

Legislation Review Committee



PARLIAMENT OF  
NEW SOUTH WALES

# Legislation Review Digest



Digest No. 21/58 – 22 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”.

# Contents

Membership.....	4
Guide to the Digest.....	5
Digest Snapshot.....	12
Summary of Conclusions.....	14
<b>PART ONE – BILLS .....</b>	<b>22</b>
1. 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2024 .....	23
2. Creative Statement to Parliament Bill 2024 .....	28
3. Environmental Planning and Assessment Amendment (State Significant Development) Bill 2024 .....	29
4. Health Insurance Levies Amendment Bill 2024 .....	30
5. Residential Tenancies Amendment Bill 2024 .....	31
6. Revenue Legislation Further Amendment Bill 2024 .....	35
7. Roads and Crimes Legislation Amendment (Offences Repeal) Bill 2024* .....	38
8. Witness Protection Amendment Bill 2024 .....	40
<b>PART TWO – REGULATIONS WITH COMMENT .....</b>	<b>46</b>
1. Explosives Regulation 2024 .....	47
2. Industrial Relations Amendment (Administrator) Regulation 2024 .....	51
<b>PART THREE – REGULATIONS WITHOUT COMMENT .....</b>	<b>54</b>
<b>APPENDICES.....</b>	<b>61</b>
Appendix One – Functions of the Committee.....	62
Appendix Two – Unconfirmed extracts of minutes.....	64

# Membership

<b>Chair</b>	Ms Lynda Voltz MP, Member for Auburn
<b>Deputy Chair</b>	Ms Maryanne Stuart MP, Member for Heathcote
<b>Members</b>	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
<b>Contact details</b>	Legislation Review Committee Parliament of New South Wales 6 Macquarie Street Sydney NSW 2000
<b>Telephone</b>	0408 309 296
<b>E-mail</b>	<a href="mailto:Legislation.Review@parliament.nsw.gov.au">Legislation.Review@parliament.nsw.gov.au</a>
<b>Website</b>	<a href="http://www.parliament.nsw.gov.au/lrc">www.parliament.nsw.gov.au/lrc</a>

# 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. 24-Hour Economy Legislation Amendment \(Vibrancy Reforms\) Bill 2024](#)

<b>Issue identified</b>	<b>Conclusion of the Committee</b>
Wide regulatory powers of Police	Referred
Wide powers of delegation - Ministerial powers	No further comment
Broad powers of the Executive implemented by written orders – Regulatory policies	No further comment
Broad powers of the Executive implemented by written orders – Ministerial orders	Referred

### [2. Creative Statement to Parliament Bill 2024](#)

No issues identified

### [3. Environmental Planning and Assessment Amendment \(State Significant Development\) Bill 2024](#)

No issues identified

### [4. Health Insurance Levies Amendment Bill 2024](#)

No issues identified

### [5. Residential Tenancies Amendment Bill 2024](#)

<b>Issue identified</b>	<b>Conclusion of the Committee</b>
Freedom of contract and property rights	No further comment
Absolute liability offences	No further comment
Retrospectivity and commencement by proclamation	No further comment

### [6. Revenue Legislation Further Amendment Bill 2024](#)

<b>Issue identified</b>	<b>Conclusion of the Committee</b>
Retrospectivity	No further comment

### [7. Roads and Crimes Legislation Amendment \(Offences Repeal\) Bill 2024\\*](#)

<b>Issue identified</b>	<b>Conclusion of the Committee</b>
Right to liberty and freedom from arbitrary detention – omission of certain exemptions	Referred

## 8. [Witness Protection Amendment Bill 2024](#)

<b>Issue identified</b>	<b>Conclusion of the Committee</b>
Wide regulatory powers	Referred
Reversal of onus of proof	Referred
Wide deferral of powers to regulations	Referred

## PART TWO – REGULATIONS WITH COMMENT

### 1. [Explosives Regulation 2024](#)

<b>Issue identified</b>	<b>Conclusion of the Committee</b>
Reversal of onus of proof – strict liability offences	No further comment
Significant matters not included in primary legislation - Criteria for licences	No further comment

### 2. [Industrial Relations Amendment \(Administrator\) Regulation 2024](#)

<b>Issue identified</b>	<b>Conclusion of the Committee</b>
Henry VIII clause	No further comment
Ministerial opinion of 'appropriateness'	No further comment

# Summary of Conclusions

## PART ONE – BILLS

---

### 1. 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2024

---

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

---

##### *Wide regulatory powers of Police*

---

The Bill proposes to amend the *Liquor Act 2007* by creating a power for Police to issue an improvement notice to a venue where 'noise is being emitted near the licensed premises by patrons of the licensed premises or staff or contractors of the licensee.' There is no further clarification or definition as to what constitutes 'noise' or 'near the licensed premises'.

Therefore, the Bill may grant Police the power to use regulatory powers with significant impact (a fine of up to \$11,000 or 100 penalty units) on license holders for premises. These regulatory powers are broad and not clearly defined, leaving open the possibility of excessive regulation impacting a person's individual rights, liberties and obligations. Further, because the regulatory power is ill-defined, it may be difficult for license holders to know how the law applies to them.

The Committee acknowledges that the intended purpose of the Bill is to take a common-sense approach to regulating the live music and performance industry. However, the Committee generally prefers that regulatory powers are sufficiently limited and defined so as to provide clarity to prevent unnecessary restriction on personal rights and liberties. In the circumstances, the Committee refers this issue to Parliament for its further consideration.

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

---

##### *Wide powers of delegation - Ministerial powers*

---

The Bill proposes to amend the *24-Hour Economy Commissioner Act 2023* by allowing the Minister to delegate any part of their function (other than the power of delegation) to a public service employee, or other person authorised by regulations.

The Bill would therefore provide for the wide delegation of statutory functions to a large class of people (the public service), and other unknown classes of people as authorised by regulations. This may enable private individuals to be delegated functions under the Act that may be expected to be performed by appointed or senior public officials or authorities. The Committee generally prefers that the classes of persons who may be delegated statutory functions are detailed in primary legislation and appropriately limited to provide clarity as well as greater oversight of the exercise of those Executive and public functions.

However, the Committee acknowledges that allowing regulations to prescribe who may be delegated certain functions, and allowing for public service employees to be delegated functions, could allow for more flexibility in the administration of the statutory regime. The Committee also recognises that regulations identifying a class of person to be delegated functions are still required to be tabled in Parliament and would therefore be subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

---

*Broad powers of the Executive implemented by written orders – Regulatory policies*

---

The Bill proposes to amend the *24-Hour Economy Commissioner Act 2023* so that the Minister may issue a policy about mediation between live music and performance venues and councils or private individuals. The policy could address significant matters including the eligibility criteria for mediation and the processes used in mediation. The Committee generally comments on provisions that provide for Executive powers being implemented by written orders, as these may impact upon the rights, liberties or obligations of individuals that would be subject to those orders.

The Committee generally prefers that Ministerial orders are provided for by regulations to ensure an appropriate level of parliamentary oversight. This is because, unlike Ministerial orders, regulations must be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the Committee acknowledges the intended purpose of the Bill is to reduce regulatory burdens on the live music and performance industry. The Committee also notes that the mediation scheme is not coercive or judicial in nature. In the circumstances, the Committee makes no further comment.

---

*Broad powers of the Executive implemented by written orders – Ministerial orders*

---

The Bill proposes to amend the *Major Events Act 2009* by shifting the process of declaring a 'major event' from the regulations to a Ministerial order published in the Gazette. When a major event is declared, consequential legislative provisions are enlivened that deal with matters such as the management of roads and airspaces, safety and crowd management, and offences.

The Committee generally comments on provisions that provide for Executive powers being implemented by written orders, as these may impact upon the rights, liberties or obligations of individuals that would be subject to those orders. The Committee notes that this power is mitigated by the power of the Premier to cancel or vary the Ministerial order. The Committee also acknowledges the intended policy effect of the Bill to reduce regulatory burdens on the live music and performance industry in the State.

However, the Committee generally prefers that matters impacting upon personal rights, liberties and obligations are provided for in primary Acts or included in regulations. This is because, unlike Ministerial orders, regulations must be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee refers this matter to Parliament for its further consideration.

---

## **2. Creative Statement to Parliament 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*.

---

## **3. Environmental Planning and Assessment Amendment (State Significant Development) Bill 2024**

---

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

---

#### 4. Health Insurance Levies 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*.

---

#### 5. Residential Tenancies Amendment Bill 2024

---

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

---

###### *Freedom of contract and property rights*

---

The Bill seeks to amend the *Residential Tenancies Act 2010* to limit rent increases for all lease types to once every 12 months. This would place restrictions on the rights and obligations of landlords who are contracting parties to residential tenancy agreements. Therefore, the Bill may impact a landlord's contractual and property rights by limiting how they can negotiate and set rent for their property.

The Committee notes that freedom of contract and property rights of a landlord are fundamental legal rights. However, the Committee recognises that the Bill aims to protect tenants by offering more clarity and certainty about how and when rent may be increased by landlords. It also acknowledges that the proposed amendments may help tenants maintain stable housing and ease pressures experienced by tenants as a result. In the circumstances, the Committee makes no further comment.

###### *Absolute liability offences*

---

The Bill introduces new absolute liability offences into the *Residential Tenancies Act 2010* for non-compliance with requirements for limits on amounts payable by tenants before a residential tenancy agreement, or for failing to offer free and convenient rent payment methods. These offences would carry maximum penalties ranging from \$1,100 (10 penalty units) to \$5,500 (50 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 acknowledges that these proposed offences are intended to remove unnecessary costs for tenants. It also acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance and fair practices. Further, the Committee notes that the offences would carry monetary penalties rather than custodial penalties. For these reasons, the Committee makes no further comment.

