

Legislation Review Committee



PARLIAMENT OF
NEW SOUTH WALES

Legislation Review Digest



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

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Membership

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Guide to the Digest

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

Part One: Functions Regarding Bills

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

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

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

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

Trespass unduly on personal rights and liberties:

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

Insufficiently defined administrative powers:

- insufficiently defined or wide powers

Non-reviewable decisions:

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

Inappropriate delegation of legislative powers:

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

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny

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

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

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

Part Two: Functions Regarding Regulations with Comments

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

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

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

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

Part Three: Regulations without Comment

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

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

Conclusions on Bills and Regulations

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

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

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

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

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

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

Digest Snapshot

PART ONE – BILLS

[1. Energy Amendment \(Long Duration Storage and Investment\) Bill 2024](#)

No issues identified

[2. Justice Legislation Amendment \(Children\) Bill 2024](#)

No issues identified

[3. Justice Legislation Amendment \(Civil\) Bill 2024](#)

Issue Identifies	Conclusion of Committee
Delegation of statutory functions to a class of persons prescribed by regulations	Referred

[4. Prevention of Cruelty to Animals Amendment \(Puppy Farming\) Bill 2024](#)

Issue Identifies	Conclusion of Committee
Penalty notice offences and significant maximum penalties	Referred
Wide powers of delegation - Secretary or Chief Executive	No further comment
Incorporation of extrinsic materials	Referred

[5. Public Health \(Tobacco\) Amendment Bill \(No 2\) 2024](#)

Issue Identifies	Conclusion of Committee
Absolute liability offences	No further comment
Broad powers of the Secretary	Referred
Commencement by proclamation	Referred
Wide deferral of powers to regulations	Referred

[6. Return of Proceeds of Crime \(Gambling Companies\) Bill 2024*](#)

Issue Identifies	Conclusion of Committee
Wide regulation making powers with retrospective effect	Referred

[7. Statute Law \(Miscellaneous Provisions\) Bill \(No. 2\) 2024](#)

Issue Identifies	Conclusion of Committee
Statutory rule expressed to commence before publication on NSW legislation website	Referred

PART TWO – REGULATIONS WITH COMMENT

1. Bail Amendment (Electronic Monitoring) Regulation 2024

Issue Identifies	Conclusion of Committee
Privacy and property rights	No further comment

2. Crimes Amendment (Major Facilities) Regulation 2024

Issue Identifies	Conclusion of Committee
Freedom of movement, assembly, and political communication	Referred

Summary of Conclusions

PART ONE – BILLS

1. Energy Amendment (Long Duration Storage and Investment) Bill 2024

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

2. Justice Legislation Amendment (Children) Bill 2024

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

3. Justice Legislation Amendment (Civil) Bill 2024

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

Delegation of statutory functions to a class of persons prescribed by regulations

The Bill proposes to amend the *Births, Deaths and Marriages Registration Act 1995* to enable the Births Deaths and Marriages Registrar to delegate its functions under the *Births, Deaths and Marriages Registration Act 1995* and the *Relationships Register Act 2010* to Public Service employees, certain persons engaged to provide services to the Registrar, and persons prescribed by the regulations.

The Committee notes that the Bill, therefore, enables the Registrar to delegate its statutory functions to an unknown class of persons that could be prescribed by regulations. The Committee acknowledges the current limitations on the Registrar engaging contingent labour and certain IT and cybersecurity specialists.

However, the Committee generally prefers that the class of persons who may be delegated statutory functions is limited and detailed in primary legislation to provide clarity as well as greater oversight of the exercise of those Executive and public functions. In the circumstances, the Committee refers this issue to Parliament for consideration.

4. Prevention of Cruelty to Animals Amendment (Puppy Farming) Bill 2024

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

Penalty notice offences and significant maximum penalties

The Bill proposes to insert a new regime of offences into the *Prevention of Cruelty to Animals Act 1979* (the POCTA). The offences largely relate to the regulation of dog breeding, including placing a cap on the maximum number of dogs allowed on a premises, regulating dog pregnancies, creating requirements for advertising a dog for sale, and care at dog breeding premises. The maximum penalties for individuals that do not comply are significant, often including a period of imprisonment and fines of over \$100,000.

The Bill proposes that these new offences are also prescribed as penalty notice offences. The Committee notes that penalty notice offences allow an individual to pay a specified monetary amount instead of appearing before a court to have their matter heard. In this case, the penalty notice amounts are monetary compared with the maximum custodial penalty listed for the offence. The *Fines Act 1996* applies to the operation of the offences in the POCTA and allow a person to elect to pay the amount specified in the notice, instead of having their matter determined by a Court. A person charged with an offence may, therefore, feel unduly pressured to pay the notice rather than 'risk' going to trial. This may impact a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker.

The Committee acknowledges that the Bill intends to establish an offence regime with significant penalties to serve as a deterrent for unethical dog breeding and to reflect community expectations and standards. It also acknowledges that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice.

However, the maximum monetary penalties for these offences and the associated maximum custodial penalties are significant and could have an impact on a person's right to have their matter heard by an impartial decision maker. For these reasons, the Committee refers this matter to Parliament for further consideration.

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

Wide powers of delegation - Secretary or Chief Executive

The Bill seeks to insert sections 34C(1) and 34C(2) into the *Prevention of Cruelty to Animals Act 1979* (the POCTA) to make provisions for the Secretary of Regional NSW and the Departmental Chief Executive to delegate their functions under the POCTA to certain persons or 'a person prescribed by regulation'.

Therefore, the Bill may provide for a wide delegation of statutory functions to classes of unknown persons prescribed by regulation. The Committee notes that this may enable private individuals to be delegated functions under the Act that may be expected to be performed by public officials or authorities. The Committee generally prefers that the classes of person who may be delegated statutory functions are detailed in primary legislation to provide clarity as well as greater oversight of the exercise of those Executive and public functions.

However, the Committee acknowledges that having regulations provide for certain functions to be delegated may allow for more flexibility in the administration of the statutory regime. The Committee also recognises that these regulations 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.

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

Incorporation of extrinsic materials

The Bill proposes to insert a new regime of offences to the *Prevention of Cruelty to Animals Act 1979*, including a number of penalty notice offences that refer to a code of practice published by the Department of Primary Industries. The Bill seeks to insert penalty notice offences at 34AB(1) and (2), which carry maximum penalties of \$5,500 that relate to breaches of the Animal Welfare Code of Practice Breeding Dogs and Cats.

The Committee generally comments on any legislative provisions that permit the incorporation of external materials like codes of practice and gives those materials legal force. It also prefers substantive matters to be set out in legislation or published in the Gazette and tabled in Parliament as regulations, where they can be subject to disallowance and, therefore, to appropriate parliamentary scrutiny. This is particularly the case when external materials are linked to offences.

The Committee recognises that the proposed amendments are intended to reflect community expectations and standards, and that they serve as a deterrent to unethical dog breeding. The Committee also acknowledges that prescribing such information in codes of practice may enable greater flexibility and responsiveness to changing regulatory practices. However, as the external material directly relates to significant penalty notice offences, the Committee refers this matter to Parliament for consideration.

5. Public Health (Tobacco) Amendment Bill (No 2) 2024

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

Absolute liability offences

The Bill seeks to introduce new absolute liability offences into the *Public Health (Tobacco) Act 2008* for non-compliance with requirements for the retail display of tobacco price boards and for the sale of tobacco and non-tobacco smoking products by retailers or wholesalers. These offences would carry maximum penalties for an individual, ranging from \$11,000 (100 penalty units) to \$44,000 (400 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 serve as 'a greater deterrent' against the unlawful sale of tobacco products and align with community expectations. It also acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance and support enforcement efforts. Further, the Committee notes that the offences would carry monetary penalties rather than custodial penalties. For these reasons, the Committee makes no further comment.

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

Broad powers of the Secretary

The Bill seeks to insert Part 5 into the *Public Health (Tobacco) Act 2008* to replace the existing tobacco regulatory scheme with a licensing regime. Under the proposed Division 2 of Part 5, the Secretary of NSW Health (the Secretary) would have broad powers to grant, impose or vary conditions, renew, or revoke licences for the sale of tobacco and non-tobacco smoking products. When applying for a new licence or renewing a licence, applicants must provide any additional information required by the Secretary under proposed subsections 39(3)(f) and 39B(3)(d). Proposed section 39K would require the Secretary to maintain a public register of licences granted or renewed under this Part. Under proposed subsection 39K(3)(c), the Secretary may, upon request, provide information from the register to members of the public in another format.

