

Legislation Review Committee



PARLIAMENT OF  
NEW SOUTH WALES

Correspondence received in response  
to the Legislation Review Committee  
Digest No. 41 – 29 March 2022



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14<sup>th</sup> April 2022

Our Ref: MP\_22.312

Chair, Legislative Review Committee  
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[legislation@review.parliament.nsw.gov.au](mailto:legislation@review.parliament.nsw.gov.au)

Dear Mr Layzell

Thank you for your letter of the 30th March 2022 regarding your concerns about my Biodiversity Conservation Amendment (Kangaroo Protection) Bill 2022.

In consultations with the Parliamentary Counsel's Office, I decided that it would be appropriate to use the framework of section 2.7 of the Biodiversity Conservation Act (BCA) and model the clauses of the bill accordingly. Given the seriousness with which the Animal Justice Party regards the infliction of harm on kangaroos and other macropods, we were content to utilize a regulation-making power that provides for such significant fines and imprisonment for the most egregious and cruel treatment of animals.

I advise, however, in the spirit of transparency and my support for parliamentary scrutiny, that when the bill is debated in the Committee of the Whole, I will be open to considering any amendment that makes provision for the penalties to be set out in the bill.

Kind Regards



**The Hon. Mark Pearson MLC Animal Justice Party**

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**The Hon. Kevin Anderson MP**  
Minister for Lands and Water  
Minister for Hospitality and Racing

Our reference: IM22/6895

Mr Dave Layzell MP  
Member for Upper Hunter  
Chair  
Legislation Review Committee  
Parliament of New South Wales

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

Dear Mr Layzell

Thank you for your letter regarding the Crown Land Management (Reserve Trusts) Regulation (No 3) 2021 (the Regulation). I appreciate the Legislation Review Committee's (the Committee) views on this matter and note its preference for amendments to an Act be made by an amending Bill rather than subordinate legislation.

The NSW Government tabled the Report on the Statutory Review of the *Cemeteries and Crematoria Act 2013* in both Houses of Parliament on 19 February 2021. The report's authors undertook a comprehensive assessment of the cemeteries and crematoria sector in NSW and provided recommendations to the NSW Government aimed at improving and future-proofing the sector. One of these recommendations was to amalgamate the five metropolitan Crown cemetery operators into a single entity.

The Regulation examined by the Committee extends the current agreement to continue the separate operation of the Catholic Metropolitan Cemeteries Trust (CMCT) to 29 February 2024. This extension will allow the NSW Government to determine the most appropriate operating model for the sector, while ensuring the important services provided by impacted Crown cemetery operators are not disrupted. The Government has not made any commitment to the CMCT, or any other stakeholder, regarding the final long-term operating model for the sector.

Ongoing consultation with all stakeholders, including faith groups, regarding the future operating model for metropolitan Crown cemeteries has been, and will continue to be, conducted in a fair and ethical manner.

Should you wish to discuss this matter further, I have asked that Ms Kristina Erizikov, Director Policy, at the Department of Planning and Environment – Crown Lands, be available to assist. Ms Erizikov can be contacted on [REDACTED]

Yours sincerely

**The Hon. Kevin Anderson MP**  
Minister for Lands and Water  
Minister for Hospitality and Racing

Date:

28.4.2022





**The Hon. Paul Toole MP**  
Deputy Premier  
Minister for Regional New South Wales  
Minister for Police

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IM22/6884  
Your ref: D22/13544

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

Dear Mr  Layzell

Thank you for your letter of 1 April 2022 regarding matters raised by the Legislation Review Committee following consideration of the *Mining and Petroleum Legislation Amendment Bill 2022* (the Bill).

The amendments improve consistency across the legislative framework and update policy and processes to support best practice in the management and regulation of extractive industries in NSW. The amendments are the result of extensive consultation. The Government has listened to the feedback from a range of stakeholders on the need to remove unnecessary barriers to doing business and to update and modernise the legislation and government processes.

The Bill includes strict liability offence provisions for carrying out prohibited prospecting operations, failing to comply with a direction concerning a person declared not fit or proper, and failure to make mandatory notifications to the Secretary. These provide safeguards that encourage responsible minerals development, provide an appropriate return to the State and protect landholder rights.

I note the concerns of the Committee about the inclusion of strict liability offences however the offence provisions are appropriate, proportionate and align with existing offences contained within the existing regulatory schemes. In setting the penalties attached to the provisions, consideration was given to the penalties of other jurisdictions and the Attorney General was consulted prior to the Bill being drafted to ensure consistency with other regulatory regimes within NSW.

