

Legislation Review Committee



PARLIAMENT OF
NEW SOUTH WALES

Legislation Review Digest



Digest No. 20/58 – 15 October 2024

New South Wales Parliamentary Library cataloguing-in-publication data:



A catalogue record for this
book is available from the
National Library of Australia

ISSN: 1448-6954

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

Chair	Ms Lynda Voltz MP, Member for Auburn
Deputy Chair	Ms Maryanne Stuart MP, Member for Heathcote
Members	Ms Donna Davis MP, Member for Parramatta Mr Nathan Hagarty MP, Member for Leppington Ms Sue Higginson MLC Mr Dave Layzell MP, Member for Upper Hunter The Hon. Jacqui Munro MLC The Hon. Cameron Murphy MLC
Contact details	Legislation Review Committee Parliament of New South Wales 6 Macquarie Street Sydney NSW 2000
Telephone	0408 309 296
E-mail	Legislation.Review@parliament.nsw.gov.au
Website	www.parliament.nsw.gov.au/lrc

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. Anti-Discrimination and Crimes Legislation Amendment \(Disability\) Bill 2024*](#)

Issue identified	Conclusion of Committee
Offences against certain public acts and expressions – right to freedom of expression	No further comment

[2. Environmental Planning and Assessment Amendment \(Affordable Housing Statutory Condition\) Bill 2024*](#)

No issues identified

[3. Fines Amendment \(Parking Fines\) Bill 2024](#)

No issues identified

[4. Justice Legislation Amendment \(Miscellaneous\) Bill 2024](#)

Issue identified	Conclusion of Committee
Wide regulation making power	No further comment
Wide delegation of powers	No further comment

[5. Local Government Amendment \(Pecuniary Interests\) Bill 2024*](#)

No issues identified

[6. Public Health \(Tobacco\) Amendment Bill 2024](#)

Issue identified	Conclusion of Committee
Strict liability offences	No further comment

[7. Royal Botanic Gardens and Domain Trust Amendment Bill 2024](#)

No issues identified

[8. State Emergency and Rescue Management Amendment Bill 2024](#)

No issues identified

[9. State Insurance and Care Governance Amendment \(Governance Arrangements\) Bill 2024](#)

No issues identified

[10. Water Legislation Amendment Bill 2024](#)

Issue identified	Conclusion of Committee
Broad regulation making powers – Henry VIII clauses	Referred

PART TWO – REGULATIONS WITH COMMENT**1. Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024**

Issue identified	Conclusion of Committee
Absolute liability offences	No further comment

2. Centennial Park and Moore Park Trust Regulation 2024

Issue identified	Conclusion of Committee
Right to petition – Implied freedom of political communication	Referred

Summary of Conclusions

PART ONE – BILLS

1. Anti-Discrimination and Crimes Legislation Amendment (Disability) Bill 2024*

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

Offences against certain public acts and expressions – right to freedom of expression

The Bill proposes to amend the *Anti-Discrimination Act 1977* to make it an offence to do a public act against a person that would offend, insult, humiliate or intimidate another person because of certain personal grounds of that person. Those grounds would include: race, religious affiliation, disability, sexual orientation, intersex status or HIV/AIDS status. The Bill also proposes to amend the Act to make it unlawful for a person to do a public act that would vilify a person, incite hatred towards, serious contempt for or severe ridicule, on the grounds that person has a disability.

'Public act' is defined to include a wide range of public expressions and communications. It may therefore infringe on a person's right to freedom of expression. By making certain forms of expression unlawful, the Bill may limit a person's right to freedom of expression, as contained in Article 19 of the *International Covenant on Civil and Political Rights*. The Committee recognises that this right is not absolute and carries with it special duties and responsibilities. It may be limited by laws necessary for, among other things, respect of the rights of other people.

The Committee notes that the offence provisions refer to a broad range of communications and expressions constituting a 'public act'. It also includes broad definitions of key terms such as 'reasonably likely' and the specified grounds such as 'religious affiliation' which could be broadly interpreted and applies. However, the Committee acknowledges that the Bill includes exemptions from the offence for certain communications and that it intends to provide a justifiable basis for a restriction on freedom of expression. For this reason, the Committee makes no further comment.

2. Environmental Planning and Assessment Amendment (Affordable Housing Statutory Condition) Bill 2024*

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

3. Fines Amendment (Parking Fines) Bill 2024

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

4. Justice Legislation Amendment (Miscellaneous) Bill 2024

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

Wide regulation making power

The Bill proposes to amend the *Children (Detention Centres) Act 1987* to expand the regulation making power of that Act. The Bill seeks to allow regulations to provide for circumstances relating to searches of the following: detainees, their room or property, a visitor or their vehicle, a juvenile justice officer or anything under their control in a detention centre.

The Bill extends the regulation-making power that would impact vulnerable persons, such as juveniles in a sensitive setting. The Committee generally comments on wide regulation-making powers which delegate legislative power in respect of matters that are substantive and not administrative in nature. The Committee prefers these matter to be specified in primary legislation, so they may be subject to the appropriate level of parliamentary scrutiny.

However, the Committee acknowledges that this regulation making power provides flexibility and responsiveness in a quasi-custodial setting and could be used to respond to the needs of the centre and detainees. The Committee notes that any regulation made under this provision is still required to be tabled in Parliament and therefore would be subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

Wide delegation of powers

The Bill seeks to expand the regulation-making power in the *Children (Detention Centres) Act 1987* to include prescribing decisions that the Secretary or centre manager may make with respect to the functioning and operation of the detention centre.

The Bill provides a broad and undefined decision-making power that may be conferred on the Secretary or manager of a detention centre. The Committee notes there are no words within the legislation to limit or constrain what decision may be made or prescribed for by the Secretary.

The Committee generally prefers that broad delegation powers which may impact vulnerable persons, such as juveniles, be specified and clearly limited in primary legislation rather than subordinate legislation. However, the Committee acknowledges that expanding the regulation making power to decisions of the Secretary is to assist with the functioning and operational matters of detention centres by providing flexibility. The Committee further notes that any regulation made under this provision is required to be tabled in Parliament and therefore would be subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

5. Local Government Amendment (Pecuniary Interests) Bill 2024*

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

6. Public Health (Tobacco) Amendment Bill 2024

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

Strict liability offences

The Bill introduces several new strict liability offences into the *Poisons and Therapeutic Goods Act 1966* and the *Medicines, Poisons and Therapeutic Goods Act 2022* for supply or possession of vaping goods. This includes supplying or possessing devices, accessories and liquids that are not authorised for therapeutic purposes or do not fall under exceptions. These offences would carry maximum penalty ranging \$17,600 (160 penalty units) to 128,700 (1,170 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 these proposed offences are intended to target illegal vaping goods and align enforcement with the Commonwealth legislation. It also acknowledges that strict liability offences are not uncommon in regulatory frameworks to encourage compliance and safe practices. The Committee also notes that relevant exceptions would be available, such as if vaping goods are supplied by an authorised pharmacist, medical practitioner or nurse practitioner under the *Poisons and Therapeutic Goods Act 1966*. Further, the Committee notes that those offences would carry monetary penalties rather than custodial penalties. For these reasons, the Committee makes no further comment.

7. Royal Botanic Gardens and Domain Trust Amendment Bill 2024

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

8. State Emergency and Rescue Management Amendment Bill 2024

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

9. State Insurance and Care Governance Amendment (Governance Arrangements) Bill 2024

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

10. Water Legislation Amendment Bill 2024

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

Broad regulation making powers – Henry VIII clauses

The Bill proposes to amend the *Water Management Act 2000*, the *Sydney Water Act 1994* and *Water NSW Act 2014* by inserting numerous regulation making powers. The regulation making powers are broadly defined and address a range of significant operational matters related to the management and supply of water in NSW. The proposed regulation making powers include prescribing conditions of exemptions to requirements under the Act to hold licences and approvals for certain activities like the taking of water. It also includes powers for regulations to authorise the Minister to impose those conditions.

The Bill creates significant and broadly worded regulation making powers under the Acts. The provisions therefore amount to Henry VIII clauses by allowing the Executive to amend the operation of the parent Act without reference to the Parliament. The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislative power, as regulations are not subject to the same level of parliamentary scrutiny as primary legislation.

The Committee acknowledges that the regulation making powers may be required to ensure the effective administration and operation of the water regulatory framework. Further, the Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, as the regulation making powers are broad and widely address significant operational matters, conditions and exemptions with Henry VIII clauses, the Committee refers this matter to Parliament for its consideration.

PART TWO – REGULATIONS WITH COMMENT

1. Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024

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

Absolute liability offences

This Regulation inserts a number of new absolute liability offences into the *Work Health and Safety Regulation 2017* concerning processing materials containing crystalline silica across all industries, particularly in relation to processing material that is assessed as high risk. Failure to comply with these provisions can result in offences for an individual with maximum penalties ranging from \$1,650 (15 penalty units) to \$8,030 (73 penalty units).

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. However, the Committee notes that absolute liability offences are not uncommon in regulatory settings to encourage compliance. In this case, the amendments may be intended to protect workers from the serious risks of exposure to crystalline silica. Further, the maximum penalty for the absolute liability offence is monetary, not custodial. In these circumstances, the Committee makes no further comment.

2. Centennial Park and Moore Park Trust Regulation 2024

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

Right to petition – Implied freedom of political communication

The *Centennial Park and Moore Park Trust Regulation 2024* inserts Part 4 into the Regulation, which prohibits commercial and public activities on Trust lands, punishable by up to \$1,100 (10 penalty units). Proposed clause 22(e) prohibits the collection of a petition or the conducting of surveys on Trust lands, being Centennial Park and Moore Park.

The Committee notes that restricting a person's ability to conduct petitions and surveys infringes on the implied freedom of political communication. The right to petition is an important mechanism of political communication for individuals to hold organisations and governments to account.

Among other things, the right to petition allows individuals to seek redress, make complaints or raise awareness about issues without fear of punishment or reprisals.

The Committee acknowledges the objects of the *Centennial and Moore Park Trust Act 1983* allows for regulating the 'use and enjoyment' of Trust lands and for the 'care, control and management' of those lands. The Committee further notes that the use of a maximum financial penalty of \$1,100 (10 penalty units) is common in regulatory settings to encourage compliance and deter conduct that would interfere with public use and enjoyment of Trust lands.

However, the Committee also notes that the implied freedom of political communication can only be restricted where there is a legitimate object, and the restriction is reasonably appropriate and adapted to achieve that object. Prohibiting the use of petitions could limit the avenues available to persons to express political ideas and communicate these to decision makers. For this reason, the Committee refers the matter of whether the regulation impermissibly burdens the implied freedom of political communication to Parliament for further consideration.