Other than previous breaches of tobacco or vaping laws, there are no clear guidelines limiting or specifying the criteria that the Secretary should consider when making licensing decisions. The Committee notes that this broad wording may give the Secretary significant discretion in making decisions about tobacco retailing and wholesaling. Therefore, the Bill may provide insufficiently defined powers to the Secretary.

The Committee acknowledges that this broad discretion may be intended to allow flexibility and ensure the effective administration of a complex regulatory regime. However, the Committee notes that, as discussed above, applicants who fail to comply with the new licensing regime may face substantial monetary penalties and risk being barred from selling tobacco products in the future. For these reasons, the Committee refers this issue to Parliament for consideration.

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

Commencement by proclamation

The main parts of the Bill would commence by proclamation, except for Schedule 1[2] - [7], [10] and [11] and Schedule 2, which will commence on assent. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected people, particularly where the provisions would affect individual rights or obligations.

The Committee acknowledges that there may be practical reasons for allowing a flexible start date, such as to provide time to establish a new licensing regime.

However, the Committee notes that the Bill would introduce new and amended offence provisions not covered by the schedules that will commence on assent, which could significantly impact personal rights and liberties. For these reasons, the Committee refers this issue to Parliament for consideration.

Wide deferral of powers to regulations

The Bill seeks to amend the *Public Health (Tobacco) Act 2008* by deferring several significant matters to regulations, including eligibility requirements for retail and wholesale licences for tobacco and non-tobacco smoking products, standard conditions on licences, and processes for licence application, variation and revocation.

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 circumstances under this new licensing regime.

However, the Committee notes the seriousness of the provisions and, as discussed above, the significant penalties for non-compliance with the new licensing regime. For these reasons, the Committee refers this matter to Parliament for consideration.

6. Return of Proceeds of Crime (Gambling Companies) Bill 2024*

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

Wide regulation making powers with retrospective effect

The Bill proposes a general regulation-making power under proposed section 9. This would allow regulations to be made on any issue that is 'required or permitted to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.

Schedule 1 of the Bill would allow regulations to make savings or transitional provisions that are consequent to the commencement of the Bill, or another provision amending the Bill, once

enacted. It also provides that the regulations may take effect on a date earlier than the date on which the provision commences, including a date before the publication of the regulations on the NSW legislation website. The Committee acknowledges the inclusion of subclauses (5)(a) and (b), which state that a savings or transitional provision taking effect before its publication on the NSW legislation website would not adversely impact on a person's pre-existing rights, or impose liabilities for actions taken or omitted before publication.

However, as there appears to be no provisions which define or limit the terms 'necessary or convenient', the Bill may, therefore, include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation that are not required to be passed by Parliament, and that the Parliament has no control over when they commence. The Committee recognises that these kinds of regulation-making powers are not uncommon, as they may allow for more flexible regulatory responses. The Committee also notes that regulations are still subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987* (the Interpretation Act). Even so, the broad nature of the proposed general regulation making power could allow significant matters to be prescribed with minimal constraints.

The Committee also generally comments on provisions that are drafted to have retrospective effect because they impact 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 notes that this would conflict with section 39 of the Interpretation Act, which requires statutory rules to commence on the date on which they are published on the NSW legislation website, and provides that, where one or more provision of a regulation is expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date). For these reasons, the Committee refers the matter to Parliament for consideration.

7. Statute Law (Miscellaneous Provisions) Bill (No. 2) 2024

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

Statutory rule expressed to commence before publication on NSW legislation website

Schedule 6, clause 5 of the Bill would allow the Governor to make regulations containing provisions of a savings or transitional nature consequent on enactment of the proposed Act. Despite being of limited effect, the clause also provides that these regulations may take effect on a date earlier than the date on which that provision commences, including a date before the publication of those regulations on the NSW legislation website. The Committee acknowledges the inclusion of subclause (5)(3), which states that any provision that takes effect before its publication on the NSW legislation website would not adversely impact on a person's pre-existing rights, or impose liabilities for actions taken or omitted before publication.

However, the Committee notes that these provisions would conflict with section 39 of the *Interpretation Act 1987*, which requires regulations to commence on the date on which they are published on the NSW legislation website, and provides that, where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date that they are published on the website, rather than the earlier date.

The Bill's provisions that enable the retrospective commencement of regulations may make it difficult for individuals to ascertain the commencement date of regulations made under this Bill and the laws that apply to them. This is contrary to the rule of law principle that people are entitled to know the law to which they are subject at any given time. For these reasons, the Committee refers the matter to Parliament for consideration.

The Committee notes this clause is identical to Schedule 3, clause 5 of the Statute Law (Miscellaneous Provisions) Bill 2024, which the committee reported on in Digest 15/58.

PART TWO – REGULATIONS WITH COMMENT

1. Bail Amendment (Electronic Monitoring) Regulation 2024

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

Privacy and property rights

This Regulation amends Division 4 of Part 4 of the Bail Regulation 2021, which provides for matters related to the supervision, monitoring and enforcement of electronic monitoring imposed on accused persons as a bail condition for serious domestic violence offences under section 28B(4) of the *Bail Act 2013* (the Act). Clause 31G of the Regulation requires an accused person subject to an electronic monitoring condition to comply with specific requirements. Subclause 31G(2)(h) allows an authorised person to enter an accused person's residence to test and take any necessary action to ensure the effective functioning of the transmitter or related equipment. A note attached to clause 31G states that a failure of the accused person to comply with an obligation under clause 31G may be considered a breach of a bail condition under Part 8 of the Act.

The Regulation may, therefore, grant the Commissioner of Corrective Services (the Commissioner) or an authorised person broad enforcement powers, potentially affecting the accused person's privacy and property rights, by permitting entry to their residence without proper consent.

However, the Committee recognises that these provisions are intended to protect individuals, particularly women, from the risk of violence from current or former partners released on bail for alleged violent offences. The Committee also notes that only those persons authorised by the Commissioner may exercise these powers. In the circumstances, the Committee makes no further comment.

2. Crimes Amendment (Major Facilities) Regulation 2024

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

Freedom of movement, assembly, and political communication

This Regulation inserts specific metro stations, including Barangaroo, Crows Nest, Gadigal, Victoria Cross and Waterloo, into Part 1, Schedule 6 of the Crimes Regulation 2020, which expands the list of 'major facilities' under section 214A of the *Crimes Act 1900* (the Act). Section 214A of the Act makes it an offence to enter, remain on or near, climb, jump from or otherwise trespass on or block entry to any part of a major facility, if the conduct causes damage, serious disruption, obstruction or forces closure of the major facility or part of it, or causes persons attempting to use the major facility to be redirected. The maximum penalty for this offence is a fine of \$22,000 (200 penalty units) and/or 2 years imprisonment.

By expanding its scope to include certain new metro stations, this Regulation restricts certain conduct that may cause disruption at these locations, which may impact rights to freedom of movement and assembly. These rights are protected under Articles 21 and 22 of the *International Covenant on Civil and Political Rights* (the ICCPR), as well as the implied freedom of political communication under the Australian Constitution. The right to freedom of assembly protects the

freedom of individuals and groups to meet and engage in peaceful protest. However, the ICCPR recognises that derogation from these rights may be warranted in certain circumstances, including to protect public health and safety.

The Committee acknowledges that there are a number of safeguards in the Act, such as a defence of having a reasonable excuse under subsection 214A(2) and exemptions for industrial actions or obtaining prior consent under subsections 214A(3)-(6).

However, the Committee notes the significance of the penalties that can be imposed in the event of a breach of the Act, including imprisonment. The Committee further notes that the Supreme Court of New South Wales in *Kvelde v State of New South Wales*[2023] NSWSC 1560 recently found some subsections of the Act to be invalid because they infringed the implied freedom of political communication under the Australia Constitution. For these reasons, the Committee refers the matter to Parliament for consideration.



