipeline (subsection 40(3)) (10 penalty units).

**The Regulation introduces a number of new offences into the Pipelines Regulation 2023 relating to the protection of pipelines and land used in the operation and construction of pipelines, the provision of information and documents, and Ministerial directions. The offences carry maximum penalties ranging from a \$110 fine (10 penalty units) to a \$25,003 fine (2,273 penalty units) for individuals.**

**The Committee generally prefers that penalties are set down in primary legislation to afford a greater level of parliamentary scrutiny. The Committee also notes that the new offences do not require a mental element to be proven. 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.**

**However, the Committee notes that the pipelines transporting primarily gas and petroleum are highly regulated and that it may be more administratively efficient to proceed by regulation. The Committee also notes that the penalties are more likely to be imposed on corporations as opposed to individuals, and are designed to promote safety around potentially hazardous substances. In the circumstances, the Committee makes no further comment.**



## Form or intention calls for elucidation: s 9(1)(b)(vii) of the LRA

### *Ministerial direction*

- 1.3 The Regulation inserts section 38A which gives the Minister the power to give a cyber security direction by written notice to a licensee requiring them to take action that the Minister considers 'reasonably necessary' to:
- (a) respond to the impact of a cyber security incident on the licensee's information technology systems, or
  - (b) prevent a cyber security incident impacting the licensee's information technology systems.
- 1.4 Subsection 38A(a) establishes an offence for failing to comply with a cyber security direction. This offence carries a maximum penalty of a \$1,100 fine (100 penalty units) for individuals.
- 1.5 Subsection 38A(2) provides that the cyber security direction has effect for the period specified in the direction.

**The Regulation inserts section 38A into the Pipelines Regulation 2023, which enables the Minister to give a cyber security direction to licensees by written notice. The direction can require the licensee to take action that the Minister considers 'reasonably necessary' to either respond to the impact of a cyber security incident on the licensee's information technology systems, or to prevent a cyber security incident impacting the licensee's information technology systems. Failure to comply with the direction is an offence which carries a maximum penalty of a \$1,100 fine (100 penalty units) for individuals.**

**The Committee notes that section 38A may grant the Minister a wide discretionary power through the insufficiently defined term 'reasonably considers', which would benefit from further clarification. The Committee prefers provisions that affect rights and obligations of individuals to be drafted with sufficient precision so that their scope is clear. It also notes that the direction may be in force indefinitely or for as long as the direction provides.**

**The Committee acknowledges that it is important for the Minister to retain flexibility and discretion, as technology and cyber security is a rapidly evolving area. It further notes that actions required by directions are limited to responding to, or preventing circumstances around cyber security threats. 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. Annual Determination – Court and Related Officers Group

The object of this Annual Determination is to make a determination on the remuneration to be paid to the Court and Related Officers Group.

Pursuant to section 13 of the *Statutory and Other Officers Remuneration Act 1975*, the Statutory and Other Officers Remuneration Tribunal makes a determination on the remuneration to be paid to the relevant officer holders on and from 1 July in that year. The Tribunal determines that there will be no increase to the remuneration. This is in accordance with the Government Wages Policy, which clause 5A of the Statutory and Other Officers Remuneration (Judicial and Other Office Holders) Regulation 2013 requires the Tribunal to apply when making remuneration determinations.

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

## 2. Annual Determination – Former Chief and Senior Executive Service

The object of this Annual Determination is to make a determination on the remuneration to be paid to senior executives employed under the provisions of the former *Public Sector Employment and Management Act 2002* which was repealed and replaced with the *Government Sector Employment Act 2013*. A small number of those transitional former senior executives may be employed who are eligible for a remuneration determination by the Statutory and Other Officers Remuneration Tribunal under Part 3A of the *Statutory and Other Offices Remuneration Act 1975*. The Determination includes NSW Police Force Senior Executives and NSW Health Service Senior Executives.

