

Legislation Review Committee



PARLIAMENT OF  
NEW SOUTH WALES

# Legislation Review Digest



Digest No. 27/58 – 25 March 2025

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



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

ISSN: 1448-6954

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

# Contents

|   |           |
|---|-----------|
| Membership.....   | 4         |
| Guide to the Digest.....  | 5         |
| Digest Snapshot.....  | 12        |
| Summary of Conclusions.....   | 14        |
| <br>  |           |
| <b>PART ONE – BILLS .....</b>   | <b>23</b> |
| 1. Claim Farming Practices Prohibition Bill 2025 .....  | 24        |
| 2. Community Improvement Districts Bill 2025 .....  | 29        |
| 3. Crimes Legislation Amendment (Racial and Religious Hatred Legislation Repeal) Bill 2025* ..... | 34        |
| 4. Industrial Relations Amendment (Transport Sector Gig Workers and Others) Bill 2025.....        | 36        |
| 5. Product Lifecycle Responsibility Bill 2025 .....   | 41        |
| 6. Roads Amendment (Wildlife Impacts) Bill 2024* .....  | 49        |
| 7. Screen and Digital Games Industries Bill 2025.....   | 50        |
| <br>  |           |
| <b>PART TWO – REGULATIONS WITHOUT COMMENT .....</b>   | <b>52</b> |
| <br>  |           |
| <b>APPENDICES.....</b>  | <b>54</b> |
| Appendix One – Functions of the Committee.....  | 55        |
| Appendix Two – Unconfirmed extracts of minutes.....   | 57        |

# Membership

|                        |  |
|------------------------|--|
| <b>Chair</b>           | Ms Lynda Voltz MP, Member for Auburn   |
| <b>Deputy Chair</b>    | Ms Maryanne Stuart MP, Member for Heathcote  |
| <b>Members</b>         | Ms Donna Davis MP, Member for Parramatta<br>Mr Nathan Hagarty MP, Member for Leppington<br>Ms Sue Higginson MLC<br>Mr Dave Layzell MP, Member for Upper Hunter<br>The Hon. Jacqui Munro MLC<br>The Hon. Cameron Murphy MLC |
| <b>Contact details</b> | Legislation Review Committee<br>Parliament of New South Wales<br>6 Macquarie Street<br>Sydney NSW 2000   |
| <b>Telephone</b>       | 0408 029 815   |
| <b>E-mail</b>          | <a href="mailto:Legislation.Review@parliament.nsw.gov.au">Legislation.Review@parliament.nsw.gov.au</a>   |
| <b>Website</b>         | <a href="http://www.parliament.nsw.gov.au/lrc">www.parliament.nsw.gov.au/lrc</a>   |

# Guide to the Digest

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

## Part One: Functions Regarding Bills

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

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

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

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

**Trespass unduly on personal rights and liberties:**

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

**Insufficiently defined administrative powers:**

- insufficiently defined or wide powers

**Non-reviewable decisions:**

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

**Inappropriate delegation of legislative powers:**

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

**Insufficiently subjects the exercise of legislative power to parliamentary scrutiny**

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

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

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



## Part Two: Functions Regarding Regulations with Comments

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

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

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

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

### **Part Three: Regulations without Comment**

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

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

## Conclusions on Bills and Regulations

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

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

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

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

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

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

# Digest Snapshot

## PART ONE – BILLS

### [1. Claim Farming Practices Prohibition Bill 2025](#)

| Issue identified  | Conclusion of Committee |
|---|-------------------------|
| Extraterritorial application of laws                              | Referred                |
| Right to the presumption of innocence – reversal of onus of proof | No further comment      |
| Wide regulation-making powers with retrospective effect           | Referred                |

### [2. Community Improvement Districts Bill 2025](#)

| Issue identified  | Conclusion of Committee |
|---|-------------------------|
| Wide regulation-making powers with retrospective effect | Referred                |
| Wide delegation of powers to unspecified persons        | Referred                |
| Commencement by proclamation                            | No further comment      |
| Strict liability offences                               | No further comment      |

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

| Issue identified                                 | Conclusion of Committee |
|--|-------------------------|
| Retrospective application of repealing provision | No further comment      |

### [4. Industrial Relations Amendment \(Transport Sector Gig Workers and Others\) Bill 2025](#)

| Issue identified                                      | Conclusion of Committee |
|---|-------------------------|
| Broad power to make contract of carriage declarations | No further comment      |
| Freedom of contract                                   | No further comment      |

### [5. Product Lifecycle Responsibility Bill 2025](#)

| Issue identified   | Conclusion of Committee |
|--|-------------------------|
| Wide regulation-making powers with retrospective effect      | Referred                |
| Granting of exemptions                                       | Referred                |
| Wide delegation of powers to unspecified persons             | Referred                |
| Commencement by proclamation                                 | No further comment      |
| Extraterritorial application of laws                         | No further comment      |
| Continuing offences – absolute and strict liability offences | No further comment      |

### [6. Roads Amendment \(Wildlife Impacts\) Bill 2024\\*](#)

No issues identified

### [7. Screen and Digital Games Industries Bill 2025](#)

| <b>Issue identified</b>       | <b>Conclusion of Committee</b> |
|-------------------------------|--------------------------------|
| Wide regulation-making powers | No further comment             |

# Summary of Conclusions

## PART ONE – BILLS

---

### 1. Claim Farming Practices Prohibition Bill 2025

---

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

---

##### *Extraterritorial application of laws*

---

The Bill proposes to extend the legislative jurisdiction of the Act beyond the State of NSW. The Committee generally comments on provisions that have extraterritorial effect as they impact on the rule of law principle that a person is entitled to know the law that applies to them at any given time.

Extraterritorial application of the Act could create conflict between the Act and another jurisdiction's laws of a similar nature. The Committee also notes that the extraterritorial application is broadly worded to apply the Act 'so far as the legislative powers of the State permit.' It may be unclear for an individual to understand the scope of the 'legislative powers' of NSW beyond the State's geographical boundaries. For these reasons, the Committee refers the matter to Parliament for its consideration.

##### *Right to the presumption of innocence – reversal of onus of proof*

---

The Bill seeks to create new offences to prohibit claim farming practices. The new offences would also include exemptions under subclauses 5(4) and 6(4) for certain circumstances and contact with potential claimants that would not be captured by the new offences. Proposed subclauses 5(5) and 6(5) provide that the evidential burden is placed on the accused to establish an exemption. Proposed subclauses 5(5) and 6(5) may therefore undermine an individual's right to the presumption of innocence by reversing the onus of proving an exemption under subclauses 5(4) and 6(4). The Committee notes that it is a principle of common law that a person charged with a criminal offence has a right to be presumed innocent until proven guilty.

However, the Committee recognises that the relevant offences do not attract a custodial penalty and that the fines would apply to law firms, rather than individuals. It acknowledges that reversing the onus of proof may sometimes be justified where it relates to an issue that is within the knowledge of the accused. For these reasons the Committee makes no further comment.

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

---

##### *Wide regulation-making powers with retrospective effect*

---

The Bill proposes a general regulation-making power under clause 11. This would allow regulations to address any issue that is 'required or permitted by this Act to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.

Schedule 1 of the Bill would allow regulations to make savings or transitional provisions that are consequent to the commencement of the Bill, or another provision amending the Bill, once enacted. It also provides that the regulations may take effect before the provision commences, including prior to their publication on the NSW legislation website. The Committee acknowledges

the inclusion of subclauses 1(5)(a) and (b), which state that a savings or transitional provision taking effect before its publication on the NSW legislation website would not adversely affect a person's pre-existing rights or impose liabilities for actions taken or omitted before publication.

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

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

---

## 2. Community Improvement Districts Bill 2025

---

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

---

#### *Wide regulation-making powers with retrospective effect*

---

The Bill proposes a general regulation-making power under clause 42. This would allow regulations to address any issue that is 'required or permitted to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.

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

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

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

---

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

---

#### *Wide delegation of powers to unspecified persons*

---

Proposed clause 33 of the Bill would allow the Minister for Transport (the Minister) and Transport for NSW (the Authority) to delegate any of their functions, other than their power to delegate, to a person or a class of persons authorised by the regulations. It would also allow those delegates to further delegate powers to a class of persons prescribed by the regulations, if authorised in writing by the Authority.

The Bill may, therefore, provide for the wide delegation of statutory functions to a class of unknown persons. This may enable private individuals to be delegated functions under the proposed Act which may be expected to be performed by public officials or authorities.

