

Legislation Review  
Committee



PARLIAMENT OF  
NEW SOUTH WALES

Legislation Review Digest  
No. 45/57 - 21 June 2022



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



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

ISSN: 1448-6954

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

# Contents

MEMBERSHIP _____	2
GUIDE TO THE DIGEST _____	3
SUMMARY OF CONCLUSIONS _____	4
<b>PART ONE – BILLS .....</b>	<b>10</b>
1. FISCAL RESPONSIBILITY AMENDMENT BILL 2022* _____	10
2. ICAC AND LECC LEGISLATION AMENDMENT BILL 2022 _____	12
3. INDUSTRIAL RELATIONS LEGISLATION AMENDMENT (PUBLIC SECTOR REMUNERATION CAP REPEAL) BILL 2022* _____	15
4. PARLIAMENTARY BUDGET OFFICER AMENDMENT BILL 2022* _____	17
5. TREASURY LEGISLATION AMENDMENT (MISCELLANEOUS) BILL 2022 _____	19
<b>PART TWO – REGULATIONS .....</b>	<b>22</b>
1. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (EMERGENCY ACCOMMODATION) REGULATION 2022 _____	22
2. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (MISCELLANEOUS) REGULATION 2022 _____	24
3. LOCAL GOVERNMENT (GENERAL) AMENDMENT (TEMPORARY EMERGENCY ACCOMMODATION) REGULATION 2022 _____	27
4. MOTOR ACCIDENT GUIDELINES VERSION 8.2 _____	29
5. ROAD TRANSPORT (GENERAL) AMENDMENT REGULATION 2022 _____	31
6. ROADS AMENDMENT (MAJOR BRIDGES AND TUNNELS) REGULATION (NO 2) 2022 _____	34
7. WORK HEALTH AND SAFETY AMENDMENT (FOOD DELIVERY RIDERS) REGULATION 2022 _____	36
<b>APPENDIX ONE – FUNCTIONS OF THE COMMITTEE .....</b>	<b>39</b>
<b>APPENDIX TWO – REGULATIONS WITHOUT PAPERS.....</b>	<b>41</b>
<b>APPENDIX THREE – LETTERS RECEIVED FROM MINISTERS AND MEMBERS RESPONDING TO THE COMMITTEE'S COMMENTS (23 NOVEMBER 2021 – 14 JUNE 2022) .....</b>	<b>46</b>

## Membership

<b>Chair</b>	Mr Dave Layzell MP, Member for the Upper Hunter
<b>Deputy Chair</b>	Mr Lee Evans MP, Member for Heathcote
<b>Members</b>	The Hon. Scott Barrett MLC Ms Abigail Boyd MLC Mr David Mehan MP, Member for the Entrance The Hon. Shaoquett Moselmane MLC Mr Peter Sidgreaves MP Mr Nathaniel Smith MP, Member for Wollondilly
<b>Contact details</b>	Legislation Review Committee Parliament of New South Wales 6 Macquarie Street Sydney NSW 2000
<b>Telephone</b>	(02) 9230 2144 / (02) 9230 2390
<b>E-mail</b>	<a href="mailto:Legislation.Review@parliament.nsw.gov.au">Legislation.Review@parliament.nsw.gov.au</a>
<b>Website</b>	<a href="http://www.parliament.nsw.gov.au/lrc">www.parliament.nsw.gov.au/lrc</a>

# Guide to the Digest

## **Comment on Bills**

- 1.1 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 section 8A(1)(b) of the *Legislation Review Act 1987 (LRA)*.

## **Comment on Regulations**

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

# Summary of Conclusions

## PART ONE – BILLS

### 1. FISCAL RESPONSIBILITY AMENDMENT BILL 2022\*

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

### 2. ICAC AND LECC LEGISLATION AMENDMENT BILL 2022

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

#### *Henry VIII and delegation of savings and transitional provisions to regulations*

The Bill inserts section 6 to the ICAC Commissioner Act to defer the making of savings and transitional provisions to the regulations.

The Committee generally prefers for savings and transitional provisions to be dealt with in primary legislation to ensure an appropriate level of parliamentary oversight. In particular, because they generally have a direct impact on how some provisions of the Act will apply now and in the future. The Committee notes savings and transitional provisions relating to the Commissioner holding office immediately before commencement of the *Independent Commission Against Corruption Amendment Act 2016* are currently included in the primary legislation, specifically section 5.

Further, the Bill provides that the regulations may prescribe savings and transitional provisions which may not be limited by the regulation making powers in the Act. This could create a Henry VIII clause, which allows the Executive to legislate without reference to the Parliament.

However, the Committee notes statutory safeguards which may mitigate the effect of these provisions. For example, subsection 6(5) states that a savings or transitional provision that takes effect before the Bill commences does not affect a person's rights prior to commencement. In particular, it does not affect a person's rights in a way that is prejudicial or imposes liabilities for an act or omission occurring before commencement. Further, the regulation making power only extends to provisions consequent on the commencement of a provision of the Act or a provision amending the Act.

The Committee also notes the deferral of savings and transitional provisions may provide for greater flexibility in determining how subsequently enacted provisions may apply in the future. In the circumstances, the Committee makes no further comment.

### 3. INDUSTRIAL RELATIONS LEGISLATION AMENDMENT (PUBLIC SECTOR REMUNERATION CAP REPEAL) BILL 2022\*

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

### 4. PARLIAMENTARY BUDGET OFFICER AMENDMENT BILL 2022\*

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

### 5. TREASURY LEGISLATION AMENDMENT (MISCELLANEOUS) BILL 2022

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

*Ministerial discretion – removal of trustees*

The Bill proposes to insert a new section 14 into the *Parliamentary Contributory Superannuation Act 1971*. Subsection 14(4) provides that an appointed trustee of the Parliamentary Contributory Superannuation Scheme may be removed by

- (a) the trustees, or
- (b) after consultation with the trustees, the Treasurer on reasonable grounds.

The Bill may therefore provide the Treasurer with a wide power to remove trustees. The Committee notes that this is not an unfettered discretion, as the Treasurer must consult with the trustees and have reasonable grounds for removing a trustee. However, the Bill does not provide further clarification as to what grounds for removal would be considered reasonable. The Committee notes that the Parliamentary Contributory Superannuation Scheme is a limited scheme that has not been available to new members since 2007, and that there are seven trustees drawn from the membership of that Scheme to provide management and oversight. Given the circumstances, the Committee makes no further comment.

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

*Incorporation of external rules not subject to disallowance*

The Bill amends the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* to include a new section 19CC. Section 19CC provides that, for the purposes of Part 4A, the AUSCOAL Rules and the AUSCOAL Trust Deed may incorporate other rules or documents approved by the Minister.

The Committee generally comments when external material such as rules, codes or documents, are included in legislation. This is because these materials are subject to change, and are not subject to oversight or disallowance as Bills and Regulations are.

In the circumstances of this Bill, the Committee notes that these materials are only incorporated for the purposes of Part 4A, which sets out the eligibility for mine workers who are incapacitated due to the inhalation of dust in coal or oil shale mines in NSW to receive subsidies. Therefore, the external materials incorporated into the legislation may have an impact on the rights and obligations of individuals who are either seeking or are currently eligible for a subsidy under Part 4A. In the circumstances, the Committee refers the matter to Parliament for its consideration.

## **PART TWO – REGULATIONS**

### **1. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (EMERGENCY ACCOMMODATION) REGULATION 2022**

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

*Incorporation of policy not subject to disallowance*

The Regulation incorporates the *State Environmental Planning Policy (Housing) 2021* (the SEPP) into the *Environmental Planning and Assessment Regulation 2021*. Specifically, it provides that development for the purposes of camping grounds or caravan parks that is permitted without development consent under Chapter 3, Part 10 of the SEPP is not an "activity" for the purposes of section 5.1(1) of the *Environmental Planning and Assessment Act 1979*. Section 5.1 prohibits

the carrying out or approval of certain activities unless an environmental impact statement has been provided.

There is no requirement that the SEPP be tabled in Parliament and it is not subject to disallowance under section 41 of the *Interpretation Act 1987*. The SEPP is therefore not subject to parliamentary scrutiny.

The Committee generally prefers that the legislation set down key definitions and exclusions to those terms in full to foster a level of parliamentary oversight. In this case, the type of development excluded from the definition of "activity". However, it acknowledges that the Act allows the regulations to prescribe development which is excluded from this definition. The Regulation incorporates the SEPP for this purpose. In the circumstances, the Committee makes no further comment.

## 2. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (MISCELLANEOUS) REGULATION 2022

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

#### *Limitation of notice requirement – Independent Planning Commission public hearings*

The Regulation provides that a public hearing of the Independent Planning Commission may be adjourned, and that the Commission's requirement to give 'reasonable notice' of a public hearing under the *Environmental Planning and Assessment Act 1979* does not apply to a public hearing reconvened following an adjournment. The term 'reasonable notice' is not defined, although the *Public Hearing Guidelines* published by the Independent Planning Commission state that it will give a minimum of two weeks' (14 days) notice of a public hearing via multiple channels including its website, social media and email.

By providing that reasonable notice does not need to be provided for a reconvened public hearing, the Regulation may limit a person's participation in the hearing, which may concern a planning or development matter impacting their property rights.

However, the Committee notes that the Act provides that the regulations may make provision for or with respect to procedures for public hearings and that the amendment set out in the Regulation may provide flexibility in relation to hearing procedure. Additionally, the Committee understands that relevant community members who engaged with the hearing's subject-matter during consultation would likely have already been notified of the initial public hearing dates, in accordance with the Commission's *Public Hearing Guidelines*. In the circumstances, the Committee makes no further comment.

## 3. LOCAL GOVERNMENT (GENERAL) AMENDMENT (TEMPORARY EMERGENCY ACCOMMODATION) REGULATION 2022

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

#### *Regulation modifying the operation of primary legislation*

The Regulation exempts community land in specified local government areas in Northern NSW which is used for the development of temporary accommodation, from the operation of certain provisions of the *Local Government Act 1993*. These provisions of the Act restrict the granting of leases and subleases for community land and impose requirements for tendering, giving notice and Ministerial oversight of such leases. The Committee generally prefers provisions that modify the effect of primary legislation to be included in primary legislation, rather than subordinate legislation, to foster an appropriate level of parliamentary oversight over such modifications.



