Legislation Review Committee

PARLIAMENT OF NEW SOUTH WALES

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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**).

1.2 The Committee's report on a Bill introduced into Parliament includes commentary that:

(a) Where no issues set out in LRA section 8A(1)(b) are identified, the Committee makes no comment in respect of the issues set out in section 8A of the LRA.

(b) Where issues set out in LRA section 8A(1)(b) are identified, the Committee makes a distinct comment in respect to each issue identified.

1.3 For every issue identified by the Committee, the respective commentary will include a conclusion that either 'refers the matter to Parliament' or 'makes no further comment'.

1.4 Where the Committee concludes to ***refer the matter to Parliament*** , the Committee considers that it requires a response or further comment by the Member with carriage of the Bill in respect to the Bill report.

1.5 Where the Committee concludes to ***make no further comment*** on an issue identified in the report, the Committee considers that the issue may technically engage with the criteria under LRA section 8A but, given counterbalancing considerations (e.g. safeguard provisions or reasons outlined by the Member with carriage), it is unlikely in practice to raise the issues under section 8A. The Committee invites but does not otherwise require the Member with carriage to comment on these issues raised in respect to the Bill.

Comment on Regulations

1.6 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. ABORIGINAL LAND RIGHTS AMENDMENT BILL 2022

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

Procedural fairness and principles of open justice – determination of disciplinary matters

The Bill amends the *Aboriginal Land Rights Act 1983* to allow the NSW Civil and Administrative Tribunal to determine matters of alleged misconduct by an officer or staff member of the New South Wales Aboriginal Land Council (NSWALC) or a Local Aboriginal Land Council (LALC) without a hearing.

This may impact an individual's rights to procedural fairness and principles of open justice, which includes the guarantee for public hearings before a court or tribunal.

However, the Committee acknowledges that these amendments are intended to ensure proceedings for alleged misconduct and possible disciplinary action may be dealt with efficiently and expeditiously, particularly where the relevant person may be suspended from their duties pending determination. It also notes that the Tribunal can only determine proceedings without a hearing where it has received agreement from all relevant parties. In these circumstances, the Committee makes no further comment.

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

Commencement by proclamation

Parts of the Bill commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly where the legislation in question affects individual rights or obligations.

However, the Committee notes that a flexible start date may assist with the implementation of administrative arrangements necessary for the effective operation of the proposed amendments to allow the administration of NSWALC councillor elections by a provider other than the NSW Electoral Commission. In the circumstances, the Committee makes no further comment.

2. CRIMES AMENDMENT (CUSTODY OF KNIVES) BILL 2022*

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

Judicial discretion in respect to sentencing matters – previous convictions as aggravating factors

The Bill inserts section 547F to prohibit a person from having custody of a knife in a public place or school without reasonable excuse. This offence carries a maximum penalty of 40 penalty units ($4 400) or imprisonment for 4 years or both. The Bill further provides that, without limiting the *Crimes (Sentencing Procedure) Act 1999*, a previous conviction for a knife-related offence must be taken into account as an aggravating factor in determining the appropriate sentence for an offence under this section.

This may impact upon the procedural fairness afforded to the accused by requiring a previous conviction to be considered an aggravating offence in sentencing. As previous convictions for a knife-related offence *must* be taken into account, it also impacts judicial discretion. However, the Committee notes that as the *Crimes (Sentencing Procedure) Act 1999* (section 21A) provides

that in determining the appropriate sentence for an offence, the court is to take into account aggravating factors that are relevant and known to the court. This includes if the offender is being sentenced for a serious personal violence offence and has a record of previous convictions for serious personal violence offences.

Subsection 21A(5) also provides that the fact that any such aggravating or mitigating factor is relevant and known to the court does not require the court to increase or reduce the sentence for the offence. Noting that these are factors the court may already take into account, and the overarching aim of public safety, the Committee makes no further comment.

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

Matters that should be in primary legislation - delegation of exemptions to the regulations

The Bill sets out what circumstances constitute a reasonable excuse for carrying a knife in a public place or school, such as the preparation or consumption of food or drink or the participation in lawful entertainment. It also provides that the regulations may prescribe custody of a kind that is a reasonable excuse for the purposes of this section.

This delegates exemptions to the offence to the regulations. The Committee generally prefers provisions which contain offences and its exemptions to be located in primary legislation to foster an appropriate level of parliamentary oversight. The Committee notes that allowing further exemptions to be prescribed by the regulation may allow a level of flexibility for responding to changing circumstances regarding the criminal law. However, as the offence attaches monetary and custodial penalties, the Committee refers this issue to Parliament for its consideration of whether the matter is more appropriately dealt with by the primary legislation.

3. ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (PRIVATE NATIVE FORESTRY) BILL 2022

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

4. FORESTRY AMENDMENT (KOALA HABITATS) BILL 2022*

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

5. GOVERNMENT SECTOR AUDIT AND OTHER LEGISLATION AMENDMENT BILL 2022

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

Wide powers to compel records – legal professional privilege

The Bill amends the *Government Sector Audit Act 1983* and the *Local Government Act 1993* to expand the powers of persons authorised by the Auditor-General to require the production of or access to records which are considered necessary for the carrying out of their audit function. This expansion includes removing the exception from production or access to records which are the subject of claims of legal professional privilege. Therefore, the Bill may impact an individual's right to procedural fairness by excluding the protection of legal professional privilege.

The Committee acknowledges that the provisions are intended to facilitate the functions of the Auditor-General, and to enhance the scrutiny and oversight of public spending by government and public sector agencies. It also notes that an additional safeguard is provided, which explicitly states that production or access under these powers do not prevent a claim of privilege.

However, the Committee notes that legal professional privilege is a key immunity under common law which seeks to protect the ability of individuals to obtain full and frank legal advice. While the safeguard provisions prohibit the publication or disclosure of 'confidential information', the use of that information by the Auditor-General is not clearly defined. This may allow the disclosure of the substance of information in the exercise of audit functions, which may defeat a claim of legal professional privilege. For these reasons, the Committee refers this matter to the Parliament for its consideration.

6. INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT (VALIDATION) BILL 2022*

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

Retrospectivity and rule of law

The Bill inserts clause 35A which provides that clause 35 of Schedule 4 of the *Independent Commission Against Corruption Act 1988* (the Act) does not apply in relation to a person who had proceedings pending in the Supreme Court, including the Court of Appeal, on 8 May 2015, which related to a finding by the Commission of Corruption. This exception thereby operates retrospectively.

The Committee generally comments on provisions drafted to have retrospective effect, as they may impact on the rule of law principle. That is, a person is entitled to know the law to which they are subject at any given time.

The Committee further notes that clause 35A has the effect of excluding four individuals in specific circumstances from the operation of a substantive provision of the Act. This may be inconsistent with the rule of law principle that the law be applied equally and fairly, with no person above the law.

The operation of the Bill's provisions may also interfere with the judicial process as it specifically provides that clause 35 of Schedule 4 to the Act does not apply for a person who had pending proceedings about a finding of corrupt conduct in the NSW Supreme Court or Court of Appeals on 8 May 2015. It also extends the limitation period for bringing those proceedings by excluding the days since 8 May 2015. This may undermine the finality of the court's decision, by reopening proceedings which have been tried in fact.

The Committee acknowledges that the Bill is attempting to address an issue of retrospectivity arising from a 2015 amending Act. However, as the Bill also acts retrospectively and specifically for the proceedings of select persons, the Committee refers the matter to Parliament for its consideration.

7. INTEGRITY LEGISLATION 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*.

8. NSW RECONSTRUCTION AUTHORITY BILL 2022

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

Right to the presumption of innocence – liability for losses without charge or conviction

The Bill creates offences for the misuse for personal advantage of information acquired through an association with the NSW Reconstruction Authority that may materially affect market prices of land. It also establishes liability for a person who contravenes those provisions, for the loss of another person which is incurred as a result.

These provisions clarify that this liability applies, whether or not any person has been prosecuted for or convicted of the offence relating to the contravening conduct. By applying personal liability for losses from contravening conduct without the need for charge or conviction of the relevant offence, the Bill may therefore impact an individual's right to the presumption of innocence.

The Committee acknowledges that the provisions are intended to ensure compliance by broadly extending personal liability, particularly in circumstances where contravention is connected to activities by the Authority intended to assist vulnerable communities affected by emergencies and disasters. However, the Committee notes that the personal liability for losses is a civil liability, which has a lower standard of proof than criminal proceedings. For these reasons, the Committee refers this matter to Parliament for its consideration.

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

Wide and ill-defined functions – functions of the Authority

Part 2 of the Bill establishes the NSW Reconstruction Authority, including section 10 which sets out the functions of the Authority. Relevantly, these functions include doing anything that is 'supplementary, incidental or consequential on the exercise of' the other functions explicitly set out in subsection (1). Section 18 also provides that the Authority's CEO has the function to take steps they consider 'necessary or desirable', to ensure proper planning preparation, coordination and control of relevant development. This may grant a wide and ill-defined power to the Authority or its CEO, to take any step or do anything considered 'desirable' or 'incidental' to the exercise of the functions set out in law.

