Legislation Review Committee

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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”.

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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. CRIMES LEGISLATION AMENDMENT (ASSAULTS ON FRONTLINE EMERGENCY AND HEALTH WORKERS) BILL 2022

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

2. CRIMES (SENTENCING PROCEDURE) AMENDMENT BILL 2022

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

Retrospectivity

The Bill inserts section 21B into the *Crimes (Sentencing Procedure) Act 1999*, which provides that a court must sentence an offender in accordance with the sentencing patterns and practices at the time of sentencing. Currently, courts impose sentences according to the patterns and procedures at the time the offence was committed. This may create provisions with retrospective effect that apply to offences that were committed before this provision has been enacted and thereby impact the key principle of the rule of law, being that a person should be able to know the law and penalties that they are subject to at any one time.

The Bill provides certain limitations on the application of its retrospective provisions. For example, applying the standard non-parole period as at the offence was committed, rather than the standard non-parole period as at the time of sentencing. A court may also sentence an offender for an offence in accordance with the sentencing patterns and practices at the time the offence was committed if the offence is not a child sexual offence, and the offender establishes that there are exceptional circumstances. Additionally, when varying or substituting a sentence, a court must vary or substitute the sentence in accordance with the sentencing patterns and practices at the time of the original sentencing.

The Committee recognises the intention of the Bill to align sentencing patterns and procedures with the current public expectations and in accordance with the recommendations of the report of the Royal Commission into Institutional Responses to Child Sexual Abuse. Specifically, the recommendation that sentences for child sexual abuse offences should be set in accordance with the sentencing standards at the time of sentencing instead of at the time of offending.

As the Bill deals with sentences for the imprisonment of individuals, and that it has retrospective application to offences that occurred before its commencement, the Committee refers the provision to the Parliament for consideration.

3. HEALTH LEGISLATION (MISCELLANEOUS) AMENDMENT BILL (NO 2) 2022

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

Ill-defined power – admission of evidence seized under a search warrant

The Bill amends Schedule 1[25] of the Health Practitioner Regulation (Adoption of National Law) Act 2009 to insert provisions applicable to disciplinary proceedings before a professional standards committee or the NSW Civil and Administrative Tribunal concerning a complaint against a registered health practitioner. Specifically, it allows a Committee or the Tribunal to

admit into evidence, on production to them, anything seized under a search warrant where the Committee or Tribunal thinks it is relevant to the proceedings.

The Bill might therefore grant relevant professional standards committees and NCAT a wide and ill-defined power. This power may impact a person's right to procedural fairness as it would permit evidence obtained under a search warrant not connected to the proceedings at hand and the only limitation on this power is a discretionary one concerning relevance.

The Committee notes that this power would only operate in disciplinary proceedings that could result in a registered health practitioner being ordered to pay compensation or being deregistered and therefore prohibited from providing healthcare services. It also notes that the standard of proof in these proceedings is lower than that for criminal proceedings, being the balance of probabilities.

However, the Committee notes that the paramount consideration in respect to professional standards of health practitioners, given the vulnerability of healthcare patients, is public safety. It acknowledges that it is in the public interest for adjudicators of complaints against health practitioners to be able to access all relevant materials that may involve those practitioners, particularly where that evidence concerns serious criminal matters. In the circumstances, the Committee makes no further comment.

4. INDUSTRIAL RELATIONS AMENDMENT (DISPUTE ORDERS) BILL 2022

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

Retrospectivity

The amendments made by the Bill, which include an increase of financial penalties and the provision that the Supreme Court can make costs order in regards to industrial proceedings including proceedings for a contravention of a dispute order, will apply to proceedings for any contraventions of dispute orders that occur on or after the commencement of this clause, even if the relevant dispute order was made before the commencement of the Bill.

The Committee generally comments on retrospectivity as it runs counter to the rule of law principle that people are entitled to know the law to which they are subject at any given time. This is particularly the case where a Bill seeks to retrospectively impose increased or different penalties.

The Committee notes that the Bill will apply to dispute orders that were imposed prior to the date of commencement. This means that parties may have dispute orders imposed with an expectation that alternative penalties may apply if that order was contravened. However, the Committee further notes that the increased penalties and imposition of costs orders will only apply to contraventions that occur after the commencement of the Bill, and therefore the effect of the retrospectivity may be reduced. In the circumstances, the Committee makes no further comment.

5. PREVENTION OF CRUELTY TO ANIMALS AMENDMENT (ANIMAL SENTIENCE) 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*.

6. ROAD TRANSPORT AMENDMENT (PROHIBITION OF U-TURNS AND 3-POINT TURNS IN SCHOOL ZONES) BILL 2022*

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

Strict liability offence

The Bill amends the *Road Rules 2014* to prohibit U-turns and 3-point turns within school zones. The maximum penalty for not complying with this provision is 20 penalty units ($2 200). The Committee notes that this amounts to a strict liability offence. The Committee generally comments on strict liability offences as they depart from the common law principle that the mens rea or mental element is a necessary part of liability for an offence.

However, the Committee notes that strict liability offences are not uncommon in regulatory settings, such as road rules, to promote compliance and strengthen offence provisions. The Committee also notes that the maximum penalty is not overly significant and is monetary only, not custodial. The Bill also contains additional provisions that permit U-turns and 3-point turns if there are specific school traffic management plans for the school zone where it is safe to do so, or if there is a written agreement between the NSW Police Local Area Commander and the school administration authority. In these circumstances, the Committee makes no further comment.

7. SCRAP METAL INDUSTRY AMENDMENT (REVIEW) BILL 2022

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

Reversed onus of proof

Section 4A creates a rebuttable presumption that a person who deals in scrap metal on more than a prescribed number of days in a 12-month period is carrying on a scrap metal business. The prescribed period is specified in clause 4 of the Regulation as being 6 days.

Under section 5, an individual carrying on a scrap metal business without the required registration may incur a maximum penalty of 500 penalty units ($55 000). A rebuttable presumption means that the onus of proof is placed on the defendant to prove that they were not carrying on the scrap metal business, as opposed to the prosecution being required to prove that the business was being carried on.

In regards to these offences, a reverse onus may undermine a person's right to the presumption of innocence as contained in Article 14 of the ICCPR. The right to the presumption of innocence protects an accused person's privilege to be presumed innocent until proven guilty according to law. However, the Committee notes that the onus for proving the factual circumstance of these offences (that there were 6 days where a scrap metal business was being carried on) is still primarily on the prosecution. Additionally, the reversed onus provides a defence for the accused persons to prove that their conduct was justified. In the circumstances, the Committee makes no further comment.

Privacy

Proposed section 24A provides that the Commissioner may publish and provide members of the public with information contained in the Contraventions Register. The Contraventions Register contains information about convictions for offences and penalty notices issued under the Act or regulations, and may include personal information. The publication or release of personal information may impact upon the privacy of those individuals to which the personal information relates. This is particularly the case where that information details offences committed by those individuals.

The Committee notes that information in regards to penalty notices cannot be published or provided if the penalty notice is unresolved (which includes remaining unpaid). The Committee also notes that information about offences under the Act or regulations may also already exist in the public domain due to the publication of court documents. In the circumstances, the Committee makes no further comment.

Retrospectivity

The Bill provides at section 24A that the Commissioner may create a Contraventions Register that contains information, including personal information, in relation to offences and penalty notices issued under the Act and associated regulations. Under section 24B of the Bill, the Commissioner may publish this information or release it to the public with some limitations. The Bill also inserts a new clause 11 into the regulation which provides that the Contraventions Register may contain information obtained by the Commissioner prior to commencement of the Bill.

The Committee generally comments on retrospectivity as it runs counter to the rule of law principle that people are entitled to know the law to which they are subject at any given time. This is particularly the case where a Bill seeks to provide for the retrospective release of personal information, which may have an impact on individual's privacy.

The Committee recognises that the information that may be released is largely in relation to offences, which are generally already made public by the judicial process. The Committee further notes there are limitations on information that can be released in relation to penalty notices and that the retrospectivity does not serve to impose further penalties. However, considering that the information that may be released is personal information, the Committee refers this issue to Parliament for consideration of whether the Bill unreasonably applies retrospectively.

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

Matters deferred to the regulations; discretionary powers

The Committee generally prefers substantive clauses to be set out in the Act where they can be subject to a greater level of parliamentary scrutiny, particularly where the rights or obligations of individuals may be affected such as by way of having their scrap metal business registration refused, revoked or suspended.

The Committee notes that the criteria by which the Commissioner may decide to refuse, revoke or suspend the registration of a scrap metal business are detailed in the regulations. Further, the regulations provide the Commissioner with the discretionary power to refuse, revoke or suspend a business registration if they believe on reasonable grounds that an offence under the Act or regulations has or may occur.