However, the Committee acknowledges that the exemption is an extraordinary response to the natural disaster emergency caused by catastrophic flooding, which intended to facilitate the provision of temporary accommodation to people displaced by the emergency. It further notes that the provisions providing for this exemption are time limited to 1 September 2022. In the circumstances, the Committee makes no further comment.

#### 4. MOTOR ACCIDENT GUIDELINES VERSION 8.2

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

###### *Privacy – surveillance of claimants with mental health conditions*

The Guidelines inserts clause 4.146 into Part 4, which sets out requirements that an insurer must follow in order to conduct surveillance of a person that they are aware has a mental health condition, in respect to a claim for motor accident compensation. This may permit insurers to conduct surveillance of a person with a known mental health condition if the insurer clearly identifies any mental health conditions in their request for surveillance and develops a risk management plan that identifies strategies for mitigating the potential impacts of surveillance on that person.

The Committee previously reported on the surveillance provisions introduced in Version 5 of the Motor Accident Guidelines, in Digest No. 11/57. Consistent with the Committee's previous comments, surveillance investigations, including the use of video surveillance, may interfere with the privacy of claimants. In the context of persons with mental health conditions, this is of particular concern where the adverse impact of surveillance may also impact a person's mental health condition.

However, the Committee notes that the surveillance of an individual with a known mental health condition may only be permitted in accordance with a risk management plan intended to mitigate the impacts of any surveillance on that condition. Consistent with its previous comments, the Committee also acknowledges the public interest in ensuring that fraudulent claims are not successful. In the circumstances, the Committee makes no further comment.

#### 5. ROAD TRANSPORT (GENERAL) AMENDMENT REGULATION 2022

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

###### *Enforcement powers and penalty notices offences*

The *Road Transport (General) Amendment Regulation 2021* amends Schedule 5 of the *Road Transport (General) Regulation 2021* to allow a Class 10 officer to issue penalty notices for certain penalty notice offences set out in the *Road Rules 2014* and *Road Transport Act 2013* (Act). A Class 10 officer is a person who is an authorised person within the meaning of section 679 of the *Local Government Act 1993* (being an authorised council employee or police officer), and who is employed, or subject to the control or direction of, a local council. This effectively expands the type of authorised officer who can issue on-the-spot fines for contravention of certain penalty notice offences.

The relevant penalty notice offences include contravention of the requirements of an authorised officer in the exercise of their identity powers under the Act. Specifically, under section 175(2)(a) and (b), the officer may require a person to provide their driver licence (if applicable) and name. Under section 177(1), certain persons must provide information as to the name and home address of a driver alleged to have committed an offence against the road transport legislation. Contravention in each case incurs a maximum penalty of 20 penalty units (\$2 200).

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 acknowledges that the exercise by Class 10 officers of these powers enables efficient enforcement and appears to support the administration road transport legislation. Further, that there is a defence available for an offence under section 177(1)(a), although this defence requires a person to attend court and challenge the penalty notice, which can be timely and costly. In the circumstances, the Committee makes no further comment.

## 6. ROADS AMENDMENT (MAJOR BRIDGES AND TUNNELS) REGULATION (NO 2) 2022

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

#### *Freedom of assembly and association*

The Regulation provides that all bridges and tunnels in the City of Newcastle, or the City of Wollongong, or a bridge or tunnel that joins a main road, a highway or a freeway, will be deemed major bridges and tunnels for the purposes of section 144G of the Roads Act. This is in addition to bridges and tunnels in the Greater Sydney region already included in the Regulation. Under subsection 144G(1), it is an offence to enter, remain on, climb, jump from or otherwise trespass on any part of a major bridge or tunnel if that conduct:

- a) causes damage to the bridge or tunnel, or
- b) seriously disrupts or obstructs vehicles or pedestrians attempting to use the bridge or tunnel.

The maximum penalty for a breach of subsection 144G(1) is 200 penalty units (\$22 000) or imprisonment for two years, or both.

The expansions of this definition limits certain actions of individuals in these locations and may impact on freedom of movement and assembly in the new areas prescribed by the Regulation. These rights that are contained in Articles 21 and 22 of the ICCPR. The right to freedom of assembly protects the freedom of individuals and groups to meet and engage in peaceful protest. However, the ICCPR recognises that derogation from these rights may be warranted in certain circumstances, including to protect public health and safety.

The Committee notes that the offences in the *Roads Act* do provide a number of safeguards, including that the amendments do not prohibit conduct undertaken in accordance with the consent of Transport for NSW, the NSW Police Force or another public authority. Under section 144G of the Bill, NSW Police may give authorisation for protests or similar action, which would therefore be exempted from prosecution.

It is also a defence to prosecution under section 144G of the *Roads Act* if the person charged proves that they had a reasonable excuse for the conduct concerned. For example, subsection (5) provides that it is a reasonable excuse if the conduct arose from a mechanical fault or breakdown of a motor vehicle. Under the *Roads Act*, a person does not commit an offence if the conduct forms part of an industrial action, thereby exempting workers who may undertake protest and other industrial action at a major facility that is their workplace.

The Committee notes that potential limits on movement and assembly may be of particular interest to the public, and notes the significance of the penalties that can be imposed in event of a breach of the *Roads Act*, including imprisonment. In these circumstances, the Committee refers the matter to Parliament for its consideration.

## 7. WORK HEALTH AND SAFETY AMENDMENT (FOOD DELIVERY RIDERS) REGULATION 2022

### ***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 *Work Health and Safety Amendment (Food Delivery Riders) Amendment 2022* inserts a number of new offences into Schedule 18A, penalty notice offences. These new offences relate to the provision of safety equipment and training to food delivery riders, and the creation of related records. Penalty notices that can be issued to food delivery booking providers in relation to these offences are \$720 for an individual, or \$3 600 for a body corporate. The penalty notices that can be issued to food delivery riders are \$144.

The Regulation also provides that (in the event a penalty notice is not issued or is challenged) the maximum penalty available for food delivery booking providers is 70 penalty units (\$7 700) for an individual, and 345 penalty units (\$37 950) for a body corporate.

As the Committee has previously noted, penalty notices allow an individual to pay a specified monetary amount and in some circumstances may elect to have the matter heard by a court. This may impact 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 acknowledges individuals and body corporates retain the right to elect to have their matter heard and decided by a Court, and the Regulation does not remove this right. 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. As the Regulation does not remove a person's right to elect to have the matter heard by a court, and given the practical benefits of penalty notices, particularly in the circumstances where compliance is designed to improve safety for delivery riders, the Committee makes no further comment.

#### *Privacy – providing personal information*

The Regulation inserts a new clause 184U to the *Work Health and Safety Regulation 2017* which requires food delivery riders to present their training verification records to a police officer or inspector on request. The Regulation may therefore impact on the privacy right of affected individuals, who may now be asked to reveal their personal information.

However, the Committee notes that without these provisions, the requirement for riders to carry their training verification records would be unenforceable. Further, while this may impact on the rider's privacy, the information contained in training verification records is a fairly narrow range. As such, the Committee makes no further comment.

## Part One – Bills

### 1. Fiscal Responsibility Amendment Bill 2022\*

Date introduced	8 June 2022
House introduced	Legislative Council
Member responsible	Ms Abigail Boyd MLC
	*Private Members Bill

#### Purpose and description

- 1.1 This Bill amends the *Fiscal Responsibility Act 2012* to make further provision about the principles of sound financial management in the conduct of fiscal policy and reporting requirements in relation to those principles.

#### Background

- 1.2 In her second reading speech, Ms Abigail Boyd MLC said that the Bill 'redefines the principles of sound financial management for our State' and indicated that it seeks to support the wellbeing of the people of NSW by amending budget setting principles and requirements.
- 1.3 The Bill proposes inserting two new objects into the *Fiscal Responsibility Act 2012* (the Act) to provide that, in addition to maintaining the State's AAA credit rating, the objects of the Act are also to:
- (a) 'establish principles for sound financial management in the conduct of fiscal policy, and
  - (b) establish reporting requirements on the extent to which the Government's fiscal policy is consistent with... [those] principles'.
- 1.4 The Bill also proposes extending the purposes of the objects of the Act, to specify that they are also to:
- (a) 'maintain essential public assets and services under public ownership and control, enabling the State to meet the needs of current and future generations without reliance on the private sector, and
  - (b) increase the long-term economic, social, environmental and cultural wellbeing of the State'.
- 1.5 Additionally, the Bill seeks to:

- (a) amend one of the three principles of sound financial management set out in section 7 of the Act. Specifically, the Bill provides that the principle of 'intergenerational equity' is to be achieved by ensuring that the current generation funds not only 'the cost of the generation's services', but also 'the cost of repairing the social, environmental and cultural damage caused by the current and previous generations'.
- (b) amend section 8 of the Act to require the Treasurer to include in the budget papers a report on the measures taken, and their effectiveness, 'to ensure the long-term economic, social, environmental and cultural wellbeing of the State', including in relation to the matters set out in the Bill. These matters include, among others, the cost of living, housing affordability, access to transport and services, biodiversity, differences in wealth and income and matters prescribed by the regulations.