The Bill also provides that the exercise of the Authority's and CEO's functions are both subject to the direction and control of the Minister. However, there appears no provisions defining 'the Minister'. The Committee generally prefers the relevant Minister to be specified in the legislation for the avoidance of doubt, particularly in cases where the Minister may direct the Authority or its CEO in the exercise of wide functions.

The Committee acknowledges that the Authority is intended to ensure effective coordination and collaboration across the State's disaster prevention, preparation, response and recovery. The provisions may facilitate more flexible and responsive administration of that role, in circumstances of unprecedented emergencies. However, the Committee notes that 'desirable', 'incidental' and 'consequential' are terms that, without legislative definitions or limitations, may be broadly defined to include any and all matters, actions or steps. This may amount to an unrestricted administrative power. For these reasons, the Committee refers this matter to Parliament for its consideration.

Wide executive powers – Ministerial declarations and step-in functions of the Authority

Part 5 of the Bill sets out the legislative framework for the making of Ministerial declarations of 'declared projects', 'reconstruction areas' and 'disaster prevention areas'. It also provides a number of powers to the Minister and the NSW Reconstruction Authority in respect to a declared project, reconstruction area and disaster prevention area. This includes the power to compulsorily acquire land, demolish buildings adjoining or in the vicinity of relevant land, construct or close roads on relevant lands, and have the Authority 'step in' for another decision-maker to determine and assess a prescribed decision or process.

In respect to the power to step-in, the Authority may make a decision which takes effect under relevant law as if the Authority was the relevant decision-maker. However, the decision of the

Authority cannot be appealed by a person and a subsequent decision by the decision-maker cannot be inconsistent with the Authority's earlier decision.

The Bill may thereby grant the Authority wide administrative powers in respect to certain matters declared by the Minister. The exercise of certain powers may impact individual rights, such as their real property rights in respect to the power to compulsory acquire land, demolish nearby buildings or close roads. Excluding the ability to appeal decisions made by the Authority under its 'step in' powers may also impact the ability of persons to seek administrative review of decisions which adversely impact them.

However, the Committee notes that the declarations can only be made by the Minister where they are satisfied it is necessary to facilitate the protection, rebuilding and recovery of an affected community, mitigate against potential disasters or improve the resilience of an affected community for potential disasters. It also acknowledges that the powers are intended to only be exercised in emergency circumstances which require immediate action, in order to protect public safety and lives. In these circumstances, the Committee makes no further comment.

Wide powers of enforcement – real property, privacy rights

Part 8 of the Bill provides enforcement powers to authorised officers for the purpose of enabling the exercise of the Minister and NSW Reconstruction Authority's functions under, determining compliance or contravention with, obtaining information connected to and general administration of the Bill. The CEO of the Authority is empowered under section 72 to appoint persons, including a class of persons, as 'authorised officers'.

These include powers to enter land other than a building or structure and require a relevant entity or person give information to the Authority it reasonably requires for the 'effective and efficient exercise' of its functions. In respect to the power to request information, non-compliance without reasonable excuse is an offence carrying a maximum penalty of 200 penalty units ($22 000).

Therefore, the Bill may grant authorised officers, including police officers, wide powers of enforcement. The exercise of these enforcement powers may impact an individual's rights including, for example, their real property rights in respect to the power to enter land and their privacy rights in respect to the power to request information at the pain of penalty.

The Committee recognises that these provisions are intended to strengthen the enforcement and compliance of the legislative framework regulating the State's emergency disaster preparedness, prevention, response and recovery system.

However, the Committee notes that the individuals authorised to exercise these enforcement powers are those persons or class of persons appointed by the CEO. These appointments are made by 'written instrument' or 'Gazette notice' which, unlike regulations, are not required to be tabled in Parliament and thus not subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee generally prefers that the prescription of significant matters, like the people or class of persons able to exercise enforcement powers which may impact individual rights, be included in the regulations to ensure an appropriate level of parliamentary oversight. For these reasons, the Committee refers this matter to Parliament for consideration.

Wide regulation-making power – matters 'convenient to' administration

The Bill provides a general regulation-making power under section 149. Specifically, it allows regulations to prescribe a matter that is 'necessary or convenient' for carrying out or effecting the Bill.

There appears to be no provisions which define or narrow the scope of the ordinary meaning of 'convenient'. The Bill may therefore include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation which are not required to be passed by Parliament and the Parliament does not control when it commences.

The Committee recognises that the provisions allow for more flexible regulatory responses in respect to the supply, manufacturing or prescription of scheduled substances and other therapeutic goods. However, it notes that the provisions may effectively allow regulations to prescribe matters with little limit. For these reasons, the Committee refers this matter to Parliament for its consideration.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Removal from office by Governor

Part 3 of the Bill establishes the NSW Reconstruction Authority Advisory Board and provides for its functions in advising the NSW Reconstruction Authority and the Minister. Under section 27, the remuneration, allowances, terms and conditions of each appointed Board member is to be decided by the Governor.

Schedule 1 also provides for the constitution and procedure of the Board. Relevantly, clause 5(2) enables the Governor to remove an appointed Board member from office 'at any time for any reason or none'. This may subject an appointed Board member's employment rights to a non-reviewable decision by the Executive. By enabling removal from office without the need for reasons, it may also limit a person's ability to challenge the decision to remove them from office.

The Committee notes that the Board is intended to give advice and recommendations about the operation and functions of the Authority, and to prepare quarterly reports to the Minister about the exercise of the Authority's functions. The provisions may therefore also interfere with the independent advisory role of the Board. For these reasons, the Committee refers this matter to Parliament.

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

Ministerial declarations and authorisations

The Bill provides for the Minister to declare by order published in the Gazette, that a project is a 'declared project' or an area is a 'reconstruction area' or 'disaster prevention area'. This order may specify that an Act of Parliament or a statutory instrument does not apply in relation to that declaration, including the circumstances where the relevant laws do not apply. It also empowers the Authority to exercise certain functions despite any other applicable laws.

It also provides that the Minister can make by order published in the Gazette an authorisation for the undertaking of a development. These orders authorise development without the need for the approvals and assessments required under the *Environmental Planning and Assessment Act 1979*, or the consent of any person.

Therefore, the Bill may enable the Minister to effectively exempt functions exercised by the Authority and certain development activities from the application of any other laws, including Acts of Parliament. This may include excluding duties to and protections for individuals provided under law, including for example property rights in respect to development activities.

The Committee further notes that, unlike regulations, it is unclear if these orders are required to be tabled in the Parliament and thus subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee generally prefers that exemptions from the operation

of specified laws be included in the subordinate legislation, in order to facilitate an appropriate level of parliamentary oversight.

However, the Committee notes that the orders may only be made by the Minister if they are satisfied it is in connection with a disaster which is likely to or has affected communities in NSW, and that it is necessary to protect public safety and welfare. In the circumstances, the Committee makes no further comment.

Wide Executive power – payments for exigencies

The Bill provides that the Treasurer, with concurrence of the Minister, to determine that additional money be paid out of the Consolidated Fund to meet exigencies, during the annual reporting period for the NSW Government for which an annual Appropriation Act has already been enacted. This would allow the Treasurer to administratively authorise appropriations from the Consolidated Funds without authorisation under an Act of Parliament, which is required under the *Constitution Act 1902* and the *Government Sector Finance Act 2018*.

The Bill therefore enables the Executive to appropriate public funds collected by the Government for exigency payments, outside of the usual Budget process. The Committee notes that this may allow appropriations of public moneys without the necessary authorisation required under the Constitution, and outside of the usual process which is subject to parliamentary scrutiny.

However, the Committee notes that these provisions are intended to enable the NSW Reconstruction Authority to make emergency payments which have not been accounted for in the earlier Budget process. This may facilitate the State's ability to respond to unprecedented natural disasters and declared state emergencies. It also notes that the details of any exigency payments are required to be included in the Budget Papers for the Authority, for the next reporting period. In these circumstances, the Committee makes no further comment.

Matters deferred to the regulations – delegation of function

The Bill provides that the NSW Reconstruction Authority, the Minister and the Authority's CEO may delegate the exercise of their functions under the Act to an 'authorised person', who may subdelegate where relevantly authorised by the Authority to do so. An 'authorised person' is defined to include a person or class of persons prescribed or authorised by the regulations.

The Bill may thereby provide a wide power of delegation, by deferring the persons authorised to be delegated functions to the regulations. The Committee notes that the Authority, its CEO and the Minister can exercise potentially wide-ranging powers under the Bill. For these reasons, the Committee refers this matter to Parliament for its consideration.

Matters deferred to the regulations – creation of offences

The Bill provides a general regulation-making power to create offences that carry a maximum penalty not exceeding 200 penalty units ($22 000). The Committee generally prefers that offences be established in primary legislation, in order to facilitate an appropriate level of parliamentary scrutiny.

However, the Committee notes that the maximum penalty punishable by offences created by regulations is only monetary and not custodial. It also acknowledges that regulations are still required to be tabled in both Houses of Parliament and subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

Commencement by proclamation

Parts of the Bill commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly where the legislation in question affects individual rights or obligations.

