

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. Crimes Amendment \(Display of Nazi and Terrorist Symbols\) Bill 2025; Summary Offences Amendment \(Public Assemblies\) Bill 2025\\*](#)

Issue identified	Conclusion of Committee
Freedom of expression and association	No further comment
Right to liberty, freedom from arbitrary detention and absolute liability offences	Referred

### [2. Crimes Amendment \(Places of Worship\) Bill 2025](#)

Issue identified	Conclusion of Committee
Freedom of expression, movement, assembly, and political communication	Referred
Reversal of onus of proof – strict liability offence	No further comment
Expansion of LEPRA - Freedom of political communication	Referred
Commencement by proclamation	Referred

### [3. Crimes Legislation Amendment \(Racial and Religious Hatred\) Bill 2025](#)

Issue identified	Conclusion of Committee
Freedom of expression	No further comment
Retrospectivity	Referred

### [4. Greyhound Racing Ban Bill 2025\\*](#)

Issue identified	Conclusion of Committee
Wide general regulation making powers	Referred
Statutory rule expressed to commence before publication on NSW legislation website	Referred

### [5. Housing Amendment Bill 2025](#)

Issue identified	Conclusion of Committee
Wide power to compulsorily acquire land	Referred
Inappropriate sub-delegation of significant legislative powers	Referred

### [6. Industrial Relations Amendment Bill 2025](#)

No issues identified

## PART TWO – REGULATIONS WITH COMMENT

### [1. Court Security and Surveillance Devices Amendment \(Body-Worn Recording Devices\) Regulation 2024](#)

Issue identified	Conclusion of Committee
Privacy rights – body worn recording devices	Referred

# Summary of Conclusions

## PART ONE – BILLS

### 1. Crimes Amendment (Display of Nazi and Terrorist Symbols) Bill 2025; Summary Offences Amendment (Public Assemblies) Bill 2025\*

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

##### *Freedom of expression and association*

The Crimes Amendment (Display of Nazi and Terrorist Symbols) Bill 2025 (the Crimes Bill) seeks to amend section 93ZA of the *Crimes Act 1900* (the Crimes Act) to prohibit the public display of a Nazi or terrorist organisation symbol. Proposed subsection 93ZA(1) would make it an offence to knowingly display, by public act and without reasonable excuse, a Nazi symbol, a terrorist organisation symbol or a symbol resembling Nazi or terrorist organisation symbols if a reasonable person would likely believe it is displayed to support Nazi ideology or a terrorist organisation. The maximum penalty for these offences would be a fine of \$22,000 (200 penalty units) and/or five years' imprisonment.

A 'public act', as defined in section 93Z of the Crimes Act, includes any written or visual communication to the public, such as writing, displaying notices, playing recorded material, broadcasting or communicating via social media and other electronic methods. It also includes wearing certain clothing or distributing materials to the public. Proposed subsection 93ZA(5) would adopt the definition of 'terrorist organisation' from section 102.1 of the *Criminal Code Act 1995* (Cth), which includes organisations directly or indirectly engaged in preparing, planning, assisting or fostering a terrorist act, or those specified by regulations for this purpose.

The Committee previously reported in Digest No. 46/57 on the Crimes Amendment (Display of Nazi Symbols) Bill 2021, which inserted the offence of knowingly displaying a Nazi symbol by public act and without reasonable excuse under subsection 93ZA(1). Consistent with those comments, the Committee notes that the Crimes Bill places restrictions on freedom of expression and association, specifically regarding the public use of Nazi or terrorist organisation symbols. The right to expression and association allows individuals to form groups, share ideas, and exchange information. The Committee generally comments where legislation limits a person's right to expression or association, as they are core rights contained in Articles 19 and 22 of the International Covenant on Civil and Political Rights (the ICCPR).

However, the Committee acknowledges that the Crimes Bill would include exceptions. These would include cases where a swastika or a similar symbol is used in connection with Hinduism, Buddhism or Jainism, and where a public act is done reasonably and in good faith for academic, artistic, or educational purposes, or for another purpose in the public interest.

The Committee recognises that the Crimes Bill may aim to protect individuals from activities that may incite or contribute to hate speech or hate crime. The Committee also recognises that lawful restrictions on freedom of expression and association may be permitted in the interests of national security or public safety, public order, the protection of public health, morals, or the rights and freedoms of others. In these circumstances, and given the exceptions for good faith public acts and religious and educational use of the symbols, the Committee makes no further comment.

*Right to liberty, freedom from arbitrary detention and absolute liability offences*

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The Summary Offences Amendment (Public Assemblies) Bill 2025 (the Summary Offences Bill) proposes to prohibit the use of certain masks and disguises during public assemblies. Proposed subsection 27C(1) provides that a person participating in a public assembly must not hide their identity or disguise their appearance, including by wearing a face covering. Proposed subsection 27C(5) would define 'face covering' as having the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Under proposed subsection 27C(3), if a person fails to comply with proposed subsection 27C(1), police may direct the person to surrender the item hiding their identity or disguising their appearance, or, if it is make-up, facepaint or similar, to remove it. Police may also direct the person to leave the vicinity of the public assembly, or remove them from the area. If the person does not comply, police may detain them until either the public assembly concludes or until they surrender or remove the item hiding their identity or disguising their appearance. The Summary Offences Bill clarifies that wearing an item of clothing or another item for religious purposes would not contravene proposed subsection 27C(1).

The Committee notes that the Summary Offences Bill may infringe on a person's right to liberty and freedom from arbitrary detention, contained in Article 9 of the International Covenant on Civil and Political Rights. The Committee considers that legislation which may impact these rights should only do so to the extent necessary to achieve public interest aims.

The Committee acknowledges that the Summary Offences Bill confines the period of detainment until end of the public assembly or surrender of the item. However, under proposed subsection 27C(4), failure to comply with police's directions under proposed subsection 27C(3)(a) or (b), or resisting a police officer enforcing proposed subsection 27C(3)(c) or (d), would be punishable by a fine of up to \$11,000 (100 penalty units) and/or 12 months' imprisonment. The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

The Committee acknowledges that absolute liability offences are not uncommon in regulatory settings to encourage compliance. The Committee further acknowledges that the Summary Offences Bill may aim to protect public safety and assist police with identifying protesters using hate speech. However, the Committee notes that the provisions would allow a custodial sentence to be imposed without establishing the mental element of 'fault' for persons failing to comply with directions that may infringe on their right to liberty and freedom from arbitrary detention. For these reasons, the Committee refers this matter to Parliament for consideration.

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## **2. Crimes Amendment (Places of Worship) Bill 2025**

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

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*Freedom of expression, movement, assembly, and political communication*

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The Bill seeks to amend section 214B of the *Crimes Act 1900* to create two new offences for individuals in or near a place of worship. Proposed subsection 214B(4) defines a 'place of worship' as a building or structure ordinarily used for worship, and includes churches, mosques, synagogues and temples. Proposed subsection 214B(1)(a) would make it an offence to intentionally block, impede, or hinder a person accessing or leaving a place of worship without reasonable excuse. Proposed subsection 214B(1)(b) would make it an offence to harass, intimidate, or threaten a person accessing or leaving a place of worship, or attempting to do so. The maximum penalty for these offences would be a fine of \$22,000 (200 penalty units) and/or two years' imprisonment.

The Committee notes that 'place of worship' is broadly defined to include 'a building or structure ordinarily used for worship', and that the offences may, therefore, be widely applied. By creating new offences for conduct in or near such places, the proposed amendments would restrict certain activities that may cause disruption, which could impact the rights to freedom of expression, movement, and assembly. These rights are protected under Articles 18, 19, 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. While the right to freedom of assembly protects the freedom of individuals and groups to meet and engage in peaceful protest, the ICCPR recognises that derogation from these rights may be warranted in certain circumstances, including measures to protect public health and safety.

The Committee acknowledges that the Bill would include a number of safeguards, such as a defence of reasonable excuse under subsection 214B(1)(a) and exemptions for industrial action or obtaining prior authorisation under subsections 214B(2)-(3). However, the Committee notes the significance of the penalties that can be imposed in the event of a breach of the proposed provisions, including imprisonment. For these reasons, the Committee refers the matter to Parliament for consideration.

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

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The Bill seeks to amend subsection 200(2) of the LEPR and insert subsection 200(5) into the LEPR to allow police to issue 'move on' directions if a demonstration, protest, procession, or assembly is not conducted substantially in accordance with its authorisation under the *Summary Offences Act 1988* and occurs in or near a place of worship. The Bill would insert the strict liability offence under section 199 of the LEPR for failing to comply with a 'move on' direction without reasonable excuse. The offence is punishable by a fine of up to \$220 (2 penalty units). Under section 236 of the LEPR, the onus of providing a defence of reasonable excuse for an offence against the Act lies with the person accused of the offence.

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

However, the Committee notes that strict liability offences are not uncommon in regulatory frameworks in order to encourage compliance. Further, the maximum penalty under section 199 of the LEPR is monetary rather than custodial. The Committee also notes that the burden of raising a defence of reasonable excuse is an evidential one, which then turns to the prosecution to prove to be false. The Committee acknowledges the concern for safety of worshippers that underpin the police powers, and for these reasons the Committee makes no further comment.

#### *Expansion of LEPR - Freedom of political communication*

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Under existing section 197 of the LEPR, police officers may direct a person to leave a public place if they reasonably believe that the person's behaviour or presence is obstructing others or traffic, or constitutes harassment or intimidation. Subsections 200(1) and (2) of the LEPR prevents police officers from issuing these directions in cases involving an industrial dispute, an apparently genuine demonstration or protest, a procession, or an organised assembly.