###### *Retrospectivity and commencement by proclamation*

---

The Bill seeks to insert Schedule 2 into the *Residential Tenancies Act 2010* to set out transitional provisions for implementing the proposed amendments regarding rent payment methods, rent increase limits, pets and termination notices. Under clause 2 of the Bill, except for Schedule 1[5], [7], [20] and [21], the commencement date would be 'on a day or days to be appointed by proclamation'.

Schedule 2 of the Bill provides for some of the proposed amendments to apply to all residential tenancy agreements, including those entered into before the proposed amendments. This would include new section 35 on rent payment methods, section 41 on rent increase limits, and section 19 and Part 3, Division 8 relating to the keeping of pets.



The Committee notes that the Bill seeks to apply certain proposed amendments to residential tenancy agreements entered into before the amendments come into effect. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.

The Committee further notes that parts of the Bill would commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly where the legislation in question affects individual rights or obligations.

However, the Committee recognises that the Bill is intended to create a balanced rental framework that provides fair and affordable rental premises, including for vulnerable people. The Committee also recognises that commencement by way of proclamation may enable greater flexibility to facilitate policy reform of the rental system. In the circumstances, the Committee makes no further comment.

---

## 6. Revenue Legislation Further Amendment Bill 2024

---

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

---

#### *Retrospectivity*

---

The Bill seeks to insert Schedule 1 into the *Duties Act 1997* to set out transitional provisions for the implementation of the proposed amendments regarding duty exemptions and tax treatment. It also proposes to insert Schedule 3 into the *Payroll Tax Act 2007* to outline transitional provisions for amendments regarding payroll tax rebates for general practitioners.

Clause 15, Schedule 1 of the Bill provides that new section 157AB relating to qualified investors will take effect on 1 February 2024. Clause 7, Schedule 6 specifies that new Schedule 2, clauses 10A and 10B, relating to payroll tax rebates for general practitioners, will take effect on 4 September 2024.

The Committee notes that the Bill seeks to apply certain proposed amendments to transactions entered into before the amendments come into effect. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.

However, the Committee recognises that the Bill is intended to create a fair and efficient revenue system to enhance integrity and compliance and in these circumstances, the Committee makes no further comment.

---

## 7. Roads and Crimes Legislation Amendment (Offences Repeal) Bill 2024\*

---

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

---

#### *Right to liberty and freedom from arbitrary detention – omission of certain exemptions*

---

The Bill seeks to amend the *Roads Act 1993* (the Act) by omitting offences that criminalise protest activity occurring on major roads. The Bill also proposes to omit a number of exemptions under section 144G of the Act for people who would otherwise be charged with the offence of damage,

disruption or obstruction of the Sydney Harbour Bridge or other major bridges, tunnels and roads ('prohibited conduct').

The Bill proposes to omit section 144G(4A), which exempts a person who commits the relevant conduct and whose workplace is a major bridge, tunnel or road. The Bill also proposes to omit section 144G(4B), which exempts a person engaging in prohibited conduct in relation to Parliament House or a Member of Parliament. Finally, the Bill seeks to omit section 144(5A), which exempts a person who is engaged in prohibited conduct as part of an industrial action, dispute or campaign.

The omission of sections 144G(4A), (4B) and (5A) would significantly widen the scope of the offence at 144G, capturing people who have undertaken 'prohibited conduct' as part of their employment, along with those people who are expressing their freedom of speech and political communication through protest. The Committee notes that widening the scope could mean that significant penalties could apply to persons like construction workers or paramedics carrying out work, who would be otherwise protected by the exemptions. The penalty for an offence under 144G is up to 2 years imprisonment and/or a significant fine of up to \$22,000. The Bill may therefore impact on a person's right to liberty and freedom from arbitrary detention contained in Article 9 of the International Covenant on Civil and Political Rights, as well as their implied freedom of political communication. For these reasons, the Committee refers the matter to Parliament for its consideration.

---

## 8. Witness Protection Amendment Bill 2024

---

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

---

#### *Wide regulatory powers*

---

The Bill proposes to amend the *Witness Protection Act 1995* to insert section 9A, which would allow the Commissioner of Police to record or monitor participants' communications with persons other than their lawyers, the Inspector or members of staff of the Law Enforcement Conduct Commission, or members of the NSW Police Force exercising functions in relation to police misconduct investigations. The new provision does not permit the Commissioner of Police to intercept communications passing over a telecommunications system.

The Committee notes that the Bill seeks to replace and update the offence under section 33 of the Act to prevent a person, directly or indirectly, from disclosing or recording certain information relating to the witness protection program. The associated maximum penalty for non-compliance is a custodial penalty of 5 years imprisonment. The Committee notes that new section 9A would be used to monitor compliance with section 33. The Bill therefore inserts a wide regulatory power to monitor communications which could lead to enforcement under section 33.

The Committee also considers that the wide regulatory power may impact on personal rights to privacy. The Committee acknowledges that the Commissioner of Police may not record or monitor participants' communications with their lawyers, which protects their right to legal professional privilege.

The Committee also acknowledges that under subsection 9A(3), persons other than participants cannot have recordings or a transcript of recordings used in legal proceedings against them. Further, section 9A would be used to protect participants from the disclosure of information that could impact their safety. However, the Committee notes that there is a significant custodial penalty of five years imprisonment associated with the offence under section 33, and for these reasons refers this matter to Parliament for its consideration.

### *Reversal of onus of proof*

---

The Bill seeks to amend the *Witness Protection Act 1995* to replace and update the offence under section 33 to prevent a person, directly or indirectly, from disclosing or recording certain information relating to the witness protection program. The Bill also inserts a defence or exemption to the offence under proposed subsection 33(1A). Under the exemption, the requirement for a person to not disclose, directly or indirectly, or record the fact that the person is, or was a participant in the witness protection program does not apply to a person if the person has a reasonable excuse for recording or disclosing the fact that relates to a health or safety risk.

Under proposed subsection 33(1B), the onus of proof lies with the person seeking to rely on the exemption. Subsection 33(1B) therefore may reverse the onus of proof from the prosecution to the accused person.

The Committee recognises that the prosecution still bears the onus of proving the elements of the offence. It also acknowledges that the presumption of innocence is not absolute, and defences where the burden of proof shifts to the defendant are not uncommon in criminal law. However, the Committee notes that the offence carries a significant maximum custodial penalty of five years imprisonment. It also notes that no defences are otherwise available to accused persons for these offences. For these reasons, the Committee refers this matter to Parliament for consideration.

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

---

#### *Wide deferral of powers to regulations*

---

The Bill seeks to amend the *Witness Protection Act 1995* to defer a number of significant matters to regulations, including circumstances where a non-disclosure certificate may be given to a court before relevant proceedings have started, and where a party to the proceedings is absent.

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

However, the Committee notes the seriousness of the provisions, and the potential impact on participants' privacy and safety, and for these reasons the Committee refers this matter to Parliament for consideration.

## **PART TWO – REGULATIONS WITH COMMENT**

---

### **1. Explosives Regulation 2024**

---

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

---

##### *Reversal of onus of proof – strict liability offences*

---

The Explosives Regulation 2024 remakes several strict liability offences that relate to, among other things, the handling, transport, storage, use, supply, safety and supervision of explosives and explosive precursors. The offences are punishable by significant fines of up to \$11,000 (100 penalty units), \$27,500 (250 penalty units) and \$38,500 (350 penalty units). The Regulation also

inserts new section 91, which places the onus of proving a defence of reasonable excuse on the person asserting it.

The Committee generally comments on strict liability offences, because they depart from the common law principle that the mental element of fault must be proven to establish liability.

However, the Committee notes that strict liability offences are not uncommon in regulatory settings in order to encourage compliance. Further, the maximum penalty of the strict liability offences are monetary, and not custodial. The Committee also notes that the burden of raising a defence of reasonable excuse is an evidential one, which then turns to the prosecution to prove to be false. The Committee acknowledges the strong safety concerns that underpin the regulation of explosives, and for these reasons the Committee makes no further comment.

---

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

---

*Significant matters not included in primary legislation - Criteria for licences*

---

The Explosives Regulation 2024 remakes, with slight amendments, the previous iterations of Part 3, division 2, sections 15, 16, 17 and 18, which specify eligibility criteria for licences relating to the use of blasting explosives, single use fireworks, sensitive dangerous substances and pyrotechnicians.

The Committee generally prefers substantive matters that make provisions for licences, particularly when they relate to dangerous goods such as explosives, to be set out in primary legislation where they are subject to appropriate parliamentary scrutiny. Unlike primary legislation, regulations are not subject to the same level of parliamentary scrutiny.

However, the Committee acknowledges deferring these matters to regulations allows for flexibility and responsiveness within the legislative scheme. In the context of explosives licences, it may be important for the legislation to be able to adapt to changing circumstances. Further, the Committee notes that regulations must be tabled in Parliament and are subject to disallowance under sections 40 and 41 of the *Interpretation Act 1987*. In these circumstances, the Committee makes no further comment.

---

## **2. Industrial Relations Amendment (Administrator) Regulation 2024**

---

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

---

*Henry VIII clause*

---

The Regulation amends Schedule 6 of the *Industrial Relations Act 1996* (the Act) to modify the administration scheme for the Construction and General Division of the Construction, Forestry and Maritime Employees Union (NSW) (the CFMEU). These changes are made to ensure consistency with the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth (the Commonwealth Act), as amended by the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* of the Commonwealth. The Commonwealth Act provides for an administrator to be appointed to the CFMEU.