However, the Committee notes that a flexible start date may assist with the implementation of administrative arrangements necessary for the effective operation of the newly established NSW Reconstruction Authority. In the circumstances, the Committee makes no further comment.

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

Significant matters deferred to the regulations

The Bill defers a significant number of matters to the regulations, including what events, incidents or matters are a 'disaster', what actions a relevant entity may be required by the Authority to take, what actions an authorised officer may take when entering land and who is a 'relevant entity' that can be subject to the functions under the Bill. The Committee generally prefers substantive matters to be dealt with in the principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight.

However, the Committee acknowledges that these provisions are intended to build more flexibility into the regulatory framework and allow regulators to better respond to changing circumstances, particularly in connection to natural disasters and declared state emergencies. It also notes that any regulations are required to be tabled in Parliament and are subject to disallowance under section 41 of the Interpretation Act 1987. In the circumstances, the Committee makes no further comment.

9. POINT TO POINT TRANSPORT (TAXIS AND HIRE VEHICLES) AMENDMENT BILL 2022

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

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

Referral to the regulations – shell legislation

The Bill provides that the regulations may make provision about further transitional assistance funds, including who is eligible to receive these funds, the amount payable, the period in which applications must be made and reviews of decisions about applications.

The Committee notes the breadth of matters delegated to the regulations and that the Explanatory Note to the Bill specifies that this regulation-making power may be considered shell legislation. That is, it provides only the skeleton of the legislative scheme and delegates its details to the regulations. It also notes that these matters impact a person's ability to access further transitional assistance funds and other important related matters, including the amount payable and reviews of decisions about applications. It appears that if a person is ineligible to access these funds, their ability to obtain compensation from the State as a result of the Bill is limited by the Bill's amendments to section 157 of the Act.

The Committee generally prefers such substantive matters to be set out in the Act where they can be subject to a greater level of public scrutiny. However, the Committee notes that regulations remain subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987*. It also notes that delegation to the regulations allows for flexibility and the opportunity to determine the details of the regulatory regime. However, taking into account the breadth and importance of matters delegated to the regulations, the Committee refers this matter to the Parliament for its consideration.

Commencement and repeal by proclamation

Certain provisions of the Bill may commence by proclamation, on a day or days not more than 1 year after the date of assent. The Bill also provides that Schedule 3, which includes transitional provisions, will be repealed on a day appointed by proclamation.

The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly where the legislation in question affects individual rights or obligations. It also notes that provisions in Acts of Parliament are generally repealed by another Act or expiry, and that this process facilitates an appropriate level of parliamentary scrutiny and transparency.

However, the Committee acknowledges that commencement of certain provisions, and repeal of the provisions relating to the payment of financial assistance, by proclamation accommodates the payment of this assistance in the transition to the new regulatory scheme. In the circumstances, the Committee makes no further comment.

10. PREVENTION OF CRUELTY TO ANIMALS AMENDMENT (INDEPENDENT OFFICE OF ANIMAL WELFARE) BILL*

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

Regulations may incorporate extrinsic material and strict liability offences

The Bill provides that regulations may prescribe or adopt guidelines relating to the welfare of an animal or class of animals. A document may be adopted in whole or in part, and with or without modification. It may also be in force at a particular time or from time to time. The regulations made under this section may provide that a provision of guidelines prescribed or adopted is a mandatory provision. The Committee generally comments on the incorporation of extrinsic material that may not be subject to disallowance by the Parliament.

The Bill also provides that contravention of a mandatory provision (as prescribed by the regulation) may incur a maximum penalty of 50 penalty units ($5 500). This may amount to a strict liability offence. The Committee generally comments when regulations can prescribe 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 accompanied by monetary penalties are not uncommon in regulatory settings to encourage compliance, and in the current case, the requirement is intended to provide an incentive to comply with provisions regarding animal welfare.

The Committee also acknowledges that before a regulation is made, it must first be reviewed by the Advisory Committee for comment and a report must be published on the Department's website outlining the Advisory Committee's comments and any suggested amendments. This provides a certain level of scrutiny that must be undertaken before a regulation is created prescribing either the incorporation of guidelines or mandatory provisions attaching penalties. Further, any regulation made is still required to be tabled in Parliament and subject disallowance under section 41 of the *Interpretation Act 1987*. As such the Committee makes no further comment.

11. PRIVACY AND PERSONAL INFORMATION PROTECTION AMENDMENT BILL 2022

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

Privacy of personal information

The Bill allows a public sector agency that is the subject of an eligible data breach to use, collect and disclose an individual's personal information, or disclose such information to another public

sector agency subject of an eligible data breach, if it is reasonable or necessary to confirm the name and contact details of a notifiable individual. A public sector agency is not required to comply with an information privacy principle, a Health Privacy Principle, a privacy code of practice or a health privacy code of practice in relation to this use, collection or disclosure.

This may interfere with an individual's right to privacy. Although, the Committee notes that 'relevant personal information' is limited in scope, and that it can only be used, collected or disclosed in limited circumstances and for a limited purpose. Specifically, where there is an eligible data breach and for the purpose of notifying an individual to whom the information relates or an affected individual of the breach.

The Committee notes that interferences with the right to privacy must be lawful and not arbitrary. It also acknowledges that the Bill intends to introduce a scheme for mandatory notification of certain data breaches, and that this provision requires the notification of affected individuals. In the circumstances, the Committee makes no further comment on this issue.

The Bill also allows provides that the Information and Privacy Commissioner and Cyber Security NSW do not have to comply with certain information protection principles or Health Privacy Principles in relation to information disclosed by or to the other agency. This may also impact on an individual's right to privacy. However, the Committee notes the Bill's intent to regulate eligible data breaches and the role of the Privacy Commissioner under the scheme to investigate, monitor, audit and report on agencies in relation to mandatory notification. Similarly, it notes the role of Cyber Security NSW in preventing and responding to cyber security threats. In the circumstances, the Committee makes no further comment.

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

Referral of delegation power to regulations

The Bill allows the regulations to prescribe a class of persons to whom the public sector agency may delegate the exercise of a function of the head of the agency.

The Committee generally prefers substantive matters, such as which persons may have delegated authority to exercise the function of a public sector agency head, to be set out in the Act where they can be subject to a greater level of parliamentary scrutiny. However, the Committee notes that regulations remain subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987*. It also notes that delegation to the regulations allows for flexibility in the regulatory framework. In the circumstances, the Committee makes no further comment.

Delegation to guidelines

The Bill allows the Privacy Commissioner to make guidelines about whether access, disclosure or loss that occurs as a result of a data breach would or would not be likely to result in serious harm to an individual. They may also make guidelines about deciding whether to exempt a public sector agency for reasons relating to serious risk of harm to health or safety, and cyber security reasons.

The Committee notes that, unlike Acts and regulations, these guidelines are not subject to parliamentary scrutiny. Although, it acknowledges that including certain matters in the guidelines allows for flexibility in the regulatory framework.

Whether or not a data breach would be likely to result in serious harm determines whether the breach is an eligible data breach, to which the mandatory disclosure scheme set out in the Bill applies. The Committee generally prefers substantive matters, including matters which can impact the application of the regulation, to be set out in legislation and subject to parliamentary

scrutiny. Although, it notes that not including a legislated definition of this threshold (in the Act or regulations) intends to ensure that the types of serious harm considered when assessing a data breach are not limited. In the circumstances, the Committee makes no further comment.

PART TWO – REGULATIONS

1. CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT (MISCELLANEOUS) REGULATION 2022

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

Privacy rights – powers of Commissioner

The Regulation inserts provisions into the *Crimes (Administration of Sentences) Regulation 2014* to regulate correspondence with, and use of, certain electronic devices by inmates. This includes permitting the monitoring or recording of a telephone call with an inmate which does not involve an exempt body or person. It also permits authorised, correctional or departmental officers to read any messages sent or received by an electronic device provided to an inmate or inspect and examine (and read, if not a legal document) anything on or accessible through such a device.

It also introduces a restriction on the sending of letters or parcels to a non-exempt body or person a designated an 'extreme high risk restricted' or 'national security interest' inmate, without the approval of the Commissioner. It prescribes the sending of a letter or parcel in contravention of this restriction as a correctional centre offence, which may be dealt with under Part 2, Division 6 of the *Crimes (Administration of Sentences) Act 1999*.

By restricting correspondence and empowering officers to monitor, record, read and examine electronic and telephone correspondence, the Regulation may therefore impact the privacy rights of inmates and individuals who correspond with them.

The Committee acknowledges that the provisions are intended to protect public safety by regulating correspondence from inmates who have been designated to be a particular safety risk. However, the Committee notes that there are no avenues to challenge the decisions of the Commissioner to refuse approvals, or of officers to exercise these compliance powers. It also notes that, in respect to the restrictions on extreme high risk restricted or national security interest inmates, the refusal of an approval to send a letter or parcel opens the inmate to liability for a correctional centre offence. For these reasons, the Committee refers this matter to Parliament for its consideration.