The Committee acknowledges that allowing regulations to prescribe who may be delegated functions by the Minister and the Authority could allow for more flexibility in the administration of the community improvement district regime. The Committee also recognises that the regulations are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the Committee prefers that the classes of persons who may be delegated statutory functions are detailed in primary legislation to provide clarity as well as greater oversight of the exercise of those Executive and public functions. For this reason, the Committee refers the matter to Parliament for further consideration.

#### *Commencement by proclamation*

---

The Bill would commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the bill's provisions, particularly where those provisions affect personal rights or liberties. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.

However, the Committee acknowledges that commencement by proclamation may allow for greater flexibility in establishing the community improvement district regime. For this reason, and because the Bill does not appear to impact personal rights and liberties, the Committee makes no further comment.

---

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

---

#### *Strict liability offences*

---

The Bill proposes to grant Transport for NSW (the Authority) the power to require information and documents from local councils, government sector agencies, community improvement district



(CID) entities or their officers or employees. The information or documents required would be set out in a written notice and must be reasonably necessary for the administration of the *Community Improvement Districts Act 2025* (the Act).

The Bill creates a strict liability offence for failing to comply with an information request notice issued by the Authority. The Bill would create a further strict liability offence for disclosing information obtained during the administration or execution of the Act, except in specific circumstances. Both offences carry a maximum penalty of a \$2,200 fine (20 penalty units) for individuals.

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 to encourage compliance. Further, the maximum penalty under subclause 35(3) is monetary rather than custodial. For these reasons, the Committee makes no further comment.

---

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

---

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

---

##### *Retrospective application of repealing provision*

---

The Bill seeks to retrospectively repeal the *Crimes Legislation Amendment (Racial and Religious Hatred) Act 2025* (the Act), on the date of the Act's commencement (2 March 2025). The Bill also proposes to insert a transitional provision into Schedule 2 of the *Crimes Act 1900* to provide that prosecutions related to the Act are to be treated as though the Act never commenced.

The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.

However, the Committee acknowledges that without the transitional provision, the offences created by the Act would be enforceable for acts committed during the relatively short period of time between its enactment and repeal. This may impact the rule of law principle of equal application of laws. In the circumstances, the Committee makes no further comment.

---

### 4. Industrial Relations Amendment (Transport Sector Gig Workers and Others) Bill 2025

---

#### **Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA**

---

##### *Broad power to make contract of carriage declarations*

---

The Bill seeks to insert subsection (3A) and (3B) into section 309 of the *Industrial Relations Act 1996* (the Act). Subsection (3A) and (3B) would broaden the circumstances in which the Industrial Relations Commission of NSW (the Commission) can declare contracts or a class of contracts to be 'contracts of carriage'. Under proposed subsections (3A) and (3B), the Commission, constituted by a Presidential Member, must be satisfied that the contract is for the work of transporting persons and/or goods, and that it would be appropriate to declare the contract a contract of carriage, having regard to matters set out at subsection (3B).

Subsection (3B) includes broadly defined considerations including 'other matters the Commission considers relevant' and 'other matters prescribed by the regulations'. The Committee notes that there does not appear to be any other provision in the Bill or Act that further defines or confines when the Commission may exercise its powers to declare a contract or a class of contract to be a contract of carriage. The Committee further notes that where a contract is declared to be a contract of carriage, the Commission can inquire into any matter arising under it and make contract determinations relating to the carrier's pay and any other condition of the contract.

However, the Committee acknowledges that the Commission must have regard to a range of matters before declaring a contract to be a contract of carriage, including whether a worker has low bargaining power and is being paid the same or less than an employee doing comparable work. The Committee also acknowledges that the amendments are intended to protect gig transport industry workers that may have unequal bargaining power. For these reasons, the Committee makes no further comment.

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

#### *Freedom of contract*

---

The Bill seeks to expand the circumstances in which contracts can be considered contracts of carriage. The amendments would allow Chapter 6 of the *Industrial Relations Act 1996* (the Act) to apply to additional categories of contract transport work and to contract carriers who own or operate a total of up to three motor vehicles. The Bill would also give the Industrial Relations Commission of NSW (the Commission) broader scope to declare contracts to be contracts of carriage.

Where a contract is declared to be a contract of carriage, the Commission can inquire into any matter arising under it and make contract determinations relating to the carrier's pay and any other condition of the contract. The Bill would provide a broad and non-exhaustive list of provisions that the Commission may include when making a contract determination for contracts of carriage under amended section 313.

The Bill may therefore impact on the contract rights of a broad group of contractors, carriers and parties to a contract or arrangements in a contractual chain. Specifically, the amendments may impede on the right to choose contractual terms and the freedom to negotiate and set out the terms and conditions of the contract.

However, the Committee acknowledges that under proposed subsection 313(4), the Commission is prevented from making a determination in relation to remuneration or other conditions in a contractual chain if it concludes that the determination would interfere with the reasonable commercial arrangements of the parties to a contract or arrangements in the contractual chain.

The Committee further acknowledges that the Bill would require the Commission to consider a range of matters before declaring a contract to be a contract of carriage, including whether the worker has low bargaining power and is being paid the same or less than an employee doing comparable work. The Committee notes that limitations on freedom of contract are not uncommon to address unequal bargaining power between parties where an apparent power imbalance exists. In the circumstances, the Committee makes no further comment.

---

## 5. Product Lifecycle Responsibility Bill 2025

---

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

---

#### *Wide regulation-making powers with retrospective effect*

---

The Bill proposes a general regulation-making power under clause 57. This would allow regulations to address any issue that is 'required or permitted by this Act to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill. The Bill would also allow the regulations to create offences for brand owners and product stewardship organisations for a regulated product failing to prepare and lodge action plans with the regulator. These offences would attract a maximum penalty of a \$110,000 fine (1,000 penalty units) for individuals.

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

However, as there appears to be no provision which defines or limits the terms 'necessary or convenient', the Bill may, therefore, include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation which are not required to be passed by Parliament, and over which Parliament has no control regarding their commencement. The Committee recognises that these types of regulation-making powers are not uncommon, as they may allow for more flexible administrative responses. The Committee also notes that regulations remain subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987* (the Interpretation Act). However, the Committee considers that the broad nature of the proposed general regulation-making power, as well as the deferral of offences attracting substantial monetary penalties to the regulations, could allow significant matters to be prescribed with minimal constraints.

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

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

---

#### *Granting of exemptions*

---

Clause 50 allows the NSW Environment Protection Authority (the regulator) to grant exemptions in general or specific circumstances, on its own initiative or on application from a person seeking an exemption. The Committee generally prefers exemptions to be included in the Act or regulations to ensure an appropriate level of parliamentary oversight. Regulations must be tabled in Parliament and are subject to disallowance under section 41 of the *Interpretation Act 1987*.

The Committee acknowledges that proposed subclause 50(5) would require the details of exemptions that do not apply only to specified persons to be published by notice in the Gazette. The Committee also acknowledges that the granting of exemptions by way of order allows for flexibility and timely decisions to be made. However, the exemptions may have broad application as they may be granted in relation to a premise, product or another matter or thing. The exemptions may also be granted at the discretion of the regulator. For these reasons, the Committee refers this matter to Parliament for its consideration.

#### *Wide delegation of powers to unspecified persons*

---

The Bill would allow the Minister to delegate the exercise of their functions under the proposed Act or regulations. Clause 51 provides that the Minister can delegate their functions to a member of staff of the NSW Environment Protection Authority (the regulator) or a person authorised by regulations. The Bill therefore provides for the wide delegation of statutory functions to an unknown class of people as authorised by regulations.

The broad delegation of functions may enable private individuals to be delegated functions that may be expected to be performed by appointed authorities or senior public officials. The Committee generally prefers that the classes of persons who may be delegated statutory functions are detailed in primary legislation and appropriately limited to provide clarity as well as greater oversight of the exercise of Executive and public functions.

The Committee acknowledges that allowing regulations to prescribe who may be delegated certain functions, and allowing staff of the regulator to perform delegated functions could allow for more flexibility in the administration of the product stewardship scheme. It also recognises that regulations are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the Committee notes that the functions that may be delegated are ministerial functions, including the setting of product stewardship targets that attract fines for non-compliance. For these reasons, the Committee refers this matter to Parliament for its consideration.

#### *Commencement by proclamation*

---

The Bill commences by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly if legislation affects individual rights and liberties. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.

The Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the making of administrative arrangements. This may be necessary, for example, to set up the arrangements for administering the product stewardship framework. Because of this, and because the Bill does not appear to impact on personal rights and liberties, the Committee makes no further comment.