### **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*.**

## 2. ICAC and LECC Legislation Amendment Bill 2022

Date introduced	8 June 2022
House introduced	Legislative Assembly
Minister responsible	The Hon. Mark Speakman SC MP
Portfolio	Attorney General

### Purpose and description

- 2.1 The object of the Bill is to amend the *Independent Commission Against Corruption Act 1988*, the *Independent Commission Against Corruption (Commissioner) Act 1994* and the *Law Enforcement Conduct Commission Act 2016* to—
- a) enable a Judge of the Supreme Court or the District Court, who has resigned immediately prior to their appointment to the Independent Commission Against Corruption (ICAC) as a Commissioner, Inspector or Assistant Inspector or to the Law Enforcement Conduct Commission (LECC), as a member of the Commission, Assistant Commissioner or Inspector, to return to their position as a Judge of the same Court, immediately after they cease to hold office for the ICAC or LECC, and
  - b) provide that, for the purposes of the *Judges' Pensions Act 1953*, time served by the person as a Commissioner, an Inspector or an Assistant Inspector of ICAC or as a member of the Commission, Assistant Commissioner or Inspector of the LECC, is time served as a Judge of the status equivalent to the judicial office held by the person immediately before their appointment.

### Background

- 2.2 The Bill amends the *Independent Commission Against Corruption Act 1988* (the **ICAC Act**), the *Independent Commission Against Corruption (Commissioner) Act 1994* (the **ICAC Commissioner Act**) and the *Law Enforcement Conduct Commission Act 2016* (the **LECC Act**) to provide that former District Court and Supreme Court Judges who serve as statutory appointees for the Independent Commission Against Corruption (the **ICAC**) and Law Enforcement Conduct Commission (the **LECC**) may resume judicial duties at the conclusion of their statutory tenures.
- 2.3 In his second reading speech, Attorney General the Hon. Mark Speakman SC MP stated the Bill will address 'inconsistencies in certain provisions' identified through an ongoing recruitment process for appointments of Commissioners and Inspectors of the ICAC and LECC. Further, the Attorney General said the Bill would encourage applicants to apply for these positions, stating:

Meritorious applicants may be discouraged from accepting an appointment without legislative amendment to extend the benefit of the existing provisions in the ICAC

Commissioner Act to judges of the District Court. This is of particular significance in circumstances where the holder of a judicial office is not eligible to be appointed as a Commissioner of the ICAC, requiring judicial officers to resign from their judicial office prior to being appointed as a commissioner of the ICAC. There is no compelling reason to exclude judges of the District Court from the benefit of these provisions. The qualification requirements for appointment to both the Supreme Court and District Court are broadly the same, namely, to be an Australian lawyer of at least seven years' standing or a person who holds or has held a judicial office.

- 2.4 The Bill inserts section 6A to the ICAC Act to allow a former District or Supreme Court Judge's commission to be revived when they cease to hold office as the ICAC Inspector. Section 6A also provides that appointment as the ICAC Inspector is taken to be service as Judge for the purposes of the *Judges' Pensions Act 1953*.
- 2.5 Section 4 of the ICAC Commissioner Act and sections 6(2) and clause 8(2) of Schedule 2 of the LECC Act are also amended to enable the revival of a District Court Judge's judicial role after their appointment as an ICAC or LECC Commissioner or LECC Inspector. Amendments to the LECC Act will extend existing provisions enabling the revival of the commission of a judge of the Supreme Court appointed as Inspector of the LECC to a judge of the District Court. These provisions were previously only afforded revival to Supreme Court Judges.
- 2.6 New section 6 of the ICAC Commissioner Act provides for the making of savings and transitional provisions in the regulations.

## Issues considered by the Committee

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

#### *Henry VIII and delegation of savings and transitional provisions to regulations*

- 2.7 The Bill inserts section 6 to the ICAC Commissioner Act to defer the making of savings and transitional provisions to the regulations. The Bill further prescribes requirements for the timeframes in which savings and transitional provisions may be made.
- 2.8 Subsection 6(4) enables the making of savings or transitional provisions consequent on the commencement of a provision of the Act or a provision amending the Act.

**The Bill inserts section 6 to the ICAC Commissioner Act to defer the making of savings and transitional provisions to the regulations.**

**The Committee generally prefers for savings and transitional provisions to be dealt with in primary legislation to ensure an appropriate level of parliamentary oversight. In particular, because they generally have a direct impact on how some provisions of the Act will apply now and in the future. The Committee notes savings and transitional provisions relating to the Commissioner holding office immediately before commencement of the *Independent Commission Against Corruption Amendment Act 2016* are currently included in the primary legislation, specifically section 5.**

**Further, the Bill provides that the regulations may prescribe savings and transitional provisions which may not be limited by the regulation making**

**powers in the Act. This could create a Henry VIII clause, which allows the Executive to legislate without reference to the Parliament.**

**However, the Committee notes statutory safeguards which may mitigate the effect of these provisions. For example, subsection 6(5) states that a savings or transitional provision that takes effect before the Bill commences does not affect a person's rights prior to commencement. In particular, it does not affect a person's rights in a way that is prejudicial or imposes liabilities for an act or omission occurring before commencement. Further, the regulation making power only extends to provisions consequent on the commencement of a provision of the Act or a provision amending the Act.**

**The Committee also notes the deferral of savings and transitional provisions may provide for greater flexibility in determining how subsequently enacted provisions may apply in the future. In the circumstances, the Committee makes no further comment.**



### 3. Industrial Relations Legislation Amendment (Public Sector Remuneration Cap Repeal) Bill 2022\*

Date introduced	8 June 2022
House introduced	Legislative Council
Member responsible	The Hon. Robert Borsak MLC
	*Private Members Bill

#### Purpose and description

- 3.1 The object of this Bill is to amend certain public sector industrial relations legislation—
- (a) to repeal the declared government policy that prevents public sector employee remuneration increases of more than 2.5% per annum, and
  - (b) to prevent the adoption of new declared government policies that would limit public sector employee remuneration increases by reference to a per annum percentage.

#### Background

- 3.2 The Bill would amend the *Industrial Relations Act 1996* and *Statutory and Other Offices Remuneration Act 1975*, by including a provision in both Acts that prohibit regulations from declaring 'a per annum percentage' limit to public sector employee remuneration increases.
- 3.3 The Bill also seeks to repeal provisions in the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014* and *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* which declare and give effect to the existing limit on public sector employee remuneration increases to 2.5 per cent per annum.
- 3.4 In his second reading speech, the Hon. Robert Borsak MLC emphasised that the amendments proposed by the Bill are driven by the principle that 'wage and conditions should be the result of negotiated outcomes between the parties—in this case, the unions and government'.
- 3.5 Mr Borsak also stated that the amendments may facilitate wage growth across New South Wales, which may assist people to manage the cost of living and lessen the burden 'placed on government to provide unemployment benefits and further subsidies'.

## **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*.**

## 4. Parliamentary Budget Officer Amendment Bill 2022\*

Date introduced	8 June 2022
House introduced	Legislative Assembly
Member responsible	Mr Ron Hoenig MP
	*Private Members Bill

### Purpose and description

- 4.1 The object of this Bill is to amend the *Parliamentary Budget Officer Act 2010* to provide that the Parliamentary Budget Officer for a State general election is to be appointed on or as soon as practicable after 1 July, rather than 1 September, immediately before the general election.

### Background

- 4.2 Section 5 of the *Parliamentary Budget Officer Act 2010* (the **Act**) establishes the position of Parliamentary Budget Officer (**PBO**) as an independent officer of Parliament. The functions of the Parliamentary Budget Officer include preparing costings of election policies in accordance with Part 4, Division 2 of the Act.
- 4.3 The Bill proposes amending subsection 6(1) of the Act, which requires the Presiding Officers to appoint a Parliamentary Budget Officer for each State general election. This subsection states that each appointment takes effect on or as soon as practicable after 1 September immediately before the election is due to be held.
- 4.4 The Bill would amend the relevant date from 1 September to 1 July.
- 4.5 In his second reading speech, Mr Ron Hoenig MP said:
- The purpose of the bill is to ensure that appointments to the Parliamentary Budget Office can be made sooner, to enable it to function in an efficient way more quickly.
- The words "as soon as practicable" are retained within the proposed amendment because experience has shown that it takes a while from the time of an appointment for the Parliamentary Budget Office to be up and running and able to do its work efficiently.
- 4.6 Under section 7 of the Act, the Parliamentary Budget Officer holds office for the period specific in the instrument of appointment, which cannot extend for more than 3 months after the State general election.
- 4.7 The Bill was introduced to the Legislative Assembly on 8 June 2022, and standing orders were suspended to consider the Bill. The Bill passed the Legislative Assembly

with amendments on 9 June 2022.<sup>1</sup> The Bill was forwarded to the Legislative Council the same day and read a first time.

### **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*.**

---

<sup>1</sup> Legislative Assembly, [LA Agreed amendments – Parliamentary Budget Officer Bill](#), New South Wales Parliament, viewed 9 June 2022.

## 5. Treasury Legislation Amendment (Miscellaneous) Bill 2022

Date introduced	8 June 2022
House introduced	Legislative Assembly
Minister responsible	The Hon. Matt Kean MP
Portfolio	Treasury

### Purpose and description

- 5.1 The object of this Bill is to amend various Acts and Regulations administered by the Treasurer. The Bill amends the following Acts—
- (a) *Coal and Oil Shale Mine Workers (Superannuation) Act 1941*,
  - (b) *General Government Liability Management Fund Act 2002*,
  - (c) *Government Sector Audit Act 1983*,
  - (d) *Government Sector Finance Act 2018*,
  - (e) *NSW Self Insurance Corporation Act 2004*,
  - (f) *Parliamentary Contributory Superannuation Act 1971*.
- 5.2 The Bill also makes law revision amendments to various Acts and Regulations as a consequence of the changing of the name of the First State Superannuation Fund to the Aware Super Fund.

### Background

- 5.3 The *Treasury Legislation Amendment (Miscellaneous) Bill 2022* (the **Bill**) makes minor amendments to six pieces of legislation, and commences on 1 July 2022 in alignment with financial reporting requirements.
- 5.4 Ms Felicity Wilson MP, who gave the second reading speech on behalf of the Hon Matt Kean MP, stated that the 'changes in the Bill are minor and broadly administrative in nature.'
- 5.5 The *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* is amended to update the arrangements for the trustee. In her Second Reading Speech, Ms Wilson stated that this would ensure that:

... the Coal Workers Act is in line with the Commonwealth legislation that was introduced in response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

5.6 The *General Government Liability Management Fund Act 2002* is amended to remove the references to 'Crown Entity' or 'Crown Finance Entity.' Ms Wilson stated that this:

... ensures compliance with the Australian Accounting Standards, specifically AASB 1050, which requires that separate financial statements should not be prepared by the Crown Entity.

