



Parliament of New South Wales

## Legislation Review Committee

Correspondence received in response to the Legislation Review Committee  
Digest No. 37 – 16 November 2021



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**The Hon. Brad Hazzard MP**  
Minister for Health and Medical Research

Mr Dave Layzell MP  
Chair  
Legislation Review Committee  
Email: [legislation.review@parliament.nsw.gov.au](mailto:legislation.review@parliament.nsw.gov.au)

Your ref D21/59724  
Our ref M21/24802

Dear Mr Layzell

I write in response to your letter of 17 November 2021 regarding various amendments to the *Public Health Regulation 2012* (NSW) ('the Regulation').

The views of the Legislation Review Committee are acknowledged; however, I consider the amendments to be reasonable and appropriate. The amendments enable the efficient and prompt management of the wide variety of circumstances covered by the Regulation.

#### Powers of the Secretary

The *Public Health Amendment (COVID-19) Regulation 2021* supplemented an existing power of the Secretary to approve the retention of a body, by a person who is not a funeral director, for more than five days, to enable the Secretary to provide for a more general approval, rather than approval on a case-by-case basis. The change removes the administrative burden of the Secretary approving each body being retained for more than five days and creates a regulatory mechanism to address the operational difficulties with the existing provision. For example, this would enable the Secretary to make a general approval for a hospital that has sufficient refrigerated space to retain bodies for longer periods or where there is an emergency and special arrangements need to be made to manage the bodies.

It is important to note that the Secretary of NSW Health has a range of powers under the *Public Health Act 2010* and the Regulation. These powers are drafted in similar terms to the clause relating to the handling of bodies. For example, clause 50(6) of the Regulation provides for the Secretary to generally, or in a particular case, approve premises to be used as a holding room and/or mortuary.

NSW Health has published guidelines titled 'Retention of Bodies - Approval to Retain Bodies for Longer than Permitted (GL2013\_015)' which will guide decision making in this area. The Ministry of Health will be considering whether any changes to this policy are required.

#### Penalty notice offences

There is currently a global COVID-19 pandemic that has caused governments around the world, including the NSW Government, to introduce new measures to protect public health. The issuing of penalty infringement notices, in relation to penalty notice offences, is one

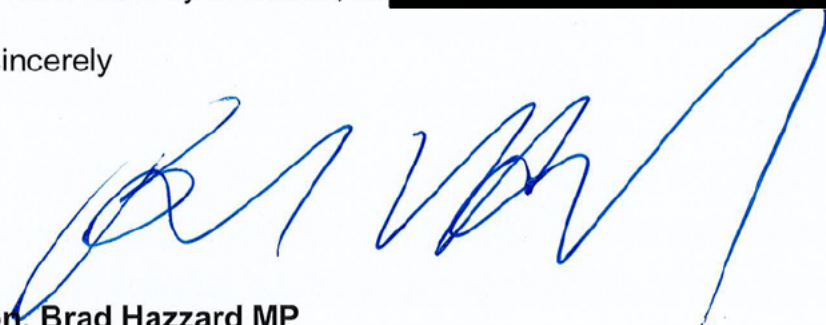
method that has assisted the NSW Government to manage the pandemic. As the Committee has noted, there are practical benefits in allowing matters to be dealt with by way of penalty infringement notice, including reducing the costs and time associated with the administration of justice.

Orders issued under section 7 of the *Public Health Act 2010* (NSW) are only valid for a period of up to 90 days, which means that each order is constantly reviewed, adjusted, and revised, as appropriate, to reasonably respond to changing public health risks. The penalty notice provisions only apply for the period of time an Order is in place.

I trust this information is of assistance.

If you require further information, please contact Mr Hugh Percival, Acting Principal Legal Officer, NSW Ministry of Health, at [REDACTED]

Yours sincerely



**The Hon. Brad Hazzard MP**  
Minister for Health and Medical Research

7 DEC 2021



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

OM21/7024

Legislation Review Committee  
Parliament House  
6 Macquarie Street  
SYDNEY NSW 2000

[Legislation.Review@parliament.nsw.gov.au](mailto:Legislation.Review@parliament.nsw.gov.au)

Dear Mr Layzell,

I am writing to you in your capacity as chair of the Legislation Review Committee (the Committee) in relation to the staged repeal of the *Animal Research Regulation 2021* and *Exhibited Animals Protection Regulation 2021* (the Regulations).