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

---

#### *Extraterritorial application of laws*

---

Clause 5 of the Bill provides that the Act and regulations apply to persons, premises or suppliers, or products that are outside of NSW, where there is an extraterritorial impact. Extraterritorial impacts include matters that affect the State of NSW that relate to supply into or within NSW of a product, or that relate to a matter of non-compliance under the Bill and regulations. The Bill

therefore proposes to have extraterritorial application outside of the State of NSW as the Act and regulations could apply to persons, premises or products located outside of NSW.

The Committee generally comments on provisions that have extraterritorial effect as they impact on the rule of law principle that a person is entitled to know the law that applies to them at any given time. It may be difficult for a person outside of NSW to determine whether they are subject to a provision of the Act or regulations. Extraterritorial application could also raise possible conflicts with regulatory frameworks in other jurisdictions.

However, the Committee notes that the Act only has extraterritorial application in certain circumstances where there is an 'extraterritorial impact'. The Committee further notes that the extraterritorial application is intended to regulate products that are sold online or manufactured outside NSW. For these reasons, the Committee makes no further comment.

#### *Continuing offences – absolute and strict liability offences*

---

The Bill proposes to create a number of continuing offences that apply to participants in the product stewardship scheme, including product brand owners and product stewardship organisations. The offences include failing to comply with a product stewardship requirement, failing to keep records as prescribed by the Act, and failing to provide notice to the regulator and product stewardship organisation before supplying a regulated product. The Bill provides maximum penalties for the offences ranging from a \$27,500 fine (250 penalty units) to a \$220,000 fine (2,000 penalty units) for individuals. In addition, for each day the offences continue, the Bill provides for penalties ranging from a \$2,200 fine (20 penalty units) to a \$22,000 fine (200 penalty units).

The Committee notes that in some cases these are significant financial penalties that may be applied for each day that the offence continues. This may significantly impact those individuals to which the continuing penalties apply, particularly where it is a strict or absolute liability offence. The Committee generally comments on strict and 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 the offence under subclause 10(1) that attracts the highest penalty of the offences, that being a \$220,000 fine (2,000 penalty units) and a \$22,000 fine (200 penalty units) for each day the offence continues, includes a defence under subclause 10(2).

The Committee also recognises that strict and absolute liability offences are not uncommon in regulatory settings in order to encourage compliance. Further, these offences are intended to promote compliance to ensure public safety and to protect the environment. The Committee also acknowledges that the maximum penalties carried by these proposed offences would only be monetary and not custodial. For these reasons, the Committee makes no further comment.

---

## **6. Roads Amendment (Wildlife Impacts) Bill 2024\***

---

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

---

## 7. Screen and Digital Games Industries Bill 2025

---

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

---

#### *Wide regulation-making powers*

---

The Bill proposes a general regulation-making power under clause 13. This would allow regulations to address any issue that is 'required or permitted to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.

The Committee notes that there does not appear to be any provisions that define or narrow the ordinary meaning of 'convenient.' The Bill may therefore include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation which are not required to be passed by Parliament, and over which Parliament has no control regarding their commencement. The Committee generally prefers substantive matters to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight.

However, the Committee acknowledges that a general regulation-making power may provide more flexibility in the administration of the framework. Further, the Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee also acknowledges that it is not uncommon to defer certain matters related to the regulation of industries, such as the screen and digital games industries, to regulations. For these reasons, the Committee makes no further comment.



# Part One – Bills

# 1. Claim Farming Practices Prohibition Bill 2025

|                      |                           |
|----------------------|---------------------------|
| Date introduced      | 18 March 2025             |
| House introduced     | Legislative Assembly      |
| Member with carriage | The Hon. Michael Daley MP |
| Portfolio            | Attorney General          |

## Purpose and description

- 1.1 The object of this Bill is to prohibit claim farming practices by making it an offence to:
- (a) make certain contact with a potential claimant in relation to civil proceedings for personal injury damages
  - (b) pay or receive referral fees in relation to civil proceedings for personal injury damages.

## Background

- 1.2 The Bill seeks to create the *Claim Farming Practices Prohibition Act 2025* (the **Act**) to ban the practice of 'claim farming.' In particular, the Act proposes to ban people from 'contacting another person to encourage them to make a relevant [personal injury] claim with the expectation of receiving a fee or other benefit'. It would also make 'buying or selling a relevant [personal injury] claim referral' unlawful.
- 1.3 The Bill would also amend the *Legal Profession Uniform Law Application Act 2014* to impose penalties on legal practitioners found guilty of the new claim farming offences under the Act.
- 1.4 In his second reading speech, the Hon. Michael Daley MP, Attorney General, commented that the Bill would:
- ...protect members of the community from predatory and exploitative claim farming practices while also preserving legitimate pathways and practices that facilitate access to justice.
- 1.5 The Attorney General also acknowledged that the Bill was developed with stakeholder and community consultation, with 32 stakeholder submissions being received via the 'Have Your Say' website.



## Issues considered by the Committee

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

#### *Extraterritorial application of laws*

- 1.6 Part 2 clause 4(b) of the Bill proposes that the new Act has extraterritorial application. This would mean that the Act would apply to conduct outside the jurisdiction of NSW, 'in so far as the legislative powers of the State permit.'

**The Bill proposes to extend the legislative jurisdiction of the Act beyond the State of NSW. The Committee generally comments on provisions that have extraterritorial effect as they impact on the rule of law principle that a person is entitled to know the law that applies to them at any given time.**

**Extraterritorial application of the Act could create conflict between the Act and another jurisdiction's laws of a similar nature. The Committee also notes that the extraterritorial application is broadly worded to apply the Act 'so far as the legislative powers of the State permit.' It may be unclear for an individual to understand the scope of the 'legislative powers' of NSW beyond the State's geographical boundaries. For these reasons, the Committee refers the matter to Parliament for its consideration.**

#### *Right to the presumption of innocence – reversal of onus of proof*

- 1.7 Under proposed clause 5 of the Bill, it would be unlawful to contact a potential claimant to solicit them to make a claim, where the person making contact:

- (a) receives a fee or other benefit
- (b) agrees or expects to receive a fee or other benefit
- (c) asks for someone else to receive a fee or other benefit
- (d) agrees to someone else receiving a fee or other benefit

because of the contact.

- 1.8 Subclause 5(4) of the Bill provides that the following forms of contact would not amount to an offence:

- (a) giving notice in relation to representative proceedings, as required under section 175 of the *Civil Procedure Act 2005* or corresponding law
- (b) law practices contacting a potential claimant where the potential claimant is a previous client and they reasonably believe the potential claimant would not object to being contacted
- (c) law practices contacting a potential claimant where they have been requested to by a representative of a community legal service or an industrial organisation, and the law practice has confirmed that the representative reasonably believes the potential claimant would not object to being contacted.

1.9 The Attorney General explained in his second reading speech that the exemptions '...safeguard access to justice and preserve the proper functioning of the legal services sector.'

1.10 Subclause 6(1) of the Bill would also make it an offence to:

- (a) receive a fee or other benefit for referring a claim to another person
- (b) agree to receive a fee or other benefit for referring a claim to another person
- (c) arrange a third party to receive a fee or other benefit for the person referring a claim to another person.

1.11 Subclause 6(2) of the Bill further prohibits payers from:

- (a) providing a fee or other benefit to another person for the referral of a claim
- (b) agreeing to provide consideration to another person for the referral of a claim
- (c) arranging for a third party to provide a fee or other benefit to another person for the referral of a claim.

Under subclause 6(4) the following are exempt from an offence under subclauses 6(1) and (2):

- (a) law practices acting for claimants referring the claimant to a third party to provide another service in relation to the claim
- (b) a law practice or part of a law practice being sold to a purchasing law practice under certain circumstances.

1.12 'Law practice' has the same meaning as under the *Legal Profession Uniform Law (NSW)* and includes sole practitioners and law firms.

1.13 The maximum penalty for each offence is a \$55,000 fine (500 penalty units).

1.14 Subclauses 5(5) and 6(5) 'places an evidential burden on the accused' to establish that an exemption applies under subclause 5(4) and 6(4).

1.15 In his second reading speech, the Attorney General noted that:

The accused will need to point to some evidence that suggests a reasonable possibility that an exemption applies. However, once raised, the prosecution will still bear the legal burden of proving, beyond reasonable doubt, that the exemption does not apply.