5.7 Ms Wilson noted that as the Crown Entity is administered by the Treasury, reports of the Crown Entity are included in those of the Treasury.

5.8 The *Government Sector Audit Act 1983* governs the audit process for government sector finances and establishes the Public Accounts Committee. The Bill amends this Act to update references and amend the timing of the provision of audits and related information.

5.9 The amendments to the *Government Sector Finance Act 2018* also provide clarification regarding the timing of providing financial information and associated compliance statements to the Auditor General.

5.10 The *NSW Self Insurance Corporation Act 2004* is amended to remove the outdated term 'Finance Entity' and make minor administrative changes.

5.11 The amendments to the *Parliamentary Contributory Superannuation Act 1971* update the eligibility, appointment and removal of trustees. In her second reading speech, Ms Wilson described that:

... the Act currently requires the trustees of the fund to be sitting members of Parliament. However, the fund was closed to new members in 2007.

5.12 Therefore the proposed amendments will allow past members of parliament to be appointed as trustees in acknowledgement of this changing circumstance.

5.13 The Bill also amends various Acts and Regulations as a consequence of the changing of the name of the First State Superannuation Fund to the Aware Super Fund.

## Issues considered by the Committee

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

*Ministerial discretion – removal of trustees*

5.14 The Bill proposes to insert a new section 14 into the *Parliamentary Contributory Superannuation Act 1971*. Subsection 14(4) provides that an appointed trustee may be removed by

- (a) the trustees, or
- (b) after consultation with the trustees, the Treasurer on reasonable grounds.

**The Bill proposes to insert a new section 14 into the *Parliamentary Contributory Superannuation Act 1971*. Subsection 14(4) provides that an appointed trustee of the Parliamentary Contributory Superannuation Scheme may be removed by**

(a) the trustees, or

(b) after consultation with the trustees, the Treasurer on reasonable grounds.

The Bill may therefore provide the Treasurer with a wide power to remove trustees. The Committee notes that this is not an unfettered discretion, as the Treasurer must consult with the trustees and have reasonable grounds for removing a trustee. However, the Bill does not provide further clarification as to what grounds for removal would be considered reasonable. The Committee notes that the Parliamentary Contributory Superannuation Scheme is a limited scheme that has not been available to new members since 2007, and that there are seven trustees drawn from the membership of that Scheme to provide management and oversight. Given the circumstances, the Committee makes no further comment.

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

##### *Incorporation of external rules not subject to disallowance*

5.15 The Bill amends the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* to include a new section 19CC. Section 19CC provides that, for the purposes of Part 4A, the AUSCOAL Rules and the AUSCOAL Trust Deed may incorporate other rules or documents approved by the Minister.

**The Bill amends the *Coal and Oil Shale Mine Workers (Superannuation) Act 1941* to include a new section 19CC. Section 19CC provides that, for the purposes of Part 4A, the AUSCOAL Rules and the AUSCOAL Trust Deed may incorporate other rules or documents approved by the Minister.**

The Committee generally comments when external material such as rules, codes or documents, are included in legislation. This is because these materials are subject to change, and are not subject to oversight or disallowance as Bills and Regulations are.

In the circumstances of this Bill, the Committee notes that these materials are only incorporated for the purposes of Part 4A, which sets out the eligibility for mine workers who are incapacitated due to the inhalation of dust in coal or oil shale mines in NSW to receive subsidies. Therefore, the external materials incorporated into the legislation may have an impact on the rights and obligations of individuals who are either seeking or are currently eligible for a subsidy under Part 4A. In the circumstances, the Committee refers the matter to Parliament for its consideration.

## Part Two – Regulations

### 1. Environmental Planning and Assessment Amendment (Emergency Accommodation) Regulation 2022

Date tabled	LA: 10 May 2022 LC: 10 May 2022
Disallowance date	LA: 13 September 2022 LC: 13 September 2022
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Planning

#### Purpose and description

- 1.1 The object of this Regulation is to provide that development for the purposes of camping grounds or caravan parks that is permitted without development consent under *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 10 is not an activity for which an environmental impact assessment may otherwise be required under the *Environmental Planning and Assessment Act 1979* (the **Act**).

#### Issues considered by the Committee

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

*Incorporation of policy not subject to disallowance*

- 1.2 Section 169 of the *Environmental Planning and Assessment Regulation 2021* provides for development which is not an "activity" under section 5.1(1) of the Act.
- 1.3 Section 5.1(1) of the Act provides the meaning of the term "activity", which does not include any development of a class or description that is prescribed by the regulations for the purposes of this definition. Division 5.1 of the Act, to which the definition applies, prohibits the carrying out or approval of certain activities unless an environmental impact statement has been provided.
- 1.4 The Regulation amends section 169 to provide that development which is not an "activity" also includes development for the purposes of camping grounds or caravan parks that is permitted without development consent under [State Environmental Planning Policy \(Housing\) 2021](#) (the **SEPP**), Chapter 3, Part 10.



- 1.5 Chapter 3, Part 10 of the SEPP aims to facilitate temporary emergency accommodation in suitable locations for persons displaced as a result of a natural disaster, and ensure that such accommodation has access to essential facilities and services. The Part provides that a development consent is not required for temporary emergency accommodation in caravan parks or camping grounds where all prescribed conditions are satisfied. These conditions include that:
- (a) the caravan parks or camping grounds will only be used to provide accommodation to displaced persons only
  - (b) the development is carried out on behalf of a public authority and within 5 years of the natural disaster occurring
  - (c) the development is carried out on land with water, electricity, sewerage and drainage services, and access to communal amenities
  - (d) each moveable dwelling or temporary shelter is installed or placed on the land in a way not adversely impacting the amenity of the land or health or safety of other persons, and removed within 5 years.
- 1.6 The SEPP is an environmental planning instrument made under section 3.29 of the Act. Section 3.13 of the Act provides that environmental planning instruments are made for the purpose of achieving any of the objects of the Act. The SEPP is not a statutory rule and therefore is not subject to parliamentary scrutiny or disallowance under section 41 of the *Interpretation Act 1987*.

**The Regulation incorporates the *State Environmental Planning Policy (Housing) 2021* (the SEPP) into the *Environmental Planning and Assessment Regulation 2021*. Specifically, it provides that development for the purposes of camping grounds or caravan parks that is permitted without development consent under Chapter 3, Part 10 of the SEPP is not an "activity" for the purposes of section 5.1(1) of the *Environmental Planning and Assessment Act 1979*. Section 5.1 prohibits the carrying out or approval of certain activities unless an environmental impact statement has been provided.**

**There is no requirement that the SEPP be tabled in Parliament and it is not subject to disallowance under section 41 of the *Interpretation Act 1987*. The SEPP is therefore not subject to parliamentary scrutiny.**

**The Committee generally prefers that the legislation set down key definitions and exclusions to those terms in full to foster a level of parliamentary oversight. In this case, the type of development excluded from the definition of "activity". However, it acknowledges that the Act allows the regulations to prescribe development which is excluded from this definition. The Regulation incorporates the SEPP for this purpose. In the circumstances, the Committee makes no further comment.**

## 2. Environmental Planning and Assessment Amendment (Miscellaneous) Regulation 2022

Date tabled	LA: 10 May 2022 LC: 10 May 2022
Disallowance date	LA: 13 September 2022 LC: 13 September 2022
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Planning

### Purpose and description

- 2.1 The objects of this Regulation are as follows—
- (a) to make permanent the current temporary arrangements for the adjournments of public hearings of the Independent Planning Commission,
  - (b) to extend savings and transitional arrangements applying to development applications and applications for complying development to applications to modify development consents and complying development,
  - (c) to make a number of minor amendments of a law revision nature.

### Issues considered by the Committee

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

##### *Limitation of notice requirement – Independent Planning Commission public hearings*

- 2.2 Schedule 2 of the *Environmental Planning and Assessment Act 1979* (the **Act**) sets out provisions relating to public hearings and procedure of the Independent Planning Commission.
- 2.3 It provides that the Independent Planning Commission must conduct a public hearing if:
- (a) requested to do so by the Minister under section 2.9(1)(d) of the Act. Section 2.9(2) states that the matters into which a public hearing may be held under subsection (1)(d) include any general or particular planning or development matter, the administration of the Act or any related matter, or
  - (b) the Minister has determined in a gateway determination that the Commission is to conduct a public hearing into a planning proposal for provisions of a local environmental plan.

- 2.4 The Independent Planning Commission states in its *Public Hearing Guidelines*:
- A public hearing provides the Commission an opportunity to hear the community's views on the case, especially on the Department's whole-of government Assessment Report (and any recommended conditions of consent) before determining an application.<sup>2</sup>
- 2.5 The Regulation inserts section 298 into the *Environmental Planning and Assessment Regulation 2021* which provides:
- (a) a public hearing of the Independent Planning Commission may be adjourned to a specified time or date if the Commission considers the adjournment necessary.
  - (b) the requirement to give reasonable notice of a public hearing under the Act, Schedule 2, clause 3, does not apply to a public hearing that is reconvened following an adjournment.
- 2.6 Schedule 2, clause 3 provides that the Commission must give reasonable notice of a public hearing by advertisement published in a manner the Commissioner sees fit and by notice in writing to any public authorities that the Commission thinks are highly likely to have an interest in the hearing's subject-matter. The term 'reasonable notice' is not defined for this clause.
- 2.7 However, the Independent Planning Commission provides in its *Public Hearing Guidelines* that it will give a minimum of two weeks' (14 days) notice of a public hearing. These Guidelines also provide how the Commission will give notice. Specifically, by publishing a post on its website and social media channels, issuing a media release to local news outlets and emailing all persons and public authorities who made a submission to the Department during consultation, the local council and state and federal MPs in the area.<sup>3</sup>
- 2.8 Members of the public have the opportunity speak at the public hearing, subject to registration requirements and time limitations.<sup>4</sup>
- 2.9 Schedule 2, clause 8 of the Act provides that the regulations may make provision for or with respect to, among other things, the procedures of the Commission, including procedures for public hearings relating to any or all, or a class, of its functions.