These amendments are made under a Henry VIII clause in the Act, which allows the Executive to legislate and amend an Act by way of regulation without reference to Parliament. Specifically,

section 16(2) of the Act allows regulations to amend the Act to 'make any changes necessary or convenient for the administration of the CFMEU by an administrator.'

The Committee generally prefers amendments to an Act be made by way of an amending bill, rather than subordinate legislation. This is to ensure a greater level of parliamentary oversight as, unlike for primary legislation, subordinate legislation is not required to be passed by Parliament and Parliament does not control when it commences. Similarly, in relation to bills, the Committee considers Henry VIII clauses to be an inappropriate delegation of legislative power, that allows the Executive to amend the operation of principal Acts through regulation.

However, in this circumstance, the amendment of the Act by subordinate legislation is enabled by the principal Act. Additionally, the Committee notes that regulations must be tabled in Parliament and are subject to disallowance under sections 40 and 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

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

---

#### *Ministerial opinion of 'appropriateness'*

---

The Regulation inserts clause 3(2A) into Schedule 6 of the *Industrial Relations Act 1996* (the Act) to give the Minister for Industrial Relations (the Minister) the authority to determine the terms of an administration scheme. Subclauses 3(2) and (3) of Schedule 6 specify that the administration scheme must outline certain matters, including the powers of the administrator. Under clause 3(2A), the Minister may also determine any other matters that 'the Minister considers appropriate'.

The Regulation does not define or specify what factors the Minister must consider when determining whether the matters are 'appropriate', nor does it define or narrow the term 'appropriate.' This gives the Minister broad discretion to set the terms of the administration scheme, particularly relating to the powers of the administrator.

However, the Committee notes that the discretion may allow the administration scheme to be flexible and responsive to a changing administrative environment, and it may enable the Government to respond to serious issues and allegations in a flexible and timely manner. Further, the Committee acknowledges that the order containing the administration scheme must be published in the NSW Government Gazette for transparency. Therefore, in the circumstances, the Committee makes no further comment.

# Part One – Bills

# 1. 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2024

Date introduced	15 October 2024
House introduced	Legislative Council
Member with carriage	The Hon. John Graham MLC
Portfolio	Music and the Night-time Economy

## Purpose and description

- 1.1 The object of this Bill is to make miscellaneous amendments to the following Acts and instruments to improve the night-time economy in New South Wales:
- a) the *24-Hour Economy Commissioner Act 2023*
  - b) the *Environmental Planning and Assessment Act 1979*
  - c) the *Gaming and Liquor Administration Act 2007*
  - d) the *Liquor Act 2007*
  - e) the *Liquor Regulation 2018*
  - f) the *Local Government Act 1993*
  - g) the *Major Events Act 2009*
  - h) the *Protection of the Environment Operations (General) Regulation 2022*
  - i) the *Registered Clubs Act 1976*
  - j) the *Registered Clubs Regulation 2015*

## Background

- 1.2 The Bill proposes amendments to various Acts that would reduce some of the regulatory framework surrounding live music and performance venues and events, and introduce a mediation framework for disputes involving live music and performance venues.
- 1.3 In his second reading speech, the Hon. John Graham MLC, Minister for Music and the Night-time Economy, highlighted the key objectives of the Bill as:

'Firstly, helping music venues and cultural spaces thrive; secondly, supporting events across the State; thirdly, a further emphasis on creating vibrant precincts and making it easier to do business outdoors; fourthly, modernising New South Wales' licensing system with a commonsense approach to risk...'

- 1.4 The Bill proposes to amend the following 7 Acts and 3 Regulations:
- (a) The *24-Hour Economy Commissioner Act 2023* to insert a mediation framework for resolving disputes between live music and performance venues and other people, including councils.
  - (b) The *Liquor Act 2007* and *Liquor Regulation 2018* to:
    - (i) Expand the definition of 'special occasion' for the purpose of venue licensing
    - (ii) Expand the circumstances where an improvement notice relating to noise may be issued to a licensed premises
    - (iii) Remove the requirement that licensed premises must not disturb the quiet and good order of a neighbourhood
    - (iv) Remove the requirement for live music and performance venues to pay a trading hours risk loading as part of their license fee.
  - (c) The *Local Government Act 1993* to insert a framework for local government to establish 'special entertainment precincts', which would be exempt from particular sound and licensing restrictions.
  - (d) The *Major Events Act 2009* to:
    - (i) Change the process for declaring a 'major event' under the Act, so that instead of the declaration being made by regulation, the Minister can make the declaration through an order published in the Gazette
    - (ii) Insert a power for the Premier to cancel or vary a Ministerial order declaring a major event
    - (iii) Insert further requirements and restrictions on major events, including additional powers for authorised officers of a major event.
  - (e) The *Gaming and Liquor Administration Act 2007* to make consequential amendments.
  - (f) The *Protection of the Environment Operations (General) Regulation 2022* to make consequential amendments.
  - (g) The *Registered Clubs Act 1976* and *Registered Clubs Regulation 2015* to insert savings and transitional clauses and other minor amendments.
  - (h) The *Environmental Planning and Assessment Act 1979* to remove certain conditions of development consents for licensed premises.



## Issues considered by the Committee

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

#### *Wide regulatory powers of Police*

- 1.5 Schedule 2[6] of the Bill proposes to amend the *Liquor Act 2007* by inserting section 75(1)(b)(iii), which would allow Police to issue an improvement notice to a relevant person of a licensed premises where 'noise is being emitted near the licensed premises by patrons of the licensed premises or staff or contractors of the licensee.'
- 1.6 Failure to comply with an improvement notice without reasonable excuse is an offence under the *Liquor Act 2007* with a maximum penalty of \$11,000 (100 penalty units). The licensee of the licensed premises is liable for this offence.

**The Bill proposes to amend the *Liquor Act 2007* by creating a power for Police to issue an improvement notice to a venue where 'noise is being emitted near the licensed premises by patrons of the licensed premises or staff or contractors of the licensee.' There is no further clarification or definition as to what constitutes 'noise' or 'near the licensed premises'.**

**Therefore, the Bill may grant Police the power to use regulatory powers with significant impact (a fine of up to \$11,000 or 100 penalty units) on license holders for premises. These regulatory powers are broad and not clearly defined, leaving open the possibility of excessive regulation impacting a person's individual rights, liberties and obligations. Further, because the regulatory power is ill-defined, it may be difficult for license holders to know how the law applies to them.**

**The Committee acknowledges that the intended purpose of the Bill is to take a common-sense approach to regulating the live music and performance industry. However, the Committee generally prefers that regulatory powers are sufficiently limited and defined so as to provide clarity to prevent unnecessary restriction on personal rights and liberties. In the circumstances, the Committee refers this issue to Parliament for its further consideration.**

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

#### *Wide powers of delegation - Ministerial powers*

- 1.7 Schedule 1[3] of the Bill proposes to insert clause (20) into the *24-Hour Economy Commissioner Act 2023*. Clause (20) is a wide power for the Minister to delegate any of their functions (other than the power of delegation) to a public service employee or a person authorised by regulations.

**The Bill proposes to amend the *24-Hour Economy Commissioner Act 2023* by allowing the Minister to delegate any part of their function (other than the power of delegation) to a public service employee, or other person authorised by regulations.**

**The Bill would therefore provide for the wide delegation of statutory functions to a large class of people (the public service), and other unknown classes of people as authorised by regulations. This may enable private individuals to be delegated functions under the Act that may be expected to be performed by appointed or senior public officials or**

authorities. The Committee generally prefers that the classes of persons who may be delegated statutory functions are detailed in primary legislation and appropriately limited to provide clarity as well as greater oversight of the exercise of those Executive and public functions.

However, the Committee acknowledges that allowing regulations to prescribe who may be delegated certain functions, and allowing for public service employees to be delegated functions, could allow for more flexibility in the administration of the statutory regime. The Committee also recognises that regulations identifying a class of person to be delegated functions are still required to be tabled in Parliament and would therefore be subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

*Broad powers of the Executive implemented by written orders – Regulatory policies*

- 1.8 Schedule 1[3] of the Bill proposes to amend the *24-Hour Economy Commissioner Act 2023* by providing for a non-compulsory mediation scheme between live music and performance venues and councils or private individuals.
- 1.9 Part of this mediation scheme is the power of the Minister to issue a policy about mediation at clause 19. The provision specifies that a policy could include eligibility criteria for mediation, arrangements for the use of public service employees and resources for mediation, and how mediations are conducted.

**The Bill proposes to amend the *24-Hour Economy Commissioner Act 2023* so that the Minister may issue a policy about mediation between live music and performance venues and councils or private individuals. The policy could address significant matters including the eligibility criteria for mediation and the processes used in mediation. The Committee generally comments on provisions that provide for Executive powers being implemented by written orders, as these may impact upon the rights, liberties or obligations of individuals that would be subject to those orders.**

**The Committee generally prefers that Ministerial orders are provided for by regulations to ensure an appropriate level of parliamentary oversight. This is because, unlike Ministerial orders, regulations must be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.**

**However, the Committee acknowledges the intended purpose of the Bill is to reduce regulatory burdens on the live music and performance industry. The Committee also notes that the mediation scheme is not coercive or judicial in nature. In the circumstances, the Committee makes no further comment.**

*Broad powers of the Executive implemented by written orders – Ministerial orders*

- 1.10 Schedule 4[9] of the Bill proposes to amend the *Major Events Act 2009* by inserting section 5A, a power for the Minister to declare a 'major event' through an order published in the Gazette.

- 1.11 Under the current legislation, a major event may only be declared under the *Major Events Act 2009* by way of regulation.
- 1.12 The Bill also proposes to insert section 4C, whereby the Premier may cancel or vary a Ministerial order about a major event if the Premier receives advice from certain agencies, if the Premier believes there is a significant risk of harm to persons, or if the Premier believes it is in the public interest.
- 1.13 In the *Major Events Act 2009*, the declaration of a major event has consequential legislative effects for the management of roads and airspaces, safety and crowd management, and the enlivening of particular offences and penalty notices.