The Bill seeks to amend subsection 200(2) of the LEPR and insert subsection 200(5) into the LEPR to allow police to issue 'move on' directions if a demonstration, protest, procession, or assembly is not conducted substantially in accordance with its authorisation under the *Summary Offences Act 1988*, occurs in or near a place of worship, does not form part of industrial action, does not occur at or outside Parliament or an office of a Member of Parliament and is not in accordance with the consent or other authority of the Commissioner of Police or the person in charge of the place of worship. The Bill would therefore broaden the circumstances in which

police officers may issue move on directions to individuals which may impact on the implied freedom of political communication under the Australian Constitution.

The Committee acknowledges that the amendment may be intended to protect the safety of individuals near and in places of worship. It also acknowledges that the proposed exception under proposed subsection 200(5) does not allow police officers to issue 'move on' directions where the demonstration, protest, procession or assembly occurs at or outside Parliament House or an office of a Member of Parliament, or forms part of industrial action, dispute or campaign.

However, the Committee notes that the implied freedom of political communication can only be restricted where there is a legitimate object, and the restriction is reasonably appropriate and adapted to achieve that object. Expanding the powers of police to issue 'move on' directions around demonstrations, protests, processions or assemblies could limit the avenues available to persons wishing to express political ideas and communicate those ideas to decision makers. For this reason, the Committee refers the matter of whether the amendment impermissibly burdens the implied freedom of political communication to Parliament for further consideration.

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

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#### *Commencement by proclamation*

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The Bill would commence three months after the date of assent, or earlier by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions, particularly where the provisions would affect individual rights or obligations.

As discussed above, the Bill proposes amendments to the *Crimes Act 1900* to create new offences related to places of worship and impose a maximum penalty of two years' imprisonment. It also proposes to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to create an exception to existing limitations on NSW Police's 'move on' powers, which would allow their use in relation to demonstrations, protests, processions or assemblies outside places of worship in certain circumstances.

The Committee acknowledges that there may be practical reasons for allowing a flexible start date, such as providing time for relevant agencies to establish administrative procedures necessary to implement the Bill's provisions. However, given the significance of the penalties, including imprisonment, the Committee considers that the proposed provisions should have a clear start date to provide certainty to those affected. For these reasons, the Committee refers the matter to Parliament for consideration.

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## **3. Crimes Legislation Amendment (Racial and Religious Hatred) Bill 2025**

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

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#### *Freedom of expression*

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The Bill seeks to amend the *Crimes Act 1900* to create a new aggravated version of the offence of knowingly displaying a Nazi symbol, where it is displayed near a Jewish school, a synagogue or the Sydney Jewish Museum without reasonable excuse. The new offence would be punishable by a \$22,000 fine (200 penalty units) and/or two years imprisonment for individuals, and a \$110,000 fine (1,000 penalty units) for corporations.



The Committee previously reported in Digest No. 46/57 on the Crimes Amendment (Display of Nazi Symbols) Bill 2021, which inserted the offence of knowingly displaying a Nazi symbol by public act and without reasonable excuse under subsection 93ZA(1). Consistent with those comments, the Committee notes that the Bill places restrictions on a persons' freedom of expression and association, specifically in regard to the public use of a Nazi symbol near Jewish schools, synagogues or the Sydney Jewish Museum. The Committee generally comments where legislation limits a person's right to expression or association, as they are core rights contained in Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR).

The Committee notes that the amended definition of 'public act' remains broadly defined to include any form of written or visual communication to the public, including writing, displaying notices, graffiti, playing of recorded material, broadcasting and communicating through social media and other electronic methods, in addition to the wearing of clothes or distribution of any matter to the public. The Committee notes that this is an inclusive and non-exhaustive definition. To avoid doubt, the Bill also clarifies that an act may be public even if it occurs on private land.

However, the Committee acknowledges that the amendments narrow the scope of an offence under subsection 93ZA(1AA) to public acts that knowingly display Nazi symbols near Jewish schools, synagogues or the Sydney Jewish Museum. It also notes the exceptions for the displaying of a swastika symbol in connection with Buddhism, Hinduism or Jainism, and where the public act is done reasonably and in good faith for academic, artistic or educational purposes, or for other purposes in the public interest. Further, the Committee acknowledges that the intent of the Bill is to protect individuals from activity that may incite or amount to acts of 'hatred and prejudice'. In the circumstances, the Committee makes no further comment.

#### *Retrospectivity*

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The Bill seeks to amend the *Crimes (Sentencing Procedure) Act 1999* to update the circumstances in which an aggravating factor in sentencing under s 21A(2)(h) may apply. The Bill proposes to expand the scope of the aggravating factor to include offences 'partially' or 'wholly' motivated by hatred or prejudice for a particular group of persons. Under amended Schedule 2, this aggravating factor would apply to offences committed and proceedings commenced before the commencement of the proposed amendment Act.

The Committee acknowledges that the proposed provisions seek to respond to recent incidents of 'antisemitism... and offences motivated by hatred' in NSW. It also notes that the retrospective application of the Act would allow for judicial officers to apply the wider interpretation of the aggravating factor in sentencing in a timely manner.

However, the Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. The Committee also notes that the provisions relate to sentencing for offences which may carry a term of imprisonment. In the circumstances, the Committee refers the matter to Parliament for its consideration.

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## **4. Greyhound Racing Ban Bill 2025\***

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

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#### *Wide general regulation making powers*

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The Bill proposes to create a general regulation-making power in section 16 of the proposed *Greyhound Racing Ban Act 2025* (the Act) to prescribe anything 'necessary or convenient' for

carrying out or giving effect to the Act. The Committee notes that there does not appear to be any provisions which define or narrow the ordinary meaning of 'convenient' or 'necessary'.

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 does not control when they commence.

The Committee recognises that this regulation-making power may allow for more flexible regulatory responses. It also acknowledges that any regulations would still have to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, the proposed regulation-making power may effectively allow regulations to prescribe matters with little limit. For these reasons, the Committee refers this matter to Parliament for consideration.

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

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#### *Statutory rule expressed to commence before publication on NSW legislation website*

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Schedule 1 of the proposed *Greyhound Racing Ban Act 2025* (the Act) would allow regulations to make savings or transitional provisions that are consequent to the commencement of the Act or other provision amending the Act. It also provides that the regulation may take effect on a date earlier than the date the provision commences, including a date before the publication of the regulation on the NSW legislation website. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.

The Committee also notes that this would conflict with section 39(1) of the *Interpretation Act 1987*, which requires that statutory rules commence either on the day of publication or a later specified date. For these reasons, the Committee refers this matter to the Parliament for its consideration.

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## **5. Housing Amendment Bill 2025**

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

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The Bill proposes to insert subsection 35C(1) into the *Housing Act 2001* (the Act) which would empower the Minister for Housing to, for the purposes of the Act, acquire land either by agreement or by compulsory acquisition through the *Land Acquisition (Just Terms Compensation) Act 1991*, which determines the rate at which original owner of the land is compensated. The Committee notes that the compulsory acquisition of land may infringe on an individual's property rights, including their right to peaceful enjoyment of their property and their right to freedom of contract.

The Committee acknowledges that the power conferred on the Minister does not exceed the existing power of the NSW Land and Housing Corporation (the Corporation) to acquire land compulsorily under subsection 22(1) of the Act. However, the Committee notes that both proposed subsection 35C(1) and existing subsection 22(1) are broadly defined, in that land may be compulsorily acquired 'for the purposes of the Act'. There does not appear to be any other provision in the Bill or Act that further defines or confines when the Minister or Corporation may exercise their powers to compulsorily acquire land.

Given the broad remit of the power, as worded by proposed subsection 35C(1), the Committee refers this matter to Parliament for its consideration.

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

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The Bill proposes to insert Division 6 into the *Housing Act 2001* (the Act) which allows the Minister for Housing to exercise a number of significant functions currently exercised by the NSW Land and Housing Corporation (the Corporation). Under the amended Act, the Minister would have powers to deal with property, accept gifts, surrender land and acquire land by compulsory process, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

The Bill further seeks to insert section 74A into the Act to enable the Minister to delegate these powers to an employee of the Department of Communities and Justice or the Corporation (a 'relevant person'). These powers can then be sub-delegated to another relevant person with the Minister's authorisation.

The Bill may, therefore, provide for an inappropriate sub-delegation of significant statutory functions. The Committee acknowledges that the Minister must first authorise the sub-delegation of the powers. However, the Minister's authorisations would not be required to be disclosed or published, and they would not be subject to parliamentary scrutiny. In this case, parliamentary scrutiny is particularly important because the provisions relate to powers to compulsorily acquire land, which may infringe on an individual's property rights. For these reasons, the Committee refers this matter to Parliament for its consideration.

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## **6. Industrial Relations Amendment Bill 2025**

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

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

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### **1. Court Security and Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2024**

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

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##### *Privacy rights – body worn recording devices*

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The Regulation amends the Court Security Regulation 2021 and the Surveillance Devices Regulation 2022 to extend the trial of the use of body-worn recording devices by one year. This trial was introduced by the Court Security and Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2023 (2023 Regulation) to permit sheriff's officers to use body-worn recording devices in court premises. It also amended those Regulations so that sheriff's officers are exempt from certain requirements and prohibitions under the *Court Security Act 2005* and the *Surveillance Devices Act 2007*.

The Committee previously reported in Digest No. 5/58 on the 2023 Regulation. Consistent with those comments, the Committee notes that the Regulation may permit the broad use of body-worn recording devices, which may infringe on a person's privacy rights. It notes again that sheriff's officers are likely to interact with vulnerable members of the public in their capacity as court security officers, including victims of crime.

The Regulation extends the trial by another year. The Committee recognises that the trial remains time limited and that there are public interest issues in deterring violence and anti-social behaviour towards these officers in the course of their duties, which may include executing court warrants

and monitoring and securing court proceedings. However, the Committee notes that the length of trial is significant as it is proposed to be extended by an additional year, meaning the trial would occur over a combined period of two years. This may further impact a person's right to privacy. For these reasons, the Committee refers the matter to Parliament for its consideration.