**The Regulation provides that a public hearing of the Independent Planning Commission may be adjourned, and that the Commission's requirement to give 'reasonable notice' of a public hearing under the *Environmental Planning and Assessment Act 1979* does not apply to a public hearing reconvened following an adjournment. The term 'reasonable notice' is not defined, although the *Public Hearing Guidelines* published by the Independent Planning Commission state**

---

<sup>2</sup> Independent Planning Commission, [Public Hearing Guidelines](#), policy document, New South Wales Government, 1 April 2022, viewed 6 June 2022, p1 (*Public Hearing Guidelines*).

<sup>3</sup> [Public Hearing Guidelines](#), p2.

<sup>4</sup> [Public Hearing Guidelines](#), p3.

**that it will give a minimum of two weeks' (14 days) notice of a public hearing via multiple channels including its website, social media and email.**

**By providing that reasonable notice does not need to be provided for a reconvened public hearing, the Regulation may limit a person's participation in the hearing, which may concern a planning or development matter impacting their property rights.**

**However, the Committee notes that the Act provides that the regulations may make provision for or with respect to procedures for public hearings and that the amendment set out in the Regulation may provide flexibility in relation to hearing procedure. Additionally, the Committee understands that relevant community members who engaged with the hearing's subject-matter during consultation would likely have already been notified of the initial public hearing dates, in accordance with the Commission's *Public Hearing Guidelines*. In the circumstances, the Committee makes no further comment.**

### 3. Local Government (General) Amendment (Temporary Emergency Accommodation) Regulation 2022

Date tabled	LA: 17 May 2022 LC: 17 May 2022
Disallowance date	LA: 20 September 2022 LC: 20 September 2022
Minister responsible	The Hon. Wendy Tuckerman MP
Portfolio	Local Government

#### Purpose and description

- 3.1 The object of this Regulation is to exempt community land in the following local government areas from the operation of certain provisions of the *Local Government Act 1993* (the Act) restricting the granting of leases, licences and other estates in relation to community land—
- (a) Ballina,
  - (b) Byron,
  - (c) City of Lismore,
  - (d) Clarence Valley,
  - (e) Kyogle,
  - (f) Richmond Valley,
  - (g) Tweed.
- 3.2 The purpose of the exemption is to facilitate the provision of temporary emergency accommodation for persons who have been displaced because of natural disasters, including flooding.

#### Issues considered by the Committee

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

*Regulation modifying the operation of primary legislation*

- 3.3 The Regulation inserts section 115 into the *Local Government (General) Regulation 2021*, which provides for various exemptions in respect to leases for temporary

accommodation in the Ballina, Byron, City of Lismore, Clarence Valley, Kyogle, Richmond Valley and Tweed local government areas.

3.4 Section 115(3) provides that community land in these local government areas used for the purposes of temporary accommodation development, authorised by a temporary accommodation lease, is exempt from the operation of sections 45(2), 46, 46A, 47A and 47C of the Act. The note to this subsection acknowledges that these specified provisions of the Act may:

- (a) generally restrict the granting of leases and subleases in relation to community land, and
- (b) impose certain requirements for the granting of leases, including requirements for tendering, the giving of notices to certain persons and obtaining the Minister's consent to the grant of a lease.

3.5 Section 415 of the *Local Government (General) Regulation 2021* provides that it is repealed on 1 September 2022. This would include the inclusion of section 115 by the Regulation.

**The Regulation exempts community land in specified local government areas in Northern NSW which is used for the development of temporary accommodation, from the operation of certain provisions of the *Local Government Act 1993*. These provisions of the Act restrict the granting of leases and subleases for community land and impose requirements for tendering, giving notice and Ministerial oversight of such leases. The Committee generally prefers provisions that modify the effect of primary legislation to be included in primary legislation, rather than subordinate legislation, to foster an appropriate level of parliamentary oversight over such modifications.**

**However, the Committee acknowledges that the exemption is an extraordinary response to the natural disaster emergency caused by catastrophic flooding, which intended to facilitate the provision of temporary accommodation to people displaced by the emergency. It further notes that the provisions providing for this exemption are time limited to 1 September 2022. In the circumstances, the Committee makes no further comment.**

## 4. Motor Accident Guidelines Version 8.2

Date tabled	LA: 17 May 2022 LC: 17 May 2022
Disallowance date	LA: 20 September 2022 LC: 20 September 2022
Minister responsible	The Hon. Victor Dominello MP
Portfolio	Customer Service and Digital Government

### Purpose and description

- 4.1 The Guidelines support the delivery of the objects of the *Motor Accident Injuries Act 2017* (the Act) and the *Motor Accident Injuries Regulation 2017* (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.
- 4.2 These Guidelines are made under section 10.2 of the Act, which enables the Authority to issue Motor Accident Guidelines with respect to any matter that is authorised or required by the Act.
- 4.3 These Guidelines are published by the State Insurance Regulatory Authority (the Authority). The Authority expects stakeholders to comply with relevant parts of the Guidelines that apply to them.
- 4.4 The Guidelines come into effect on 8 April 2022 and apply to motor accidents occurring on or after 1 December 2017. The Guidelines replaces Version 8.1 of the Motor Accident Guidelines (the previous Version) on the dates set out as follows:
- (a) clause 1.34 is to commence upon publication of Version 2 of the *Motor Accident Guidelines: Determination of insurance premiums for taxis and hire vehicles*, and before then, clause 1.34 in Version 7 applies.
  - (b) clause 1.41 is to commence upon publication of Version 2 of the *Motor Accident Guidelines: Determination of insurance premiums for taxis and hire vehicles*, and before then, clause 1.41 in Version 7 applies.
  - (c) all remaining clauses commence upon publication of this Version 8.2 of the Motor Accident Guidelines.

### Issues considered by the Committee

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

##### *Privacy – surveillance of claimants with mental health conditions*

- 4.5 The Guidelines update the clauses in respect to the conduct of surveillance under Part 4 of the previous Version. Specifically, it inserts clause 4.146 which states:

Where the insurer becomes aware that a person has a mental health condition, surveillance of that person is only permitted if the insurer:

- (a) clearly identifies any mental health conditions in the request for surveillance
- (b) develops a risk management plan assessing the mental health conditions and identifying risk mitigation strategies that reduce the potential for impact on these conditions, and ensures that surveillance is conducted in line with this plan.
  - Risk mitigation strategies may include, but are not limited to, restriction of mobile forms of surveillance and greater use of static or passive forms of surveillance, use of multiple investigators and/or increased rotation of investigators, consideration of investigator characteristics (for example, gender), and reduction of surveillance hours.
  - *Note:* Insurers have obligations under the *Privacy Act 1988 (Cth)* and the *Health Records and Information Privacy Act 2002 (NSW)* that must be complied with, including when undertaking investigations through surveillance.

**The Guidelines inserts clause 4.146 into Part 4, which sets out requirements that an insurer must follow in order to conduct surveillance of a person that they are aware has a mental health condition, in respect to a claim for motor accident compensation. This may permit insurers to conduct surveillance of a person with a known mental health condition if the insurer clearly identifies any mental health conditions in their request for surveillance and develops a risk management plan that identifies strategies for mitigating the potential impacts of surveillance on that person.**

The Committee previously reported on the surveillance provisions introduced in Version 5 of the Motor Accident Guidelines, in Digest No. 11/57.<sup>5</sup> Consistent with the Committee's previous comments, surveillance investigations, including the use of video surveillance, may interfere with the privacy of claimants. In the context of persons with mental health conditions, this is of particular concern where the adverse impact of surveillance may also impact a person's mental health condition.

However, the Committee notes that the surveillance of an individual with a known mental health condition may only be permitted in accordance with a risk management plan intended to mitigate the impacts of any surveillance on that condition. Consistent with its previous comments, the Committee also acknowledges the public interest in ensuring that fraudulent claims are not successful. In the circumstances, the Committee makes no further comment.

---

<sup>5</sup> Parliament of New South Wales, Legislation Review Committee, [Legislation Review Digest No. 11/57](#), 24 March 2020.



## 5. Road Transport (General) Amendment Regulation 2022

Date tabled	LA: 7 June 2022 LC: 7 June 2022
Disallowance date	LA: 11 October 2022 LC: 11 October 2022
Minister responsible	The Hon. David Elliot MP, The Hon. Natalie Ward MP, and The Hon. Sam Farraway MLC. <sup>6</sup>
Portfolio	Transport, Metropolitan Roads, Regional Transport

### Purpose and description

- 5.1 The object of this Regulation is to amend the *Road Transport (General) Regulation 2021* to—
- (a) include a bus zone, within the meaning of the *Road Rules 2014*, in the definition of prescribed place for the purposes of the *Road Transport Act 2013* (the **Act**), section 143(12), and
  - (b) remove certain areas of operations of the University of Wollongong from the Schedule of declared organisations, and
  - (c) authorise an additional class of officer to issue penalty notices for certain offences under the *Road Rules 2014* and the Act.

### Issues considered by the Committee

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

##### *Enforcement powers and penalty notices offences*

- 5.2 The Regulation amends Schedule 5 of the *Road Transport (General) Regulation 2021* to allow a Class 10 officer to issue penalty notices for certain penalty notice offences listed in the Schedule. It does so by listing a Class 10 officer as an 'authorised officer' for the purpose of these offences.
- 5.3 Schedule 4 of the *Road Transport (General) Regulation 2021* defines a Class 10 officer as a person:

---

<sup>6</sup> Jointly administered by the Ministers for Transport, Metropolitan Roads and Regional Transport. See [Allocation of the Administration of Acts \(2001 SI 338\)](#).