However the Committee also notes that regulations are still subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987*.

The Committee notes that the criteria for refusing, revoking or suspending a scrap metal business licence include the Commissioner believing on reasonable grounds that an offence may occur. Therefore, the matters deferred to the regulations by section 11A of the Bill may have an impact on the rights of individuals to carry out a lawful business. Considering these circumstances, the Committee refers the matter to Parliament for its consideration.

8. WORKERS' COMPENSATION (DUST DISEASES) 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*.

PART TWO – REGULATIONS

1. WATER MANAGEMENT (GENERAL) AMENDMENT (FLOODPLAIN HARVESTING ACCESS LICENCES) REGULATION 2022; WATER MANAGEMENT (GENERAL) AMENDMENT REGULATION (NO 2) 2022

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

Strict liability offence

The *Water Management (General) Amendment Regulation (No 2) 2022* inserts Division 3C into Part 10 of the *Water Management (General) Regulation 2018*. Clause 238P establishes that a 'duly qualified' person under Division 3C commits a strict liability offence if they fail to comply with the requirements of their role under that Division. This offence carries a maximum penalty of $2 200. The Committee generally comments on strict liability offences as they depart from the common law principle that mens rea, or the mental element, is a relevant factor in establishing liability for an offence.

However, the Committee notes that strict liability offences are not uncommon in regulatory settings to encourage compliance with their obligations as duly qualified persons. It also notes that the maximum penalty for the offence is monetary, not custodial. In the circumstances, the Committee makes no further comment.

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

Significant matters not subject to parliamentary scrutiny – models published on departmental website

The *Water Management (General) Amendment (Floodplain Harvesting Access Licences) Regulation 2022* inserts Part 2A into the *Water Management (General) Regulation 2018*, to enable the Minister to issue replacement floodplain harvesting access licences. In determining the share component allowed under those licences, clause 23G requires the Minister to consider models for water sources which they are also required to publish on the website.

Unlike regulations, there is no requirement for these models to be tabled in Parliament and subject to disallowance under section 41 of the *Interpretation Act 1987*. To foster an appropriate level of parliamentary oversight, the Committee usually prefers for these considerations to be included in regulations, not in separate models published online.

However, the Committee acknowledges that the nature of water modelling may require frequent revisions which could create significant administrative burden if they were to be incorporated into regulations. In the circumstances, the Committee makes no further comment.

Henry VIII clauses

The *Water Management (General) Amendment Regulation (No 2) 2022* inserts a number of provisions into the *Water Management (General) Regulation 2018*, under regulation-making powers set out in sections 91B and 400 of the *Water Management Act 2000*. These provisions would exempt certain specified activities or classes of approval holders from offence provisions set out under the Act intended to discourage non-compliance with water allocations under access licences.

The Regulation therefore may amend the operation of the statutory provisions set out in the *Water Management Act 2000*, by way of Henry VIII clauses contained in the Act. The Committee generally prefers provisions which amend the application of an Act of Parliament to be effected by an amending Bill, rather than subordinate legislation. This is to foster a greater level of parliamentary oversight over the changes.

However, the Committee notes that it may be more administratively efficient to proceed by regulation when extending exemptions to offence provisions, particularly where these offences may carry significant monetary penalties and potentially custodial penalties for individuals. It further acknowledges that regulations must be tabled in Parliament and they are subject to disallowance under section 41 of *the Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

Part One – Bills

1. Crimes Legislation Amendment (Assaults on Frontline Emergency and Health Workers) Bill 2022

Date introduced	10 August 2022
House introduced	Legislative Assembly
Minister responsible	The Hon. Mark Speakman SC MP
Portfolio	Attorney General

Purpose and description

1.1 The objects of this Bill are—

(a) to amend the *Crimes Act 1900* to create new offences in relation to assaults on, and other actions in relation to, law enforcement officers and frontline emergency and health workers and persons who come to the aid of law enforcement officers,

(b) to amend the *Criminal Procedure Act 1986* and certain other Acts as a consequence of the amendments in paragraph (a).

Background

1.2 The Hon. Mark Speakman SC MP, Attorney General, described the amendments proposed by the Bill in his second reading speech as a 'suite of important reforms for better protection of health and emergency service workers'. He further stated that these amendments are intended to 'ensure that people who assault frontline health workers, correctional and Youth Justice officers, and emergency services staff and volunteers will face tougher penalties under new offences'.

1.3 The Bill seeks to amend the *Crimes Act 1900* ('Crimes Act') and the *Criminal Procedure Act 1986* ('Criminal Procedure Act') to create a new class of criminal offences for assaulting or hindering the aforementioned classes of people as it relates to their duties. It also proposes further amendments that would move relevant offences under other statutes governing frontline emergency and health workers into the Crimes Act, and increase the severity of the penalties for those offences.

1.4 In his second reading speech, the Attorney General noted that these amendments followed 'widespread public consultation and consideration of crime and sentencing' by the NSW Sentencing Council, including over 20 written submissions

and in-depth consultations and roundtables with frontline workers' representative bodies and legal stakeholders. He emphasised that the Sentencing Council found from its review:

> in particular, that in New South Wales the criminal law provides insufficient protection against assault to frontline health workers including ambulance officers, hospital medical staff and hospital security staff.

1.5 The Bill would expand the offences provided under Part 3, Division 8A of the Crimes Act. Division 8A currently sets out offences for assaults and other actions, like stalking, harassment and intimidation, against police officers and other law enforcement officers while in the execution of their duty. Specifically, it proposes to insert sections 60AB to 60AE, which sets out mirror offences applicable to assaults and other actions against people aiding a law enforcement officer, frontline emergency workers and frontline health workers. It would also distinguish assault of law enforcement officers in the course of their duty from general assault offences under Part 3, Division 8, by providing for that offence under Division 8A and omitting a similar offence provision under section 58.

1.6 The Attorney General spoke to these amendments in his second reading speech, explaining that the creation of these new offences would:

> … recognise that acts of violence against these workers merit express and distinct recognition and higher penalties than are currently available under the general assault provisions in the Crimes Act 1900. While it is already an offence under New South Wales law to assault another person, the offence charged and the maximum penalty depends on the circumstances of the offending and the injury caused. These reforms will create new, bespoke, graduated offences of assault and other actions against frontline emergency workers and frontline health workers…

1.7 The Bill also seeks to expand the definition of 'law enforcement officer' under Division 8A to include employees at correctional and youth detention centres. In his second reading speech, the Attorney General noted that this amendment would remedy the current exclusion of correctional and youth justice workers, 'who may be at an equally high risk of assault' and 'who, like these officers, perform an essential service that puts them in dangerous situations'.

1.8 As a result of the new offences proposed, the Bill also seeks to repeal similar offence provisions for frontline emergency and health workers under the *Fire and Rescue NSW Act 1989*, *Health Services Act 1997*, *Rural Fires Act 1997* and *State Emergency Service Act 1989*. It also proposes to repeal similar offences relating to police officers under sections 58 and 546C of the Crimes Act. The Attorney General explained in his second reading speech that repealing these provisions are intended to consolidate offences under Part 3, Division 8A of the Crimes Act and avoid duplication of offences across multiple statutes.

1.9 As the Bill seeks to set out increased protections for frontline workers, it does not engage with any of the reportable issues under section 8A of the *Legislation Review Act 1987.*

Issues considered by the Committee

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

2. Crimes (Sentencing Procedure) Amendment Bill 2022

Date introduced	10 August 2022
House introduced	Legislative Assembly
Minister responsible	The Hon. Mark Speakman SC MP
Portfolio	Attorney General

Purpose and description

2.1 The objects of this Bill are—

(a) to require a court, except in certain circumstances, to sentence an offender in accordance with the sentencing patterns and practices at the time of sentencing, not at the time the offence was committed, and

(b) to clarify that intensive correction orders are not available in relation to certain historical sexual offences.

Background

2.2 The Bill amends the *Crimes (Sentencing Procedure) Act 1999* (the **Act**), which sets out the legislative framework for the court to impose a sentence on an offender. The purpose of the Act is to ensure that the offender is adequately punished for the offence, prevent crimes by deterring the offender and other persons from committing similar offences, protect the community, promote rehabilitation, and recognise the harm done to the victim of the crime and the community.[1]

2.3 In the second reading speech to the Bill, the Attorney General, the Hon. Mark Speakman SC MP, stated that the intention of the Bill is to require the courts to apply current sentencing patterns and practices to all crimes regardless of when they were committed. The Attorney General stated that the Bill is also intended to address a historical drafting issue to ensure that intensive correction orders are not available for certain historical sexual offences, such as sexual assault and child sex offences.