**The Bill proposes to amend the *Major Events Act 2009* by shifting the process of declaring a 'major event' from the regulations to a Ministerial order published in the Gazette. When a major event is declared, consequential legislative provisions are enlivened that deal with matters such as the management of roads and airspaces, safety and crowd management, and offences.**

**The Committee generally comments on provisions that provide for Executive powers being implemented by written orders, as these may impact upon the rights, liberties or obligations of individuals that would be subject to those orders. The Committee notes that this power is mitigated by the power of the Premier to cancel or vary the Ministerial order. The Committee also acknowledges the intended policy effect of the Bill to reduce regulatory burdens on the live music and performance industry in the State.**

**However, the Committee generally prefers that matters impacting upon personal rights, liberties and obligations are provided for in primary Acts or included in regulations. This is because, unlike Ministerial orders, regulations must be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee refers this matter to Parliament for its further consideration.**

## 2. Creative Statement to Parliament Bill 2024

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

### Purpose and description

- 2.1 The object of this Bill is to require the preparation and tabling of a statement to Parliament about the creative industries in New South Wales.

### Background

- 2.2 The Creative Statement to Parliament Bill 2024 (the **Bill**) creates a new Act that proposes to require the creation of a report by the Government on the arts and creative industries in New South Wales every three years.

- 2.3 The Bill proposes that the report assesses the status, challenges, opportunities and economic impact of the arts and creative industries in New South Wales.

- 2.4 In his second reading speech, the Hon. John Graham MLC, Minister for the Arts, explained:

'This statement will enable ongoing transparency and accountability to Parliament and to the public by providing a clear understanding of the size, complexity and health of the arts, culture and creative industries sector ... and also identify challenges and opportunities for the sector and factors impacting its sustainability and growth.'

- 2.5 The Bill also makes specific provision for First Nations creative industries and proposes that the report identify the following:

- government support for First Nations industries, and
- government activities undertaken to support First Nations participation in those industries.

### 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*.**

### 3. Environmental Planning and Assessment Amendment (State Significant Development) Bill 2024

Date introduced	16 October 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Paul Scully MP
Portfolio	Planning and Public Spaces

#### Purpose and description

- 3.1 The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979 (the Act)* in relation to State significant development and to validate certain development consents.

#### Background

- 3.2 Schedule 1[1] of the Bill proposes to amend the Act by allowing the Planning Secretary to determine when a development forms part of a 'single proposed development' for the purposes of an application for consent for 'State significant development'.
- 3.3 In his second reading speech, the Hon. Paul Scully MP, Minister for Planning and Public Spaces, advised that the Bill was tabled in response to a recent decision of the NSW Court of Appeal in *Bingman v Bowdens*.<sup>1</sup> In this decision, the Court found that a transmission line was part of the single proposed development of an open-cut silver mine for the purposes of the Act. This changed the way the development proposal for the transmission line should be assessed by the Independent Planning Commission.
- 3.4 The Minister explained:

'The precedent established in the Bowdens case affects both current State significant development applications awaiting determination and those applications that have already been determined,' and that without amending legislation the recent court decision '...will cause significant uncertainty and delays in the assessment and determination of State significant development applications.'

#### 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*.**

---

<sup>1</sup> *Bingman Catchment Landcare Group Incorporated v Bowdens Silver Pty Ltd* [2024] NSWCA 205.

## 4. Health Insurance Levies Amendment Bill 2024

Date introduced	15 October 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Ryan Park MP
Portfolio	Treasurer and Finance

### Purpose and description

- 4.1 The object of this Bill is to provide for a new prescribed rate under the *Health Insurance Levies Act 1982* (the **Act**) that is used to calculate the monthly levy payable under the Act.

### Background

- 4.2 The Bill proposes an increase in the prescribed rate of the health insurance levy. This levy is designed to recover unpaid amounts from health insurers who fail to pay 'the full single room rate when their members stay in single rooms in public hospitals'.
- 4.3 In his second reading speech, the Hon. Ryan Park MP, Minister for Health, explained that the Bill aims to empower the Treasurer and the Minister for Finance to increase the levy from \$1.77 a week to \$3.27 a week, if negotiations with health insurers are 'unsuccessful'. The Minister stated that the Bill would ensure that the NSW health system can continue to provide high-quality care and world-class hospital services across the State.
- 4.4 The Bill's key amendment would allow for regulations to declare a base rate for the health insurance levy.

### 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*.**

## 5. Residential Tenancies Amendment Bill 2024

Date introduced	15 October 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Anoulack Chanthivong MP
Portfolio	Housing

### Purpose and description

5.1 The objects of this Bill are to amend the *Residential Tenancies Act 2010* (the **Act**) as follows:

- (a) to ensure residential tenants are offered a convenient and free way to pay rent,
- (b) to ensure prospective tenants cannot be charged for background checks,
- (c) to enable residential tenants to obtain consent to keep animals and to set out the grounds for a landlord to refuse consent,
- (d) to require a landlord to have a valid reason to end a residential tenancy,
- (e) to specify the grounds on which a landlord may terminate a residential tenancy by termination notice,
- (f) to limit rent increases to once every 12 months for all leases,
- (g) to create offences including an offence for a landlord wrongly giving a termination notice,
- (h) to specify when a tenant may vacate premises after a termination notice is given and before the termination date, and
- (i) to make the NSW Rental Commissioner a member of the Rental Bond Board.

### Background

5.2 The Bill seeks to introduce important changes to rental law in New South Wales to improve clarity and certainty in residential tenancy agreements, and to promote a fairer rental system across the State.

5.3 In his second reading speech, the Hon. Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading, noted that the Bill is intended to 'end no-grounds evictions' under all types of leases, and to make it 'easier for renters to keep pets'. Further, the Minister stated that the Bill will

'...limit how often rent can be increased, ban renters from being asked to pay for background checks, and ensure renters have a free and convenient way to pay their rent'.

The Minister emphasised that these changes would benefit both renters and landlords by contributing to the building of stronger communities and achieving a fairer rental market.

5.4 The key amendments proposed by the Bill are:

- removing no-grounds evictions for residential tenancy agreements and introducing new grounds for landlords to terminate a lease
- establishing exclusion periods that restrict landlords from signing new tenancy agreements after terminating a lease, unless the Secretary of the Department of Customer Service approves an exemption for re-letting the property
- extending notice periods for terminating fixed-term leases while allowing tenants to give an 'early exit notice' to avoid paying double rent for an extended period
- making it easier for tenants to keep pets on rented residential premises
- limiting rent increases to no more than once every 12 months
- providing for rent to be paid through convenient and practical methods
- prohibiting landlords from charging tenants for background checks, and
- appointing the NSW Rental Commissioner as a member of the Rental Bond Board.

## Issues considered by the Committee

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

#### *Freedom of contract and property rights*

5.5 The Bill proposes to amend sections 41 and 42 of the Act to apply an existing rent increase cap to fixed-term leases shorter than two years and to cases where the lease type changes. This proposed extension would limit rent increases for all lease types to once every 12 months.

5.6 In his second reading speech, the Minister explained that frequent rental increases were unfair to renters and stressed the need for 'predictability and certainty' to help households and families plan their budgets.

**The Bill seeks to amend the *Residential Tenancies Act 2010* to limit rent increases for all lease types to once every 12 months. This would place restrictions on the rights and obligations of landlords who are contracting parties to residential tenancy agreements. Therefore, the Bill may impact a landlord's contractual and property rights by limiting how they can negotiate and set rent for their property.**



**The Committee notes that freedom of contract and property rights of a landlord are fundamental legal rights. However, the Committee recognises that the Bill aims to protect tenants by offering more clarity and certainty about how and when rent may be increased by landlords. It also acknowledges that the proposed amendments may help tenants maintain stable housing and ease pressures experienced by tenants as a result. In the circumstances, the Committee makes no further comment.**

*Absolute liability offences*

- 5.7 The Bill introduces new absolute liability offences into the Act, including for:
- requiring or receiving any payment from a prospective tenant, other than a holding fee, rent, a rental bond, or a fee for registering a tenancy agreement, before or when entering into a residential tenancy agreement, which carries a maximum penalty of \$2,200 (20 penalty units) (proposed section 23)
  - failing to offer tenants a free and convenient way to pay rent, which carries a maximum penalty ranging from \$1,100 (10 penalty units) to \$5,500 (50 penalty units) (proposed section 35).
- 5.8 In his second reading speech, the Minister explained that these proposed amendments would remove unnecessary costs for tenants.

**The Bill introduces new absolute liability offences into the *Residential Tenancies Act 2010* for non-compliance with requirements for limits on amounts payable by tenants before a residential tenancy agreement, or for failing to offer free and convenient rent payment methods. These offences would carry maximum penalties ranging from \$1,100 (10 penalty units) to \$5,500 (50 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 acknowledges that these proposed offences are intended to remove unnecessary costs for tenants. It also acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance and fair practices. Further, the Committee notes that the offences would carry monetary penalties rather than custodial penalties. For these reasons, the Committee makes no further comment.**

*Retrospectivity and commencement by proclamation*

- 5.9 Clause 2 of the Bill provides that, except for Schedules 1[5], [7], [20] and [21], the Bill would commence 'on a day or days to be appointed by proclamation'.
- 5.10 The Bill seeks to insert Schedule 2 into the Act to outline transitional provisions for implementing the proposed amendments.
- 5.11 Schedule 2 of the Bill provides that new section 35 relating to rent payment methods would apply to all residential tenancy agreements, including those entered into before the proposed amendment.