The amendments also create an enforcement power to direct a person to rehabilitate land following illegal mining activities. This is an important protection for landholders and a central provision to ensure the co-existence of agriculture and mining. It ensures that those who cause damage to land, either through deliberately exploring or mining without an authorisation or from an authorised activity that has caused damage to the surrounding area, can be directed to fix the damage they have caused.

The Committee has noted that there are no legislative safeguards available in circumstances where individuals do not consent to the exercise of these powers on their lands. However, the new provisions are limited to empowering directions to be given where unauthorised prospecting, mining or related activities have occurred and there is an adverse environmental impact or risk of such an impact. Consistent with other NSW regulatory regimes, these provisions allow environmental protection measures to be undertaken without landholder consent. Importantly, the provisions do not derogate a landholder's right to take legal action against the party who has caused damage to their land.

During public and targeted consultation on the Bill the responses received were supportive of the enforcement provisions in the Bill. For example, NSW Farmers commented:

*NSW Farmers therefore welcomes the amendments to improve compliance tools including enabling an inspector to issue a direction to rehabilitate where disturbance has occurred*

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*without a valid authorisation and making prospecting without a valid land access agreement an offence.*

Likewise, the Lock the Gate Alliance commented:

*We support the inclusion under s75 of the Petroleum (Onshore) Act and s240 of the Mining Act of directions to address adverse impacts or the risk of impacts to the environment of exploration or extraction activity, including on land beyond the title area.*

The Bill moves a range of administrative processes to the regulations, including requirements for applications to conduct mining activities. The Committee has noted that the matters deferred to the regulations relate to the determination of applications for mining minerals and petroleum, which is the core subject matter for which both Acts regulate, including what decision-makers may consider when making determinations.

However, the matters deferred to the regulations are generally the administrative and prescriptive elements of the application and determination processes. By moving these elements to the regulations greater flexibility is provided to ensure that they can be updated to reflect contemporary best practice where required. Importantly, applicants will continue to receive a notice of proposed decision and procedural fairness applies under administrative law and is supported by current Departmental processes. I also note that the Department's governance framework and application of administrative law principles ensure that Departmental decisions are subject to robust internal review.

Finally, I can confirm draft regulations are expected to be released for public consultation shortly. Further feedback from industry and the community will inform refinement of the regulations prior to finalisation. Most of the Bill's amendments will not commence until the regulation amendments are finalised.

Thank you for the opportunity to respond to the matters raised by the Legislation Review Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Toole', with a stylized, flowing script.

**The Hon. Paul Toole MP**  
Deputy Premier  
Minister for Regional New South Wales  
Minister for Police





**The Hon. Victor Dominello MP**

Minister for Customer Service and Digital Government  
Minister for Small Business  
Minister for Fair Trading

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Our reference: P22/1020  
Your reference: D22/13543

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

Dear Mr Layzell,

Thank you for your correspondence of 1 April 2022, to the former Minister for Small Business, the Hon. Eleni Petinos MP, regarding the findings of the Legislation Review Committee in relation to the Retail and Other Commercial Leases (COVID-19) Regulation 2022 (the Regulation). I have since assumed the role of Minister for Small Business and appreciate the opportunity to respond. I apologise for the delay.

As you are aware, the Regulation was introduced to extend protections provided to eligible retail and commercial tenants impacted by public health orders in response to the COVID-19 pandemic. These protections were originally prescribed by National Cabinet's Code of Conduct for commercial tenancies, which all States and Territories agreed to implement. The Regulation expired on 30 June 2022

The Regulation was one of the many measures that the Government implemented to support New South Wales small businesses to survive the impacts of COVID-19. It promoted collaboration and negotiation between lessors and lessees and allowed flexibility to deal with matters on a case-by-case basis. In circumstances where negotiations have not been successful, the Small Business Commission has been able to facilitate mediations to resolve disputes.

I note the findings of the Committee and the fact they are consistent with the findings relating to the Regulation's predecessors. I understand the Regulation may have had a negative impact on some lessors. In acknowledgement of this, the Government has provided support to lessors in the form of land tax relief and the Commercial Landlord Hardship Fund.

Thank you again for bringing these findings to my attention.

Yours sincerely,

**The Hon. Victor Dominello MP**

Minister for Customer Service and Digital Government  
Minister for Small Business  
Minister for Fair Trading

Date: 1-9-22

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