# Part One – Bills

# 1. Crimes Amendment (Display of Nazi and Terrorist Symbols) Bill 2025; Summary Offences Amendment (Public Assemblies) Bill 2025\*

Date introduced	13 February 2025
House introduced	Legislative Assembly
Member with carriage	Mr Alister Henskens MP
	*Private Members Bill

## Purpose and description

### Crimes Amendment (Display of Nazi and Terrorist Symbols) Bill 2025

- 1.1 The Crimes Amendment (Display of Nazi and Terrorist Symbols) Bill 2025 (the **Crimes Bill**) creates an offence for knowingly displaying terrorist organisation symbols by public act and without reasonable excuse.

### Summary Offences Amendment (Public Assemblies) Bill 2025

- 1.2 The object of the Summary Offences Amendment (Public Assemblies) Bill 2025 ( the **Summary Offences Bill**) is to amend the *Summary Offences Act 1988* (the **SO Act**) to make further provision about public assemblies.

## Background

- 1.3 The Crimes Bill seeks to amend section 93ZA of the *Crimes Act 1900* (the **Crimes Act**) to address the public display of Nazi or terrorist symbols.
- 1.4 In his second reading speech, Mr Alister Henskens MP stated that the Crimes Bill would align with federal offences and increase penalties to prohibit the display of Nazi and terrorist organisations' symbols.
- 1.5 The Crimes Bill's amendments would:
- make it an offence to knowingly display a terrorist organisation symbol
  - make it an offence to display symbols that resemble Nazi or terrorist organisation symbols
  - increase penalties for individuals knowingly displaying a Nazi symbol
- 1.6 The Summary Offences Bill seeks to amend the SO Act to provide NSW Police with a mechanism to approve, refuse, and regulate public assemblies, particularly for repeat public assemblies.

1.7 In his second reading speech, Mr Henskens MP stated:

...this is a better balance of the rights of protestors to protest in the most disruptive parts of our State and the rights of the taxpayers to not have to pick up the price of excessive and repetitive protests.

1.8 The Summary Offences Bill's key provisions are:

- setting mandatory considerations for the Commissioner of Police and a Court when deciding on public assemblies
- requiring organisers to pay police costs in advance for certain repeat public assemblies
- prohibiting the wearing of certain masks and disguises during public assemblies.

1.9 Although these bills would operate as separate Acts if enacted, the Crimes Bill and the Summary Offences Bill are cognate. As a result, they were introduced and will be considered together. Therefore, in accordance with the Committee's usual practice, both bills have been considered in a single report.

## Issues considered by the Committee

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

#### *Freedom of expression and association*

1.10 The Crimes Bill seeks to amend section 93ZA of the Crimes Act to create two new offences for individuals who knowingly display, by public act and without reasonable excuse:

- a terrorist organisation symbol (proposed section 93ZA(1)(b)), or
- a symbol resembling Nazi or terrorist organisation symbols, where a reasonable person would likely believe it is displayed to support Nazi ideology or a terrorist organisation (proposed section 93ZA(1)(c)).

1.11 The maximum penalty for these offences under proposed section 93ZA(1) for individuals would be a fine of \$22,000 (200 penalty units) and/or five years' imprisonment.

1.12 Proposed subsection 93ZA(2) provides that proposed subsection 93ZA(1)(a) and (c) do not apply if a swastika or a similar symbol is displayed in connection with Buddhism, Hinduism, or Jainism.

1.13 Proposed subsection 93ZA(3) further provides that a reasonable excuse includes the display of a symbol reasonably and in good faith:

- (a) for an academic, artistic, or educational purpose, or
- (b) for another purpose in the public interest.

- 1.14 Proposed subsection 93ZA(5) adopts the definition of 'public act' from section 93Z of the Crimes Act, which includes:
- (a) any form of communication to the public, including writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods
  - (b) actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia in a way that is observable by the public
  - (c) the distribution or dissemination of any matter to the public.
- 1.15 Proposed subsection 93ZA(5) adopts the definition of 'terrorist organisation' as set out in the *Criminal Code Act 1995* (Cth), section 102.1, which includes:
- (a) an organisation directly or indirectly engaged in preparing, planning, assisting or fostering a terrorist act, or
  - (b) an organisation specified by the regulations for this purpose.

**The Crimes Amendment (Display of Nazi and Terrorist Symbols) Bill 2025 (the Crimes Bill) seeks to amend section 93ZA of the *Crimes Act 1900* (the Crimes Act) to prohibit the public display of a Nazi or terrorist organisation symbol. Proposed subsection 93ZA(1) would make it an offence to knowingly display, by public act and without reasonable excuse, a Nazi symbol, a terrorist organisation symbol or a symbol resembling Nazi or terrorist organisation symbols if a reasonable person would likely believe it is displayed to support Nazi ideology or a terrorist organisation. The maximum penalty for these offences would be a fine of \$22,000 (200 penalty units) and/or five years' imprisonment.**

A 'public act', as defined in section 93Z of the Crimes Act, includes any written or visual communication to the public, such as writing, displaying notices, playing recorded material, broadcasting or communicating via social media and other electronic methods. It also includes wearing certain clothing or distributing materials to the public. Proposed subsection 93ZA(5) would adopt the definition of 'terrorist organisation' from section 102.1 of the *Criminal Code Act 1995* (Cth), which includes organisations directly or indirectly engaged in preparing, planning, assisting or fostering a terrorist act, or those specified by regulations for this purpose.

The Committee previously reported in Digest No. 46/57 on the Crimes Amendment (Display of Nazi Symbols) Bill 2021, which inserted the offence of knowingly displaying a Nazi symbol by public act and without reasonable excuse under subsection 93ZA(1).<sup>1</sup> Consistent with those comments, the Committee notes that the Crimes Bill places restrictions on freedom of expression and association, specifically regarding the public use of Nazi or terrorist organisation symbols. The right to

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<sup>1</sup> Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 46/57](#), 19 October 2021.



**expression and association allows individuals to form groups, share ideas, and exchange information. The Committee generally comments where legislation limits a person's right to expression or association, as they are core rights contained in Articles 19 and 22 of the International Covenant on Civil and Political Rights (the ICCPR).<sup>2</sup>**

**However, the Committee acknowledges that the Crimes Bill would include exceptions. These would include cases where a swastika or a similar symbol is used in connection with Hinduism, Buddhism or Jainism, and where a public act is done reasonably and in good faith for academic, artistic, or educational purposes, or for another purpose in the public interest.**

**The Committee recognises that the Crimes Bill may aim to protect individuals from activities that may incite or contribute to hate speech or hate crime. The Committee also recognises that lawful restrictions on freedom of expression and association may be permitted in the interests of national security or public safety, public order, the protection of public health, morals, or the rights and freedoms of others. In these circumstances, and given the exceptions for good faith public acts and religious and educational use of the symbols, the Committee makes no further comment.**

*Right to liberty, freedom from arbitrary detention and absolute liability offences*

- 1.16 The Summary Offences Bill seeks to prohibit the use of certain masks and disguises during public assemblies. Proposed subsection 27C(1) of the SO Act provides that a person participating in a public assembly must not hide their identity or disguise their appearance, including by wearing a face covering.
- 1.17 Under proposed subsection 27C(5), 'face covering' has the same meaning as defined in the *Law Enforcement (Powers and Responsibilities) Act 2002*.
- 1.18 Proposed subsection 27C(2) clarifies that wearing an item of clothing or another item for religious purposes does not contravene proposed subsection 27C(1).
- 1.19 Under proposed subsection 27C(3), if a person fails to comply with proposed subsection 27C(1), police may:
- (a) direct the person to surrender the item hiding their identity or disguising their appearance, or if it is make-up, facepaint or similar, to remove it
  - (b) direct the person to leave the vicinity of the public assembly
  - (c) remove the person from the vicinity of the public assembly
  - (d) detain the person until either:

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

- (i) the public assembly concludes, or
- (ii) the person surrenders or removes the item hiding their identity or disguising their appearance.

1.20 Under proposed subsection 27C(4), failure to comply with a direction under proposed subsection 27C(3)(a) or (b), or resisting a police officer carrying out an action under proposed subsection 27C(3)(c) or (d), is an offence punishable by a fine of up to \$11,000 (100 penalty units) and/or 12 months' imprisonment.

1.21 In his second reading speech, Mr Henskens noted that the new police powers would allow officers to require a person to remove an item obscuring their appearance, or to take the person into custody for the remainder of the protest.

**The Summary Offences Amendment (Public Assemblies) Bill 2025 (the Summary Offences Bill) proposes to prohibit the use of certain masks and disguises during public assemblies. Proposed subsection 27C(1) provides that a person participating in a public assembly must not hide their identity or disguise their appearance, including by wearing a face covering. Proposed subsection 27C(5) would define 'face covering' as having the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.**

Under proposed subsection 27C(3), if a person fails to comply with proposed subsection 27C(1), police may direct the person to surrender the item hiding their identity or disguising their appearance, or, if it is make-up, facepaint or similar, to remove it. Police may also direct the person to leave the vicinity of the public assembly, or remove them from the area. If the person does not comply, police may detain them until either the public assembly concludes or until they surrender or remove the item hiding their identity or disguising their appearance. The Summary Offences Bill clarifies that wearing an item of clothing or another item for religious purposes would not contravene proposed subsection 27C(1).

The Committee notes that the Summary Offences Bill may infringe on a person's right to liberty and freedom from arbitrary detention, contained in Article 9 of the International Covenant on Civil and Political Rights. The Committee considers that legislation which may impact these rights should only do so to the extent necessary to achieve public interest aims.