**The Bill seeks to create new offences to prohibit claim farming practices. The new offences would also include exemptions under subclauses 5(4) and 6(4) for certain circumstances and contact with potential claimants that would not be captured by the new offences. Proposed subclauses 5(5) and 6(5) provide that the evidential burden is placed on the accused**

to establish an exemption. Proposed subclauses 5(5) and 6(5) may therefore undermine an individual's right to the presumption of innocence by reversing the onus of proving an exemption under subclauses 5(4) and 6(4). The Committee notes that it is a principle of common law that a person charged with a criminal offence has a right to be presumed innocent until proven guilty.

However, the Committee recognises that the relevant offences do not attract a custodial penalty and that the fines would apply to law firms, rather than individuals. It acknowledges that reversing the onus of proof may sometimes be justified where it relates to an issue that is within the knowledge of the accused. For these reasons the Committee makes no further comment.

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

*Wide regulation-making powers with retrospective effect*

- 1.16 The Bill proposes a general regulation-making power under clause 11. This would allow regulations to address any issue that is 'required or permitted by this Act to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill, if enacted.
- 1.17 Schedule 1 of the Bill would allow regulations to make savings, transitional, and other provisions. Subclauses 1(4) and 1(5) would permit a savings or transitional provision that is made because of the commencement of a provision to take effect before that provision has commenced, including before publication of the regulation on the NSW legislation website.
- 1.18 Proposed subclause 1(5) clarifies that a savings or transitional provision taking effect before publication would not adversely affect a person's pre-existing rights or impose liabilities for actions taken or omitted before publication.
- 1.19 Subsection 39(1) of the *Interpretation Act 1987* (the **Interpretation Act**) requires a statutory rule, including regulations, to be published on the NSW legislation website. They take effect on the date of publication or a later specified date. Subsection 39(2A) of the Interpretation Act clarifies that a statutory rule is not invalid if it is expressed to commence (wholly or partly) before the publication date. In such cases, it is taken to commence on the date of publication rather than the earlier stated date.

**The Bill proposes a general regulation-making power under clause 11. This would allow regulations to address any issue that is 'required or permitted by this Act to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.**

**Schedule 1 of the Bill would allow regulations to make savings or transitional provisions that are consequent to the commencement of the Bill, or another provision amending the Bill, once enacted. It also provides that the regulations may take effect before the provision commences, including prior to their publication on the NSW legislation website. The Committee acknowledges the inclusion of subclauses 1(5)(a) and (b), which state that a savings or transitional provision taking effect before its publication on the NSW legislation website would not**

**adversely affect a person's pre-existing rights or impose liabilities for actions taken or omitted before publication.**

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

**The Committee also generally comments on provisions that are drafted to have retrospective effect because they impact the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. The Committee notes that this would conflict with section 39 of the Interpretation Act, which requires statutory rules to commence on the date on which they are published on the NSW legislation website. The provision further specifies that where one or more provisions of a regulation is expressed to commence before publication, they are taken to commence on the date they are published on the website (rather than the earlier date). For these reasons, the Committee refers the matter to Parliament for consideration.**

## 2. Community Improvement Districts Bill 2025

|                      |                             |
|----------------------|-----------------------------|
| Date introduced      | 19 March 2025               |
| House introduced     | Legislative Assembly        |
| Member with carriage | The Hon. Jenny Aitchison MP |
| Portfolio            | Transport                   |

### Purpose and description

- 2.1 The objects of this Bill are as follows:
- (a) to provide for the establishment and operation of community improvement districts (**CIDs**)
  - (b) to provide for the recognition and functions of CID entities to stimulate economic growth and community development
  - (c) for other purposes.

### Background

- 2.2 The Bill seeks to create the *Community Improvement Districts Act 2025* (the **Act**) which would provide a framework for CIDs in NSW.
- 2.3 In her second reading speech, the Hon. Jenny Aitchison MP, Minister for Roads and Regional Transport, stated that the CID framework is 'a model of urban governance.' It would allow groups of local businesses to form an entity and develop a proposal to 'provide services, activities, and projects within a defined geographic area.'
- 2.4 The proposed framework is intended to 'enhance public spaces, stimulate local economies, and support community building.'
- 2.5 The Bill's key provisions include:
- defining the functions of the CID Authority, Transport for NSW (the **Authority**)
  - providing for what is to be contained in CID proposals and what is required before the Authority can accept and approve CID proposals
  - managing financial matters, including imposing, collecting, and establishing a CID Levies Fund
  - providing for delegations of functions, sharing of information, reviewing the Act and regulation-making powers
  - making consequential amendments to the *State Debt Recovery Act 2018*.

## Issues considered by the Committee

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

#### *Wide regulation-making powers with retrospective effect*

- 2.6 The Bill proposes a general regulation-making power under clause 42. This would allow regulations to address any issue that is 'required or permitted to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill, if enacted.
- 2.7 Schedule 1 of the Bill would allow regulations to make savings, transitional, and other provisions. Subclauses 1(4) and 1(5) would permit a savings or transitional provision that is made because of the commencement of a provision to take effect before that provision has commenced, including before publication of the regulation on the NSW legislation website.
- 2.8 Proposed subclause 1(5) clarifies that a savings or transitional provision taking effect before publication would not adversely affect a person's pre-existing rights or impose liabilities for actions taken or omitted before publication.
- 2.9 Subsection 39(1) of the *Interpretation Act 1987* (the **Interpretation Act**) requires a statutory rule, including regulations, to be published on the NSW legislation website. They take effect on the date of publication or a later specified date. Subsection 39(2A) of the Interpretation Act clarifies that a statutory rule is not invalid if it is expressed to commence (wholly or partly) before the publication date. In such cases, it is taken to commence on the date of publication rather than the earlier stated date.

**The Bill proposes a general regulation-making power under clause 42. This would allow regulations to address any issue that is 'required or permitted to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.**

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

**However, as there appears to be no provision which defines or limits the terms 'necessary or convenient', the Bill may, therefore, include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation which are not required to be passed by Parliament, and over which Parliament has no control regarding their commencement. The Committee recognises that these types of regulation-making powers are not uncommon, as they may allow for more flexible administrative responses. The Committee also notes that regulations remain subject to parliamentary scrutiny and can be**

disallowed under section 41 of the *Interpretation Act 1987* (the Interpretation Act). However, the Committee considers that the broad nature of the proposed general regulation-making power could allow significant matters to be prescribed with minimal constraints.

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

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

#### *Wide delegation of powers to unspecified persons*

- 2.10 Clause 33 of the Bill would allow the Minister for Transport and the Authority to delegate any of their functions, other than their power to delegate, to a person or a class of persons authorised by the regulations.
- 2.11 Under proposed subclause 33(3), a delegate may further delegate the Authority's powers under proposed subclause 33(2) to an 'authorised person' if the Authority provides written authorisation.
- 2.12 Proposed subclause 33(4) defines an 'authorised person' as someone belonging to a class prescribed by the regulations.

**Proposed clause 33 of the Bill would allow the Minister for Transport (the Minister) and Transport for NSW (the Authority) to delegate any of their functions, other than their power to delegate, to a person or a class of persons authorised by the regulations. It would also allow those delegates to further delegate powers to a class of persons prescribed by the regulations, if authorised in writing by the Authority.**

The Bill may, therefore, provide for the wide delegation of statutory functions to a class of unknown persons. This may enable private individuals to be delegated functions under the proposed Act which may be expected to be performed by public officials or authorities.

The Committee acknowledges that allowing regulations to prescribe who may be delegated functions by the Minister and the Authority could allow for more flexibility in the administration of the community improvement district regime. The Committee also recognises that the regulations are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the Committee prefers that the classes of persons who may be delegated statutory functions are detailed in primary legislation to provide clarity as well as greater oversight of the exercise of those

**Executive and public functions. For this reason, the Committee refers the matter to Parliament for further consideration.**

*Commencement by proclamation*

- 2.13 Clause 2 of the Bill provides that it would commence on a day or days appointed by proclamation.

**The Bill would commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for those affected by the bill's provisions, particularly where those provisions affect personal rights or liberties. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.**

**However, the Committee acknowledges that commencement by proclamation may allow for greater flexibility in establishing the community improvement district regime. For this reason, and because the Bill does not appear to impact personal rights and liberties, the Committee makes no further comment.**

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

*Strict liability offences*

- 2.14 Proposed clause 35 of the Bill would grant the Authority the power to require and disclose information and documents from CID entities or their officers or employees by written notice. Under proposed subclause 35(2), information or documents may only be requested under subclause (1) if they are 'reasonably necessary' for the administration of the proposed Act.
- 2.15 Schedule 4 of the Bill defines a CID entity as an incorporated association specified in an approved CID proposal.
- 2.16 Proposed subclause 35(3) would create a strict liability offence for failing to comply with the information request notice issued by the Authority without a reasonable excuse. The maximum penalty for an individual would be \$2,200 (20 penalty units).
- 2.17 Proposed clause 38 would prohibit a person from disclosing information obtained during the administration or execution of the proposed Act, except in specific circumstances. Non-compliance with clause 38 is a strict liability offence with a maximum penalty of \$2,200 (20 penalty units) for an individual.