Part One – Bills

1. Anti-Discrimination and Crimes Legislation Amendment (Disability) Bill 2024*

Date introduced	25 September 2024
House introduced	Legislative Council
Member with carriage	Ms Abigail Boyd MLC
	*Private Members Bill

Purpose and description

- 1.1 The object of this Bill is to amend the *Anti-Discrimination Act 1977* (the **ADA Act**) and the *Crimes Act 1900* (the **Crimes Act**) as follows:
- (a) to make it unlawful to vilify a person or group of persons on the grounds of disability
 - (b) to make it unlawful to offend, insult, humiliate or intimidate another person or a group of persons on the grounds of race, religion, disability, sexual orientation, gender identity or intersex or HIV/AIDS status
 - (c) to create an offence of threatening or inciting violence on the grounds of disability.

Background

- 1.2 The Bill proposes to amend the ADA Act and the Crimes Act to create additional protections for people with disabilities by making certain behaviour unlawful prohibiting offensive behaviour against certain persons under specified protected grounds.

- 1.3 Ms Abigail Boyd MLC, explained that the Bill would insert provisions that:

... make it unlawful to incite hatred towards, serious contempt for, or serious ridicule of a person on the grounds of disability and make it an offence to threaten or incite violence on the grounds of disability.

The Bill will also insert new offence behaviour protections in the *Anti-Discrimination Act*, making it unlawful to offend, insult, humiliate or intimidate another person or a group of people because of race, religion, disability, gender identity or intersex or HIV/AIDS status.

- 1.4 The Bill proposes to amend the ADA Act to replace the current definition of 'disability' and insert a new Division to make it unlawful for a person to 'incite hatred towards, serious contempt for or severe ridicule of:
- (a) a person on the ground the person has, or does not have, a disability

- (b) a group of persons on the grounds the members of the group have, or do not have, a disability.
- 1.5 The Bill then proposes to make it unlawful for a person to do a public act that is likely to 'offend, insult, humiliate or intimidate another person or a group of persons' because of certain grounds. Those grounds include: race, religious affiliation, disability, sexual orientation, intersex status or HIV/AIDS status.
- 1.6 The Bill proposes to include exemptions for the new unlawful behaviour so that behaviour would not be unlawful if a thing is said or done 'reasonably' and 'in good faith':
- (a) in the performance, exhibition or distribution of an artistic work
 - (b) during a statement made for academic, artistic, scientific or other purpose in the public interest
 - (c) in making a fair and accurate report of a matter in public interest or a comment of public interest and an expression of a genuine belief.
- 1.7 Finally, the Bill proposes to amend the Crimes Act to insert a definition of disability and make it an offence to make public threats or incite violence against a person, or a group of persons, on the grounds that they have a disability, is a person who has a disposition to be a partner to a child with a disability, or a carer of a person with a disability.

Issues considered by the Committee

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

Offences against certain public acts and expressions – right to freedom of expression

- 1.8 The Bill proposes to amend the ADA to insert a new Part 5A that would make it unlawful for a person to do a public act that is:
- (a) reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons
 - (b) done because of any one of the following grounds: race, religious affiliation, disability, sexual orientation, intersex status or HIV/AIDS status.
- 1.9 It defines 'public act' to include:
- (a) a form of communication to the public including speaking, writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods
 - (b) conduct observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems or insignia
 - (c) distribution of dissemination of matters to the public.

- 1.10 It also provides that when determining if an offence has been committed, it is not relevant whether the offender's assumptions or beliefs about the other persons grounds were accurate.
- 1.11 The Bill also proposes to insert a new Division 3A to make it an offence to do a public act that incites hatred towards, serious contempt for or severe ridicule of:
- (a) a person on the ground that person has or does not have a disability
 - (b) a group of persons on the grounds the members of the group have, or do not have, a disability.

The Bill proposes to amend the *Anti-Discrimination Act 1977* to make it an offence to do a public act against a person that would offend, insult, humiliate or intimidate another person because of certain personal grounds of that person. Those grounds would include: race, religious affiliation, disability, sexual orientation, intersex status or HIV/AIDS status. The Bill also proposes to amend the Act to make it unlawful for a person to do a public act that would vilify a person, incite hatred towards, serious contempt for or severe ridicule, on the grounds that person has a disability.

'Public act' is defined to include a wide range of public expressions and communications. It may therefore infringe on a person's right to freedom of expression. By making certain forms of expression unlawful, the Bill may limit a person's right to freedom of expression, as contained in Article 19 of the *International Covenant on Civil and Political Rights*. The Committee recognises that this right is not absolute and carries with it special duties and responsibilities. It may be limited by laws necessary for, among other things, respect of the rights of other people.¹

The Committee notes that the offence provisions refer to a broad range of communications and expressions constituting a 'public act'. It also includes broad definitions of key terms such as 'reasonably likely' and the specified grounds such as 'religious affiliation' which could be broadly interpreted and applies. However, the Committee acknowledges that the Bill includes exemptions from the offence for certain communications and that it intends to provide a justifiable basis for a restriction on freedom of expression. For this reason, the Committee makes no further comment.

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

2. Environmental Planning and Assessment Amendment (Affordable Housing Statutory Condition) Bill 2024*

Date introduced	26 September 2024
House introduced	Legislative Assembly
Member with carriage	Ms Kobi Shetty MP
	*Private Members Bill

Purpose and description

- 2.1 The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* (the **EP&A Act**) to impose a condition requiring an affordable housing component for development for residential accommodation that will result in 10 or more dwellings.

Background

- 2.2 The Bill proposes to amend the EP&A Act to require as a condition of consent for residential development, that a certain proportion of floorspace is to be used for affordable housing. The Bill would make this a prescribed condition of consent for development applications for residential accommodation with 10 or more dwellings.

- 2.3 Ms Kobi Shetty MP, explained that the Bill will do two things:

First, it will amend section 7.32 of the EP&A Act to remove the requirement for a State environmental planning policy [SEPP] to identify a need for affordable housing with an area before an affordable housing contribution scheme can be established...

- 2.4 She then explained that second, the Bill would insert new section 7.32A which:

Will operate in tandem with any scheme developed under the existing provision to create a statutory condition requiring all residential development projects that will result in the construction of 10 or more dwellings, other than developers being carried out by or on behalf of the Aboriginal Housing Office, the Land and Housing Corporation or a registered community housing provider, to set aside 20 per cent of the residential floor space for affordable housing.

- 2.5 The Bill proposes to expand the circumstances where the condition must be imposed so that it does not need to be in an area that is identified as needing affordable housing by a State environmental planning policy. Ms Shetty explained that the requirement to develop affordable housing should be a requirement under the EP&A 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*.

3. Fines Amendment (Parking Fines) Bill 2024

Date introduced	26 September 2024
House introduced	Legislative Council
Member with carriage	The Hon. Courtney Houssos MLC
Portfolio	Finance

Purpose and description

- 3.1 The object of this Bill is to make special provision in relation to the issuing of penalty notices for parking offences.

Background

- 3.2 The Bill seeks to amend the *Fines Act 1996* (the **Act**) to change the issuing of parking fines by councils and other authorities by reintroducing on-the-spot notifications to drivers.

- 3.3 In her second reading speech, the Hon. Courtney Houssos, MLC, Minister for Finance, said the Bill makes 'important commonsense changes to improve transparency and fairness for drivers and the community'.

- 3.4 The Minister further explained that the Bill is in response to the ticketless parking fine system which allowed councils and other agencies to issue parking fines without immediate notification, such as the display of a ticket on a car'.

- 3.5 The Bill requires councils, New South Wales government agencies and universities, when issuing parking fines to:

- provide an on-the-spot notification (except in limited circumstances, such as it is unsafe, the vehicle is moving, the area is a prescribed parking zone, or in circumstances provided by regulations)
- if not providing a notification, provide written reasons why to Revenue NSW or the driver upon request
- report on and publish the reasons why notifications were not left and on the use of exceptions
- take photographs of parking offences and photographs of the notification attached to the vehicle, which must be provided to Revenue NSW or the driver upon request

- 3.6 The Bill will also prohibit a parking fine being issued when:

- a fine for the same kind of offence was issued within the previous seven days, and

- it occurred in the same area, or on the same length of road between the same cross streets, and
- no notification was placed on the vehicle for the earlier offence

3.7 The Bill also provides that non-compliance by authorities with the above requirements, such as failure to record reasons for not leaving a notification, may result in the invalidation of a fine.

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*.

4. Justice Legislation Amendment (Miscellaneous) Bill 2024

Date introduced	25 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

4.1 The object of this Bill is to make various amendments to the following Acts relating to courts, crimes and other Communities and Justice portfolio matters—

- (a) the *Children (Detention Centres) Act 1987*
- (b) the *Coptic Orthodox Church (NSW) Property Trust Act 1990*
- (c) the *Defamation Act 2005*
- (d) the *Dormant Funds Act 1942*
- (e) the *Firearms Act 1996*
- (f) the *Prisoners (Interstate Transfer) Act 1982*
- (g) the *Solicitor General Act 1969*
- (h) the *Terrorism (High Risk Offenders) Act 2017*
- (i) the *Trees (Disputes Between Neighbours) Act 2006*

Background

4.2 The Bill seeks to amend various Acts within the Department of Communities and Justice portfolio. In the second reading speech, Dr Hugh McDermott, MP on behalf of The Hon. Michael Daley MP, Attorney-General explained that the Bill:

...introduces several miscellaneous amendments to improve court and legal processes and ensure operational efficiencies; improve and clarify government processes and functions; and finally, clarify the regulation-making power of existing legislation.

4.3 The Attorney General explained that miscellaneous Bills are a 'practical way [of] updating legislation ... to ensure that laws remain fit for purpose and keep pace with developments in the community and legal system.

4.4 The Bill proposed to amend the following 9 Acts:

- The *Children (Detention Centres) Act 1987* to:
 - update and expand the regulation-making power to provide for the circumstances of a search in children's detention centres. Searches relate to detainees, their room and extends to visitors and their vehicles and juvenile justice officers
 - expand the regulation-making power to decisions and case plans that a detention centre manager may make with respect to that centre.
- The *Coptic Orthodox Church (NSW) Property Trust Act 1990* to:
 - reflect changes to the constitution of the Coptic Orthodox Church Diocese of Sydney and Affiliated Regions ('the Diocese') made in September 2022
 - replace the current-sole trustee structure of the Diocese with a board of trustees, which can make decisions about church property which is held in a property trust under the Act
 - insert a regulation-making power for the transitional nature of changes and their commencement. The Bill proposes to validate actions taken between the constitution change in September 2022 and when the amendments to the Act commence to 'ensure that any actions taken by the board prior to the commencement of this bill are not deemed to be invalid due to any inconsistency with the Act at that time'
 - clarify that the board is taken to be a continuation of the bishop in the bishop's capacity as sole trustee of the Coptic property trust.
- The *Defamation Act 2005* to:
 - extend the defence of absolute privilege to matters and documents produced to the Judicial Commission for the purposes of making a complaint under the *Judicial Officers Act 1986* to ensure that victim survivors are not deterred
 - extend defences for the publication of public documents and of fair reporting of proceedings of public concern relating to the Modern Slavery Committee.
 - provide a mechanism for public disclosure of confidential documents and evidence to extend to the Modern Slavery Committee.
- The *Dormant Funds Act 1942* to clarify that the regulations may set fees relating to a dormant fund as a percentage of the value of the dormant fund. The percentage may be set regardless of the value of the fund.
- The *Firearms Act 1996* to update outdated references to the 'Department of Industry' to the 'Department of Primary Industries and Regional Development' throughout the Act.
- The *Prisoners (Interstate Transfer) Act 1982* to allow the Secretary of the Department and Communities and Justice to authorise a prescribed officer to certify an order of transfer on the Secretary's behalf.

