PARLIAMENT OF NEW SOUTH WALES

Legislation Review Committee

LEGISLATION REVIEW DIGEST

NO. 32/57 – 22 June 2021

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

New South Wales. Parliament. Legislative Assembly.

Legislation Review Committee Legislation Review Digest, Legislation Review Committee, Parliament NSW [Sydney, NSW]: The Committee, 2020, 85pp 30cm

Chair: David Layzell MP

22 JUNE 2021

ISSN 1448-6954

1. Legislation Review Committee – New South Wales
2. Legislation Review Digest No. 32 of 57
I Title.
II Series: New South Wales. Parliament. Legislation Review Committee Digest; No. 32 of 57

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 ii

Guide to the Digest iii

Conclusions iv

PART ONE – BILLS 1

1. ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS VILIFICATION) BILL 2021* 1

2. FAMILIES, COMMUNITIES AND DISABILITY SERVICES MISCELLANEOUS AMENDMENT BILL 2021 5

3. ELECTORAL LEGISLATION AMENDMENT (LOCAL GOVERNMENT ELECTIONS) BILL 2021 12

4. MOTOR ACCIDENTS AND WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2021 15

5. ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021 22

6. ROCK FISHING SAFETY AMENDMENT BILL 2021 25

PART TWO – REGULATIONS 27

1. DESIGN AND BUILDING PRACTITIONERS REGULATION 2021 27

2. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (SHORT-TERM RENTAL ACCOMMODATION) REGULATION 2021 29

3. MOTOR ACCIDENT GUIDELINES - VERSION 7 - 19 FEBRUARY 2021 35

4. POISONS AND THERAPEUTIC GOODS AMENDMENT (REAL TIME PRESCRIPTION MONITORING) REGULATION 2021 39

5. PUBLIC HEALTH AMENDMENT (COVID-19 MANDATORY FACE COVERINGS) REGULATION (NO 2) 2021 42

6. PUBLIC HEALTH AMENDMENT (COVID-19 SPITTING AND COUGHING) REGULATION 2021 44

7. ROAD TRANSPORT (GENERAL) AMENDMENT (PENALTY NOTICE OFFENCES) REGULATION 2021 47

8. ROAD TRANSPORT LEGISLATION AMENDMENT (OFFENSIVE ADVERTISING) REGULATION 2021 49

APPENDIX ONE – FUNCTIONS OF THE COMMITTEE 51

APPENDIX TWO – APPENDIX TWO – LETTERS RECEIVED FROM MINISTERS AND MEMBERS RESPONDING TO THE COMMITTEE'S COMMENTS (16 DECEMBER 2020 – 16 JUNE 2021) 53

Membership

CHAIR	Mr David Layzell MP, Member for the Upper Hunter
DEPUTY CHAIR	Mr Lee Evans MP, Member for Heathcote
MEMBERS	Ms Abigail Boyd MLC Mr Sam Farraway MLC Mr David Mehan MP, Member for The Entrance The Hon. Shaoquett Moselmanne MLC Ms Robyn Preston MP, Member for Hawkesbury The Hon Leslie Williams MP, Member for Port Macquarie
CONTACT DETAILS	Legislation Review Committee Parliament of New South Wales Macquarie Street Sydney NSW 2000
TELEPHONE	02 9230 2226 / 02 9230 2390
FACSIMILE	02 9230 3309
E-MAIL	legislation.review@parliament.nsw.gov.au
URL	www.parliament.nsw.gov.au/lrc

Guide to the Digest

COMMENT ON BILLS

This section contains the Legislation Review Committee's reports on Bills introduced into Parliament on which the Committee has commented against one or more of the five criteria for scrutiny set out in s 8A(1)(b) of the *Legislation Review Act 1987*.

COMMENT ON REGULATIONS

This section contains the Legislation Review Committee's reports on Regulations in accordance with section 9 of the *Legislation Review Act 1987*.

Conclusions

PART ONE – BILLS

1. ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS VILIFICATION) BILL 2021*

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

Right to free speech

The Bill amends the *Anti-Discrimination Act 1977* to insert Part 2AA regarding religious vilification, which makes it unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the grounds of their religious belief or affiliation.

Under the Bill, religious belief or affiliation is defined as holding or not holding a religious belief. Proposed section 22AB defines a public act to include any form of communication to the public (including speaking, writing, printing or broadcasting), and any conduct observable by the public (including actions and gestures and the wearing of clothing, signs, flags or emblems), and the distribution or dissemination of any matter to the public with knowledge that it promotes or expresses hatred towards, serious contempt for or sever ridicule of a person or group of person on the grounds of their religious belief or affiliation.

While the Bill creates a new protection for religious vilification, the Committee notes that the definition of public act includes a broad range of communications. Limiting the subject matter of such public communications may infringe on a person's right to free speech.

However, as noted in the second reading speech, right to freedom of speech is not an absolute right and may be limited by law where it is in the public interest to do so. The Bill also provides that is not unlawful to provide a fair report of a public act, or where the communication is subject to a defence of absolute privilege, or a public act done in reasonably good faith for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

The Committee also notes that the intention of the Bill is to protect individuals from vilification on the basis of religious belief or affiliation, and that the provisions mirror existing vilification provisions under the Act, such as those regarding protection for vilification on the grounds of race. In these circumstances, the Committee makes no further comment.

2. FAMILIES, COMMUNITIES AND DISABILITY SERVICES MISCELLANEOUS AMENDMENT BILL 2021

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

Privacy

The Bill inserts sections 133AA and 133AB to clarify that where a person is entitled to receive information under Chapter 8 of the Adoption Act 2000 that entitlement is not lost because of the information also being contained in a court record. The amendment also provides that a person who has been in out-of-home care under the Children and Young Persons (Care and Protection) Act 1998 prior to being adopted may obtain information by a single application under the Adoption Act.

The Bill also amends section 194 of the Adoption Act, regarding restrictions on the inspection of records, to clarify that records made in connection with the administration or execution of the Adoption Act or previous adoption legislation may be produced to a Court or other authority in response to a subpoena or other compulsory process.

This information includes details regarding birth history, social and medical history, and reasons for adoption, and may be seen to infringe on the privacy of the person to whom it relates. However, the Committee notes that this information does not contain identifying details, and that the amendments only remove the requirement for a separate application to access this type of information that a person may already be entitled to. In that regard, 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

Discretion of Commissioner to disclose confidential information

The Bill amends the *Ageing and Disability Commissioner Act 2019* to allow the Commissioner to provide information about the outcome of a report to the reporter and other people concerned for the welfare of the adult with a disability or older person if the Commissioner considers the disclosure of such information is consistent with the objects of the Act. The Bill does not outline matters that the Commissioner must take into consideration when determining whether the disclosure of such information is appropriate. The disclosure of such information may infringe on the privacy of those to which the report concerns.

However, the Committee notes that the intention of the provision is to provide relevant information to key parties to ensure the safety of the adult with disability or older person. For example, to advise a NDIS supporter or GP. In doing so, the amendment seeks to protect the adult from abuse, neglect and exploitation. In these circumstances, the Committee makes no further comment.

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

Matters that should be in primary legislation

The Bill makes a number of amendments to the *Children and Young Persons (Care and Protection) Act 1998* to allow certain matters to be prescribed by the regulations. This includes matters related to financial assistance, the authorisation and conditions of authorised carers, and the prescribing of a class of persons for the provision and exchange of information under the Act. It also amends the regulation making powers to provide that regulations may be made to require authorised carers to provide information to a designated agency, to set out the circumstances in which an authorised carer or a person residing with an authorised carer may be required to undergo a medical examination and to provide for the Secretary to approve the form of documents and reports provided under the regulations.

The Committee generally comments where matters are deferred to the regulations. Unlike primary legislation, regulations are subordinate legislation and not required to be passed by Parliament and the Parliament does not control when it commences. The Committee recognises that regulations may be used in relation to certain administrative matters. The Committee also notes that regulatory changes are tabled in both Houses of Parliament and subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the matters deferred include matters regarding the authorisation and conditions of authorised carers, and particularly requirements to provide information or be required to undergo a medical examination. The Committee considers that such matters may be more than merely administrative and may require a higher level of parliamentary scrutiny. Consequently, the Committee refers these provisions to the Parliament for the consideration of whether they insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

Code of conduct not subject to disallowance

The Bill amends the *Children and Young Persons (Care and Protection) Act 1998* to provide that the Minister may approve a code of conduct for authorised carers and make it a condition of an authorised carer's authorisation that they comply with the code of conduct. The Committee notes that, unlike regulations, there is no requirement that such a code of conduct is to be tabled and therefore is not subject to disallowance. This may subject such a code of conduct and its terms to insufficient parliamentary scrutiny.

However, the Committee recognises that the intent of the provision is to make it a condition of an authorised carer's authorisation to comply with the Code of Conduct for the protection of the rights of adults under their care. In these circumstances, the Committee makes no further comment.

3. ELECTORAL LEGISLATION AMENDMENT (LOCAL GOVERNMENT ELECTIONS) BILL 2021

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

Retrospectivity

The Bill amends the *Electoral Funding Act 2018* and the *Local Government Act 1993* to provide that certain provisions are to apply to matters that occurred before the commencement of the relevant sections within the Bill. This allows these provisions to operate retrospectively.

The Committee generally comments where provisions apply retrospectively as it runs counter to the rule of law principle that a person is entitled to know the law that applies to him or her at any given time. However, the Committee notes that the relevant provisions are largely mechanic in nature, including savings transitional and other provisions consequent on the enactment of the provisions in the Bill, and for the facilitation of local government elections. In these circumstances, the Committee makes no further comment.

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

Rules not subject to disallowance

The Bill allows the Electoral Commissioner to publish COVID-19 safe election rules for the safe conduct of elections during the COVID-19 pandemic. Such rules are not required to be tabled in the Parliament and therefore not subject to parliamentary scrutiny. The Committee generally comments where legislation allows for the making of rules not subject to disallowance that may infringe on a person's personal rights or liberties, such as the right to vote.

However, the Committee recognises that the purpose of these COVID-safe rules is to ensure that elections are run in accordance with the relevant public health orders and health recommendations of NSW Health regarding holding public events during the COVID-19 pandemic. The section is also set to be repealed on 1 January 2022, or a later day, not later than

26 March 2022, as prescribed by the regulations. Given the public safety aspect of the provisions, and the considerable safeguards, the Committee makes no further comment.

4. MOTOR ACCIDENTS AND WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2021

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

Strict liability offences

The Bill amends the *Motor Accidents Injuries Act 2017* and inserts section 2.26, which allows the Authority to serve a notice on a person conducting a vehicle-related business to provide information to the Authority to determine guidelines for insurance premiums for third-party policies for taxis, hire vehicles or other classes of vehicles. It also allows the Authority to serve a notice to pay premiums for third-party policies for taxis, hire vehicles or other classes of vehicles. Failure to comply with the notice is subject to a maximum penalty of 100 penalty units ($11,000), and 500 penalty units ($55,000) for any other contraventions.

The Committee notes that these may amount to significant penalties for failing to comply, and that these provision amount to strict liability offences. The Committee generally comments on strict liability offences as they depart from the common law principle that *mens rea*, or the mental element, is a relevant factor in establishing liability for an offence. This is of particular concern where significant financial penalties are attached.

However, the Committee notes that strict liability offences are not uncommon in legislation and regulatory frameworks to ensure compliance with regulatory authorities. Further, the Committee notes that the provisions impose monetary penalties rather than imprisonment, and are to provide a financial incentive for persons conducting a vehicle-related business to provide information to the Authority to determine guidelines for insurance premiums for third-party policies for taxis, hire vehicles or other classes of vehicles. The provisions also ensure that vehicle-related businesses pay, within the timeframe, the relevant premiums for third-party policies for taxis, hire vehicles or other classes of vehicles. In these circumstances, the Committee makes no further comment.

Enforcement powers – direction to provide data, services or take action

The Bill amends the *State Insurance and Care Governance Act 2015* to enable SIRA to give written directions to certain providers of services for the purposes of workers compensation and motor accidents legislation, including requiring the provider to provide SIRA with specified data, or take specified actions, or provide specified relevant services.

The Committee generally comments where enforcement powers may be used, as they may infringe on the ordinary rights such as the right to privacy or property. In this case, the powers would allow SIRA to obtain records that are the property of certain service providers, and gives SIRA the authority to direct them to take specified actions or provide relevant services not ordinarily required.

However the Committee notes that the ability of SIRA to give directions to provide data or services is for the purposes of carrying out its functions under the relevant workers compensation and motor accidents legislation. In these circumstances, the Committee makes no further comment.

Right to fair trial - Penalty notice offences

The Bill amends the *State Insurance and Care Governance Act 2015* to insert Part 3 Division 3 regarding the functions of SIRA concerning certain service providers. Under the new provisions, authorised officer may issue penalty notices for offences under the Act, with the penalty amount to be prescribed by the regulations.

The Committee notes that penalty notices allow an individual to pay a specified monetary amount, instead of appearing before a Court to have their matter heard. This may impact on a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker.

However, the Committee recognises that individuals retain the right to elect to have their matter heard and decided by a Court and acknowledge that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. This may be particularly the case with state insurance and care schemes. In these circumstances, the Committee makes no further comment.

Privacy - Operates contrary to other laws

The Bill amends the *State Insurance and Care Governance Act 2015* to provide that under the new Part 3 Divisions 3, provisions of this Division apply despite anything to the contrary in another Act or law. A relevant service provider is also authorised and required to comply with a direction given under this Division despite anything to the contrary in the other Act or law. The provisions also specify that such sections apply even in relation to data that is personal information or health information about an individual despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

The Committee generally comments where provisions may be contrary to other laws. This makes the law applicable to individuals hard to ascertain and understand, and can create unfairness where there may be penalties that differ between laws. The Committee recognises that the purpose of the provision is to ensure compliance with directions given by SIRA. However, the Committee notes that that provisions allow directions to be given to require the provision of information or specify actions or services, which may involve the provision of personal information ordinarily subject to the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*. High financial penalties may also apply for non-compliance with these provisions. The Committee refers these provisions to the Parliament for its consideration of the operation of these provisions contrary to other relevant laws to provide certainty to those affected.

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

Commencement on proclamation

The Act is to commence on assent except for Schedule 2.1[3] and [5], amending the *Workers Compensation Act 1987,* which are to commence on proclamation. Schedule 2.1[3] requires an employer to pay additional compensation to cover certain investment and management fees and costs concerning a lump sum benefit paid concerning a dependant of a deceased worker. Schedule 2.1[5] creates greater flexibility for the regulations to provide for what constitutes, or does not constitute, medical or related treatment for the purposes of the payment of compensation to cover the treatment.

The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons. The Committee notes that the provision marked to commence on proclamation make changes to workers compensation obligations and costs of deceased workers, as well as changing the definition of medial or related treatment. While these changes may require time to be implemented across the relevant industries, a fixed date would provide certainty for the person to whom these provisions relate. The Committee refers these provisions to Parliament for their consideration.

Matters deferred to the regulations

The Bill amends the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* and defers certain matters to be prescribed by the regulations. This includes provisions for limiting the classes of work assistance for which compensation is payable and for limiting the classes of education or training for which compensation is payable under the Act. The Bill also amends the regulation making power under the Act to provide that the regulations may apply, adopt or incorporate a publication, whether with or without modifications, as in force at a particular time or as in force from time to time.

The Committee generally comments where matters are deferred to the regulations rather than include them in the primary legislation to allow sufficient parliamentary scrutiny. Unlike primary legislation, regulations are subordinate legislation and not required to be passed by Parliament and the Parliament does not control when it commences. The Committee recognises that regulations may be used in relation to certain administrative matters.

In this case, as the provisions relate to circumstances which may limit the classes of work assistance or education and training assistance where compensation is payable, these may be matters that may affect the rights of individuals seeking compensation and may therefore require additional parliamentary scrutiny. The Committee refers these provisions to the Parliament for their consideration of whether they inappropriately delegates legislative powers.

5. ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2021

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

Taxation provisions relocated to subordinate legislation

The Bill moves the schedule of taxation amounts from the *Motor Vehicles Taxation Act* 1988 to the Motor Vehicle Taxation Regulation 2016 Regulation. Other provisions relevant to the amount of motor vehicle tax payable are also moved to the Motor Vehicle Taxation Regulation. The Committee prefers that provisions that potentially impact on an individual's rights be located within primary legislation in order to facilitate the appropriate level of Parliamentary scrutiny.

However, the Committee notes that it is not uncommon for provisions setting out the amounts of fees, charges or fines to be located within subordinate legislation. The Committee also notes that any amendments to either the Motor Vehicle Taxation Regulation 2016 or the Road Transport (Vehicle Registration) Regulation 2017 are subject to disallowance under section 9 of the *Legislation Review Act* 1987. In the circumstances the Committee makes no further comment.

6. ROCK FISHING SAFETY AMENDMENT BILL 2021

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

PART TWO – REGULATIONS

1. DESIGN AND BUILDING PRACTITIONERS REGULATION 2021

The form or intention of the regulation calls for elucidation: s 9(1)(b)(vii) of the LRA

Wide power of delegation

Clause 93 of the Regulation provides that the Secretary may delegate their functions under the Act, other than this power of delegation, to a person employed by a government sector agency within the meaning of the *Government Sector Employment Act 2013.*

The Committee notes that the Regulation does not provide restrictions on this power to delegate, such as restricting delegation to people with certain qualifications or expertise. The Committee also notes that the Secretary holds functions related to the registration of design practitioners, principal design practitioners, professional engineers, specialist practitioners and other building practitioners, and compliance declarations.

The Committee recognises that the delegation of such functions are commonplace where the Secretary requires such delegation to appropriate Department staff. However, given the wide scope of this power of delegation, the Committee refers it to the Parliament for consideration of whether the objective of the provision calls for further clarity or elucidation.

2. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (SHORT-TERM RENTAL ACCOMMODATION) REGULATION 2021

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

Right to a fair trial – penalty notice offences

The Environmental Planning and Assessment Amendment (Short-term Rental Accommodation) Regulation 2021 expands the list of offences under the Environmental Planning and Assessment Regulation 2000 for which a penalty notice may be issued. Specifically, it includes as a new 'penalty notice offence' contravention of clause 186W, which requires that dwellings used for short-term rental accommodation (STRA) comply with applicable fire safety standards. The amount payable for a penalty notice issued for this offence is $1,500 for an individual or $3,000 for a corporation, compared to a maximum penalty of $110,000 if a penalty notice is not issued.