On 1 September 2021, the Regulations came into force, repealing the existing 2010 versions of each Regulation. The Government had intended to postpone the automatic repeal of these Regulations via amendment to the *Subordinate Legislation Act 1989*, however the cancellation of the August 2021 Parliament sitting weeks meant postponement was not possible.

The Government is currently undertaking a project to reform NSW's animal welfare laws. This reform project will ultimately repeal certain Acts, including the *Animal Research Act 1985* (ARA) and the *Exhibited Animals Protection Act 1986* (EAPA), (being the parent Acts under which the Regulations are made) and replace them with a new animal welfare Act. Postponement of the automatic repeal would have ensured that the status quo was maintained while the new Animal Welfare Act and its supporting regulations were developed and implemented.

Instead, the Regulations were remade on an urgent basis using an exemption under section 6(1)(b) of the Act allowing the Regulations to be made without complying with the requirements of section 5 of the Act. I understand that where this exemption is used, section 6(2) of the Act requires that the responsible Minister to ensure that the relevant requirements of section 5 (with any necessary adaptations) are complied with within four months after the proposed Regulation is made. Summarised requirements of section 5 are that, as far as is reasonably practicable:

- a Regulatory Impact Statement (RIS) complying with Schedule 2 of the Act is prepared
- public consultation is undertaken on the RIS.

As such, I write to demonstrate compliance with the requirements of section 5 of the Act as far as is reasonably practicable and with necessary adaptations having regard to following circumstances:

- the unexpected and unavoidable need to urgently remake the existing 2010 Regulations due to the cancellation of Parliamentary sittings; and
- the remaking of the existing Regulations occurring at a time when the animal welfare reform project is underway which will ultimately modernise and replace those Regulations.

The requirements of section 5 of the Act will be met through the NSW Animal Welfare Reform process which is currently at the point of developing a new animal welfare Act. Once this process is complete, consideration will be given to developing new Regulations which would involve the development of a RIS and public consultation, and ultimately repealing the existing Regulations.

Given the intention is that the recently developed Regulations will be replaced, and the extensive reform consultation to date as well as the planned consultation and RIS development of proposed new Regulations, it is considered that the requirements set out in Section 5 of the *Subordinate Legislation Act 1989* will be met as part of the NSW Animal Welfare Reform Process and therefore the obligations set out in section 6(2) of the Act will be met.

I note that on 11 November 2021 and 17 November 2021, you wrote to me in relation to issues noted in the Committee's Digest relating to the Animal Research Regulation 2021 and Exhibited Animals Protection Regulation 2021 respectively. The issues you raised were:

- That in the Animal Research Regulation 2021, the use of strict liability offences may unduly trespass on personal rights and liberties. Also, that the objective of the Regulation could have been achieved by alternative and more effective means by incorporating the National Code in a way that is not subject to disallowance.
- That in the Exhibited Animals Protection Regulation 2021, the penalties in the Regulation should instead be in the primary legislation to afford a greater level of parliamentary scrutiny. Also, that the exhibited animals Standards published by the Department should be included in the Regulation, so they are subject to Parliamentary disallowance.

I will ensure that these issues are considered in the development of new animal welfare Regulations (which will include the repeal of the Animal Research Regulation 2021 and Exhibited Animals Protection Regulation 2021) as part of the ongoing animal welfare reform process outlined above.

The Departmental contact is Clem Harris, Director, Strategy & Policy. Ms Harris can be contacted on [REDACTED]

Yours sincerely



Adam Marshall  
**MINISTER**

14 DEC 2021



**The Honourable Kevin Anderson MP**  
Minister for Better Regulation and Innovation

Our reference: COR-08092-2021

Mr David Layzell MP  
Chair  
Legislation Review Committee  
By email: legislation.review@parliament.nsw.gov.au

Dear Mr Layzell MP

Thank you for your correspondence providing the views of the Legislative Review Committee (the **Committee**) about legislation within my portfolio of responsibilities, as detailed in Legislative Review Digest No 37/57.