Part One – Bills

1. Energy Amendment (Long Duration Storage and Investment) Bill 2024

Date introduced	24 October 2024
House introduced	Legislative Council
Member with carriage	The Hon. Penny Sharpe MLC
Portfolio	Energy

Purpose and description

1.1 The objects of this Bill are to:

- (a) amend the *Electricity Infrastructure Investment Act 2020* (the **EII Act**) to:
 - (i) provide that the Australian Energy Regulator (the **regulator**) may only recommend the NSW renewable energy sector plan to the Minister if the regulator is satisfied the plan promotes social and economic benefits for the NSW community and economy, in addition to the current requirement that the regulator be satisfied the plan protects the financial interests of NSW electricity customers and is consistent with Australia's international trade obligations
 - (ii) provide a process for amending the plan for the NSW renewable energy sector
 - (iii) require the consumer trustee to notify the Minister of the maximum amounts set by the consumer trustee for the capital costs for the development and construction of renewable energy zone (**REZ**) network infrastructure projects
 - (iv) enable the Minister to disclose the maximum amount for the capital costs of a REZ network infrastructure project to other persons
 - (v) require persons to whom the maximum amount for the capital costs of a REZ network infrastructure project is disclosed to keep the information confidential
 - (vi) clarify that the limit imposed by the maximum amount set by the consumer trustee on the determination by the regulator of an amount that may be paid to a network operator applies only to the regulator's initial determination and not to:
 - (1) the adjustment of amounts under the determination or the regulations
 - (2) the statutory periodic review and remaking of determinations by the regulator

- (vii) set a new minimum objective for the construction of long-duration storage infrastructure with a total storage of at least 28 gigawatt hours by 31 December 2033
 - (viii) authorise particular conduct in relation to an access scheme for the purposes of the *Competition and Consumer Act 2010* of the Commonwealth (the **Commonwealth Act**), section 51(1)(b)(i) to the extent the conduct would otherwise contravene the Commonwealth Act, Part IV or the Competition Code of New South Wales
 - (ix) deal with adjustments of amounts payable to and from network operators in relation to network infrastructure projects under the regulator's determinations
 - (x) facilitate NSW modifications to the *National Electricity Rules* relating to access schemes for renewable energy zones and REZ network infrastructure projects
- (b) amend the *Energy and Utilities Administration Act 1987* (the **EUA Act**) to allow amounts to be paid out of the Energy Administration Account and into the Consolidated Fund to repay amounts that were paid into the Energy Administration Account from the Consolidated Fund.

Background

- 1.2 The Bill proposes to amend two Acts, the EII Act and the EUA Act to accommodate a transition to renewable energy and the delivery of more long-duration energy storage.
- 1.3 The Hon. Penny Sharpe MLC, Minister for Energy (the **Minister**), said that the Bill introduces 'a new 2034 minimum objective for the construction of 28 gigawatt hours of long-duration storage infrastructure by 31 December 2033' and that this 'new minimum objective is intended to provide greater certainty for investors through a clear, long-term signal.'
- 1.4 The Minister explained that legislative changes will be required to progress the implementation of the Electricity Infrastructure Roadmap and to deliver recommendations of the Electricity Supply and Reliability Check Up review into NSW's energy policies. In addition to establishing the long-duration storage objective, the Bill also proposes amendments to:
- ...strengthen consideration of social and economic benefits when reviewing the Renewable Energy Sector Board's plans; clarify the application of the maximum capital cost for renewable energy zone network infrastructure projects; provide for adjustment payments at the end of a network project's authorisation; clarify that the Australian Energy Regulator maintains its jurisdiction in respect of national electricity laws and rules, including where modified by the New South Wales Electricity Infrastructure Investment Regulation 2021; update competition authorisations; and enable the Treasurer to direct payments be made from the Energy Administration Account to the Consolidated Fund in certain circumstances.
- 1.5 The Bill proposes key amendments to the EII Act, to:

- allow amendments to be made to the NSW renewable energy sector plan as proposed by the Board or the Minister and as recommended by the regulator if it protects the financial interests of NSW electricity customers, is consistent with Australia's trade obligations and promotes economic and social benefits
- allow the Minister to disclose the maximum amount for the capital costs for development and construction of a renewable energy zone network infrastructure project and require those persons to whom the maximum amount is disclosed to keep the information confidential
- provide that an adjustment provision in a determination may provide that amounts are payable by a network operator to the scheme financial vehicle in certain circumstances and that this determination can be remade
- make modifications to the *National Electricity Rules*, including:
 - addressing the operation of civil penalties in the *National Electricity Rules* by a regulation under the EII Act
 - information sharing and the use of information by the Australian Energy Regulator
 - other matters dealt with by regulation under the EII Act.

1.6 The Bill also proposes the following key amendments to the EUA Act, to:

- provide that certain amounts may be paid out of the Energy Administration Account (the **Account**) that are required to meet expenditure incurred by the Energy Corporation of New South Wales and amounts directed by the Treasurer to be paid into the Account
- limit the circumstances where the Treasurer can direct amounts to be paid into the Account.

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*.

2. Justice Legislation Amendment (Children) Bill 2024

Date introduced	24 October 2024
House introduced	Legislative Council
Member with carriage	The Hon. John Graham MLC
Portfolio	Families and Communities, Youth Justice and Attorney General

Purpose and description

- 2.1 The object of this Bill is to make various amendments to the following Acts in the Communities and Justice portfolio—
- Child Protection (Working with Children) Amendment Act 2022*
 - Children (Community Service Orders) Act 1987*
 - Children (Criminal Proceedings) Act 1987.*

Background

- 2.2 The Bill seeks to make miscellaneous changes to three Acts relating to children, in order to clarify parts and correct minor legislative errors.
- 2.3 In his second reading speech, the Hon. John Graham MLC explained:
- 'Regularly reviewing and updating legislation is an important mechanism to ensure that laws remain fit for purpose...'
- 2.4 The key amendments proposed by the Bill are:
- Amending the *Child Protection (Working With Children) Amendment Act 2022* to clarify that if a 'relevant person' is subject to criminal proceedings outside of Australia, they only need to notify the Children's Guardian if the proceedings relate to a 'prescribed offence'. This is a change from requiring notification of any offence to the Children's Guardian
 - Amending the *Children (Community Service Orders) Act 1987* and *Children (Criminal Proceedings) Act 1987* to clarify that the Children's Court has discretion to take no action in relation to particular breaches under those Acts.

Issues considered by the Committee

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

3. Justice Legislation Amendment (Civil) Bill 2024

Date introduced	23 October 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

3.1 The object of this Bill is to make various amendments to the following Acts in the Communities and Justice portfolio:

- a) *Births, Deaths and Marriages Registration Act 1995*,
- b) *Land and Environment Court Act 1979*,
- c) *Legal Profession Uniform Law Application Act 2014*,
- d) *Modern Slavery Act 2018*,
- e) *Police Act 1990*,
- f) *Powers of Attorney Act 2003*, and
- g) *Status of Children Act 1996*.

Background

3.2 In his second reading speech, Dr Hugh McDermott MP, on behalf of the Attorney General, noted that the amendments proposed by the Bill would:

...improve court and legal processes and ensure operational efficiency, improve and clarify government processes and functions, and clarify the regulation-making power of the *Legal Profession Uniform Law Application Act 2014*.

3.3 The Bill seeks to amend the following seven Acts:

The *Births, Deaths and Marriages Registration Act 1995*, to:

- enable the Registrar of Births, Deaths and Marriages (the **Registrar**) to engage persons under a contract to provide services to the Registrar
- allow the Registrar to delegate certain functions to Public Service employees, certain persons engaged to provide services to the Registrar and persons prescribed by the regulations.

- The *Land and Environment Court Act 1979*, to confer jurisdiction on the Land and Environment Court in relation to the forfeiture of chemical substances and containers of chemical substances to the Crown.
- The *Legal Profession Uniform Law Application Act 2014*, to allow regulations to be made relating to costs orders made under section 303 of the Legal Profession Uniform Law (NSW).
- The *Modern Slavery Act 2018*, to allow reports of the Anti-Slavery Commissioner to be tabled with the Clerk of a House of Parliament instead of the Presiding Officer of the House if the House is not sitting.
- The *Police Act 1990*, to clarify that a New Zealand citizen who resides in Australia on a special category visa is eligible to be appointed as a member of the NSW Police Force.
- The *Powers of Attorney Act 2003*, to clarify that an interstate enduring power of attorney includes an instrument made in another State or Territory in the nature of an enduring power of attorney, however described.
- The *Status of Children Act 1996*, to update a reference to the Registrar of Births, Deaths and Marriages to remove a reference to the repealed *Public Sector Management Act 1988*.

Issues considered by the Committee

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

Delegation of statutory functions to a class of persons prescribed by regulations

3.4 Schedule 1[3] of the Bill proposes to amend the *Births, Deaths and Marriages Registration Act 1995* (the **Act**) by replacing subsection 8(3), which would allow the Births Deaths and Marriages Registrar (the **Registrar**) to delegate its functions under the Act and the *Relationships Register Act 2010* to:

- Public Service employees,
- certain persons engaged to provide services to the Registrar, and
- persons prescribed by the regulations.