2.4 The Attorney General explained that ensuring that a court imposes an appropriate sentence is important to reflect the seriousness of the offence. However, the current practice is to sentence an offender in accordance with sentencing patterns and practices that existed at the time an offence was committed rather than the sentencing patterns and practices in existence at the time of sentencing.

[1] *Crimes (sentencing Procedure) Act 1999*, section 3A (Purposes of sentencing).

2.5 Specifically, the Attorney General referred to the common law precedent establishing this practice:

> This was established by the New South Wales Court of Criminal Appeal in *R v Shore* (1992) 66 A Crim R 37 and later in *R v MJR* (2002) 54 NSWLR 368. This has been subject to judicial disagreement over the years, including a powerful dissenting judgment by President Mason in MJR. There, His Honour was critical of a sentencing rule that required courts to perpetuate past errors and to impose sentences that do not reflect current community expectations.

2.6 The Attorney General noted the difficulties of applying this approach, particularly in relation to historical offences such as those examined by the Royal Commission into Institutional Responses to Child Sexual Abuse:

> The Royal Commission into Institutional Responses to Child Sexual Abuse found, in relation to child sexual offences, that applying historical sentencing patterns and practices can result in sentencing outcomes that are perceived to be too short by current standards and may prevent courts from considering some aggravating features now recognised by the law. Accordingly, the royal commission recommended that all State and Territory governments should introduce legislation to provide that sentences for child sexual abuse offences should be set in accordance with the sentencing standards at the time of sentencing instead of at the time of offending. However, the sentence must be limited to the maximum sentence that was available for the offence at the time when the offence was committed.

2.7 The Attorney General further stated:

> In response to this recommendation, in 2018 the New South Wales Parliament amended the *Crimes (Sentencing Procedure) Act 1999* by inserting section 25AA. This provision requires the courts to sentence offenders for child sexual offences in accordance with sentencing patterns and practices that existed at the time of sentencing rather than those that existed at the time of the offence. The Government's intention is that section 25AA operate to ensure that sentencing outcomes for these offences reflect community expectations and the modern understanding of the terrible harm inflicted by these offences.
>
> The common law position, however, has continued to apply for other offences. This has proven to be problematic. For example, in the case of the *R v Gregory Richardson*—unreported, District Court of New South Wales, Berman DCJ, 20 October 2020—an offender was sentenced for a number of historical sexual offences against victim-survivors aged between 14 and 25. Because of section 25AA the offender was not able to benefit from more lenient historical sentencing patterns for the offences committed against the victims aged under 16. However, the offender did receive that benefit for the offences committed against victims aged 16 and over. This resulted in a disparity in sentencing outcomes for different offences depending solely on the age of the respective victims. This also potentially produced a final sentence that did not adequately reflect legitimate community expectations. The bill will expand the reforms which began with section 25AA to all categories of offences.

2.8 Regarding the operation of the Bill, it inserts proposed section 21B into the Act to provide that a court must sentence an offender in accordance with the sentencing patterns and practices at the time of sentencing.

2.9 Some limitations apply, including applying the standard non-parole period as at the time the offence was committed, rather than the non-parole period at the time of sentencing. The court may also have the discretion to sentence an offender for an offence in accordance with the sentencing patterns and practices at the time the offence was committed if the offence is not a child sexual offence, and the offender establishes that there are exceptional circumstances.

Issues considered by the Committee

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

Retrospectivity

2.10 The Bill inserts section 21B, which provides that a court must sentence an offender in accordance with the sentencing patterns and practices at the time of sentencing (subsection 21B(1)).

2.11 However, the standard non-parole period for an offence applies, rather than the non-parole period at the time of sentencing (subsection 21B(2)).

2.12 Despite subsection (1), a court may sentence an offender for an offence in accordance with the sentencing patterns and practices at the time the offence was committed if the offence is not a child sexual offence, and the offender establishes that there are exceptional circumstances (subsection 21B(3)).

2.13 When varying or substituting a sentence, a court must vary or substitute the sentence in accordance with the sentencing patterns and practices at the time of the original sentencing (subsection 21B(4)).

2.14 In his second reading speech, the Attorney General noted how the current law operates to sentence offenders according to the maximum penalty available at the time the offence was committed. He further acknowledged that this aligns with the rule of law and its key principle that a person should be able to know the law that they are subject to at any one time:

> A central tenet of the rule of law is that the law should be knowable and able to be obeyed. A corollary of this is the fundamental principle of criminal law that a person may only be punished for an act that would have constituted a criminal offence at the time it was committed and should be given no greater sentence than the maximum penalty that would have been available at that time. That means that where a person is charged with an historical offence, they can only be convicted of an offence that was in force at the time that the act was committed and can only be sentenced in accordance with the maximum penalty and, if applicable, standard non-parole period that was in place at the time.

2.15 He further stated the difficulty of applying this approach to historical offences, such as child sexual offences, where 'applying historical sentencing patterns and practices can result in sentencing outcomes that are perceived to be too short by current standards and may prevent courts from considering some aggravating features now recognised by the law'.

2.16 In particular, he acknowledged the recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse that all State and Territory

governments should introduce legislation to provide that sentences for child sexual abuse offences should be set in accordance with the sentencing standards at the time of sentencing instead of at the time of offending. However, the sentence must be limited to the maximum sentence that was available for the offence at the time when the offence was committed.[2]

The Bill inserts section 21B into the *Crimes (Sentencing Procedure) Act 1999*, which provides that a court must sentence an offender in accordance with the sentencing patterns and practices at the time of sentencing. Currently, courts impose sentences according to the patterns and procedures at the time the offence was committed. This may create provisions with retrospective effect that apply to offences that were committed before this provision has been enacted and thereby impact the key principle of the rule of law, being that a person should be able to know the law and penalties that they are subject to at any one time.

The Bill provides certain limitations on the application of its retrospective provisions. For example, applying the standard non-parole period as at the offence was committed, rather than the standard non-parole period as at the time of sentencing. A court may also sentence an offender for an offence in accordance with the sentencing patterns and practices at the time the offence was committed if the offence is not a child sexual offence, and the offender establishes that there are exceptional circumstances. Additionally, when varying or substituting a sentence, a court must vary or substitute the sentence in accordance with the sentencing patterns and practices at the time of the original sentencing.

The Committee recognises the intention of the Bill to align sentencing patterns and procedures with the current public expectations and in accordance with the recommendations of the report of the Royal Commission into Institutional Responses to Child Sexual Abuse. Specifically, the recommendation that sentences for child sexual abuse offences should be set in accordance with the sentencing standards at the time of sentencing instead of at the time of offending.

As the Bill deals with sentences for the imprisonment of individuals, and that it has retrospective application to offences that occurred before its commencement, the Committee refers the provision to the Parliament for consideration.

[2] Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report – Recommendations*, Recommendation 76, p 112.

3. Health Legislation (Miscellaneous) Amendment Bill (No 2) 2022

Date introduced	10 August 2022
House introduced	Legislative Assembly
Minister responsible	The Hon. Brad Hazzard MP
Portfolio	Health

Purpose and description

3.1 This Bill makes miscellaneous amendments to the following Acts relating to health and associated matters—

(a) *Health Care Complaints Act 1993*,

(b) *Health Practitioner Regulation (Adoption of National Law) Act 2009*,

(c) *Human Tissue Act 1983*,

(d) *Mental Health Act 2007*,

(e) *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*,

(f) *Public Health Act 2010*,

(g) *Statutory and Other Offices Remuneration Act 1975*.

Background

3.2 The Bill seeks to amend a number of statutes and regulations which govern health and health-related matters. In his second reading speech introducing the Bill, the Hon. Brad Hazzard MP, Minister for Health, described the suite of amendments proposed by the 'omnibus bill' as 'minor amendments … to ensure that it remains up to date'.

3.3 On the details of the Bill, it proposes amendments to the *Health Care Complaints Act 1993* and the *Statutory and Other Offices Remuneration Act 1975* ('**SOORA**'). These amendments include provisions to clarify that the engagement and remuneration of the Health Care Complaints Commissioner was to be determined by a contract of employment under SOORA, and provide for the Commissioner's allowance entitlements to be determined by the Minister.

3.4 The Minister noted in his second reading speech that these amendments are intended to align the Health Care Complaints Commissioner with other similar oversight bodies. He further stated that requiring the Remuneration Tribunal to determine the Commissioner's remuneration would ensure that 'there is an external and independent remuneration assessment of the role'.