I acknowledge that the Committee has considered and made no further comments on the following Regulations:

- *Residential Tenancies Amendment (COVID-19 Pandemic Emergency Response) Regulation (No 2) 2021,*
- *Strata Schemes Management Amendment (COVID-19) Regulation (No 2) 2021, and*
- *Strata Schemes Management Amendment (Pets) Regulation 2021.*

While the Committee made no further comment on the use of Henry VIII clauses in the *Strata Schemes Management Amendment (COVID-19) Regulation (No 2) 2021*, I recall that the Committee noted this matter in prior issues of the Legislation Review Digest. With this issue in mind, it is timely to update the Committee on the recent completion of the strata schemes statutory review report (the **Report**). I tabled the Report in both Houses of Parliament on 29 November 2021. I draw the Committee's attention to the Report's recommendation for permanent changes to strata and community schemes laws on electronic voting and the execution of documents without affixing a common seal. When those changes have been legislated, there will no longer be a need for the current approach.

The Committee commented on the levy register provided for in clause 22 of the *Community Land Management Regulation 2021* (the **Regulation**). The Regulation has been drafted to provide certainty to the sector and to ensure the greatest possible alignment to the *Strata Schemes Management Regulation 2016*. As mentioned, the statutory review of strata laws has been completed and following consideration of substantial public feedback, 139 recommendations have been made for changes to both the strata schemes and community lands laws. No suggestions have been made regarding the levy register.

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

Yours sincerely

**Kevin Anderson MP**  
Minister for Better Regulation and Innovation

Date:

15/12/21



Letter from the Hon. Mark Speakman SC MP responding to the Committee's comments on the *Crimes Legislation Amendment (Loss of Foetus) Bill 2021*, *District Court Criminal Practice Note 19*, *District Court Criminal Practice Note 22*, *District Court Criminal Practice Note 23 Drug Misuse and Trafficking Regulation 2021*, *Practice Note DC (Civil) No. 16*, *Stronger Communities Legislation Amendment (COVID-19) Regulation 2021*, *General Terrorism (Police Powers) Regulation 2021* – 16 December 2021

Mark Speakman  
Attorney General  
Minister for Prevention of Domestic and Sexual Violence

IM21/34943  
EAP21/16334

Mr Dave Layzell MP  
Chair  
Legislation Review Committee  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

Legislation.Review@parliament.nsw.gov.au

Dear Mr Layzell

*Dave*

### **Legislation Review Committee – Legislation Review Digest No. 37/57**

Thank you for your letter, received 18 November 2021, on behalf of the Legislative Review Committee (the Committee) about the tabling of Digest No. 37/57 (the Digest). I note that the Digest includes consideration of the:

- Crimes Legislation Amendment (Loss of Foetus) Bill 2021
- Drug Misuse and Trafficking Regulation 2021
- Stronger Communities Amendment (COVID-19) Regulation 2021
- Terrorism (Police Powers) Regulation 2021
- District Court Practice Note 19
- District Court Practice Note 22
- District Court Criminal Practice Note 23
- Practice Note DC (Civil) No. 16.

District Court Practice Notes are issued by the District Court of NSW. Accordingly, I have written to Chief Judge of the District Court of NSW to draw the Digest to his attention, for his consideration and any response if considered appropriate.

I welcome the Committee's close consideration of the Bill and Regulations, and the opportunity to respond to the issues discussed in the Digest.

### **Crimes Legislation Amendment (Loss of Foetus) Bill 2021**

The Crimes Legislation Amendment (Loss of Foetus) Bill 2021 passed Parliament on 19 November 2021. The new offences in the Bill have been carefully developed to ensure that the prosecution must still prove all the elements of the applicable grievous bodily harm or homicide offence (including any relevant mental element) before an accused may be found guilty of the new offences.

This is appropriate under the particular circumstances captured by the Bill, in view of the unique injury and loss for the pregnant woman and other family members caused when a foetus is lost due to another person's criminal act.



## Drug Misuse and Trafficking Regulation 2021

Clause 16 was originally introduced into the Drug Misuse and Trafficking Regulation 2011 by Parliament through the *Drug Misuse and Trafficking Amendment (Drug Exhibits) Act 2016*. This Act responded to concerns raised by the NSW Auditor General in the report *Managing drug exhibits and other high profile goods: NSW Police Force*.