The Committee acknowledges that the Summary Offences Bill confines the period of detainment until end of the public assembly or surrender of the item. However, under proposed subsection 27C(4), failure to comply with police's directions under proposed subsection 27C(3)(a) or (b), or resisting a police officer enforcing proposed subsection 27C(3)(c) or (d), would be punishable by a fine of up to \$11,000 (100 penalty units) and/or 12 months' imprisonment. The Committee generally comments on absolute liability offences as they depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability.

The Committee acknowledges that absolute liability offences are not uncommon in regulatory settings to encourage compliance. The

**Committee further acknowledges that the Summary Offences Bill may aim to protect public safety and assist police with identifying protesters using hate speech. However, the Committee notes that the provisions would allow a custodial sentence to be imposed without establishing the mental element of 'fault' for persons failing to comply with directions that may infringe on their right to liberty and freedom from arbitrary detention. For these reasons, the Committee refers this matter to Parliament for consideration.**

## 2. Crimes Amendment (Places of Worship) Bill 2025

Date introduced	11 February 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Michael Daley MP
Portfolio	Attorney General

### Purpose and description

- 2.1 The object of this Bill is to amend the *Crimes Act 1900* (the **Crimes Act**) and the *Law Enforcement (Powers and Responsibilities) Act 2002* (the **LEPRA**) to:
- (a) make it an offence to block, impede, hinder or take certain other action to affect a person accessing or leaving a place of worship
  - (b) authorise police officers to issue 'move on' directions in relation to an apparently genuine demonstration, protest, procession or assembly occurring in or near a place of worship in certain circumstances.

### Background

- 2.2 The Bill seeks to address conduct in or near places of worship that intimidates individuals attending for religious purposes or obstructs the practice of faith in NSW.
- 2.3 In his second reading speech, the Hon. Michael Daley MP, Attorney General, noted that the Bill would protect the right of people 'to practise their religion freely and without fear of intimidation or harassment.' He acknowledged that:

While this bill may limit freedom of expression in some cases, it does so in a way that is proportionate and justified to facilitate the exercise of the right to freedom of religion or belief, and the right to manifest that freedom in a place of worship.

- 2.4 The Bill's key provisions are:
- the creation of an offence for intentionally and without reasonable excuse obstructing access to or from a place of worship
  - the creation of an offence for intimidating, harassing, or threatening a person accessing or leaving a place of worship or attempting to do so
  - requiring the Attorney General to review the operation of the proposed amendments under the Crimes Act
  - allowing NSW Police to use 'move on' powers for demonstrations, protests, processions or assemblies outside places of worship in certain circumstances.

## Issues considered by the Committee

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

#### *Freedom of expression, movement, assembly, and political communication*

- 2.5 The Bill seeks to amend section 214B of the Crimes Act to create two new offences for individuals in or near a place of worship who:
- (a) without reasonable excuse, intentionally block, impede or hinder a person accessing or leaving a place of worship, or
  - (b) harass, intimidate or threaten a person accessing or leaving a place of worship.
- 2.6 The maximum penalty for these offences would be a fine of \$22,000 (200 penalty units) and/or two years' imprisonment.
- 2.7 In his second reading speech, the Attorney General stated that the phrase 'in or near' is consistent with section 214A of the Crimes Act, which prohibits remaining 'on or near' a major facility while engaging in certain conduct.
- 2.8 Proposed subsection 214B(4) defines a 'place of worship' as:
- (a) a building or structure ordinarily used for worship, and
  - (b) a church, mosque, synagogue, or temple.
- 2.9 In his second reading speech, the Attorney General clarified that the definition of 'place of worship' does not include 'prayer rooms, multi-faith rooms and chapels within other buildings, such as hospitals, airports and office blocks'. He explained that whether a premises is 'ordinarily' used for worship depends on factors such as how often it is used for worship and how long it has been used for that purpose.
- 2.10 Proposed subsection 214B(2) specifies that it is not an offence under proposed subsection 214B(1)(a), if the conduct:
- is part of industrial action, an industrial dispute or an industrial campaign (proposed subsection 214B(2)(a))
  - occurs at or outside Parliament House or an office of a Member of Parliament (proposed subsection 214B(2)(b)), or
  - is carried out with the consent or authority of the Commissioner of Police, or the person apparently in charge of the place of worship (proposed subsection 214B(2)(c)).
- 2.11 In his second reading speech, the Attorney General stated that the proposed offences do not prohibit protests or civil assemblies near places of worship. He clarified that the exclusions for Parliament and industrial action ensure that the Bill does not criminalise gatherings solely because of their proximity to a place of worship.

- 2.12 Proposed subsection 214B(3) would also provide a defence to an offence under proposed subsection 214B(1)(a) if protest organisers have applied for authorisation to hold a public assembly under section 24 of the *Summary Offences Act 1988* (the **SO Act**).

**The Bill seeks to amend section 214B of the *Crimes Act 1900* to create two new offences for individuals in or near a place of worship. Proposed subsection 214B(4) defines a 'place of worship' as a building or structure ordinarily used for worship, and includes churches, mosques, synagogues and temples. Proposed subsection 214B(1)(a) would make it an offence to intentionally block, impede, or hinder a person accessing or leaving a place of worship without reasonable excuse. Proposed subsection 214B(1)(b) would make it an offence to harass, intimidate, or threaten a person accessing or leaving a place of worship, or attempting to do so. The maximum penalty for these offences would be a fine of \$22,000 (200 penalty units) and/or two years' imprisonment.**

**The Committee notes that 'place of worship' is broadly defined to include 'a building or structure ordinarily used for worship', and that the offences may, therefore, be widely applied. By creating new offences for conduct in or near such places, the proposed amendments would restrict certain activities that may cause disruption, which could impact the rights to freedom of expression, movement, and assembly. These rights are protected under Articles 18, 19, 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. While the right to freedom of assembly protects the freedom of individuals and groups to meet and engage in peaceful protest, the ICCPR recognises that derogation from these rights may be warranted in certain circumstances, including measures to protect public health and safety.**

**The Committee acknowledges that the Bill would include a number of safeguards, such as a defence of reasonable excuse under subsection 214B(1)(a) and exemptions for industrial action or obtaining prior authorisation under subsections 214B(2)-(3). However, the Committee notes the significance of the penalties that can be imposed in the event of a breach of the proposed provisions, including imprisonment. For these reasons, the Committee refers the matter to Parliament for consideration.**

*Reversal of onus of proof – strict liability offence*

- 2.13 The Bill seeks to amend section 200 of the LEPRA to create an exception to the existing limitations on NSW Police's 'move on' powers.
- 2.14 Under section 197 of the LEPRA, a police officer may direct a person to leave a public place if the police officer reasonably believes that the person's behaviour or presence is obstructing others or traffic, or constitutes harassment or intimidation.
- 2.15 Subsections 200(1) and (2) of the LEPRA limits police powers to issue these directions in cases involving an industrial dispute, an apparently genuine demonstration or protest, a procession, or an organised assembly.

- 2.16 The Bill would amend subsection 200(2) of the LEPR and insert subsection 200(5) into the LEPR to create an additional exception. It would allow NSW Police to issue 'move on' directions if a demonstration, protest, procession, or assembly:
- (a) is not an authorised public assembly under the SO Act, or is not being conducted substantially in accordance with its authorisation, and
  - (b) occurs in or near a place of worship.
- 2.17 Under section 199 of the LEPR, failure to comply with a 'move on' direction without reasonable excuse is an offence punishable by a fine of up to \$220 (2 penalty units).
- 2.18 Under section 236 of the LEPR, the onus of providing a defence of reasonable excuse for an offence against the Act lies with the person accused of the offence.
- 2.19 In his second reading speech, the Attorney General stated that the usual legal thresholds for issuing a 'move on' direction would continue to apply.

**The Bill seeks to amend subsection 200(2) of the LEPR and insert subsection 200(5) into the LEPR to allow police to issue 'move on' directions if a demonstration, protest, procession, or assembly is not conducted substantially in accordance with its authorisation under the *Summary Offences Act 1988* and occurs in or near a place of worship. The Bill would insert the strict liability offence under section 199 of the LEPR for failing to comply with a 'move on' direction without reasonable excuse. The offence is punishable by a fine of up to \$220 (2 penalty units). Under section 236 of the LEPR, the onus of providing a defence of reasonable excuse for an offence against the Act lies with the person accused of the offence.**

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

**However, the Committee notes that strict liability offences are not uncommon in regulatory frameworks in order to encourage compliance. Further, the maximum penalty under section 199 of the LEPR is monetary rather than custodial. The Committee also notes that the burden of raising a defence of reasonable excuse is an evidential one, which then turns to the prosecution to prove to be false. The Committee acknowledges the concern for safety of worshippers that underpin the police powers, and for these reasons the Committee makes no further comment.**

*Expansion of LEPR - Freedom of political communication*

- 2.20 The Bill seeks to amend section 200 of the LEPR to create an exception to the existing limitations on NSW Police's 'move on' powers.
- 2.21 Under section 197 of the LEPR, a police officer may direct a person to leave a public place if the police officer reasonably believes that the person's behaviour or presence is obstructing others or traffic, or constitutes harassment or intimidation.

- 2.22 Subsections 200(1) and (2) of the LEPRA prevents police officers from issuing these directions in cases involving an industrial dispute, an apparently genuine demonstration or protest, a procession, or an organised assembly.
- 2.23 As noted above, the Bill would amend subsection 200(2) of the LEPRA and insert subsection 200(5) into the LEPRA to create an additional exception. It would allow NSW Police to issue 'move on' directions if a demonstration, protest, procession, or assembly:
- (a) is not an authorised public assembly under Part 4 of the SO Act or is not being conducted substantially in accordance with its authorisation
  - (b) occurs in or near a place of worship
  - (c) does not form part of industrial action or an industrial dispute or campaign
  - (d) does not occur outside Parliament House or an office of a Member of Parliament
  - (e) is not in accordance with the consent or other authority of the Commissioner of Police or the person apparently in charge of the place of worship.
- 2.24 In his second reading speech, the Attorney General stated that the usual legal thresholds for issuing a 'move on' direction would continue to apply.