3.5 Schedule 2 of the Bill would amend the *Health Practitioner Regulation (Adoption of National Law) Act 2009* (**'Adoption Act'**) to make additional provisions in respect to complaints made about a registered health practitioner. In his second reading speech, the Minister also briefly summarised the framework for governance of health practitioners established under the Adoption Act:

> The adoption Act adopts the schedule to the Queensland Health Practitioner Regulation National Law Act as a law of New South Wales, subject to any modifications made by New South Wales. However, following recent amendments to the adoption Act, if changes are made to the Queensland law, the changes apply in New South Wales only if a regulation is made adopting the changes. The combination of the Queensland law with modifications made by New South Wales is known as the Health Practitioner Regulation National Law (NSW).

3.6 The Bill also seeks to amend the definition of 'principal care office' for a child in state care under the *Human Tissue Act 1983*. This would clarify that the role is held by the Secretary of the Department of Communities and Justice, rather than the principal officer of a 'designated agency' with supervisory responsibility of the child. However, it provides powers to the Secretary to delegate its functions as principal care officer under the Act. The Minister explained in his second reading speech the need for this amendment as follows:

> … most children in out-of-home care are now under the supervisory responsibility of non-government designated agencies [NGOs]. This means that, for those children, the secretary of DCJ is no longer the principal care officer. … It is appropriate that DCJ should have an oversight role to ensure that the right decision is made for a child eligible for tissue donation and that proper processes are carried out.

3.7 Regarding matters of mental health, the Bill proposes several amendments to the *Mental Health Act 2007* ('MHA') under Schedule 4, and the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* under Schedule 5 ('**MHCIFPA**'). Substantively, the Bill seeks to remove provisions under the MHA requiring the Mental Health Review Tribunal to specify a mental health facility when making an order for a person to be detained. In his second reading speech, the Minister emphasised that this reform accorded with best practice, stating that the Mental Health Review Tribunal 'is not best placed to determine which facility the person should be detained in. That is best determined by the patient's treating team'.

3.8 On the amendments to the MHCIFPA, the Bill proposes to insert section 69(2) to clarify the objects of the Act also apply to decisions to extend a person's status as a forensic patient. It also seeks to amend section 101 of the MHCIFPA to clarify that a person ceases to be a forensic patient if a court later finds a person fit to be tried, who was previously found unfit, on advice of the Director of Public Prosecutions. The Minister emphasised that these amendments are 'generally consistent with the approach taken when the person who is found fit is detained in a correctional facility or detention centre under the Act'. He also noted that this would address the existing gap in the legislative framework which provides that a person automatically ceases to be a forensic patient on a court finding of fitness, by requiring the Director of Public Prosecutions to advise the court before that status ceases.

3.9 Finally, the Bill proposes a number of amendments to the *Public Health Act 2010* which would operate changes to how officers authorised to enter premises under

the Act would identify themselves. These amendments would require authorised officers who are not police officers to present an approved photo identification card, rather than a 'certificate of authority'. In his second reading speech explaining the rationale for this amendment, the Minister highlighted that a photo identification card 'makes the card harder to forge' than a certificate of authority.

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

Ill-defined power – admission of evidence seized under a search warrant

3.10 As noted by the Minister in his second reading speech, section 4 of the Adoption Act adopts a schedule to an act of Queensland Parliament which provides for the Health Practitioner Regulation National Law ('**National Law**'). Subsection (1) provides that the application of the National Law as a law of New South Wales is subject to the modifications set out in Schedule 1 of the Adoption Act.

3.11 The Minister further noted that:

> The Health Practitioner Regulation National Law (NSW) establishes the National Registration and Accreditation Scheme [NRAS] in New South Wales. The NRAS is the national scheme for the registration and accreditation of health practitioners, such as medical practitioners, nurses, midwives and pharmacists. … New South Wales has its own complaints processes involving the independent Health Care Complaints Commission [HCCC] and the health professional councils. The HCCC, in consultation with the health professional councils, prosecutes serious complaints against registered health practitioners before the Civil and Administrative Tribunal of New South Wales [NCAT].

3.12 Under Schedule 1[25] of the Adoption Act, Schedule 5D sets out provisions applicable to proceedings in New South Wales brought before the Professional Standards Committee ('PSC') or the NSW Civil and Administrative Tribunal ('NCAT'). These provisions set out the powers and processes of a PSC and NCAT in hearing complaints about health practitioners and students registered under the NRAS in New South Wales.

3.13 The Bill inserts clause 5(1A) into Schedule 5D to enable a PSC or NCAT, in complaint proceedings against a registered health practitioner or student, to admit into evidence any 'thing' produced which was seized under the authority of a search warrant. This power is limited to only those things where a PSC or NCAT is of the opinion that it is 'relevant to the proceedings'.

3.14 During his second reading speech, the Minister spoke in great detail to the need for this power and noted that 'information obtained under a search warrant by another agency, such as the NSW Police Force, may be relevant to disciplinary action regarding the registered practitioner'. Having emphasised the potential weight of this evidence, the Minister highlighted that this amendment was important for public safety to ensure that a PSC and NCAT can consider relevant material since:

> The disciplinary jurisdiction is a protective one, with a different standard of proof from criminal proceedings. The paramount consideration is always the protection of the

public. Material obtained under a search warrant may be needed to prove allegations that allow NCAT or a PSC to take action to protect the public. However, in the absence of an express provision, there is some doubt as to whether material obtained under a search warrant can be relied on in disciplinary proceedings under the Health Practitioner Regulation National Law (NSW).

The Bill amends Schedule 1[25] of the Health Practitioner Regulation (Adoption of National Law) Act 2009 to insert provisions applicable to disciplinary proceedings before a professional standards committee or the NSW Civil and Administrative Tribunal concerning a complaint against a registered health practitioner. Specifically, it allows a Committee or the Tribunal to admit into evidence, on production to them, anything seized under a search warrant where the Committee or Tribunal thinks it is relevant to the proceedings.

The Bill might therefore grant relevant professional standards committees and NCAT a wide and ill-defined power. This power may impact a person's right to procedural fairness as it would permit evidence obtained under a search warrant not connected to the proceedings at hand and the only limitation on this power is a discretionary one concerning relevance.

The Committee notes that this power would only operate in disciplinary proceedings that could result in a registered health practitioner being ordered to pay compensation or being deregistered and therefore prohibited from providing healthcare services. It also notes that the standard of proof in these proceedings is lower than that for criminal proceedings, being the balance of probabilities.

However, the Committee notes that the paramount consideration in respect to professional standards of health practitioners, given the vulnerability of healthcare patients, is public safety. It acknowledges that it is in the public interest for adjudicators of complaints against health practitioners to be able to access all relevant materials that may involve those practitioners, particularly where that evidence concerns serious criminal matters. In the circumstances, the Committee makes no further comment.

4. Industrial Relations Amendment (Dispute Orders) Bill 2022

Date introduced	9 August 2022
House introduced	Legislative Council
Minister responsible	The Hon. Damien Tudehope MLC
Portfolio	Employee Relations

Purpose and description

4.1 The object of this Bill is to make amendments to the *Industrial Relations Act 1996* (the Principal Act) to—

a) increase the maximum penalties for contraventions of dispute orders, and

b) remove the prohibition on the Supreme Court awarding costs in relation to proceedings for contraventions of dispute orders.

Background

4.2 The Industrial Relations Amendment (Dispute Orders) Bill 2022 (the **Bill**) proposes amendments to the *Industrial Relations Act 1966* (the **Act**), which sets out the legislative framework for, among other objects, to promote efficiency, productivity and participation in industrial relations, and the facilitate appropriate regulation of employment through awards, enterprise agreements and other industrial instruments.[3]

4.3 The Bill increases the penalties that can be imposed on a party that contravenes a dispute order made by the Industrial Relations Commission. It also amends the Act to provide that the Supreme Court can make costs order in regards to industrial proceedings including proceedings for a contravention of a dispute order.

Issues considered by the Committee

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

Retrospectivity

4.4 The Bill amends and increases the penalties contained in section 139 of the Act regarding contravention of a dispute order.

4.5 The amendments will apply to proceedings for any contraventions of dispute orders that occur on or after the commencement of this clause, even if the relevant dispute order was made before the commencement of the Bill.

[3] Industrial Relations Act 1996, section 3 (Objects)

The amendments made by the Bill, which include an increase of financial penalties and the provision that the Supreme Court can make costs order in regards to industrial proceedings including proceedings for a contravention of a dispute order, will apply to proceedings for any contraventions of dispute orders that occur on or after the commencement of this clause, even if the relevant dispute order was made before the commencement of the Bill.

The Committee generally comments on retrospectivity as it runs counter to the rule of law principle that people are entitled to know the law to which they are subject at any given time. This is particularly the case where a Bill seeks to retrospectively impose increased or different penalties.

The Committee notes that the Bill will apply to dispute orders that were imposed prior to the date of commencement. This means that parties may have dispute orders imposed with an expectation that alternative penalties may apply if that order was contravened. However, the Committee further notes that the increased penalties and imposition of costs orders will only apply to contraventions that occur after the commencement of the Bill, and therefore the effect of the retrospectivity may be reduced. In the circumstances, the Committee makes no further comment.