- The *Solicitor General Act 1969* to extend the circumstances when the Solicitor General can assume the functions of the Attorney General to when the Attorney General is on leave but still within NSW.
- The *Terrorism (High Risk Offenders) Act 2017* to clarify and update definitions and procedural matters relating to offences of terrorism. The Bill proposes to define a sentence of imprisonment for a NSW indictable offence to ensure aggregate and cumulative sentences of imprisonment are covered by the definition.
- The *Trees (Disputes between Neighbours) Act 2006* to change the notice requirements for applications and orders sought regarding tree disputes between neighbours. The Bill seeks to specify that notice is to be given at least 21 days prior to a hearing regarding the application.

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

Wide regulation making power

- 4.5 The Bill proposes to insert section 32A(r)(i)-(iv) into the *Children (Detention Centres) Act 1987* to amend the regulation making power of that Act.
- 4.6 Proposed section 32A(r) would provide that the regulations may prescribe circumstances for the following:
- the search of a detainee, their room or property
 - the search of a visitor or their vehicle at a detention centre
 - a search of a juvenile justice officer or anything under their control at a detention centre

The Bill proposes to amend the *Children (Detention Centres) Act 1987* to expand the regulation making power of that Act. The Bill seeks to allow regulations to provide for circumstances relating to searches of the following: detainees, their room or property, a visitor or their vehicle, a juvenile justice officer or anything under their control in a detention centre.

The Bill extends the regulation-making power that would impact vulnerable persons, such as juveniles in a sensitive setting. The Committee generally comments on wide regulation-making powers which delegate legislative power in respect of matters that are substantive and not administrative in nature. The Committee prefers these matter to be specified in primary legislation, so they may be subject to the appropriate level of parliamentary scrutiny.

However, the Committee acknowledges that this regulation making power provides flexibility and responsiveness in a quasi-custodial setting and could be used to respond to the needs of the centre and detainees. The Committee notes that any regulation made under this provision is still required to be tabled in Parliament and therefore would be subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

Wide delegation of powers

4.7 The Bill proposes to insert section 32A(y) and (z) into the *Children (Detention Centres) Act 1987*, which would allow the regulations to make provisions for decision making powers of the Secretary or centre manager for:

- (a) decisions with respect to the detention centre
- (b) case plans and their development

4.8 In his second reading speech, Dr McDermott MP, explained that the bill 'provide[s] specific regulation-making power relating to ... certain decisions that are relevant to the operation of a detention centre, such as providing approvals for a dentist to perform function as a dental officer under the regulations.'

The Bill seeks to expand the regulation-making power in the *Children (Detention Centres) Act 1987* to include prescribing decisions that the Secretary or centre manager may make with respect to the functioning and operation of the detention centre.

The Bill provides a broad and undefined decision-making power that may be conferred on the Secretary or manager of a detention centre. The Committee notes there are no words within the legislation to limit or constrain what decision may be made or prescribed for by the Secretary.

The Committee generally prefers that broad delegation powers which may impact vulnerable persons, such as juveniles, be specified and clearly limited in primary legislation rather than subordinate legislation. However, the Committee acknowledges that expanding the regulation making power to decisions of the Secretary is to assist with the functioning and operational matters of detention centres by providing flexibility. The Committee further notes that any regulation made under this provision is required to be tabled in Parliament and therefore would be subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

5. Local Government Amendment (Pecuniary Interests) Bill 2024*

Date introduced	25 September 2024
House introduced	Legislative Council
Member with carriage	The Hon. Tania Mihailuk MLC
	*Private Members Bill

Purpose and description

- 5.1 The object of this Bill is to amend the *Local Government Act 1993* (**the Act**) as follows:
- (a) to make it clear that a pecuniary interest includes a pecuniary interest outside New South Wales
 - (b) to require the model code of conduct, prescribed by the regulations, to require councillors and general managers of councils to disclose all pecuniary interests.

Background

- 5.2 The Bill seeks to amend the Act to clarify that pecuniary interests include those outside of NSW, and to require model codes for council meeting practices to include disclosure of pecuniary interests.
- 5.3 In her second reading speech, the Hon. Tania Mihailuk MLC argued that the current Model Code of Conduct for Local Councils in NSW is worded in such a way that 'councillors have relied upon that particular wording to avoid full disclosure.'

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*.

6. Public Health (Tobacco) Amendment Bill 2024

Date introduced	25 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Ryan Park MP
Portfolio	Health

Purpose and description

6.1 The objects of this Bill are to:

- (a) amend the *Poisons and Therapeutic Goods Act 1966* (the **PTG Act**) to regulate the supply and possession of vaping goods consistent with recent amendments to the *Therapeutic Goods Act 1989* of the Commonwealth (the **Commonwealth TG Act**) and other Commonwealth legislation to ban the supply and commercial possession of disposable single use and recreational vapes and, in particular, to
 - (i) prohibit a person from supplying vaping goods in New South Wales unless the vaping goods are therapeutic goods and
 - (1) the person supplying the goods is authorised to supply the goods under the Commonwealth TG Act or import the goods under the *Customs Act 1901* of the Commonwealth (the **Commonwealth Customs Act**) and the person receiving the vaping goods is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is authorised to supply the vaping goods under the PTG Act or an equivalent law of the State or Territory in which the person receiving the goods carries on a business, practises or is employed, or
 - (2) the person supplying the goods is a pharmacist, medical practitioner or nurse practitioner and the supply is in final dosage form and for the purposes of smoking cessation, management of nicotine dependence or another indication determined under the Commonwealth TG Act, and
 - (ii) prohibit a person from possessing commercial quantities of vaping goods in New South Wales unless:
 - (1) the person is authorised to manufacture or possess the goods under the Commonwealth TG Act or import the goods under the Commonwealth Customs Act, or
 - (2) the person is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is authorised to supply the goods under the PTG Act, and

- (iii) prohibit a retailer from possessing less than commercial quantities of vaping goods at a retail premises in New South Wales unless:
 - (1) the retailer is authorised to possess the vaping goods under the Commonwealth TG Act or the PTG Act, or
 - (2) the vaping goods are for the retailer's lawful personal use, and
- (b) amend the *Medicines, Poisons and Therapeutic Goods Act 2022* (the **MPTG Act**) to regulate the supply and possession of vaping goods consistent with recent amendments to the Commonwealth TG Act and other legislation to ban the supply and commercial possession of disposable single use and recreational vapes and, in particular, to:
 - (i) prohibit a person from supplying vaping goods in New South Wales unless the vaping goods are therapeutic goods and
 - (1) the person supplying the goods is authorised to supply the goods under the Commonwealth TG Act or import the goods under the Commonwealth Customs Act and the person receiving the vaping goods is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is authorised to supply the vaping goods under the MPTG Act or an equivalent law of the State or Territory in which the person receiving the goods carries on a business, practises or is employed, or
 - (2) the person supplying the goods is a pharmacist, medical practitioner or nurse practitioner and the supply is in final dosage form and for the purposes of smoking cessation, management of nicotine dependence or another indication determined under the Commonwealth TG Act, and
 - (ii) prohibit a person from possessing commercial quantities of vaping goods in New South Wales unless:
 - (1) the person is authorised to manufacture or possess the goods under the Commonwealth TG Act or import the goods under the Commonwealth Customs Act, or
 - (2) the person is a wholesaler, pharmacist, medical practitioner or nurse practitioner who is authorised to supply the goods under the MPTG Act, and
 - (iii) prohibit a retailer from possessing less than commercial quantities of vaping goods at a retail premises in New South Wales unless:
 - (1) the retailer is authorised to possess the vaping goods under the Commonwealth TG Act or the MPTG Act, or
 - (2) the vaping goods are for the retailer's lawful personal use, and

- (c) amend the *Criminal Procedure Act 1986* to provide that indictable offences relating to the supply and possession of vaping goods under the PTG Act and the MPTG Act may be dealt with summarily, and
- (d) make related amendments to the *Public Health (Tobacco) Act 2008* (the **PHTA Act**) to:
 - (i) reflect that the sale, supply and possession of vaping goods will now be regulated under the PTG Act and the MPTG Act,
 - (ii) reflect that advertising relating to vaping goods will now be regulated under the Commonwealth TG Act, and
 - (iii) ensure the offence of smoking in a motor vehicle if a juvenile is present continues to apply in relation to the use of vaping goods, and
- (e) make related amendments to the *Smoke-free Environment Act 2000* to ensure the provisions of that Act apply in relation to the use of all vaping goods.

Background

- 6.2 The Bills seeks to introduce specific offences for the supply and possession of vaping goods in New South Wales to strengthen enforcement within the state and align with recent Commonwealth reforms.
- 6.3 Recent reforms under the Commonwealth TG Act prohibit the import, manufacture, supply and possession of vaping goods, including devices, accessories and liquids, regardless of nicotine content, unless a relevant defence or exception applies. These bans have been in place across New South Wales and Australia since 1 July 2024.
- 6.4 In his second reading speech, the Hon. Ryan Park MP, Minister for Health, noted that this Bill is intended to 'complement' the Commonwealth reforms and ensure effective enforcement in retail settings within New South Wales. The Minister emphasised that while this Bill aims to protect the health of children and the broader community, it 'does not intend to criminalise the possession of vaping goods for personal use, particularly for young people who have been targeted by these products'.
- 6.5 The key amendments proposed by the Bill are:
 - creating offences under the PTG Act and the MPTG Act for supplying or possessing vaping goods, unless authorised for therapeutic purposes or where an exception applies
 - aligning with the Commonwealth laws by introducing strict liability offences with lower penalties, allowing for proportional enforcement based on the seriousness of the offence
 - enabling officers appointed under the PTG Act and the MPTG Act to use their current powers to enforce these new offences
 - prohibiting vaping in a motor vehicle if a juvenile is present under the PHTA Act

- allowing those offences to be dealt with summarily unless the prosecutor elects otherwise
- 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

Strict liability offences

6.6 The Bill introduces several new strict liability offences into the PTG Act and the MPTG Act, which apply unless vaping goods are authorised for therapeutic purposes or fall under an exception. The new offences in both Acts are substantively the same, including:

- supplying vaping goods in NSW, with a maximum penalty of \$61,600 (560 penalty units) (proposed subsections 20(2) of the PTG Act and 85B(2) of the MPTG Act)
- possessing a kind of vaping good in commercial quantities, but less than 100 times the commercial quantity, with a maximum penalty of \$36,300 (330 penalty units) (proposed subsections 21(2) of the PTG Act and 85C(2) of the MPTG Act)
- possessing a kind of vaping good in quantities of at least 100 times but less than 1,000 times the commercial quantity, with a maximum penalty of \$73,700 (670 penalty units) (proposed subsections 21(4) of the PTG Act and 85C(4) of the MPTG Act)
- possessing a kind of vaping goods in quantities of at least 1,000 times the commercial quantity, with a maximum penalty of \$128,700 (1,170 penalty units) (proposed subsections 21(6) of the PTG Act and 85C(6) of the MPTG Act)
- retailers possessing vaping goods in quantities less than commercial quantities on retail premises, with a maximum penalty of \$17,600 (160 penalty units) (proposed subsection 22(2) of the PTG Act)

6.7 In his second reading speech, the Minister explained that proposed offences would align with the Commonwealth laws and would not require the prosecutor to prove a mental element of the offence, which ensures the approach would be proportional and match the severity of the offence.