Freedom of association/access to legal representation – approval by Commissioner for AVL visits

The Regulation inserts Division 7A into Part 5 of the *Crimes (Administration of Sentences) Regulation 2014*, which provides for the conduct of audiovisual link (AVL) visits with inmates under subdivision 2. These provisions enable the Commissioner to permit a person to have an AVL visit with an inmate. For inmates who are designated 'extreme high risk restricted' or 'national security interest', clause 122D requires approval from the Commissioner to permit an AVL visit with that inmate. It also provides that the Commissioner may require any person, including a legal practitioner, seeking to undertake such an approval to undergo a criminal record check. The Commissioner may refuse the approval on the basis of that criminal record check, and can otherwise revoke the approval of a person.

The Regulation may thereby impact on an inmate's freedom of association and, in respect to legal practitioners, refused approvals for AVL visits impacts their access to legal representation. The Committee acknowledges that limits on the freedom of association may be justified for the protection of public safety. However, it notes that the Commissioner has a broad discretion to

refuse an approval 'on the basis of a criminal record check' and to revoke an approval, and there appears no provisions which set out or limit the grounds for such a refusal or revocation. For these reasons, the Committee refers this matter to Parliament for its consideration.

Biometric identification of persons aged under 18 years

The Regulation amends clause 320 of the *Crimes (Administration of Sentences) Regulation 2014*, to broadly enable a person aged under 18 years to be required to comply with a biometric identification system. Failure to comply may mean the person is denied access to the correctional centre.

By requiring persons aged under 18 years to comply with biometric identification systems, the Regulation may thereby require the collection of personal information, in this case biometric data, of minors. The Committee notes that there does not appear to be any safeguard provisions for the collection of that personal information from minors, and that young people under the age of 18 years may lack the capacity to understand the consequences of the collection of that information or refusing to comply with requirements. For these reasons, the Committee refers this matter to Parliament for its consideration.

2. MAJOR EVENTS AMENDMENT REGULATION 2022

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

Wide enforcement powers – authorised officers for major events

The Regulation prescribes persons engaged to provide security or traffic/pedestrian control services by the responsible authority for a declared major event, as authorised officers under the *Major Events Act 2009*. This would authorise a person privately engaged to provide these services for a major event to exercise enforcement powers granted to authorised officers under the Act. The exercise of these enforcement powers may impact an individual's rights including, for example, their real property rights in respect to the powers to search and inspect vehicles and articles, and their right to freedom of movement in respect to the power to be directed to leave or be removed from an area.

In respect to the power of authorised officers to issue penalty notices, the Committee notes that penalty notices allow a person to pay the amount specified for an offence within a certain time should he or she not wish to have the matter determined by a court. This may impact on a person's right to a fair trial, specifically, to have a matter heard by an impartial decision maker.

The Committee notes that the provisions are intended to facilitate the smooth and orderly management and enjoyment of major events, by ensuring attendees comply with security, traffic and pedestrian control personnel. However, the provisions would allow private sector employees to exercise wide enforcement powers, including the power to search or remove persons. The Committee notes that, unlike police officers, individuals who have bene privately engaged to provide services are not subject to the same obligations, duties and safeguards provided in NSW law. For these reasons, the Committee refers this matter to Parliament for its consideration.

Part One – Bills

1. Aboriginal Land Rights Amendment Bill 2022

Date introduced	8 November 2022
House introduced	Legislative Council
Minister responsible	The Hon. Ben Franklin MLC
Portfolio	Aboriginal Affairs

Purpose and description

1.1 The object of this Bill is to amend the *Aboriginal Land Rights Act 1983* (the **Act**) in relation to the following matters—

(a) land dealings by a Local Aboriginal Land Council (an **LALC**) and the amendment by the New South Wales Aboriginal Land Council (**NSWALC**) of the approval of land dealings,

(b) the refund of community development levy amounts paid for cancelled dutiable transactions,

(c) the preparation and approval of community, land and business plans of Aboriginal Land Councils,

(d) the financial reporting obligations of NSWALC and other governance and administrative matters relating to the operations of Aboriginal Land Councils,

(e) officers of Aboriginal Land Councils, including suspension from office, grounds for disqualification from office, vacancies in office, and employment and training of officers,

(f) the administration of elections of councillors of NSWALC,

(g) the employment of staff and the advertising of staff vacancies of an Aboriginal Land Council,

(h) the functions under the principal Act of Aboriginal Land Councils and the Minister for Aboriginal Affairs,

(i) the rectification of the Register of Aboriginal Owners by the Registrar under the principal Act,

(j) the transaction of business of NSWALC outside meetings or by telephone or other electronic means,

(k) updating the Preamble to the principal Act to reflect the importance of waters to Aboriginal persons, in addition to the existing recognition of lands,

(l) other minor or consequential matters.

1.2 The Bill also makes consequential amendments to the *Aboriginal Land Rights Regulation 2020* and the *Government Sector Finance Regulation 2018*.

Background

1.3 The Hon. Ben Franklin MLC, Minister for Aboriginal Affairs, described the recommendations from the most recent statutory review of the Act (the **2021 Statutory Review**),[1] in his second reading speech:

> The recommendations of the review identified immediate and long-term work involving a three-stage process. Stage one related to administrative arrangements to the Aboriginal Land Rights Act to support existing structures and provisions to improve the operation of the Act and of Aboriginal land councils. Stage two related to comprehensive consultation on proposals to consider ways for Aboriginal land councils to undertake land dealings on lands subject to native title—and, if required, further amendments of the Aboriginal Land Rights Act may proceed. Stage three related to consideration of major policy reforms of the Aboriginal Land Rights Act, specifically ways to improve the intersection of the Act with other legislative frameworks and government administrative processes such as Crown land management and urban and regional planning.

1.4 The Minister further stated that the Bill enacts the 'first stage' recommended by the 2021 Statutory Review, by proposing amendments to the Act which are intended to improve the administrative operation of the Aboriginal Land Council (ALC) system established in NSW.

1.5 The Statement of Public Interest to the Bill also noted that the 'administrative amendments' identified in the Review would 'reduce financial costs and ease the day-to-day works of Aboriginal Land Councils and the regulators'.

1.6 As a result, the Bill seeks to amend and insert provisions into the Act in respect to the matters identified by the 2021 Statutory Review, namely:

(a) How LALCs undertake land dealings and provisions concerning 'community benefits'.

(b) Clarifying the existing misconduct and complaints handling mechanisms in respect to ALCs, established under Part 10 of the Act, including providing the Registrar with express powers to suspend officers pending investigation and determination.

[1] Aboriginal Affairs NSW, *2021 Statutory Review of the Aboriginal Land Rights Act 1983*, November 2021, pp 17-23, viewed 9 November 2022.

(c) Provisions in respect to the requirements around election and conduct of officers of the NSWALC and LALCs, including updating disqualification criteria.

(d) Clarifying the relationship between the Minister for Aboriginal Affairs and the NSWALC and LALCs.

(e) Matters of general administration.

1.7 Speaking broadly to its provisions, the Minister stated that the amendments proposed to:

> … seek to make improvements to better assist and support frontline and end users of the Aboriginal Land Rights Act, including the 120 local Aboriginal land councils constituted throughout the State, the NSW Aboriginal Land Council and the registrar of the Act. Furthermore, the proposed amendments are set to strengthen the performance of local Aboriginal land councils and build confidence in the land rights network for a range of organisations that do business with local Aboriginal land councils …

1.8 The Statement of Public Interest also noted that the proposed amendments are intended to also make the Act 'readable and better understood by all users'. It further stated that this:

> … will have beneficial and long-lasting positive impacts. Improving the accessibility and operation of the Aboriginal Land Rights system will strengthen and increase engagement across the network which will in turn ensure the continued delivery of the Act's policy objectives.

Issues considered by the Committee

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

Procedural fairness and principles of open justice – determination of disciplinary matters

1.9 The Bill replaces Part 10 of the Act, which sets out provisions for the conduct of officers and staff members of the NSWALC and a LALC, the handling of complaints and disciplinary matters. This includes provisions for the making of a complaint of misconduct, or the referral of a report by the NSW Independent Commission Against Corruption or the NSW Ombudsman to the Registrar, in respect to alleged misconduct of an officer or staff member.

1.10 It also provides for the Registrar to refer the matter to the NSW Civil and Administrative Tribunal (the **Tribunal**), who may decide to conduct proceedings into the matter. Relevantly, section 205 provides that the Tribunal may determine such a matter referred to it without a hearing where all of the following are met:

(a) The Tribunal has considered the referral report and other relevant matters, and is of the opinion that public interest considerations do not require a hearing.

(b) The Registrar and person subject of the referral report have agreed that the proceedings may be determined without a hearing.

(c) There are no material facts in dispute between the Registrar and person subject of the referral report.

The Bill amends the *Aboriginal Land Rights Act 1983* to allow the NSW Civil and Administrative Tribunal to determine matters of alleged misconduct by an officer or staff member of the New South Wales Aboriginal Land Council (NSWALC) or a Local Aboriginal Land Council (LALC) without a hearing.