3.5 The Registrar's general functions under the Act are to:

- establish and maintain the registers necessary for the purposes of the Act and the *Relationships Register Act 2010*
- maintain the integrity of the Register and to seek to prevent identity fraud associated with the Register and the information extracted from the Register
- administer the registration system established by the Act and ensure that the system operates efficiently, effectively and economically
- ensure that the Act is administered in the way best calculated to achieve its objects.

- 3.6 In his second reading speech, Dr McDermott noted that the Registrar cannot currently 'engage contingent labour, because even data entry and administrative functions are performed under delegation'. In addition, the Registrar is restricted 'from engaging certain IT and cybersecurity specialists under contract if their work requires delegations in relation to the registry's core IT system'.

The Bill proposes to amend the *Births, Deaths and Marriages Registration Act 1995* to enable the Births Deaths and Marriages Registrar to delegate its functions under the *Births, Deaths and Marriages Registration Act 1995* and the *Relationships Register Act 2010* to Public Service employees, certain persons engaged to provide services to the Registrar, and persons prescribed by the regulations.

The Committee notes that the Bill, therefore, enables the Registrar to delegate its statutory functions to an unknown class of persons that could be prescribed by regulations. The Committee acknowledges the current limitations on the Registrar engaging contingent labour and certain IT and cybersecurity specialists.

However, the Committee generally prefers that the class of persons who may be delegated statutory functions is limited and detailed in primary legislation to provide clarity as well as greater oversight of the exercise of those Executive and public functions. In the circumstances, the Committee refers this issue to Parliament for consideration.

4. Prevention of Cruelty to Animals Amendment (Puppy Farming) Bill 2024

Date introduced	24 October 2024
House introduced	Legislative Council
Member with carriage	The Hon. Tara Moriarty MLC
Portfolio	Agriculture

Purpose and description

4.1 The object of this Bill is to amend the following legislation to provide for a regulatory framework for dog breeding and the advertising of dogs to be sold, given away or otherwise transferred:

- (a) the *Prevention of Cruelty to Animals Act 1979*
- (b) the *Companion Animals Act 1998*
- (c) the *Prevention of Cruelty to Animals Regulation 2012*
- (d) the *Companion Animals Regulation 2018*.

Background

4.2 The Bill proposes amendments to various Acts to expand the regulatory and enforcement framework for dog breeding or 'puppy farming' in the State.

4.3 In her second reading speech, the Hon. Tara Moriarty MLC, Minister for Agriculture (the **Minister**), explained that the Bill seeks to address strong community sentiment in favour of ethical dog breeding, while still balancing 'regulatory burdens on breeders and stakeholders' through 'sensible and realistic animal welfare standards.'

4.4 The Bill proposes the following major amendments to:

- the *Prevention of Cruelty to Animals Act 1979* (the **POCTA**) to:
 - insert definitions and make minor clarifying amendments
 - limit dog breeding facilities to housing a maximum of 20 adult female dogs at a time
 - require any person in charge of a dog that becomes pregnant to register for a Breeder Identification Number (**BIN**)
 - set a lifetime breeding cap for dogs who have had a certain number of pregnancies and deliveries

- require a minimum number of staff to be present at a dog breeding facility
- require all advertisements and sales of dogs to include information about the dog and breeder
- insert a series of offences and penalty notice offences reflecting the above changes
- specify a staged commencement of these changes to allow for a transition to the new regulatory regime
- allow the Secretary of Regional NSW (the **Secretary**) or Chief Executive to delegate their powers under the Act
- the Prevention of Cruelty to Animals Regulation 2012 to:
 - require breeders to follow a standard code of practice
 - insert penalty notice offences relating to the new regulatory framework
- the *Companion Animals Act 1998* and Companion Animals Regulation 2018 to:
 - establish the BIN framework, including applications for a BIN, BINS for rehoming organisations, and conditions of a BIN
 - insert penalty notice offences relating to the new regulatory framework.

Issues considered by the Committee

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

Penalty notice offences and significant maximum penalties

4.5 The Bill proposes to insert a number of new offences into the POCTA. Many of these offences carry a significant maximum penalty for individuals, including imprisonment, along with being prescribed as penalty notice offences. These new offences include:

- An occupier of dog premises must not keep more than 20 female adult dogs on the premises (proposed section 23D(1)), which carries a penalty of \$110,000 (1,000 penalty units) or 2 years imprisonment, or both for an individual
- A person in charge of an adult dog must not intentionally allow the dog to become pregnant unless the person has been allocated a BIN (proposed section 23E(1)), which carries a penalty of \$11,000 (100 penalty units) or 6 months imprisonment, or both for an individual
- If a female adult dog is pregnant and the person in charge does not have a BIN, they must apply for a BIN within the earlier of the following days: 14 days of becoming aware of the dog's pregnancy, or 7 days after the dog gives birth (proposed section 23G(2)), which carries a penalty of \$11,000 (100 penalty units) or 6 months imprisonment, or both for an individual

- A person in charge of an adult female dog must not allow the dog to become pregnant if the dog has had the maximum number of deliveries (proposed section 23H(1)), which carries a penalty of \$110,000 (1,000 penalty units) or 2 years imprisonment, or both for an individual
- A person in charge of an adult female dog that has had a delivery must record that delivery within 14 days (proposed section 23H(2)), which carries a penalty of \$11,000 (100 penalty units) for an individual
- The occupier of a dog breeding premises must ensure the minimum number of staff members and that each dog receives proper care (proposed section 23I(2)), which carries a penalty of \$44,000 (400 penalty units) for an individual
- A person must not advertise a dog for sale without including the identification information of the dog (proposed section 23L(1)), which carries with a penalty of \$16,500 (150 penalty units) or 6 months imprisonment, or both for an individual
- A person selling a dog must provide the dog's identification information to the buyer at the time of sale (proposed section 23L(2)), which carries a penalty of \$16,500 (150 penalty units) or 6 months imprisonment, or both for an individual.

4.6 Penalty notice offences are issued by an inspector and are provided for by section 33E of the POCTA. Subsection 33E(3) clarifies that the *Fines Act 1996* applies and that, should a person issued with a penalty notice offence not wish to have their matter determined by a Court, they may pay the amount specified in the notice and not be liable to further proceedings for that alleged offence.

4.7 In her second reading speech, the Minister explained that the penalty offences:

...are designed to deter illegal and unethical breeding practices by providing strong incentives to comply.

Further, the Minister stated that the amendments proposed by the Bill 'address the critical gaps in our current regulatory framework and aligns with the expectations of the community.'

The Bill proposes to insert a new regime of offences into the *Prevention of Cruelty to Animals Act 1979* (the POCTA). The offences largely relate to the regulation of dog breeding, including placing a cap on the maximum number of dogs allowed on a premises, regulating dog pregnancies, creating requirements for advertising a dog for sale, and care at dog breeding premises. The maximum penalties for individuals that do not comply are significant, often including a period of imprisonment and fines of over \$100,000.

The Bill proposes that these new offences are also prescribed as penalty notice offences. The Committee notes that penalty notice offences allow an individual to pay a specified monetary amount instead of appearing before a court to have their matter heard. In this case, the penalty notice amounts are monetary compared with the maximum custodial penalty listed for the offence. The *Fines Act 1996* applies to the operation of the offences in the POCTA and allow a person to elect to pay the amount specified in the notice, instead of having their matter determined by a

Court. A person charged with an offence may, therefore, feel unduly pressured to pay the notice rather than 'risk' going to trial. This may impact a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker.

The Committee acknowledges that the Bill intends to establish an offence regime with significant penalties to serve as a deterrent for unethical dog breeding and to reflect community expectations and standards. It also acknowledges that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice.

However, the maximum monetary penalties for these offences and the associated maximum custodial penalties are significant and could have an impact on a person's right to have their matter heard by an impartial decision maker. For these reasons, the Committee refers this matter to Parliament for further consideration.

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

Wide powers of delegation - Secretary or Chief Executive

- 4.8 The Bill proposes to insert section 34C(1) into the POCTA, which would allow the Secretary to delegate any of their functions under the POCTA to a person employed by the Department, or a person prescribed by regulation.
- 4.9 The Bill similarly proposes the insertion of section 34C(2), which would allow the Departmental Chief Executive to delegate their functions under the POCTA to any person employed in the Office of Local Government, or a person prescribed by regulation.