The Bill introduces several new strict liability offences into the *Poisons and Therapeutic Goods Act 1966* and the *Medicines, Poisons and Therapeutic Goods Act 2022* for supply or possession of vaping goods. This includes supplying or possessing devices, accessories and liquids that are not authorised for therapeutic purposes or do not fall under exceptions. These offences would carry maximum penalty ranging \$17,600 (160 penalty units) to 128,700 (1,170 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 these proposed offences are intended to target illegal vaping goods and align enforcement with the Commonwealth legislation. It also acknowledges that strict liability offences are not uncommon in regulatory frameworks to encourage compliance and safe practices. The Committee also notes that relevant exceptions would be available, such as if vaping goods are supplied by an authorised pharmacist, medical practitioner or nurse practitioner under the *Poisons and Therapeutic Goods Act 1966*. Further, the Committee notes that those offences would carry monetary penalties rather than custodial penalties. For these reasons, the Committee makes no further comment.

7. Royal Botanic Gardens and Domain Trust Amendment Bill 2024

Date introduced	25 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Paul Scully MP
Portfolio	Planning and Public Spaces

Purpose and description

- 7.1 The object of this Bill is to amend the *Royal Botanic Gardens and Domain Trust Act 1980* (the **Act**) to:
- (a) include all land that the Royal Botanic Gardens and Domain Trust (the **Trust**) oversees at certain sites to ensure ongoing maintenance and improvement of the lands, and
 - (b) extend the length of certain leases and licences over Trust land.

Background

- 7.2 The Bill seeks to amend the Act to increase the term of leases the Trust may enter into to up to 50 years. Currently the Act allows for the granting of leases for a term of up to eight years, or ten years for cafes and restaurants.
- 7.3 In his second reading speech, the Hon. Paul Scully MP provided that the aim of entering into longer leases, is so the Trust can 'generate revenue and attract investment'. He further explained that this would lead to better facilities and services, bring consistency to the terms and conditions of leases and licences across the Public Spaces portfolio, and increase sustainable revenue 'for the gardens and the important work it undertakes in scientific research and the preservation of our national environmental heritage'.
- 7.4 The Bill also updates the description of the land the Trust is responsible for overseeing to ensure that all Trust land is accurately captured by the Act.

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*.

8. State Emergency and Rescue Management Amendment Bill 2024

Date introduced	25 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Jihad Dib MP
Portfolio	Emergency Services

Purpose and description

- 8.1 The object of the Bill is to amend the *State Emergency and Rescue Management Act 1989* (the **Act**) to:
- allow certain officers of emergency services organisations to temporarily close roads and road related areas in certain circumstances,
 - give the State Emergency Management Committee the function of supporting emergency services organisations and other organisations to plan for the development and maintenance of the emergency management volunteer workforce, and
 - make other minor amendments.

Background

- 8.2 The Hon. Jihad Dib MP, Minister for Emergency Services, provided that the Bill proposes to amend the Act to 'streamline and improve the management of incidents and emergencies in New South Wales'.
- 8.3 The key amendments proposed by the Bill include:
- establishing a new power for emergency service workers to temporarily close roads or road related areas where there is an obstruction or a danger to traffic (if not inconsistent with a direction from a police officer, Transport for NSW or the roads authority)
 - creating a new function for the State Emergency Management Committee to support emergency services and other organisations in planning for the development and maintenance of the capabilities and service delivery capacity of the emergency management volunteer workforce
 - establishing education services (such as schools, TAFE, higher education and early childhood education) as a 'functional area' under the Act. Functional areas are 'a category of services involved in the prevention of and preparation for responses to or recovery from an emergency'.
- 8.4 The Minister explained that amendments would improve the safety of New South Wales roads for 'emergency services personnel and road users'. He further noted that

the Bill allows 'increased coordination and planning in the development and maintenance of the emergency management volunteer workforce'.

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*.

9. State Insurance and Care Governance Amendment (Governance Arrangements) Bill 2024

Date introduced	25 September 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Sophie Cotsis MP
Portfolio	Work Health and Safety

Purpose and description

- 9.1 The object of this Bill to amend the *State Insurance and Care Governance Act 2015* (**the Act**) to:
- 9.2 remove the Chief Executive Officer from the board of directors of Insurance and Care NSW (**icare**) as a Managing Director
- 9.3 appoint the Treasury Secretary, or a nominated Treasury delegate, to the icare board
- 9.4 require Ministerial approval for the appointment of a CEO by the icare board
- (a) require the tabling of the icare annual statement of business intent in Parliament from 1 January 2025 onwards.

Background

- 9.5 The Bill seeks to promote the efficiency, transparency and accountability of Insurance and Care NSW by making changes to its governance processes and board structure.
- 9.6 In her second reading speech, the Hon. Sophie Cotsis MP explained that the Bill forms part of the Government's reform of icare to 'strengthen icare's accountability and transparency to its stakeholders, including government.'
- 9.7 The Bill's key amendments to the Act include:
- changing the constitution of the icare board to include a representative of NSW Treasury, and removing the chief executive of icare
 - inserting a provision that the Minister must approve the appointment of a new chief executive of icare
 - requiring icare's statements of business intents to be tabled in Parliament

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.

10. Water Legislation Amendment Bill 2024

Date introduced	24 September 2024
House introduced	Legislative Council
Member with carriage	The Hon. Rose Jackson MLC
Portfolio	Water

Purpose and description

- 10.1 The objects of this Bill are as follows:
- (a) to amend the *Water Management Act 2000* (the **Water Management Act**):
 - (i) to make further provision for regulation-making powers about water management and water supply authorities
 - (ii) to validate access licences and approvals that purportedly replaced certain entitlements under the *Water Act 1912*
 - (iii) to address other miscellaneous matters
 - (b) to amend the *Sydney Water Act 1994* (the **Sydney Water Act**) to make further provision for regulation-making powers in relation to controlled areas and works, and the *Sydney Water Regulation 2017* to make consequential amendments
 - (c) to amend the *Water NSW Act 2014* (the **Water NSW Act**) to make further provision for regulation-making powers in relation to controlled areas, special areas and the Regulatory Authority
 - (d) to make minor consequential amendments to regulations
 - (e) to repeal the *Water Management Amendment Act 2010* and the *Water Management Amendment Act 2014*.
- 10.2 Certain amendments proposed by this Bill include indirect Henry VIII provisions in the Water Management Act. The proposed amendments clarify that exemptions from the Act prescribed by the regulations may have certain conditions imposed by the regulations and the Minister and that the regulations may permit the Minister to exempt persons from the Act in certain circumstances.

Background

- 10.3 The Bill proposes to amend three Acts; the Water Management Act, the Sydney Water Act and Water NSW Act to provide regulation making powers related to the licensing,

management and supply of water in NSW as well as other related administrative matters. It also proposes to amend the related regulations.

- 10.4 The Hon. Rose Jackson MLC, Minister for Water said that the Bill amends the three Acts to provide clear regulation making powers. She explained that:

The Bill does two important things, firstly it provides critical amendments to remake three regulations that are relied on to effectively manage water in NSW...

Secondly the Bill clarifies the legal validity of some licences and approvals that were incorrectly converted from the Water Act 1912 to the Water Management Act 2000.

- 10.5 The Minister explained that a need for clearer regulation making powers for a range of existing provisions in regulations was identified through remaking regulations as part of the statutory repeal process. She said that without these regulation making powers in the Acts, the 'provisions could not be included in the regulations when they are remade'.

- 10.6 Firstly, the Bill proposes to make the following amendments to the Water Management Act:

- prescribing the conditions of various exemptions to approvals and licences under the Water Management Act, including allowing the Minister to make exemptions by publishing orders in the Gazette
- clarifying powers for water supply authorities to discharge water into sewerage and drainage systems
- providing for the validation of the replacement of certain water entitlements replaced by access licences or approvals.

- 10.7 Second, the Bill proposes to make amendments to the Sydney Water Act inserting numerous regulation making powers addressing the management and operation of controlled areas and works related to water supply, sewerage or stormwater drainage

- 10.8 Lastly, the Bill proposes to make amendments to the Water NSW Act inserting various regulation making powers to provide for the regulation and management of controlled areas and special areas

- 10.9 The Bill also proposes to make consequential amendments to the Sydney Water Regulation 2017 and the Water Management (General) Regulation 2018 and repeal the *Water Management Amendment Act 2010* and the *Water Management Amendment Act 2014*.

Issues considered by the Committee

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

Broad regulation making powers – Henry VIII clauses

- 10.10 The Bill proposes to insert regulation making powers into the Water Management Act, Sydney Water Act and Water NSW Act.
- 10.11 The regulation making powers the Bill seeks to insert into the Water Management Act would include allowing regulations to:
- prescribe conditions for an exemption to for the requirement to hold an access licence under section 60A(1) or (2) of the Water Management Act
 - authorise the Minister for Water to impose those conditions and require the Minister to publish details in the gazette about the groundwater sources to which an exemption may apply
 - authorise the Minister to exempt public authorities from approvals if the exemption is related to drought and the conditions of that exemption
 - prescribe conditions on which a water management work can be subject to an exemption for the taking of water for emergencies, permitting the Minister to impose those conditions and requiring the Minister to publish them in the gazette
 - protect water supply by prohibiting certain activities
 - measure water supply by providing for factors like the method of measurement, installation and operation of meters and directions given by water supply authorities
 - the management of special areas including prohibiting certain activities, authorising certain persons with functions over special areas and the way a water supply authority can regulate conduct in a special area.
- 10.12 The regulation making powers the Bill seeks to insert into the Sydney Water Act would include allowing regulations to:
- provide for the management of controlled areas by addressing issues such as the regulation and prohibition of certain activities, functions and directions of authorised officers, fees and charges Sydney Water Corporation can impose for use and access of the areas
 - address powers regarding works for water supply sewerage or stormwater drainage such as authorising a person to connect to or alter a work owned by Sydney Water Corporation and provide for standards, approvals and permits related to water supply, sewerage or stormwater drainage granted by Sydney Water Corporation.
- 10.13 The Bill then proposes to insert regulation making powers about special areas and controlled areas under the Water NSW Act. The regulations may address matters including:

- regulating and prohibiting certain activities such as contamination or pollution
- functions of authorised officers and the directions they may give
- powers to remove persons from the areas and the use of reasonable force
- fees and charges Water NSW can charge for access or use of the areas
- provisions for powers, fees and registers of the Regulatory Authority.