- (a) who is an authorised person within the meaning of the *Local Government Act 1993* for the purposes of that Act, section 679, meaning:
  - (i) an employee of a council generally or specially authorised by the council in respect of or whose duty it is to deal with, or to act in regard to, any acts, matters or things in relation to which the expression is used, or
  - (ii) a police officer, and
- (b) who is:
  - (i) employed by a local council, or
  - (ii) subject to the control and direction of a local council.

5.4 Pursuant to the Regulation, offences for which a Class 10 officer can issue penalty notices are set out in Parts 7.1 (authorised officers) and 7.2 (identity powers) of the Act:

- (a) under section 169A an authorised officer may, for the purpose of or in connection with exercising other powers under the road transport legislation, give a direction to stop a light vehicle or light combination or not to move or interfere with the vehicle or combination. Contravention of an operative direction incurs a maximum penalty of 60 penalty units (\$6 600).
- (b) under section 175(2)(a) and (b) an authorised officer may, in the execution of their functions under road transport legislation, require the driver or rider of a vehicle or horse to produce their driver's licence (for a driver) and/or state their name. Refusing to do so or stating a false name incurs a maximum penalty of 20 penalty units (\$2 200).
- (c) under section 177(1)(a) a person responsible for, or with custody of, a motor vehicle must immediately give information to an authorised officer, when required by the officer, as to the name and home address of the driver if the driver is alleged to have committed an offence against the road transport legislation. Non-compliance incurs a maximum penalty of 20 penalty units (\$2 200). It is a defence to prosecution if the defendant proves to the court that they did not know and could not with reasonable diligence have ascertained the information.
- (d) under section 177(1)(b) any other person must also, if required by an authorised officer, give any information in their power to give and that may lead to identification of a driver alleged to have committed an offence against the road transport legislation. Non-compliance incurs a maximum penalty of 20 penalty units (\$2 200).

5.5 The Act defines 'road transport legislation' as the Act and its statutory rules, the *Motor Vehicles Taxation Act 1998* and its regulations, and any other Act or statutory rule made under any other Act (or any provision of such an Act or statutory rule) prescribed by the statutory rules.

- 5.6 Pursuant to the Regulation, a Class 10 officer can also issue a penalty notice for non-compliance with rule 292(c) of the *Road Rules 2014*, under which a driver must not drive or tow a vehicle if the vehicle is carrying a load that projects from the vehicle in a way likely to cause injury, obstruction or damage. Contravention incurs a maximum penalty of 20 penalty units (\$2 000).

**The *Road Transport (General) Amendment Regulation 2021* amends Schedule 5 of the *Road Transport (General) Regulation 2021* to allow a Class 10 officer to issue penalty notices for certain penalty notice offences set out in the *Road Rules 2014* and *Road Transport Act 2013* (Act). A Class 10 officer is a person who is an authorised person within the meaning of section 679 of the *Local Government Act 1993* (being an authorised council employee or police officer), and who is employed, or subject to the control or direction of, a local council. This effectively expands the type of authorised officer who can issue on-the-spot fines for contravention of certain penalty notice offences.**

The relevant penalty notice offences include contravention of the requirements of an authorised officer in the exercise of their identity powers under the Act. Specifically, under section 175(2)(a) and (b), the officer may require a person to provide their driver licence (if applicable) and name. Under section 177(1), certain persons must provide information as to the name and home address of a driver alleged to have committed an offence against the road transport legislation. Contravention in each case incurs a maximum penalty of 20 penalty units (\$2 200).

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 acknowledges that the exercise by Class 10 officers of these powers enables efficient enforcement and appears to support the administration road transport legislation. Further, that there is a defence available for an offence under section 177(1)(a), although this defence requires a person to attend court and challenge the penalty notice, which can be timely and costly. In the circumstances, the Committee makes no further comment.

## 6. Roads Amendment (Major Bridges and Tunnels) Regulation (No 2) 2022

Date tabled	LA: 10 May 2022 LC: 10 May 2022
Disallowance date	LA: 13 September 2022 LC: 13 September 2022
Minister responsible	The Hon. Natalie Ward MLC
Portfolio	Metropolitan Roads

### Purpose and description

- 6.1 The object of this Regulation is to amend the *Roads Regulation 2018* to prescribe further major bridges or tunnels for the purposes of the *Roads Act 1993* (the **Roads Act**), section 144G. Section 144G creates an offence for a person who trespasses on a major bridge or tunnel, including by seriously disrupting or obstructing vehicles or pedestrians attempting to use the bridge or tunnel if the person's conduct causes the bridge or tunnel to be closed or vehicles or pedestrians redirected.

### Issues considered by the Committee

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

##### *Freedom of assembly and association*

- 6.2 The Regulation provides that all bridges and tunnels in the Greater Sydney Region, the City of Newcastle, or the City of Wollongong, or a bridge or tunnel that joins a main road, a highway or a freeway, will be deemed major bridges and tunnels for the purposes of section 144G of the Roads Act.
- 6.3 Under section 144G of the Roads Act it is an offence to enter, remain on, climb, jump from or otherwise trespass on any part of the Sydney Harbour Bridge or any other major bridge or tunnel or road if that conduct causes damage or seriously disrupt or obstructs vehicles or persons. This offence carries a maximum penalty of 200 penalty units or 2 years imprisonment, or both.

**The Regulation provides that all bridges and tunnels in the City of Newcastle, or the City of Wollongong, or a bridge or tunnel that joins a main road, a highway or a freeway, will be deemed major bridges and tunnels for the purposes of section 144G of the Roads Act. This is in addition to bridges and tunnels in the Greater Sydney region already included in the Regulation. Under subsection 144G(1), it is an offence to enter, remain on, climb, jump from or otherwise trespass on any part of a major bridge or tunnel if that conduct:**

- a) causes damage to the bridge or tunnel, or

- b) seriously disrupts or obstructs vehicles or pedestrians attempting to use the bridge or tunnel.**

The maximum penalty for a breach of subsection 144G(1) is 200 penalty units (\$22 000) or imprisonment for two years, or both.

The expansions of this definition limits certain actions of individuals in these locations and may impact on freedom of movement and assembly in the new areas prescribed by the Regulation. These rights that are contained in Articles 21 and 22 of the ICCPR. The right to freedom of assembly protects the freedom of individuals and groups to meet and engage in peaceful protest. However, the ICCPR recognises that derogation from these rights may be warranted in certain circumstances, including to protect public health and safety.

The Committee notes that the offences in the *Roads Act* do provide a number of safeguards, including that the amendments do not prohibit conduct undertaken in accordance with the consent of Transport for NSW, the NSW Police Force or another public authority. Under section 144G of the Bill, NSW Police may give authorisation for protests or similar action, which would therefore be exempted from prosecution.

It is also a defence to prosecution under section 144G of the *Roads Act* if the person charged proves that they had a reasonable excuse for the conduct concerned. For example, subsection (5) provides that it is a reasonable excuse if the conduct arose from a mechanical fault or breakdown of a motor vehicle. Under the *Roads Act*, a person does not commit an offence if the conduct forms part of an industrial action, thereby exempting workers who may undertake protest and other industrial action at a major facility that is their workplace.

The Committee notes that potential limits on movement and assembly may be of particular interest to the public, and notes the significance of the penalties that can be imposed in event of a breach of the *Roads Act*, including imprisonment. In these circumstances, the Committee refers the matter to Parliament for its consideration.

## 7. Work Health and Safety Amendment (Food Delivery Riders) Regulation 2022

Date tabled	LA: 10 May 2022 LC: 10 May 2022
Disallowance date	LA: 13 September 2022 LC: 13 September 2022
Minister responsible	The Hon. Eleni Petinos MP
Portfolio	Fair Trading

### Purpose and description

7.1 The object of this Regulation is to regulate food delivery service work by requiring—

- (a) a food delivery booking provider to supply a food delivery rider with the following—
  - (i) high-visibility personal protective equipment, including a retroreflective outer clothing item and a bag or container for safely transporting food or drink,
  - (ii) induction training and verification when the training is successfully completed to ensure that the food delivery rider is trained before delivering food or drink, and
- (b) a food delivery booking provider to keep records, and
- (c) a food delivery rider to keep evidence of successful completion of induction training available for immediate inspection while delivering food or drink.

7.2 This Regulation is made under the *Work Health and Safety Act 2011*, including section 276, 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

##### *Penalty notice offences – right to a fair trial*

7.3 The Regulation amends the *Work Health and Safety Regulation 2017* to enable a penalty notice to be issued to an individual or body corporate that employs food delivery riders for the following offences:

- (a) failure to supply personal protective equipment (clause 184Q)
- (b) failure to provide food delivery induction training (clause 184R)

- (c) failure to ensure a food delivery rider has been trained (clause 184S)
- (d) failure to keep records (clause 184T)
- (e) failure to give records to a regulator (clause 184T)

- 7.4 The Regulation also inserts a new clause 184U that enables a penalty notice to be issued to a food delivery rider who fails to make their training verification information available to an inspector or police office, or fails to use or wear their hi-vis personal protective equipment.
- 7.5 The maximum penalty that can be issued for a contravention of these provisions is \$720 for an individual, and \$3 600 for a body corporate.
- 7.6 The Regulation also provides that, in the event a penalty notice is not issued or is challenged, the maximum penalty available for food delivery booking providers is 70 penalty units (\$7 700) for an individual, and 345 penalty units (\$37 950) for a body corporate. The maximum penalty for food delivery riders is 15 penalty units (\$1 650).