The Tribunal determines that there will be no increase to the remuneration. This is in accordance with the Government Wages Policy, which clause 5A of the Statutory and Other Officers Remuneration (Judicial and Other Office Holders) Regulation 2013 requires the Tribunal to apply when making remuneration determinations.

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

## 3. Annual Determination – Governor

The object of this Determination is to make a determination of the remuneration to be paid to the Governor of NSW. Pursuant to section 13 of the *Statutory and Other Officers Remuneration Act 1975* the Statutory and Other Officers Remuneration Tribunal is required to make an annual determination on the remuneration to be paid to the Governor each year.

The Tribunal determines that there will be no increase to the remuneration. This is in accordance with the Government Wages Policy, which clause 5A of the Statutory and Other Officers Remuneration (Judicial and Other Office Holders) Regulation 2013 requires the Tribunal to apply when making remuneration determinations.

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

#### 4. Annual Determination – Public Office Holders

The object of this Annual Determination is to make a determination on the remuneration to be paid to the Judges and Magistrates Group.

Pursuant to section 13 of the *Statutory and Other Officers Remuneration Act 1975* (the **Act**), the Statutory and Other Officers Remuneration Tribunal makes a determination on the remuneration to be paid to the relevant officer holders on and from 1 July in that year. The Tribunal determined that there will be no increase to the remuneration. This is in accordance with the Government Wages Policy, which clause 5A of the Statutory and Other Officers Remuneration (Judicial and Other Office Holders) Regulation 2013 requires the Tribunal to apply when making remuneration determinations.

The Tribunal also made a Report and Determination on Travel Allowances for NSW Judges and Magistrates, pursuant to section 13 of the Act. The Tribunal determined that the travel allowance for Judges and Magistrates will be in line with the reasonable travel allowances rates determined by the Australia Taxation Office in TD2024/3 from 1 July 2024.

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

#### 5. Children (Education and Care Services) Supplementary Provisions Regulation 2019

The object of this Regulation is to repeal and remake, with substantial amendments, the provisions of the Children (Education and Care Services) Supplementary Provisions Regulation 2012, which would otherwise be repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

Provisions of the *Children (Education and Care Services) Supplementary Provisions Amendment Act 2018* that commence on 27 May 2019 align the regulation of NSW mobile education and care services and occasional education and care services more closely with the regulation of all other education and care services under the *Children (Education and Care Services) National Law (NSW)* (the **National Law**).

This Regulation provides for the following:

- (a) the application of various regulations under the National Law to NSW mobile and occasional education and care services, including regulations relating to approvals, operational requirements, assessment, the National Quality Standard and compliance
- (b) additional conditions of provider approvals and service approvals for mobile and occasional education and care services
- (c) the continuation of home based education and care services for a transitional period of 6 months, after which time all home based child care in NSW will be regulated under the National Law.

This Regulation is made under the *Children (Education and Care Services) Supplementary Provisions Act 2011*, including sections 21 (2), 29 and 36 (the general regulation-making power).

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

- (a) matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public
- (c) matters that are of a machinery nature.

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

## 6. Crimes (Forensic Procedures) Regulation 2024

The Regulation is made under section 118 of the *Crimes (Forensic Procedures) Act 2000* (the **Act**). The object of this Regulation is to remake, with changes, the Crimes (Forensic Procedures) Regulation 2014, which was repealed on 1 September 2024.

The Regulation:

- prescribes the Aboriginal Legal Service as an Aboriginal legal aid organisation for the Act
- declares the Secretary of the Ministry of Health as the person responsible for the DNA database system
- provides for the laws of the Commonwealth, States and Territories that are corresponding laws for the Act
- provides the particulars required to be included in consents to carry out certain forensic procedures
- provides the information required to be given to a person, or to the parent or guardian of a person, who volunteers to undergo a forensic procedure
- provides the restrictions on the placement of certain information on indexes of the DNA database system
- provides the circumstances in which information stored on the DNA database system may be accessed and disclosed
- provides the circumstances in which information revealed by the carrying out of a forensic procedure may be disclosed.