10.14 In her second reading speech, the Minister noted that the some of the regulation making powers in the Bill are Henry VIII provisions which 'allow an Act to be amended by subordinate legislation'. She said they have been included 'in this Bill only because they are essential to enable the remake of the regulations next year'.

The Bill proposes to amend the *Water Management Act 2000*, the *Sydney Water Act 1994* and *Water NSW Act 2014* by inserting numerous regulation making powers. The regulation making powers are broadly defined and address a range of significant operational matters related to the management and supply of water in NSW. The proposed regulation making powers include prescribing conditions of exemptions to requirements under the Act to hold licences and approvals for certain activities like the taking of water. It also includes powers for regulations to authorise the Minister to impose those conditions.

The Bill creates significant and broadly worded regulation making powers under the Acts. The provisions therefore amount to Henry VIII clauses by allowing the Executive to amend the operation of the parent Act without reference to the Parliament. The Committee generally considers Henry VIII clauses in bills to be an inappropriate delegation of legislative power, as regulations are not subject to the same level of parliamentary scrutiny as primary legislation.

The Committee acknowledges that the regulation making powers may be required to ensure the effective administration and operation of the water regulatory framework. Further, the Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, as the regulation making powers are broad and widely address significant operational matters, conditions and exemptions with Henry VIII clauses, the Committee refers this matter to Parliament for its consideration.

Part Two – Regulations with comment

1. Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024

Date tabled	LA: 17 September 2024 LC: 17 September 2024
Disallowance date	LA: 13 November 2024 LC: 19 November 2024
Minister responsible	The Hon. Sophie Cotsis MP
Portfolio	Work Health and Safety

Purpose and description

- 1.1 The object of this Regulation is to amend the Work Health and Safety Regulation 2017 (the **Principal Regulation**) to give effect to the *Model Work Health and Safety Regulations (Crystalline Silica Substances) Amendment 2024*.
- 1.2 The amendments aim to strengthen the regulation of materials that contain at least 1% crystalline silica, such as engineered stone, including:
- controlled processing of all crystalline silica substances (**CSS**)
 - risk assessment for work involving a CSS processing, and
 - additional duties for high-risk engineered stone processing, including preparing a silica risk control plan and worker training, and air and health monitoring.
- 1.3 This Regulation is made under the *Work Health and Safety Act 2011*, including the general regulation-making power at section 276, and Schedule 3.

Issues considered by the Committee

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

Absolute liability offences

- 1.4 This Regulation introduces a number of new absolute liability offences into the Principal Regulation relating to the processing of materials containing crystalline silica across all industries, particularly for high-risk processes. These provisions require a person conducting a business or undertaking to:
- not carry out, direct or allow a worker to perform CSS processing unless the process is controlled (new clause 529C)

- assess, identify and document whether a CSS processing at the workplace is high risk (new clause 529CA)
- prepare, comply with and regularly review a silica risk control plan for high-risk CSS processing (new clauses 529CB, 529CC)
- train workers about the risks of crystalline silica and maintain records of the training for inspection (new clause 529CD), and
- conduct air and health monitoring for workers involved in high-risk CSS processing (new clause 529CE)

1.5 Failure to comply with these provisions can result in a maximum penalty for individuals, ranging from fines of \$1,650 (15 penalty units) to \$8,030 (73 penalty units).

This Regulation inserts a number of new absolute liability offences into the *Work Health and Safety Regulation 2017* concerning processing materials containing crystalline silica across all industries, particularly in relation to processing material that is assessed as high risk. Failure to comply with these provisions can result in offences for an individual with maximum penalties ranging from \$1,650 (15 penalty units) to \$8,030 (73 penalty units).

The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability. However, the Committee notes that absolute liability offences are not uncommon in regulatory settings to encourage compliance. In this case, the amendments may be intended to protect workers from the serious risks of exposure to crystalline silica. Further, the maximum penalty for the absolute liability offence is monetary, not custodial. In these circumstances, the Committee makes no further comment.

2. Centennial Park and Moore Park Trust Regulation 2024

Date tabled	LA: 17 September 2024 LC: 17 September 2024
Disallowance date	LA: 13 November 2024 LC: 19 November 2024
Minister responsible	The Hon. Paul Scully
Portfolio	Planning and Public Spaces

Purpose and description

- 2.1 The object of this regulation is to remake, with amendments, the Centennial Park and Moore Park Trust Regulation 2014, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).
- 2.2 This Regulation deals with the management, use and regulation of the land vested in the Centennial Park and Moore Park Trust (the Trust lands), including the following—
- (a) the entry of persons onto the Trust lands
 - (b) the driving and parking of vehicles
 - (c) commercial and public activities
 - (d) recreational activities
 - (e) offensive and dangerous conduct
 - (f) the bringing of animals onto the Trust lands and prohibitions relating to horses
 - (g) the offences under this regulation for which penalty notices may be issued and the amount of the penalty payable.

This Regulation is made under the *Centennial Park and Moore Park Trust Act 1983* ('the **Act**'), including sections 16(b), 17(b), 18C, 20A and 22, the general regulation-making power.

Background

- 2.3 The Regulation seeks to make provision for the management, use and operation of Centennial Park and Moore Park Trust lands.
- 2.4 The Regulation substantially replicates the previous iteration of regulation, the Centennial Park and Moore Park Trust Regulation 2014, but prohibits certain new

conduct, such as the collection of a petition and conducting a survey on Trust lands. The penalty that applies to this and other offences is a fine at a maximum amount of \$1,100 (10 penalty units).

- 2.5 On 24 September 2024, the Committee wrote to the Minister for Public Planning and Public Spaces, the Hon. Paul Scully MP after reviewing the regulatory impact statement, which found no reference to the new prohibitions.
- 2.6 The Committee requested further information and inquired as to how the new prohibitions meet the objectives of the regulation making power provided by section 22 of the Act.
- 2.7 On 7 October 2024, the Committee received correspondence from the Minister that the new prohibitions meet the objectives of section 22 of the Act because they relate to 'the use and enjoyment of the Trust lands' (ss(2)(a)) and 'the care, control and management of the Trust lands' (ss(2)(b)).
- 2.8 The Minister further stated that a maximum penalty of \$1,100, or 10 penalty units, is intended to 'deter the unauthorised collection of a petition or conduct of a survey from causing a public disturbance that would adversely affect the public use and enjoyment of the Trust lands'.
- 2.9 The Minister also noted that the regulations were drafted with other 'benchmarking regulations', which include the Royal Botanic Gardens and Domain Trust Regulation 2020, that contain the same offence and penalties. The Minister stated that this promotes consistency and alignment between parklands legislation.

Issues considered by the Committee

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

Right to petition – Implied freedom of political communication

- 2.10 The Regulation proposes to insert Part 4, which prohibits certain commercial and public activities on Trust lands, being Centennial Park and Moore Park. Proposed clause 22(e) prohibits the collection of a petition or conducting a survey on Trust lands.
- 2.11 The prohibited activity is punishable by a maximum of 10 penalty units.

The Centennial Park and Moore Park Trust Regulation 2024 inserts Part 4 into the Regulation, which prohibits commercial and public activities on Trust lands, punishable by up to \$1,100 (10 penalty units). Proposed clause 22(e) prohibits the collection of a petition or the conducting of surveys on Trust lands, being Centennial Park and Moore Park.

The Committee notes that restricting a person's ability to conduct petitions and surveys infringes on the implied freedom of political communication. The right to petition is an important mechanism of political communication for individuals to hold organisations and governments to account. Among other things, the right to petition allows individuals to seek redress, make complaints or raise awareness about issues without fear of punishment or reprisals.

The Committee acknowledges the objects of the *Centennial and Moore Park Trust Act 1983* allows for regulating the 'use and enjoyment' of Trust lands and for the 'care, control and management' of those lands. The Committee further notes that the use of a maximum financial penalty of \$1,100 (10 penalty units) is common in regulatory settings to encourage compliance and deter conduct that would interfere with public use and enjoyment of Trust lands.

However, the Committee also notes that the implied freedom of political communication can only be restricted where there is a legitimate object, and the restriction is reasonably appropriate and adapted to achieve that object. Prohibiting the use of petitions could limit the avenues available to persons to express political ideas and communicate these to decision makers. For this reason, the Committee refers the matter of whether the regulation impermissibly burdens the implied freedom of political communication to Parliament for further consideration.



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. [Aboriginal Land Rights Amendment \(Regions\) Order 2024](#)

The object of this order is to amend the *Aboriginal Land Rights Act 1983 (the Act)*, Schedule 5 to provide that the Western Region includes the Wangaaypuwan Local Aboriginal Land Council, which was constituted on 24 February 2023.

The order is made under the Act, section 93(2).

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

2. [Agricultural and Veterinary Chemicals \(New South Wales\) Regulation 2024](#)

The object of this Regulation is to repeal and remake, with minor changes, the *Agricultural and Veterinary Chemicals (New South Wales) Regulation 2015*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for:

- (a) prescribing provisions of the *Stock Medicines Act 1989* as eligible laws for the definition of permit in the Agvet Code, being the national code relating to the registration, labelling and supply of agricultural and veterinary chemicals, which applies as a law of New South Wales because of the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*
- (b) the interpretation of references to permits in those provisions of the *Stock Medicines Act 1989*.

This Regulation is made under the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*, including sections 32, the general Regulation-making power, and 33.

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 remake adds additional references to eligible laws and includes the *Biosecurity Act 2015* as an Act that can authorise permits.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 8 of the *Legislation Review Act 1987*.

3. [Assisted Reproductive Technology Regulation 2024](#)

The object of this Regulation is to remake, with amendments, the Assisted Reproductive Technology Regulation 2014, which will be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following:

- (a) matters to be included in an application for registration as an Assisted Reproductive Technology (**ART**) provider
- (b) application and annual registration fees for ART providers
- (c) additional events or changes that registered ART providers must give notice of to the Secretary of the Ministry of Health (the Secretary)
- (d) infection control standards that certain ART providers must meet
- (e) qualifications required to provide counselling services to certain persons affected by ART treatment
- (f) reasonable steps an ART provider must complete in certain circumstances to establish whether a gamete provider is alive
- (g) information the Secretary must enter in the central register and disclose to certain persons
- (h) information an ART provider and certain other persons must provide to the Secretary in relation to women who have undergone ART treatment and persons born as a result of the ART treatment
- (i) other miscellaneous matters.