**The *Work Health and Safety Amendment (Food Delivery Riders) Amendment 2022* inserts a number of new offences into Schedule 18A, penalty notice offences. These new offences relate to the provision of safety equipment and training to food delivery riders, and the creation of related records. Penalty notices that can be issued to food delivery booking providers in relation to these offences are \$720 for an individual, or \$3 600 for a body corporate. The penalty notices that can be issued to food delivery riders are \$144.**

**The Regulation also provides that (in the event a penalty notice is not issued or is challenged) the maximum penalty available for food delivery booking providers is 70 penalty units (\$7 700) for an individual, and 345 penalty units (\$37 950) for a body corporate.**

**As the Committee has previously noted, penalty notices allow an individual to pay a specified monetary amount and in some circumstances may elect to have the matter heard by a court. This may impact 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 acknowledges individuals and body corporates retain the right to elect to have their matter heard and decided by a Court, and the Regulation does not remove this right. 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. As the Regulation does not remove a person's right to elect to have the matter heard by a court, and given the practical benefits of penalty notices, particularly in the circumstances where compliance is designed to improve safety for delivery riders, the Committee makes no further comment.**

*Privacy – providing personal information*

- 7.7 The Regulation inserts clause 184U(1), which provides that a food delivery driver must provide their training verification record (issued to them by the food delivery booking provider) for inspection by an inspector or a police officer if requested. Failing to do so carries a maximum penalty of 15 penalty units (\$1 650) or a penalty notice of \$144 may be issued.
- 7.8 Training verification records may include a food delivery riders name, and the timing and nature of the training that was provided to them.

**The Regulation inserts a new clause 184U to the *Work Health and Safety Regulation 2017* which requires food delivery riders to present their training verification records to a police office or inspector on request. The Regulation may therefore impact on the privacy right of affected individuals, who may now be asked to reveal their personal information.**

**However, the Committee notes that without these provisions, the requirement for riders to carry their training verification records would be unenforceable. Further, while this may impact on the rider's privacy, the information contained in training verification records is a fairly narrow range. As such, the Committee makes no further comment.**



## Appendix One – Functions of the Committee

The functions of the Legislation Review Committee are set out in the *Legislation Review Act 1987*:

### **8A Functions with respect to Bills**

- (1) The functions of the Committee with respect to Bills are:
  - (a) to consider any Bill introduced into Parliament, and
  - (b) to report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:
    - (i) trespasses unduly on personal rights and liberties, or
    - (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
    - (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
    - (iv) inappropriately delegates legislative powers, or
    - (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny.
- (2) A House of Parliament may pass a Bill whether or not the Committee has reported on the Bill, but the Committee is not precluded from making such a report because the Bill has been so passed or has become an Act.

### **9 Functions with respect to regulations**

- (1) The functions of the Committee with respect to regulations are:
  - (a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,
  - (b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:
    - (i) that the regulation trespasses unduly on personal rights and liberties,
    - (ii) that the regulation may have an adverse impact on the business community,
    - (iii) that the regulation may not have been within the general objects of the legislation under which it was made,

- (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,
  - (v) that the objective of the regulation could have been achieved by alternative and more effective means,
  - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,
  - (vii) that the form or intention of the regulation calls for elucidation, or
  - (viii) that any of the requirements of sections 4, 5 and 6 of the [Subordinate Legislation Act 1989](#), or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and
- (c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.
- (1A) The Committee is not precluded from exercising its functions under subsection (1) in relation to a regulation after it has ceased to be subject to disallowance if, while it is subject to disallowance, the Committee resolves to review and report to Parliament on the regulation.
- (2) Further functions of the Committee are:
- (a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and
  - (b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.
- (3) The functions of the Committee with respect to regulations do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

## Appendix Two – Regulations without papers

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

### 1. [Children’s Guardian Regulation 2022](#)

The objects of this Regulation are as follows—

- (a) to provide for the Children’s Guardian to keep a register of residential care workers (the *register*),
- (b) to require residential care providers to—
  - record information on the register about applicants applying for positions as residential care workers, and
  - conduct certain checks about the applicants, and
  - update the register to record reportable allegations about residential care workers,
- (c) to extend the requirement for residential care providers to record information on the register to include information about—
  - existing workers, and
  - existing applicants,
- (d) to prescribe the persons who may deal with information for keeping the register,
- (e) to prescribe certain persons as the head of a relevant entity for the reportable conduct scheme administered by the Children’s Guardian.

The Regulation prescribe matters delegated under the *Children’s Guardian Act 2012* in respect to the maintenance, updating and accessing of the residential care workers register. It also makes exemptions to requirements for register checks in circumstances of emergency authorisations or for caseworkers at the discretion of the Secretary.

### 2. [Civil and Administrative Tribunal \(Amendment No 8\) Rule 2022](#)

The object of this Rule is to enable the Tribunal to provide that the means by which documents may be served, given and lodged with the Tribunal include means other than electronic means.

### 3. [Community Land Management Amendment \(COVID-19\) Regulation 2022](#)

The object of this Regulation is to provide for the following matters under the Community Land Management Act 2021 for the purpose of responding to the public health emergency caused by the COVID-19 pandemic—

- a) altered arrangements for voting at meetings of an association or association committee,
- b) allowing instruments and documents, instead of being affixed with the seal of an association in the presence of certain persons, to be signed, and the signatures to be witnessed, by those persons.

4. [District Court Criminal Practice Note 27 – Jury Trials and Judge Alone Trials](#)

This Practice Note provides information about compliance with public health measures related to the COVID-19 pandemic when attending court proceedings, and the associated procedural requirements.

5. [Heavy Vehicle \(Adoption of National Law\) Amendment Regulation 2022](#)

The object of this Regulation is to modify the application of the Heavy Vehicle (Vehicle Standards) National Regulation (the National Regulation) in New South Wales to allow for an exemption from compliance with an Australian Design Rule, applied under the National Regulation.

The exemption relates to the width of particular bus seats if the seats meet certain criteria. This Regulation is made under the Heavy Vehicle (Adoption of National Law) Act 2013, including section 28.

6. [Local Land Services Amendment Regulation 2022](#)

The objects of this Regulation are—

- (a) to clarify the application process for certain stock permits in circumstances where the fee for the permits is determined through an acquisition process approved by Local Land Services, and
- (b) to specify conditions relating to insurance that may be imposed on a stock permit or a reserve use permit.

7. [Long Service Leave Amendment \(Regulatory Reform\) Regulation 2022](#)

The object of this Regulation is to prescribe the way in which an employer must keep long service leave records for workers employed by the employer. This regulation is made under the *Long Service Leave Act 1955*, sections 8 and 15 (the general regulation-making power).

8. [Major Events Amendment \(UCI Road World Championships\) Regulation 2022](#)

This Regulation declares the 2022 Union Cycliste Internationale Road World Championships, to be held in the City of Wollongong, as a major event for the Major Events Act 2009.

The Regulation provides for the following—

- a) the major event periods,
- b) major event venues or facilities,
- c) the provisions of the Major Events Act 2009, Part 4 that apply in relation to the major event,
- d) the responsible authority for the major event,
- e) the sales control period for the major event during which the sale or distribution of articles is restricted in controlled areas,
- f) an additional class of persons who may be authorised to enforce restrictions on the sale or distribution of articles,
- g) exemptions from the prohibition of certain advertising in sites in or around major event venues and facilities (advertising controlled sites),

- h) a prohibition on advertising in certain airspace (advertising controlled airspace) except with the approval of the responsible authority,
- i) the process of applying to the responsible authority for authorisations to sell or distribute articles in an area where restrictions are in place,
- j) an expiry date for the modification of environmental planning instruments and development consents,
- k) the period during which a prohibition on using land within 5km of any major event venue or facility for the purpose of a car park in certain circumstances is in effect (the parking control period),
- l) an additional class of persons to whom the responsible authority may delegate its functions in relation to determining applications referred to in paragraph (h).

This Regulation is made under the Major Events Act 2009, including section 72, the general regulation-making power.

9. [Personal Injury Commission \(Amendment No 1\) Rule 2022](#)

The object of this Rule is to amend the Personal Injury Commission Rules 2021 to—

- (a) update requirements relating to the lodgment of documents and surveillance recordings, and
- (b) specify the procedure for determining an extension of the time within which specified applications under certain Acts may be made, and
- (c) make other minor and miscellaneous updates

10. [Poisons and Therapeutic Goods Amendment \(Prescription Requirements\) Regulation 2022](#)

The objects of the *Poisons and Therapeutic Goods Amendment (Prescription Requirements) Regulation 2022* (Regulation) are to—

- a) require the patient's date of birth to be included on prescriptions for restricted substances and drugs of addiction, and
- b) further provide for the information to be recorded in the monitored medicines database, and
- c) make provision for the secure storage of propofol on hospital wards, and
- d) reduce the minimum age at which a person may receive certain vaccines from a suitably qualified pharmacist from 16 years of age to 12 years of age.

The Regulation also expands the list of vaccines which may be supplied without a prescription by a pharmacist, including the SARS-CoV-2 (COVID-19) vaccine.

The Regulation is made under sections 17, 24 and 45C of the *Poisons and Therapeutic Goods Act 1966* (Act) and commences on the date of publication, except for Schedule 1.2 which commences on 1 November 2022.

#### 11. Referrable Debt Order (2002-227)

Pursuant to section 7(2) of the State Debt Recovery Act 2018, the act of grace payments made by the Government which are recoverable under section 5.7(3) of the Government Sector Finance Act 2018 for the following purposes are declared to be referable debts:

- (a) Back Home Program
- (b) Rental Support Payment Program
- (c) \$10 000 Small Business Norther Flood Grant
- (d) Australian Government HomeBuilder Grant.

#### 12. Rural Fires Regulation 2022

The object of this Regulation is to remake, with minor amendments, the *Rural Fires Regulation 2013*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

The Regulation makes provision for the following—

- (e) membership of rural fire brigades and the constitutions of the brigades,
- (f) disciplinary action against officers and members of rural fire brigades and groups of rural fire brigades,
- (g) the constitution, membership and procedure of Bush Fire Management Committees,
- (h) fire prevention,
- (i) the giving of notices required under the *Rural Fires Act 1997*,
- (j) other matters relating to bravery and service awards, voluntary work, managed land, fire permit conditions, bush fire prone land, bush fire hazard reduction, bush fire safety authorities, bush fire hazard reduction certificates and penalty notices.

The Regulation substantially remakes the *Rural Fires Regulation 2013* and makes only style or linguistic changes to its previous iteration.