Clause 16 was introduced to ensure that drug exhibits could be destroyed promptly without negatively affecting the ability of the defendant or accused person to request further testing where there was a genuine concern as to the results obtained following testing of the 'A' sample. There was no evidence that further testing frequently revealed results that are inconsistent with initial testing. Requiring the defendant or accused person to bear the cost of further testing ensures that the Forensic and Analytical Science Service is not burdened with frivolous applications for the testing of 'B' samples, which in almost all instances will merely confirm results of testing the 'A' sample.

Clause 16 was not driven by concerns that faulty testing was leading to unjust outcomes for defendants or accused persons, but to allow the prompt destruction of drug exhibits. The NSW Government considers that the requirement for the defendant or accused person to bear the cost of further testing continues to be appropriate, including in light of the fact that clause 16 confers a right on such persons that did not expressly exist in legislation before 2016.

## Terrorism (Police Powers) Regulation 2021

The preventative detention scheme under the *Terrorism (Police Powers) Act 2002* authorises the Supreme Court to make orders to detain persons to prevent a terrorist attack or preserve evidence following a terrorist attack. The scheme is designed to be used only in extraordinary circumstances, and is accompanied by strong safeguards and accountability measures.

Parliament specifically intended that the preventative detention powers exercised under the *Terrorism (Police Powers) Act 2002* would have to override provisions of, or made under, the *Crimes (Administration of Sentences) Act 1999*.

Parliament approved that the regulations could provide for the operation of provisions of, or made under, *Crimes (Administration of Sentences) Act 1999* to be overridden where the NSW Police Force arranges for a person under a preventative detention order to be held in a correctional centre (section 26X(3) of the *Terrorism (Police Powers) Act 2002*). This reflects the underlying policy rationale that national security should be prioritised.

The exclusion of the operation of provisions of, and made under, the *Crimes (Administration of Sentences) Act 1999* appropriately prioritises the security and management requirements for persons subject to preventative detention orders made by the Supreme Court.

Thank you for the Committee's thoughtful comments and careful consideration of the Bill and Regulations.

Yours sincerely



**Mark Speakman**

16 DEC 2021



**The Honourable Victor Dominello MP**  
Minister for Digital  
Minister for Customer Service

*Our reference: COR-08081-2021*

Mr David Layzell MP  
Chair  
Legislation Review Committee  
By email: [legislation.review@parliament.nsw.gov.au](mailto:legislation.review@parliament.nsw.gov.au)

Dear Chair

Thank you for your letter about the *Legislation Review Digest No. 37/57*.

I have considered the Committee's comments in the Digest about the *Service NSW (One-Stop Access to Government Services) Act Amendment (COVID-19 Information Privacy) Bill 2021*.

As noted by the Committee, the *COVID-19 Information Privacy Bill* is intended to protect the privacy of the people of NSW by limiting the disclosure and use of personal and health information collected by Service NSW under the COVID-19 Public Health Orders.

The Bill prevents Service NSW from disclosing personal and health information collected under the Public Health Orders for any use other than

- the purpose it was collected
- contact tracing
- to provide it to the person it is about
- or in limited circumstances to investigate a breach of the Public Health Orders.

As the Committee recognised, the uses of personal information permitted by the Bill are limited to those required to protect public health in the context of the COVID-19 pandemic.

The Bill has now passed both houses of Parliament and received assent on 29 November 2021.

Thank you for your considered review of the Bill.

Yours sincerely

**Victor Dominello MP**  
Minister for Digital  
Minister for Customer Service

Date: 17/12/21



Mr Dave Layzell MP  
Chair, Legislation Review Committee  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

Via email: [legislation.review@parliament.nsw.gov.au](mailto:legislation.review@parliament.nsw.gov.au)

Dear Mr Layzell

Thank you for your correspondence to the Hon. Rob Stokes MP, the then Minister for Planning and Public Spaces and Minister for Transport and Roads, regarding Digest No 37/57 of the Legislation Review Committee. I was asked to respond on his behalf in relation to the Greater Sydney Parklands Trust Bill 2021.

### **Delegation to the regulations**

Section 59 of the Greater Sydney Parklands Trust Bill 2021 (the Bill) is a proposed regulation-making power, which is necessary as the matters referred to in the section are likely to require further detail to be prescribed in regulation, rather than the principal Act. In particular, section 59 (2) of the Bill allows fees and charges, as well as further regulations regarding the use of the parklands and facilities, and services to be provided by the Greater Sydney Parklands Trust (the Trust). These matters are commonly provided for in regulations under other statutory regimes.