- 5.12 Schedule 2 also provides that new section 41, which limits rent increases, would apply to all residential tenancy agreements, including those made before the proposed amendments, except for 'excluded agreements'.
- 5.13 Further, Schedule 2 provides that new section 19 and Part 3, Division 8 relating to pets would apply to all residential tenancy agreements, including those made before the proposed amendment.

**The Bill seeks to insert Schedule 2 into the *Residential Tenancies Act 2010* to set out transitional provisions for implementing the proposed amendments regarding rent payment methods, rent increase limits, pets and termination notices. Under clause 2 of the Bill, except for Schedule 1[5], [7], [20] and [21], the commencement date would be 'on a day or days to be appointed by proclamation'.**

**Schedule 2 of the Bill provides for some of the proposed amendments to apply to all residential tenancy agreements, including those entered into before the proposed amendments. This would include new section 35 on rent payment methods, section 41 on rent increase limits, and section 19 and Part 3, Division 8 relating to the keeping of pets.**

**The Committee notes that the Bill seeks to apply certain proposed amendments to residential tenancy agreements entered into before the amendments come into effect. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.**

**The Committee further notes that parts of the Bill would commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly where the legislation in question affects individual rights or obligations.**

**However, the Committee recognises that the Bill is intended to create a balanced rental framework that provides fair and affordable rental premises, including for vulnerable people. The Committee also recognises that commencement by way of proclamation may enable greater flexibility to facilitate policy reform of the rental system. In the circumstances, the Committee makes no further comment.**

## 6. Revenue Legislation Further Amendment Bill 2024

Date introduced	16 October 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

### Purpose and description

- 6.1 The object of this Bill is to make miscellaneous amendments to the following Acts:
- (a) the *Duties Act 1997* (the **Duties Act**),
  - (b) the *Fines Act 1996*,
  - (c) the *Land Tax Act 1956*,
  - (d) the *Land Tax Management Act 1956*,
  - (e) the *Law Enforcement (Powers and Responsibilities) Act 2002* (the **LEPRA**),
  - (f) the *Payroll Tax Act 2007* (the **Payroll Tax Act**),
  - (g) the *State Debt Recovery Act 2018*, and
  - (h) the *Taxation Administration Act 1996*.

### Background

- 6.2 The Bill seeks to amend a number of pieces of legislation to improve the administration and compliance of the revenue system in New South Wales.
- 6.3 In his second reading speech, the Hon. Michael Daley MP, Attorney General, stated the Bill would
- '...enhance the integrity of the revenue system, strengthen compliance, increase the efficient administration of the revenue system and otherwise ensure that revenue legislation remains effective and up to date'.
- 6.4 The Attorney General explained that the reforms proposed by the Bill can be grouped into four categories:
- amendments to State taxation legislation to exempt duty being charged to family farm transfers and relationship breakdowns, aiming to 'enhance revenue integrity', ensure proper exemptions and 'reduce red tape',

- amendments to State debt legislation to 'streamline the allocation of recovered amounts', improving 'overall administration',
- amendments to fines legislation to clarify the sources for obtaining postal addresses for service, and
- minor amendments to revenue legislation and the LEPRA to 'update the name of an Act and various government departments'.

6.5 The key amendments proposed by the Bill are as follows:

- providing duty exemptions for family farm transfers, including declarations of a bare trust over dutiable property (Schedule 1)
- providing duty exemptions for property transfers due to relationship breakdowns, extending to legal representatives in certain circumstances (Schedule 1)
- expanding the definition of a 'qualified investor' for landholder duty purposes (Schedule 1)
- aligning the tax treatment of corporate collective investment vehicles with the Commonwealth's approach (Schedule 1)
- resolving an inconsistency between the principal place of residence exemption and the mixed-use land concession for land used as a principal residence (Schedule 4)
- amending the definition of 'former entity' to prevent payroll tax avoidance through 'phoenixing' (Schedule 6)
- including definitions of 'prescribed billing arrangements' and 'veterans arrangements' for payroll tax rebates for general practitioners (Schedule 6)
- clarifying the definition of 'referable debt' to improve administration and closing 'the loop on the life cycle of a State debt' (Schedule 7)
- introducing a new statutory penalty for engaging in tax avoidance schemes (Schedule 8).

## Issues considered by the Committee

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

#### *Retrospectivity*

- 6.6 The Bill seeks to insert Schedule 1 into the Duties Act as transitional provisions for implementing the proposed amendments.
- 6.7 Clause 15, Schedule 1 of the Bill provides that new section 157AB relating to qualified investors will take effect on 1 February 2024.
- 6.8 The Bill also seeks to insert Schedule 3 into the Payroll Tax Act as transitional provisions.

- 6.9 Clause 7, Schedule 6 of the Bill provides that new clauses 10A and 10B, relating to payroll tax rebates for general practitioners, will take effect on 4 September 2024.
- 6.10 In his second reading speech, the Attorney General explained that the proposed amendments aimed to ensure that medical centres serving the veteran community 'are not inadvertently disadvantaged' when determining eligibility for payroll tax rebates.

**The Bill seeks to insert Schedule 1 into the *Duties Act 1997* to set out transitional provisions for the implementation of the proposed amendments regarding duty exemptions and tax treatment. It also proposes to insert Schedule 3 into the *Payroll Tax Act 2007* to outline transitional provisions for amendments regarding payroll tax rebates for general practitioners.**

**Clause 15, Schedule 1 of the Bill provides that new section 157AB relating to qualified investors will take effect on 1 February 2024. Clause 7, Schedule 6 specifies that new Schedule 2, clauses 10A and 10B, relating to payroll tax rebates for general practitioners, will take effect on 4 September 2024.**

**The Committee notes that the Bill seeks to apply certain proposed amendments to transactions entered into before the amendments come into effect. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.**

**However, the Committee recognises that the Bill is intended to create a fair and efficient revenue system to enhance integrity and compliance and in these circumstances, the Committee makes no further comment.**

## 7. Roads and Crimes Legislation Amendment (Offences Repeal) Bill 2024\*

Date introduced	17 October 2024
House introduced	Legislative Assembly
Member with carriage	Ms Kobi Shetty MP
	*Private Members Bill

### Purpose and description

- 7.1 The object of this Bill is to amend the *Roads Act 1993*, the Roads Regulation 2018, the *Crimes Act 1900* and the Crimes Regulation 2020 to abolish certain offences for behaviour that causes damage or disruption to major roads or major public facilities.

### Background

- 7.2 The Bill proposes to amend the *Roads Act 1993*, the *Crimes Act 1900* and their respective regulations to abolish offences relating to a person entering or interfering with a major road in a way that damages the road or disrupts traffic.

- 7.3 In her second reading speech, Ms Kobi Shetty MP explained that the purpose of the Bill was:

...to wind back the draconian anti-protest laws ... (which) sought to criminalise peaceful protest and make it harder to assemble in public places...

- 7.4 The Bill seeks to omit offences relating to the interference with major roads and major facilities from the *Roads Act 1993* and the *Crimes Act 1900*. It would also omit various protections for people charged with interfering with major bridges, tunnels and roads, or the Sydney Harbour Bridge.

### Issues considered by the Committee

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

##### *Right to liberty and freedom from arbitrary detention – omission of certain exemptions*

- 7.5 Schedule 1[7] of the Bill seeks to omit sections 144G(4A), (4B) and (5A) from the *Roads Act 1993*. Section 144G relates to the offences of damage, disruption or obstruction of the Sydney Harbour Bridge and other major bridges, tunnels and roads.

- 7.6 The current exemptions that are provided for by the *Roads Act 1993* are as follows:

- (a) 144G(4A) provides that a person has not committed an offence under section 144G if the conduct occurs at the person's workplace
- (b) 144G(4B) provides that a person has not committed an offence under section 144G if the conduct relates to Parliament House or a Member of Parliament
- (c) 144(5A) provides that a person has not committed an offence under section 144G if the conduct was part of an industrial action, industrial dispute or industrial campaign.

7.7 An offence under section 144G carries a maximum penalty of \$22,000 (200 penalty units), or 2 years imprisonment, or both.

**The Bill seeks to amend the *Roads Act 1993* (the Act) by omitting offences that criminalise protest activity occurring on major roads. The Bill also proposes to omit a number of exemptions under section 144G of the Act for people who would otherwise be charged with the offence of damage, disruption or obstruction of the Sydney Harbour Bridge or other major bridges, tunnels and roads ('prohibited conduct').**

The Bill proposes to omit section 144G(4A), which exempts a person who commits the relevant conduct and whose workplace is a major bridge, tunnel or road. The Bill also proposes to omit section 144G(4B), which exempts a person engaging in prohibited conduct in relation to Parliament House or a Member of Parliament. Finally, the Bill seeks to omit section 144(5A), which exempts a person who is engaged in prohibited conduct as part of an industrial action, dispute or campaign.

The omission of sections 144G(4A), (4B) and (5A) would significantly widen the scope of the offence at 144G, capturing people who have undertaken 'prohibited conduct' as part of their employment, along with those people who are expressing their freedom of speech and political communication through protest. The Committee notes that widening the scope could mean that significant penalties could apply to persons like construction workers or paramedics carrying out work, who would be otherwise protected by the exemptions. The penalty for an offence under 144G is up to 2 years imprisonment and/or a significant fine of up to \$22,000. The Bill may therefore impact on a person's right to liberty and freedom from arbitrary detention contained in Article 9 of the International Covenant on Civil and Political Rights, as well as their implied freedom of political communication. For these reasons, the Committee refers the matter to Parliament for its consideration.