Part 3 of the Regulation sets out the limited circumstances in which information from the DNA database system can be disclosed. The Regulation does not appear to engage with any privacy or other issues set out in section 9 of the *Legislation Review Act 1987*.

## 7. Education (School and Administrative Support Staff) Regulation 2024

The object of this Regulation is to repeal and remake, with minor changes, the Education (School Administrative and Support Staff) Regulation 2018, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the medical assessment or examination of persons seeking appointment on a permanent basis as members of the school administrative and support staff of the Department of Education.

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 appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

8. [Fisheries Management \(Sharks taken in the Ocean Trap and Line Fishery Possession Limit\) Order 2024](#)

The Order is made under section 17C of the *Fisheries Management Act 1994*. Part 2 of the Order provides an upper limit of kilograms of shark an endorsement holder in the Ocean Trap and Line Fishery can possess. Part 1 sets out a definition of the relevant terms, including the species of cartilaginous fishes that are 'sharks'.

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

9. [Home Building Amendment \(Supervision Practice Standard\) Regulation 2024](#)

The object of this Regulation is to make it a condition of a qualified supervisor's endorsed contractor licence and supervisor certificate that supervision of electrical wiring work must be carried out in accordance with the Department of Customer Service's *Supervision Practice Standard* for Apprentices in the Electrical Industry.

The Regulation is made under section 140 of the *Home Building Act 1989*. The Committee acknowledges clause 28, as substituted by the Regulation, is a Henry VIII provision. However, the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

10. [Prisoners \(Interstate Transfer\) Regulation 2024](#)

The object of this regulation is to repeal and remake, with minor changes, the Prisoners (Interstate Transfer) Regulation 2019, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This regulation prescribes the following:

- (a) the officers who may certify that a consent to or request for the transfer of a prisoner has been given or made
- (b) the way in which certain orders and documents must be certified
- (c) the persons who may make an application for the revocation of an order of transfer.

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 arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory.

The Regulation is made under section 35 of the *Prisoners (Interstate Transfer) Act 1982* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

11. [Public Health Amendment \(Interstate Prohibition Orders\) Regulation 2024](#)

The object of this Regulation is to amend the Public Health Regulation 2022 to extend the application of certain provisions of the *Public Health Act 2010* to persons who are subject to an interim prohibition order issued in another State or Territory, or an order under the *Health and Disability Services (Complaints) Act 1995* of Western Australia, Part 3D, Division 1 or 2.

This Regulation is made under the *Public Health Act 2010*, including sections 101(1), definition of 'corresponding interstate prohibition order' and 134, 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. [Regional Development Amendment \(Advisory Council\) Regulation 2024](#)

The object of the Regulation is to amend the Regional Development Regulation 2018 to make changes to:

- the requirements in appointing members to the Regional Development Advisory Council
- the meeting procedure of the Regional Development Advisory Council.

The Regulation is made under section 16 of the *Regional Development Act 2004* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

13. [Annual Determination – Public Office Holders Group](#)

The object of this Annual Determination is to make a determination on the remuneration to be paid to public office holders employed under the provisions of the *Government Sector Employment Act 2013*.

The tribunal determines that there will be no increase to the remuneration for public office holders. The Tribunal makes decisions in accordance with the Government Wages Policy, which is contained in clause 5A of the Statutory and Other Officers Remuneration (Judicial and Other Office Holders) Regulation 2013.

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

14. [Annual Determination - Public Service Senior Executives](#)

The object of this Annual Determination is to make a determination on the remuneration to be paid to the Public Service senior executives employed under the *Government Sector Employment Act 2013*.