Penalty notices allow a person to pay the amount specified for an offence within a certain time should they not wish to have the matter determined by a court. This may impact on a person's right to a fair trial, notably the automatic right to have a matter heard by an impartial decision maker in public with the opportunity to put forward their side of the case.

The Committee recognises the practical benefits of penalty notices such as their cost effectiveness and ease of administration. Further, the Committee notes that issuing a penalty notice does not prevent the recipient from electing to have the matter proceed to court. However, there is a risk that some may waive this right and pay the on-the-spot fine to avoid attending court and risking a larger penalty. Given the large maximum penalty attached to contravention of clause 186W if a matter proceeds to court, compared to the significantly smaller amounts attached to penalty notices, the Committee refers the matter to Parliament for consideration.

Privacy – access to information on short-term rental accommodation register

Clause 186X of the Regulation requires that individuals who provide a dwelling for use as STRA must register that dwelling with the NSW Planning Secretary. The Planning Secretary must maintain a register on the NSW planning portal, and make its contents available to others in certain circumstances. By requiring the Planning Secretary to disclose information about individuals providing STRA, including their name and address, the Regulation may impact on those individuals' right to privacy.

The Committee acknowledges the safeguards included in the provision, including the requirement that access to the register only be granted to 'authorised' staff from the Department of Customer Service or a local council, or if necessary to ensure the safety of people occupying STRA. The Committee also acknowledges the public safety objectives of the requirement to provide information. In these circumstances, the Committee makes no further comment.

The regulation may have an adverse impact on the business community: s 9(1)(b)(ii) of the LRA

Additional costs of providing short-term rental accommodation

The Regulation introduces a number of new requirements that must be met by individuals or companies providing STRA. For example, dwellings used for STRA must be registered, at a fee of $65 for initial registration and $25 for renewal each year. Dwellings must also comply with the fire safety standard approved by the Planning Secretary.

These provisions are likely to create an additional administrative burden, and add to the cost of doing business for companies and individuals already providing STRA in New South Wales. Failure to keep a dwelling registered for use as STRA, or to ensure that the dwelling complies with the fire safety standard, will attract monetary penalties. However, the Committee acknowledges the public safety objectives of the new provisions, and notes that the registration fees are relatively minimal. In these circumstances, the Committee makes no further comment.

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

Important matters in subordinate legislation – regulation creates new offences

The Regulation creates two new offences. Contravention of clause 186X(3) (the requirement to register dwellings used for STRA with the Planning Secretary) attracts a maximum penalty of $2,200. Contravention of clause 186W(1) (the requirement that dwellings used for STRA comply with the fire safety standard) attracts a maximum penalty of $110,000. The Committee prefers provisions which introduce new offences to be included in primary rather than subordinate legislation, to facilitate an appropriate level of parliamentary oversight. Given the significant maximum penalties that may be imposed, the Committee refers the provision to the Parliament for its consideration.

Regulations incorporating standards in instruments that will not be subject to disallowance

Clause 186V(1) of the Regulation refers to an external document, the '*Short-term Rental Accommodation Fire Safety Standard*'. This document must be approved by the Planning Secretary and published on the Department's website, and may be altered from time to time. Unlike regulations, there is no requirement for the Standard to be tabled in Parliament and subject to disallowance under the *Interpretation Act 1987.* As noted above, non-compliance with the Standard attracts a maximum penalty of $110,000.

The Committee generally prefers that provisions which may impact liability for offences are subject to Parliamentary scrutiny. The Committee acknowledges the public safety objectives of the Standard, and the potential advantages of flexibility in adding or amending its contents. However, given the significant maximum penalty attached to failure to comply with the Standard, the Committee refers the matter to Parliament for consideration.

3. MOTOR ACCIDENT GUIDELINES - VERSION 7 - 19 FEBRUARY 2021

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

Retrospectivity

The Motor Accident Guidelines – Version 7, like previous versions of the Guidelines, apply to motor accidents occurring on or after 1 December 2017, despite being introduced years after that date. They apply to claims made before the Guidelines commenced, although they do not invalidate any steps taken under previous versions of the Guidelines. Accordingly, the Guidelines have some retrospective effect.

The Committee generally comments on retrospectivity, as it runs counter to the rule of law principle that a person is entitled to know the law that applies to him or her at any given time. This is particularly significant given that the Guidelines substantially change the way that claim disputes are dealt with – no longer are they adjudicated by the State Insurance Regulatory Authority's Dispute Resolution Services or CTP Assist, but by the newly established Personal Injury Commission. In these circumstances, the Committee refers the matter to Parliament for consideration.

Privacy – surveillance of claimants

The Guidelines set out the circumstances in which insurers may investigate claimants by means of surveillance. This has the potential to interfere with individual claimants' right to privacy. However, the Guidelines contain a number of safeguards. Surveillance can only occur if there is evidence that an aspect of the claim is exaggerated, misleading or inconsistent. In addition, the Guidelines limit surveillance to public areas or where individuals can be seen by members of the public. Inducement, entrapment or trespass is not permitted. There are also requirements designed to protect children from unnecessary video surveillance. Further, the Committee acknowledges the public interest in ensuring that fraudulent claims are not successful. Accordingly, the Committee makes no further comment.

The regulation may have an adverse impact on the business community: s 9(1)(b)(ii) of the LRA

Regulation of insurance premiums

Part 1 of the Guidelines provides for the regulation of insurance premiums, with SIRA able to reject premiums it believes are excessive or inadequate or if they do not conform to the Guidelines. This may interfere with the autonomy of insurance companies when setting prices for their insurance products.

The Guidelines are part of a regime established under the *Motor Accidents Injuries Act 2017* that seeks to keep premiums affordable and promote fair market practices. The Committee acknowledges the public interest in ensuring that premiums are affordable and the third party insurance scheme is sustainable. It also notes that risk-based pricing is permitted, within certain limits. In the circumstances, the Committee makes no further comment.

Requirement to provide third party insurance

Under the Part 2 of the Guidelines, there are limited circumstances in which insurers can refuse to issue a third party insurance policy. This could have an adverse impact on insurers and agents, as they cannot reject customers with significant risk characteristics.

However, the Committee notes that these provisions are based on the overriding principle of transparency and non-discrimination. This is consistent with the object in section 1.3(c) of the Act to continue to make third-party bodily insurance compulsory for all car-owners in NSW. In these circumstances, the Committee makes no further comment.

4. POISONS AND THERAPEUTIC GOODS AMENDMENT (REAL TIME PRESCRIPTION MONITORING) REGULATION 2021

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

Privacy and security of personal information

The Regulation establishes a system and database for the real time monitoring of the prescription and supply of monitored medicines. Under the new provisions, pharmacists and prescribers of monitored medicines must record information about the person the medication is prescribed to, and the prescriber or pharmacist. This includes their full name, date of birth, gender, street address and other relevant information approved by the Secretary, including healthcare identifier if available. This information may be transferred to another State or Territory database if that information is reasonably required for the operation of the database.

The Committee notes that the recording of this information may impact on a person's right to privacy of their personal information, including contact details, gender and healthcare identifier. The Committee recognises that the Regulation provides some safeguards on this information, by prohibiting a person from knowingly accessing, using or disclosing the information in the database without lawful authority.

However, the Committee notes that the Regulation does not specify whether the collected information would constitute 'personal information' as defined under the *Privacy and Personal Information Protect Act 1998*. Under the Privacy Act, there are certain protections regarding the use, disclosure and retention of personal information by public sector agencies. In these circumstances, the Committee refers these provisions to the Parliament for its consideration.

5. PUBLIC HEALTH AMENDMENT (COVID-19 MANDATORY FACE COVERINGS) REGULATION (NO 2) 2021

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

Personal liberty

The regulation amends the *Public Health Regulation 2012* to provide that penalty notices may be issued for contravening a public health order requiring the wearing of fitted face coverings in certain circumstances when inside NSW airports and domestic commercial aircraft. This may impact a person's physical bodily integrity by requiring them to wear an item of clothing that covers their nose and mouth or may impact their breathing.

However, the Committee recognises that the intent of the regulation is to protect public health and safety when travelling by aircraft within NSW and is in response to the COVID-19 pandemic and the risk of recurring outbreaks across the States and Territories. The Committee also notes that the regulation provides exceptions to wearing fitted face coverings in circumstances where the person is under 12 years old, where it is not suitable due to a disability or physical or mental

illness, or for a temporary period such as when eating or drinking or during an emergency. In these circumstances, the Committee makes no further comment.

6. PUBLIC HEALTH AMENDMENT (COVID-19 SPITTING AND COUGHING) REGULATION 2021

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

Penalty notice offences – right to a fair trail

The *Public Health Amendment (COVID-19 Spitting and Coughing) Regulation 2021* allows a penalty notice of $5,000 to be issued to an individual who contravenes the *Public Health (Spitting and Coughing) Order 2021* by intentionally spitting or coughing on a public office or on another worker while the worker is at the worker's place of working or travelling to or from it, in a way that is likely to cause fear about the spread of COVID-19.

In its previous Digests 13/57, 17/57, 25/57, and 30/57 the Committee commented on earlier versions of the Regulation, which similarly provided that a penalty notice of $5,000 could be issued to a person who contravened earlier versions of the Order. Consistent with its previous comments, the Committee notes that penalty notices allow an individual to pay a specified monetary amount, instead of appearing before a Court to have their matter heard. This may impact on a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker. The Committee also notes that $5,000 is a significant monetary amount to be imposed on an individual by way of penalty notice.

The Committee recognises that individuals retain the right to elect to have their matter heard and decided by a Court, although individuals may be incentivised not to do so, as the maximum penalty is significantly higher, and includes imprisonment. The Committee also acknowledges that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. This is particularly the case given the extraordinary conditions created by COVID-19, where public institutions, including courts, need to facilitate social distancing. Given these factors, the Committee makes no further comment.

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

Matters that should be included in primary legislation

As noted above, the Regulation allows a penalty notice of $5,000 to be issued to an individual who contravenes the Public Health (COVID-19 Spitting and Coughing) Order 2021 by intentionally spitting or coughing on a public official or on another worker while the worker is at the worker's place of work or travelling to or from it, in a way that is likely to cause fear about the spread of COVID-19.

Consistent with its comments in Digests 13/57, 17/57, 25/57, and 30/57, the Committee generally prefers significant matters to be dealt with in primary rather than subordinate legislation. This includes provisions that set down large on-the-spot penalties for offending. This would foster a greater level of parliamentary oversight concerning the provisions.

The Committee acknowledges the importance of relevant authorities having sufficient flexibility to respond quickly to emerging public health issues. Being able to include significant matters in subordinate legislation may further this objective, meaning that responses are not delayed by

the need for an amending Bill. Given the extraordinary circumstances caused by the COVID-19 pandemic, the Committee makes no further comment.

7. ROAD TRANSPORT (GENERAL) AMENDMENT (PENALTY NOTICE OFFENCES) REGULATION 2021

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

Penalty Notice Offences – Right to a fair trial

The Regulation adds two offences to the list of penalty notice offences. Firstly, the Regulation makes it an offence to tow an unregistered trailer, which is classed as a "level three" offence and carries penalty of $194, or a maximum penalty of 20 penalty units ($2,200) for failure to comply with the initial notice. Secondly, for failing to provide identity information when requested by written notice in relation to a parking offence or a camera recorded offence. This is classed as a level 8 offence and carries a penalty of $697, or a maximum penalty of 20 penalty units ($2,200) for failure to comply with the initial notice.

Penalty notices allow a person to pay the amount specified for an offence within a certain amount of time should he or she not wish to have the matter determined by the court. The fine payable under a penalty notice is usually less than the maximum penalty that would otherwise apply. This may impact on a person's right to a fair trial, notably the automatic right to have a matter heard by an impartial decision maker in public with the opportunity to put forward his or her side of the case.

However, the Regulation does not remove the right of individual to elect to have their matter heard and decided by a Court. Additionally, there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. Given these factors, the Committee makes no further comment.

8. ROAD TRANSPORT LEGISLATION AMENDMENT (OFFENSIVE ADVERTISING) REGULATION 2021

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

Exclusion of right to appeal

The Regulation inserts Clause 45(1A) to the *Road Transport (Vehicle Registration) Regulation 2017,* which provides that Transport for NSW (TfNSW) must cancel the registration of a vehicle 14 days after it has been served with an offensive advertising notice. This must occur unless Ad Standards has given written notice of the withdrawal of the relevant advertising code breach notice before the expiry of the 14-day period. The Regulation also amends Clause 131 of the *Road Transport (General) Regulation 2013* to provide that decisions under Clause 45(1A) are not 'appealable decisions' that may be appealed to a Local Court.

These provisions remove the right of appeal for vehicles that have been served with an offensive advertising notice under this clause. Removing the right to appeal may impact on the rights of vehicle owners whose registration is removed.

While the Committee recognises that the a vehicle owner may seek a review of a decision by Ad Standards that the advertisement breached the advertising code, such a review must occur within 10 days and prior to the cancellation of the registration.

The Committee generally prefers provisions that remove the right to judicial review of a decision to be located in primary legislation in order to ensure an appropriate level of Parliamentary

scrutiny. In the circumstances, the Committee refers the matter to Parliament to consider whether the Regulation trespasses unduly on the personal rights and liberties of vehicle owners.

The regulation may have an adverse impact on the business community: s 9(1)(b)(ii) of the LRA

Impact on businesses

The Regulation provides for the cancellation of vehicle registration where Ad Standards has found it breached the advertising code for offensive advertising. A review of such a decision by Ad Standards is $1,000, or $2,000 if the advertiser has not paid the advertising levy. An owner may not transfer the registration of a vehicle if it carries advertising found to be in breach of the advertising code for offensive advertising.

The Committee notes that this may impact businesses that own or operate vehicles that are found to have breached the advertising code and subsequently had their registration cancelled or incur costs to review such a decision. However, the Committee recognises that any inconvenience to business should be balanced against the policy aim of discouraging the display of offensive advertising. Under the circumstances, the Committee makes no further comment.

The regulation insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 9(1)(b) of the LRA

Cancellation of registration dependent upon determination of non-government organisation

The Regulation provides for the removal of vehicle registration where Ad Standards has issued an offensive advertising notice for the vehicle. The Committee notes that Ad Standards is an industry self-regulatory body whose determinations are made by a community panel by applying the AANA Code.

The Committee prefers that determinations that impact upon rights be based on provisions set down in legislation that is subject to Parliamentary Scrutiny. In the circumstances, the Committee refers the matter to Parliament to consider whether the Regulation insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

Part One – Bills

1. Anti-Discrimination Amendment (Religious Vilification) Bill 2021*

Date introduced	10 June 2021
House introduced	Legislative Assembly
Member responsible	Mr Paul Lynch MP
	* Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Anti-Discrimination Act 1977* to make it unlawful to vilify a person or group of persons on the ground of a specific religious belief or affiliation.

BACKGROUND

2. In his second reading speech, Mr Paul Lynch told the Parliament that the Bill intended to provide protection from religious vilification:

> The object of the bill is to make religious vilification of individuals unlawful. It does that by amending the Anti-Discrimination Act. That Act already lists a number of attributes of individuals in relation to which vilification is unlawful. This bill proposes to add religion to those other attributes. Proceeding in this way has the advantage of building upon a structure that is already there with a jurisprudence that has been developed over time. In technical terms, it is a minor amendment rather than a wholesale restructuring. It is, however, in substance very important to many groups within the community.

3. Mr Lynch noted that the Bill was an incremental increase from the current legislation in place:

> Section 20C of the principal Act rendered racial vilification unlawful. Vilification against a person or a group of persons on the grounds of the race of the person or persons was, and is, unlawful. As a result of the 1994 amendment, section 4 of the Act defines race as including ethno-religious origin. This was according to the second reaching speech of the then Attorney General, Jim Hannaford, intended to include Sikhism, Judaism, and Islam. There was a clear attempt made, at least in relation to some religions, to make religious vilification unlawful. Hannaford said that "the effect of the amendment is to clarify that ethno-religious groups such as Jewish people, Muslims and Sikhs have access to the racial vilification and discrimination provisions of the Act.

4. The Bill follows the report of the Joint Select Committee on the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020*,[1] which examined anti-discrimination protection for religion in NSW. Mr Lynch noted that the current legislative

[11] Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, Final Report, March 2021.

protections for religion are limited to the Act's definition of race. Under section 4 of the Act, race includes colour, nationality, descent and ethnic, ethno-religious or national origin. As noted in the Committee's report, 'ethno-religious' is limited to religions with a specific ethic origin, such as Sikhs. It is not available to religious with an ethnically diverse population, such as the broader faiths of Christianity or Islam.[2]

5. The *Anti-Discrimination Amendment (Religious Vilification) Bill 2021* amends the *Anti-Discrimination Act 1977* (the Act) to insert new protection from religious vilification.

ISSUES CONSIDERED BY COMMITTEE

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

Right to free speech

6. The Bill amends the *Anti-Discrimination Act 1977* and inserts proposed Part 2AA, regarding religious vilification.

7. Proposed section 22AB provides that it is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the ground that they have a specific religious belief or affiliation.

8. Under the Bill, religious belief or affiliation means holding or not holding a religious belief.

9. Proposed section 22AA provides that a public act includes:

   a) Any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material, and

   b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, and

   c) the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.

10. Subsection 22AB further provides that the following is not unlawful:

   a) a fair report of a public act, or

   b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the *Defamation Act 2005* or otherwise) in proceedings for defamation, or

   c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

[2] Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, Final Report, March 2021, p.

11. In the second reading speech to the Bill, Mr Lynch acknowledged that one criticism of the Bill may be that it stifles free speech:

Another potential criticism is that it stifles free speech. The truth has always been that free speech, while an important civil right, has never been an absolute right. It is a question of determining where the boundaries are. As I have pointed out several times, the principal act—the Anti-Discrimination Act—already has vilification provisions in it, and in 1994 an amendment was made to extend that to ethno-religious origins. So the right to free speech has already had boundaries placed on it in this space. This bill proposes to move those boundaries incrementally.