**Under existing section 197 of the LEPRA, police officers may direct a person to leave a public place if they reasonably believe that the person's behaviour or presence is obstructing others or traffic, or constitutes harassment or intimidation. Subsections 200(1) and (2) of the LEPRA prevents police officers from issuing these directions in cases involving an industrial dispute, an apparently genuine demonstration or protest, a procession, or an organised assembly.**

**The Bill seeks to amend subsection 200(2) of the LEPRA and insert subsection 200(5) into the LEPRA to allow police to issue 'move on' directions if a demonstration, protest, procession, or assembly is not conducted substantially in accordance with its authorisation under the *Summary Offences Act 1988*, occurs in or near a place of worship, does not form part of industrial action, does not occur at or outside Parliament or an office of a Member of Parliament and is not in accordance with the consent or other authority of the Commissioner of Police or the person in charge of the place of worship. The Bill would therefore broaden the circumstances in which police officers may issue move on directions to individuals which may impact on the implied freedom of political communication under the Australian Constitution.**

**The Committee acknowledges that the amendment may be intended to protect the safety of individuals near and in places of worship. It also acknowledges that the proposed exception under proposed subsection 200(5) does not allow police officers to issue 'move on' directions where the demonstration, protest, procession or assembly occurs at or outside Parliament House or an office of a Member of Parliament, or forms part of industrial action, dispute or campaign.**



However, the Committee notes that the implied freedom of political communication can only be restricted where there is a legitimate object, and the restriction is reasonably appropriate and adapted to achieve that object. Expanding the powers of police to issue 'move on' directions around demonstrations, protests, processions or assemblies could limit the avenues available to persons wishing to express political ideas and communicate those ideas to decision makers. For this reason, the Committee refers the matter of whether the amendment impermissibly burdens the implied freedom of political communication to Parliament for further consideration.

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

#### *Commencement by proclamation*

2.25 Clause 2 of the Bill provides that it would commence on the earlier of:

- (a) the day that is three months after the date of assent, or
- (b) a day to be appointed by proclamation.

2.26 In his second reading speech, the Attorney General explained that the proposed commencement date would 'ensure that the necessary implementation work and training can be undertaken.'

**The Bill would commence three months after the date of assent, or earlier by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the Bill's provisions, particularly where the provisions would affect individual rights or obligations.**

As discussed above, the Bill proposes amendments to the *Crimes Act 1900* to create new offences related to places of worship and impose a maximum penalty of two years' imprisonment. It also proposes to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* to create an exception to existing limitations on NSW Police's 'move on' powers, which would allow their use in relation to demonstrations, protests, processions or assemblies outside places of worship in certain circumstances.

The Committee acknowledges that there may be practical reasons for allowing a flexible start date, such as providing time for relevant agencies to establish administrative procedures necessary to implement the Bill's provisions. However, given the significance of the penalties, including imprisonment, the Committee considers that the proposed provisions should have a clear start date to provide certainty to those affected. For these reasons, the Committee refers the matter to Parliament for consideration.

### 3. Crimes Legislation Amendment (Racial and Religious Hatred) Bill 2025

Date introduced	11 February 2025
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 amend:
- (a) the *Crimes Act 1900* (**Crimes Act**) to increase the penalties for the offence of displaying a Nazi symbol by public act, including graffiti, if the offence occurs on or near a synagogue, a Jewish school or the Sydney Jewish Museum
  - (b) the *Crimes (Sentencing Procedure) Act 1999* (**SP Act**) to provide that unlawful conduct motivated partially or wholly by hate or prejudice will aggravate a sentence
  - (c) the *Graffiti Control Act 2008* (**Graffiti Act**) to provide that for an offence committed in relation to graffiti, it is a circumstance of aggravation to graffiti a place of worship.

#### Background

3.2 The Bill proposes amendments to the Crimes Act, the SP Act and the Graffiti Act in response to recent 'incidents of antisemitic graffiti... and other criminal acts of antisemitism' in NSW.

3.3 In his second reading speech, the Hon. Michael Daley MP, Attorney General, explained that the Bill seeks to:

...address graffiti on places of worship, the display of Nazi symbols on or near places of importance to our Jewish community, and offences motivated by hatred with the seriousness they deserve.

3.4 The Bill seeks to amend the Crimes Act to:

- include graffiti as a 'public act' in relation to offences of threatening or inciting violence against a particular group and displaying Nazi symbols
- insert an offence with an increased penalty for knowingly displaying a Nazi symbol on or near a synagogue, a Jewish school or the Sydney Jewish Museum without reasonable excuse

- require the Attorney General to review the operation of the amendments as soon as practicable after two years from the commencement of the amendment Act.
- 3.5 The Bill also seeks to amend the SP Act to provide that when an offence is 'partially' or 'wholly' motivated by hatred for or prejudice against a group of people it is an aggravating factor to be taken into account when determining the appropriate sentence for an offence.
- 3.6 Further, the Bill would amend the Graffiti Act to provide a new circumstance of aggravation for the offence of intentionally marking premises or property where the premises is a place of worship.
- 3.7 Finally, the Bill proposes to introduce savings and transitional provisions into the SP and Graffiti Acts.

## Issues considered by the Committee

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

#### *Freedom of expression*

- 3.8 The Bill proposes to insert subsection 93ZA(1AA) into the Crimes Act to create a new offence for knowingly displaying a Nazi symbol near a Jewish school, a synagogue or the Sydney Jewish Museum by public act and without reasonable excuse. The offence would be punishable by a \$22,000 fine (200 penalty units) and/or two years imprisonment for individuals, and a \$110,000 fine (1,000 penalty units) for corporations.
- 3.9 The existing offence under subsection 93ZA(1) for knowingly displaying a Nazi symbol by public act and without reasonable excuse, carries a lesser penalty of a \$11,000 fine (100 penalty units) and/or 12 months imprisonment for individuals and a \$55,000 fine (500 penalty units) for corporations. The Bill would amend existing subsection 93ZA(1) to exclude persons displaying a Nazi symbol where it is near a Jewish school, a synagogue or the Sydney Jewish Museum from being captured by the offence. The Attorney General explained that the amendment ensures 'the more serious offence is charged in these instances'.
- 3.10 In addition, the Bill seeks to amend the definition of a 'public act', under subsection 93Z(5), to include 'graffiti'. Currently, the Crimes Act defines a public act to include:
- (a) any form of communication to the public, including writing, displaying notices, playing of recorded material, broadcasting and communicating through social media and other electronic methods
  - (b) actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia in a way that is observable by the public
  - (c) the distribution or dissemination of any matter to the public.
- 3.11 The Bill defines 'Jewish school' to mean a Hebrew school, an independent Jewish day school, or a yeshiva.

- 3.12 Under subsection 93ZA(3) of the Crimes Act, a 'reasonable excuse' includes the display of a Nazi symbol done reasonably and in good faith for an academic, artistic or educational purpose, or for another purpose in the public interest.
- 3.13 In his second reading speech, the Attorney General noted that the amendment 'recognises that the display of a Nazi symbol on or near these types of premises is distinctly violent, threatening and offensive to [the NSW] Jewish community'.

**The Bill seeks to amend the *Crimes Act 1900* to create a new aggravated version of the offence of knowingly displaying a Nazi symbol, where it is displayed near a Jewish school, a synagogue or the Sydney Jewish Museum without reasonable excuse. The new offence would be punishable by a \$22,000 fine (200 penalty units) and/or two years imprisonment for individuals, and a \$110,000 fine (1,000 penalty units) for corporations.**

The Committee previously reported in Digest No. 46/57 on the Crimes Amendment (Display of Nazi Symbols) Bill 2021, which inserted the offence of knowingly displaying a Nazi symbol by public act and without reasonable excuse under subsection 93ZA(1).<sup>3</sup> Consistent with those comments, the Committee notes that the Bill places restrictions on a person's freedom of expression and association, specifically in regard to the public use of a Nazi symbol near Jewish schools, synagogues or the Sydney Jewish Museum. The Committee generally comments where legislation limits a person's right to expression or association, as they are core rights contained in Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR).<sup>4</sup>

The Committee notes that the amended definition of 'public act' remains broadly defined to include any form of written or visual communication to the public, including writing, displaying notices, graffiti, playing of recorded material, broadcasting and communicating through social media and other electronic methods, in addition to the wearing of clothes or distribution of any matter to the public. The Committee notes that this is an inclusive and non-exhaustive definition. To avoid doubt, the Bill also clarifies that an act may be public even if it occurs on private land.

However, the Committee acknowledges that the amendments narrow the scope of an offence under subsection 93ZA(1AA) to public acts that knowingly display Nazi symbols near Jewish schools, synagogues or the Sydney Jewish Museum. It also notes the exceptions for the displaying of a swastika symbol in connection with Buddhism, Hinduism or Jainism, and where the public act is done reasonably and in good faith for academic, artistic or educational purposes, or for other purposes in the public interest. Further, the Committee acknowledges that the intent of the Bill is to protect individuals from activity that may incite or amount to acts of 'hatred and prejudice'. In the circumstances, the Committee makes no further comment.

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<sup>3</sup> Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 46/57](#), 19 October 2021.

<sup>44</sup> United Nations, Office of the High Commissioner for Human Rights, [International Covenant on Civil and Political Rights](#), 1966.

*Retrospectivity*

- 3.14 The Bill proposes to amend section 21A(2)(h) of the SP Act to allow an offence that was 'partially' or 'wholly' motivated by hatred or prejudice against a particular group of people to which the offender believed the victim belonged to be an aggravating factor in sentencing.
- 3.15 The Bill also seeks to insert a provision in Schedule 2 of the SP Act to allow the amended aggravating factor to apply to sentences for offences committed before the commencement of the *Crimes Legislation Amendment (Racial and Religious Hatred) Act 2025 (amendment Act)*, as well as to proceedings that commenced before the commencement of the amendment Act.