The Bill seeks to insert sections 34C(1) and 34C(2) into the *Prevention of Cruelty to Animals Act 1979* (the POCTA) to make provisions for the Secretary of Regional NSW and the Departmental Chief Executive to delegate their functions under the POCTA to certain persons or 'a person prescribed by regulation'.

Therefore, the Bill may provide for a wide delegation of statutory functions to classes of unknown persons prescribed by regulation. The Committee notes that this may enable private individuals to be delegated functions under the Act that may be expected to be performed by public officials or authorities. The Committee generally prefers that the classes of person who may be delegated statutory functions are detailed in primary legislation to provide clarity as well as greater oversight of the exercise of those Executive and public functions.

However, the Committee acknowledges that having regulations provide for certain functions to be delegated may allow for more flexibility in the administration of the statutory regime. The Committee also recognises that these regulations 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.

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

Incorporation of extrinsic materials

4.10 The Bill proposes to insert a number of new penalty notice offences into the POCTA. Two of these new offences rely on compliance with a 'breeding code of practice'. Those offences are as follows:

- A person with a BIN must follow the breeding code of practice (proposed section 34AB(1)), which carries a penalty of \$5,500 (50 penalty units) for an individual
- The occupier of a dog breeding premises must take all reasonable steps to ensure their staff follow the breeding code of practice (proposed section 34AB(2)), which carries a penalty of \$5,500 (50 penalty units) for an individual.

4.11 The 'breeding code of practice' referred to at offences 34AB(1) and (2) is clarified at proposed section 39C as a particular publication of the Department of Primary Industries.

The Bill proposes to insert a new regime of offences to the *Prevention of Cruelty to Animals Act 1979*, including a number of penalty notice offences that refer to a code of practice published by the Department of Primary Industries. The Bill seeks to insert penalty notice offences at 34AB(1) and (2), which carry maximum penalties of \$5,500 that relate to breaches of the Animal Welfare Code of Practice Breeding Dogs and Cats.

The Committee generally comments on any legislative provisions that permit the incorporation of external materials like codes of practice and gives those materials legal force. It also prefers substantive matters to be set out in legislation or published in the Gazette and tabled in Parliament as regulations, where they can be subject to disallowance and, therefore, to appropriate parliamentary scrutiny. This is particularly the case when external materials are linked to offences.

The Committee recognises that the proposed amendments are intended to reflect community expectations and standards, and that they serve as a deterrent to unethical dog breeding. The Committee also acknowledges that prescribing such information in codes of practice may enable greater flexibility and responsiveness to changing regulatory practices. However, as the external material directly relates to significant penalty notice offences, the Committee refers this matter to Parliament for consideration.

5. Public Health (Tobacco) Amendment Bill (No 2) 2024

Date introduced	24 October 2024
House introduced	Legislative Assembly
Member with carriage	The Hon. Ryan Park MP
Portfolio	Health

Purpose and description

5.1 The objects of this Bill are as follows:

- (a) to amend the *Public Health (Tobacco) Act 2008* (the **Act**) to:
 - (i) establish a licensing scheme to regulate the sale of tobacco products and non-tobacco smoking products by retail and wholesale, and
 - (ii) provide for clearer offences relating to the display of prices and brands of tobacco products and non-tobacco smoking products and to increase penalties for particular offences,
- (b) to make consequential amendments to the *Public Health (Tobacco) Regulation 2022*.

Background

5.2 Building on a recently introduced bill regarding vaping goods (*Public Health (Tobacco) Amendment Bill (No 1) 2024*, which the Committee reported on in Digest No. 20/58¹), this Bill proposes a licensing scheme for businesses that intend to sell tobacco and non-tobacco smoking products and seeks to increase penalties for certain existing tobacco-related offences.

5.3 In his second reading speech, the Hon. Ryan Park MP, Minister for Health, noted that the Bill would be:

...a direct response to these community expectations regarding the need to tackle the trade in illicit tobacco and ensure robust enforcement of tobacco retailing laws.

5.4 The Minister stated that these changes would 'provide a greater deterrent' against unlawful tobacco sale and 'protect the community from the harms of illicit tobacco', aligning New South Wales with other Australian States and Territories.

¹ Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 20/58](#), 15 October 2024

5.5 The key amendments proposed by the Bill are:

- replacing the current notification scheme with a new licensing regime for both tobacco retailers and wholesalers
- streamlining the application process and introducing an annual licence renewal requirement
- introducing offences for the sale or acquisition of tobacco and non-tobacco smoking products without a licence
- creating a standalone offence for improper retail display of tobacco price boards
- increasing penalties for existing tobacco-related offences, including for selling tobacco products without required health warnings, selling to minors, and obstructing or impersonating inspectors.

Issues considered by the Committee

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

Absolute liability offences

5.6 The Bill seeks to introduce new absolute liability offences into the Act, including for:

- displaying the retail prices or names of tobacco products in a way that can be seen from public places, which carries a maximum penalty of \$11,000 (100 penalty units) for an individual (proposed section 16E)
- selling tobacco or non-tobacco smoking products by retail or wholesale in breach of the Act, regulations, or licence conditions, which carries a maximum penalty of \$44,000 (400 penalty units) for an individual (proposed sections 37 and 38).

5.7 In his second reading speech, the Minister explained that these proposed amendments would 'better facilitate compliance activity'.

The Bill seeks to introduce new absolute liability offences into the *Public Health (Tobacco) Act 2008* for non-compliance with requirements for the retail display of tobacco price boards and for the sale of tobacco and non-tobacco smoking products by retailers or wholesalers. These offences would carry maximum penalties for an individual, ranging from \$11,000 (100 penalty units) to \$44,000 (400 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 serve as 'a greater deterrent' against the unlawful sale of tobacco products and align with community expectations. It also acknowledges that absolute liability offences are not uncommon in regulatory frameworks to encourage compliance and support enforcement efforts. Further, the Committee notes that the offences would carry monetary penalties

rather than custodial penalties. For these reasons, the Committee makes no further comment.

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

Broad powers of the Secretary

- 5.8 Part 5 of the Bill seeks to replace the existing restrictions and offences related to tobacco retailing with a licensing regime to regulate the sale of tobacco and non-tobacco smoking products for retail and wholesale.
- 5.9 Under proposed Division 2 of Part 5 of the Bill, the Secretary of NSW Health (the **Secretary**) would have broad powers to grant, renew, or revoke licences, along with imposing or varying licencing conditions for selling tobacco and non-tobacco smoking products.
- 5.10 When applying for, or renewing a licence, under proposed subsections 39(3)(f) and 39B(3)(d), applicants must include any information required by the Secretary.
- 5.11 When deciding an application for a new licence or a licence renewal, proposed sections 39A and 39C would allow the Secretary to refuse the application if the applicant has:
- previous convictions relating to the sale or supply of tobacco or vaping products under the tobacco or vaping laws of New South Wales or another jurisdiction,
 - provided false or misleading information,
 - breached licence conditions, or
 - another ground prescribed by the regulations.
- 5.12 Similarly, proposed subsection 39G would allow the Secretary to revoke a licence on similar grounds.
- 5.13 Proposed section 39K would require the Secretary to maintain a public register of licences granted or renewed under this Part.
- 5.14 Under proposed subsection 39K(3)(c), the Secretary may, upon request, provide information from the register of licences to members of the public in another format.

The Bill seeks to insert Part 5 into the *Public Health (Tobacco) Act 2008* to replace the existing tobacco regulatory scheme with a licensing regime. Under the proposed Division 2 of Part 5, the Secretary of NSW Health (the Secretary) would have broad powers to grant, impose or vary conditions, renew, or revoke licences for the sale of tobacco and non-tobacco smoking products. When applying for a new licence or renewing a licence, applicants must provide any additional information required by the Secretary under proposed subsections 39(3)(f) and 39B(3)(d). Proposed section 39K would require the Secretary to maintain a public register of licences granted or renewed under this Part. Under proposed

subsection 39K(3)(c), the Secretary may, upon request, provide information from the register to members of the public in another format.

Other than previous breaches of tobacco or vaping laws, there are no clear guidelines limiting or specifying the criteria that the Secretary should consider when making licensing decisions. The Committee notes that this broad wording may give the Secretary significant discretion in making decisions about tobacco retailing and wholesaling. Therefore, the Bill may provide insufficiently defined powers to the Secretary.

The Committee acknowledges that this broad discretion may be intended to allow flexibility and ensure the effective administration of a complex regulatory regime. However, the Committee notes that, as discussed above, applicants who fail to comply with the new licensing regime may face substantial monetary penalties and risk being barred from selling tobacco products in the future. For these reasons, the Committee refers this issue to Parliament for consideration.