**The Bill proposes to grant Transport for NSW (the Authority) the power to require information and documents from local councils, government sector agencies, community improvement district (CID) entities or their officers or employees. The information or documents required would be set out in a written notice and must be reasonably necessary for the administration of the *Community Improvement Districts Act 2025* (the Act).**

**The Bill creates a strict liability offence for failing to comply with an information request notice issued by the Authority. The Bill would create a further strict liability offence for disclosing information obtained during**



**the administration or execution of the Act, except in specific circumstances. Both offences carry a maximum penalty of a \$2,200 fine (20 penalty units) for individuals.**

**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 to encourage compliance. Further, the maximum penalty under subclause 35(3) is monetary rather than custodial. For these reasons, the Committee makes no further comment.**

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

|                      |                           |
|----------------------|---------------------------|
| Date introduced      | 19 March 2025             |
| House introduced     | Legislative Council       |
| Member with carriage | The Hon. John Ruddick MLC |
|                      | *Private Members Bill     |

#### Purpose and description

- 3.1 The object of this Bill is to amend the *Crimes Act 1900* (the **Crimes Act**) and other Acts to reverse, with retrospective effect, the amendments made by the following Acts:
- (a) the *Crimes Amendment (Inciting Racial Hatred) Act 2025* (the **Inciting Racial Hatred Act**)
  - (b) the *Crimes Amendment (Places of Worship) Act 2025* (the **Places of Worship Act**)
  - (c) the *Crimes Legislation Amendment (Racial and Religious Hatred) Act 2025* (the **Racial and Religious Hatred Act**).

#### Background

- 3.2 The Bill proposes to repeal the following Acts on the day which they commenced:
- (a) the Inciting Racial Hatred Act, which created the offence of publicly inciting hatred on the ground of race
  - (b) the Places of Worship Act, which created the offences of intentionally impeding access to a place of worship and harassing a person accessing a place of worship
  - (c) the Racial and Religious Hatred Act, which created the offence of displaying Nazi symbols near prominent Jewish sites in NSW.
- 3.3 In his second reading speech, the Hon. John Ruddick MLC explained that the Bill seeks to repeal the Acts because they 'curb the ability of citizens of NSW to speak and think freely.'

## Issues considered by the Committee

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

#### *Retrospective application of repealing provision*

- 3.4 Subclause 2(a) of the Bill seeks to retrospectively repeal the Religious and Racial Hatred Act on the date it commenced (2 March 2025).
- 3.5 The Bill would also insert a transitional provision into schedule 11 of the Crimes Act, to provide that prosecutions related to the Religious and Racial Hatred Act are to be determined as though that Act never commenced.

**The Bill seeks to retrospectively repeal the *Crimes Legislation Amendment (Racial and Religious Hatred) Act 2025* (the Act), on the date of the Act's commencement (2 March 2025). The Bill also proposes to insert a transitional provision into Schedule 2 of the *Crimes Act 1900* to provide that prosecutions related to the Act are to be treated as though the Act never commenced.**

**The Committee generally comments on provisions that are drafted to have retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time.**

**However, the Committee acknowledges that without the transitional provision, the offences created by the Act would be enforceable for acts committed during the relatively short period of time between its enactment and repeal. This may impact the rule of law principle of equal application of laws. In the circumstances, the Committee makes no further comment.**

## 4. Industrial Relations Amendment (Transport Sector Gig Workers and Others) Bill 2025

|                      |                           |
|----------------------|---------------------------|
| Date introduced      | 20 March 2025             |
| House introduced     | Legislative Assembly      |
| Member with carriage | The Hon. Sophie Cotsis MP |
| Portfolio            | Industrial Relations      |

### Purpose and description

- 4.1 The object of this Bill is to amend the *Industrial Relations Act 1996* (the **Act**) and Industrial Relations (General) Regulation 2020 (the **Regulation**) to:
- (a) provide for the extension of regulation under the Act, Chapter 6 to certain transport gig worker contracts by deeming these contracts as contracts of carriage
  - (b) allow the Industrial Relations Commission of NSW (the **Commission**) to assist in the bargaining of pay and other conditions for certain transport sector gig worker contracts
  - (c) set out the relevant considerations that the Commission must have regard to when making a contract determination under the Act, Chapter 6
  - (d) authorise the Commission to require the attendance of a person involved in the contractual chain that relates to the industrial dispute that is the subject of a compulsory conference
  - (e) extend accessorial liability to persons involved in the contractual chain who are involved in a contravention of the Act, Chapter 6
  - (f) provide that contract determinations and contract agreements for contracts of carriage must include provisions:
    - (i) specifying how tolls incurred in the course of work performed under a contract of carriage are to be reimbursed
  - (g) setting out a carrier's reasonable obligations regarding routes that must be taken to effect a delivery, and repeal the current exclusion of certain contracts from the jurisdiction of the Act, Chapter 6
  - (h) make certain consequential amendments.

## Background

- 4.2 The Bill seeks to make a series of amendments to the Act and Regulation to provide protections to a larger portion of the NSW transport industry. In particular, the Bill seeks to extend the application of Chapter 6 of the Act to gig transport workers.
- 4.3 Chapter 6 of the Act regulates the pay and conditions of independent contractors by providing for the making of enforceable instruments. It currently applies to owner drivers and taxis.
- 4.4 In her second reading speech, the Hon. Sophie Cotsis MP, Minister for Industrial Relations, explained that the amendments ensure that the Act 'keeps its relevance as a modern piece of industrial relations legislation.'

## Issues considered by the Committee

### **Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA**

#### *Broad power to make contract of carriage declarations*

- 4.5 The Bill seeks to insert subsections (3A) and (3B) into section 309 of the Act. Section 309 sets out when a contract for the transportation of goods by motor vehicle or bicycle is considered a 'contract of carriage'. Under subsection 313(1) of the Act, the Commission can inquire into any matter arising under contracts of carriage and make contract determinations relating to the carrier's pay and any other condition of the contract.
- 4.6 Proposed subsections (3A) and (3B) would broaden the circumstances in which the Commission could declare contracts or classes of contracts as 'contracts of carriage'. Currently, under the Act the Commission can declare contracts to be contracts of carriage after determining that:
- (a) the contract was entered into for the purpose of defeating, evading or avoiding the provisions of the Act relating to contracts of carriage
  - (b) the contract would otherwise meet the definition of a contract of carriage if it was not entered into for that purpose.
- 4.7 Under proposed subsections (3A) and (3B), the Commission, constituted by a Presidential Member, would be able to declare contracts to be contracts of carriage if it is satisfied that the contract is for the work of transporting persons and/or goods, and that it would be appropriate, having regard to:
- (a) if the person transporting the persons or goods has low bargaining power in contract negotiations for the contract which the work is being performed under
  - (b) if the person is being paid at or below the rate of an employee performing comparable work
  - (c) if the person has a low degree of authority over the performance of the work

- (d) if the terms of the contract would be unfair to the person
- (e) if the terms of the contract as a whole are reasonable terms
- (f) if the person has other characteristics prescribed by the regulations
- (g) other matters the Commission considers relevant
- (h) other matters prescribed by the regulations.

**The Bill seeks to insert subsection (3A) and (3B) into section 309 of the *Industrial Relations Act 1996* (the Act). Subsection (3A) and (3B) would broaden the circumstances in which the Industrial Relations Commission of NSW (the Commission) can declare contracts or a class of contracts to be 'contracts of carriage'. Under proposed subsections (3A) and (3B), the Commission, constituted by a Presidential Member, must be satisfied that the contract is for the work of transporting persons and/or goods, and that it would be appropriate to declare the contract a contract of carriage, having regard to matters set out at subsection (3B).**

**Subsection (3B) includes broadly defined considerations including 'other matters the Commission considers relevant' and 'other matters prescribed by the regulations'. The Committee notes that there does not appear to be any other provision in the Bill or Act that further defines or confines when the Commission may exercise its powers to declare a contract or a class of contract to be a contract of carriage. The Committee further notes that where a contract is declared to be a contract of carriage, the Commission can inquire into any matter arising under it and make contract determinations relating to the carrier's pay and any other condition of the contract.**

**However, the Committee acknowledges that the Commission must have regard to a range of matters before declaring a contract to be a contract of carriage, including whether a worker has low bargaining power and is being paid the same or less than an employee doing comparable work. The Committee also acknowledges that the amendments are intended to protect gig transport industry workers that may have unequal bargaining power. For these reasons, the Committee makes no further comment.**

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

#### *Freedom of contract*

- 4.8 The amendments proposed by the Bill seek to expand the circumstances in which certain contracts in the NSW transport industry may be considered contracts of carriage. These amendments include:
- (a) as set out above, broadening the circumstances in which the Commission can declare a contract or a class of contract to be a contract of carriage (Schedule 1, clause 2)
  - (b) removing exemptions for certain categories of contract transport work so they can be considered contracts of carriage (including for the carriage of bread,

milk or cream for sale, or delivery for sale, or the delivery of mail on behalf of Australia Post) (Schedule 1, clause 3)

- (c) extending the operation of Chapter 6 to contract carriers who own or operate a total of up to three motor vehicles (Schedule 1, clause 5).