For regulations to be made under section 59 of the Bill the proper administrative process must be followed, including: obtaining an initial in-principle approval of the Minister; preparing a regulatory impact statement for a principal statutory rule to fully examine, assess and consult on the benefits of the regulatory proposals so that the community can be satisfied of the benefits of the proposed regulations; and undergo Executive Council consideration and approval by the Governor to ensure the proposed regulations are appropriate and reasonable.

The process for making regulations is both robust and rigorous, and any proposed regulations are subject to scrutiny, including by Parliament which has the capacity to disallow regulations. Prescribing the powers of rangers, and creating offences punishable by penalties up to a maximum set amount (in this case 50 penalty units – presently \$5,500) in regulations is standard across the statute book as it enables the regulation to provide the level of detail often required for these matters. It also enables greater flexibility to craft an appropriate regulatory response to changing circumstances and conditions. A regulation-making power includes matters that may be prescribed in regulations so that they may be set out in more detail than is appropriate in a principal Act.


### **Delegation of Trust's functions and exercise of functions through private subsidiaries and government sector agencies**

The delegation of the Trust's functions will occur on agreement of the Trust following full consideration of the relevant delegate's suitability to undertake and carry out the function(s). Delegation of the Trust's functions are intended to occur only where they are necessary to benefit the NSW Government, the Trust, and the community. The exercise of the Trust's functions through private subsidiary corporations (which may only be established in accordance with the provisions of the Bill) will be appropriately controlled and managed, and reflects provisions in other similar legislation including the *Western Sydney Parklands Act 2006*.

The delegation of the Trust's functions to government sector agencies will be by agreement and appropriately managed keeping in mind these government agencies will enter into agreements with the Trust to manage, maintain and improve the Trust estate. Any delegation of the Trust's functions, including in relation to land acquisition and finances, will occur following consideration of the suitability of delegating the specific function to the specific delegate. All necessary measures will be undertaken to ensure delegations are appropriate and carefully managed.

If you have any further questions regarding the Greater Sydney Parklands Trust Bill 2021, please contact Ms Suellen Fitzgerald, Chief Executive at Greater Sydney Parklands, on [REDACTED]

Yours sincerely



12 January 2022  
Denise Ora  
Acting Group Deputy Secretary  
Place, Design and Public Spaces



**The Hon. Matt Kean MP**  
Treasurer  
Minister for Energy

OFFICIAL

Ref: P21/4584  
Your ref: D21/59692

Mr Dave Layzell MP  
Chair of the Legislation Review Committee  
Parliament of New South Wales  
[Legislation.Review@parliament.nsw.gov.au](mailto:Legislation.Review@parliament.nsw.gov.au)

Dear Mr Layzell, *Dave*

Thank you for your correspondence of 17 November 2021, regarding comments from Digest No. 37/57 of the Legislation Review Committee concerning retrospectivity in the Gaming Machine Tax Amendment (Promotional Prizes) Bill 2021 (Bill). I apologise for the delay in responding.

As you are aware, the Governor assented to the Bill, and thus it is now an 'Amendment Act'. The primary purpose of the Amendment Act is to clarify that bets placed on gaming machines using promotional prizes, such as bonus points under reward schemes, have been and will continue to be taxable.

As noted in your letter, the Amendment Act is taken to have commenced when the principal Act commenced. The Amendment Act, however, does not seek to retrospectively remove rights or impose obligations. Instead, it confirms the original legislative intent of taxing all bets made on gaming machines across NSW.

The Amendment Act essentially modernises and removes ambiguity in the meaning of the law that took effect in 2001 and clarifies the application of the existing obligations and provisions, rather than creating new obligations with retrospective effect. The definitions and concepts clarified under the Amendment Act remain consistent with the longstanding tax treatment and practice by Liquor and Gaming NSW and the club and hotel industry since the commencement of the *Gaming Machine Tax Act* (the principal Act) in 2001.

I also note that, despite the changes to the definitions and concepts in the Amendment Act, there is no change in the tax base and so historical (and future) tax liabilities are unaffected.

Thank you for bringing these matters to my attention.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Kean'.

**The Hon. Matt Kean MP**  
Treasurer  
Minister for Energy

*9.3.22.*