The pertinent changes in the remake of the previous iteration are as follows:

- rewording and renumbering of existing clauses
- changing the fee amounts for application for registration and registration for ART providers
- removing certain clauses that are now reflected in the Act
- removing clauses relating to gametes produced before the Act was passed in 2007 (pre-Act gametes could only be stored for a maximum of 10 years)
- requiring the Secretary to take into account psychological reports when considering whether to contact the offspring of a donor

- requiring ART providers to give the Secretary information about other embryos or children resulting from a donor, when providing information about that donor
- requiring a person to give the Secretary information about a specific ART treatment when directed.

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

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

This Regulation is made under *Assisted Reproductive Technology Act 2007*. It does not appear to engage with any issues set out in section 8 of the *Legislation Review Act 1987*.

4. [Biosecurity Order \(Permitted Activities\) Amendment 2024](#)

The object of this Regulation is to amend the Biosecurity Order (Permitted Activities 2019) to update references to the Oyster Shipment Log Book to the aquaculture shipment log book.

This Order is made under the Biosecurity Regulation 2017 and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

5. [Casino Control Amendment Regulation 2024](#)

The object of this Regulation is to make various amendments to the Casino Control Regulation 2019, including to set out the requirements for player cards to be used by patrons at casinos. The amendments relating to player cards are consequential on the commencement of the *Casino Control Act 1992*, section 71A on 19 August 2024. Section 71A makes it a condition of a casino licence that all gaming at the casino must be by use of a player card.

The Regulation makes changes to the *Casino Control Regulation 2019* including:

- rewording and renumbering of existing clauses
- creating a penalty for casino operators that use information collected about a patron for the purpose of advertising the casino to that person
- creating a penalty for casino operators that use gambling inducements, for example free liquor while gambling
- setting requirements for the use of debit cards in a casino so that they are only used by the owner of the debit card

- creating Regulations for the use of player cards in casinos, including a requirement that casinos collect particular information about player card usage for the purpose of monitoring operator compliance with the Act

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

6. Children (Protection and Parental Responsibility) Regulation 2024

The object of this Regulation is to repeal and remake, without substantial changes, the Children (Protection and Parental Responsibility) Regulation 2019, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation is made under the *Children (Protection and Parental Responsibility) Act 1997 (the Act)*.

This Regulation provides for the following:

- undertakings given under the Act
- counselling services
- protocols relating to the way functions conferred on police officers and other persons under the Act, Part 3 must be exercised
- records that must be made by police officers who remove children from public places and escort them to other places.

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

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

The changes in the remake of the previous iteration are superficial, and do not alter the meaning or effect of the clauses. This Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

7. Children's Court Regulation 2024

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

This Regulation prescribes the kinds of appeals to the District Court in relation to a decision of the Presidential Children's Court that are taken to be appeals to the Supreme Court under the *Children's Court Act 1987*.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature.

The changes simplify references to the relevant Acts under which matters are taken to be appeals to the Supreme Court. Overall the changes are minor and the Regulation does not appear to engage with any issues set out in section 8 of the *Legislation Review Act 1987*.

8. Civil Liability Regulation 2024

This Regulation is made under the *Civil Liability Act 2002* (**the Act**).

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

This Regulation provides that:

- (a) non-government schools and Water NSW are public authorities for the Act, Part 5
- (b) certain persons who are authorised carers under the Children and Young Persons (Care and Protection) Act 1998 for the purpose of providing residential care to children and young people in out-of-home care are taken to be employees for the purposes of the Act.

The pertinent changes in the remake of the previous iteration are as follows:

- rewording and renumbering of existing clauses
- creating an exception to the definition of 'individual akin to an employee' under section 6G(3)(b) of the Act in certain residential care settings

This Regulation also makes a transitional provision relating to the application of proportionate liability provisions in the Act. This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely:

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

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

9. Crimes (Criminal Organisations Control) Regulation 2024

The object of this Regulation is to repeal and remake, with minor changes, the Crimes (Criminal Organisations Control) Regulation 2019, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2). This Regulation:

- (a) provides for the designation of:

- a. the criminal intelligence monitor, who monitors applications made to the Supreme Court in relation to criminal intelligence, criminal organisations and their members
 - b. alternates if the criminal intelligence monitor is unavailable
- (b) prescribes certain notification and annual reporting requirements for the criminal intelligence monitor
 - (c) prevents a lawyer who exercises the functions of the criminal intelligence monitor from representing certain persons and organisations.

This Regulation is made under the *Crimes (Criminal Organisations Control) Act 2012*, including sections 28C(1) and (2) and 38, the general Regulation-making power.

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 not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

The changes in the remake of the previous iteration are superficial, and do not alter the meaning or effect of the clauses. This Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

10. [Crimes \(High Risk Offenders\) Regulation 2018](#)

The object of this Regulation is make provision with respect to the constitution and procedure of the High Risk Offenders Assessment Committee when it exercises functions under the *Terrorism (High Risk Offenders) Act 2017*.

This Regulation is made under the *Crimes (High Risk Offenders) Act 2006*, including sections 24AB (3) and 30 (the general Regulation-making power).

The changes in the remake of the previous iteration are superficial, and do not alter the meaning or effect of the clauses.

The pertinent changes in the remake of the previous iteration are as follows:

- rewording and renumbering of existing clauses
- prescribing additional people for the purpose of section 32(4)(c) of the Act, whereby a prosecutor may file with the court a list of offences that a defendant was charged with but not convicted of, if that list is signed by a person prescribed in the Regulations
- prescribing additional people for the purpose of section 35A(3) of the Act, whereby a sentencing Court may take into consideration additional offences that were the subject of

charge negotiations if a prescribed person has verified certain factors relating to this information

- changes to the preparation and consideration of victim impact statements by the Courts, including certain information the statements must and must not contain, and when a victim impact statement may be provided to a Tribunal considering the release of a forensic patient
- changes to the required information to be included in assessment reports for sentencing proceedings
- additional procedures for imposing, varying or revoking further conditions on community correction or conditional release orders.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

This Regulation does not appear to engage with any issues set out in section 8 of the *Legislation Review Act 1987*.

11. Crimes (Sentencing Procedure) Regulation 2024

The object of this Regulation is to remake, with minor amendments, the Crimes (Sentencing Procedure) Regulation 2017, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2). This Regulation is made under the *Crimes (Sentencing Procedure) Act 2024*.

This Regulation makes provision in relation to sentencing procedures generally, procedures relating to victim impact statements and sentencing procedures for community-based orders.

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.

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

12. Crown Land Management Amendment Regulation 2024

The object of this Regulation is to provide that the consent of the Minister administering the *Crown Land Management Act 2016* is not required before a development application may be lodged for development on dedicated or reserved Crown land if:

- (a) the development is State significant development

- (a) the application is lodged by, or on behalf of, a public authority.

This Regulation is made under the *Crown Land Management Act 2016*, section 13.5(2)(n).

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

13. Dormant Funds Regulation 2024

The object of this Regulation is to remake, with minor amendments, the provisions of the Dormant Funds Regulation 2014, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989* (the **Act**), section 10(2).

This Regulation comprises or relates to matters set out in Schedule 3 of the Act that do not require regulatory impact statements, including:

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

The Regulation is made under the *Dormant Funds Act 1942*.

The changes in the remake of the previous iteration simplify the language and keep the requirements for notifying trustees or former trustees of dormant fund determinations the same.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

14. Education Standards Authority Regulation 2024

The object of this Regulation is to repeal and remake, without substantial changes, the Education Standards Authority Regulation 2019, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989* (the **Act**), section 10(2).

This Regulation provides for the following:

- (a) the authorised persons or bodies to whom the NSW Education Standards Authority (the **Authority**) may delegate its functions,
- (b) the relevant agencies with whom the Authority may enter into an information sharing arrangement, and
- (c) the offences under the *Education Act 1990* and the *Teacher Accreditation Act 2004* for which penalty notices may be issued and the amounts payable under the penalty notices.

The Regulation comprises or relates to matters set out in Schedule 3 of the Act that do not require regulatory impact statements, including:

- (a) matters of a machinery nature, and

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

The Regulation is made under the *Education Standards Authority Act 2013* (the **ESA Act**).

The changes in the remake of the previous iteration simplify and shorten the list of authorised persons or bodies under section 12B(2) of the ESA Act by removing the references to teacher accreditation authorities and combining similar roles.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

15. [Electricity Infrastructure Investment Amendment \(Firm Capacity\) Regulation 2024](#)

The object of this Regulation is to make further provision in relation to:

- (a) the calculation of firm capacity for the purposes of the energy security target
- (b) the publication of revenue determinations.

This Regulation is made under the *Electricity Infrastructure Investment Act 2020* and the minor amendments do not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

16. [Electricity Infrastructure Investment Amendment \(Revenue Determinations\) Regulation 2024](#)

The object of this Regulation is to make further provision in relation to revenue determinations made by the regulator under the *Electricity Infrastructure Investment Act 2020*, section 28.

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

17. [Evidence \(Audio and Audio Visual Link\) Regulation 2024](#)

The object of this Regulation is to remake, with minor changes, the *Evidence (Audio and Audio Visual Links) Regulation 2015*, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation exempts an accused detainee from the requirement to appear physically before a NSW court in certain bail proceedings if the accused detainee is being held in a specified location. This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

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

This Regulation is made under section 22 of the *Evidence (Audio and Visual Links) Act 1998* and substantially replicates the previous Regulation. The Regulation restates which

places are exempt from in person appearances in bail proceedings. The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

18. Film and Television Industry (Advisory Committee) Regulation 2024

The object of this Regulation is to remake, without substantial amendments, the Film and Television Industry (Advisory Committee) Regulation 2019, which will be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2). This Regulation:

- (a) provides for the composition of the Film and Television Industry Advisory Committee established under the Film and Television Industry Act 1988, section 5(1) (the Advisory Committee), and
- (b) specifies the terms of office and remuneration arrangements for members of the Advisory Committee, and
- (c) provides for the procedure of the Advisory Committee, and
- (d) prescribes certain functions of the Advisory Committee.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

This Regulation is made under section 12 of the *Film and Television Industry Act 1988* and makes minor amendments to the previous Regulation. The Regulation provides for terms of office and remuneration for members of the Advisory Committee and their function. The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

19. Fisheries Management (Aquaculture) Regulation 2024

The object of this Regulation is to remake, with some changes, the Fisheries Management (Aquaculture) Regulation 2017, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following matters:

- (a) the classification of, applications for and the issue and variation of aquaculture permits,
- (b) conditions on aquaculture permits for the control of aquaculture species in aquaculture production areas
- (c) the contributions payable by permit holders for administrative costs and research
- (d) commercial farm development plans
- (e) financial arrangements to be entered into by certain permit holders to guarantee compliance obligations under the *Fisheries Management Act 1994*

- (f) the maintenance of a trust account in relation to contributions payable by certain permit holders,
- (g) the classification of, applications for and the grant and renewal of aquaculture leases,
- (h) the rent payable under aquaculture leases
- (i) the subletting, transferring and transmission of aquaculture leases
- (j) the surrender, consolidation and subdivision of aquaculture leases
- (k) aquaculture lease plans and documents
- (l) requirements relating to leased areas, boat channels and access ways
- (m) the marking of containers of shellfish and other aquaculture products for sale
- (n) the payment of fees for permits.