12. Mr Lynch further stated that the Bill's provisions are based on existing provisions within the Act, specifically section 20C regarding racial vilification:

> The detail of the bill is quite straightforward. I say that because it is modelled very precisely on the provisions of the existing section 20C, which was the first of the vilification provisions in this legislation. The other vilification provisions in the Act were based upon this. This means that most of the bill is not novel. The phrase "religious belief or affiliation" in this bill is the same phrase used in section 93Z of the Crimes Act. So we are using the Government's drafting. The section 4 definition means that the phrase "religious belief or affiliation" includes holding or not holding a religious belief or view. The provisions in proposed section 22AA about "public acts" are based upon the existing provision in section 4 of the Act.

The Bill amends the *Anti-Discrimination Act 1977* to insert Part 2AA regarding religious vilification, which makes it unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the grounds of their religious belief or affiliation.

Under the Bill, religious belief or affiliation is defined as holding or not holding a religious belief. Proposed section 22AB defines a public act to include any form of communication to the public (including speaking, writing, printing or broadcasting), and any conduct observable by the public (including actions and gestures and the wearing of clothing, signs, flags or emblems), and the distribution or dissemination of any matter to the public with knowledge that it promotes or expresses hatred towards, serious contempt for or sever ridicule of a person or group of person on the grounds of their religious belief or affiliation.

While the Bill creates a new protection for religious vilification, the Committee notes that the definition of public act includes a broad range of communications. Limiting the subject matter of such public communications may infringe on a person's right to free speech.

However, as noted in the second reading speech, right to freedom of speech is not an absolute right and may be limited by law where it is in the public interest to do so. The Bill also provides that is not unlawful to provide a fair report of a public act, or where the communication is subject to a defence of absolute privilege, or a public act done in reasonably good faith for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

The Committee also notes that the intention of the Bill is to protect individuals from vilification on the basis of religious belief or affiliation, and that the

provisions mirror existing vilification provisions under the Act, such as those regarding protection for vilification on the grounds of race. In these circumstances, the Committee makes no further comment.

2. Families, Communities and Disability Services Miscellaneous Amendment Bill 2021

Date introduced	9 June 2021
House introduced	Legislative Assembly
Minister responsible	The Hon. Alister Henskens MP
Portfolio	Families, Communities and Disability Services

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to—

(a) amend the *Adoption Act 2000* to clarify that rights to obtain information about a person's adoption are not lost due to the relevant information also being contained in a court record, and

(b) amend the *Ageing and Disability Commissioner Act 2019* to—

(i) make it an offence for a person to take detrimental action against an employee or contractor who assists the Ageing and Disability Commissioner with a report about abuse, neglect or exploitation of an adult with disability or an older adult, and

(ii) authorise the Commissioner to disclose information about the outcome of a report to a person who made the report or another person concerned with the welfare of the person the subject of the report provided the disclosure is consistent with the objects and principles of the Act, and

(c) amend the *Children and Young Persons (Care and Protection) Act 1998* to—

(i) clarify that the Children's Court has a discretion to appoint a guardian ad litem in care proceedings rather than an obligation to do so, and

(ii) allow the Children's Court to consider reports, including supervision reports, that are provided late where the Court is satisfied that it is both appropriate and in the best interests of the child or young person to do so, and

(iii) make provision for the preservation of records about authorised carers who cared for a child or young person in out-of-home care, and

(iv) clarify regulation making powers, and

(d) amend the *Children (Detention Centres) Act 1987* to ensure that persons who are 18 or over are not inadvertently detained in a detention centre under a warrant or order for the detention of the person on remand, and

(e) make minor amendments to the *Children's Guardian Act 2019*, including to extend the operation of existing regulations by 12 months to 1 September 2022.

BACKGROUND

2. The Bill amends a number of Acts under the Families, Communities and Disability Services portfolio. This includes amendments to the *Adoption Act 2000*, the *Ageing and Disability Commissioner Act 2019*, the *Children and Young Persons (Care and Protection) Act,* the *Children (Detention Centres) Act 1987*, and the *Children's Guardian Act 2019*.

3. In the second reading speech, the Hon. Alister Henskens, the Minister for Families, Communities and Disability Services, noted that the Bill aimed to address emerging issues, support procedural amendments and clarify uncertainty in the legislation:

> Some of the ways that these amendments will strengthen our community include improving information sharing under the Adoption Act 2000, improving protections for older people and people with disability, clarifying the representation of children in Children's Court proceedings and improving child protection processes for children in out-of-home care through the reportable conduct scheme.

4. The Minister also noted that the Bill was a part of the Government's on-going review and streamlining of legislation:

> This bill is an important part of the Government's regular legislative review and monitoring program. Many of the amendments in the bill are technical in nature and are important steps in streamlining the day-to-day work performed by the various agencies working within the Stronger Communities Cluster. They address emerging issues, support procedural improvements, clarify uncertainty and correct errors in legislation.

ISSUES CONSIDERED BY THE COMMITTEE

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

Privacy

5. The Bill amends the *Adoption Act 2000* in relation to the provision of information that a person is entitled to access.

6. Specifically, the Bill inserts section 133AA, which provides that a person does not lose an entitlement to receive information under Chapter 8 of the Act regarding adoption information due to the information also being contained in a record of court proceedings. This includes by operation of section 143, which provides that an information source that supplies any adoption information pursuant to an application under the Act is required to comply with relevant regulatory guidelines.

7. Proposed section 133AB also clarifies that an application by a person for information the person is entitled to receive under this Chapter may include a request for information the person is entitled to access under the *Children and Young Persons (Care and Protection) Act 1998*, Chapter 8, Part 6. The information under the *Children and Young Persons (Care and Protection) Act 1998* may be provided to the person despite no request having been made under that Act.

8. In the second reading speech, the Minister noted the impact of these changes:

> The Department of Communities and Justice holds prescribed information that adopted persons and other persons are entitled to access under chapter 8 of the Adoption Act, including non-identifying background information about an adopted person's birth parents and other relatives, birth details about the adopted person, the social and medical history of the adopted person, and the reason an adoption decision was made by the birth parents. Some of this information may also be contained in the records of proceedings of the court relating to the person's adoption.
>
> … The introduction of section 133AA will not expand the kinds of information a person is entitled to access under chapter 8 but will make abundantly clear that prescribed information that may also be contained in records of proceedings in the court may be released to a person who is already entitled to that information under chapter 8 of the Adoption Act, without that person having to make an additional application to the court under section 143.
>
> … Currently, an adopted person who was formerly in out-of-home care must lodge two separate applications to access information related to their adoption and their out-of-home care experience. Section 133AB will streamline the application process for those adopted people so that a single application can be made to access both adoption information and information available under sections 168 and 169 of the care Act. These two new sections will reduce unnecessary duplication for adopted persons in applying for information and make it easier to access their information. This is consistent with the objects of the Adoption Act to allow access to information relating to adoptions.

9. The Bill also amends section 194 of the Act, regarding restrictions on the inspection of records, to clarify that the operation of the section does not prevent a record from being produced to a court, tribunal, or an authority or person having power to require the production of documents or the answering of questions.

10. The Minister also noted that the Bill's amendment to section 194 of the Adoption Act clarifies, rather than extends, the power of the court to require records to be produced to a court:

> Item [2] of the bill's amendments to the Adoption Act amends section 194 to clarify that the prohibition on access to records under that section does not prevent records being produced to a court or other authority in response to a subpoena or other compulsory process. Section 194 of the Adoption Act provides that records made in connection with the administration or execution of the Act or previous adoption legislation are not to be open to inspection by, or made available to, any person, except as provided by the Act or the regulations. There is no express exception to this prohibition in cases where documents are required to be produced under compulsory process, such as a subpoena or notice to produce. This has caused uncertainty about whether section 194 is intended to prevent production of documents in response to compulsory processes. The amendment will clarify that records made in connection with the administration or execution of the current Adoption Act or previous adoption legislation may be produced to a court or other authority in response to a subpoena or other compulsory process.

The Bill inserts sections 133AA and 133AB to clarify that where a person is entitled to receive information under Chapter 8 of the Adoption Act 2000 that entitlement is not lost because of the information also being contained in a court record. The amendment also provides that a person who has been in out-of-home care under the Children and Young Persons (Care and Protection) Act 1998 prior to being adopted may obtain information by a single application under the Adoption Act.

The Bill also amends section 194 of the Adoption Act, regarding restrictions on the inspection of records, to clarify that records made in connection with the administration or execution of the Adoption Act or previous adoption legislation may be produced to a Court or other authority in response to a subpoena or other compulsory process.

This information includes details regarding birth history, social and medical history, and reasons for adoption, and may be seen to infringe on the privacy of the person to whom it relates. However, the Committee notes that this information does not contain identifying details, and that the amendments only remove the requirement for a separate application to access this type of information that a person may already be entitled to. In that regard, 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

Discretion of Commissioner to disclose confidential information

11. The Bill amends the *Ageing and Disability Commissioner Act 2019* to insert section 31A regarding the disclosure of information about the outcome of a report under section 13 of the Act.

12. Proposed section 31A provides that, despite section 31, if the Commissioner considers disclosure of information about the outcome of a report to the Commissioner under section 13 is consistent with the objects and principles of this Act, the Commissioner may disclose the information to a person who made the report, or another person concerned for the welfare of the adult with disability or the older adult who was alleged to have been subject to, or at risk of, abuse, neglect or exploitation.

13. Section 31 of the Act provides that a person must not disclose any information obtained in connection with the administration or execution of this Act unless it is made:

    a) with the consent of the person from whom the information was obtained, or

    b) in connection with the administration or execution of this Act, or

    c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or

    d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or

    e) with other lawful excuse.

14. The maximum penalty under section 31 is 50 penalty units ($5,500).

15. Section 13 of the Act provides that reports may be made to the Commissioner about, among other matters, older adults or adults with a disability that are subject to, or at risk of, abuse, neglect or exploitation.

16. In regards to this section, the Minister stated:

> Item [4] of schedule 2 introduces section 31A of the ADC Act to allow the ADC to provide information about the outcome of a report to the reporter and other people concerned for

the welfare of the adult with a disability or older person if the ADC considers that disclosure of the information is consistent with the objects and principles of the ADC Act. In certain cases, the ADC needs to be able to provide relevant information about the outcome of a report to the reporter or other key parties to enable appropriate safeguarding of the adult with disability or older person. These circumstances might include advising an individual's NDIS support coordinator, GP or other key supporters. Information about the outcome of a report would not be provided in every case. It may often be inappropriate for the ADC to provide information back to the reporter or to disclose information to other parties. This amendment simply allows the ADC to be able to disclose information about the outcome of a report when necessary, primarily to protect the adult from abuse, neglect and exploitation, and to promote their rights.

The Bill amends the *Ageing and Disability Commissioner Act 2019* to allow the Commissioner to provide information about the outcome of a report to the reporter and other people concerned for the welfare of the adult with a disability or older person if the Commissioner considers the disclosure of such information is consistent with the objects of the Act. The Bill does not outline matters that the Commissioner must take into consideration when determining whether the disclosure of such information is appropriate. The disclosure of such information may infringe on the privacy of those to which the report concerns.

However, the Committee notes that the intention of the provision is to provide relevant information to key parties to ensure the safety of the adult with disability or older person. For example, to advise a NDIS supporter or GP. In doing so, the amendment seeks to protect the adult from abuse, neglect and exploitation. In these circumstances, the Committee makes no further comment.

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

Matters that should be in primary legislation

17. Schedule 3 amends the *Children and Young Persons (Care and Protection) Act 1998* and allows a number of matters to be deferred to the regulations.

18. Proposed subsection 79C(5) provides that the provision of financial assistance under this section is subject to conditions prescribed by the regulations.

19. Proposed subsection 137(2) provides that the regulations may make provisions for various matters regarding authorised carers, including:

    a) the authorisation of persons as authorised carers and on a provisional basis

    b) the making a determination of an application for authorisations

    c) the imposition of various conditions of an authorisation including the maximum number of children and young persons who may be placed in the care of an authorised carer and the maximum number in specified aged groups, and the identification or description of children and young persons who may be placed in the care of an authorised carer

    d) the period for which authorisation remains in force

e) the cancellation or suspension of an authorisation, including events that result in automatic cancellation of an authorisation or the presumption an authorisation will be cancelled

f) the notification, by a designated agency, to the Children's Guardian of the placement of a child or young person in the out-of-home care of an authorised carer

g) the approval or prohibition of behaviour management practices that may be used by an authorised carer in managing the behaviour of a child or young person in out-of-home care.

20. The proposed amendment to section 245B provides that the regulations may prescribe a class of person in regards to the sections 245B and 248 of the Act regarding the provision and exchange of information.

21. The Bill also amends section 264 of the Act to amend the regulation making powers to provide that regulations may be made to require authorised carers to provide information to a designated agency, to set out the circumstances in which an authorised carer or a person residing with an authorised carer may be required to undergo a medical examination and to provide for the Secretary to approve the form of documents and reports provided under the regulations.

The Bill makes a number of amendments to the *Children and Young Persons (Care and Protection) Act 1998* to allow certain matters to be prescribed by the regulations. This includes matters related to financial assistance, the authorisation and conditions of authorised carers, and the prescribing of a class of persons for the provision and exchange of information under the Act. It also amends the regulation making powers to provide that regulations may be made to require authorised carers to provide information to a designated agency, to set out the circumstances in which an authorised carer or a person residing with an authorised carer may be required to undergo a medical examination and to provide for the Secretary to approve the form of documents and reports provided under the regulations.

The Committee generally comments where matters are deferred to the regulations. Unlike primary legislation, regulations are subordinate legislation and not required to be passed by Parliament and the Parliament does not control when it commences. The Committee recognises that regulations may be used in relation to certain administrative matters. The Committee also notes that regulatory changes are tabled in both Houses of Parliament and subject to disallowance under section 41 of the *Interpretation Act 1987*.

However, the matters deferred include matters regarding the authorisation and conditions of authorised carers, and particularly requirements to provide information or be required to undergo a medical examination. The Committee considers that such matters may be more than merely administrative and may require a higher level of parliamentary scrutiny. Consequently, the Committee refers these provisions to the Parliament for the consideration of whether they insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

Code of conduct not subject to disallowance

22. The inserts proposed section 248C into the *Children and Young Persons (Care and Protection) Act 1998,* which provides that the Minister may approve a code of conduct for authorised carers and to make it a condition of an authorised carer's authorisation that they comply with the code of conduct. The code of conduct must be published on the website of the Department.

The Bill amends the *Children and Young Persons (Care and Protection) Act 1998* to provide that the Minister may approve a code of conduct for authorised carers and make it a condition of an authorised carer's authorisation that they comply with the code of conduct. The Committee notes that, unlike regulations, there is no requirement that such a code of conduct is to be tabled and therefore is not subject to disallowance. This may subject such a code of conduct and its terms to insufficient parliamentary scrutiny.

However, the Committee recognises that the intent of the provision is to make it a condition of an authorised carer's authorisation to comply with the Code of Conduct for the protection of the rights of adults under their care. In these circumstances, the Committee makes no further comment.

3. Electoral Legislation Amendment (Local Government Elections) Bill 2021

Date introduced	10 June 2021
House introduced	Legislative Council
Minister responsible	The Hon. Don Harwin MLC
Portfolio	Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts

PURPOSE AND DESCRIPTION

1. The objects of this Bill are to—

   (a) amend the *Electoral Funding Act 2018* to enable a party agent of a registered party to elect to be the person responsible for disclosing certain political donations and electoral expenditure relating to local government, and

   (b) amend the *Local Government Act 1993* to—

      (i) clarify the relationship between the regulations under that Act and arrangements between a council and the Electoral Commissioner for administration of local council elections, and

      (ii) provide for the making of rules for the safe conduct of council elections during the COVID-19 pandemic, and

      (iii) clarify that the postponement of a council election by the Minister does not affect the validity of certain council resolutions passed and arrangements entered into by the council.

BACKGROUND

2. The Bill amends the *Electoral Funding Act 2018* and the *Local Government Act 1993* in order to facilitate the upcoming local government elections in September 2021.

3. In the second reading speech to the Bill, the Minister, the Hon. Don Harwin noted the changes the Bill made to party agents for local government elections:

> Firstly, the bill amends the Electoral Funding Act 2018 to expand the circumstances in which a party agent can choose to be responsible for electoral expenditure and donations disclosures on behalf of endorsed candidates, councillors or groups. Part 3 of the Electoral Funding Act requires electoral participants to disclose information about political donations and electoral expenditure to the NSW Electoral Commission. The rules setting out who is responsible for making those disclosures are set out in section 14 of the Act. For local government elections, the Act currently provides that candidates, councillors and groups are generally responsible for making their own disclosures, including those who are members of a registered political party.

> … These amendments will result in disclosure requirements for local government elections—or at least an option existing—being more closely aligned with State government elections, where a party agent has greater control over the disclosures of endorsed candidates. The changes are also expected to reduce administrative inefficiencies experienced by parties and candidates by allowing party agents to become responsible for an endorsed candidate, councillor or group's disclosures without the administrative burden of first negotiating an agreement. It is also important to note that being responsible for disclosures triggers other responsibilities in relation to electoral expenditure and donations under the Electoral Funding Act. For example, where a party agent is responsible for the disclosures of a candidate, the party agent also becomes responsible for accepting donations made to the candidate and paying those donations into the party's local government campaign account.
>
> As a result, the increased flexibility for party agents to take control of disclosures will in turn mean that party agents have greater scope to oversee campaign finances in local government elections. This option will be an important integrity measure to ensure that those with the ability, experience and know-how are able to run campaigns for their candidates in full compliance with the Electoral Funding Act. It will mitigate against the risk that candidates, with less experience and familiarity of obligations under the Electoral Funding Act, will fall foul of the Act's disclosure requirements.

4. The Minister also noted the changes the Bill made regarding the current precautions for the COVID-19 pandemic:

> The bill also makes changes to the Local Government Act 1993 to respond to challenges associated with the COVID-19 pandemic. This bill contains several measures to clarify the intended operation of the Local Government Act 1993 in circumstances where local government elections are postponed and to ensure the NSW Electoral Commission can conduct COVID-safe elections, if necessary, in September.