This may impact an individual's rights to procedural fairness and principles of open justice, which includes the guarantee for public hearings before a court or tribunal.

However, the Committee acknowledges that these amendments are intended to ensure proceedings for alleged misconduct and possible disciplinary action may be dealt with efficiently and expeditiously, particularly where the relevant person may be suspended from their duties pending determination. It also notes that the Tribunal can only determine proceedings without a hearing where it has received agreement from all relevant parties. In these circumstances, the Committee makes no further comment.

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

Commencement by proclamation

1.11 Section 2(a) of the Bill provides that certain amendments to the Act and the *Aboriginal Land Rights Regulation 2020* commence on a day or days to be appointed by proclamation. These amendments provide for the conduct of elections of NSWALC councillors administered by an election service providers other than the NSW Electoral Commission.

Parts of the Bill commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly where the legislation in question affects individual rights or obligations.

However, the Committee notes that a flexible start date may assist with the implementation of administrative arrangements necessary for the effective operation of the proposed amendments to allow the administration of NSWALC councillor elections by a provider other than the NSW Electoral Commission. In the circumstances, the Committee makes no further comment.

2. Crimes Amendment (Custody of Knives) Bill 2022*

Date introduced	10 November 2022
House introduced	Legislative Assembly
Member responsible	Mr Michael Daley MP
	*Private Members Bill

Purpose and description

2.1 The object of this Bill is to amend the *Crimes Act 1900* to create an indictable offence, with a maximum penalty of imprisonment for 4 years, of having custody of a knife in a public place or school.

2.2 The Bill also makes consequential amendments to related legislation.

Background

2.3 The Bill amends the *Crimes Act 1900* (the **Act**), which consolidates criminal law in NSW.

2.4 Specifically, the Bill inserts a new section 547F regarding custody of a knife in a public place or school. Under this section, a person must not, without reasonable excuse, proof of which lies on the person, have in the person's custody a knife in a public place or a school. This may incur a maximum penalty of 40 penalty units ($4 400) or imprisonment for 4 years or both.

2.5 In speaking to the Bill, Mr Michael Daley MP noted the Bill was in response to knife crime statistics in NSW that he described as 'stubbornly high':

> We must make sure that in all of our deliberations in Parliament, particularly in respect to criminal law, community safety is paramount. Although the Bureau of Crime Statistics and Research and Local Court statistics regarding knife crime are relatively stable under the current relevant provisions in the Crimes Act, they are still stubbornly high. As a former Minister for Police, I note that the police do a terrific job making sure that they are vigilant in the parts of Sydney and New South Wales where the possession of knives is more prevalent so that they are all over the people who are want to carry those weapons in public. They do a very good job of keeping us safe, as do magistrates and judges when these matters are brought before the courts. I reiterate that although knife crime offences are not increasing, their numbers are still stubbornly high.

2.6 The Bill also makes corresponding amendments to recognise the new offence under the *Criminal Procedure Act 1986* and the *Summary Offences Act 1988.*

Issues considered by the Committee

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

Judicial discretion in respect to sentencing matters – previous convictions as aggravating factors

2.7 The Bill inserts section 547F to the Act, which provides that a person must not, without reasonable excuse, proof of which lies on the person, have in the person's custody a knife in a public place or a school. This may incur a maximum penalty of 40 penalty units ($4 400) or imprisonment for 4 years or both.

2.8 Subsection 547F(4) provides that:

> Without limiting the *Crimes (Sentencing Procedure) Act 1999*, section 21A(1)(a) and (2)(d), a previous conviction for a knife-related offence must be taken into account as an aggravating factor in determining the appropriate sentence for an offence under this section.

2.9 Subsections 21A(1)(a) and (2)(d) of the *Crimes (Sentencing Procedure) Act 1999* provide that in determining the appropriate sentence for an offence, the court is to take into account aggravating factors that are relevant and known to the court, including that the offender has a record of previous convictions. This is particularly if the offender is being sentenced for a serious personal violence offence and has a record of previous convictions for serious personal violence offences.

2.10 Subsection 21A(5) of the *Crimes (Sentencing Procedure) Act 1999* states explicitly that "The fact that any such aggravating or mitigating factor is relevant and known to the court does not require the court to increase or reduce the sentence for the offence."

2.11 A knife related offence is defined under subsection (6) to mean an offence under the following:

> (a) this section,
>
> (b) the *Summary Offences Act 1988*, section 11B or 11E,
>
> (c) the *Summary Offences Act 1988*, section 11C before its repeal,
>
> (d) another offence punishable on conviction by imprisonment for 2 years or more if a knife was used in the commission of the offence,
>
> (e) an offence under a law of the Commonwealth or of another State or Territory punishable on conviction by imprisonment for 2 years or more if a knife was used in the commission of the offence.

2.12 In the second reading speech, Mr Daley identified the risk of reoffending as a concern:

> According to the Judicial Commission of New South Wales, between 2017 and 2022 there have been an average of 1,862 violent assaults or robberies involving a knife committed each year. Also, between 2018 and 2021, the Local Court of New South Wales heard 3,115 cases relating to the offence of custody of a knife in a public place, first offence. What is of concern is that the Local Court heard matters relating to a further 1,530 subsequent offences for knife possession in the same period. One might

glean from those statistics that there is a propensity for reoffending. The statistics are a concern, as are the motivations of the offenders.

The Bill inserts section 547F to prohibit a person from having custody of a knife in a public place or school without reasonable excuse. This offence carries a maximum penalty of 40 penalty units ($4 400) or imprisonment for 4 years or both. The Bill further provides that, without limiting the *Crimes (Sentencing Procedure) Act 1999*, a previous conviction for a knife-related offence must be taken into account as an aggravating factor in determining the appropriate sentence for an offence under this section.

This may impact upon the procedural fairness afforded to the accused by requiring a previous conviction to be considered an aggravating offence in sentencing. As previous convictions for a knife-related offence *must* be taken into account, it also impacts judicial discretion. However, the Committee notes that as the *Crimes (Sentencing Procedure) Act 1999* (section 21A) provides that in determining the appropriate sentence for an offence, the court is to take into account aggravating factors that are relevant and known to the court. This includes if the offender is being sentenced for a serious personal violence offence and has a record of previous convictions for serious personal violence offences.

Subsection 21A(5) also provides that the fact that any such aggravating or mitigating factor is relevant and known to the court does not require the court to increase or reduce the sentence for the offence. Noting that these are factors the court may already take into account, and the overarching aim of public safety, the Committee makes no further comment.

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

Matters that should be in primary legislation - delegation of exemptions to the regulations

2.13 As discussed above, the Bill inserts section 547F which prohibits a person from having custody of a knife in a public place or school without reasonable excuse. This offence carries a maximum penalty of 40 penalty units ($4 400) or imprisonment for 4 years or both.

2.14 Subsection 547(2) provides circumstances that may constitute a reasonable excuse, including:

- the lawful pursuit of the person's occupation, education or training
- the preparation or consumption of food or drink
- participation in a lawful entertainment, recreation or sport,
- the exhibition of knives for retail or other trade purposes,
- an organised exhibition by knife collectors,
- the wearing of an official uniform,
- genuine religious purposes,

2.15 It also includes circumstances where it is reasonably necessary to travel to or from, or incidental to any of the above activities.

2.16 Subsection 547(2)(c) provides that the regulations may also prescribe custody of a kind that is a reasonable excuse for the purposes of this section.

The Bill sets out what circumstances constitute a reasonable excuse for carrying a knife in a public place or school, such as the preparation or consumption of food or drink or the participation in lawful entertainment. It also provides that the regulations may prescribe custody of a kind that is a reasonable excuse for the purposes of this section.

This delegates exemptions to the offence to the regulations. The Committee generally prefers provisions which contain offences and its exemptions to be located in primary legislation to foster an appropriate level of parliamentary oversight. The Committee notes that allowing further exemptions to be prescribed by the regulation may allow a level of flexibility for responding to changing circumstances regarding the criminal law. However, as the offence attaches monetary and custodial penalties, the Committee refers this issue to Parliament for its consideration of whether the matter is more appropriately dealt with by the primary legislation.

3. Environmental Planning and Assessment Amendment (Private Native Forestry) Bill 2022

Date introduced	9 November 2022
House introduced	Legislative Assembly
Minister responsible	The Hon. Dugald Saunders MP
Portfolio	Agriculture

Purpose and description

3.1 The objects of this Bill are—

(a) to provide that forestry operations authorised by the *Local Land Services Act 2013*, Part 5B are taken to be exempt development except in certain circumstances, and

(b) to extend the maximum duration of private native forestry plans to 30 years

Background

3.2 The Bill amends the *Environmental Planning and Assessment Act 1979* (the **EP&A Act**), which sets out the legislative framework for, amongst other things, the promotion of the social and economic welfare of the community and a better environment through the proper management, development and conservation of the State's natural and other resources.

3.3 It also amends the *Local Land Services Act 2013* (the **LLA Act**) which sets out the legislative framework for establishing Local Land Services and for the management and delivery of local land services.