#### 13. Strata Schemes Management Amendment (COVID-19) Regulation 2022

The object of this Regulation is to provide for the following matters under the Strata Schemes Management Act 2015 for the purpose of responding to the public health emergency caused by the COVID-19 pandemic—

- a) altered arrangements for voting at meetings of an owners corporation or a strata committee,
- b) allowing instruments and documents, instead of being affixed with the seal of an owners corporation in the presence of certain persons, to be signed, and the signatures to be witnessed, by those persons.

14. [Trans-Tasman Mutual Recognition \(New South Wales\) Temporary Exemptions Regulation 2022](#)

The object of this Regulation is to declare certain provisions of the Plastic Reduction and Circular Economy Act 2021, including the regulations made under that Act, to be exempt from the Trans-Tasman mutual recognition scheme for goods.

The mutual recognition scheme provides generally that goods that may lawfully be sold in New Zealand may also be sold in New South Wales without the necessity for compliance with certain requirements imposed on the goods in New South Wales.

The exemption—

- a) is substantially for the purpose of preventing, minimising or regulating environmental pollution, and
- b) will expire on 1 June 2023.

This Regulation comprises or relates to matters set out in the Subordinate Legislation Act 1989, Schedule 3, being matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth and other States.

## Appendix Three – Letters received from Ministers and Members responding to the Committee's Comments (23 November 2021 – 14 June 2022)

*Note: this index lists responses received to the Committee's comments on bills and regulations since Digest No. 38/57 - (23 November 2021). All responses are published to the [Committee's website](#) on an ongoing basis as resolved by the Committee and hyperlinked below.*

<b>No.</b>	<b>Digest Number</b>	<b>Minister/Member and Date of Letter</b>	<b>Bills/Regulations Covered by Letter</b>
1.	<a href="#">31/57</a>	The Hon. Mark Speakman SC MP – 24 December 2021	<i>Mental Health and Cognitive Impairment Forensic Provisions Regulation 2021</i>
2.	<a href="#">33/57</a>	The Hon. Rob Stokes MP – 17 December 2021	<i>Crown Land Management (Plan of Management) Regulation 2021</i>
3.	<a href="#">34/57</a>	The Hon. Sarah Mitchell MLC – 15 December 2021	<i>Education and Care Services National Amendment Regulations 2021</i>
4.	<a href="#">35/57</a>	The Hon. Matt Kean MP – 23 November 2021	<i>Energy Legislation Amendment Bill 2021</i>
5.	<a href="#">36/57</a>	The Hon. Alister Henskens SC MP – 7 December 2021	<i>National Disability Insurance Scheme (Worker Checks) Amendment Regulation 2021</i>
6.	<a href="#">36/57</a>	The Hon. Paul Toole MP – 15 December 2021	<i>Mining Amendment (Standard Conditions of Mining Leases - Rehabilitation) Regulation 2021</i>



LETTERS RECEIVED FROM MINISTERS AND MEMBERS RESPONDING TO THE COMMITTEE'S COMMENTS  
(23 NOVEMBER 2021 – 14 JUNE 2022)

No.	Digest Number	Minister/Member and Date of Letter	Bills/Regulations Covered by Letter
7.	<a href="#">36/57</a>	The Hon. Victor Dominello MP – 16 December 2021	<i>Customer Service Legislation Bill 2021</i>
8.	<a href="#">36/57</a>	The Hon. Mark Speakman SC MP – 30 December 2021	<i>Crimes Legislation Amendment Bill 2021</i> <i>Crimes Legislation Amendment (Sexual Consent Reforms) Bill 2021</i> <i>Graffiti Control Regulation 2021</i>
9.	<a href="#">36/57</a>	Mr Marcus Ray on behalf of the Hon. Rob Stokes MP – 27 January 2022	<i>Environmental Planning and Assessment Amendment (Compliance Fees) Regulation 2021</i>
10.	<a href="#">36/57</a>	The Hon. Adam Marshall MP – 14 December 2021	<i>Animal Research Regulation 2021</i>
	<a href="#">37/57</a>		<i>Exhibited Animals Protection Regulation 2021</i>
11.	<a href="#">37/57</a>	The Hon. Brad Hazzard MP – 7 December 2021	<i>Public Health Amendment (COVID-19 Penalty Notice Offences) Regulation (No 2) 2021</i> <i>Public Health Amendment (COVID-19 Penalty Notice Offences) Regulation (No 3) 2021</i> <i>Public Health Amendment (COVID-19 Penalty Notice Offences) Regulation (No 4) 2021</i> <i>Public Health Amendment (COVID-19) Regulation 2021</i>

LEGISLATION REVIEW COMMITTEE

LETTERS RECEIVED FROM MINISTERS AND MEMBERS RESPONDING TO THE COMMITTEE'S COMMENTS  
(23 NOVEMBER 2021 – 14 JUNE 2022)

No.	Digest Number	Minister/Member and Date of Letter	Bills/Regulations Covered by Letter
12.	<a href="#">37/57</a>	The Hon. Kevin Anderson MP – 15 December 2021	<p><i>Community Land Management Regulation 2021</i></p> <p><i>Residential Tenancies Amendment (COVID-19 Pandemic Emergency Response) Regulation (No 2) 2021</i></p> <p><i>Strata Schemes Management Amendment (COVID-19) Regulation (No 2) 2021</i></p> <p><i>Strata Schemes Management Amendment (Pets) Regulation 2021</i></p>
13.	<a href="#">37/57</a>	The Hon. Mark Speakman SC MP – 16 December 2021	<p><i>Crimes Legislation Amendment (Loss of Foetus) Bill 2021</i></p> <p><i>District Court Criminal Practice Note 19</i></p> <p><i>District Court Criminal Practice Note 22</i></p> <p><i>District Court Criminal Practice Note 23</i></p> <p><i>Drug Misuse and Trafficking Regulation 2021</i></p> <p><i>Practice Note DC (Civil) No. 16</i></p> <p><i>Stronger Communities Legislation Amendment (COVID-19) Regulation 2021</i></p> <p><i>Terrorism (Police Powers) Regulation 2021</i></p>
14.	<a href="#">37/57</a>	The Hon. Victor Dominello MP – 17 December 2021	<p><i>Service NSW (One-Stop Access to Government Services) Act Amendment (COVID-19 Information Privacy) Bill 2021</i></p>
15.	<a href="#">37/57</a>	Ms Denise Ora on behalf of the Hon. Rob Stokes MP – 12 January 2022	<p><i>Greater Sydney Parklands Trust Bill 2021</i></p>

LETTERS RECEIVED FROM MINISTERS AND MEMBERS RESPONDING TO THE COMMITTEE'S COMMENTS  
(23 NOVEMBER 2021 – 14 JUNE 2022)

No.	Digest Number	Minister/Member and Date of Letter	Bills/Regulations Covered by Letter
16.	<a href="#">37/57</a>	The Hon. Matt Kean MP – 9 March 2022	<i>Gaming Machine Tax Amendment (Promotional Prizes) Bill 2021</i>
17.	<a href="#">38/57</a>	The Hon. Victor Dominello MP – 17 January 2022	<i>Licensing and Registration (Uniform Procedures) Amendment Bill 2021</i>  <i>Workers Compensation Amendment Bill 2021</i>
18.	<a href="#">39/57</a>	The Hon. James Griffin MP – 23 March 2022	<i>Environment Legislation Amendment Bill 2021</i>
19.	<a href="#">39/57</a>	The Hon. Victor Dominello MP – 24 March 2022	<i>Electronic Conveyancing (Adoption of National Law) Amendment Bill 2022</i>
20.	<a href="#">39/57</a>	The Hon. Anthony Roberts MP – 13 April 2022	<i>Environmental Planning and Assessment Amendment (Owner's Consent and BASIX Certificates) Regulation 2021</i>  <i>Environmental Planning and Assessment Amendment (Short-term Rental Accommodation) Amendment Regulation (No 2) 2021</i>
21.	<a href="#">39/57</a>	The Hon. Matt Kean MP – 21 April 2022	<i>COVID-19 and Other Legislation Amendment (Regulatory Reforms) Bill 2022</i>
22.	<a href="#">39/57</a>	The Hon. Matt Kean MP – 22 April 2022	<i>Electricity Infrastructure Investment Amendment (Safeguard) Regulation 2021</i>
23.	<a href="#">40/57</a>	The Hon. Stuart Ayres MP – 29 March 2022	<i>Major Events Amendment Bill 2022</i>  <i>Motor Sports Bill 2022</i>
24.	<a href="#">40/57</a>	The Hon. James Griffin MP – 11 May 2022	<i>Pesticides Amendment Regulation 2021</i>

LEGISLATION REVIEW COMMITTEE

LETTERS RECEIVED FROM MINISTERS AND MEMBERS RESPONDING TO THE COMMITTEE'S COMMENTS  
(23 NOVEMBER 2021 – 14 JUNE 2022)

No.	Digest Number	Minister/Member and Date of Letter	Bills/Regulations Covered by Letter
25.	<a href="#">40/57</a>	The Hon. Anthony Roberts MP – 12 May 2022	<i>Environmental Planning and Assessment Amendment (Housing) Regulation 2021</i>
26.	<a href="#">40/57</a>	The Hon. Gabrielle Upton MP on behalf of the Hon. Dominic Perrottet MP – 30 May 2022	<i>Electoral Amendment (COVID-19) Regulation 2021</i> <i>Electoral Amendment (COVID-19) Regulation 2022</i>
27.	<a href="#">41/57</a>	The Hon. Mark Pearson MLC – 14 April 2022	<i>Biodiversity Conservation Amendment (Kangaroo Protection) Bill 2022</i>
28.	<a href="#">41/57</a>	The Hon. Kevin Anderson MP – 28 April 2022	<i>Crown Land Management Amendment (Reserve Trusts) Regulation (No 3) 2021</i>
29.	<a href="#">43/57</a>	The Hon. Victor Dominello MP - 10 June 2022	<i>Government Telecommunications Amendment Bill 2022</i>