ISSUES CONSIDERED BY THE COMMITTEE

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

Retrospectivity

5. The Bill amends Schedule 2 of the *Electoral Funding Act 2018,* regarding savings transitional and other provisions. Under the proposed Part 5, Section 14 of the Act, as in force immediately before the commencement of this Bill, continues to apply to the disclosure of political donations received or made, and electoral expenditure incurred, before that commencement.

6. The Bill also amends Schedule 8 of the *Local Government Act 1993*, regarding the postponement of elections. Under the proposed section 134, section 318B(4A) extends to resolutions passed, and arrangements entered into, before the commencement of that subsection in relation to an election postponed under section 318B before the commencement.

> **The Bill amends the *Electoral Funding Act 2018* and the *Local Government Act 1993* to provide that certain provisions are to apply to matters that occurred before the commencement of the relevant sections within the Bill. This allows these provisions to operate retrospectively.**

The Committee generally comments where provisions apply retrospectively as it runs counter to the rule of law principle that a person is entitled to know the law that applies to him or her at any given time. However, the Committee notes that the relevant provisions are largely mechanic in nature, including savings transitional and other provisions consequent on the enactment of the provisions in the Bill, and for the facilitation of local government elections. In these circumstances, the Committee makes no further comment.

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

Rules not subject to disallowance

7. The Bill amends the *Local Government Act 1993* to insert proposed section 296C, which provides that the Electoral Commissioner may, by a written order published on their website, specify COVID-19 safe election rules for the safe conduct of elections during the COVID-19 pandemic.

8. In determining COVID-19 safe election rules, the Electoral Commissioner must have regard to applicable public health orders and health recommendations by NSW Health concerning the COVID-19 pandemic and the holding of public events during the pandemic.

9. This section is to be repealed on 1 January 2022, or a later day, not later than 26 March 2022, as prescribed by the regulations.

10. In the second reading speech, the Minister noted the purpose of the provision:

> Section 296C will operate to allow the commissioner to publish COVID-19 safe election rules based on applicable public health orders concerning the COVID-19 pandemic and relevant health recommendations made by NSW Health concerning the holding of public events during the COVID-19 pandemic. The commissioner will not contravene section 296(2) in relation to an election arrangement entered into with a council for something done, or not done, for the purpose of complying with COVID-19 safe election rules. This third measure is a time-limited one and automatically expires on 1 January 2022, or no later than 26 March 2022 if extended by regulation.

The Bill allows the Electoral Commissioner to publish COVID-19 safe election rules for the safe conduct of elections during the COVID-19 pandemic. Such rules are not required to be tabled in the Parliament and therefore not subject to parliamentary scrutiny. The Committee generally comments where legislation allows for the making of rules not subject to disallowance that may infringe on a person's personal rights or liberties, such as the right to vote.

However, the Committee recognises that the purpose of these COVID-safe rules is to ensure that elections are run in accordance with the relevant public health orders and health recommendations of NSW Health regarding holding public events during the COVID-19 pandemic. The section is also set to be repealed on 1 January 2022, or a later day, not later than 26 March 2022, as prescribed by the regulations. Given the public safety aspect of the provisions, and the considerable safeguards, the Committee makes no further comment.

4. Motor Accidents and Workers Compensation Legislation Amendment Bill 2021

Date introduced	9 June 2021
House introduced	Legislative Assembly
Minister responsible	The Hon. Victor Dominello MP
Portfolio	Customer Service

PURPOSE AND DESCRIPTION

1. The objects of this Bill are—

(a) to make miscellaneous amendments to certain legislation concerning workers compensation and motor accidents, and

(b) to make other consequential or related amendments, including amendments in the nature of statute law revision.

BACKGROUND

2. The Bill makes amendments to various bills under the motor accidents and workers compensation legislation, which fall under the authority of the State Insurance Regulatory Authority (SIRA).

3. In the second reading speech, the Minister, the Hon Victor Dominello MP, noted that the Bill's amendments covered four broad themes:

> The bill introduces a number of amendments to the motor accidents and workers compensation legislation, as well as the State Insurance and Care Governance Act 2015 and the Personal Injury Commission Act 2020, or the PIC Act. These amendments seek to clarify rights and entitlements, and improve the regulation, administration and efficiency of the compulsory third party insurance [CTP] and workers' compensation schemes. The amendments proposed by the bill cover four broad themes: first, improving customer experience, scheme efficiency, fairness and equity; secondly, improving access to compensation entitlements for injured workers, certain volunteers and people injured in motor vehicle accidents and their dependants; thirdly, expanding and clarifying existing regulation-making powers, including provisions related to deemed diseases and point to point vehicles; and fourthly, establishing new powers for the State Insurance Regulatory Authority [SIRA] to enable better regulation for providers of treatment and other services in the workers compensation and CTP insurance schemes.

4. The Minister acknowledged that in developing the Bill, the Government had consulted with a range of key stakeholders:

> In developing the bill, my department and the State Insurance Regulatory Authority consulted with key stakeholders across both schemes, including insurers, peak legal and

medical professional bodies, dispute resolution decision-makers, industry and key government agencies. I wish to acknowledge the assistance of these stakeholders, who have provided valuable input. Honourable members may be assured that their comments have been carefully considered in finalising the bill.

ISSUES CONSIDERED BY THE COMMITTEE

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

Strict liability offences

5. The Bill amends the *Motor Accidents Injuries Act 2017* to insert section 2.26 regarding special provisions relating to taxis and hire vehicles and other vehicles.

6. Proposed subsection 2.26(5) provides that the Authority may, by written notice served on a person conducting a business relating to vehicles, including the provider of a passenger service or a booking service, require the person to do 1 or more of the following—

   a) provide to the Authority, within the time and in the way specified in the notice, information the Authority reasonably requires for the purpose of determining the guidelines for insurance premiums for third-party policies for taxis, hire vehicles or other classes of vehicles,

   b) provide to the Authority or a licensed insurer, within the time and in the way specified in the notice, information the Authority or licensed insurer reasonably requires to determine premiums for third-party policies for taxis, hire vehicles or other classes of vehicles,

   c) pay, within the time and in the way specified in the notice, premiums for third-party policies for taxis, hire vehicles or other classes of vehicles.

7. Under subsection 2.26(6), a person that fails to comply with the notice under subsection 2.26(5)(a) above is subject to a maximum penalty of 100 penalty units ($11,000), and 500 penalty units ($55,000) for any other contraventions.

The Bill amends the *Motor Accidents Injuries Act 2017* and inserts section 2.26, which allows the Authority to serve a notice on a person conducting a vehicle-related business to provide information to the Authority to determine guidelines for insurance premiums for third-party policies for taxis, hire vehicles or other classes of vehicles. It also allows the Authority to serve a notice to pay premiums for third-party policies for taxis, hire vehicles or other classes of vehicles. Failure to comply with the notice is subject to a maximum penalty of 100 penalty units ($11,000), and 500 penalty units ($55,000) for any other contraventions.

The Committee notes that these may amount to significant penalties for failing to comply, and that these provision amount to strict liability offences. The Committee generally comments on strict liability offences as they depart from the common law principle that *mens rea*, or the mental element, is a relevant factor in establishing liability for an offence. This is of particular concern where significant financial penalties are attached.

However, the Committee notes that strict liability offences are not uncommon in legislation and regulatory frameworks to ensure compliance with regulatory authorities. Further, the Committee notes that the provisions impose monetary penalties rather than imprisonment, and are to provide a financial incentive for persons conducting a vehicle-related business to provide information to the Authority to determine guidelines for insurance premiums for third-party policies for taxis, hire vehicles or other classes of vehicles. The provisions also ensure that vehicle-related businesses pay, within the timeframe, the relevant premiums for third-party policies for taxis, hire vehicles or other classes of vehicles. In these circumstances, the Committee makes no further comment.

Enforcement powers – direction to provide data, services or take action

8. The Bill amends the *State Insurance and Care Governance Act 2015* and inserts proposed Part 3 Division 3 regarding the functions of SIRA concerning certain service providers.

9. Under this Part, proposed section 26C provides that SIRA may give a written direction to a relevant service provider requiring the provision of specified data within a specified period concerning relevant services the provider provides. Failure to comply with such a direction may incur a maximum penalty of 500 penalty units ($55,000) for a corporation and 100 penalty units ($11,000) for an individual.

10. Proposed subsection 26D allows SIRA to issue written direction to require a relevant service provider to take specified action, or provide or not provide specified relevant services, for the purposes of the workers compensation and motor accidents legislation. A direction under this section may extend of all of the workers compensation and motor accidents legislation or be limited to specified Acts or instruments, or specified provisions of Acts or instruments, forming part of the legislation.

The Bill amends the *State Insurance and Care Governance Act 2015* to enable SIRA to give written directions to certain providers of services for the purposes of workers compensation and motor accidents legislation, including requiring the provider to provide SIRA with specified data, or take specified actions, or provide specified relevant services.

The Committee generally comments where enforcement powers may be used, as they may infringe on the ordinary rights such as the right to privacy or property. In this case, the powers would allow SIRA to obtain records that are the property of certain service providers, and gives SIRA the authority to direct them to take specified actions or provide relevant services not ordinarily required.

However the Committee notes that the ability of SIRA to give directions to provide data or services is for the purposes of carrying out its functions under the relevant workers compensation and motor accidents legislation. In these circumstances, the Committee makes no further comment.

Right to fair trial - Penalty notice offences

11. The Bill amends the *State Insurance and Care Governance Act 2015* to insert Part 3 Division 3 regarding the functions of SIRA concerning certain service providers. Under this Division, proposed section 29B provides that an authorised officer may issue penalty

notices. The amount payable under a penalty notice issues under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed by a court.

The Bill amends the *State Insurance and Care Governance Act 2015* to insert Part 3 Division 3 regarding the functions of SIRA concerning certain service providers. Under the new provisions, authorised officer may issue penalty notices for offences under the Act, with the penalty amount to be prescribed by the regulations.

The Committee notes that penalty notices allow an individual to pay a specified monetary amount, instead of appearing before a Court to have their matter heard. This may impact on a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker.

However, the Committee recognises that individuals retain the right to elect to have their matter heard and decided by a Court and acknowledge that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. This may be particularly the case with state insurance and care schemes. In these circumstances, the Committee makes no further comment.

Privacy - Operates contrary to other laws

12. As noted, Schedule 3.3 of the Bill amends the *State Insurance and Care Governance Act 2015* and inserts proposed Part 3 Division 3 regarding the functions concerning certain service providers. Under this Division, proposed section 26B provides that the provisions of this Division apply despite anything to the contrary in another Act or law.

13. The remaining provisions under the Division are regarding direction that SIRA may give to relevant service providers to provide relevant data, take specified action, and provide specified relevant services, among other matters, for the purposes of the workers compensation and motor accidents legislation. The provisions also list maximum penalties available for failing to comply with such directions, which include 500 penalty units ($55,000) for a corporation and 100 penalty units ($11,000) for an individual.

14. It also specifies that a relevant service provider is authorised and required to comply with a direction given under this Division despite anything to the contrary in the other Act or law.

15. Under this Part, subsection 26C(3) provides that the section applies in relation to data that is personal information or health information about an individual despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

The Bill amends the *State Insurance and Care Governance Act 2015* to provide that under the new Part 3 Divisions 3, provisions of this Division apply despite anything to the contrary in another Act or law. A relevant service provider is also authorised and required to comply with a direction given under this Division despite anything to the contrary in the other Act or law. The provisions also specify that such sections apply even in relation to data that is personal

information or health information about an individual despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

The Committee generally comments where provisions may be contrary to other laws. This makes the law applicable to individuals hard to ascertain and understand, and can create unfairness where there may be penalties that differ between laws. The Committee recognises that the purpose of the provision is to ensure compliance with directions given by SIRA. However, the Committee notes that that provisions allow directions to be given to require the provision of information or specify actions or services, which may involve the provision of personal information ordinarily subject to the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*. High financial penalties may also apply for non-compliance with these provisions. The Committee refers these provisions to the Parliament for its consideration of the operation of these provisions contrary to other relevant laws to provide certainty to those affected.

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

Commencement on proclamation

16. Proposed section 2 of the Bill provides that the Act is to commence on assent, except Schedule 2.1[3] and [5], which are to commence on a day or days to be appointed by proclamation.

17. Schedule 2.1 of the Bill amends the *Workers Compensation Act 1987.* Schedule 2.1[3] inserts subsection (1A) to provide that if the lump sum death benefit is paid to the NSW Trustee for the benefit of a dependant in accordance with section 85 after the commencement of this subsection, the employer must, subject to the regulations, pay as additional compensation fees of a kind prescribed by the regulations concerning investing or otherwise managing the sum for the dependant's benefit.

18. Schedule 2.1[5] changes the definition of medical or related treatment to mean a treatment, care, assistance, service or other thing of a kind prescribed by the regulations, but does not include—

    a) an ambulance service, or

    b) a hospital treatment, or

    c) a workplace rehabilitation service, or

    d) a treatment, care, assistance, service or other thing of a kind prescribed by the regulations not to be medical or related treatment.

The Act is to commence on assent except for Schedule 2.1[3] and [5], amending the *Workers Compensation Act 1987,* which are to commence on proclamation. Schedule 2.1[3] requires an employer to pay additional compensation to cover certain investment and management fees and costs concerning a lump sum benefit paid concerning a dependant of a deceased worker. Schedule 2.1[5] creates greater flexibility for the regulations to provide for what constitutes, or

does not constitute, medical or related treatment for the purposes of the payment of compensation to cover the treatment.

The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons. The Committee notes that the provision marked to commence on proclamation make changes to workers compensation obligations and costs of deceased workers, as well as changing the definition of medial or related treatment. While these changes may require time to be implemented across the relevant industries, a fixed date would provide certainty for the person to whom these provisions relate. The Committee refers these provisions to Parliament for their consideration.

Matters deferred to the regulations

19. The Bill amends the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* and defers certain matters to be prescribed by the regulations.

20. Proposed section 14A, regarding returning to work with a new employer, provides that the regulations may make provisions for limiting the classes of work assistance for which compensation is payable under this section, and otherwise limiting the circumstances in which compensation is payable for the cost of work assistance under this section.

21. Proposed section 14B, regarding compensation for education and training assistance, provides that the regulations may make provision for limiting the classes of education or training for which compensation is payable under this section, and otherwise limiting the circumstances for which compensation is payable under this section.

22. Proposed subsection 34(3), regarding regulations, also provides that the regulation may apply, adopt or incorporate a publication, whether with or without modifications, as in force at a particular time or as in force from time to time.

The Bill amends the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* and defers certain matters to be prescribed by the regulations. This includes provisions for limiting the classes of work assistance for which compensation is payable and for limiting the classes of education or training for which compensation is payable under the Act. The Bill also amends the regulation making power under the Act to provide that the regulations may apply, adopt or incorporate a publication, whether with or without modifications, as in force at a particular time or as in force from time to time.

The Committee generally comments where matters are deferred to the regulations rather than include them in the primary legislation to allow sufficient parliamentary scrutiny. Unlike primary legislation, regulations are subordinate legislation and not required to be passed by Parliament and the Parliament does not control when it commences. The Committee recognises that regulations may be used in relation to certain administrative matters.

In this case, as the provisions relate to circumstances which may limit the classes of work assistance or education and training assistance where compensation is payable, these may be matters that may affect the rights of individuals seeking compensation and may therefore require additional parliamentary scrutiny. The

Committee refers these provisions to the Parliament for their consideration of whether they inappropriately delegates legislative powers.

5. Road Transport Legislation Amendment Bill 2021

Date introduced	10 June 2021
House introduced	Legislative Assembly
Minister responsible	The Hon. Paul Toole MP
Portfolio	Regional Transport and Roads

PURPOSE AND DESCRIPTION

1. The objects of this Bill are as follows—

   (a) to amend the *Road Transport Act* 2013 and the *Motor Vehicles Taxation Act* 1988 concerning the fixing of registration charges and motor vehicle taxation amounts, including by providing that the *Road Transport Act* 2013 and the related regulations deal with all heavy vehicles, including primary producers' heavy vehicles,

   (b) to provide for the Motor Vehicles Taxation Regulation 2016 to fix the amounts of motor vehicle taxation, and the indexation of those amounts,

   (c) to update enforcement powers,

   (d) to make minor and consequential amendments and savings and transitional provisions,

   (e) to amend various Acts and instruments to make consequential amendments for the purposes of giving effect to provisions of the Road Vehicle Standards Act 2018 of the Commonwealth.

BACKGROUND

2. The Bill makes amendments to the *Road Transport Act* 2013; the *Motor Vehicles Taxation Act* 1988 and the *Motor Vehicles Taxation Regulation* 2016.

3. The Bill adjusts the entitlement to concessions for primary producers. In the second reading speech for the Bill, it was stated that –

> the amendments will rectify a longstanding legislative anomaly caused by a drafting error which incorrectly applies a monetary cap on heavy vehicle primary producer registration charges.

4. It was also stated In the Second Reading Speech that –

> The amendments will also strengthen the customer enrolment framework to ensure that primary producer vehicle registration concessions benefit genuine farmers. This will be achieved through the introduction of an income threshold that will require confirmation that at least 50 per cent of total income is earned from primary production activities in normal seasonal circumstances.

5. Clause 1 of Schedule 3 of the Bill inserts a new definition of 'primary producer' into the *Road Transport Act 2013*. The definition states that a primary producer is defined by the statutory rules and meets the eligibility criteria in the statutory rules. The Bill inserts a new Clause 127B into the *Road Transport (Vehicle Registration) Regulation 2017* that sets down the eligibility criteria for primary producers as follows –

> For the purposes of the Act, section 4(1), definition of primary producer, paragraph (b), the eligibility criteria for a primary producer is that the primary producer must earn at least 50 per cent of the primary producer's total income from primary production activities.