4.9 The Bill would also amend section 313 of the Act to provide a broader and non-exhaustive list of provisions that the Commission may include when making a contract determination for contracts of carriage. If amended, the Commission could make provisions regarding:

- (a) payment of allowances instead of annual or other holidays, sick leave or long service leave
- (b) payment methods and periods, cost recovery, ensuring a fair return on financial risk and capital investment, and the value of entitlements that would otherwise apply to employees
- (c) record keeping
- (d) training and skill development, including relevant industry accreditation
- (e) adequate consultation and dispute resolution
- (f) ensuring access to proper representation by an association of contract carriers, including workplace rights inductions and workplace delegate leave
- (g) the attraction and retention of contract carriers.

4.10 Proposed subsection 313(3) would also allow the Commission to make a determination in relation to remuneration and other conditions in a contractual chain. 'Contractual chain' is defined as a chain or series of contracts under which work is performed for a party by a bailor or carrier, and that Chapter 6 applies.

4.11 However, under proposed subsection 313(4), the Commission could not exercise this power if it thought the determination would interfere with the reasonable commercial arrangements of the parties to a contract or arrangements in a contractual chain.

**The Bill seeks to expand the circumstances in which contracts can be considered contracts of carriage. The amendments would allow Chapter 6 of the *Industrial Relations Act 1996* (the Act) to apply to additional categories of contract transport work and to contract carriers who own or operate a total of up to three motor vehicles. The Bill would also give the Industrial Relations Commission of NSW (the Commission) broader scope to declare contracts to be contracts of carriage.**

**Where a contract is declared to be a contract of carriage, the Commission can inquire into any matter arising under it and make contract determinations relating to the carrier's pay and any other condition of the contract. The Bill would provide a broad and non-exhaustive list of provisions that the Commission may include when making a contract determination for contracts of carriage under amended section 313.**

**The Bill may therefore impact on the contract rights of a broad group of contractors, carriers and parties to a contract or arrangements in a contractual chain. Specifically, the amendments may impede on the right to choose contractual terms and the freedom to negotiate and set out the terms and conditions of the contract.**

**However, the Committee acknowledges that under proposed subsection 313(4), the Commission is prevented from making a determination in relation to remuneration or other conditions in a contractual chain if it concludes that the determination would interfere with the reasonable commercial arrangements of the parties to a contract or arrangements in the contractual chain.**

**The Committee further acknowledges that the Bill would require the Commission to consider a range of matters before declaring a contract to be a contract of carriage, including whether the worker has low bargaining power and is being paid the same or less than an employee doing comparable work. The Committee notes that limitations on freedom of contract are not uncommon to address unequal bargaining power between parties where an apparent power imbalance exists. In the circumstances, the Committee makes no further comment.**



## 5. Product Lifecycle Responsibility Bill 2025

|                      |                           |
|----------------------|---------------------------|
| Date introduced      | 18 March 2025             |
| House introduced     | Legislative Council       |
| Member with carriage | The Hon. Penny Sharpe MLC |
| Portfolio            | Environment               |

### Purpose and description

- 5.1 The objects of this Bill are as follows:
- (a) to establish a product stewardship framework for brand owners of certain products
  - (b) to create various offences relating to the above matters.

### Background

5.2 The Bill proposes to create the *Product Lifecycle Responsibility Act 2025* (the **Act**). The Act would establish 'a product stewardship framework for brand owners of certain products.'

- 5.3 The Bill's key provisions include:
- (a) providing when a person is the 'brand owner' of a product
  - (b) allowing the regulations to establish a scheme for the stewardship of the lifecycle of a regulated product (**product stewardship scheme**)
  - (c) allowing the regulations to prescribe a requirement and target for the product stewardship scheme, including the development, design, creation, production, assembly, supply, use or re-use, collection, recovery, recycling or disposal of the regulated product
  - (d) allowing the Minister to set product stewardship targets by order published in the Gazette
  - (e) creating an offence for failing to comply with a product stewardship requirement
  - (f) creating offences for failing to meet record keeping and reporting requirements
  - (g) providing for the publishing of certain information by the NSW Environment Protection Authority (the **regulator**) and product stewardship organisations

- (h) creating an offence for brand owners and product stewardship organisations failing to prepare or lodge an action plan with the regulator
- (i) providing the circumstances in which the regulator may approve action plans
- (j) giving the regulator powers to amend action plan conditions and creating an offence for failing to comply with the regulator's directions
- (k) specifying a process for the review of certain decisions by the regulator
- (l) allowing the regulator to enter into a written agreement with a product stewardship organisation in connection with the management and administration of a product stewardship scheme for one or more regulated products
- (m) allowing the regulator to seek financial assurances and recover or fund from the financial assurance in certain circumstances
- (n) providing for when summary proceedings can be commenced under the Act or regulations and when the imposition of a financial assurance condition can be appealed
- (o) providing for how documents may be served on a person
- (p) giving the regulator the power to grant exemptions from provisions of the Act or regulations
- (q) allowing the Minister to delegate its functions under the Act
- (r) requiring the regulator to keep a public register
- (s) requiring the Minister to consult before making regulations that prescribe a regulated product
- (t) prescribing regulation-making powers
- (u) requiring the Minister to review the Act
- (v) savings and transitional provisions
- (w) amendments to other legislation to include references to the Act.

5.4 The Hon. Penny Sharpe MLC, Minister for the Environment, explained in her second reading speech that the Bill '...is intended in the first instance to be used to provide a framework for the regulation of product stewardship for batteries.'

5.5 The Statement of Public Interest tabled with the Bill noted that the Bill was introduced '...to strengthen and expand NSW's legislative framework for mandatory product stewardship, allowing for comprehensive action to reduce the risk of battery fires.'

## Issues considered by the Committee

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

#### *Wide regulation-making powers with retrospective effect*

- 5.6 The Bill proposes a general regulation-making power under clause 57. This would allow regulations to address any issue that is 'required or permitted by this Act to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill, if enacted.
- 5.7 The Bill would also defer a number of matters to the regulations, including establishing offences for:
- (a) brand owners of a regulated product failing to prepare and lodge an action plan with the regulator (\$110,000 fine (1,000 penalty units) for individuals)
  - (b) product stewardship organisations for a regulated product failing to prepare and lodge an action plan with the regulator (\$110,000 fine (1,000 penalty units) for individuals).
- 5.8 Schedule 1 of the Bill would allow regulations to make savings, transitional, and other provisions. Subclauses 1(4) and 1(5) would permit a savings or transitional provision that is made because of the commencement of a provision to take effect before that provision has commenced, including before publication of the regulation on the NSW legislation website.
- 5.9 Proposed subclause 1(5) clarifies that a savings or transitional provision taking effect before publication would not adversely affect a person's pre-existing rights or impose liabilities for actions taken or omitted before publication.
- 5.10 Subsection 39(1) of the *Interpretation Act 1987* (the **Interpretation Act**) requires a statutory rule, including regulations, to be published on the NSW legislation website. They take effect on the date of publication or a later specified date. Subsection 39(2A) of the Interpretation Act clarifies that a statutory rule is not invalid if it is expressed to commence (wholly or partly) before the publication date. In such cases, it is taken to commence on the date of publication rather than the earlier stated date.