5. Prevention of Cruelty to Animals Amendment (Animal Sentience) Bill 2022*

Date introduced	10 August 2022
House introduced	Legislative Council
Member responsible	Ms Abigail Boyd MLC
	*Private Members Bill

Purpose and description

5.1 The object of this Bill is to amend the *Prevention of Cruelty to Animals Act 1979* (the **Act**) to—

(a) recognise the sentience and intrinsic value of animals and the duty of care people have to ensure the physical and mental welfare of animals in their charge, and

(b) amend the definition of pain to recognise different forms of suffering and distress and insert definitions of cruelty and sentience, and

(c) set out the considerations relevant to determining whether pain experienced by an animal is unreasonable or unnecessary for the purposes of the amended definition of cruelty, and

(d) require current animal welfare assessment models and best practice to be taken into account by the court, officers and the Secretary.

Background

5.2 The Bill amends the *Prevention of Cruelty to Animals Act 1979,* which sets out the legislative framework for the prevention of animal cruelty and promoting the welfare of animals by requiring a person provide care and treat animals in a humane manner.[4]

5.3 The Bill makes amendments to the Act to recognise the sentience of animals and their intrinsic value and to define cruelty to an animal by reference to different forms of suffering.

5.4 Specifically, the Bill amends the objects of the Act, under section 3, to recognise the sentience and intrinsic value of animals and the duty of care people have to ensure the welfare of animals in their charge.

[4] Prevention of Cruelty to Animals Act 1979, section 3 (Objects of Act).

5.5 The Bill also amends the definitions contained in section 4 to include:

> ***cruelty***, to an animal, includes an act or omission that causes or is likely to cause the animal to feel or experience pain that is unreasonable or unnecessary.
>
> ***pain*** includes physical, mental or emotional suffering or distress.
>
> ***sentience***, of an animal, means the animal's capacity to feel or experience negative and positive physical, mental and emotional states.

5.6 Proposed subsection 4(2B) also provides:

> For the purposes of the definition of ***cruelty***, the considerations relevant to determining whether pain experienced by an animal is unreasonable or unnecessary include the following—
>
> (a) whether the pain could reasonably have been avoided or reduced,
>
> (b) whether the conduct which caused the pain was in compliance with a relevant law or a relevant provision of a licence, code of practice or instrument,
>
> (c) whether the conduct which caused the pain was for a legitimate purpose, including—
>
> (i) to benefit the animal, or
>
> (ii) to protect a person, property or another animal,
>
> (d) whether the pain was proportionate to the purpose of the conduct which caused the pain,
>
> (e) whether the conduct which caused the pain was, in all the circumstances, that of a reasonably competent and humane person.

5.7 Proposed section 4A also provides that current animal welfare assessment models and best practice must be taken into account by the court in determining whether a person is guilty of an animal cruelty offence, and by an officer in exercising a function under Part 2A, and by the Secretary in exercising a function under Part 2B.

5.8 In this section, 'best practice' is defined as best practice principles and standards for ensuring animal welfare that require the physical, emotional and mental needs of animals to be met in a way that conforms with contemporary scientific knowledge.

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*.

6. Road Transport Amendment (Prohibition of U-turns and 3-point Turns in School Zones) Bill 2022*

Date introduced	11 August 2022
House introduced	Legislative Assembly
Member responsible	Dr Hugh McDermott MP
	*Private Members Bill

Purpose and description

6.1 The object of this Bill is to amend the *Road Rules 2014* to prohibit the making of U-turns and 3-point turns in school zones during school zone times.

Background

6.2 The Bill amends the *Road Rules 2014*, which set out the road rules that are applicable in New South Wales. These are based on the Australian Road Rules which ensures that the road rules applicable in this State are substantially uniform with those elsewhere in Australia. The *Road Rules 2014* also provide for additional rules which are not included in the Australian Road Rules.

6.3 In his second reading speech, Dr Hugh McDermott MP provided that the Bill seeks to improve the safety of school children. He said that the existing law must be changed to address situations not currently covered by the *Road Rules 2014* and to address ambiguity:

> I turn now to why the law must be changed. As the Road Rules 2014 currently stand, there are rules as to the circumstances in which a driver may or may not perform a U-turn. However, those circumstances do not cover all situations involving a school zone. There is also ambiguity as to whether three-point turns could be covered in the definition of a U-turn.

6.4 This Bill was introduced as the previous *Road Transport Amendment (Prohibition of U-turns and 3-point Turns in School Zones) Bill 2021* (**2021 Bill**) lapsed earlier this year.[5] The provisions of this Bill and the 2021 Bill are the same. The Committee reported on the strict liability offence proposed by the 2021 Bill in Digest No. 35/57.[6] This commentary is also applicable to the provisions of this Bill, and is set out below.

[5] *Road Transport Amendment (Prohibition of U-turns and 3-point Turns in School Zones) Bill 2021*

[6] Parliament of NSW, Legislation Review Committee, *Legislation Review Digest No. 37/57*, 9 November 2021.

Issues considered by the Committee

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

Strict liability offence

6.5 The Bill amends the *Road Rules 2014* to insert Rule 42-1, which provides that a driver must not make a U-turn or perform a 3-point turn on a road in a school zone during the times indicated on the school zone sign on a road, or the road, into the zone.

6.6 Contravention of this provision carries a maximum penalty of 20 penalty units ($2 200).

6.7 Sub rule 42-1(2) provides that this rule does not apply in cases where complying with the rule is unsafe or impractical, or if there is a school traffic management plan for the school zone that permits making U-turns and performing 3-point turns. The rule also does not apply where U-turns and 3-point turns are permitted by a written agreement between the Local Area Commander within the NSW Police Force for the local area the school is in, and the school administration authority.

The Bill amends the *Road Rules 2014* to prohibit U-turns and 3-point turns within school zones. The maximum penalty for not complying with this provision is 20 penalty units ($2 200). The Committee notes that this amounts to a strict liability offence. The Committee generally comments on strict liability offences as they depart from the common law principle that the mens rea or mental element is a necessary part of liability for an offence.

However, the Committee notes that strict liability offences are not uncommon in regulatory settings, such as road rules, to promote compliance and strengthen offence provisions. The Committee also notes that the maximum penalty is not overly significant and is monetary only, not custodial. The Bill also contains additional provisions that permit U-turns and 3-point turns if there are specific school traffic management plans for the school zone where it is safe to do so, or if there is a written agreement between the NSW Police Local Area Commander and the school administration authority. In these circumstances, the Committee makes no further comment.

7. Scrap Metal Industry Amendment (Review) Bill 2022

Date introduced	9 August 2022
House introduced	Legislative Assembly
Minister responsible	The Hon. Paul Toole MP
Portfolio	Police

Purpose and description

7.1 The object of this Bill is to make miscellaneous amendments to the *Scrap Metal Industry Act 2016* (the Principal Act) and the *Scrap Metal Industry Regulation 2016* following a statutory review of the Principal Act.

Background

7.2 The Scrap Metal Industry Amendment (Review) Bill 2022 (the **Bill**) amends the *Scrap Metal Industry Act 2016* (the **Act**) and the *Scrap Metal Industry Regulation 2016* (the **Regulation**) to implement recommendations made in the report on the statutory review of the Act. The statutory review was undertaken in 2020 by the NSW Police Force in accordance with section 29 of the Act.

7.3 The Minister for Police, the Hon. Paul Toole MP, stated:

> The statutory review found that the Act's policy objectives remain valid; however, the industry have evolved and amendments are needed to address emerging issues and better realise the policy intent of the legislation.

7.4 The Bill seeks to improve the regulation of the scrap metal industry by clarifying who a scrap metal dealer is, enhancing existing powers of the Commissioner of Police (the **Commissioner**) in relation to scrap metal, and updating certain penalties.

7.5 The Minister further described that:

> Key issues raised by stakeholders—industry stakeholders in particular—were the lack of adequate enforcement powers, ineffective penalties and commercial detriment caused by the inability to compete with noncompliant scrap metal dealers. Speaking plainly, law-abiding scrap metal dealers are losing out to rogue dealers evading the requirements of the Act. We need to strengthen regulation to level the playing field.

7.6 The Bill creates a new offence in relation to the advertising of payment of cash for scrap metal, which includes a penalty notice offence. It also removes the exclusion of aluminium cans from the definition of scrap metal, and provides the Local Court with the power to issue long-term closure orders to scrap metal premises if there is repeated non-compliance at those premises.