6. Schedule 3 of the Bill amends the *Motor Vehicles Taxation Act* 1988 to relocate the schedule of taxation amounts from the Act to the *Motor Vehicle Taxation Regulation* 2016. Section 5(1) of the *Motor Vehicles Taxation Act* currently states that the amount of motor vehicle tax applicable to a vehicle is the amount specified in Schedule 1 of the Act, which currently sets out the amounts of tax that are payable in relation to each category of vehicle according to its weight. Clause 8 of Schedule 3 of the Bill amends section 4 of the *Motor Vehicles Taxation Act* 1988 to insert a provision to allow the amounts of motor vehicle taxation and the indexation of those amounts to be fixed by the regulations; Clause 5 of Schedule 3 of the Bill removes the schedule of taxation amounts from the Act; Schedule 4 of the Bill sets out the schedule of taxation amounts to be inserted into the Regulation.

7. The Bill amends section 69 of the *Road Transport Act* 2013. Section 69 prohibits a person from making a false statement or misrepresentation in order to obtain a vehicle registration or possess rego plates or docs without lawful authority and sets a maximum penalty of 20 penalty units ($2,200). As currently worded, section 69(3) states that a registration plate or document that is obtained by misrepresentation is void. The revised section 69(3) provides that Transport for NSW may decide that such a plate or document is void. The reworded section 69 also includes a new maximum penalty for corporations of 100 penalty units ($11,000).

8. The Bill amends the *Point to Point Transport (Taxis and Hire Vehicles) Act* 2016 to allow the Point to Point Commissioner to be taken to be a public officer for the purposes of the *Criminal Procedure Act* 1986. In the second reading speech it is noted that –

> Public officers are indemnified in respect of any costs awarded against them personally in proceedings in which they are acting in their capacity as a public officer.

9. The Bill makes a range of minor and consequential amendments to several Acts and Regulations in anticipation of the replacement of the *Motor Vehicle Standards Act* 1989 (Cth) with the *Road Vehicle Standards Act* 2018 (Cth) which will take effect on 1 July 2021.

ISSUES CONSIDERED BY THE COMMITTEE

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

Taxation provisions relocated to subordinate legislation

10. Schedule 3 of the Bill amends the *Motor Vehicles Taxation Act* 1988 to relocate the schedule of taxation amounts from the Act to the *Motor Vehicle Taxation Regulation* 2016.

11. Section 5(1) of the *Motor Vehicles Taxation Act* currently states that the amount of motor vehicle tax applicable to a vehicle is the amount specified in Schedule 1 of the Act. Schedule 1 sets out the amounts of tax that are payable in relation to each category of vehicle according to its weight.

12. Clause 8 of Schedule 3 of the Bill amends section 4 of the *Motor Vehicles Taxation Act* 1988 to insert a provision to allow the amounts of motor vehicle taxation and the indexation of those amounts to be fixed by the regulations.

13. Clause 5 of Schedule 3 of the Bill removes the schedule of taxation amounts from the Act.

14. Schedule 4 of the Bill sets out the schedule of taxation amounts to be inserted into the Regulation.

> **The Bill moves the schedule of taxation amounts from the *Motor Vehicles Taxation Act* 1988 to the Motor Vehicle Taxation Regulation 2016 Regulation. Other provisions relevant to the amount of motor vehicle tax payable are also moved to the Motor Vehicle Taxation Regulation. The Committee prefers that provisions that potentially impact on an individual's rights be located within primary legislation in order to facilitate the appropriate level of Parliamentary scrutiny.**
>
> **However, the Committee notes that it is not uncommon for provisions setting out the amounts of fees, charges or fines to be located within subordinate legislation. The Committee also notes that any amendments to either the Motor Vehicle Taxation Regulation 2016 or the Road Transport (Vehicle Registration) Regulation 2017 are subject to disallowance under section 9 of the *Legislation Review Act* 1987. In the circumstances the Committee makes no further comment.**

6. Rock Fishing Safety Amendment Bill 2021

Date introduced	9 June 2021
House introduced	Legislative Council
Member responsible	The Hon. Mark Banasiak, MLC
	*Private Member's Bill

PURPOSE AND DESCRIPTION

1. The object of this Bill is to amend the *Rock Fishing Safety Act 2016* as follows—

   (a) to extend its application to all naturally occurring rock platforms or other rock formations exposed to ocean swell within New South Wales,

   (b) to require persons to wear appropriate footwear when fishing at high risk rock fishing locations,

   (c) to permit persons to wear a wetsuit instead of a lifejacket when fishing at high risk rock fishing locations,

(d) to provide that penalty notices can no longer be issued for offences.

BACKGROUND

2. The *Rock Fishing Safety Act 2016* requires people participating in fishing from high risk rock platforms to wear life jackets and provides for the issuing of penalty notices where such people do not wear life jackets. The maximum penalty is set at 50 penalty units ($5,500). Penalty notices may be issued under section 8 of the Act, the current penalty is $100.

3. The Bill extends the application of the *Rock Fishing Safety Act 2016* to all high-risk rock fishing locations within NSW. The Act applies only to people fishing at 'high risk rock fishing locations' as defined in section 4(2). Currently, that definition includes 'a naturally occurring rock platform or other rock formation exposed to ocean swell within a declared area'. Under section 4(1), the Minister may declare an area for the purpose of section 4(2).

4. The Bill amends the definition of 'high risk rock fishing location' to remove the requirement for an area to be declared under section 4(1), in addition to removing section 4. By removing this requirement the Bill expands the application of the Act to all rock formations exposed to ocean swell. The Bill also removes Clause 2.2 of schedule 1, which provides for the making of a regulation which establishes a moratorium for a period of 12 months after an area is declared.

5. Currently, section 5 of the Act requires people who fish from high risk rock fishing locations to wear a life jacket. The Bill amends section 5 to allow people engaged in rock fishing to wear a wetsuit instead of a life jacket.

6. In the second reading speech it was stated that a wetsuit is sufficiently buoyant to act as an alternative flotation device to a life jacket, and that a wet suit could provide additional protection from hypothermia.

7. The Bill also amends section 5 by requiring people participating in rock fishing to wear appropriate footwear. The Bill amends section 3 of the Act to include a definition of 'appropriate footwear' to mean either 'shoes with spikes or cleats', unless fishing from a rock platform with a granite surface, where appropriate footwear is defined as 'lightweight, non-slip boots'.

8. Currently, section 8 of the Act provides for the issuing of penalty notices for offences under the Act. The Bill removes section 8, thereby removing the power to issue penalty notices and requiring that offences under the Act be determined by a court.

9. The Bill also removes Clause 4 of Schedule 1 of the Act. This is a transitional provision which sets a temporary penalty of $100 for offences under section five, when dealt with by penalty notice. As the Bill removes penalty notices from the Act, the removal of Clause 4 of Schedule 1 will have no practical effect. However, if penalty notices were to be retained the removal of Clause 4 would have the effect of changing the penalty from $100 to an amount set by Regulation (see section 8 of the Act). Currently, no such Regulation has been made.

ISSUES CONSIDERED BY THE COMMITTEE

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

Part Two – Regulations

1. Design and Building Practitioners Regulation 2021

Date tabled	LA: 4 May 2021 LC: 4 May 2021 (sitting day of 24 March 2021)
Disallowance date	LA: 10 August 2021 LC: 12 August 2021
Minister responsible	The Hon. Kevin Anderson MP
Portfolio	Better Regulation and Innovation

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to provide for the following—

(a) the registration of design practitioners, principal design practitioners, building practitioners and professional engineers (the practitioners),

(b) the form and content of certain regulated designs and compliance declarations,

(c) provision of certain documents to the Secretary of the Department of Customer Service,

(d) exclusions to building work and professional engineering work,

(e) the insurance required to indemnify registered practitioners,

(f) the recognition of professional bodies of engineers and the body's requirements for a recognition or registration scheme,

(g) matters to be included on the register of registrations of practitioners,

(h) the classes of registration for practitioners and the qualifications, experience, knowledge and skills required for registration in a class of practitioner,

(i) continuing professional development requirements for registered practitioners,

(j) the code of practice for registered practitioners,

(k) record keeping,

(l) the offences for which penalty notices may be issued.

2. This Regulation is made under the *Design and Building Practitioners Act 2020*, including sections 4(2), 5(2), 8, 11(2), 12(2), 14(2), 15(2), 16(3), 17(2) and (6), definition of required document, 20(1) and (2)(b), 24(2) and (4), 26(a), 31(2)(b), 32(3), definition of prescribed area of engineering, paragraph (f), 33(2), 42, 45(5), 46(e), 47, 49(1)(a), 50(2) and (3), 51(3), 52(1)(h), 54, 55(2)(a)(v), 60(h), 64(h), 73(c), 94(2) and (6), definition of penalty notice officer, paragraph (b), 98(1), 104(1)(e) and (7), definition of relevant agency, paragraph (c), 105(1)(f), 106(1)(b) and 107, the general regulation-making power and Schedule 1, clause 1.

ISSUES CONSIDERED BY THE COMMITTEE

The form or intention of the regulation calls for elucidation: s 9(1)(b)(vii) of the LRA

Wide power of delegation

3. Clause 93 of the Regulation provides that, for the purposes of section 106(1)(b) of the *Design and Building Practitioners Act 2020*, the Secretary may delegate the exercise of their functions under the Act, other than this power of delegation, to a person employed by a government sector agency within the meaning of the *Government Sector Employment Act 2013.*

> **Clause 93 of the Regulation provides that the Secretary may delegate their functions under the Act, other than this power of delegation, to a person employed by a government sector agency within the meaning of the *Government Sector Employment Act 2013.***
>
> **The Committee notes that the Regulation does not provide restrictions on this power to delegate, such as restricting delegation to people with certain qualifications or expertise. The Committee also notes that the Secretary holds functions related to the registration of design practitioners, principal design practitioners, professional engineers, specialist practitioners and other building practitioners, and compliance declarations.**
>
> **The Committee recognises that the delegation of such functions are commonplace where the Secretary requires such delegation to appropriate Department staff. However, given the wide scope of this power of delegation, the Committee refers it to the Parliament for consideration of whether the objective of the provision calls for further clarity or elucidation.**

2. Environmental Planning and Assessment Amendment (Short-term Rental Accommodation) Regulation 2021

Date tabled	LA: 4 May 2021 LC: 4 May 2021 (sitting day of 24 March 2021)
Disallowance date	LA: 10 August 2021 LC: 12 August 2021
Minister responsible	The Hon. Rob Stokes MP
Portfolio	Planning and Public Spaces

PURPOSE AND DESCRIPTION

1. The object of the *Environmental Planning and Assessment Amendment (Short-term Rental Accommodation) Regulation 2021* is to prohibit a dwelling from being used for the purpose of short-term rental accommodation (STRA), even if that use is otherwise permissible, unless —

   (a) the dwelling complies with certain fire safety and evacuation controls, and

   (b) the dwelling is registered on the register established by the Planning Secretary on the NSW planning portal.

2. This Regulation also revises the location of certain references to offences under the *Environmental Planning and Assessment Regulation 2000* so that the maximum penalties for the offences are attributed to the correct enabling provision.

3. This Regulation is made under the *Environmental Planning and Assessment Act 1979,* including sections 6.34, 9.58 and 10.13 (the general regulation-making power) and Schedule 3, clause 3.

4. The Regulation is part of a new state-wide regulatory framework for STRA, aimed at complimenting the mandatory Code of Conduct and changes to strata legislation relating to STRA introduced by the Department of Customer Service in April and December 2020.[3] On its website, the NSW Department of Planning describes the new regulatory framework as 'seek[ing] to ensure local communities continue to enjoy the economic benefits of STRA, while managing potential adverse impacts'.[4]

5. The Regulation is due to commence on 30 July 2021.

[3] NSW Fair Trading, Changes to laws for short-term rental accommodation

[4] NSW Department of Planning, Industry and Environment, Under review and new policy and legislation – Short-term rental accommodation, 16 April 2021.

ISSUES CONSIDERED BY THE COMMITTEE

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

Right to a fair trial – penalty notice offences

6. The Regulation makes a number of amendments to the *Environmental Planning and Assessment Regulation 2000,* including inserting a new 'Division 7D – Fire safety and short-term rental accommodation'. Among other provisions in Division 7D, clause 186W(1) provides that a dwelling must not be used for the purpose of STRA unless it complies with the requirements of the fire safety standard.

7. Pursuant to clause 186V, 'fire safety standard' means the STRA Fire Safety Standard approved by the Planning Secretary and published on the Department's website, as in force from time to time.

8. In addition to inserting Division 7D, the Regulation amends Schedule 5 to the *Environmental Planning and Assessment Regulation 2000* by prescribing contravention of clause 186W as a penalty notice offence. Pursuant to clause 283A of the *Environmental Planning and Assessment Regulation 2000,* this has the effect of rendering clause 186W an 'offence provision', contravention of which has a maximum penalty of $110,000.

9. However, the amendment to Schedule 5 means that a penalty notice may be issued for contravention of clause 186W, in an amount of $1,500 for an individual or $3,000 for a corporation.

> **The Environmental Planning and Assessment Amendment (Short-term Rental Accommodation) Regulation 2021 expands the list of offences under the Environmental Planning and Assessment Regulation 2000 for which a penalty notice may be issued. Specifically, it includes as a new 'penalty notice offence' contravention of clause 186W, which requires that dwellings used for short-term rental accommodation (STRA) comply with applicable fire safety standards. The amount payable for a penalty notice issued for this offence is $1,500 for an individual or $3,000 for a corporation, compared to a maximum penalty of $110,000 if a penalty notice is not issued.**
>
> **Penalty notices allow a person to pay the amount specified for an offence within a certain time should they not wish to have the matter determined by a court. This may impact on a person's right to a fair trial, notably the automatic right to have a matter heard by an impartial decision maker in public with the opportunity to put forward their side of the case.**
>
> **The Committee recognises the practical benefits of penalty notices such as their cost effectiveness and ease of administration. Further, the Committee notes that issuing a penalty notice does not prevent the recipient from electing to have the matter proceed to court. However, there is a risk that some may waive this right and pay the on-the-spot fine to avoid attending court and risking a larger penalty. Given the large maximum penalty attached to contravention of clause 186W if a matter proceeds to court, compared to the significantly smaller amounts attached to penalty notices, the Committee refers the matter to Parliament for consideration.**

Privacy – access to information on short-term rental accommodation register

10. Clause 186X(1) provides that the Planning Secretary is to establish and maintain a register on the NSW planning portal of dwellings used for the purpose of STRA. Pursuant to clause 186X(2), the register is to record information including –

    a) the address of the dwelling, and

    b) the name and address of the person who is providing the dwelling for use as STRA.

11. It is an offence under clause 186X(3) for a person to provide a dwelling for use as STRA if it is not included on the register.

12. Clause 186X(11) provides that the Planning Secretary is to make the contents of the register available to –

    a) an authorised member of staff of the Department of Customer Service,

    b) an authorised member of staff of a local council, and

    c) any other person, if the Planning Secretary considers it necessary to make the contents available to ensure the safety of persons occupying the dwelling as STRA.

    Clause 186X of the Regulation requires that individuals who provide a dwelling for use as STRA must register that dwelling with the NSW Planning Secretary. The Planning Secretary must maintain a register on the NSW planning portal, and make its contents available to others in certain circumstances. By requiring the Planning Secretary to disclose information about individuals providing STRA, including their name and address, the Regulation may impact on those individuals' right to privacy.

    The Committee acknowledges the safeguards included in the provision, including the requirement that access to the register only be granted to 'authorised' staff from the Department of Customer Service or a local council, or if necessary to ensure the safety of people occupying STRA. The Committee also acknowledges the public safety objectives of the requirement to provide information. In these circumstances, the Committee makes no further comment.

The regulation may have an adverse impact on the business community: s 9(1)(b)(ii) of the LRA

Additional costs of providing short-term rental accommodation

13. The Regulation imposes a number of new obligations on providers of STRA in New South Wales.

14. The phrase 'short-term rental accommodation' is not defined in the Regulation. However, clause 186V of the Regulation provides that 'terms used in this Division have the same meanings as they have in Part 3A of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (the SEPP).

15. The *State Environmental Planning Policy (Affordable Rental Housing) Amendment (Short-term Rental Accommodation) 2021*, which contains amendments to the SEPP due to

commence on 30 July 2021, provides that STRA 'means a dwelling used by the host to provide accommodation in the dwelling on a commercial basis for a temporary or short-term period'.

16. Further it defines 'non-hosted' STRA as meaning STRA provided 'where the host does not reside on the premises during the provision of the accommodation. 'Hosted' STRA means STRA provided where the host resides on the premises during the provision of the accommodation.

17. The new obligations imposed on providers of STRA accommodation include –

    a) the requirement to ensure that a dwelling used for STRA complies with the fire safety standard (clause 186W(1)), and

    b) the requirement to register a dwelling used for STRA, and ensure registration remains in force (clause 186W(3)).

18. Pursuant to subclauses 186W(6) to (7), registering a dwelling attracts an initial fee of $65, and a renewal fee of $25, with renewal required each year.

19. Separate to this Regulation, providers of STRA are also subject to other obligations, such as those contained in the NSW Fair Trading Code of Conduct.[5]

The Regulation introduces a number of new requirements that must be met by individuals or companies providing STRA. For example, dwellings used for STRA must be registered, at a fee of $65 for initial registration and $25 for renewal each year. Dwellings must also comply with the fire safety standard approved by the Planning Secretary.

These provisions are likely to create an additional administrative burden, and add to the cost of doing business for companies and individuals already providing STRA in New South Wales. Failure to keep a dwelling registered for use as STRA, or to ensure that the dwelling complies with the fire safety standard, will attract monetary penalties. However, the Committee acknowledges the public safety objectives of the new provisions, and notes that the registration fees are relatively minimal. In these circumstances, the Committee makes no further comment.

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

Important matters in subordinate legislation – regulation creates new offences

20. The Regulation creates two new offences, as follows –

    a) Under clause 186X(3), it is an offence to provide a dwelling for STRA unless it is included on the register on the NSW planning portal, and the registration is in force. The maximum penalty for this offence is 20 penalty units ($2,200).

[5] NSW Fair Trading – Department of Customer Service, Code of Conduct for the Short-term Rental Accommodation Industry, October 2020

b) Under clause 186W(1), it is an offence to use a dwelling for STRA unless it complies with the requirements of the fire safety standard approved by the Planning Secretary and published on the Department's website.