**The Bill seeks to amend the *Crimes (Sentencing Procedure) Act 1999* to update the circumstances in which an aggravating factor in sentencing under s 21A(2)(h) may apply. The Bill proposes to expand the scope of the aggravating factor to include offences 'partially' or 'wholly' motivated by hatred or prejudice for a particular group of persons. Under amended Schedule 2, this aggravating factor would apply to offences committed and proceedings commenced before the commencement of the proposed amendment Act.**

**The Committee acknowledges that the proposed provisions seek to respond to recent incidents of 'antisemitism... and offences motivated by hatred' in NSW. It also notes that the retrospective application of the Act would allow for judicial officers to apply the wider interpretation of the aggravating factor in sentencing in a timely manner.**

**However, the Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. The Committee also notes that the provisions relate to sentencing for offences which may carry a term of imprisonment. In the circumstances, the Committee refers the matter to Parliament for its consideration.**

## 4. Greyhound Racing Ban Bill 2025\*

Date introduced	12 February 2025
House introduced	Legislative Council
Member with carriage	The Hon. Emma Hurst MLC
	*Private Members Bill

### Purpose and description

- 4.1 The object of this Bill is to, from 12 months after the date of assent to the proposed Act, ban greyhound racing in New South Wales by:
- (a) prohibiting, from that date, greyhound racing, the keeping of greyhounds for racing and betting on greyhound racing in New South Wales
  - (b) prohibiting, from the date of assent to the proposed Act:
    - (i) the breeding of greyhounds in New South Wales for racing
    - (ii) the destruction of registered greyhounds
    - (iii) the transfer or export of greyhounds for racing
  - (c) requiring the Minister to appoint an administrator to wind up greyhound racing in New South Wales and the affairs of Greyhound Racing NSW
  - (d) providing for the repeal of the *Greyhound Racing Act 2017* and the dissolution of Greyhound Racing NSW.

### Background

4.2 The Bill proposes to create the *Greyhound Racing Ban Act 2025* (the **Act**) to ban greyhound racing activities, dissolve Greyhound Racing New South Wales (**GRNSW**) and repeal the *Greyhound Racing Act 2017*.

4.3 During her second reading speech, the Hon. Emma Hurst MLC commented that that greyhound racing industry 'has long been synonymous with animal cruelty' and explained that the Act:

...allows for a transition away from greyhound racing that aligns with the ban on greyhound racing in New Zealand, which is also scheduled to come into effect in 2026.

4.4 Ms Hurst further explained the Act would:

...ensure a managed transition, supported by any assistance the New South Wales Government chooses to provide to those affected, including

track and venue workers, support staff and other non-racing employees who may be affected by the shutdown.

- 4.5 Part 2 of the Act would make the following offences:
- (a) holding a meeting for greyhound racing, operating a greyhound track, participating in greyhound racing or providing betting services in relation to greyhound racing in NSW
  - (b) keeping a greyhound in NSW for racing in or outside NSW
  - (c) breeding greyhounds in NSW for racing in or outside NSW
  - (d) destroying a registered greyhound or causing a registered greyhound to be destroyed
  - (e) relocating a greyhound for greyhound racing to another state or territory, or exporting a greyhound for greyhound racing outside Australia.
- 4.6 The Act would also dissolve GRNSW by appointing an administrator. This would include ceasing the appointment of the directors of GRNSW and transferring the assets, rights or liabilities of GRNSW to the Crown.
- 4.7 Finally, the Act includes administrative matters concerning the making of regulations, the prosecution of offences and the repeal of the *Greyhound Racing Act 2017*.

### 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 general regulation making powers*

- 4.8 The Bill seeks to create regulation-making powers under proposed section 16 of the Act. This power includes a general regulation-making power that would allow the Governor to make regulations about anything required or permitted to be prescribed by the Bill, or 'necessary or convenient' to be prescribed for carrying out or giving effect to the Act.

**The Bill proposes to create a general regulation-making power in section 16 of the proposed *Greyhound Racing Ban Act 2025* (the Act) to prescribe anything 'necessary or convenient' for carrying out or giving effect to the Act. The Committee notes that there does not appear to be any provisions which define or narrow the ordinary meaning of 'convenient' or 'necessary'.**

**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 does not control when they commence.**

**The Committee recognises that this regulation-making power may allow for more flexible regulatory responses. It also acknowledges that any**

**regulations would still have to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. However, the proposed regulation-making power may effectively allow regulations to prescribe matters with little limit. For these reasons, the Committee refers this matter to Parliament for consideration.**

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

*Statutory rule expressed to commence before publication on NSW legislation website*

4.9 Under section 39(1) of the *Interpretation Act 1987*, a statutory rule (including regulations) must be published on the NSW legislation website and commence on the date of publication or a later specified date. Subsection 39(2A) provides that a statutory rule is not invalid merely because it is expressed to commence (wholly or partly) before the date of publication, and is instead taken to commence on the date of publication rather than the earlier stated date.

4.10 Schedule 1 of the Bill seeks to establish a regulation-making power to make savings, transitional and other provisions. Subclauses 1(4) and (5) of Schedule 1 would allow a savings or transitional provision which is made as a consequence of the commencement of a provision to take effect before that provision has commenced, including before the publication of the regulation on the NSW legislation website.

**Schedule 1 of the proposed *Greyhound Racing Ban Act 2025* (the Act) would allow regulations to make savings or transitional provisions that are consequent to the commencement of the Act or other provision amending the Act. It also provides that the regulation may take effect on a date earlier than the date the provision commences, including a date before the publication of the regulation on the NSW legislation website. The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.**

**The Committee also notes that this would conflict with section 39(1) of the *Interpretation Act 1987*, which requires that statutory rules commence either on the day of publication or a later specified date. For these reasons, the Committee refers this matter to the Parliament for its consideration.**



## 5. Housing Amendment Bill 2025

Date introduced	11 February 2025
House introduced	Legislative Council
Member with carriage	The Hon. Rose Jackson MLC
Portfolio	Housing

### Purpose and description

- 5.1 The object of this Bill is to enable the Minister administering the *Housing Act 2001* (**the Act**):
- (a) to exercise the same functions as the NSW Land and Housing Corporation, including to deal with land and property for the Act
  - (b) to transfer rights, assets and liabilities between the Minister and other government entities.

### Background

- 5.2 The Bill would amend the Act to give the Minister for Housing (the **Minister**) the following powers currently exercised by the NSW Land and Housing Corporation (the **Corporation**) under the Act:
- (a) to purchase, lease or dispose of property
  - (b) to acquire land by agreement or by compulsory acquisition, in accordance with the *Land Acquisition Just Terms (Compensation) Act 1991* (**Land Acquisition Act**).
  - (c) to accept gifts of property or the surrender of land.
- 5.3 The Bill would also give the Minister the 'same functions that the NSW Land and Housing Corporation has under any relevant legislation'.
- 5.4 In her second reading speech, the Hon. Rose Jackson MLC, Minister for Housing, explained that 'giv[ing] the Minister for Housing the same functions as the Land and Housing Corporation under the Act and under other laws... enables the Minister to direct government resources to build more social housing.'
- 5.5 The Statement of Public Interest tabled with the Bill states that the powers provided by the Bill would assist with 'the implementation of the 2024-25 Budget's 6.6 billion Building Homes for NSW program'.
- 5.6 Further, the Bill would allow for the transfer of assets, rights and liabilities between the Minister and government agencies.

## 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 power to compulsorily acquire land*

- 5.7 The Bill proposes to insert subsection 35C(1) into the Act, which would empower the Minister to acquire land by agreement or by compulsory process under the Land Acquisition Act for the purposes of the Act. The Corporation has the same power under subsection 22(1) of the Act.
- 5.8 The Land Acquisition Act governs how NSW government agencies can acquire property by agreement or by compulsory process, although it does not broadly grant government agencies the statutory power to acquire real property. When land is acquired under the Land Acquisition Act, the original owner is compensated at a rate determined by the Act.

**The Bill proposes to insert subsection 35C(1) into the *Housing Act 2001* (the Act) which would empower the Minister for Housing to, for the purposes of the Act, acquire land either by agreement or by compulsory acquisition through the *Land Acquisition (Just Terms Compensation) Act 1991*, which determines the rate at which original owner of the land is compensated. The Committee notes that the compulsory acquisition of land may infringe on an individual's property rights, including their right to peaceful enjoyment of their property and their right to freedom of contract.**

**The Committee acknowledges that the power conferred on the Minister does not exceed the existing power of the NSW Land and Housing Corporation (the Corporation) to acquire land compulsorily under subsection 22(1) of the Act. However, the Committee notes that both proposed subsection 35C(1) and existing subsection 22(1) are broadly defined, in that land may be compulsorily acquired 'for the purposes of the Act'. There does not appear to be any other provision in the Bill or Act that further defines or confines when the Minister or Corporation may exercise their powers to compulsorily acquire land.**

**Given the broad remit of the power, as worded by proposed subsection 35C(1), the Committee refers this matter to Parliament for its consideration.**

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

#### *Inappropriate sub-delegation of significant legislative powers*

- 5.9 The Bill seeks to insert Division 6 into the Act which gives the Minister for Housing new functions, including to:
- (a) purchase, exchange, take on lease, hold, dispose of and otherwise deal with property (proposed section 35B)
  - (b) acquire land by agreement or by compulsory process, in accordance with the Land Acquisition Act (proposed section 35C)

- (c) acquire by gift, bequest or devise any property for any of the purposes of the Act (proposed section 35D)
  - (d) accept a surrender of land leased, dedicated or granted under the Act (proposed section 35E).
- 5.10 Proposed subsection 35F(1) would also give the Minister 'the same functions as the Corporation... under relevant legislation.'
- 5.11 Additionally, the Bill proposes to insert section 74A, which allows the Minister to delegate any functions conferred by the Act (except for the power of delegation) or under another Act to a 'relevant person', if those functions relate to the Minister's powers under the Act.
- 5.12 Under subsection 74A(3), a relevant person includes an employee of the Department of Communities and Justice or the Corporation.
- 5.13 The Bill would further allow for the delegate to subdelegate to another relevant person, if authorised by the Minister under subsection 74A(2).