Issues considered by the Committee

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

Reversed onus of proof

7.7 The Bill inserts section 4A, which creates a rebuttable presumption that a person who deals in scrap metal on more than a prescribed number of days in a 12-month period is carrying on a scrap metal business. The prescribed period is specified in clause 4 of the Regulation as being 6 days.

Section 4A creates a rebuttable presumption that a person who deals in scrap metal on more than a prescribed number of days in a 12-month period is carrying on a scrap metal business. The prescribed period is specified in clause 4 of the Regulation as being 6 days.

Under section 5, an individual carrying on a scrap metal business without the required registration may incur a maximum penalty of 500 penalty units ($55 000). A rebuttable presumption means that the onus of proof is placed on the defendant to prove that they were not carrying on the scrap metal business, as opposed to the prosecution being required to prove that the business was being carried on.

In regards to these offences, a reverse onus may undermine a person's right to the presumption of innocence as contained in Article 14 of the ICCPR. The right to the presumption of innocence protects an accused person's privilege to be presumed innocent until proven guilty according to law. However, the Committee notes that the onus for proving the factual circumstance of these offences (that there were 6 days where a scrap metal business was being carried on) is still primarily on the prosecution. Additionally, the reversed onus provides a defence for the accused persons to prove that their conduct was justified. In the circumstances, the Committee makes no further comment.

Privacy

7.8 The Bill inserts proposed section 24A provides that the Commissioner may keep a register of information relating to convictions for offences, and penalty notices issued, under the Act (the **Contraventions Register**). The Contraventions Register may include, amongst other information, identifying information about a person or business convicted of an offence or issued with a penalty notice (subsection 24A(2)(a)).

7.9 Subsection 24B(1) provides that the Commissioner may publish and provide members of the public with information contained in the Contraventions Register. The Bill does specify at section 24B(2)-(3) that certain information about a penalty notice issued to a person cannot be published in all circumstances (section 24B(2)-(3)).

7.10 No liability, including liability for defamation, can be incurred when information is published under section 24B in good faith.

Proposed section 24A provides that the Commissioner may publish and provide members of the public with information contained in the Contraventions

Register. The Contraventions Register contains information about convictions for offences and penalty notices issued under the Act or regulations, and may include personal information. The publication or release of personal information may impact upon the privacy of those individuals to which the personal information relates. This is particularly the case where that information details offences committed by those individuals.

The Committee notes that information in regards to penalty notices cannot be published or provided if the penalty notice is unresolved (which includes remaining unpaid). The Committee also notes that information about offences under the Act or regulations may also already exist in the public domain due to the publication of court documents. In the circumstances, the Committee makes no further comment.

Retrospectivity

7.11 The Bill amends the Scrap Metal Industry Regulation 2016 and inserts clause 11, which provides that the Contraventions Register may include information held by the Commissioner before the commencement of the Bill. Under section 24A of the Bill, the Contraventions Register may contain personal information such as offences and penalties issues. Proposed section 24B of the Bill provides that the Commissioner may publish or release this information to the public.

The Bill provides at section 24A that the Commissioner may create a Contraventions Register that contains information, including personal information, in relation to offences and penalty notices issued under the Act and associated regulations. Under section 24B of the Bill, the Commissioner may publish this information or release it to the public with some limitations. The Bill also inserts a new clause 11 into the regulation which provides that the Contraventions Register may contain information obtained by the Commissioner prior to commencement of the Bill.

The Committee generally comments on retrospectivity as it runs counter to the rule of law principle that people are entitled to know the law to which they are subject at any given time. This is particularly the case where a Bill seeks to provide for the retrospective release of personal information, which may have an impact on individual's privacy.

The Committee recognises that the information that may be released is largely in relation to offences, which are generally already made public by the judicial process. The Committee further notes there are limitations on information that can be released in relation to penalty notices and that the retrospectivity does not serve to impose further penalties. However, considering that the information that may be released is personal information, the Committee refers this issue to Parliament for consideration of whether the Bill unreasonably applies retrospectively.

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

Matters deferred to the regulations; discretionary powers

7.12 The Bill defers some matters to the regulations. In particular, section 11A provides that the Commissioner may, in circumstances prescribed by the regulations, refuse to grant, or revoke or suspend the registration of a scrap metal business.

7.13 Clause 7A of the Regulation provides that the prescribed circumstances are where:

(a) a scrap metal dealer has committed an offence under the Act or regulations,

(b) the Commissioner believes on reasonable grounds that an offence is likely to be committed by the dealer,

(c) the scrap metal dealer is a corporation and an officer of the corporation has, or the Commissioner believes on reasonable grounds, is likely to commit an offence under the Act or regulations.

The Committee generally prefers substantive clauses to be set out in the Act where they can be subject to a greater level of parliamentary scrutiny, particularly where the rights or obligations of individuals may be affected such as by way of having their scrap metal business registration refused, revoked or suspended.

The Committee notes that the criteria by which the Commissioner may decide to refuse, revoke or suspend the registration of a scrap metal business are detailed in the regulations. Further, the regulations provide the Commissioner with the discretionary power to refuse, revoke or suspend a business registration if they believe on reasonable grounds that an offence under the Act or regulations has or may occur.

However the Committee also notes that regulations are still subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987*.

The Committee notes that the criteria for refusing, revoking or suspending a scrap metal business licence include the Commissioner believing on reasonable grounds that an offence may occur. Therefore, the matters deferred to the regulations by section 11A of the Bill may have an impact on the rights of individuals to carry out a lawful business. Considering these circumstances, the Committee refers the matter to Parliament for its consideration.

8. Workers' Compensation (Dust Diseases) Amendment Bill 2022

Date introduced	10 August 2022
House introduced	Legislative Assembly
Minister responsible	The Hon. Matt Kean MP
Portfolio	Energy[7]

Purpose and description

8.1 The object of this Bill is to amend the *Workers' Compensation (Dust Diseases) Act 1942* (the **Dust Diseases Act**) and the *Workers Compensation Act 1987* (the **WC Act**) regarding rates of compensation payable to workers suffering from dust diseases.

8.2 The Bill validates certain past payments of compensation made to injured workers by deeming amendments to have been in force on and from the commencement of the WC Act or relevant amendments to that Act.

Background

8.3 In the second reading speech, Ms Felicity Wilson MP, on behalf of the Hon. Matt Kean MP, provided that the Bill responds to mispayments identified by icare in 2020 to recipients of financial compensation under the Dust Diseases Care scheme. Ms Wilson noted that some workers were overpaid as a result of 'a continuation of payment practices that appeared reasonable but became inconsistent with legislative changes over the years'. Ms Wilson said that the Bill seeks to enable the continuation of those current payment practices and simplify benefit calculations to ease the administrative burden on injured workers.

8.4 The Bill's provisions validate certain past payments of compensation by deeming amendments to the Dust Diseases Act and WC Act to have been in force or have commenced from an earlier date (as specified).

8.5 In the second reading speech, Ms Wilson explained the outcome of these retrospective amendments:

> The bill removes references to coalminers in the 1942 Act to clarify that coalmining provisions do not apply to workers with a dust disease. The bill amends rates of compensation to injured workers to align with the 1987 Act, rather than with the lower rates under the Workers' Compensation Act 1926, and it ensures that workers get paid a statutory rate that is 20 per cent higher than currently entitled. The bill amends provisions so that, regardless of the date of the injury occurring, calculation of benefits for injured workers are consistent and in line with the rates within the

[7] The *Workers' Compensation (Dust Diseases) Act 1942* and the *Workers Compensation Act 1987* are allocated to the Minister for Finance under the Allocation of the Administration of Acts (2001 SI 338).

> general workers compensation scheme. The bill amends provisions to ensure partially disabled workers who are retired or unfit for suitable duties as a result of their dust disease are entitled under legislation to payments for dependants. The bill amends the 1987 Act so that current weekly wage rates can be calculated according to Australian Bureau of Statistics average earnings.

8.6 Ms Wilson further said that the Bill will remove ambiguity over workers' entitlements, ensure they are paid promptly and do not bear the burden of providing documentation to verify historical earnings, and preclude the need to change payment practice and workers losing their entitlements.

8.7 While the Bill includes provisions which have a retrospective effect, it is noted that their purpose is to validate past compensation payments and maintain individuals' entitlements, rather than interfere with them. The Committee therefore makes no comment on the Bill.

Issues considered by the Committee

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

Part Two – Regulations

1. Water Management (General) Amendment (Floodplain Harvesting Access Licences) Regulation 2022; Water Management (General) Amendment Regulation (No 2) 2022

Date tabled	LA: 9 August 2022 LC: 9 August 2022
Disallowance date	LA: 10 November 2022 LC: 10 November 2022
Minister responsible	The Hon. Kevin Anderson MP
Portfolio	Lands and Water

Purpose and description

1.1 The object of the *Water Management (General) Amendment (Floodplain Harvesting Access Licences) Regulation 2022* ('**Floodplain Harvesting Regulation**') is to amend the *Water Management (General) Regulation 2018* ('**Water Regulation**') to provide for replacement floodplain harvesting access licences, including by—

(a) setting out the circumstances in which a landholder may be eligible for a replacement floodplain harvesting access licence, and

(b) providing for the determination by the Minister for Lands and Water of the share components of replacement floodplain harvesting access licences.