21. There is no penalty included within clause 186W itself. However, clause 283A of the *Environmental Planning and Assessment Regulation 2000* provides that the maximum penalty for contravening any 'offence provision' of the Regulation (meaning a provision that is prescribed in Schedule 5 as a penalty notice offence) is $110,000. Given that the Regulation prescribes clause 186W as a new penalty notice offence, $110,000 is the applicable penalty.

The Regulation creates two new offences. Contravention of clause 186X(3) (the requirement to register dwellings used for STRA with the Planning Secretary) attracts a maximum penalty of $2,200. Contravention of clause 186W(1) (the requirement that dwellings used for STRA comply with the fire safety standard) attracts a maximum penalty of $110,000. The Committee prefers provisions which introduce new offences to be included in primary rather than subordinate legislation, to facilitate an appropriate level of parliamentary oversight. Given the significant maximum penalties that may be imposed, the Committee refers the provision to the Parliament for its consideration.

Regulations incorporating standards in instruments that will not be subject to disallowance

22. As noted above, clause 186W(1) provides that a dwelling must not be used for STRA unless it complies with the requirements of the fire safety standard.

23. Clause 186V(1) provides that, in Division 7D, 'fire safety standard' means the *'Short-term Rental Accommodation Fire Safety Standard'* approved by the Planning Secretary and published on the Department's website, as in force from time to time.[6]

Clause 186V(1) of the Regulation refers to an external document, the '*Short-term Rental Accommodation Fire Safety Standard*'. This document must be approved by the Planning Secretary and published on the Department's website, and may be altered from time to time. Unlike regulations, there is no requirement for the Standard to be tabled in Parliament and subject to disallowance under the *Interpretation Act 1987.* As noted above, non-compliance with the Standard attracts a maximum penalty of $110,000.

The Committee generally prefers that provisions which may impact liability for offences are subject to Parliamentary scrutiny. The Committee acknowledges the public safety objectives of the Standard, and the potential advantages of flexibility in adding or amending its contents. However, given the significant maximum penalty attached to failure to comply with the Standard, the Committee refers the matter to Parliament for consideration.

[6] NSW Department of Planning, Industry and Environment, Short-term Rental Accommodation (STRA) Fire Safety Standard, April 2021

3. Motor Accident Guidelines - Version 7 - 19 February 2021

Date tabled	LA: 16 March 2021 LC: 16 March 2021
Disallowance date	LA: 22 June 2021 LC: 24 June 2021
Minister responsible	The Hon. Victor Dominello MP
Portfolio	Customer Service

PURPOSE AND DESCRIPTION

1. The *Motor Accident Injuries Act 2017* (the Act) establishes a scheme of compulsory third party (CTP) insurance and the provision of benefits and support relating to the death of, or injury to, people injured as a consequence of motor accidents in New South Wales on or after 1 December 2017.

2. These Guidelines are made under section 10.2 of the Act, which enables the State Insurance Regulatory Authority (SIRA) to issue Motor Accident Guidelines with respect to any matter that is authorised or required by the Act.

3. The Guidelines support the delivery of the objects of the Act and the Regulation by establishing clear processes and procedures, scheme objectives and compliance requirements. In particular, the Guidelines describe and clarify expectations that apply to respective stakeholders in the scheme.

4. Under section 10.7 of the Act, it is a condition of an insurer's licence that the insurer comply with relevant provisions of the Guidelines.

5. A significant change in the new Guidelines is the inclusion of provisions about the Personal Injury Commission, which alter how CTP claim disputes are managed. The Personal Injury Commission was established by the *Personal Injury Commission Act 2020* in August 2020, and is a single tribunal that manages disputes about claim outcomes in the workers compensation and CTP insurance schemes. Disputes about claims previously managed by the State Insurance Regulatory Authority's Dispute Resolution Services or CTP Assist (as provided for by previous versions of the Guidelines) are now managed by the Personal Injury Commission.[7]

[7] NSW State Insurance Regulatory Authority, 'Motor accident injury disputes'; NSW Government, Minister for Customer Service, 'New personal injury commission passes parliament', 5 August 2020

ISSUES CONSIDERED BY COMMITTEE

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

Retrospectivity

6. The Guidelines were published on 19 February 2021, but came into effect on 1 March 2021. They replaced in whole the Motor Accident Guidelines – Version 6, published on 18 December 2020.

7. The Guidelines apply to motor accidents occurring on or after 1 December 2017. The Part of the Guidelines relating to premium determination applies to premium rate filings for all third-party policies commencing on or after 15 January 2021.

8. There are some exceptions to the retrospective application of the Guidelines. For example, existing Guidelines continue to have effect in relation to the scheme established under the *Motor Accidents Compensation Act 1999* (NSW), which applies to motor accidents from 5 October 1999 to 30 November 2017.

9. The 'General introduction' to the Guidelines also notes that, while the Guidelines apply to all claims and applications made before or after their commencement, they do not invalidate a step previously taken under the Motor Accident Guidelines – Version 6, published on 18 December 2020.

> **The Motor Accident Guidelines – Version 7, like previous versions of the Guidelines, apply to motor accidents occurring on or after 1 December 2017, despite being introduced years after that date. They apply to claims made before the Guidelines commenced, although they do not invalidate any steps taken under previous versions of the Guidelines. Accordingly, the Guidelines have some retrospective effect.**
>
> **The Committee generally comments on retrospectivity, as it runs counter to the rule of law principle that a person is entitled to know the law that applies to him or her at any given time. This is particularly significant given that the Guidelines substantially change the way that claim disputes are dealt with – no longer are they adjudicated by the State Insurance Regulatory Authority's Dispute Resolution Services or CTP Assist, but by the newly established Personal Injury Commission. In these circumstances, the Committee refers the matter to Parliament for consideration.**

Privacy – surveillance of claimants

10. Part 4 of the Guidelines sets out rules and principles relating to the management of insurance claims, including the circumstances under which insurers can investigate claimants by means of surveillance.

11. Clause 4.142 provides that an insurer can only conduct surveillance only when there is evidence to indicate that the claimant is exaggerating an aspect of the claim or providing misleading information or documents in relation to a claim, or where the insurer reasonably believes that the claim is inconsistent with information or documents in the insurer’s possession regarding the circumstances of the accident or medical evidence.

The Guidelines set out the circumstances in which insurers may investigate claimants by means of surveillance. This has the potential to interfere with individual claimants' right to privacy. However, the Guidelines contain a number of safeguards. Surveillance can only occur if there is evidence that an aspect of the claim is exaggerated, misleading or inconsistent. In addition, the Guidelines limit surveillance to public areas or where individuals can be seen by members of the public. Inducement, entrapment or trespass is not permitted. There are also requirements designed to protect children from unnecessary video surveillance. Further, the Committee acknowledges the public interest in ensuring that fraudulent claims are not successful. Accordingly, the Committee makes no further comment.

The regulation may have an adverse impact on the business community: s 9(1)(b)(ii) of the LRA

Regulation of insurance premiums

12. Clause 1.5 of the Guidelines states that, while SIRA allows risk-based pricing to promote competition and innovation by insurers, this must be done within limits in order to keep premiums affordable.

13. Clause 1.6 provides that filed premiums must be adequate and not excessive, and that SIRA will scrutinise filed premiums against the objects of the Act. Those objects, contained in section 1.3 of the Act and set out in clause 1.4 of the Guidelines, include:

    (a) promoting competition and innovation in the setting of premiums,

    (b) ensuring the sustainability and affordability of the scheme and fair market practices, and

    (c) keeping premiums affordable by ensuring that the profits realised by insurers do not exceed the amount that is sufficient to underwrite the relevant risk.

14. Clause 1.15 provides that SIRA may reject a filed premium in a range of circumstances, including if it is of the opinion that the premium is excessive or inadequate, or if the premium does not conform to the Guidelines.

15. This is consistent with SIRA's powers set out in section 2.22(1) of the Act. Section 2.2(3) further provides that, if SIRA rejects a premium of a licensed insurer, the insurer may request that SIRA reconsider the rejection.

Part 1 of the Guidelines provides for the regulation of insurance premiums, with SIRA able to reject premiums it believes are excessive or inadequate or if they do not conform to the Guidelines. This may interfere with the autonomy of insurance companies when setting prices for their insurance products.

The Guidelines are part of a regime established under the *Motor Accidents Injuries Act 2017* that seeks to keep premiums affordable and promote fair market practices. The Committee acknowledges the public interest in ensuring that premiums are affordable and the third party insurance scheme is sustainable. It also notes that risk-based pricing is permitted, within certain limits. In the circumstances, the Committee makes no further comment.

Requirement to provide third party insurance

16. Clause 2.11 of the Guidelines set out a number of 'guiding principles' that an insurer and its agents must follow when issuing, administering or renewing third-party policies. One of these is a requirement that insurers make third-party policies readily accessible and available to all customers.

17. Clauses 2.15 further requires that the insurer and its agents treat customers in the same way, regardless of the risk profile of the vehicle or its owner, or the terms of the policy.

18. Clause 2.30 requires that third party policies (both quotes and sales) must be readily and accessible to all customers. Insurers must give prompt, uniform access and availability to all customers who approach them, again, regardless of the risk characters of the vehicle and owner. Insurers must provide customers with the ability to obtain a quote, without the need to identify themselves or their vehicle's registration number.

19. Pursuant to clause 2.32, insurers may only refuse to issue a third party policy in certain circumstances, including where the customer does not pay the required premium in the timeframe agreed, the vehicle is written off, or the customer does not provide correct identifying information.

> **Under the Part 2 of the Guidelines, there are limited circumstances in which insurers can refuse to issue a third party insurance policy. This could have an adverse impact on insurers and agents, as they cannot reject customers with significant risk characteristics.**
>
> **However, the Committee notes that these provisions are based on the overriding principle of transparency and non-discrimination. This is consistent with the object in section 1.3(c) of the Act to continue to make third-party bodily insurance compulsory for all car-owners in NSW. In these circumstances, the Committee makes no further comment.**

4. Poisons and Therapeutic Goods Amendment (Real Time Prescription Monitoring) Regulation 2021

Date tabled	LA: 4 May 2021 LC: 4 May 2021 (sitting day of 24 March 2021)
Disallowance date	LA: 10 August 2021 LC: 12 August 2021
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Health and Medical Research

PURPOSE AND DESCRIPTION

1. The objects of this Regulation are—

   (a) to establish a system, including a database, for the real time monitoring of the prescribing and supply of certain medicines that may be subject to abuse, and

   (b) to authorise prescribers, suppliers and entities using electronic prescribing or dispensing systems to provide information for inclusion in the database, and

   (c) to allow for the use and disclosure of information in the database for prescribed purposes, including monitoring the prescribing and supply of monitored medicines, whether in New South Wales or elsewhere in Australia, and

   (d) to allow the Secretary of the Ministry of Health to exempt a person or class of persons from the obligations imposed by this Regulation.

2. This Regulation is made under the Poisons and Therapeutic Goods Act 1966, including sections 17, 24 and 45C (the general regulation-making power).

ISSUES CONSIDERED BY THE COMMITTEE

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

Privacy and security of personal information

3. The Regulations amends the *Poisons and Therapeutic Goods Regulation 2008* and inserts Part 8A regarding real time prescription monitoring. This Part establishes a system and database for the real time monitoring of the prescription and supply of monitored medicines.

4. Monitored medicines are substances listed in Appendix E of the Regulation.

5. Under clauses 174D and 174E of the Regulation, a prescriber of a monitored medicine or pharmacist supplying a monitored medicine must record a person's full name, date of birth, gender, street address and other relevant information approved by the Secretary, including healthcare identifier if available. The prescriber or pharmacist must also record their full name, registration, healthcare identifier and other relevant contact information, including telephone number and email address.

6. Clause 174F provides that a data source entity is authorised to transfer this information for inclusion in the database to another State or Territory if that information is reasonably required for the operation of the database.

7. Clause 174G provides that the information in the database may be used or disclosed by the Secretary for the following purposes:

   a) operating, maintaining or improving the database, and

   b) monitoring the prescribing and supply of monitored medicines—

      (i) by individual prescribers and pharmacists, or

      (ii) on a more general, including State-wide, basis, and

   c) providing that information, whether directly or via a data source entity, to another State or Territory for inclusion in a database established under a law of that State or Territory and serving substantially the same purpose as the database, and

   d) providing information to a regulatory authority where that information is reasonably required by the authority for the purpose of regulating the prescribing, supply or use of monitored medicines, and

   e) providing information to a data source entity for purposes connected to monitoring the prescribing or supply of monitored medicines, and

   f) for any other lawful purpose.

8. Clause 174H also provides that the information may be used by dentists, medical practitioners, and nurse practitioners for the purpose of providing treatment to an individual by reviewing their prescribed monitored medications and for providing advice to a prescriber or a pharmacist on the treatment of an individual patient.

9. Clause 174I provides that a person must not knowingly access, use or disclose information in the database without lawful authority. The maximum penalty for this offence is 20 penalty units ($2,200).

10. Other potential safeguards against unauthorised disclosure exist outside of the Regulation. The *Health Records and Information Privacy Act* 2002 imposes obligations on health service providers who collect, hold or use health information. Section 11(2) of the *Health Records and Information Privacy Act* requires health service providers to comply with the Health Privacy Principles set down in Schedule 1 of that Act. Clause 10 of Schedule 1 limits the use of health information to those purposes specified.

11. In addition, pharmacists and medical practitioners in Australia are required to be registered. Confidentiality and privacy obligations are imposed as conditions of registration. Clause 3.4 of the Code of Conduct for Dentists; Clause 3.4 of the of the Code of Conduct for Pharmacists; and Clause 4.4 of the Code of Conduct for doctors, for example, all specify the obligations of practitioners with regard to patients' privacy and confidentiality.

    The Regulation establishes a system and database for the real time monitoring of the prescription and supply of monitored medicines. Under the new provisions, pharmacists and prescribers of monitored medicines must record information about the person the medication is prescribed to, and the prescriber or pharmacist. This includes their full name, date of birth, gender, street address and other relevant information approved by the Secretary, including healthcare identifier if available. This information may be transferred to another State or Territory database if that information is reasonably required for the operation of the database.

    The Committee notes that the recording of this information may impact on a person's right to privacy of their personal information, including contact details, gender and healthcare identifier. The Committee recognises that the Regulation provides some safeguards on this information, by prohibiting a person from knowingly accessing, using or disclosing the information in the database without lawful authority.

    However, the Committee notes that the Regulation does not specify whether the collected information would constitute 'personal information' as defined under the *Privacy and Personal Information Protect Act 1998*. Under the Privacy Act, there are certain protections regarding the use, disclosure and retention of personal information by public sector agencies. In these circumstances, the Committee refers these provisions to the Parliament for its consideration.

5. Public Health Amendment (COVID-19 Mandatory Face Coverings) Regulation (No 2) 2021

Date tabled	LA: 4 May 2021 LC: 4 May 2021 (sitting day of 24 March 2021)
Disallowance date	LA: 10 August 2021 LC: 12 August 2021
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Health and Medical Research

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to allow for the issue of penalty notices for an offence against section 10 of the *Public Health Act 2010* involving a contravention of a Ministerial direction under the *Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) 2021* to wear a fitted face covering in certain circumstances inside NSW airports and on domestic commercial aircraft.

2. This Regulation is made under the *Public Health Act 2010*, including sections 118 and 134 (the general regulation-making power).

3. The Committee previously reported on an earlier rendition of this regulation in Digest 27/57 in regards to the *Public Health Amendment (COVID-19 Mandatory Face Coverings) Regulation 2021*.[8]

ISSUES CONSIDERED BY THE COMMITTEE

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

Personal liberty

4. The Regulation allows penalty notices to be issued for offences under section 10 of the *Public Health Act 2010* for a contravention of a Ministerial direction. Specifically, for an offence against clause 5(1) or (5) of the *Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) 2021*, which repeals and remakes the *Public Health (COVID-19 Mandatory Face Coverings) Order 2021* which would have otherwise been repealed on 2 April 2021.

5. Clause 5(1) or (5) of the *Public Health (COVID-19 Mandatory Face Coverings) Order (No 2) 2021* provides that the Minister directs that persons wear a fitted face mask in certain circumstances when inside NSW airports and domestic commercial aircraft.

[8] Legislation Review Committee, Digest 27/57 – 16 March 2021, p33.

6. However, subclause 5(2) of the *Public Health (COVID-19 Mandatory Face Coverings) Order (No 2)* provides that these requirements do not apply to persons under 12 or to a person with a physical or mental health illness or condition, or disability, that makes wearing a fitted face covering unsuitable including, for example, a skin condition, an intellectual disability, autism or trauma.

7. Subclause 5(3) also provides exceptions to the requirement to wearing a fitted face mask, including when a person is eating or drinking, when communicating with another person who is deaf or hard of hearing, when it interferes with the nature of their work, where they are asked to remove it to ascertain their identity, because of an emergency or where it is necessary for the proper provision of goods or services.

8. Under the Regulation, the penalty for this offence against clause 5(1) or (5) of the order is $200 for an individual.

The regulation amends the *Public Health Regulation 2012* to provide that penalty notices may be issued for contravening a public health order requiring the wearing of fitted face coverings in certain circumstances when inside NSW airports and domestic commercial aircraft. This may impact a person's physical bodily integrity by requiring them to wear an item of clothing that covers their nose and mouth or may impact their breathing.

However, the Committee recognises that the intent of the regulation is to protect public health and safety when travelling by aircraft within NSW and is in response to the COVID-19 pandemic and the risk of recurring outbreaks across the States and Territories. The Committee also notes that the regulation provides exceptions to wearing fitted face coverings in circumstances where the person is under 12 years old, where it is not suitable due to a disability or physical or mental illness, or for a temporary period such as when eating or drinking or during an emergency. In these circumstances, the Committee makes no further comment.

6. Public Health Amendment (COVID-19 Spitting and Coughing) Regulation 2021

Date tabled	LA: 16 March 2021 LC: 16 March 2021
Disallowance date	LA: 22 June 2021 LC: 24 June 2021
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Health and Medical Research

PURPOSE AND DESCRIPTION

1. The object of the Regulation is to allow for the issue of penalty notices for an offence against section 10 of the *Public Health Act 2010* involving a contravention of a Ministerial direction under the *Public Health (COVID-19 Spitting and Coughing) Order 2021* about intentionally spitting or coughing on a public official or other worker in a way that is likely to cause fear about the spread of COVID-19.