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

Commencement by proclamation

- 5.15 Clause 2 of the Bill provides that, the Bill would commence 'on a day or days to be appointed by proclamation', except for Schedule 1[2] - [7], [10] and [11] and Schedule 2, which will commence on assent.

The main parts of the Bill would commence by proclamation, except for Schedule 1[2] - [7], [10] and [11] and Schedule 2, which will commence on assent. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected people, particularly where the provisions would affect individual rights or obligations.

The Committee acknowledges that there may be practical reasons for allowing a flexible start date, such as to provide time to establish a new licensing regime.

However, the Committee notes that the Bill would introduce new and amended offence provisions not covered by the schedules that will commence on assent, which could significantly impact personal rights and liberties. For these reasons, the Committee refers this issue to Parliament for consideration.

Wide deferral of powers to regulations

- 5.16 The Bill proposes to defer the following powers to regulations:
- setting eligibility requirements for retail and wholesale licences (proposed subsection 58(1)(l))
 - prescribing standard conditions on licences (proposed subsections 36(2)) and 58(1)(m))
 - managing the imposition, variation and revocation of standard conditions on retail or wholesale licences (proposed subsection 58(1)(n))

- specifying the renewal process for retail or wholesale licences (proposed subsection 58(1)(o))
- outlining requirements for keeping, publishing, inspecting and sharing documents or information relating to retail or wholesale licences (proposed subsection 58(1)(r))
- providing for the monitoring and enforcement of compliance with Part 5 regarding restrictions on tobacco retailing (proposed subsection 58(1)(s))
- establishing procedures for reviewing decisions under Part 5 on tobacco retailing restrictions (proposed subsection 58(1)(t)).

The Bill seeks to amend the *Public Health (Tobacco) Act 2008* by deferring several significant matters to regulations, including eligibility requirements for retail and wholesale licences for tobacco and non-tobacco smoking products, standard conditions on licences, and processes for licence application, variation and revocation.

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 circumstances under this new licensing regime.

However, the Committee notes the seriousness of the provisions and, as discussed above, the significant penalties for non-compliance with the new licensing regime. For these reasons, the Committee refers this matter to Parliament for consideration.

6. Return of Proceeds of Crime (Gambling Companies) Bill 2024*

Date introduced	24 October 2024
House introduced	Legislative Assembly
Member with carriage	Mrs Helen Dalton MP
	*Private Members Bill

Purpose and description

- 6.1 The objects of this Bill are to:
- (a) make it an offence for a gambling business to allow use of its gambling services to be paid for with stolen money or to fail to report that use, and
 - (b) require a court to make orders to compensate a person whose money was stolen and used to access gambling services.

Background

- 6.2 The Bill seeks to require gambling companies to report to the Commissioner of Police (the **Commissioner**) if they suspect a person is using illegally obtained money to pay for gambling services. It also seeks to allow the Supreme Court to make compensation orders if a gambling company provides gambling services to a person whom it suspects has used illegal money.
- 6.3 In her second reading speech, Ms Helen Dalton MP stated the Bill would change NSW gambling laws to return the proceeds of crime held by gambling companies to the victims, which would align partly with a Federal bill tabled by Federal Independent Member Mr Andrew Wilkie MP.
- 6.4 The Bill's key provisions are:
- requiring gambling businesses to refuse service to anyone suspected of using stolen money
 - requiring gambling businesses to report suspicious gambling activities to the Commissioner
 - establishing offences for suspicious gambling with a maximum penalty of \$10 million
 - allowing courts to make compensation orders related to suspicious gambling activities.

Issues considered by the Committee

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

Wide regulation making powers with retrospective effect

- 6.5 The Bill proposes a general regulation-making power under section 9. This section would allow the regulations to address any issue that is 'required or permitted to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill, if enacted.
- 6.6 Schedule 1 of the Bill would give the regulations power to make savings, transitional and other provisions. Subclauses 1(4) and 1(5) would then allow a savings or transitional provision that is made as a result of the commencement of a provision, to take effect before that provision has commenced, including before publication of the regulation on the NSW legislation website.
- 6.7 Proposed subclause 1(5) further specifies that any savings or transitional provision taking effect before publication would not adversely affect a person's pre-existing rights, or impose liabilities for actions taken or omitted before publication.
- 6.8 Subsection 39(1) of the *Interpretation Act 1987* (the **Interpretation Act**) requires that a statutory rule (which includes regulations) must be published on the NSW legislation website and take effect on the date of publication, or on a later specified date. Further, subsection 39(2A) of the Interpretation Act clarifies that a statutory rule is not invalid if it is expressed to commence (wholly or partly) before the publication date and is instead taken to commence on the date of publication rather than the earlier stated date.

The Bill proposes a general regulation-making power under proposed section 9. This would allow regulations to be made on any issue that is 'required or permitted to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.

Schedule 1 of the Bill would allow regulations to make savings or transitional provisions that are consequent to the commencement of the Bill, or another provision amending the Bill, once enacted. It also provides that the regulations may take effect on a date earlier than the date on which the provision commences, including a date before the publication of the regulations on the NSW legislation website. The Committee acknowledges the inclusion of subclauses (5)(a) and (b), which state that a savings or transitional provision taking effect before its publication on the NSW legislation website would not adversely impact on a person's pre-existing rights, or impose liabilities for actions taken or omitted before publication.

However, as there appears to be no provisions which define or limit the terms 'necessary or convenient', the Bill may, therefore, include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation that are not required to be passed by Parliament, and that the Parliament has no control over when they commence. The Committee recognises that these kinds of regulation-making powers are not uncommon, as they may allow for more flexible regulatory

responses. The Committee also notes that regulations are still subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987* (the Interpretation Act). Even so, the broad nature of the proposed general regulation making power could allow significant matters to be prescribed with minimal constraints.

The Committee also generally comments on provisions that are drafted to have retrospective effect because they impact 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 notes that this would conflict with section 39 of the Interpretation Act, which requires statutory rules to commence on the date on which they are published on the NSW legislation website, and provides that, where one or more provision of a regulation is expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date). For these reasons, the Committee refers the matter to Parliament for consideration.

7. Statute Law (Miscellaneous Provisions) Bill (No. 2) 2024

Date introduced	24 October 2024
House introduced	Legislative Council
Member with carriage	The Hon John Graham, MLC
Portfolio	Special Minister of State

Purpose and description

- 7.1 The objects of the Bill are to:
- (a) make minor amendments to various Acts and instruments (Schedule 1)
 - (b) make minor amendments to certain Acts and instruments for the purpose of effecting statute law revision (Schedule 2)
 - (c) make amendments to certain Acts to remove references to the Government Printer and Government Printing Office (Schedule 3)
 - (d) make amendments to certain Acts and instruments to replace references to the *Impounding Act 1993* with references to the *Public Spaces (Unattended Property) Act 2021* (Schedule 4)
 - (e) repeal various Acts and a provision of an Act (Schedule 5)
 - (f) make other provisions of a consequential or ancillary nature (Schedule 6).

Background

- 7.2 In his second reading speech, the Hon. John Graham MLC, Special Minister of State, noted that the Bill '...continues the Statute Law Revision program which has been in place for 40 years.' He said that statute law revision bills:

... are an effective method for making minor policy changes. They are also significant in maintaining the quality of the New South Wales statute book.

- 7.3 The Statement of Public Interest tabled with the Bill similarly indicated that the Statute Law Revision program ensures '...that the NSW statute book remains current and accurate.'

- 7.4 The Bill seeks to amend a number of unrelated Acts and regulations which are grouped into schedules according to the nature of the specific amendments. The Minister outlined the content of each schedule as follows:

- Schedule 1 contains 'minor and uncontroversial' policy changes to 16 Acts and one regulation
- Schedule 2 contains 'minor technical changes to legislation', including '...amendments to correct typographical errors, correct provision numbering and omit redundant provisions'
- Schedule 3 removes references to the Government Printer (which was closed in 1989) across the statute book. It replaces those references with a requirement to publish on the Government Gazette and the New South Wales legislation website, as appropriate
- Schedule 4 amends 11 Acts and regulations to remove references to the *Impounding Act 1993*, which was replaced by the *Public Spaces (Unattended Property) Act 2021*. It replaces the references '...to ensure the correct legislation and provisions are referred to across the statute book'
- Schedule 5 '...repeals redundant legislation and provisions...' and '...repeal[s] previous statute law Acts from 2019 to 2023 that have since fully commenced'
- Schedule 6 contains '...general savings provisions, transitional provisions and other provisions', including a provision which allows regulations to be made that are of a savings or transitional nature.