1.2 The object of *Water Management (General) Amendment Regulation (No 2) 2022* ('**General Amendment Regulation**') is to amend the Water Regulation to—

(a) impose mandatory conditions on a work approval in relation to a water supply work nominated for the purpose of capturing or storing water taken under the following arrangements—

(i) a floodplain harvesting (regulated river) access licence,

(ii) a floodplain harvesting (unregulated river) access licence,

(iii) a basic landholder right and an access licence referred to in subparagraph (i) or (ii), and

(b) provide for exemptions from requirements under the *Water Management Act 2000* ('Water Act') for a landholder—

(i) to hold a water supply work approval to use a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field that is part of the land, and

(ii) to hold a water access licence to take water from a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field that is part of the land, except during a period in which a work on the land, other than a tailwater drain, takes overland flow water.

1.3 The provisions of the Floodplain Harvesting Regulation and General Amendment Regulation (collectively, the 'Amending Regulations') are substantially identical to the provisions of the *Water Management (General) Amendment Regulation 2021* ('the 2021 Regulation').[8] The 2021 Regulation was published on 17 December 2021, and was disallowed under section 41 of the *Interpretation Act 1987* by a motion of the Legislative Council on 24 February 2022.

1.4 In accordance with section 9(1) of the *Legislation Review Act 1987*, the Committee may only report on regulations while they are disallowable. Therefore, the 2021 Regulation was not reported on by the Committee. However, in its Digest No. 40/57 (22 March 2022), the Committee noted a number of issues raised by the regulation which it may have otherwise reported on.[9]

1.5 The issues raised by the Amending Regulations reflect those issues noted by the Committee in its Digest No. 40/57. For these reasons, the Committee has considered the Amending Regulations together in the one report.

Issues considered by the Committee

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

Strict liability offence

1.6 The General Amendment Regulation inserts Divisions 3A to 3C into Part 10 of the Water Regulation. Division 3B sets out a number of mandatory requirements in respect to metering equipment standards for particular supply work approvals, including requirements for point-of-intake and storage metering equipment. Relevantly, subclause 238J(3) requires a 'duly qualified person' to inspect that all floodplain harvesting intake points are able to be measured by point-of-intake metering equipment which complies with the relevant standards.

1.7 Division 3C establishes a number of obligations for duly qualified persons who inspect and accuracy check point-of-intake metering equipment and validates storage metering equipment. Specifically, clauses 238M to 238O requires a duly

[8] *Water Management (General) Amendment Regulation 2021* (sl-2021-775).

[9] Parliament of New South Wales, Legislation Review Committee, *Legislation Review Digest No. 40/57*, 22 March 2022.

qualified person to issue a certificate in respect to their work inspecting, checking and validating metering equipment under those provisions. Clause 238P further requires those certificates issued to be in the approved form, and given to the approval holder within seven days. Clause238P(2) and (3) also requires a duly qualified person installing or carrying out other work on metering equipment to notify the Minister in the approved form if they know or reasonably suspect the equipment has been tampered with, within 7 days of becoming aware or forming the suspicion.

1.8 Clause 238P(4) establishes an offence of non-compliance with Division 3C, for a duly qualified person. That offence carries a maximum penalty of $2 200.

The *Water Management (General) Amendment Regulation (No 2) 2022* inserts Division 3C into Part 10 of the *Water Management (General) Regulation 2018*. Clause 238P establishes that a 'duly qualified' person under Division 3C commits a strict liability offence if they fail to comply with the requirements of their role under that Division. This offence carries a maximum penalty of $2 200. The Committee generally comments on strict liability offences as they depart from the common law principle that mens rea, or the mental element, is a relevant factor in establishing liability for an offence.

However, the Committee notes that strict liability offences are not uncommon in regulatory settings to encourage compliance with their obligations as duly qualified persons. It also notes that the maximum penalty for the offence is monetary, not custodial. In the circumstances, the Committee makes no further comment.

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

Significant matters not subject to parliamentary scrutiny – models published on departmental website

1.9 The Floodplain Harvesting Regulation inserts Part 2A into the Water Regulation, to provide for the issue of replacement floodplain harvesting access licences ('**replacement licence**'). These provisions set out the regulatory framework under which eligible landholders, defined under clause 23B, may harvest floodplain water.

1.10 Division 3 of Part 2A details the models for a water source which can be used to determine the water share component of a replacement licence, being the 'current conditions model', 'eligible water supply works scenario model' and 'plan limit compliance scenario model'.

1.11 Relevantly, clause 23G(1) provides that the Minister must adopt these models ' for the purposes of determining the share component of a replacement floodplain harvesting access licence'. Subclause (2) further requires the Minister to publish to the Department's website specified information on these models, being: a description of the model, its objectives, the matters the model represents and the data upon which it relies.

The *Water Management (General) Amendment (Floodplain Harvesting Access Licences) Regulation 2022* inserts Part 2A into the *Water Management (General)*

***Regulation 2018*, to enable the Minister to issue replacement floodplain harvesting access licences. In determining the share component allowed under those licences, clause 23G requires the Minister to consider models for water sources which they are also required to publish on the website.**

Unlike regulations, there is no requirement for these models to be tabled in Parliament and subject to disallowance under section 41 of the *Interpretation Act 1987*. To foster an appropriate level of parliamentary oversight, the Committee usually prefers for these considerations to be included in regulations, not in separate models published online.

However, the Committee acknowledges that the nature of water modelling may require frequent revisions which could create significant administrative burden if they were to be incorporated into regulations. In the circumstances, the Committee makes no further comment.

Henry VIII clauses

1.12 The General Amendment Regulation insert a number of provisions into the Water Regulation. Clause 39B exempts the collection of rainfall run-off from an irrigated field using a tailwater drain from application of the offence under section 91B(1) of the Water Act. Clause 238C allows the Minister to exempt (by discretion or on application) an approval holder from the application of the mandatory floodplains condition under clause 238B. Both these exemptions are purported to be provided by the regulation-making power set out in section 400(2) of the Water Act.

1.13 Clause 21(1)(a) of the Water Regulation provides that a person specified in Schedule 4, Part 1 is exempt from the application of section 60A(1) and (2) of the Water Act. Those sections establishes an offence for a person who intentionally or negligently takes water from a water source without holding the requisite access licence, carrying a maximum penalty of 2 years imprisonment and/or $1 100 000 under the Act. The General Amendment Regulation inserts clause 17C into Part 1 of Schedule 4 , to include an exemption for a landholder who takes water from a tailwater drain for the purpose of collecting rainfall run-off from an irrigated field.

The *Water Management (General) Amendment Regulation (No 2) 2022* inserts a number of provisions into the *Water Management (General) Regulation 2018*, under regulation-making powers set out in sections 91B and 400 of the *Water Management Act 2000*. These provisions would exempt certain specified activities or classes of approval holders from offence provisions set out under the Act intended to discourage non-compliance with water allocations under access licences.

The Regulation therefore may amend the operation of the statutory provisions set out in the *Water Management Act 2000*, by way of Henry VIII clauses contained in the Act. The Committee generally prefers provisions which amend the application of an Act of Parliament to be effected by an amending Bill, rather than subordinate legislation. This is to foster a greater level of parliamentary oversight over the changes.

However, the Committee notes that it may be more administratively efficient to proceed by regulation when extending exemptions to offence provisions,

particularly where these offences may carry significant monetary penalties and potentially custodial penalties for individuals. It further acknowledges that regulations must be tabled in Parliament and they are subject to disallowance under section 41 of *the Interpretation Act 1987*. In the circumstances, 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.

Functions Regarding Bills

The Legislation Review Committee has two broad functions set out in sections 8A and 9 of the *Legislation Review Act 1987*. Section 8A requires the Committee to scrutinise all Bills introduced into Parliament while section 9 requires the scrutiny of all regulations. The Committee can only comment on the specific issues set out under these two sections.

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

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

(i) To consider any Bill introduced into Parliament, and

(ii) To report to both Houses of Parliament as to whether any such Bill, by express words or otherwise:

(1) trespass unduly on personal rights and liberties, or

(2) makes rights, liberties and obligations unduly dependent upon insufficiently defined administrative powers, or

(3) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or

(4) inappropriately delegates legislative powers, or

(5) insufficiently subjects the exercise of legislative power to parliamentary scrutiny.