2. This Regulation is made under the *Public Health Act 2010*, including sections 118 and 134 (the general regulation-making power).

3. The *Public Health (COVID-19 Spitting and Coughing) Order 2021* commenced on 12 March 2021 and repeals and remakes the *Public Health (Spitting and Coughing) Order (No 4) 2020*. The original *Public Health (COVID-19 Spitting and Coughing) Order 2020* commenced on 9 April 2020, and has now been remade four times. These orders are made under section 7 of the *Public Health Act 2010*, and pursuant to section 7(5), must expire after 90 days.

4. The Committee has reported on prior renditions of this regulation in Digests 13/57, 17/57, 25/57, and 30/57.[9]

ISSUES CONSIDERED BY COMMITTEE

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

Penalty notice offences – right to a fair trail

5. The Regulation amends the Schedule 4 of the *Public Health Regulation 2012* to allow penalty notices to be issued for offences under section 10 of the *Public Health Act 2010,* regarding a contravention of the *Public Health (COVID-19 Spitting and Coughing) Order 2021*.

6. The *Public Health (COVID-19 Spitting and Coughing) Order 2021*, which commenced on 15 December 2020, directs that a person must not intentionally spit at or cough on public

[9] Legislation Review Committee Digests, 13/57 – 5 May 2020, 17/57 – 4 August 2020, 25/57 – 16 February 2021, and 30/57 – 11 May 2021.

officials or other workers in a way that is likely to cause fear about the spread of COVID-19.

7. Under subsections 7(1) and (2) of the *Public Health Act 2010*, if the Minister for Health and Medical Research considers on reasonable grounds that there is, or is likely to be, a risk to public health, the Minister may by order give such directions as the Minister considers necessary to deal with the risk and its possible consequences.

8. Under subsection 7(5) of the Act, such an order expires 90 days after it is made unless earlier revoked, unless an earlier day is specified in the order.

9. Further, under section 10 of the Act, a person who is subject to a direction under section 7, and who has notice of the direction must not, without reasonable excuse, fail to comply with the direction. The maximum penalty for doing so is –

    (a) for an individual—100 penalty units ($11,000), or imprisonment for 6 months, or both, and, in the case of a continuing offence, a further 50 penalty units ($5,500) for each day the offence continues, or

    (b) for a corporation—500 penalty units ($55,000) and, in the case of a continuing offence, a further 250 penalty units ($27,500) for each day the offence continues.

10. The Regulation, like its predecessors, provides that a breach of the Order, resulting in an offence under section 10 of the Act, is an offence for which a penalty notice of $5,000 may be served. This is consistent with the penalties which applied to previous versions of the Order, which have since expired.

The *Public Health Amendment (COVID-19 Spitting and Coughing) Regulation 2021* allows a penalty notice of $5,000 to be issued to an individual who contravenes the *Public Health (Spitting and Coughing) Order 2021* by intentionally spitting or coughing on a public office or on another worker while the worker is at the worker's place of working or travelling to or from it, in a way that is likely to cause fear about the spread of COVID-19.

In its previous Digests 13/57, 17/57, 25/57, and 30/57 the Committee commented on earlier versions of the Regulation, which similarly provided that a penalty notice of $5,000 could be issued to a person who contravened earlier versions of the Order. Consistent with its previous comments, the Committee notes that penalty notices allow an individual to pay a specified monetary amount, instead of appearing before a Court to have their matter heard. This may impact on a person's right to a fair trial, specifically any automatic right to have their matter heard by an impartial decision maker. The Committee also notes that $5,000 is a significant monetary amount to be imposed on an individual by way of penalty notice.

The Committee recognises that individuals retain the right to elect to have their matter heard and decided by a Court, although individuals may be incentivised not to do so, as the maximum penalty is significantly higher, and includes imprisonment. The Committee also acknowledges that there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. This is particularly the case given the extraordinary conditions created by

COVID-19, where public institutions, including courts, need to facilitate social distancing. Given these factors, the Committee makes no further comment.

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

Matters that should be included in primary legislation

1. As noted above, the Regulation allows for a $5,000 penalty notice to be issued for a contravention of the Ministerial direction in clause 5 of the Order, that is, when an individual intentionally spits or coughs on a public official or on another worker while the worker is at the worker's place of work or travelling to or from it, in a way that is likely to cause fear about the spread of COVID-19.

As noted above, the Regulation allows a penalty notice of $5,000 to be issued to an individual who contravenes the Public Health (COVID-19 Spitting and Coughing) Order 2021 by intentionally spitting or coughing on a public official or on another worker while the worker is at the worker's place of work or travelling to or from it, in a way that is likely to cause fear about the spread of COVID-19.

Consistent with its comments in Digests 13/57, 17/57, 25/57, and 30/57, the Committee generally prefers significant matters to be dealt with in primary rather than subordinate legislation. This includes provisions that set down large on-the-spot penalties for offending. This would foster a greater level of parliamentary oversight concerning the provisions.

The Committee acknowledges the importance of relevant authorities having sufficient flexibility to respond quickly to emerging public health issues. Being able to include significant matters in subordinate legislation may further this objective, meaning that responses are not delayed by the need for an amending Bill. Given the extraordinary circumstances caused by the COVID-19 pandemic, the Committee makes no further comment.

7. Road Transport (General) Amendment (Penalty Notice Offences) Regulation 2021

Date tabled	LA: 4 May 2021 LC: 4 May 2021 (sitting day of 24 March 2021)
Disallowance date	LA: 10 August 2021 LC: 12 August 2021
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Transport and Roads

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to—

   (a) enable an authorised officer under the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* to issue a penalty notice to a driver who stops in a taxi zone, contrary to rule 182(1) of the *Road Rules 2014*, and
   (b) enable a level 3 penalty notice to be issued for use of an unregistered registrable vehicle on a road, contrary to section 68(1) of the *Road Transport Act 2013*, where the vehicle is a motor vehicle and trailer combination in which the motor vehicle is registered and the towed trailer is unregistered, and
   (c) enable a level 8 penalty notice to be issued for failure to comply with a request made under section 192(1) of the *Road Transport Act 2013* for identity information of a driver responsible for a parking offence or camera recorded offence.

2. This Regulation is made under the *Road Transport Act 2013*, including sections 23 (the general power to make regulations and rules) and 195(3).

ISSUES CONSIDERED BY COMMITTEE

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

Penalty Notice Offences – Right to a fair trial

3. The Regulation amends the *Road Transport (General) Regulation 2013* to allow penalty notices to be issued for several different offences under the *Road Transport Act 2013* and the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

4. Specifically, the Regulation adds a definition of a Class 17 officer, which means a person who is appointed by the Point to Point Transport Commissioner as an authorised officer for the purposes of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*. A Class 17 officer may issue penalty notice offences regarding Rule 182(1) of the *Road Rules 2014,* which provides that a diver must not stop in a taxi zone unless driving a taxi. The maximum penalty for this offence is 20 penalty units ($2,200).

5. The Regulation also makes changes to Schedule 5 for matters relating to section 68(1) of the *Road Transport Act 2013*, which prohibits the use of an unregistered registrable

vehicle on a road. The Regulation inserts new (a1) under Schedule 5 of the *Road Transport (General) Regulation 2013*. This states:

> (a1) for a class A motor vehicle that is a motor vehicle and trailer combination, where the motor vehicle is registered and the towed trailer is unregistered.

6. The offence is listed as a level 3 offence (carrying a penalty of $194).

7. The Regulation also provides that penalty notices may be issued for contravention of section 192(3) of the *Road Transport Act 2013*, for failing to provide identity information when requested by written notice in relation to a parking offence or a camera recorded offence. This is categorised as a Level 8 offence, which carries a penalty of $697. Under the Act, a person who fails to comply with such a notice may be subject to a maximum penalty of 20 penalty units ($2,200).

The Regulation adds two offences to the list of penalty notice offences. Firstly, the Regulation makes it an offence to tow an unregistered trailer, which is classed as a "level three" offence and carries penalty of $194, or a maximum penalty of 20 penalty units ($2,200) for failure to comply with the initial notice. Secondly, for failing to provide identity information when requested by written notice in relation to a parking offence or a camera recorded offence. This is classed as a level 8 offence and carries a penalty of $697, or a maximum penalty of 20 penalty units ($2,200) for failure to comply with the initial notice.

Penalty notices allow a person to pay the amount specified for an offence within a certain amount of time should he or she not wish to have the matter determined by the court. The fine payable under a penalty notice is usually less than the maximum penalty that would otherwise apply. This may impact on a person's right to a fair trial, notably the automatic right to have a matter heard by an impartial decision maker in public with the opportunity to put forward his or her side of the case.

However, the Regulation does not remove the right of individual to elect to have their matter heard and decided by a Court. Additionally, there are a range of practical benefits in allowing matters to be dealt with by way of penalty notice, including reducing the costs and time associated with the administration of justice. Given these factors, the Committee makes no further comment.

8. Road Transport Legislation Amendment (Offensive Advertising) Regulation 2021

Date tabled	LA: 4 May 2021 LC: 4 May 2021 (sitting day of 24 March 2021)
Disallowance date	LA: 10 August 2021 LC: 12 August 2021
Minister responsible	The Hon. Andrew Constance MP
Portfolio	Transport and Roads

PURPOSE AND DESCRIPTION

1. The object of this Regulation is to allow Transport for NSW to cancel a vehicle's registration if the Ad Standards Community Panel has determined that offensive or discriminatory advertising material is displayed on the vehicle.

2. This Regulation is made under the *Road Transport Act 2013*, including sections 23 (the general statutory rule-making power) and 24 and Schedule 1, clause 3A.

ISSUES CONSIDERED BY COMMITTEE

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

Exclusion of right to appeal

3. The Regulation amends the *Road Transport (Vehicle Registration) Regulation 2017* to insert Clause 45(1A), which provides that Transport for NSW (TfNSW) must cancel the registration of a vehicle 14 days after it has been served with an offensive advertising notice by Ad Standards. This must occur unless Ad Standards has given written notice of the withdrawal of the relevant advertising code breach notice before the expiry of the 14-day period.

4. Ad Standards is an industry self-regulatory body whose its determinations are made by a Community Panel that makes decisions by applying the Australian Association of National Advertisers Code of Ethics (the AANA Code[10]). This process is not subject to legislation.

5. The Regulation further amends Clause 131 of the *Road Transport (General) Regulation 2013* to insert Clause 131(c), which provides that a decision of TfNSW under Clause 45(1A) is excluded from the definition of 'appealable decision'.

6. Under section 267 of the *Road Transport Act 2013*, appealable decisions may be appealed to a Local Court.

7. Prior to cancellation of registration, the owner of the vehicle may seek a review of Ad Standards' decision that the advertisement breached the advertising code. Review

[10] Australian Association of National Advertisers, Code of Ethics, February 2021.

requests must be received by Ad Standards within ten business days of the date of the letter notifying the advertiser of a determination and must be accompanied by a fee of $1,000 or $2,000 (depending upon whether the advertiser has paid the advertising levy).[11]

8. The Regulation inserts Clause 48D, which provides that if the review request is successful, Ad Standards may give a written notice to Transport for NSW withdrawing the code breach notice, but the withdrawal notice must be provided before the registration is cancelled (Clause 48D(1)(b)).

> **The Regulation inserts Clause 45(1A) to the *Road Transport (Vehicle Registration) Regulation 2017,* which provides that Transport for NSW (TfNSW) must cancel the registration of a vehicle 14 days after it has been served with an offensive advertising notice. This must occur unless Ad Standards has given written notice of the withdrawal of the relevant advertising code breach notice before the expiry of the 14-day period. The Regulation also amends Clause 131 of the *Road Transport (General) Regulation 2013* to provide that decisions under Clause 45(1A) are not 'appealable decisions' that may be appealed to a Local Court.**
>
> **These provisions remove the right of appeal for vehicles that have been served with an offensive advertising notice under this clause. Removing the right to appeal may impact on the rights of vehicle owners whose registration is removed.**
>
> **While the Committee recognises that the a vehicle owner may seek a review of a decision by Ad Standards that the advertisement breached the advertising code, such a review must occur within 10 days and prior to the cancellation of the registration.**
>
> **The Committee generally prefers provisions that remove the right to judicial review of a decision to be located in primary legislation in order to ensure an appropriate level of Parliamentary scrutiny. In the circumstances, the Committee refers the matter to Parliament to consider whether the Regulation trespasses unduly on the personal rights and liberties of vehicle owners.**

The regulation may have an adverse impact on the business community: s 9(1)(b)(ii) of the LRA

Impact on businesses

9. As noted above, the Regulation provides for the cancellation of registration where a vehicle displays advertising that is found to be in breach of advertising standards.

> **The Regulation provides for the cancellation of vehicle registration where Ad Standards has found it breached the advertising code for offensive advertising. A review of such a decision by Ad Standards is $1,000, or $2,000 if the advertiser has not paid the advertising levy. An owner may not transfer the registration of a vehicle if it carries advertising found to be in breach of the advertising code for offensive advertising.**

[11] AdStandards, The independent review process – Time, as at 16 June 2021.

The Committee notes that this may impact businesses that own or operate vehicles that are found to have breached the advertising code and subsequently had their registration cancelled or incur costs to review such a decision. However, the Committee recognises that any inconvenience to business should be balanced against the policy aim of discouraging the display of offensive advertising. Under the circumstances, the Committee makes no further comment.

The regulation insufficiently subjects the exercise of legislative power to parliamentary scrutiny: s 9(1)(b) of the LRA

Cancellation of registration dependent upon determination of non-government organisation

10. The Regulation makes the cancellation of registration dependent upon a determination made by Ad Standards (Schedule 1, Clauses 48B(1) and 48C(1)). Ad Standards is an industry self-regulatory body – its determinations are made by a Community Panel that makes decisions by applying the AANA Code[12]).

11. The decision that a vehicle carries offensive advertising is not made by a court and is not based upon a definition in legislation. Thus, the decision may be considered to be outside the scope of Parliamentary scrutiny.

The Regulation provides for the removal of vehicle registration where Ad Standards has issued an offensive advertising notice for the vehicle. The Committee notes that Ad Standards is an industry self-regulatory body whose determinations are made by a community panel by applying the AANA Code.

The Committee prefers that determinations that impact upon rights be based on provisions set down in legislation that is subject to Parliamentary Scrutiny. In the circumstances, the Committee refers the matter to Parliament to consider whether the Regulation insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

[12] Australian Association of National Advertisers, Code of Ethics, February 2021.

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.

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.

The functions of the Committee 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 – Letters received from Ministers and Members responding to the Committee's Comments (16 December 2020 – 16 June 2021)

Number	Digest Number	Minister/Member and Date of Letter	Bills/Regulations Covered by Letter
1.	17/57	The Hon Kevin Anderson MP – 27 April 2021	*Strata Schemes Management Amendment (Sustainability Infrastructure) Bill 2020*
2.	23/57	The Hon. Melinda Pavey MP – 16 December 2020	*Water NSW Regulation 2020*
3.	24/57	The Hon. Matt Kean MP – 23 February 2021	*Electricity Infrastructure Investment Bill 2020*
4.	25/57	The Hon Mark Speakman MP SC – 22 April 2021	*Surveillance Devices Amendment (Body Worn Recording Devices) Regulation 2020*
5.	26/57	The Hon Adam Marshall MP – 2 June 2021	*Prevention of Cruelty to Animals Amendment Bill 2021*
6.	27/57	The Hon. Gareth Ward MP – 26 April 2021	*Children (Detention Centre) Amendment (Disclosure of Information) Regulation 2020*
7.	27/57	The Hon. Damien Tudehope MLC – 22 March 2021	*Retail and Other Commercial Leases (COVID-19) Regulation (No 2) 2020*
8.	28/57	The Hon Victor Dominello MP – 26 April 2021	*Real Property Amendment (Certificates of Title) Bill 2021*
9.	28/57	The Hon Kevin Anderson MP – 27 April 2021	*Strata Schemes Management Amendment (COVID-19) Regulation (No 2) 2020*
10.	30/57	The Hon. Damien Tudehope MLC – 17 May 2021	*Tax Administration Amendment (Combating Wage Theft) Bill 2021*

The Honourable Kevin Anderson MP
Minister for Better Regulation and Innovation

Our reference: COR-01877-2021

Ms Felicity Wilson MP
Chair
Legislation Review Committee
By email: legislation.review@parliament.nsw.gov.au

Dear Ms ~~Wilson~~ Felicity

Thank you for your correspondence setting out the Legislation Review Committee's views on the *Strata Schemes Management Amendment (COVID-19) Regulation (No 2) 2020* (the **Regulation**).

I am pleased to note that the Regulation has allowed strata schemes to respond promptly and safely to the COVID-19 pandemic in allowing altered meeting arrangements for convening and voting at meetings, an alternative approach to affixing the seal of an owners corporation, and an extension of certain time periods. I welcome the Committee's view that this has been a reasonable measure in light of the ongoing risk of COVID-19 to the community.

The Department of Customer Service is currently undertaking a statutory review of the operation of the *Strata Schemes Management Act 2015* (the **Act**). The discussion paper for the review has sought feedback on the operation of these temporary measures, with a view to finding permanent solutions to the issues addressed by the Regulation. The Government's intention would be to amend the Act to better enable strata schemes to access alternative means of meeting, voting, and executing documents.

Thank you for bringing these matters to my attention and for the Committee's ongoing work in reviewing legislation in NSW.

Yours sincerely

Kevin Anderson

Kevin Anderson MP
Minister for Better Regulation and Innovation

Date: 27.4.2021

GPO Box 5341 Sydney NSW 2001 ▪ P: (02) 8574 5550 ▪ F: (02) 9339 5584 ▪ W: nsw.gov.au/ministeranderson

16 December 2020

Ms Felicity Wilson MP
Chair – Legislation Review Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Wilson

Thank you for your letter of 12 November 2020 on behalf of the Legislation Review Committee to Hon Melinda Pavey MP, Minister for Water, Property and Housing regarding the *Water NSW Regulation 2020*. The Minister has asked me to respond on her behalf. You raised a number of issues in your letter which I have addressed below sequentially.