3.4 In the second reading speech to the Bill, the Hon. Dugald Saunders MP, stated that the Bill 'will support the improved long-term sustainability of the New South Wales forestry industry by ensuring that our State has a simple and consistent approach to regulating private native forestry'.

3.5 Schedule 1 of the Bill amends the EP&A Act, to provide that forestry operations under the *Local Land Services Act 2013* are taken to be exempt development unless development consent is required by a State Environmental Planning Policy (**SEPP**) or the forestry operations are prohibited by an SEPP or a Local Environmental Plan. It also provides that the Minister must not recommend to the Governor the making of a State Environmental Planning Policy that contains a requirement for development consent to clear native vegetation on land to which a private native forestry plan applies without the concurrence of the Minister administering the LLA.

3.6 Mr Saunders observed that the Bill amends the EP&A Act to 'reduce the regulatory burden on landholders caused by duplicative local council approvals, which vary across the State.'

3.7 Schedule 2 of the Bill amends the *Local Land Services Act 2013* to extend the maximum duration of private native forestry (**PNF**) plans from 15 years to 30 years. Mr Saunders noted that the increase to maximum approval periods served the following purposes:

> Firstly, it helps harmonise PNF plan approvals with native hardwood regeneration periods. Secondly, it provides farmers with the certainty and security to invest in long-term forest management. Extending the maximum PNF plan approval time frame will remove the current perverse requirement for farmers to harvest before their forests reach environmental and commercial maturity, and will promote long-term investment in ecological sustainable forest management.

3.8 The Committee considers that the Bill's amendment does not engage with the reportable issues under section 8A of the *Legislation Review Act 1987* regarding personal rights and liberties.

Issues considered by the Committee

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

4. Forestry Amendment (Koala Habitats) Bill 2022*

Date introduced	9 November 2022
House introduced	Legislative Council
Member responsible	Ms Sue Higginson MLC
	*Private Members Bill

Purpose and description

4.1 The object of this Bill is to prohibit forestry operations from being carried out in koala habitats.

Background

4.2 The *Forestry Act 2012* (the **Act**) provides for the dedication, management and use of State forests and other Crown-timber land for forestry and other purposes.

4.3 The Bill amends the Act to make it a requirement of an integrated forestry operations approval that forestry operations are not carried out in koala habitats, being:

(a) an area of regional koala significance identified in the Koala Prioritisation Project – Areas of Regional Koala Significance Database, or

(b) an area declared by the Minister, by order published in the Gazette, as a koala habitat, if the Minister receives an assessment by a suitably qualified person that the area is a koala habitat. An assessment must be tabled in each House of Parliament.

4.4 It is an offence under section 69SA of the Act for a person to contravene a requirement of an integrated forestry operations approval.

4.5 In her second reading speech, Ms Higginson provided that koalas are at threat of extinction and explained:

> The bill amends the New South Wales Forestry Act to protect koala habitat, as mostly already identified and mapped by successive environment departments, on our public forest estate. It does this by prohibiting the industrial-scale logging of that koala habitat.

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*.

5. Government Sector Audit and Other Legislation Amendment Bill 2022

Date introduced	9 November 2022
House introduced	Legislative Assembly
Member introducing[2]	Ms Felicity Wilson MP
Minister responsible	The Hon. Matt Kean MP
Portfolio	Treasurer

Purpose and description

5.1 The object of this Bill is to amend the *Government Sector Audit Act 1983* and the *Local Government Act 1993* to extend the performance audit powers of the Auditor-General to include non-government entities that carry out government funded activities for or on behalf of State and local government entities to assess whether the activities are being carried out effectively, economically, efficiently and lawfully.

5.2 This Bill also amends the *Government Sector Audit Act 1983* and the *Local Government Act 1993* to implement recommendations of the quadrennial review of the Audit Office.

Background

5.3 The Bill proposes a number of amendments to the *Government Sector Audit Act 1983* (the **Audit Act**) and the *Local Government Act 1993* (the **Local Government Act**) in respect to the functions and powers of the Auditor-General and Audit Office of New South Wales (the **Audit Office**).

5.4 In her second reading speech to the Bill, Ms Felicity Wilson MP (on behalf of the Hon. Matt Kean MP, Treasury) stated that these amendments are intended to implement the NSW Government's response to the Public Accounts Committee's report '*Quadrennial Review of the Audit Office of New South Wales 2022*' (the **PAC Report**).[3]

5.5 The Public Accounts Committee made two recommendations in the PAC Report, which was directed to the NSW Government and Treasurer. Recommendation 1 supported the implementation of the two recommendations made by the peer reviewer of the Audit Officer directed to the Government, which called for

[2] The Bill was introduced by Ms Felicity Wilson MP, Parliamentary Secretary to the Treasurer, on behalf of the Hon. Matt Kean MP, Treasurer, who has carriage of the Bill.

[3] Public Accounts Committee, *Quadrennial Review of the Audit Office of New South Wales 2022*, report 10/57, Parliament of New South Wales, September 2022, pp iv, 15, 16.

legislative amendments to strengthen the powers and independence of the Audit Office.[4]

5.6 Ms Wilson highlighted the important role of performance audits by the Audit Office and acknowledged the barriers to the Audit Office comprehensively carrying out that function, as identified in the PAC Report:

> All members will know that the Auditor-General plays a crucial role in assisting Parliament to hold both the State Government and local governments to account for their use of public resources. A key part of that role is undertaking performance audits, which are designed to assess whether particular activities of State agencies and, since 2016, local governments are being carried out effectively, economically, efficiently and in compliance with relevant laws. …
>
> When carrying out performance audits, the Auditor-General is currently unable to directly examine the use of public resources by non-public sector entities that are engaged by government agencies or local councils to exercise functions or provide other public services on their behalf, such as charities and not-for-profit organisations. In effect, the Auditor-General and Parliament's scrutiny is restricted simply by the way in which agencies or councils deliver those services.

5.7 To address those gaps, the Bill seeks to make mirror amendments to both the Audit Act and the Local Government Act. Primarily, the amendments would enable the Auditor-General to also conduct performance audits of non-public sector entities which are engaged to do things for a State (public service) purpose. These amendments are referred to as 'follow the dollar' powers.

5.8 In her second reading speech, Ms Wilson highlighted that these amendments would bring the Auditor-General's powers in line with 'every other Australian jurisdiction'. She further stated that by 'broadening the Auditor-General's mandate, the Bill will:

> … deliver more robust accountability and transparency over the use of public resources. The reform will also address gaps in external accountability arrangements that may have arisen from a shift that has occurred over time from direct service delivery by State and local government agencies to a significant level of service delivery being undertaken by non-public sector entities on behalf of New South Wales government agencies…

5.9 Beyond the follow the dollar powers, the Bill also proposed amendments to clarify the role of the Audit Office as an independent agency from the Executive. These include explicit provisions that the Auditor-General is an independent officer of Parliament, and that they be consulted on the scope of any audit they have been directed to perform by the Parliament, the Treasurer or a Minister.

5.10 Finally, the Bill seeks to amend a number of provisions relating to the role of the Public Accounts Committee in overseeing the Audit Office. This includes updating the legislative scheme for the quadrennial review of the Audit Office, and explicitly include in the Committee's functions the examination of annual reports published by the Audit Office.

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[4] Public Accounts Committee, *Quadrennial Review of the Audit Office of New South Wales 2022*, report 10/57, Parliament of New South Wales, September 2022, p 15, 16.

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

Wide powers to compel records – legal professional privilege

5.11 The Audit Act (section 36) and the Local Government Act (section 423) set out the powers of the Auditor-General to access and call on the production of documents in exercising their auditing functions under both Acts.

5.12 Specifically, both sections provide that the Auditor-General or a person authorised by them is entitled at 'all reasonable times to full and free access' to the records of the relevant entity that is necessary in order to carry out the Auditor-General's functions. The provisions also allow for authorised persons to require a record be produced or that they be given access to a record.

5.13 Both subsection 36(6) of the Audit Act and subsection 423(4) of the Local Government Act clarify that the authorised person is entitled to exercise these functions in respect to accessing and producing records, despite:

(a) any rule of law which, in proceedings in a court of law, might justify an objection to access … or

(b) any privilege of an entity that the entity might claim in a court of law, … or

(c) any duty of secrecy or other restriction on disclosure applying to an auditable entity or an officer or employee of an auditable entity (including a government officer).

5.14 The Bill amends both of these subsections, to remove a previous exclusion of legal professional privilege from the application of the power to access and compel the production of documents. This would require the production or access to a document which is the subject of a claim of legal professional privilege, if the Auditor-General or a person authorised by them requests access or production in the conduct of an audit.

5.15 The Bill also replaces sections 36(8) and (9) of the Audit Act and subsections 423(5) and (6) of the Local Government Act to provide identical safeguards in respect to the exercise of this power to compel the production or access to records. These safeguards include:

(a) Prohibition on the Auditor-General or authorised person from publishing or disclosing confidential information produced to them,

(b) Requirements for the return, destruction or termination of access to records that contain confidential information provided or produced to an authorised person,

(c) Clarification that any claim of confidential or privilege is 'not prevented merely because the information is access, provided or produced under this section'.