Issues considered by the Committee

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

Statutory rule expressed to commence before publication on NSW legislation website

- 7.5 Schedule 6, subclause 5(1) of the Bill provides that the Governor may make regulations with provisions of a savings or transitional nature, consequent on the enactment of the proposed Act. Further, subclause 5(2) states that, if the regulations provide, those provisions may take effect from the date of assent of the Bill as an Act, or on a later date.
- 7.6 Subclause 5(3) would limit the effect of provisions that take effect from a date prior to the relevant regulation being published on the NSW legislation website. Specifically, it would prevent those provisions operating in a way that would prejudicially impact any pre-existing rights of a person or impose liabilities on a person in respect to actions or omissions prior to publication.
- 7.7 Subsection 39(1) of the *Interpretation Act 1987* (the **Interpretation Act**) requires that statutory rules, including regulations, must be published on the NSW legislation website and take effect on the date of publication or on a later specified date. Further, subsection 39(2A) of the Interpretation Act clarifies that a statutory rule is not invalid if it is expressed to commence (wholly or partly) before the publication date and is instead taken to commence on the date of publication rather than the earlier stated date.

Schedule 6, clause 5 of the Bill would allow the Governor to make regulations containing provisions of a savings or transitional nature consequent on enactment of the proposed Act. Despite being of limited effect, the clause also provides that these regulations may take effect on

a date earlier than the date on which that provision commences, including a date before the publication of those regulations on the NSW legislation website. The Committee acknowledges the inclusion of subclause (5)(3), which states that any provision that takes effect before its publication on the NSW legislation website would not adversely impact on a person's pre-existing rights, or impose liabilities for actions taken or omitted before publication.

However, the Committee notes that these provisions would conflict with section 39 of the *Interpretation Act 1987*, which requires regulations to commence on the date on which they are published on the NSW legislation website, and provides that, where one or more provisions of a regulation are expressed to commence before publication, they are taken to commence on the date that they are published on the website, rather than the earlier date.

The Bill's provisions that enable the retrospective commencement of regulations may make it difficult for individuals to ascertain the commencement date of regulations made under this Bill and the laws that apply to them. This is contrary to the rule of law principle that people are entitled to know the law to which they are subject at any given time. For these reasons, the Committee refers the matter to Parliament for consideration.

The Committee notes this clause is identical to Schedule 3, clause 5 of the Statute Law (Miscellaneous Provisions) Bill 2024, which the committee reported on in Digest 15/58.²

² Legislation Review Committee, [Legislation Review Digest](#), Digest 15/58, Parliament of New South Wales, 18 June 2024, pp 70-71.

Part Two – Regulations with comment

1. Bail Amendment (Electronic Monitoring) Regulation 2024

Date tabled	LA: 15 October 2024 LC: 15 October 2024
Disallowance date	LA: TBC 2025 LC: TBC 2025
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

- 1.1 The object of this Regulation is to amend the Bail Regulation 2021 (the **Principal Regulation**) to prescribe matters relating to the supervision, monitoring and enforcement of electronic monitoring imposed as a bail condition on a person accused of a serious domestic violence offence.
- 1.2 This Regulation is made under the *Bail Act 2013* (the **Act**), including sections 28B(4) and 98(1), 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

Privacy and property rights

- 1.3 This Regulation makes substantial amendments to the Principal Regulation in relation to electronic monitoring as a bail condition. The Regulation amends Division 4 of Part 4, which provides for matters related to the supervision, monitoring and enforcement of electronic monitoring imposed on accused persons as a bail condition for serious domestic violence offences under section 28B(4) of the Act.
- 1.4 Clause 31G of the Regulation requires that an accused person subject to an electronic monitoring condition must allow an authorised person to fit an electronic monitoring transmitter to them, and that they comply with certain additional requirements.
- 1.5 One of the requirements under subclause 31G(2)(h) specifies that an accused person must follow reasonable directions about the transmitter or related equipment from the Commissioner of Corrective Services (the **Commissioner**), or an authorised person. This requirement includes allowing the authorised person to enter the accused person's residence to test and take any necessary actions to ensure the effective functioning of the transmitter or related equipment.
- 1.6 Under clause 31A of the Regulation, an 'authorised person' means a person authorised by the Commissioner for the purposes of this Division.

- 1.7 A note attached to clause 31G states that if an accused person fails to meet their obligations under clause 31G, non-compliance may be treated as a breach of a bail condition under Part 8 of the Act.

This Regulation amends Division 4 of Part 4 of the Bail Regulation 2021, which provides for matters related to the supervision, monitoring and enforcement of electronic monitoring imposed on accused persons as a bail condition for serious domestic violence offences under section 28B(4) of the *Bail Act 2013* (the Act). Clause 31G of the Regulation requires an accused person subject to an electronic monitoring condition to comply with specific requirements. Subclause 31G(2)(h) allows an authorised person to enter an accused person's residence to test and take any necessary action to ensure the effective functioning of the transmitter or related equipment. A note attached to clause 31G states that a failure of the accused person to comply with an obligation under clause 31G may be considered a breach of a bail condition under Part 8 of the Act.

The Regulation may, therefore, grant the Commissioner of Corrective Services (the Commissioner) or an authorised person broad enforcement powers, potentially affecting the accused person's privacy and property rights, by permitting entry to their residence without proper consent.

However, the Committee recognises that these provisions are intended to protect individuals, particularly women, from the risk of violence from current or former partners released on bail for alleged violent offences. The Committee also notes that only those persons authorised by the Commissioner may exercise these powers. In the circumstances, the Committee makes no further comment.

2. Crimes Amendment (Major Facilities) Regulation 2024

Date tabled	LA: 15 October 2024 LC: 15 October 2024
Disallowance date	LA: TBC 2025 LC: TBC 2025
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

Purpose and description

- 2.1 The object of this Regulation is to amend the Crimes Regulation 2020 (the **Principal Regulation**) to prescribe certain metro stations to be major facilities for the *Crimes Act 1900* (the **Act**), section 214A. Section 214A creates offences in relation to persons damaging or disrupting major facilities.
- 2.2 This Regulation is made under the Act, including sections 214A(7), definition of 'major facility', paragraph (a) and 582, 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

Freedom of movement, assembly, and political communication

- 2.3 This Regulation inserts specific metro stations, including Barangaroo, Crows Nest, Gadigal, Victoria Cross and Waterloo, into Part 1, Schedule 6 of the Principal Regulation, which expands the list of places classified as a 'major facility' under section 214A of the Act.
- 2.4 Section 214A of the Act makes it an offence to enter, remain on or near, climb, jump from or otherwise trespass on or block entry to any part of a major facility, if that conduct:
- (a) causes damage to the major facility,
 - (b) seriously disrupts or obstructs persons trying to use the major facility,
 - (c) causes the closure of the major facility, or part of it, or
 - (d) causes persons attempting to use the major facility to be redirected.
- 2.5 The maximum penalty for this offence is a fine of \$22,000 (200 penalty units) and/or 2 years imprisonment.

- 2.6 A 'major facility' is defined in subsection 214A(7) of the Act, which includes a railway station or other public transport facility prescribed by the regulations.
- 2.7 Subsection 214A(2) provides a defence to this offence if a person has a reasonable excuse for their conduct.
- 2.8 Section 214A also specifies it is not an offence under this section, if the conduct:
- is part of industrial action, an industrial dispute or an industrial campaign (subsection 214A(3))
 - occurs at the person's workplace or at a workplace owned, occupied, operated or used by their employer (subsection 214A(4))
 - relates to Parliament House or an office of a Member of Parliament (subsection 214A(5)), or
 - is carried out with the consent or authority of the NSW Police Force, another public authority, or the owner or operator of a privately owned major facility (subsection 214A(6)).
- 2.9 On 13 December 2023, the Supreme Court of New South Wales in *Kvelde v State of New South Wales*[2023] NSWSC 1560³ declared that section 214A(1)(c) is invalid to the extent that it makes it an offence to cause part of a major facility to be closed. It also declared that section 214A(1)(d) is invalid.

This Regulation inserts specific metro stations, including Barangaroo, Crows Nest, Gadigal, Victoria Cross and Waterloo, into Part 1, Schedule 6 of the Crimes Regulation 2020, which expands the list of 'major facilities' under section 214A of the *Crimes Act 1900* (the Act). Section 214A of the Act makes it an offence to enter, remain on or near, climb, jump from or otherwise trespass on or block entry to any part of a major facility, if the conduct causes damage, serious disruption, obstruction or forces closure of the major facility or part of it, or causes persons attempting to use the major facility to be redirected. The maximum penalty for this offence is a fine of \$22,000 (200 penalty units) and/or 2 years imprisonment.