**The Bill proposes to insert Division 6 into the *Housing Act 2001* (the Act) which allows the Minister for Housing to exercise a number of significant functions currently exercised by the NSW Land and Housing Corporation (the Corporation). Under the amended Act, the Minister would have powers to deal with property, accept gifts, surrender land and acquire land by compulsory process, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.**

**The Bill further seeks to insert section 74A into the Act to enable the Minister to delegate these powers to an employee of the Department of Communities and Justice or the Corporation (a 'relevant person'). These powers can then be sub-delegated to another relevant person with the Minister's authorisation.**

**The Bill may, therefore, provide for an inappropriate sub-delegation of significant statutory functions. The Committee acknowledges that the Minister must first authorise the sub-delegation of the powers. However, the Minister's authorisations would not be required to be disclosed or published, and they would not be subject to parliamentary scrutiny. In this case, parliamentary scrutiny is particularly important because the provisions relate to powers to compulsorily acquire land, which may infringe on an individual's property rights. For these reasons, the Committee refers this matter to Parliament for its consideration.**

## 6. Industrial Relations Amendment Bill 2025

Date introduced	12 February 2025
House introduced	Legislative Assembly
Member with carriage	The Hon. Sophie Cotsis MP
Portfolio	Industrial Relations

### Purpose and description

6.1 The object of this Bill is to amend the following legislation to make miscellaneous amendments about matters concerning industrial relations and, in particular, the Industrial Relations Commission in Court Session (the **Industrial Court**):

- the *Crimes (Appeal and Review) Act 2001*
- the *Criminal Procedure Act 1986*
- the *Health Services Act 1997* and the Health Services Regulation 2018
- the *Industrial Relations Act 1996* and the Industrial Relations (General) Regulation 2020
- the *Parliamentary Remuneration Act 1989*
- the *Police Act 1990*
- the *Work Health and Safety Act 2011*.

### Background

6.2 In her second reading speech, the Hon. Sophie Cotsis MP, Minister for Industrial Relations, noted that the amendments aim to 'support the efficient and effective operation of the recently re-established Industrial Court.'

6.3 The Bill would amend the *Crimes (Appeal and Review) Act 2001* to:

- remove the automatic right of appeal to the Supreme Court for persons convicted or sentenced by the Local Court for an offence under the *Industrial Relations Act 1996* or the *Work Health and Safety Act 2011* (**workplace relations offence**)
- allow for persons convicted or sentenced by the Local Court for a workplace relations offence to appeal to the Supreme Court against the conviction or sentence on a ground involving a question of law, with the leave of the Supreme Court

- allow the Attorney General or the Director of Public Prosecutions to appeal an acquittal of a person by the Industrial Court in proceedings for a workplace relations offence to the Court of Criminal Appeal on any ground involving a question of law alone.

6.4 The Bill further proposes to amend:

- the *Criminal Procedure Act 1986* to specify case management procedures for the Industrial Court
- the *Health Services Act 1997* to require an arbitrator for certain disputes under this Act to be a Judicial Member of the Industrial Relations Commission, and to insert new considerations the arbitrator must have regard to in making certain determinations
- the *Industrial Relations Act 1996* to clarify that regulations may provide for the refund or waiver of fees and charges imposed by the Industrial Relations Commission, and to provide that the procedure for appeals from the Local Court to the Industrial Court will mirror the appeal procedure to the District Court rather than the Supreme Court
- the *Parliamentary Remuneration Act 1989* to update the definition of 'basic salary' to reflect that the Tribunal must have regard to the fiscal position and outlook of the Government and the likely effects of the making of the determination on the position and outlook
- the *Police Act 1900* to replace references to 'the Chief Commissioner' with 'the President of the Commission'
- the *Work Health and Safety Act 2011* to transfer the jurisdiction of the District Court to hear civil proceedings in relation to engaging in or inducing discriminatory or coercive conduct to the Industrial Court.

6.5 Finally, the Bill would insert savings and transitional provisions and make consequential amendments to Regulations.

### Issues considered by the Committee

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

# Part Two – Regulations with comment

# 1. Court Security and Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2024

Date tabled	LA: 11 February 2025 LC: 11 February 2025
Disallowance date	LA: 8 May 2025 LC: 27 May 2025
Minister responsible	The Hon. Michael Daley MP
Portfolio	Attorney General

## Purpose and description

- 1.1 The object of this Regulation is to extend the trial of body-worn recording devices by sheriff's officers to 30 November 2025.

## Issues considered by the Committee

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

#### *Privacy rights – body worn recording devices*

- 1.2 The Court Security and Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2023 amended the Court Security Regulation 2021 and the Surveillance Devices Regulation 2022 (**Principal Regulations**) to permit sheriff's officers to use body-worn recording devices in court premises for a trial period commencing on 1 December 2023 and ending on 30 November 2024.
- 1.3 This Regulation extends the trial of the body-worn recording devices by sheriff's officers by one year, by replacing references to '30 November 2024' with '30 November 2025' in the Principal Regulations.
- 1.4 Section 21 of the *Court Security Act 2005* provides that sheriff's officers can be appointed as security officers to undertake security activities in a court. Under section 5A of the Court Security Regulation 2021, sheriff's officers may record using body-worn devices where at least one of the following applies:
- before making a recording, the officer has made a reasonable attempt to ensure the person likely to be recorded is aware that the device is capable of recording images, sound, or both
  - in the opinion of the officer, there is a significant risk of harm to the officer or another person
  - the recording of images, sound, or both by the device is inadvertent or unexpected.

- 1.5 Further, section 6A of the Court Security Regulation 2021 and section 6B of the Surveillance Devices Regulation 2022 exempts the use of body-worn recording devices by sheriff's officers from the prohibitions under the *Court Security Act 2005* and the *Surveillance Devices Act 2007*, respectively.

**The Regulation amends the Court Security Regulation 2021 and the Surveillance Devices Regulation 2022 to extend the trial of the use of body-worn recording devices by one year. This trial was introduced by the Court Security and Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2023 (2023 Regulation) to permit sheriff's officers to use body-worn recording devices in court premises. It also amended those Regulations so that sheriff's officers are exempt from certain requirements and prohibitions under the *Court Security Act 2005* and the *Surveillance Devices Act 2007*.**

The Committee previously reported in Digest No. 5/58 on the 2023 Regulation.<sup>5</sup> Consistent with those comments, the Committee notes that the Regulation may permit the broad use of body-worn recording devices, which may infringe on a person's privacy rights. It notes again that sheriff's officers are likely to interact with vulnerable members of the public in their capacity as court security officers, including victims of crime.

The Regulation extends the trial by another year. The Committee recognises that the trial remains time limited and that there are public interest issues in deterring violence and anti-social behaviour towards these officers in the course of their duties, which may include executing court warrants and monitoring and securing court proceedings. However, the Committee notes that the length of trial is significant as it is proposed to be extended by an additional year, meaning the trial would occur over a combined period of two years. This may further impact a person's right to privacy. For these reasons, the Committee refers the matter to Parliament for its consideration.

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<sup>5</sup> Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 5/58](#), 10 October 2023.





# 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. Environmental Planning and Assessment Amendment (Macquarie Park Transport Oriented Development Precinct) Regulation 2024

The objects of the Regulation are:

- (a) to require development applications involving land in the Macquarie Park Corridor, other than land in the Macquarie Park Transport Oriented Development Precinct, to be accompanied by an assessment of the consistency of the development with the Macquarie Park Innovation Precinct Place Strategy published by the Department of Planning, Housing and Infrastructure in September 2022
- (b) to increase the maximum percentage of development levy a consent authority may require an applicant to pay as a condition of development consent for development on land in the Macquarie Park Corridor.

The regulation increases the development levy on land in the Macquarie Park corridor for projects of \$250,000 or more. If projects are residential accommodation, the levy is 4%, otherwise it is 1.5%. There is no levy on projects up to \$250,000.

This regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 4.12, 4.64, 7.12, 10.13, the general regulation-making power, and 10.15. These changes not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

## 2. Health Legislation Amendment (Fees) Regulation 2024

The object of the Regulation is to increase certain licence and other fees charged under Acts administered by the Minister for Health.

Th Regulation is made under the *Mental Health Act 2007* and the *Private Health Facilities Act 2007*. These administrative changes do not affect substantive rights or obligations and therefore do not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

## 3. Law Enforcement (Powers and Responsibilities) Amendment (Hand-held Scanners) Regulation 2024

The object of the Regulation is to prescribe information that must be kept by the Commissioner of Police in relation to the use of powers under Part 4A of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

The Regulation requires the Commissioner of Police to keep records and information in relation to the use of hand-held scanners designed to detect metal. The Commissioner of Police must keep a record of the number and locations of places declared as 'designated areas' as well as the number of:

- persons police officers stop and submit to the use of a hand-held scanner
- persons searched, including strip searches

- weapons found using hand-held scanners and the type of weapon
- persons charged with the offence of failing to comply with a police officer's use of a hand-held scanner
- persons charged with an offence as a result of the use of a hand-held scanner.

The Regulation is made under section 45P of the *Law Enforcement (Powers and Responsibilities Act) 2002*. The Regulation requires the Commissioner of Police to keep certain records of the use of police officers' powers and does not appear to engage with the issues set out in section 9 of the *Legislation Review Act 1987*.