5.16 Speaking to these amendments, Ms Wilson stated in her second reading speech that it 'will remove the current provisions that mean that the Auditor-General is not entitled to access information that is Cabinet information or subject to legal professional privilege'. However, she highlighted the additional safeguards and described this balance:

> … allows the Auditor-General broad powers of access to ensure the highest levels of scrutiny and oversight, but it also balances that right of access against the legitimate public interest in the State being able to maintain and assert privilege in other forums such as in litigation before a court.

The Bill amends the *Government Sector Audit Act 1983* and the *Local Government Act 1993* to expand the powers of persons authorised by the Auditor-General to require the production of or access to records which are considered necessary for the carrying out of their audit function. This expansion includes removing the exception from production or access to records which are the subject of claims of legal professional privilege. Therefore, the Bill may impact an individual's right to procedural fairness by excluding the protection of legal professional privilege.

The Committee acknowledges that the provisions are intended to facilitate the functions of the Auditor-General, and to enhance the scrutiny and oversight of public spending by government and public sector agencies. It also notes that an additional safeguard is provided, which explicitly states that production or access under these powers do not prevent a claim of privilege.

However, the Committee notes that legal professional privilege is a key immunity under common law which seeks to protect the ability of individuals to obtain full and frank legal advice. While the safeguard provisions prohibit the publication or disclosure of 'confidential information', the use of that information by the Auditor-General is not clearly defined. This may allow the disclosure of the substance of information in the exercise of audit functions, which may defeat a claim of legal professional privilege. For these reasons, the Committee refers this matter to the Parliament for its consideration.

6. Independent Commission Against Corruption Amendment (Validation) Bill 2022*

Date introduced	9 November 2022
House introduced	Legislative Council
Member responsible	The Hon. Rod Roberts MLC
	*Private Members Bill

Purpose and description

6.1 Previously, the *Independent Commission Against Corruption Amendment (Validation) Act 2015* inserted a provision into the *Independent Commission Against Corruption Act 1988* to validate certain previous actions of the Independent Commission Against Corruption following the decision of the High Court in *Independent Commission Against Corruption v Cunneen [2015] HCA 14*.

6.2 The object of this Bill is to amend the *Independent Commission Against Corruption Act 1988* to provide that the validation provision does not apply in relation to a person who had proceedings pending in the Supreme Court or the Court of Appeal on 8 May 2015 relating to a finding by the Commission of corrupt conduct.

6.3 The Bill also provides that in calculating a limitation period for a proceeding brought for or on behalf of a person of that kind, the period between 8 May 2015 and the date of assent to the proposed Act is to be disregarded in the calculation of the limitation period. It also provides that the new provisions inserted by the Bill apply whether or not the person of that kind is deceased, including for a proceeding brought on behalf of a deceased person.

Background

6.4 The Bill amends the *Independent Commission Against Corruption Act 1988* (the **Act**) to provide that the validation provision set out at Clause 35 of Schedule 4 of the Act does not apply to a person who had proceedings pending in the Supreme Court or the Court of Appeal on 8 May 2015 which related to a finding by the Commission of corrupt conduct. It also provides that any relevant limitation period does not factor in the time between 8 May 2015 and the date of assent of this Bill.

6.5 In his second reading speech to the Bill, the Hon. Rod Roberts MLC, outlined that the Bill was specifically in relation to the High Court case of *ICAC v Cunneen [2015] HCA 14 (**Cunneen**):*

> In short, in the Cunneen matter, the High Court of Australia—the highest court in this land—found that the ICAC had misinterpreted the definition of "corrupt conduct". The High Court's decision threw into doubt earlier ICAC corrupt conduct findings where

> the wrongful interpretation had been used and applied. This decision was handed down on 15 April 2015. As a result of this finding, the ICAC requested that the government of the day amend the ICAC Act with retrospective force. This was because of ICAC's concern that the High Court decision in *Cunneen* impacted a number of past investigations. Hence, the *Independent Commission Against Corruption Amendment (Validation) Act 2015*, which I refer to as the validation Act, was introduced and passed by this Parliament.
>
> The bill was introduced and passed by both Houses of Parliament and then assented to all on the one day— that being 6 May 2015. The effect of the new legislation was to validate certain conduct of the ICAC before 15 April 2015, including findings of corrupt conduct.

6.6 Mr Roberts further noted that the effect of the 2015 amendment expanded the scope of the ICAC's powers retrospectively which resulted in four individuals not being able to have findings of corrupt conduct set aside.

6.7 Mr Roberts also made mention of the Joint Committee on the ICAC's 2021 report on the reputational impact on an individual being adversely named in the ICAC's investigation. That report recommended that the *Independent Commission Against Corruption Amendment (Validation) Act 2015* be amended to put the specified persons in the same position they would have been in on 8 May 2015 (the date set for the Court of Appeal proceeding) had the Validation Act not applied to them.[5]

6.8 In his concluding statements, Mr Roberts stated that the Bill:

> …has been specifically drafted to apply only to the gentlemen that had the undertaking of both the ICAC and the Court of Appeal to have their findings annulled.

Issues considered by the Committee

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

Retrospectivity and rule of law

6.9 The Bill inserts sub-clause 35A(1) which provides that clause 35 of Schedule 4 of the Act does not apply in relation to a person who had proceedings pending in the Supreme Court, including the Court of Appeal, on 8 May 2015, which related to a finding by the Commission of corrupt conduct.

6.10 The Bill inserts sub-clause 35A(2) the period between 8 May 2015 and the date of assent of this Bill is to be disregarded in the calculation of any limitation period a proceeding brought by or on behalf of a person specified in sub-clause 35A(1) in relation to a finding of corrupt conduct. It also provides that the new provisions inserted by the Bill apply whether or not the person of that kind is deceased, including for a proceeding brought on behalf of a deceased person.

6.11 In his second reading speech to the Bill, Mr Roberts noted that when the *Independent Commission Against Corruption Amendment (Validation) Act 2015* was

[5] Committee on the Independent Commission Against Corruption, Reputational impact on an individual being adversely named in the ICAC's investigations, November 2021, p33 (Recommendation 7).

passed there were four individuals who had 'legal proceedings in play' to contest corrupt findings made against them by the ICAC.

6.12 In his closing remarks, Mr Roberts stated that amendments included in this bill have been:

> …specifically drafted to apply only to the gentlemen that had the undertaking of both the ICAC and the Court of Appeal to have their findings annulled.

The Bill inserts clause 35A which provides that clause 35 of Schedule 4 of the *Independent Commission Against Corruption Act 1988* (the Act) does not apply in relation to a person who had proceedings pending in the Supreme Court, including the Court of Appeal, on 8 May 2015, which related to a finding by the Commission of Corruption. This exception thereby operates retrospectively.

The Committee generally comments on provisions drafted to have retrospective effect, as they may impact on the rule of law principle. That is, a person is entitled to know the law to which they are subject at any given time.

The Committee further notes that clause 35A has the effect of excluding four individuals in specific circumstances from the operation of a substantive provision of the Act. This may be inconsistent with the rule of law principle that the law be applied equally and fairly, with no person above the law.

The operation of the Bill's provisions may also interfere with the judicial process as it specifically provides that clause 35 of Schedule 4 to the Act does not apply for a person who had pending proceedings about a finding of corrupt conduct in the NSW Supreme Court or Court of Appeals on 8 May 2015. It also extends the limitation period for bringing those proceedings by excluding the days since 8 May 2015. This may undermine the finality of the court's decision, by reopening proceedings which have been tried in fact.

The Committee acknowledges that the Bill is attempting to address an issue of retrospectivity arising from a 2015 amending Act. However, as the Bill also acts retrospectively and specifically for the proceedings of select persons, the Committee refers the matter to Parliament for its consideration.

7. Integrity Legislation Amendment Bill 2022

Date introduced	9 November 2022
House introduced	Legislative Assembly
Minister introducing	The Hon. Alister Henskens SC MP
Minister responsible	The Hon. Dominic Perrottet MP
Portfolio	Premier

Purpose and description

7.1 The object of this Bill is to—

(a) amend the *Constitution Act 1902* to expand the regulation-making power in relation to the disclosure of pecuniary interests and other matters by—

(i) Members of either House of Parliament, and

(ii) members of the immediate family of Members of either House of Parliament, and

(b) amend the *Independent Commission Against Corruption Act 1988* to prescribe the Ministerial Code of Conduct as an applicable code of conduct in relation to Parliamentary Secretaries.

Background

7.2 The Minister, Alistair Henskens SC MP, in his second reading speech stated that Bill sought to implement the Government's response to the recommendations of the recent report of the Independent Commission Against Corruption (**ICAC**).

7.3 In July 2022, the ICAC published their report titled *Investigation into the conduct of the local member for Drummoyne*.[6] It made recommendations directed at changing the disclosure requirements of pecuniary interests by Members of Parliament.

7.4 In regards to the current disclosure requirements, the Minister noted that Members of Parliament are not expressly required to disclose memberships of trusts or the interest of their family members.