## 8. Witness Protection Amendment Bill 2024

Date introduced	16 October 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Yasmin Catley MP
Portfolio	Police and Counter-terrorism

### Purpose and description

8.1 The objects of the Bill are to:

- a) amend the *Witness Protection Act 1995* (the **Act**) to:
  - i. provide additional protection for and assistance to participants and former participants in the witness protection program
  - ii. provide for the disclosure and secure management of certain information relating to the program
  - iii. make other minor administrative and consequential amendments
- b) make consequential amendments to the *Surveillance Devices Act 2007*.

### Background

8.2 The Bill seeks to introduce amendments to equip the NSW Police Force to protect the safety and welfare of witnesses who agree to give evidence on behalf of the Crown.

8.3 In her second reading speech, the Hon. Yasmin Catley MP, Minister for Police and Counter-terrorism, noted that the aim of the amendments were to ensure that:

...witnesses can trust the program's capacity to keep them safe if they are to agree to provide evidence for the Crown in circumstances that may put their safety at risk.

8.4 The key amendments proposed by the Bill are as follows:

- expanding the definition of a 'witness' to include a person who has given, or has agreed to give, evidence on behalf of the Crown in proceedings relating to an application for a serious crime prevention order under the *Crimes (Serious Crime Prevention Orders) Act 2016*
- allowing applications to the Supreme Court for an order authorising a specified person or class of persons to remove an identity record held by an agency, or to create a new identity record held by an agency, or to create a new identity record in the participant's new identity



- allowing the Commissioner of Police to ask an interstate entity to remove a participant's identity record or create a new identity record in the participant's new identity where there is a risk of the identity record linking the participant's previous and new identities
- requiring the Commissioner of Police to keep removed identity records when asked by an authorised person or interstate entity for the purposes of restoring a previous identity
- expanding the current requirement of persons to not, directly or indirectly, disclose certain information relating to the witness protection program, and to not record certain information
- creating an exemption for disclosing or recording the fact that a person is, or was a participant in the witness protection program where the person has a reasonable excuse relating to a health or safety risk
- providing that that a non-disclosure certificate must be given to the court in accordance with any requirements prescribed by the regulations, where a protected person becomes involved in a relevant proceeding before a court, whether under their new or previous identity, where their identity is in issue
- allowing a non-disclosure certificate to be given to a court before the relevant proceedings commence, and also in the absence of a party to the proceedings, subject to regulations
- enabling a court to allow questions or statements that may disclose relevant information about a protected person's identity or where they live on its own motion
- requiring a non-disclosure certificate to state that a person is entitled to give evidence via audio visual link, as well as 'other information about the person that the Commissioner of Police considers necessary or appropriate to include', and specifying that it not include any information that may enable the protected identity of the person to be revealed unless the Commissioner of Police is satisfied the inclusion of the information is necessary or appropriate
- allowing a participant's memorandum of understanding to contain provision relating to the 'recording or monitoring of the participant's communications with another person'
- allowing the Commissioner of Police to record or monitor participants' communications with other persons, with the exception of their legal representatives, Law Enforcement Conduct Commission staff, the Inspector of the Law Enforcement Conduct Commission, and NSW Police staff that are exercising functions in relation to police misconduct investigations
- preventing a recording or transcript of the recording being used in legal proceedings against a person other than a participant
- preventing the Commissioner of Police from intercepting communications passing over a telecommunications system
- allowing the Commissioner of Police to terminate the protection and assistance provided under the program to a participant if the Commissioner is satisfied that the participant has been sentenced to full-time detention after

their inclusion in the program and the sentence limits the Commissioner's ability to provide adequate protection to them

- clarifying that the Commissioner of Police may take necessary and reasonable action to protect the safety and welfare of a participant, rather than a witness
- providing that a witness protection order may be used to change the participant's identity, if the participant consents, not more than twice
- requiring agencies in possession of confidential documents to take reasonable steps to ensure that those documents are kept and handled securely.

## Issues considered by the Committee

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

#### *Wide regulatory powers*

- 8.5 The Bill proposes to insert section 9A into the Act, which would give the Commissioner of Police a new power to record and monitor certain communications of participants under witness protection.
- 8.6 Proposed section 9A would allow the Commissioner of Police to record or monitor participants' communications with other persons with the exception of:
- their legal representatives
  - staff of the Law Enforcement Conduct Commission
  - the Inspector of the Law Enforcement Conduct Commission
  - members of the NSW Police Force that are exercising functions in relation to police misconduct investigations.
- 8.7 The Commissioner of Police may only record or monitor communications where a memorandum of understanding in relation to the participant contains the provision that 'the recording or monitoring of the participant's communications with another person, other than a person referred to in section 9A(2)(a)-(d)'.
- 8.8 The recording or transcript of the recording cannot be used in legal proceedings against a person other than the participant.
- 8.9 The proposed section does not authorise the Commissioner of Police to intercept communications passing over a telecommunications system.
- 8.10 The Bill also seeks to replace and update the existing offence under section 33 of the Act. Subsection 33(1) of the Act currently prevents disclosing certain information relating to the witness protection program. The Bill extends that offence to provide that a person must not disclose or record:
- the fact that the person, or a person with whom the person is an associate, has entered into a memorandum of understanding
  - details of a memorandum of understanding

- the fact that the person is, or was a participant in the witness protection program
- confidential information relating to the witness protection program.

8.11 The maximum penalty associated with the offence is 5 years imprisonment.

**The Bill proposes to amend the *Witness Protection Act 1995* to insert section 9A, which would allow the Commissioner of Police to record or monitor participants' communications with persons other than their lawyers, the Inspector or members of staff of the Law Enforcement Conduct Commission, or members of the NSW Police Force exercising functions in relation to police misconduct investigations. The new provision does not permit the Commissioner of Police to intercept communications passing over a telecommunications system.**

**The Committee notes that the Bill seeks to replace and update the offence under section 33 of the Act to prevent a person, directly or indirectly, from disclosing or recording certain information relating to the witness protection program. The associated maximum penalty for non-compliance is a custodial penalty of 5 years imprisonment. The Committee notes that new section 9A would be used to monitor compliance with section 33. The Bill therefore inserts a wide regulatory power to monitor communications which could lead to enforcement under section 33.**

**The Committee also considers that the wide regulatory power may impact on personal rights to privacy. The Committee acknowledges that the Commissioner of Police may not record or monitor participants' communications with their lawyers, which protects their right to legal professional privilege.**

**The Committee also acknowledges that under subsection 9A(3), persons other than participants cannot have recordings or a transcript of recordings used in legal proceedings against them. Further, section 9A would be used to protect participants from the disclosure of information that could impact their safety. However, the Committee notes that there is a significant custodial penalty of five years imprisonment associated with the offence under section 33, and for these reasons refers this matter to Parliament for its consideration.**

*Reversal of onus of proof*

8.12 As set out above, the Bill seeks to update the offence of participants and others disclosing or recording information under section 33 of the Act.

8.13 The Bill also inserts a new defence under proposed subsection 33(1A). Under the defence (or exemption), the requirement for a person to not disclose, directly or indirectly, or record the fact that the person is, or was a participant in the witness protection program does not apply to a person if the person has a 'reasonable excuse' for recording or disclosing the fact that relates to a health or safety risk.

8.14 Subsection 33(1B) prescribes that the onus of proof lies with the person seeking to rely on the exemption.

**The Bill seeks to amend the *Witness Protection Act 1995* to replace and update the offence under section 33 to prevent a person, directly or indirectly, from disclosing or recording certain information relating to the witness protection program. The Bill also inserts a defence or exemption to the offence under proposed subsection 33(1A). Under the exemption, the requirement for a person to not disclose, directly or indirectly, or record the fact that the person is, or was a participant in the witness protection program does not apply to a person if the person has a reasonable excuse for recording or disclosing the fact that relates to a health or safety risk.**

**Under proposed subsection 33(1B), the onus of proof lies with the person seeking to rely on the exemption. Subsection 33(1B) therefore may reverse the onus of proof from the prosecution to the accused person.**

**The Committee recognises that the prosecution still bears the onus of proving the elements of the offence. It also acknowledges that the presumption of innocence is not absolute, and defences where the burden of proof shifts to the defendant are not uncommon in criminal law. However, the Committee notes that the offence carries a significant maximum custodial penalty of five years imprisonment. It also notes that no defences are otherwise available to accused persons for these offences. For these reasons, the Committee refers this matter to Parliament for consideration.**

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

##### *Wide deferral of powers to regulations*

8.15 The Bill proposes to defer the following powers to regulations:

- prescribing a person or body to be an 'agency' for this Act (subsection 4A(1)(g))
- prescribing requirements in relation to the making of a request under section 19 (subsection 19B(4))
- prescribing requirements by which the Commissioner of Police must give a court a non-disclosure certificate relating to a protected person (subsection 31B(2))
- prescribing circumstances around when a non-disclosure certificate may be given to a court before the relevant proceeding commences, and in the absence of a party to the proceeding (subsection 31B(2A))
- prescribing requirements in which agencies must take reasonable steps to ensure that confidential documents are kept and handled securely (subsection 38A(2)(b)).