The changes provide for commercial development plans and clarifying procedures concerning aquaculture lease plans and documents.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

20. Gaming and Liquor Regulation 2024

The object of this Regulation is to remake, with changes, the *Gaming and Liquor Administration Regulation 2016*, which will be repealed on 1 September 2024 by the Subordinate Legislation Act, section 10(2). This Regulation prescribes the following:

- (a) applications made under gaming and liquor legislation in relation to which a person aggrieved by a decision of the Independent Liquor and Gaming Authority (the Authority) may apply to NCAT for administrative review,
- (b) the persons and bodies to whom information acquired in the exercise of functions under gaming and liquor legislation may be divulged,
- (c) delegated decisions of Public Service employees that are reviewable decisions,
- (d) the way in which a person aggrieved by a reviewable decision may apply to the Authority for a review of the decision,
- (e) decisions that must be published on the website of the department in which the Gaming and Liquor Administration Act 2007 is administered,
- (f) penalty notice offences.

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

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

This Regulation is made under section 47 of the *Gaming and Liquor Administration Act 2007* and makes minor amendments to the previous Regulation, such as the nature of reviewable decisions of the Liquor and Gaming Authority and the disclosure of persons information to relevant bodies. The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

21. Government Advertising Regulation 2024

The object of this Regulation is to remake, with minor amendments, the Government Advertising Regulation 2018, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation:

- (a) provides exemptions from certain requirements under the *Government Advertising Act 2011* for Government advertising campaigns for specified matters
- (b) prescribes the monetary threshold for peer review of Government advertising campaigns.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

The changes clarify circumstances where certain agencies are exempt from complying with the Act and refers to an authorised person who procures an advertising campaign.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

22. Heavy Vehicle (Mass, Dimension and Loading) National Amendment Regulation 2024

This Regulation amends the Heavy Vehicle (Mass, Dimension and Loading) National Regulation 2013.

This Regulation is made under the Heavy Vehicle National Law as applied by the Heavy Vehicle National Law Act 2012 (Qld) and by the law of the States and Territories and commences on 1 November 2024.

The amendments largely relate to the insertion of relevant definitions and changes to mass requirements, exceptions and limits for various vehicles. For these reasons, the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

23. Hunter Water Regulation 2024

This Regulation is made under the *Hunter Water Act 1991* (the **Act**).

The object of this Regulation is to remake, with amendments, the *Hunter Water Regulation 2015*, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following:

- (a) the further Regulation of activities within special areas
- (b) the Secretary to delegate the Secretary's approval and direction functions to the Corporation and its staff in relation to special areas
- (c) the process for granting authorisations and conditions of authorisations for connections, alterations or use of works in relation to the Act, section 30A,
- (d) standards and requirements for works in relation to the Act, section 69,
- (e) the restriction and Regulation of the use of water in drought or an accident, or in the public interest,
- (f) offences relating to activities in special areas and for certain work carried out,
- (g) offences under the Act and this Regulation that may be dealt with by penalty notice, and the corresponding penalty.

The changes providing for authorisation for connections, alterations or use or works and clarify processes for works for water supply, sewerage or drainage.

Overall, the changes are do not substantially change the operation of the Regulation and for this reason the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

24. Industrial Relations Commission (Amendment No 1) Rules 2024

The object of these Rules is to make further rules as a consequence of the re-establishment of the Industrial Court.

The further Rules provide for the following matters:

- (a) application of the Rules to Work Health and Safety prosecutions
- (b) application of the Rules to the use of an interpreter for criminal proceedings
- (c) procedures for mutual gains bargaining
- (d) appeals from Local Court
- (e) procedures for small claims

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

25. Insurance Regulation 2024

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

This Regulation exempts certain insurance contracts and reinsurance contracts from certain provisions of the *Insurance Act 1902* (the **Insurance Act**).

This Regulation comprises or relates to matters set out in Schedule 3 of the Act that do not require regulatory impact statements, including:

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

The Regulation is made under the Insurance Act.

The changes in the remake of the previous iteration list reinsurance contracts separately as an exemption like other insurance contracts under the Insurance Act.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

26. Law Enforcement and National Security (Assumed Identities) Regulation 2024

The object of this Regulation is to remake, with some amendments, the Law Enforcement and National Security (Assumed Identities) Regulation 2016, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation:

- (a) prescribes additional agencies that are law enforcement agencies for the purposes of the *Law Enforcement and National Security (Assumed Identities) Act 2010* (the **Act**)
- (b) prescribes chief officers, law enforcement officers and supervisors of law enforcement agencies,
- (c) prescribes positions and ranks within a law enforcement agency to which a chief officer in the agency may delegate functions
- (d) declares corresponding laws for the Act.

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

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

The changes clarify and simplify definitions of certain authorised officers that are prescribed under various Acts.

Overall, the changes are largely administrative and for this reason the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

27. [National Redress Scheme for Institutional Child Sexual Abuse \(Commonwealth Powers\) Regulation 2024](#)

The object of this Regulation is to repeal and remake, with minor changes, the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Regulation 2018, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989* (the **Act**), section 10(2).

This Regulation provides for the restriction of certain information from being:

- (a) given by a State institution to the National Redress Scheme Operator (the Operator) at the request of the Operator, or
- (b) shared between State agencies for the purpose of assisting a State institution in complying with such a request by the Operator.

This Regulation comprises or relates to matters set out in Schedule 3 of the Act that do not require regulatory impact statements, including:

- (a) matters of a machinery nature, and
- (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 the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018*.

The changes in the remake of the previous iteration update the role from 'a RCA team member' to 'an incident reviewer' when information can be shared, without changing the overall restrictions or penalties.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

28. [Notice of Reservation of a National Park \(NSWGG-2024-353-1\)](#)

This Notice of Reservation is made under the National Parks and Wildlife Act 1974. It reserves approximately 37,723 hectares of land indicated by the notice diagram, inclusive of unformed Crown roads and the bed of Cuttaburra Creek, in the County of Irrara, Parishes of Porialla, Birrawarra and Ashton.

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

29. [Oaths Regulation 2024](#)

The object of this Regulation is to remake, without substantial changes, the provisions of the Oaths Regulation 2017, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989* (the **Act**), section 10(2).

This Regulation sets out the procedure for identifying persons making statutory declarations or affidavits. This Regulation relates to matters set out in Schedule 3 of the Act that do not require regulatory impact statements, including:

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

The Regulation is made under the *Oaths Act 1900*.

The changes in the remake of the previous iteration move definitions to the Dictionary in Schedule 2 of the Regulation and update the definition of 'forensic patient' to match the meaning in the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

30. [Paintball Regulation 2024](#)

The object of this Regulation is to remake, with amendments, the Paintball Regulation 2019, which will be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following—

- (a) matters to be included in an application for use of a paintball marker other than at an authorised paintball venue including—
 - (i) the application fee, and
 - (ii) the considerations the Secretary must take into account in deciding the application,
- (b) paintball marker sharing arrangements,
- (c) conditions on paintball venue permits including in relation to supervision of the use of paintball markers,
- (d) the information in relation to paintball markers that must be provided to the Secretary for inclusion in the register of paintball markers,
- (e) requirements for the disposal of paintball markers by authorised suppliers,
- (f) miscellaneous matters in relation to the refusal of permits,

- (g) recognised equivalent authorisations in relation to permits under the *Paintball Act 2018*
- (h) penalties for offences against the Act and this Regulation.

This Regulation is made under section 80 of the *Paintball Act 2018*. The changes in the repeal and remake are minor, and include new obligations for paintball operators to ensure appropriate disposal of paintball markers. The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

31. [Parliamentary Contributory Superannuation Regulation 2024](#)

The object of the Regulation is to repeal and remake, with minor changes, the Parliamentary Contributory Superannuation Regulation 2018, which is repealed on 1 September 2024 by subsection 10(2) of the *Subordinate Legislation Act 1989*.

The Regulation provides for:

- (a) the procedures for meetings of the trustees of the Parliamentary Contributory Superannuation Fund (the **Fund**),
- (b) the way in which a cheque may be drawn on the Fund,
- (c) the way in which an application for a pension or other benefit under the *Parliamentary Contributory Superannuation Act 1971* (the **Act**) may be made,
- (d) a power of the trustees to require a person to provide evidence of the person's age, relationship or entitlement under the Act,
- (e) a requirement to notify the trustees if a person ceases to be entitled to receive a pension under the Act,
- (f) the records the trustees must keep,
- (g) matters relating to family law superannuation payments to or in relation to members who have a superannuation interest under the Act, and the members' spouses.

The Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3 that do not require regulatory impact statements, including:

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

The Regulation makes small changes, including requiring that information be given to trustees under the Act in writing unless the Act says otherwise, and allowing the trustee to require a dependent child of a deceased member or former member to give the trustees specified information.

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

32. Payroll Tax Regulation 2024

The object of this Regulation is to prescribe, for the *Payroll Tax Act 2007*, Schedule 2, Part 3, Division 2A, that Metropolitan Sydney means the area comprising land that, for the whole financial year, is in a suburb or locality in the Greater Sydney Region other than the specified suburbs and localities.

The specified suburbs and localities are the suburbs and localities that do not have a Modified Monash Model classification of “MM1”. It is envisaged that if the Modified Monash Model classification of a suburb or locality changes, this Regulation will be amended accordingly.

This Regulation is made under section 101 of the *Payroll Tax Act 2007* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

33. Powers of Attorney Regulation 2024

The object of the Regulation is to repeal and remake, with minor changes, the *Powers of Attorney Regulation 2016*, which is repealed on 1 September 2024 by subsection 10(2) of the *Subordinate Legislation Act 1989*.

The Regulation prescribes:

- (a) the classes of persons who may certify that a document is a true and complete copy of an instrument creating a power of attorney,
- (b) the form to create a general power of attorney,
- (c) the form to create an enduring power of attorney,
- (d) savings and formal matters.

The Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3 that do not require regulatory impact statements, including:

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

The changes makes small adjustments to the wording and style of Form 1: Prescribed forms of power of attorney. Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

34. Professional Standards Regulation 2024

The object of this Regulation is to remake, with amendments, the *Professional Standards Regulation 2019*, which is repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following:

- (a) the fees payable in relation to occupational liability schemes,
- (b) the form of a statement to be used on documents provided to clients by persons whose occupational liability is limited.

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 changes simplify and clarify the payment of annual fees in relation to occupational liability schemes.

Overall the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

35. [Racing Appeals Tribunal Regulation 2024](#)

The object of this Regulation is to remake, with some changes, the provisions of the Racing Appeals Tribunal Regulation 2015, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation:

- (a) prescribes the classes of matters for which an appeal may be made to the Racing Appeals Tribunal under the *Racing Appeals Tribunal Act 1983* (the **Act**), and
- (b) provides for procedural and consequential matters relating to appeals

This Regulation is made under the Act, including sections 15-15B, 18 and 23, the general Regulation-making power.

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

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

The changes in the remake of the previous iteration clarify and make changes to what appeals may be made under the Act including the associated processes. The remake also makes changes to the format of the Regulation to delineate between the different types of appeals.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

36. Referable Debt Order (2024-457)

The Order is made under subsection 7(2) of the *State Debt Recovery Act 2019*. The object of the Order is to set out the fees, charges and other amounts declared to be referable debts.

The Order sets out the fees, charges and other amounts specified in Column 1, payable to the public authorities specified in Column 2, that are declared to be referable debts.

The Order sets out a number of referable debts to the Department of Education and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

37. Referrable Debt Order (2024-414)

The Order is made under subsection 7(2) of the *State Debt Recovery Act 2019*. The object of the Order is to set out the fees, charges and other amounts declared to be referable debts.

Column 1 lists the fees, charges and other amounts that are referable debt and column 2 provides the public authorities the amounts are payable to.

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

38. Rural Assistance Regulation 2024

The object of the Regulation is to remake, with minor changes, the *Rural Assistance Regulation 2016*, which is repealed on 1 September 2024 by subsection 10(2) of the *Subordinate Legislation Act 1989*.

The Regulation prescribes:

- (a) oyster farming as a farming operation for the *Rural Assistance Act 1989* (the **Act**), and
- (b) the particulars that must accompany an application for assistance under the Act.

The Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3 that do not require regulatory impact statements, including:

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

The Regulation is made under the *Rural Assistance Act 1989*. The changes in the repeal and remake are stylistic as well as some minor rewording that does not change the meaning. The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

39. State Records Regulation 2024

The object of the Regulation is to remake, with amendments, the *State Records Regulation 2015*, which is repealed on 1 September 2024 by subsection 10(2) of the *Subordinate Legislation Act 1989*.

The Regulation:

- (a) prescribes certain public offices as State collecting institutions to exempt the private records in the collections of those offices from the operation of the *State Records Act 1998* (the **Act**),
- (b) provides exceptions from the Act, Part 3, which prohibits certain actions in relation to State records, such as disposal, damage and alteration of the records,
- (c) prescribes certain persons and entities as persons or entities to whom information acquired in the exercise of functions under the Act may be disclosed to, under legal compulsion, in legal proceedings if the disclosure would otherwise be an offence under the Act,
- (d) prescribes guidelines on what constitutes normal administrative practice in a public office for the Act, section 22(3), which permits certain actions in relation to State records if the actions are done in accordance with normal administrative practice in a public office,
- (e) requires a public office to prepare and submit a transfer plan in relation to the transfer of certain State records to Museums of History NSW, and
- (f) provides for savings and formal matters.

The Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3 that do not require regulatory impact statements, including:

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

The Regulation is made under the Act. The changes to the updated Regulation include: prescribing persons who may receive information or documents that otherwise may not be divulged under the Act, clarifying when different types of records may and must not be disposed of and prescribing when records can be transferred to Museums of History NSW.

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

40. [Statutory and Other Offices Remuneration \(Executive Office Holders and Senior Executives\) Amendment Regulation 2024](#)

The object of the Regulation is to repeal the declaration of government policies that the Statutory and Other Offices Remuneration Tribunal is to give effect to when determining the remuneration of certain office holders.

The Regulation is made after the repeal of section 146C of the *Industrial Relations Commission Act 1996*. This repealed a similar requirement for the Industrial Relations Commission to give effect to government policies when making or varying awards or orders relating to the employment of public sector employees.

The Regulation is made under the *Statutory and Other Offices Remuneration Act 1975* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

41. [Statutory and Other Offices Remuneration \(Judicial and Other Office Holders\) Regulation 2024](#)

The object of the Regulation is to repeal and remake, with amendments, the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013*, which is repealed on 1 September 2024 by subsection 10(2) of the *Subordinate Legislation Act 1989*.

This Regulation sets out the policies that the Statutory and Other Offices Remuneration Tribunal must give effect to when making changes to the remuneration of office holders under Part 3 of the *Statutory and Other Offices Remuneration Act 1975* (the **Act**).

The Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3 that do not require regulatory impact statements, including:

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

The Regulation makes a small number of changes, including preventing the Tribunal from making a determination that has the effect of awarding an increase in remuneration that takes effect before 1 July 2025. Equal remuneration is also not referred to as a 'paramount policy' in the Regulation, but remains a policy that the Tribunal must consider when making a decision on altering remuneration of office holders under Part 3.

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

42. [Supreme Court \(Amendment No 435\) Rule 2024](#)

The object of this Rule is to make a consequential amendment following the commencement of the Industrial Relations Amendment Act 2023, which re-established the Industrial Relations Commission in Court Session.

The Rule has been made by the Supreme Court Rule Committee under the *Supreme Court Act 1970*.

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

43. [Teaching Service Regulation 2024](#)

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

This Regulation provides for the following:

- (a) compliance by members of the Teaching Service with statutory conditions of service,
- (b) compliance by members of the Teaching Service with directions under *the Teaching Service Act 1980* (the **Teaching Service Act**) and the review of those directions,
- (c) general duties of members of the Teaching Service,
- (d) the prohibition of the use and disclosure, by members of the Teaching Service, of information obtained in the course of discharging their duties,
- (e) the holding of local government office by members of the Teaching Service,
- (f) the management of schools,
- (g) the medical examination of members of the Teaching Service to determine fitness to perform duties.

This Regulation comprises or relates to matters set out in Schedule 3 of the Act that do not require regulatory impact statements, including:

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

The Regulation is made under the Teaching Service Act.

The changes in the remake of the previous iteration give officers and temporary employees of the Teaching Service more flexibility in following directions under section 100(1)(b) of the Teaching Service Act and clarify the process for handling review requests.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

44. [Terrorism \(High Risk Offenders\) Regulation 2024](#)

The object of this Regulation is to repeal and remake, with some amendments, the Terrorism (High Risk Offenders) Regulation 2018.

This Regulation prescribes the following:

- (a) the circumstances in which the Attorney General may require a person to provide the Attorney General with offender information in the person's possession or under the person's control,
- (b) the kinds of offender information the Attorney General may require a person to provide,
- (c) authorities and agencies for the purposes of the *Terrorism (High Risk Offenders) Act 2017* (the **Act**), section 4(1), definition of prescribed terrorism intelligence authority,
- (d) kinds of bodies of knowledge for the purposes of the Act, section 4(1), definition of relevant expert,
- (e) the kinds of persons that are qualified to provide independent and impartial representation for eligible offenders under the Act, Division 5.3 (independent third parties), and
- (f) the duties of independent third parties.

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

- (a) matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory, and
- (b) matters of a machinery nature.

The Regulation is made under the Act.

The changes in the remake of the previous iteration move the definitions of various terms and the details of 'kinds of offender information' to the Schedules 1 to 3 of the Regulation.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

45. [Transport Administration \(General\) Amendment \(Parramatta Light Rail\) Regulation 2024](#)

The object of this Regulation is to declare the route for the Parramatta Light Rail Stage 2 Enabling Works. This Regulation is made under the *Transport Administration Act 1988*, including sections 104N(2) and 119, 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*.

46. [Trees \(Disputes Between Neighbours\) Regulation 2024](#)

The object of this Regulation is to repeal and remake, without substantive changes, the *Trees (Disputes Between Neighbours) Regulation 2019*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989* (the **Act**), section 10(2).

This Regulation prescribes certain plants as trees for the purposes of the *Trees (Disputes Between Neighbours) Act 2006* (the **TDBN Act**). This Regulation comprises or relates to matters set out in the Act, including

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

The Regulation is made under the TDBN Act. The changes in the remake of the previous iteration simplify and clarify the definition of 'prescribed plants'.

Overall, the changes are minor and the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

47. [Uniform Civil Procedure \(Amendment No 102\) Rule 2024](#)

The object of this Rule is to make consequential amendments following the commencement of the *Industrial Relations Amendment Act 2023*, which re-established the Industrial Relations Commission in Court Session.

The Rule has been made by the Uniform Rule Committee under the *Civil Procedure Act 2005*.

The Rule 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. 21

TIME & DATE: 3:02PM, 14 OCTOBER 2024

LOCATION: ROOM 1254 AND WEBEX

MEMBERS PRESENT

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

APOLOGIES

Nil

OFFICERS PRESENT

Kieran Lewis, Kate McCorquodale, Mengyuan Chen, Alice Zwar and Elizabeth Hawken.

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 23 September 2024 be confirmed.

2. ***

3. Consideration of bills with comment for Legislation Review Digest 20/58

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

- a) Anti-Discrimination and Crimes Legislation Amendment (Disability) Bill 2024
- b) Justice Legislation Amendment (Miscellaneous) Bill 2024
- c) Water Legislation Amendment Bill 2024

The Committee considered the draft bill report on the Public Health (Tobacco) Amendment Bill 2024.

Resolved, on the motion of Ms Stuart: That the Committee adopts the draft bill report on the Public Health (Tobacco) Amendment Bill 2024 without amendment.

4. Consideration of bills without comment for Legislation Review Digest 20/58

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

- a) Environmental Planning and Assessment Amendment (Affordable Housing Statutory Condition) Bill 2024
- b) Fines Amendment (Parking Fines) Bill 2024
- c) Local Government Amendment (Pecuniary Interests) Bill 2024
- d) Royal Botanic Gardens and Domain Trust Amendment Bill 2024
- e) State Emergency and Rescue Management Amendment Bill 2024
- f) State Insurance and Care Governance Amendment (Governance Arrangements) Bill 2024

5. Regulations with comment for Legislation Review Digest 20/58

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

- a) Centennial Park and Moore Park Trust Regulation 2024
- b) Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024

6. Regulations without comment for Legislation Review Digest 20/58

Resolved, on the motion of Mr Layzell: That the Committee adopts the regulations without comment as Part Three to Digest 20/58.

7. Legislation Review Digest 20/58

Resolved, on the motion of Mr Murphy:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts the Legislation Review Digest No. 20/58 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 3.16pm until 21 October 2024 at 3.00pm.