By expanding its scope to include certain new metro stations, this Regulation restricts certain conduct that may cause disruption at these locations, which may impact rights to freedom of movement and assembly. These rights are protected under Articles 21 and 22 of the *International Covenant on Civil and Political Rights* (the ICCPR), as well as the implied freedom of political communication under the Australian Constitution. The right to freedom of assembly protects the freedom of individuals and groups to meet and engage in peaceful protest. However, the ICCPR recognises that derogation from these rights may be warranted in certain circumstances, including to protect public health and safety.

³ [Kvelde v State of New South Wales - NSW Caselaw](#)

The Committee acknowledges that there are a number of safeguards in the Act, such as a defence of having a reasonable excuse under subsection 214A(2) and exemptions for industrial actions or obtaining prior consent under subsections 214A(3)-(6).

However, the Committee notes the significance of the penalties that can be imposed in the event of a breach of the Act, including imprisonment. The Committee further notes that the Supreme Court of New South Wales in *Kvelde v State of New South Wales*[2023] NSWSC 1560 recently found some subsections of the Act to be invalid because they infringed the implied freedom of political communication under the Australia Constitution. For these reasons, the Committee refers the matter to Parliament for consideration.



Part Three – Regulations without comment

Regulations without comment

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

1. Children's Guardian Amendment (Code of Practice) Regulation 2024

The objects of this Regulation are as follows:

- (a) to prescribe a code of practice to ensure designated agencies and adoption service providers comply with the national Child Safe Standards
- (b) to prescribe procedures and criteria for granting exemptions for classes or kinds of conduct under the *Children's Guardian Act 2019*, section 30
- (c) to amend the definition of 'relevant individual' to align the residential care provider check requirement for workers currently and previously engaged by a residential care provider other than the provider conducting the check
- (d) to require a residential care provider that seeks to re-engage a former residential care worker within 12 months to undertake a residential care provider check if the former worker is a relevant individual
- (e) to prescribe certain offences in the *Children's Guardian Act 2019*, the *Children's Guardian Regulation 2022* and the *Child Protection (Working with Children) Act 2012* as penalty notice offences.

This regulation is made under the following Acts:

- (a) the *Children's Guardian Act 2019*, including sections 8DA, 30, 85, 172(2) and 184, the general regulation-making power
- (b) the *Child Protection (Working with Children) Act 2012*, including sections 50A(2) and 52, the general regulation-making power.

This Regulation prescribes a framework to ensure compliance with safety standards and makes amendments to facilitate the protection of children in care. The Regulation does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

2. Government Sector Employment Amendment (Public Service Employees) Regulation 2024

The object of this Regulation is to provide that the merit-based employment rules contained in Part 3 of the *Government Sector Employment (General) Rules 2014* do not apply to a decision to employ a person as a non-executive Public Service employee if:

- (a) the person is employed by a private entity engaged to exercise a function or manage or operate a service on behalf of the NSW Government which is being returned to or assumed by the NSW Government
- (b) the agency head is satisfied the person is suitable for the role.

The Regulation is made under section 88 of the *Government Sector Employment Act 2013*. As the Determination makes minor changes to the application of rules in relation to certain Public Service employees, it does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

3. [Industrial Court Criminal Practice Note No. 1 \(NSWGG-2024-380-5\) GG No 380](#)

The Practice Note applies to all criminal proceedings commenced in the Industrial Court (the **Court**) pursuant to section 229B(1)(b) of the *Work Health and Safety Act 2011* (the **WHS Act**) (**WHS prosecutions**).

The purpose of the Practice Note is to explain the administrative and case management procedures followed in the Court for WHS prosecutions. The Practice Note deals with:

- Commencing summary proceedings
- Serving the brief of evidence
- Before and at the first mention
- The second mention
- The third mention
- Expert evidence
- Preparing for final hearings
- Preparing for sentence hearings where prosecutor's facts are agreed
- Breaching the Court's directions
- Liberty to restore
- Applications to vacate hearings
- Court technology and evidence
- Applications for enforceable undertakings
- Reckoning of time
- Affidavits
- Motions
- Summonses

The Practice Note commenced on 1 July 2024 and was amended on 24 September 2024. The Practice Note outlines new rules for the reinstated Industrial Court that are largely based on those of the criminal system. The Practice Note, therefore, does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

4. [Music Festivals Amendment Regulation 2024 \(2024-509\)](#)

The object of this Regulation is to amend the Music Festivals Regulation 2024 to provide for the time periods during which certain acts or events must be done. The Regulation is made under the *Music Festivals Act 2019*, including section 21, the general regulation-making power.

The Regulation commences on the date of assent to the *Music Festivals Amendments Act 2024*. As the Regulation makes minor changes relating to time periods, it does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

5. [Music Festivals Regulation 2024](#)

This Regulation commences on the day the *Music Festivals Amendment Act 2024* commences. The Regulation provides for the membership of the music festival roundtable, its meetings and reporting.

The Regulation makes administrative arrangements for the music festival roundtable and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

6. [NSW Admission Board \(withdraw without penalty\) Amendment Rule 2024](#)

The object of this Rule is to amend the NSW Admission Board Rules 2015 to provide recognition that a student-at-law may withdraw from being examined in a subject without penalty in certain situations.

The Rule commenced on its publication in the Gazette on 4 October 2024. The Rule does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

7. [The Law Society of New South Wales Professional Standards Scheme](#)

The object of this notification is to publish a professional standards scheme created by the Law Society of New South Wales.

The professional standards scheme sets out when a lawyer under the scheme is covered by insurance policies recognised by the Law Society. Its publication is authorised pursuant to section 13 of the *Professional Standards Act 1994*.

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

8. [Water Management \(General\) Amendment \(Miscellaneous\) Regulation 2024](#)

The object of this Regulation is to amend the Water Management (General) Regulation 2018 to:

- (a) replace the methodology that must be used to determine the value of water taken from a water source in contravention of *Water Management Act 2000*, Chapter 3, Part 2, Division 1A
- (b) increase the amounts payable for penalty notices issued for certain offences against the Act.

The methodology that the Regulation replaces to determine the value of illegally taken water does not raise issues of concern and does not differ significantly from the previous methodology in that it replaces the trading value with the amount paid for the water as the basis to determine the value.

The Regulation is made under the *Water Management Act 2000* and does not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.



Appendices

Appendix One – Functions of the Committee

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

8A Functions with respect to Bills

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

9 Functions with respect to regulations

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

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

Appendix Two – Unconfirmed extracts of minutes

Meeting no. 23

TIME & DATE: 3:00PM, 11 NOVEMBER 2024

LOCATION: ROOM 1254 AND WEBEX

MEMBERS PRESENT

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

APOLOGIES

Nil.

OFFICERS PRESENT

Rohan Tyler, Kate McCorquodale, Mengyuan Chen, Alex Read (via Webex), Alice Zwar and Lloyd Connolly.

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Hagarty: That the minutes of the meeting of 21 October 2024 be confirmed.

2. ***

3. Consideration of bills with comment for Legislation Review Digest 22/58

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

- a) Justice Legislation Amendment (Civil) Bill 2024
- b) Prevention of Cruelty to Animals Amendment (Puppy Farming) Bill 2024
- c) Public Health (Tobacco) Amendment Bill (No. 2) 2024
- d) Return of Proceeds of Crime (Gambling Companies) Bill 2024
- e) Statute Law (Miscellaneous Provisions) Bill (No. 2) 2024

4. Consideration of bills without comment for Legislation Review Digest 22/58

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

- a) Energy Amendment (Long Duration Storage and Investment) Bill 2024
- b) Justice Legislation Amendment (Children) Bill 2024

5. Regulations with comment for Legislation Review Digest 22/58

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

- a) Bail Amendment (Electronic Monitoring) Regulation 2024
- b) Crimes Amendment (Major Facilities) Regulation 2024

6. Regulations without comment for Legislation Review Digest 22/58

Resolved, on the motion of Mr Murphy: That the Committee adopts the regulations without comment as Part Three to Digest No. 22/58.

7. Legislation Review Digest 22/58

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. 22/58 and that it be signed by the Chair and presented to the House.

8. Regulations to be reviewed

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

9. ***

10. Next meeting

The meeting adjourned at 3.06pm until 18 November 2024 at 3.00pm.