Pursuant to section 240 of the *Statutory and Other Officers Remuneration Act 1975*, the Statutory and Other Officers Remuneration Tribunal makes a determination on the remuneration packages for senior executives on and from 1 July in that year. The Determination provides for

remuneration ranges for Bands 1 to 4 as well as specific remuneration packages for certain individual office holders.

The Tribunal determined that there will be no increase to the remuneration. This is in accordance with the Government Wages Policy, which clause 4 of the Statutory and Other Officers Remuneration (Executive Office Holders and Senior Executives) Regulation 2023 requires the Tribunal to apply when making remuneration determinations.

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

#### 15. [Supreme Court Practice Note SC GEN 17](#)

This Practice Note applies to representative proceedings, commonly referred to as class actions, under Part 10 of the *Civil Procedure Act 2005* (the **Act**). The object of this Practice Note is to ensure that class actions are managed consistently with Part 6 of the Act. It sets out guiding principles applicable to all class actions commenced in the Supreme Court (the **Court**).

This Practice Note is made under the *Supreme Court Act 1970* and replaces the Practice Note SC Gen 17 issued on 31 July 2017, with a commencement date of 1 August 2024. While it largely remakes its previous iteration, it makes the following notable changes:

- parties are encouraged proactively, collaboratively and expeditiously to identify issues which require the Court's attention and propose possible solutions
- class actions must be commenced in the Division of the Court appropriate to their subject matter
- at the time of commencement, the plaintiff's solicitor must file and serve a Class Action Summary Statement, including key information and any litigation funding agreement
- lawyers must inform the Court if they become aware of any competing class actions
- unless otherwise ordered, an application for approval by the Court of a settlement or discontinuance of proceedings must be made by Notice of Motion.

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

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

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

- 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
- make minor related changes.

The Regulation is made under section 23 of the *Road Transport Act 2013* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.



17. [Water Management \(General\) Amendment \(Specific Purpose Access Licences\) Regulation 2024](#)

The object of this Regulation is to provide for the application for a specific purpose licence by Sydney Water Corporation allowing access to stormwater for the purposes of stormwater harvesting and management in the Mamre Road precinct and Western Sydney Aerotropolis.

This Regulation is made under the *Water Management Act 2000*, including sections 57(2) and 61(1)(a).

The Regulation 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. 20

TIME & DATE: 3:02PM, 23 SEPTEMBER 2024      LOCATION: ROOM 1254 AND VIA WEBEX

### MEMBERS PRESENT

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

### APOLOGIES

Ms Davis and Mr Hagarty.

### OFFICERS PRESENT

Rohan Tyler, Kate McCorquodale, Alice Zwar, Alex Read, 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 16 September 2024 be confirmed.

**2. \*\*\***

**3. Consideration of bills with comment for Legislation Review Digest 19/58**

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

- a) Crimes (Domestic and Personal Violence) and Other Legislation Bill 2024
- b) Marine Safety Amendment Bill 2024
- c) Music Festivals Amendment Bill 2024
- d) Police Amendment (Police Officer Support Scheme) Bill 2024

**4. Consideration of bills without comment for Legislation Review Digest 19/58**

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

- a) Agriculture Commissioner Bill 2024
- b) Environmental Planning and Assessment Amendment (Certification) Bill 2024
- c) Portable Long Service Leave Legislation Amendment Bill 2024
- d) Road Transport Legislation Amendment (Speed Camera Detection) Bill 2024

**5. Consideration of regulations with comment for Legislation Review Digest 19/58**

Resolved, on the motion of Mr Murphy: That the Committee adopts the following draft regulation report:

a) Pipelines Amendment Regulation 2024

**6. Regulations without comment for Legislation Review Digest 19/58**

Resolved, on the motion of Mr Layzell: That the Committee adopts the regulations without comment as Part Three to Digest 19/58.

**7. Legislation Review Digest 19/58**

Resolved, on the motion of Ms Stuart:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts the Legislation Review Digest No.19/58 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 3:06pm until 14 October 2024 at 3.00pm.