**The Bill proposes a general regulation-making power under clause 57. This would allow regulations to address any issue that is 'required or permitted by this Act to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill. The Bill would also allow the regulations to create offences for brand owners and product stewardship organisations for a regulated product failing to prepare and lodge action plans with the regulator. These offences would attract a maximum penalty of a \$110,000 fine (1,000 penalty units) for individuals.**

**Schedule 1 of the Bill would allow regulations to make savings or transitional provisions that are consequent to the commencement of the Bill, or another provision amending the Bill, once enacted. It also provides that the regulations may take effect before the provision commences, including prior to their publication on the NSW legislation**

website. The Committee acknowledges the inclusion of subclauses 1(5)(a) and (b), which state that a savings or transitional provision taking effect before its publication on the NSW legislation website would not adversely affect a person's pre-existing rights or impose liabilities for actions taken or omitted before publication.

However, as there appears to be no provision which defines or limits the terms 'necessary or convenient', the Bill may, therefore, include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation which are not required to be passed by Parliament, and over which Parliament has no control regarding their commencement. The Committee recognises that these types of regulation-making powers are not uncommon, as they may allow for more flexible administrative responses. The Committee also notes that regulations remain subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987* (the Interpretation Act). However, the Committee considers that the broad nature of the proposed general regulation-making power, as well as the deferral of offences attracting substantial monetary penalties to the regulations, could allow significant matters to be prescribed with minimal constraints.

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

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

#### *Granting of exemptions*

- 5.11 Clause 50 of the Bill would allow the regulator to grant exemptions from provisions of the Bill or regulations. Proposed section 50(1) provides that the regulator may grant exemptions from specified provisions of the Bill or the regulations, both generally or in specified circumstances. Exemptions can be granted to a person in reference to a premise, product or 'another matter or thing'.
- 5.12 The regulator would be able to grant exemptions on its own initiative or on application from a person to who the exemption would apply.
- 5.13 Exemptions granted to specified persons only would be published in the Gazette or by written notice to the persons. Otherwise, exemptions would be published by notice in the Gazette.

**Clause 50 allows the NSW Environment Protection Authority (the regulator) to grant exemptions in general or specific circumstances, on its own initiative or on application from a person seeking an exemption. The Committee generally prefers exemptions to be included in the Act or**

regulations to ensure an appropriate level of parliamentary oversight. Regulations must be tabled in Parliament and are subject to disallowance under section 41 of the *Interpretation Act 1987*.

The Committee acknowledges that proposed subclause 50(5) would require the details of exemptions that do not apply only to specified persons to be published by notice in the Gazette. The Committee also acknowledges that the granting of exemptions by way of order allows for flexibility and timely decisions to be made. However, the exemptions may have broad application as they may be granted in relation to a premise, product or another matter or thing. The exemptions may also be granted at the discretion of the regulator. For these reasons, the Committee refers this matter to Parliament for its consideration.

*Wide delegation of powers to unspecified persons*

5.14 Clause 51 of the Bill would allow the Minister to delegate the exercise of their functions under the Act or regulations to:

- (a) a member of staff of the regulator, or
- (b) a person authorised by the regulations.

The Bill would allow the Minister to delegate the exercise of their functions under the proposed Act or regulations. Clause 51 provides that the Minister can delegate their functions to a member of staff of the NSW Environment Protection Authority (the regulator) or a person authorised by regulations. The Bill therefore provides for the wide delegation of statutory functions to an unknown class of people as authorised by regulations.

The broad delegation of functions may enable private individuals to be delegated functions that may be expected to be performed by appointed authorities or senior public officials. The Committee generally prefers that the classes of persons who may be delegated statutory functions are detailed in primary legislation and appropriately limited to provide clarity as well as greater oversight of the exercise of Executive and public functions.

The Committee acknowledges that allowing regulations to prescribe who may be delegated certain functions, and allowing staff of the regulator to perform delegated functions could allow for more flexibility in the administration of the product stewardship scheme. It also recognises that regulations are still required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the Committee notes that the functions that may be delegated are ministerial functions, including the setting of product stewardship targets that attract fines for non-compliance. For these reasons, the Committee refers this matter to Parliament for its consideration.

*Commencement by proclamation*

- 5.15 Clause 2 of the Bill provides that it would commence on a day or days appointed by proclamation.

**The Bill commences by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly if legislation affects individual rights and liberties. Commencement by proclamation effectively delegates the role of Parliament in determining when legislation commences to the Executive.**

**The Committee acknowledges that commencement by proclamation may be intended to facilitate greater flexibility in the making of administrative arrangements. This may be necessary, for example, to set up the arrangements for administering the product stewardship framework. Because of this, and because the Bill does not appear to impact on personal rights and liberties, the Committee makes no further comment.**

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

*Extraterritorial application of laws*

- 5.16 Clause 5 of the Bill provides that the Act and regulations apply to persons, premises or suppliers that are outside of NSW, where there is an 'extraterritorial impact'. Extraterritorial impact is defined as a thing or matter that occurs or is located outside of NSW that:

- (a) affects or is likely to effect the State of NSW, or
- (b) relates to the supply or likely supply into or within the State or NSW, or
- (c) relates to a non-compliance matter.

- 5.17 A non-compliance matter includes a matter or thing that is, or is likely to be, an offence under the Act or regulations.

- 5.18 In her second reading speech, the Minister noted that the extraterritorial application of the Act provided for in clause 5 'is particularly important when regulating products that are sold online or manufactured outside the State.'

**Clause 5 of the Bill provides that the Act and regulations apply to persons, premises or suppliers, or products that are outside of NSW, where there is an extraterritorial impact. Extraterritorial impacts include matters that affect the State of NSW that relate to supply into or within NSW of a product, or that relate to a matter of non-compliance under the Bill and regulations. The Bill therefore proposes to have extraterritorial application outside of the State of NSW as the Act and regulations could apply to persons, premises or products located outside of NSW.**

**The Committee generally comments on provisions that have extraterritorial effect as they impact on the rule of law principle that a person is entitled to know the law that applies to them at any given time.**

**It may be difficult for a person outside of NSW to determine whether they are subject to a provision of the Act or regulations. Extraterritorial application could also raise possible conflicts with regulatory frameworks in other jurisdictions.**

**However, the Committee notes that the Act only has extraterritorial application in certain circumstances where there is an 'extraterritorial impact'. The Committee further notes that the extraterritorial application is intended to regulate products that are sold online or manufactured outside NSW. For these reasons, the Committee makes no further comment.**

*Continuing offences – absolute and strict liability offences*

- 5.19 The Bill proposes to create multiple offences within the regulatory framework for non-compliance with the Act and regulations. These offences attract monetary penalties, and ongoing penalties for each day the offence continues.
- 5.20 Clause 10 of the Bill would make it an offence for the brand owner of a regulated product to fail to comply with a safety requirement of a product stewardship requirement. The offence is subject to a maximum penalty of a \$220,000 fine (2,000 penalty units) for individuals. For each day the offence continues, a \$22,000 fine (200 penalty units) applies. Where the requirement is not a safety requirement, a \$110,000 fine applies, with an additional \$11,000 fine for each day the offence continues.
- 5.21 Subclause 10(2) provides a defence for the offence where the defendant establishes that at the time of the offence there was an approved action plan in place which they were complying with.
- 5.22 The Bill proposes to create several other continuing offences, including for:
- (a) a product brand owner or stewardship organisation failing to keep records as prescribed under clause 11 (\$110,000 fine (1,000 penalty units) and a \$11,000 fine (100 penalty units) for each day the offence continues)
  - (b) failing to comply with a record keeping direction given by the regulator under section 11 (\$27,500 fine (250 penalty units) and a \$2,200 fine (20 penalty units) for each day the offence continues)
  - (c) a product owner failing to notify the regulator and the product stewardship organisation (where there is a product stewardship scheme) before they supply a regulated product (\$110,000 fine (1,000 penalty units) and a \$11,000 fine (100 penalty units) for each day the offence continues)
  - (d) a brand owner failing to provide an annual report to the regulator and the product stewardship organisation (where there is a product stewardship scheme) within three months of the end of the financial year (\$110,000 fine (1,000 penalty units) and a \$11,000 fine (100 penalty units) for each day the offence continues).