#### 4. Personal Injury Commission (Amendment No 3) Rule 2024

The object of the Rule is to amend the Personal Injury Commission Rules 2021 in relation to the introduction of documents in applicable proceedings.

The Rule provides for the filing of documents in Personal Injury Commission matters and additional requirements for documents in applications to commence proceedings or in reply to an application.

The Rule sets a limit of 500 page document bundles in Personal Injury Commission matters, with exceptions for certain motor accident and workers compensation proceedings. The Rule provides for the serving of additional documents, which requires the leave of the appropriate decision-maker if the proceedings do not relate to medical assessment proceedings.

The Rules are made under sections 19 and 20 of the *Personal Injury Commission Act 2020* and do not appear to raise any procedural fairness or other issues set out in section 9 of the *Legislation Review Act 1987*.

#### 5. Point to Point Transport (Taxis and Hire Vehicles) Amendment (Disqualifying Offences) Regulation 2024

The object of the Regulation is to make further provision in relation to offences that disqualify a person from driving a taxi or hire vehicle.

The Regulation replaces clause 24(2)(m). Under new clause 24(2)(m1), where a taxi driver is found guilty of one of the following offences and they have previously been found guilty of any of the offences before, they are disqualified from driving a taxi or hire vehicle:

- demanding fares that exceed the amount of the fare determined under a fares order or contravenes arrangements for remuneration approved by a fares order
- failing to accept a hiring immediately when offered
- incorrectly operating a fare calculation device.

The Regulation is made under sections 32 and 158, the general regulation-making power of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*. The Regulation introduces new disqualifying offences to regulate the taxi and hire vehicle industry and does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

## 6. Public Notaries Act 1997—Public Notaries Appointment Amendment (Miscellaneous) Rule 2024

The object of the Rule is to amend the Public Notaries Appointment Rules to reflect the definitions contained in the Legal Profession Uniform Law 2014 (NSW) (the **Uniform Law**), to prescribe deadlines for making applications, and to make minor amendments that would assist with legibility.

The Rule is made under the *Public Notaries Act 1997*. It updates definitions, including 'Australian practising certificate' and 'Australian lawyers', to match their meanings under the Uniform Law and adds headings to certain rules for clarity. It also allows the registrar to publish application deadlines to clarify administrative processes. These minor changes do not affect substantive rights or obligations and therefore do not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

## 7. Surveying and Spatial Information Regulation 2024

The object of this Regulation is to repeal and remake, with substantial amendments, the Surveying and Spatial Information Regulation 2017, which would otherwise be repealed on 1 September 2025 by section 10(2) of the *Subordinate Legislation Act 1989*.

The Regulation prescribes requirements for carrying out surveys and preparing plans and other documents, including in relation to the following:

- (a) measurement equipment and methods
- (b) accuracy tolerances and measurement checks
- (c) the adoption of datum lines
- (d) defining boundaries
- (e) the use of survey marks and monuments
- (f) keeping field notes
- (g) the content of formal land survey plans
- (h) the completion of survey and consent certificates
- (i) record keeping and reporting.

The Regulation also makes provision for:

- (a) the registration of surveyors
- (b) the constitution of the Board of Surveying and Spatial Information and related committees
- (c) fees payable for various matters.

The Regulation is made under sections 3, 4, 5, 7, 10, 26, 27 and 36 (the general regulation making power) of the *Surveying and Spatial Information Act 2002*. The Regulation largely remakes the previous iterations with minor changes that include:

- removing references to surveyor duties
- clarifying the process of surveyor consents

- clarifying metrics for measurements and calculations.

The Regulation amendments to its previous iteration do not appear to engage with any issues set out in section 9 of the *Legislation Review Act 1987*.

#### 8. [Water Management \(General\) Amendment \(Fire Fighting Exemptions\) Regulation 2024](#)

The object of the Regulation is to make provision in relation to exemptions from the *Water Management Act 2000* for taking water and using works for fire fighting activities.

The Regulation amends the Water Management (General) Regulation 2018 to allow fire fighters to access water from landholders' land where the water is used on the landholder's land or adjacent land for:

- controlling or extinguishing a fire
- protecting persons, animals or property under threat from fire
- fire fighting training or controlled burning carried out by or under the authority of a fire fighting authority
- testing or maintenance of firefighting equipment.

The Regulation requires that the amount of water taken in a water year must be reasonably proportionate to the fire or threat of fire and cannot exceed 100,000 litres.

The Regulation is made under subsection 400(2) of the *Water Management Act 2000*. It provides confined exceptions for accessing water from landholders' land and does not appear to engage with the 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. 26

TIME & DATE: 3:00PM, 17 FEBRUARY 2025

LOCATION: ROOM 1136 AND WEBEX

### MEMBERS PRESENT

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

### OFFICERS PRESENT

Rohan Tyler, Alice Zwar, Alex Read, Oliver Sinclair and Elizabeth Hawken.

### AGENDA ITEM

#### 1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 10 February 2025 be confirmed.

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

#### 3. Consideration of bills with comment for Legislation Review Digest 25/58

Discussion ensued.

Resolved, on the motion of Ms Davis, seconded by Mr Layzell: That the Committee adopts the following draft reports *in globo*:

- a) Crimes Amendment (Display of Nazi and Terrorist Symbols) Bill 2025; Summary Offences Amendment (Public Assemblies) Bill 2025
- b) Crimes Legislation Amendment (Racial and Religious Hatred) Bill 2025
- c) Greyhound Racing Ban Bill 2025
- d) Housing Amendment Bill 2025

Resolved, on the motion of Ms Higginson: That the Committee adopts the following draft bill report, as amended, with the following issue to be inserted at page 30 of Legislation Review Digest No. 25/58 before the heading 'Inappropriately delegates legislative powers: s 8A(1)(b)(iv) of the LRA':

- a) Crimes Amendment (Places of Worship) Bill 2025  
*Expansion of LEPRA - Freedom of political communication*
  - (i) The Bill seeks to amend section 200 of the LEPRA to create an exception to the existing limitations on NSW Police's 'move on' powers.
  - (ii) Under section 197 of the LEPRA, a police officer may direct a person to leave a public place if the police officer reasonably believes that the

person's behaviour or presence is obstructing others or traffic, or constitutes harassment or intimidation.

- (iii) Subsections 200(1) and (2) of the LEPR prevents police officers from issuing these directions in cases involving an industrial dispute, an apparently genuine demonstration or protest, a procession, or an organised assembly.
- (iv) As noted above, the Bill would amend subsection 200(2) of the LEPR and insert subsection 200(5) into the LEPR to create an additional exception. It would allow NSW Police to issue 'move on' directions if a demonstration, protest, procession, or assembly:
  - (a) is not an authorised public assembly under Part 4 of the SO Act or is not being conducted substantially in accordance with its authorisation
  - (b) occurs in or near a place of worship
  - (c) does not form part of industrial action or an industrial dispute or campaign
  - (d) does not occur outside Parliament House or an office of a Member of Parliament
  - (e) is not in accordance with the consent or other authority of the Commissioner of Police or the person apparently in charge of the place of worship.
- (i) In his second reading speech, the Attorney General stated that the usual legal thresholds for issuing a 'move on' direction would continue to apply.

**Under existing section 197 of the LEPR, police officers may direct a person to leave a public place if they reasonably believe that the person's behaviour or presence is obstructing others or traffic, or constitutes harassment or intimidation. Subsections 200(1) and (2) of the LEPR prevents police officers from issuing these directions in cases involving an industrial dispute, an apparently genuine demonstration or protest, a procession, or an organised assembly.**

**The Bill seeks to amend subsection 200(2) of the LEPR and insert subsection 200(5) into the LEPR to allow police to issue 'move on' directions if a demonstration, protest, procession, or assembly is not conducted substantially in accordance with its authorisation under the *Summary Offences Act* 1988, occurs in or near a place of worship, does not form part of industrial action, does not occur at or outside Parliament or an office of a Member of Parliament and is not in accordance with the consent or other authority of the Commissioner of Police or the person in charge of the place of worship. The Bill would therefore broaden the circumstances in which police officers may issue move on directions to individuals which may impact on the implied**

**freedom of political communication under the Australian Constitution.**

**The Committee acknowledges that the amendment may be intended to protect the safety of individuals near and in places of worship. It also acknowledges that the proposed exception under proposed subsection 200(5) does not allow police officers to issue 'move on' directions where the demonstration, protest, procession or assembly occurs at or outside Parliament House or an office of a Member of Parliament, or forms part of industrial action, dispute or campaign.**

**However, the Committee notes that the implied freedom of political communication can only be restricted where there is a legitimate object, and the restriction is reasonably appropriate and adapted to achieve that object. Expanding the powers of police to issue 'move on' directions around demonstrations, protests, processions or assemblies could limit the avenues available to persons wishing to express political ideas and communicate those ideas to decision makers. For this reason, the Committee refers the matter of whether the amendment impermissibly burdens the implied freedom of political communication to Parliament for further consideration.**

**4. Consideration of bills without comment for Legislation Review Digest 25/58**

Resolved, on the motion of Mr Hagarty: That the Committee adopts the draft bill report regarding the Industrial Relations Amendment Bill 2025.

**5. Consideration of regulations with comment for Legislation Review Digest 25/58**

Resolved, on the motion of Ms Higginson: That the Committee adopts the draft report regarding the Court Security and Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2024.

**6. Regulations without comment for Legislation Review Digest 25/58**

Resolved, on the motion of Mr Murphy: That the Committee adopts the regulations without comment as Part Three to Digest 25/58.

**7. Legislation Review Digest 25/58**

Resolved, on the motion of Ms Stuart:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts the Legislation Review Digest No. 25/58, as amended, 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. \*\*\***

**11. Next meeting**

The meeting adjourned at 3:14pm until Monday 17 March 2025 at 3.00pm in meeting room 1136.