Strict liability offences

Higher Penalties than those prescribed under the National Park and Wildlife Service Regulation 2019

You noted in your letter that the penalties prescribed in the Water NSW Regulation 2020 are higher than those in the *National Park and Wildlife Service Regulation 2019*.

The higher penalties in the *Water NSW Regulation 2020* reflect the fact that entering water catchments is restricted and activities regulated. WaterNSW's statutory function includes the protection of water quality and quantity for public health and public safety. The higher penalties are necessary to act as a disincentive to entering the area for the purpose of recreational activities which compromise these objectives.

A distinction should be drawn between the two Regulations. There is an open invitation for people to visit the National Park Estate for recreational purposes where the objective of the Water NSW Regulation is to regulate access and activities to the special and controlled areas for the purpose of water quality and asset protection.

No Move on Provision

You noted in your letter that there is no "move on" power comparable to section 9 of the *Summary Offences Act*.

However, Clause 19 (1) of the Regulation does contain a move on provision, which states:

WaterNSW ABN 21 147 934 787
169 Macquarie Street Parramatta NSW 2150
PO Box 398, Parramatta NSW 2124
T 1300 662 077 E Customer.Helpdesk@waternsw.com.au
waternsw.com.au

A person who contravenes a provision of the Act or this Regulation on Crown land or Water NSW land that is in a special area or controlled area must leave the land concerned immediately when directed to do so by an authorised officer.

Freedom of movement and enjoyment of public space

Prohibiting the Use of Drones

You have also noted that while the Regulation introduces a prohibition of drones over the Special Areas, there is no mechanism prescribed in the Regulation to provide consent. The relevant provision is clause 25(1)(d) which contains this prohibition concerning the flying of a drone.

However, I can advise you that clause 9 of the Regulation states:

(1) A person does not commit an offence under this Part (other than an offence under this clause or under clause 15, 18, 19 or 20) by reason of anything done with the consent of Water NSW.
(2) A person who does anything in a special area or controlled area with the consent of Water NSW must comply with the conditions, if any, to which the consent is subject.

The way WaterNSW can grant consent is prescribed in clause 10 of the Regulation.

Further information can be found on the WaterNSW website here:
https://www.waternsw.com.au/water-quality/catchment/manage/special-areas/access

Thank you for your interest in this matter.

Yours sincerely

Fiona Smith
Executive Manager – Water and Catchment Protection

NSW GOVERNMENT
The Honourable Matt Kean MP
Minister for Energy and Environment

Your ref: LAC20/007.15
Our ref: MD20/8259

Ms Felicity Wilson MP
Chair
Legislation Review Committee
Parliament of New South Wales
SYDNEY NSW 2000

By email: legislation.review@parliament.nsw.gov.au

Dear Ms ~~Wilson~~ Felicity

Thank you for your correspondence on behalf of the Legislation Review Committee regarding the concerns it had with the proposed Electricity Infrastructure Investment Bill 2020, now the *Electricity Infrastructure Investment Act 2020*, the Act having received assent on 2 December 2020.

This historic legislation seeks to improve the affordability, reliability, security and sustainability of electricity supply in NSW. It does this by creating a framework that encourages private investment in new electricity generation, storage and network related infrastructure, while fostering local community support for investment in a way that encourages economic development and manufacturing.

In relation to the Committee's concerns I have provided some information below which may assist:

1. *information gathering powers* - as the Committee acknowledged, there are a number of safeguards included in the legislation to ensure that information obtained through the new powers is protected. These safeguards were designed, taking into account the sensitivity of the information being sought. In addition, as you noted in your report, these new powers are essential to the Act's framework to ensure the monitor can assess whether there is a breach of the energy security target.
2. *the proposed penalty for failing to comply with a request for information or providing false or misleading information* - it is standard practice in the NSW Statute Book to have offences and penalties to ensure compliance with this type of requirement. The penalties in the Act align with existing offences in the *Electricity Supply Act 1995*.
3. *commencing the Act by proclamation* - as the Committee acknowledged, given the nature of the changes, flexibility is required to enable the new framework to be effectively implemented. I further note that on 9 December 2020, the bulk of the legislation was substantially commenced.
4. *ministerial declarations* - the declarations are critical to the new framework and it is important to note specified matters must be taken into account prior to making a declaration.
5. *deferral of matters to the regulations - creation of offences and rules* - as the Committee acknowledged there is a need to delegate some matters to the regulations, particularly where they are technical in nature and require more detail. As the new framework requires regulations to support it, it was not possible to have the Act cover all potential

offences under the new framework. For example, some of these will depend on the nature of the obligations created through the regulations. These will then need specific offences to ensure compliance with them.

In addition, it is common in the energy framework for the regulations to deal with external material like rules. This will give participants important information about the operation of the framework and the framework for making these rules needs to be more flexible to allow it to work efficiently and effectively.

6. *wide powers of delegation* - having wide powers of delegation is not uncommon in the NSW Statute Book. It is appropriate to have broad powers of delegation to allow the new framework's efficient and effective operation.

I trust that the above information addresses the Committee's concerns. Should you or members of the Committee have any further questions in relation to this matter, please contact Teresa Hislop, Acting Director, Policy and Legislation, Department of Planning, Industry and Environment on 9274 6210 or at teresa.hislop@planning.nsw.gov.au.

Yours sincerely

Matt Kean MP
Minister for Energy and Environment

23.2.21

Mark Speakman
Attorney General
Minister for the Prevention of Domestic Violence

IM21/4787
EAP21/3114

Ms Felicity Wilson MP
Chair, Legislation Review Committee
Member for North Shore
Parliament of NSW, Macquarie Street
SYDNEY NSW 2000

legislation.review@parliament.nsw.gov.au

Dear Ms ~~Wilson~~ Felicity

Thank you for your letter, received on 18 February 2021, in relation to the issues by the Legislation Review Committee (**Committee**) in the Legislation Review Digest No 25/57 relating to the Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2020 (**the Regulation**).

I note the Committee's observation that the Regulation has the potential to impact individuals' right to privacy and that the Regulation does not address how recordings captured by body-worn video will be stored or used. I also note the Committee's observation that the Regulation is associated with a trial, accompanied by various safeguards, and that there is a public interest in deterring violence towards ambulance officers.

I am advised that the trial is being conducted in compliance with the privacy requirements of the *Health Records and Information Privacy Act 2002* and the Health Privacy Principles. I am also advised that a Privacy Impact Assessment was conducted prior to the commencement of this trial, which made recommendations relating to the retention, destruction and disclosure of footage. NSW Ambulance has advised that it has implemented those recommendations. NSW Health also consulted with the Privacy Commissioner on the trial and the Privacy Impact Assessment.

If your staff have any questions about this issue, could you please contact Ms Alex Sprouster, A/Director, Law Enforcement and Crime, on 8346 1231 or at alex.sprouster@dcj.nsw.gov.au?

Thank you for taking the time to write.

Yours sincerely

Mark Speakman

Mark Speakman

22 APR 2021

The Hon. Adam Marshall MP
Minister for Agriculture
Minister for Western New South Wales

OM21/1159
Your ref: LAC21/035.02

Ms Felicity Wilson MP
Chair, Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

legislation@review.parliament.nsw.gov.au

Dear Ms Wilson ~~Wilson~~ Felicity,

Thank you for your letter of 18 February 2021 regarding the proposed penalty amounts in the Prevention of Cruelty to Animals Amendment Bill 2021.

I note the concerns of the Legislative Review Committee and can assure you the revised penalty amounts proposed in the Bill have been developed based on a consideration of a number of factors to ensure they are reasonable and proportionate.

In setting the revised amounts, consideration was given to the scale of penalties in comparison with other offences in NSW, to ensure the penalty amounts are proportionate. Strong consideration was also given to animal welfare penalty amounts in other jurisdictions, to ensure NSW penalties for animal welfare offences meet the national benchmark.

Finally, the revised penalties were selected to ensure they create a clear graduation of offences and are proportionate to the penalties associated with more serious animal welfare offences under the *Crimes Act 1900*.The Attorney General was also consulted prior to the Bill being drafted with regard to the penalty increases.

In June 2018, the NSW Government consulted the community on the penalties for these specific animal welfare offences. We received over 2,000 responses from the public demonstrating overwhelming support for the increased penalty amounts.

In February 2020, we released the Animal Welfare Reform: Issues Paper to seek community feedback on issues to be addressed in the review of NSW animal welfare legislation. Feedback on that paper reaffirmed there continues to be strong community support for significant increases to penalties.

The Government has consulted with key stakeholder groups throughout the development of the Bill to ensure that changes to the legislation are practical and suited to on-the-ground requirements. We have worked closely with NSW Police Force, RSPCA NSW, Animal Welfare League NSW and NSW Farmers' Association as this Bill has been developed.

Thank you again for your interest in this matter.

Yours sincerely

Adam Marshall
MINISTER

02 JUN 2021

GPO Box 5341 Sydney NSW 2001 ▪ P: (02) 8574 5450 ▪ F: (02) 9339 5574 ▪ W: nsw.gov.au/ministermarshall

The Hon Gareth Ward MP
Minister for Families and Communities
Minister for Disability Services

EAP21/4422

Ms Felicity Wilson MP
Member for North Shore
Suite 3, 40 Yeo Street
NEUTRAL BAY NSW 2089

Dear Ms Wilson, Felicity,

I refer to your correspondence dated 18 March 2021 regarding the *Children (Detention Centres) Amendment (Disclosure of Information) Regulation 2020,* tabled before the Legislation Review Committee. I thank the Committee for raising this matter with me.

The recent amendments to the *Children (Detention Centres) Act 1987* (CDC Act) and Regulation, in 2018 and 2020 respectively, were necessary to:

- enable improved interagency collaboration and ensure timely assistance and support for children and young people;
- provide for the effective operation of the justice system; and,
- to ensure the safety of the public more broadly.

I can assure you that careful consideration was given to the protection of children and young people's privacy and confidentiality as part of this process. The draft Amendment Regulation and background paper were heavily consulted on with stakeholders, including the Department of Premier and Cabinet, the Privacy Commissioner, the Ministry of Health, the NSW Police Force, Legal Aid NSW, and the Law Society of NSW.

Using this consultation mechanism, legal stakeholders raised concerns about the privacy of children and young people. Their comments were considered closely and the Amendment Regulation was strengthened to clarify several prescribed purposes. There was also general support among stakeholders for the National Disability Insurance Agency (NDIA) being prescribed as an agency for information sharing purposes.

The Information and Privacy Commission and the Advocate for Children and Young People also advocated for appropriate safeguards to protect information from any improper disclosure. Most stakeholders requested a strengthening of safeguards to ensure the best interests of the child are considered and only information 'reasonably necessary' for the prescribed purpose is shared.

Again, this stakeholder feedback was factored into amendments made to the Amendment Regulation to be more specific about the purposes prescribed.

52 Martin Place, Sydney NSW 2000
GPO Box 5341, Sydney NSW 2001
Phone: (61 2) 8574 6050 Web: www.nsw.gov.au/MinisterWard

Additional safeguards will also be incorporated into new Youth Justice Policy and Procedures relating to information sharing.

I hope this response serves to assure you that appropriate safeguards have been built into the Amendment Regulation to protect the best interests of children and young people.

Should you require further information about the changes, I encourage you to contact Paul O'Reilly, Executive Director, Youth Justice on 0407 209 180 or at Paul.OReilly@dcj.nsw.gov.au.

Thank you again for raising these important concerns with me.

Yours sincerely,

THE HON GARETH WARD MP
Minister for Families and Communities
Minister for Disability Services

26-4-21

The Hon. Damien Tudehope MLC
Minister for Finance and Small Business
Leader of the House in the Legislative Council

22 March 2021

Ms Felicity Wilson MP
Chair
Legislation Review Committee
Parliament of New South Wales

By email

Your ref: LAC21/035.03

Dear Chair

Thank you for the opportunity to respond to the issues raised by the Legislation Review Committee in its consideration of the *Retail and Other Commercial Leases (COVID-19) Regulation (No 2) 2020.*

The Committee considers the possibility that the regulation may impact on property rights and freedom of contract, have a retrospective effect and have an adverse impact on the business community.

However, the Committee notes that the Regulation is limited to "*cases involving 'impacted lessees*'" is of limited duration and is made in the context of the "*ongoing economic consequences of the COVID-19 pandemic*".

The Committee also notes that the Regulation is made "*in response to the ongoing public health emergency and is in line with the National Cabinet's decision"* to *"lessen the economic impacts of COVID-19"*

I agree with these observations by the Committee of the context in which the Regulation has been made.

Yours sincerely

The Hon. Damien Tudehope MLC
Minister for Finance and Small Business
Leader of the House in the Legislative Council

GPO Box 5341 Sydney NSW 2001 ▪ P: (02) 8574 6450 ▪ F: (02) 9339 5594 ▪ W: nsw.gov.au/ministertudehope

The Hon. Victor Dominello MP
Minister for Digital
Minister for Customer Service

Our reference: COR-01927-2021

Ms Felicity Wilson MP
Chair
Legislation Review Committee
By email: legislation.review@parliament.nsw.gov.au

Dear Ms ~~Wilson~~ Felicity

Thank you for your correspondence about the *Real Property Amendment (Certificates of Title) Bill 2021* (the Bill). I appreciate the Legislation Review Committee's (the Committee) feedback and comments on the Bill.

I agree with the Committee's preference for legislation to commence on a fixed date or on assent, noting, however, that a flexible start date may assist with implementation. This is particularly so for the current Bill, which will require significant technical work for the reforms to be realised. It will also require careful coordination between the land registry, the electronic lodgment network operators and financial institutions. The Office of the Registrar General will ensure that all technical aspects of the reform are fully implemented and capable of handling the change before proclaiming a date for commencement of the provisions.

A flexible start date will also provide an opportunity for the Office of the Registrar General to implement a solid and extensive communications program before certificates of title are cancelled and the CoRD framework is removed. As you would expect, industry will require guidance as a result of the changes. The community at large, who may hold paper certificates of title, will also need to be informed of the new procedures so they can adjust expectations.

The Committee also notes that the Bill includes powers for the Registrar General to destroy or deliver paper documents. These powers exist under the current *Real Property Act 1900* and have just been moved to a different part via this Bill. These powers do not trespass on any property rights. The purpose of the powers is to allow the land registry to manage paper dealings that have been filmed or reproduced at the land registry. It will also enable the land registry to destroy or deliver paper certificates of title that might be in its possession after the cancellation date, when they are no longer considered legal documents.

If you have any further queries, please contact Sandrah Mikha, Lawyer eConveyancing, Office of the Registrar General on (02) 8226 0044 or sandrah.mikha@customerservice.nsw.gov.au.

Yours sincerely

Victor Dominello MP
Minister for Digital
Minister for Customer Service

Date: 26-4-21

The Honourable Kevin Anderson MP
Minister for Better Regulation and Innovation

Our reference: COR-01877-2021

Ms Felicity Wilson MP
Chair
Legislation Review Committee
By email: legislation.review@parliament.nsw.gov.au

Dear Ms ~~Wilson~~ Felicity

Thank you for your correspondence setting out the Legislation Review Committee's views on the *Strata Schemes Management Amendment (COVID-19) Regulation (No 2) 2020* (the **Regulation**).

I am pleased to note that the Regulation has allowed strata schemes to respond promptly and safely to the COVID-19 pandemic in allowing altered meeting arrangements for convening and voting at meetings, an alternative approach to affixing the seal of an owners corporation, and an extension of certain time periods. I welcome the Committee's view that this has been a reasonable measure in light of the ongoing risk of COVID-19 to the community.

The Department of Customer Service is currently undertaking a statutory review of the operation of the *Strata Schemes Management Act 2015* (the **Act**). The discussion paper for the review has sought feedback on the operation of these temporary measures, with a view to finding permanent solutions to the issues addressed by the Regulation. The Government's intention would be to amend the Act to better enable strata schemes to access alternative means of meeting, voting, and executing documents.

Thank you for bringing these matters to my attention and for the Committee's ongoing work in reviewing legislation in NSW.

Yours sincerely

Kevin Anderson

Kevin Anderson MP
Minister for Better Regulation and Innovation

Date: 27.4.2021

GPO Box 5341 Sydney NSW 2001 ▪ P: (02) 8574 5550 ▪ F: (02) 9339 5584 ▪ W: nsw.gov.au/ministeranderson

The Hon. Damien Tudehope MLC
Minister for Finance and Small Business
Leader of the House in the Legislative Council

17 May 2021

Ms Felicity Wilson MP
Chair, Legislation Review Committee
Parliament of New South Wales

By email: Legislation.Review@parliament.nsw.gov.au

Your ref: LAC21/035.06

Dear Chair,

Thank you for the opportunity to respond to the issues raised by the Legislation Review Committee in its consideration of the *Tax Administration Amendment (Combating Wage Theft) Bill 2021*.

The Committee considers the significant increase in penalties for multiple offences and the inclusion of new custodial sentences but notes the purpose of these strict and executive liability offences is to encourage compliance and leaves it to Parliament to consider whether the changes are proportionate.

Given the seriousness of underpayment of wages, I am confident that the Parliament will agree that the penalties proposed in the Bill are indeed proportionate.

The Committee also considers that the expanded information sharing provisions in the Bill may impact on the right to privacy and notes that the details of the factors to be considered before disclosing information under new Section 83A are to be determined in guidelines to be issued by the Minister.

The Committee observes that while it generally prefers that provisions impacting which could impact on individual liberties and rights be determined by primary legislation it refers the matter to Parliament for consideration.

I appreciate this issue raised by the Committee, but I consider that in this instance Ministerial guidelines that can be amended more readily to respond to new circumstances in a rapidly evolving area are nonetheless the appropriate way to proceed.

Yours sincerely,

The Hon. Damien Tudehope MLC
Minister for Finance and Small Business
Leader of the House in the Legislative Council

GPO Box 5341 Sydney NSW 2001 ▪ P: (02) 8574 6450 ▪ F: (02) 9339 5594 ▪ W: nsw.gov.au/ministertudehope