**The Bill seeks to amend the *Witness Protection Act 1995* to defer a number of significant matters to regulations, including circumstances where a non-disclosure certificate may be given to a court before relevant proceedings have started, and where a party to the proceedings is absent.**

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

**However, the Committee notes the seriousness of the provisions, and the potential impact on participants' privacy and safety, and for these reasons the Committee refers this matter to Parliament for consideration.**

# Part Two – Regulations with comment

# 1. Explosives 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 the Explosives Regulation 2024 ('the **Regulation**') is to remake, with a range of amendments, the Explosives Regulation 2013, which was repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).
- 1.2 This regulation provides for the following:
- (a) eligibility criteria for specific licences
  - (b) the activities that may be carried out under each type of licence
  - (c) administrative matters for the issue, renewal, suspension and cancellation of licences and security clearances
  - (d) exemptions from the requirement to hold a security clearance or licence
  - (e) storage and transport of explosives and explosive precursors
  - (f) the secure and safe handling of explosives and explosive precursors, including record keeping and compliance with codes and standards
  - (g) matters concerning the administration and enforcement of the *Explosives Act 2003* and this regulation including prescribing offences as penalty notice offences.
- 1.3 This regulation is made under the *Explosives Act 2003*, including section 36, the general regulation-making power.

## Issues considered by the Committee

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

#### *Reversal of onus of proof – strict liability offences*

- 1.4 The Regulation remakes a number of strict-liability offences for non-compliance for matters relating to explosives. The new offences are substantively similar to the previous Regulation, and cover the following conduct:

- handling of unauthorised explosives or falsely representing an explosive as being authorised, with a maximum penalty of \$27,500 (250 penalty units) (new Pt 2, s 8)
- using or modifying authorised explosives for unauthorised purposes, with a maximum penalty of \$38,500 (350 penalty units) (new Pt 2, s 9)
- handling of explosives or explosive precursors in excess of the amount granted by a licence, with a maximum penalty of \$27,500 (250 penalty units) (new Pt 3, Div 1, s 12)
- storage or transport of explosives and explosive precursors, with a maximum penalty of \$27,500 (250 penalty units) (new Pt 5, divisions 1, 2 and 4)
- transport of explosives in a public passenger vehicle, with a maximum penalty of \$38,500 (350 penalty units) (new Pt 5, division 4, s 48)
- transport of explosives in certain areas, including central business districts and areas east of the Newell Highway, unless with a specified final destination, with a maximum penalty of \$27,500 (250 penalty units) (new Pt 5, division 4, s 49-51)
- emergency management plans for those storing explosives, with a maximum penalty of \$27,500 (250 penalty units) (new Pt 5, s 41)
- supervision of explosives removed from storage, with a maximum penalty of \$27,500 (250 penalty units) (new Pt 5, s 43)
- the holding of explosives in a vehicle or rail yard, with a maximum penalty of \$27,500 (250 penalty units) (new Part 5, division 3)
- compliance with safety and security measures, including security plans, safety management plans and complying with relevant Australian security standards, such as the Australian Explosives Code, with a maximum penalty of \$27,500 (250 penalty units) (new Pt 6)
- recording supply by the supplier, including the date of supply, the type and quantity of explosives, and details of the receiver, with a maximum penalty of \$11,000 (100 penalty units) (new Pt 6, division 4, s 66 and 67)
- marking of explosives in accordance with the Australian Explosives Code, with a maximum penalty of \$27,500 (250 penalty units) (new Pt 6, division 4, s 62 and 64)
- importing or exporting explosives (for those with a licence) without written notice to the regulatory authority of the particulars of import, with a maximum penalty of \$27,500 (250 penalty units) (new Pt 6, division 4, s 69)
- supervising explosives until they have been exploded or rendered harmless, with a maximum penalty of \$38,500 (350 penalty units) (new Pt 6, division 6, s 72)
- notifying authorities of the loss or theft of explosives or explosive precursors, with a maximum penalty of \$38,500 (350 penalty units) (new Pt 6, division 8, s 81)



- preserving a site following a serious incident, with a maximum penalty of \$38,500 (350 penalty units) (new Pt 6, division 8, s 83)

1.5 New section 91 of the Regulation states that the onus of proving a defence of reasonable excuse for an offence against the Regulation rests with the person asserting the defence.

**The Explosives Regulation 2024 remakes several strict liability offences that relate to, among other things, the handling, transport, storage, use, supply, safety and supervision of explosives and explosive precursors. The offences are punishable by significant fines of up to \$11,000 (100 penalty units), \$27,500 (250 penalty units) and \$38,500 (350 penalty units). The Regulation also inserts new section 91, which places the onus of proving a defence of reasonable excuse on the person asserting it.**

**The Committee generally comments on strict liability offences, because they depart from the common law principle that the mental element of fault must be proven to establish liability.**

**However, the Committee notes that strict liability offences are not uncommon in regulatory settings in order to encourage compliance. Further, the maximum penalty of the strict liability offences are monetary, and not custodial. The Committee also notes that the burden of raising a defence of reasonable excuse is an evidential one, which then turns to the prosecution to prove to be false. The Committee acknowledges the strong safety concerns that underpin the regulation of explosives, and for these reasons the Committee makes no further comment.**

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

*Significant matters not included in primary legislation - Criteria for licences*

1.6 The Regulation is substantively similar to the previous iteration and remakes it with slight amendments to sections 15, 16, 17 and 18, which provide eligibility criteria for persons holding various licences for explosives.

1.7 The eligibility criteria applies to the following licences:

- the blasting explosives user licence
- the single use fireworks licence
- the security sensitive dangerous substances licence
- the pyrotechnician's licence.

**The Explosives Regulation 2024 remakes, with slight amendments, the previous iterations of Part 3, division 2, sections 15, 16, 17 and 18, which specify eligibility criteria for licences relating to the use of blasting explosives, single use fireworks, sensitive dangerous substances and pyrotechnicians.**

**The Committee generally prefers substantive matters that make provisions for licences, particularly when they relate to dangerous goods such as explosives, to be set out in primary legislation where they are subject to appropriate parliamentary scrutiny. Unlike primary legislation, regulations are not subject to the same level of parliamentary scrutiny.**

**However, the Committee acknowledges deferring these matters to regulations allows for flexibility and responsiveness within the legislative scheme. In the context of explosives licences, it may be important for the legislation to be able to adapt to changing circumstances. Further, the Committee notes that regulations must be tabled in Parliament and are subject to disallowance under sections 40 and 41 of the *Interpretation Act 1987*. In these circumstances, the Committee makes no further comment.**

## 2. Industrial Relations Amendment (Administrator) 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	Industrial Relations

### Purpose and description

- 2.1 The object of this Regulation is to amend Schedule 6 of the *Industrial Relations Act 1996* (the **Act**) to ensure consistency with the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth (the **Commonwealth Act**), as amended by the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* of the Commonwealth.
- 2.2 The amendments made by the Regulation are Henry VIII provisions as they amend Schedule 6 of the Act.
- 2.3 This Regulation is made under the Act, including Schedule 6, clause 17(2)(b)(i).

### Issues considered by the Committee

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

##### *Henry VIII clause*

- 2.4 The Regulation amends Schedule 6 of the Act to modify the administration scheme for the Construction and General Division of the Construction, Forestry and Maritime Employees Union (NSW) (the **CFMEU**). These changes are intended to ensure consistency with the Commonwealth Act, which provides for an administrator to be appointed to the CFMEU.
- 2.5 The Regulation makes key amendments to Schedule 6 of the Act as follows:
- defining the term 'removed person'
  - allowing the Minister for Industrial Relations (the **Minister**) to determine the terms of an administration scheme, as appropriate
  - empowering the Minister to vary or revoke an administration order
  - establishing a complaints procedure

- restricting persons who have been removed from serving as officers or employees
- requiring the administrator to report to the Minister.

**The Regulation amends Schedule 6 of the *Industrial Relations Act 1996* (the Act) to modify the administration scheme for the Construction and General Division of the Construction, Forestry and Maritime Employees Union (NSW) (the CFMEU). These changes are made to ensure consistency with the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth (the Commonwealth Act), as amended by the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024* of the Commonwealth. The Commonwealth Act provides for an administrator to be appointed to the CFMEU.**

**These amendments are made under a Henry VIII clause in the Act, which allows the Executive to legislate and amend an Act by way of regulation without reference to Parliament. Specifically, section 16(2) of the Act allows regulations to amend the Act to 'make any changes necessary or convenient for the administration of the CFMEU by an administrator.'**

**The Committee generally prefers amendments to an Act be made by way of an amending bill, rather than subordinate legislation. This is to ensure a greater level of parliamentary oversight as, unlike for primary legislation, subordinate legislation is not required to be passed by Parliament and Parliament does not control when it commences. Similarly, in relation to bills, the Committee considers Henry VIII clauses to be an inappropriate delegation of legislative power, that allows the Executive to amend the operation of principal Acts through regulation.**

**However, in this circumstance, the amendment of the Act by subordinate legislation is enabled by the principal Act. Additionally, the Committee notes that regulations must be tabled in Parliament and are subject to disallowance under sections 40 and 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.**

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

#### *Ministerial opinion of 'appropriateness'*

- 2.6 Clause 3, Schedule 6 of the Act allows the Minister to establish an administration scheme through administration orders, and to appoint an administrator to manage the scheme.
- 2.7 Subclauses 3(2) and (3) specify what the administration scheme must provide for, including the administrator's powers, the termination of CFMEU employees, and the authority to take disciplinary action in certain circumstances.
- 2.8 The Regulation inserts clause 3(2A) into Schedule 6 of the Act to expand the possible terms of the administration scheme. It allows the scheme to include any other matters the Minister considers 'appropriate.'
- 2.9 Clause 6, Schedule 6 of the Act allows the Minister to vary an administration order, including changes to the administration scheme, at any time by publishing an order in the NSW Government Gazette.

The Regulation inserts clause 3(2A) into Schedule 6 of the *Industrial Relations Act 1996* (the Act) to give the Minister for Industrial Relations (the Minister) the authority to determine the terms of an administration scheme. Subclauses 3(2) and (3) of Schedule 6 specify that the administration scheme must outline certain matters, including the powers of the administrator. Under clause 3(2A), the Minister may also determine any other matters that 'the Minister considers appropriate'.