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

Trespass unduly on personal rights and liberties:

- retrospectivity
- self-incrimination and the right to silence
- reversal of the onus of proof
- strict liability
- search and seizure without warrant
- confidential communications and privilege
- oppressive official powers
- right to vote
- equal application of laws
- non-discrimination

- freedom of speech
- freedom of religion
- privacy and protection of personal information
- rights to personal physical integrity
- excessive and disproportionate punishment
- legislative interference in standing judicial matters

Insufficiently defined administrative powers:

- ill-defined and wide powers
- vagueness or uncertainty

Non-reviewable decisions:

- excludes merits review
- excludes judicial review
- no requirement to provide reasons for an a decisions
- decisions made in private

Inappropriate delegation of legislative powers:

- provides the executive with unilateral authority to commence an Act;
- Henry VIII clauses (clauses that allow amendment of Acts by regulation)
- provide that a levy, tax or penalty be set by regulation
- allow for offences to be set by regulation
- extraterritoriality
- matters which should be set by Parliament (for example definitions)

Insufficiently subjects the exercise of legislative power to parliamentary scrutiny

- subordinate legislation not tabled in Parliament and not subject to disallowance
- insufficient disallowance period
- providing that regulations may incorporate rules or standards of other bodies in force not subject to disallowance

Past practice of the Committee has been to highlight issues of concern it identifies in a Bill and its provisions. The Committee also evaluates the potential reasons and safeguards regarding issues of concern and determines if the provisions may be reasonable in the circumstances or should be referred to Parliament for further consideration.

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

Functions Regarding Regulations – Review of All Regulations

Functions with respect to regulations are established under section 9 of the Act as follows:

(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, or

  (vii) that the form or intention of the regulation calls for elucidation.

(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.

Unlike Bill reports, the Committee only reports on those regulations with identified issues under section 9, rather than reporting on every regulation made.

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

A summary of the regulations that the Committee considers do not warrant comment are published as an appendix to the Digest.

Appendix Two – Regulations without papers

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

1. Criminal Procedure Amendment (National Heavy Vehicle Regulator) Regulation 2022

   The object of this Regulation is to facilitate the transfer of prosecutorial functions from Transport for NSW to the National Heavy Vehicle Regulator established under the *Heavy Vehicle National Law (NSW)*, section 656, including by declaring that officers and employees of the Regulator are public officers for the purposes of the *Criminal Procedure Act 1986*.

2. Environmental Planning and Assessment Amendment (Moorebank Freight Intermodal Precinct) Regulation 2022

   The object of this Regulation is to provide for complying development in the *Moorebank Freight Intermodal Facility under State Environmental Planning Policy (Transport and Infrastructure) 2021*, Chapter 6.

3. Environmental Planning and Assessment Amendment (Snowy Mountains Activation Precinct) Regulation 2022

   The objects of this Regulation are—

   (a) to provide that an Activation Precinct certificate is not required to accompany a development application for development in the Snowy Mountains Activation Precinct under *State Environmental Planning Policy (Precincts—Regional) 2021*, Chapter 3, and
   (b) to make law revision amendments.

4. Environmental Planning and Assessment Amendment (Temporary Emergency Facilities) Regulation 2022

   The object of this Regulation is to—

   (a) provide that development for the purposes of temporary emergency early education and care facilities, schools and health services facilities, other than patient transport facilities or hospitals, that is permitted without development consent under *State Environmental Planning Policy (Transport and Infrastructure) 2021* is not an activity for which an environmental impact assessment may otherwise be required under the *Environmental Planning and Assessment Act 1979*, and
   (b) correct incorrect cross-references.

5. Essential Services Regulation (No 3) 2022

The object of this Regulation is to authorise the Minister for Energy to direct persons to take action in relation to the supply or distribution of coal to a power station in response to the declaration that the supply or distribution of coal is an essential service.

This Regulation is excluded from requirements regarding the making of statutory rules by the *Subordinate Legislation Act 1989*, Schedule 4, item 20.

This instrument was in force from 17 July 2022 until it was repealed in accordance with the *Essential Services Proclamation (No 3) 2022*.

6. Fair Trading Amendment (Monetary Limit on Orders) Regulation 2022

The object of this Regulation is to prescribe the amount of $100,000 as the monetary limit on the Civil and Administrative Tribunal's jurisdiction to make orders in relation to certain consumer claims.

7. Industrial Relations (Public Sector Conditions of Employment) Amendment Regulation 2022

The object of this Regulation is to—

(a) implement a temporary wages policy for public sector employees covered by the *Industrial Relations Act 1996*, and

(b) provide for public sector employees to be awarded an increase in remuneration and other conditions of employment, resulting in a remuneration increase greater than an amount that may be awarded—

  (i) despite an aspect of government policy declared by the regulations, and

  (ii) if an employer agrees to the increase and any reforms that relate to the increase.

This Regulation is made under the *Industrial Relations Act 1996*, including sections 146C and 407, the general regulation-making power.

8. Judicial Officers Regulation 2022

The object of this Regulation is to set out the process for lodging complaints with the Judicial Commission of New South Wales and requires those complaints to be verified by statutory declaration. This Regulation remakes, without substantial changes, the *Judicial Officers Regulation 2017* which will be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature.

9. Justice Legislation Amendment (Fees) Regulation 2022

The object of this Regulation is to provide for the annual automatic indexation of certain court fees in accordance with the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics.

10. National Parks and Wildlife Act 1974—Notice of Reservation of a Regional Park (n2022-1258)

This notice reserves land as a regional park and assigns the name 'Killalea Regional Park' to that land under sections 30A(1)(d) and 30A(2) of the *National Parks and Wildlife Act 1974*. The land reserved is in the Land District of Kiama, LGA of Shellharbour.

11. NSW Admission Board Amendment (Fees) Rule 2022

The Rule, made under the *Legal Profession Uniform Law Application Act 2014*, replaces the Third Schedule of the *NSW Admission Board Rules 2015*. This Schedule includes the table of fees for admission as a lawyer, student services and other services/applications.

12. Poisons and Therapeutic Goods Amendment (Vaccines) Regulation 2022

This Regulation amends the *Poisons and Therapeutic Goods Regulation 2008* to require pharmacists who have authority to supply and administer vaccines to comply with standards approved by the Secretary.

This Regulation is made under the *Poisons and Therapeutic Goods Act 1966*, including section 45C, the general regulation-making power.

13. Rail Safety National Law National Regulations (Fees and FOI) Amendment Regulations 2022

This Regulation amends the definition of 'Rail Safety National Law' in regulation 37 (modifications of the FOI Act for purposes of the national rail safety system) and fees set out in Schedule 3 of the *Rail Safety National Law National Regulations 2012*.

This Regulation is made under section 264 of the *Rail Safety National Law*. That Law is set out in a schedule to the *Rail Safety National Law (South Australia) Act 2012* and applies as a law of NSW, with modifications set out in Schedule 1 of the *Rail Safety (Adoption of National Law) Act 2012* (see section 4 of that Act).

14. Retirement Villages Amendment (Operator Obligations) Regulation 2022

The object of this Regulation is to amend the Retirement Villages Regulation 2017 to—

(a) require operators of retirement villages to provide information about retirement villages to the Secretary, and
(b) permit the Secretary to publish information about retirement villages on websites administered by the Department of Customer Service.

15. Roads Amendment (Evidentiary Certificates) Regulation 2022

The objects of this Regulation are as follows—

(a) to allow a person who is authorised by TfNSW to issue legally admissible evidentiary certificates for matters relating to motor vehicles using tollways or the payment of tolls,
(b) to update references to the relevant Minister and Department.

This Regulation is made under the *Roads Act 1993*, including sections 248 and 264, the general regulation making power.

16. Transport Legislation Amendment (Penalties, Fees and Charges) Regulation 2022

This Regulation amends various instruments relating to transport to increase certain penalty levels, fees and charges imposed for offences dealt with by the issue of a penalty notice. The penalty, fee and charge increases are generally in line with movements in the Consumer Price Index. This Regulation is made under the following Acts—

(a) *Driving Instructors Act 1992*, including sections 11(2), 30(2)(b) and 59, the general regulation-making power,
(b) *Marine Safety Act 1998*, including sections 19K(1), 37(2)(k) and 137, the general regulation-making power,
(c) *Photo Card Act 2005*, including sections 5(3), 34(2) and 36, the general regulation-making power,
(d) *Ports and Maritime Administration Act 1995*, including sections 85G and 110, the general regulation-making power,
(e) *Road Transport Act 2013*, including sections 23, the general statutory rule-making power, 24, 32(1), 195 and Schedule 1,
(f) *Roads Act 1993*, including sections 243(2) and 264, the general regulation-making power.