**The Bill proposes to create a number of continuing offences that apply to participants in the product stewardship scheme, including product brand owners and product stewardship organisations. The offences include**

**failing to comply with a product stewardship requirement, failing to keep records as prescribed by the Act, and failing to provide notice to the regulator and product stewardship organisation before supplying a regulated product. The Bill provides maximum penalties for the offences ranging from a \$27,500 fine (250 penalty units) to a \$220,000 fine (2,000 penalty units) for individuals. In addition, for each day the offences continue, the Bill provides for penalties ranging from a \$2,200 fine (20 penalty units) to a \$22,000 fine (200 penalty units).**

**The Committee notes that in some cases these are significant financial penalties that may be applied for each day that the offence continues. This may significantly impact those individuals to which the continuing penalties apply, particularly where it is a strict or absolute liability offence. The Committee generally comments on strict and 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 the offence under subclause 10(1) that attracts the highest penalty of the offences, that being a \$220,000 fine (2,000 penalty units) and a \$22,000 fine (200 penalty units) for each day the offence continues, includes a defence under subclause 10(2).**

**The Committee also recognises that strict and absolute liability offences are not uncommon in regulatory settings in order to encourage compliance. Further, these offences are intended to promote compliance to ensure public safety and to protect the environment. The Committee also acknowledges that the maximum penalties carried by these proposed offences would only be monetary and not custodial. For these reasons, the Committee makes no further comment.**



## 6. Roads Amendment (Wildlife Impacts) Bill 2024\*

|                       |                                   |
|-----------------------|-----------------------------------|
| Date introduced       | 20 March 2025                     |
| House introduced      | Legislative Assembly              |
| Member with carriage  | Adjunct Professor Tamara Smith MP |
| *Private Members Bill |                                   |

### Purpose and description

- 6.1 The object of this Bill is to amend the *Roads Act 1993* (the **Act**) to provide that it is an object of the Act that the impact of motor vehicle strikes on wildlife be recognised and taken into consideration when making decisions about roads; and for related purposes.

### Background

- 6.2 The Bill seeks to amend the Act to recognise the impact of motor vehicle strikes on wildlife by inserting proposed subsection (3)(i) into the Act.
- 6.3 The Bill also proposes to insert section 261AA into the Act to require Transport for NSW (**TfNSW**) to consider the impact of motor vehicle strikes on wildlife when exercising its decision making function about a road. TfNSW would be required to consider mitigation actions, including using:
- (a) speed limit reductions
  - (b) works, including fauna underpasses, fauna overpasses, fencing and virtual fencing.
- 6.4 Proposed section 261AA would also require TfNSW to report on the actions taken to mitigate the impact of motor vehicle strikes on wildlife on roads in its annual reports.
- 6.5 In her second reading speech, Adjunct Professor Tamara Smith MP explained that 'roads have become the biggest killer of animals.' She went on to note that while:

TfNSW has a responsibility to consider the impacts of its activities on the environment... this obligation is not measured by any government processes, and there is no consequence for failing to protect wildlife from road strikes.

### 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.**

## 7. Screen and Digital Games Industries Bill 2025

|                      |                          |
|----------------------|--------------------------|
| Date introduced      | 18 March 2025            |
| House introduced     | Legislative Council      |
| Member with carriage | The Hon. John Graham MLC |
| Portfolio            | The Arts                 |

### Purpose and description

- 7.1 The objects of this Bill are to assist, promote and strengthen the screen and digital games industries in NSW and to establish the Screen and Digital Games Industries Advisory Committee (the **Committee**), which will give advice about the screen and digital games industries in NSW to the Minister for the Arts (the **Minister**).

### Background

- 7.2 The Bill seeks to amend the regulatory framework for screen and digital games in NSW. The Statement of Public Interest tabled with the Bill notes that the Bill aims to 'promote the cooperation of Government agencies to support both the screen and digital games industries.'

- 7.3 The Bill's key provisions are:

- repealing the *Film and Television Industry Act 1988*
- creating the *Screen and Digital Games Industries Act 2025* (the **Act**) and the *Screen and Digital Games Industries (Advisory Committee) Regulation 2025*
- providing for the functions of the Secretary
- establishing the Committee
- setting out principles for government decision-making under the Act to assist screen and digital games industries
- providing for local councils to be accredited as a 'screen production friendly local council'
- amending the *Local Government Act 1993* to insert requirements for councils responding to filming proposals
- other administrative provisions.

- 7.4 In his second reading speech, the Minister explained that the Act 'renews and modernises terminology to reflect current and emerging technologies and, importantly, includes the digital games industry.'

## Issues considered by the Committee

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

#### *Wide regulation-making powers*

- 7.5 The Bill proposes a general regulation-making power under clause 13. This would allow regulations to address any issue that is 'required or permitted to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill, if enacted.

**The Bill proposes a general regulation-making power under clause 13. This would allow regulations to address any issue that is 'required or permitted to be prescribed' or any matter 'necessary or convenient' for carrying out or giving effect to the Bill.**

**The Committee notes that there does not appear to be any provisions that define or narrow the ordinary meaning of 'convenient.' The Bill may therefore include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation which are not required to be passed by Parliament, and over which Parliament has no control regarding their commencement. The Committee generally prefers substantive matters to be set out in primary legislation rather than regulations to ensure an appropriate level of parliamentary oversight.**

**However, the Committee acknowledges that a general regulation-making power may provide more flexibility in the administration of the framework. Further, the Committee acknowledges that regulations are required to be tabled in Parliament and are therefore subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee also acknowledges that it is not uncommon to defer certain matters related to the regulation of industries, such as the screen and digital games industries, to regulations. For these reasons, the Committee makes no further comment.**

# Part Two – Regulations without comment

# Regulations without comment

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

## 1. [Education and Care Services National Amendment \(Transitional Provisions\) Regulations 2024](#)

The object of the Regulations is to amend the Education and Care Services National Regulations to make minor administrative changes by extending the operating time of certain provisions.

The Regulation is made under section 301 of *Education and Care Services National Law*. Schedules 1[2] and [3] commenced on 1 January 2025 and the remainder of the Regulation commenced on 13 December 2024. As it does not make any substantive changes to the Principal Regulations, it does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

## 2. [Environmental Planning and Assessment \(Development Levies\) Regulation \(No 2\) 2024](#)

The object of the Regulation is to make further provision for development levies imposed by the consent authority for development on certain land in Parramatta.

The Regulation commenced on 13 December 2024 and is made under the *Environmental Planning and Assessment Act 1979*. In setting the maximum rate for a development levy for certain developments, the Regulation does not appear to engage with any of the issues set out in section 9 of the *Legislation Review Act 1987*.

## 3. [Public Notaries Appointment Amendment \(Second Fees\) Rule 2024](#)

The object of the Rule is to amend the Public Notaries Appointment Rules to make amendments in respect of the fees payable for late applications.

The Rule is made under section 9 of the *Public Notaries Act 1997* and commenced on 29 November 2024. The Rule replaces the Second Schedule, and includes a new fee for applications for appointment as Public Notary lodged after the published cut-off date. As the Rule makes minor amendments to fees, it does not appear to engage with any of 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. 28

TIME & DATE: 3:00PM, 24 MARCH 2025

LOCATION: ROOM 1136 AND WEBEX

### MEMBERS PRESENT

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

### APOLOGIES

Ms Voltz (**Chair**)

### OFFICERS PRESENT

Rohan Tyler, Alice Zwar, Mengyuan Chen, Joan Douce, Natasha Moir, Elizabeth Hawken and Nicolle Gill.

### AGENDA ITEM

The Deputy Chair opened the meeting with an Acknowledgement of Country.

#### 1. Confirmation of minutes

Resolved, on the motion of Mr Murphy: That the minutes of the meeting of 17 March 2025 be confirmed.

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

#### 3. Consideration of bills with comment for Legislation Review Digest 27/58

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

- a) Claim Farming Practices Prohibition Bill 2025
- b) Community Improvements Districts Bill 2025
- c) Crimes Legislation Amendment (Racial and Religious Hatred Legislation Repeal) Bill 2025
- d) Industrial Relations Amendment (Transport Sector Gig Workers and Others) Bill 2025
- e) Product Lifecycle Responsibility Bill 2025
- f) Screen and Digital Games Industries Bill 2025.

**4. Consideration of bills without comment for Legislation Review Digest 27/58**

Resolved, on the motion of Ms Higginson: That the Committee adopts the draft bill report regarding the Roads Amendment (Wildlife Impacts) Bill 2024.

**5. Regulations without comment for Legislation Review Digest 27/58**

Resolved, on the motion of Mr Layzell: That the Committee adopts the regulations without comment as Part Two to Digest No. 27/58.

**6. Legislation Review Digest 27/58**

Resolved, on the motion of Mr Hagarty:

- That appropriate minute extracts of this meeting be published as Appendix Two of the Digest.
- That the Committee adopts Legislation Review Digest No. 27/58 and that it be signed by the Chair and presented to the House.

**7. Regulations to be reviewed**

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

**8. \*\*\***

**9. Next meeting**

The meeting adjourned at 3:04pm until Monday 5 May 2025 at 3.00pm in meeting room 1136.