The Regulation does not define or specify what factors the Minister must consider when determining whether the matters are 'appropriate', nor does it define or narrow the term 'appropriate.' This gives the Minister broad discretion to set the terms of the administration scheme, particularly relating to the powers of the administrator.

However, the Committee notes that the discretion may allow the administration scheme to be flexible and responsive to a changing administrative environment, and it may enable the Government to respond to serious issues and allegations in a flexible and timely manner. Further, the Committee acknowledges that the order containing the administration scheme must be published in the NSW Government Gazette for transparency. Therefore, in the circumstances, the Committee makes no further comment.

# Part Three – Regulations without comment

# Regulations without comment

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

## 1. Administrative Decisions Review Regulation 2024

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

This Regulation makes an amendment that provides for the exclusion of certain classes of decisions from internal review, for example, a decision by the Education Minister to make a direction that a child not attend school for a specified period because there is a significant risk the student will engage in serious violent conduct.

This Regulation is made under the *Administrative Decisions Review Act 1997*. It does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

## 2. Agricultural Industry Services Regulation 2024

The object of this Regulation is to remake, with amendments, the *Agricultural Industry Services Regulation 2015*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation:

- (a) establishes Riverina Winegrape Growers as an agricultural industry services committee that is a continuation of the Wine Grapes Marketing Board
- (b) provides for the conduct of polls and elections for agricultural industry services committees
- (c) provides for other minor matters.

The regulation is made under the *Agricultural Industry Services Act 1998*, including sections 5(1)(a), 6, 32D and 51, the general regulation-making power.

The Regulation, Parts 1, 3 and 4 comprise or relate 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
- (c) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

The Regulation substantially replicates the previous instrument and makes the following minor changes:

- notice of a poll of a committee is no longer required to be published in a NSW newspaper operating in the committee's area of operations
- removal of interstate arrangements relating to the Greater Sunraysia Pest Free Area, which applies to citrus fruit, stone fruit and table grapes.

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

### 3. Apprenticeship and Traineeship Regulation 2024

The object of the Regulation is to remake, with some changes, the *Apprenticeship and Traineeship Regulation 2017*, which would otherwise be repealed on 1 September 2024 by subsection 10(2) of the *Subordinate Legislation Act 1989*.

The Regulation provides for:

- requirements for an application to establish an apprenticeship or traineeship
- particular requirements for an application lodged by an agent
- the trade vocations in which a person who is less than 21 years of age may be employed without being an apprentice or qualified tradesperson in the vocation
- record keeping requirements for employers of apprentices and trainees
- requirements for an application for recognition of qualifications or experience in a recognised trade vocation
- requirements relating to an independent competency assessment
- the form of a certificate of identification for conciliators, industry training officers and penalty notice officers
- the allowances and expenses payable to persons required to attend or to give evidence at certain hearings
- matters for which fees are payable, the amount of the fees and the circumstances in which fees may be waived, postponed or remitted
- penalty notice offences.

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 Regulation is made under section 81 of the *Apprenticeship and Traineeship Act 2001*.



The Regulation updates a provision requiring agents to retain an electronic copy of the relevant training contract and associated documents relating to an application, as opposed to a hard copy which the previous iteration required. The Regulation also increases the associated penalty for not retaining the record for 7 years or complying with the Commissioner's request to make the record available for inspection from a \$55 fine (5 penalty units) to a \$1,100 fine (100 penalty units).

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

#### 4. Photo Card Regulation 2024

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

This Regulation:

- (a) prescribes fees for the issue of a Photo Card
- (b) prescribes persons who are not liable to pay fees for the issue of a Photo Card
- (c) prescribes grounds for the cancellation of a Photo Card by Transport for NSW
- (d) provides for the surrender of a Photo Card to Transport for NSW
- (e) requires a holder of a Photo Card to give notice to Transport for NSW of changes to the holder's name or address and makes it an offence for the holder to fail to do so
- (f) prescribes a relevant purpose for which a digital Photo Card may be used by Transport for NSW
- (g) permits the release of information of a personal nature contained in the Photo Card Register for specified purposes, unless the release is not permitted under privacy legislation
- (h) prescribes circumstances when photographs provided to Transport for NSW in relation to applications for the issue of Photo Cards may be kept, used and released by Transport for NSW
- (i) provides for offences under the Photo Card Act 2005 and this Regulation that may be dealt with by a penalty notice.

This Regulation is made under section 36 of the *Photo Card Act 2005*. The amendments are of a minor nature and therefore the Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

#### 5. Private Health Facilities Regulation 2024

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

This Regulation provides for:

- (a) classes of private health facilities and the licensing standards that apply to them
- (b) fees for an application for a private health facility licence and for other purposes
- (c) the conduct of private health facilities
- (d) responding to incidents at private health facilities
- (e) other miscellaneous matters, including:
  - the disclosure of pecuniary interests in private health facilities
  - the display of private health facility licences.

This Regulation is made under the *Private Health Facilities Act 2007*.

This Regulation provides for a number of changes to the licensing scheme, however, it does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

## 6. [Scrap Metal Industry \(Transitional\) Amendment Regulation 2024](#)

The object of this Regulation is to require existing scrap metal dealers to give the Commissioner of Police the additional registration information for the registered business carried on by the scrap metal dealer by 1 December 2024. The Regulation gives the Commissioner the option of suspending the registration of the business if an existing scrap metal dealer fails to give the additional registration information.

The Regulation is made under section 28 of the *Scrap Metal Industry Act 2016* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

## 7. [Scrap Metal Industry Regulation 2024](#)

The object of this Regulation is to remake, with minor changes, the *Scrap Metal Industry Regulation 2016*, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, subsection 10(2).

This Regulation provides for:

- (a) the prescribed number of days for which a person must deal in scrap metal to give rise to the rebuttable presumption that a person is carrying on a business dealing in scrap metal
- (b) additional information in relation to a scrap metal business that the person carrying on the business is required to provide to the Commissioner of Police
- (c) the registration fee payable by persons carrying on a business dealing in scrap metal
- (d) the particulars that must be listed on a certificate of registration issued by the Commissioner of Police to a scrap metal dealer

- (e) the photo identification documents that must be used by a scrap metal dealer to record the name, residential address and date of birth of an individual who sells scrap metal to the dealer
- (f) an exemption from the requirement for scrap metal dealers to record the unique identifier of a motor vehicle if the motor vehicle has been crushed, cubed or shredded
- (g) the requirement that a scrap metal dealer must display a copy of the certificate of registration at a scrap metal yard used by the dealer
- (h) offences under the Act and this Regulation that may be dealt with by way of a penalty notice
- (i) savings and transitional matters.

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

- (a) matters of a machinery nature, 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 28 of the *Scrap Metal Industry Act 2016*.

The pertinent changes in the remake of the previous iteration expand on the prescribed registration information that must be provided for businesses to be registered. Under the Regulation, businesses must provide identification (such as a birth certificate, citizenship certificate or Australian driver licence) to the Commissioner of Police. Under the previous iteration, only the name of the manager (if any) had to be provided. The Regulation also provides for prescribed circumstances in which the Commissioner of Police may refuse, suspend or revoke registration. The Regulation also removes 'aluminium cans' as an exclusion from the definition of 'scrap metal' in section 3(1) of the *Scrap Metal Industry Act 2016*.

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

## 8. [Stocks Medicines Regulation 2024](#)

This Regulation remakes, without substantial changes, the Stock Medicines Regulation 2019, which would otherwise be repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, subsection 10(2).

This Regulation provides for:

- (a) the prescribing of certain types of stock as major food producing species
- (b) the information that must be given when supplying stock food that has been treated with a stock medicine
- (c) the records required to be kept by veterinary practitioners who prescribe, supply or use a stock medicine

- (d) the prohibiting of certain advertisements of stock medicines
- (e) the offences for which penalty notices may be issued and the amounts of the fines payable under the notices.

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 65 of the *Stock Medicines Act 1989*.

The changes in the remake of the previous iteration are minor amendments to the wording and layout of the Regulation, and therefore it 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. 22

**TIME & DATE: 3.01PM, 21 OCTOBER 2024**

**LOCATION: ROOM 1254 AND WEBEX**

### MEMBERS PRESENT

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

### APOLOGIES

Ms Higginson

### OFFICERS PRESENT

Rohan Tyler, Kate McCorquodale, Alice Zwar, Mengyuan Chen, Oliver Sinclair and Elizabeth Hawken.

### AGENDA ITEM

**1. Confirmation of minutes**

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 14 October 2024 be confirmed.

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

**3. Consideration of bills with comment for Legislation Review Digest 21/58**

Discussion ensued.

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

- a) 24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2024
- b) Residential Tenancies Amendment Bill 2024
- c) Revenue Legislation Further Amendment Bill 2024
- d) Roads and Crimes Legislation Amendment (Offences Repeal) Bill 2024
- e) Witness Protection Amendment Bill 2024

**4. Consideration of bills without comment for Legislation Review Digest 21/58**

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

- a) Creative Statement to Parliament Bill 2024
- b) Environmental Planning and Assessment Amendment (State Significant Development) Bill 2024
- c) Health Insurance Levies Amendment Bill 2024



**5. Regulations with comment for Legislation Review Digest 21/58**

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

- a) Explosives Regulation 2024
- b) Industrial Relations Amendment (Administrator) Regulation 2024

**6. Regulations without comment for Legislation Review Digest 21/58**

Resolved, on the motion of Ms Stuart: That the Committee adopts the regulations without comment as Part Three to Digest 21/58.

**7. Legislation Review Digest 21/58**

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.21/58 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. Next meeting**

The meeting adjourned at 3:08pm until 11 November 2024 at 3.00pm.