7.5 The Minister further stated:

> In the report the ICAC identified the following weaknesses and shortcomings in the New South Wales disclosure system: There are limited disclosure requirements on

[6] Independent Commission Against Corruption NSW, Investigation into the conduct of the local member for Drummoyne, July 2022.

> members of Parliament where family members use family trusts to hold investments—and that was of course an issue that arose with regard to Eddie Obeid. Members of Parliament should not be able to circumvent disclosure obligations by arrangements where family members hold or are transferred assets; and in comparison with other Australian jurisdictions, the New South Wales disclosure system "does not reflect best practice and community expectations, and provides opportunities for hidden interests".

7.6 Schedule 1.1 of the Bill amends the *Constitution Act 1902*, to clarify that the regulations made under section 14A may relate to the disclosure of the pecuniary interests, or other matters, of members of the immediate family of Members of either House of Parliament.

7.7 Schedule 1.2 of the Bill amends the *Independent Commission Against Corruption Act 1988* to extend disclosure requirements to Parliamentary Secretaries.

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*.

8. NSW Reconstruction Authority Bill 2022

Date introduced	9 November 2022
House introduced	Legislative Assembly
Minister responsible	The Hon. Anthony Roberts MP
Portfolio	Planning

Purpose and description

8.1 The object of this Bill is to establish the NSW Reconstruction Authority to facilitate prevention, preparedness, recovery, reconstruction and adaptation for the impact of disasters in NSW, to improve resilience for potential disasters and to provide for the Authority's functions and powers.

Background

8.2 The Bill seeks to establish the NSW Reconstruction Authority (the **Authority**) and set up the legislative framework for its operation and functions in NSW.

8.3 In his second reading speech to the Bill, the Hon. Anthony Roberts MP, Minister for Planning, noted that the Bill seeks to implement Recommendation 15 of the Report of the NSW Independent Floods Inquiry (the **Floods Report**),[7] which recommended:

> That, to provide rapid and effective recovery from floods (and other disasters) and to provide maximum mitigation of the impacts of future floods (and other disasters), Government establish a permanent state-wide agency, the NSW Reconstruction Authority (NSWRA) dedicated to disaster recovery, reconstruction and preparedness.[8]

8.4 The Minister stated in his second reading speech that the Authority recommended by the Floods Report is 'to be closely modelled on the Queensland Reconstruction Authority'. He noted that the Bill was drafted following work with members of the Queensland Reconstruction Authority (**QRA**) and Lismore City Council, who have experienced recent flooding disasters. He further highlighted the work of the QRA, stating that:

> Established 11 years ago and tested by time, the QRA has proven itself to be highly successful and experienced and the leading model for recovery. Our colleagues in Queensland have shared their knowledge and experience from their reconstruction authority, and we have pooled this with our collective experience to develop the structure for this new authority. …
>
> The design of the NSW Reconstruction Authority is informed by the structure and experience of the QRA… Ninety-eight disasters have struck Queensland in the 11 years

[7] NSW Government, 2022 NSW Flood Inquiry, 18 August 2022, viewed 11 November 2022.

[8] M O'Kane and M Fuller, *2022 Flood Inquiry – Volume One: Summary report*, NSW Government, July 2022, pp 24-25, viewed 11 November 2022.

> since the QRA was first established. It has played a significant role in rebuilding from and mitigating the impact of disasters throughout that time.

8.5 In his second reading speech, the Minister spoke of the broader role which the Authority is intended to play in NSW. He stated that:

> The NSW Reconstruction Authority will provide the foundations of a stronger, better State, one that is prepared to tackle disaster mitigation and recovery head on. The NSW Reconstruction Authority will be the driving force behind the resilience, adaptation and mitigation measures that are aimed at improving the State's ability to protect its people now and into the future.

Issues considered by the Committee

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

Right to the presumption of innocence – liability for losses without charge or conviction

8.6 Part 9 of the Bill establishes various offences and makes provisions in respect to legal proceedings for those offences.

8.7 Sections 78 and 79 create offences for misusing information acquired through an association with the Authority which is not generally known but may materially affect the market price of land, for personal advantage.

8.8 Subsections 78(3) and 79(3) are identical, and provide that a person who has contravened this offence and has gained an advantage due to that contravention is liable to another person for the amount of any loss incurred as a result. This liability applies regardless of 'whether or not any person has been prosecuted for or convicted of an offence in relation to a contravention'.

The Bill creates offences for the misuse for personal advantage of information acquired through an association with the NSW Reconstruction Authority that may materially affect market prices of land. It also establishes liability for a person who contravenes those provisions, for the loss of another person which is incurred as a result.

These provisions clarify that this liability applies, whether or not any person has been prosecuted for or convicted of the offence relating to the contravening conduct. By applying personal liability for losses from contravening conduct without the need for charge or conviction of the relevant offence, the Bill may therefore impact an individual's right to the presumption of innocence.

The Committee acknowledges that the provisions are intended to ensure compliance by broadly extending personal liability, particularly in circumstances where contravention is connected to activities by the Authority intended to assist vulnerable communities affected by emergencies and disasters. However, the Committee notes that the personal liability for losses is a civil liability, which has a lower standard of proof than criminal proceedings. For these reasons, the Committee refers this matter to Parliament for its consideration.

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

Wide and ill-defined functions – functions of the Authority

8.9 Part 2 of the Bill establishes the Authority under Division 1, and Division 2 sets out its functions. The functions of the Authority under section 10 include 'to do anything supplementary, incidental or consequential on the exercise of the Authority's functions' explicitly set out under subsection (1).

8.10 Section 9 of the Bill provides that in the exercise of its functions, the Authority is subject to the control and direction of the Minister'. Section 18 also sets out the main functions of the CEO of the Authority. Relevantly, subsection (1)(b) provides that one of the functions of the chief executive officer is to:

> … carry out or commission investigations, prepare plans or take steps the Minister directs, or the chief executive officer considers necessary or desirable, to ensure proper planning, preparation, coordination and control of development for the protection, rebuilding and recovery of affected communities…

8.11 The Minister stated in his second reading speech that:

> The Reconstruction Authority will be a new government agency headed by a chief executive officer who will be responsible for the day-to-day operations of the authority while still being subject to the control and direction of the Minister for Planning.

Part 2 of the Bill establishes the NSW Reconstruction Authority, including section 10 which sets out the functions of the Authority. Relevantly, these functions include doing anything that is 'supplementary, incidental or consequential on the exercise of' the other functions explicitly set out in subsection (1). Section 18 also provides that the Authority's CEO has the function to take steps they consider 'necessary or desirable', to ensure proper planning preparation, coordination and control of relevant development. This may grant a wide and ill-defined power to the Authority or its CEO, to take any step or do anything considered 'desirable' or 'incidental' to the exercise of the functions set out in law.

The Bill also provides that the exercise of the Authority's and CEO's functions are both subject to the direction and control of the Minister. However, there appears no provisions defining 'the Minister'. The Committee generally prefers the relevant Minister to be specified in the legislation for the avoidance of doubt, particularly in cases where the Minister may direct the Authority or its CEO in the exercise of wide functions.

The Committee acknowledges that the Authority is intended to ensure effective coordination and collaboration across the State's disaster prevention, preparation, response and recovery. The provisions may facilitate more flexible and responsive administration of that role, in circumstances of unprecedented emergencies. However, the Committee notes that 'desirable', 'incidental' and 'consequential' are terms that, without legislative definitions or limitations, may be broadly defined to include any and all matters, actions or steps. This may amount to an unrestricted administrative power. For these reasons, the Committee refers this matter to Parliament for its consideration.

Wide executive powers – Ministerial declarations and step-in functions of the Authority

8.12 Under Part 5 of the Bill, the Minister is enabled to declare by order published in the Gazette that a project for proposed development is a 'declared project' (section 39), or part of the State is a 'reconstruction area' (section 40) or a 'disaster prevention area' (section 41).

8.13 The Minister may only make the declaration if the Authority has recommended the declaration be made, and the Minister is satisfied that:

(a) The area specified or where the specified project will be carried out will be affected by a disaster,

(b) The declaration is necessary to help facilitate the protection, rebuilding and recovery of the affected community, mitigate against potential disasters or improve the resilience of an affected community for potential disasters.

8.14 Division 2 of Part 6 sets out the functions of the Authority in relation to a declared project, reconstruction area or disaster prevention area. These powers include:

- Acquire land for the declared project or relevant land by compulsory acquisition under the *Land Acquisition (Just Terms Compensation) Act 1991* (section 45(a)(ii)).
- Demolish any building adjoining or in the vicinity of land vested in the Authority or relevant land (section 46(c)).
- Set out and construct, or temporarily or permanently close roads on land vested in the Authority or relevant land (section 46(d)).
- Give a step-in notice to a decision-maker, with the approval of the Minister, advising the decision-maker and application for a prescribed decision or process that the Authority will be the decision-maker for the prescribed matter (sections 45(d) and 52).

8.15 Section 59 states that the Authority is not required to consult with anyone before giving a progression notice or notice to decide.

8.16 Division 5 of Part 5 makes provisions in respect to a step-in notice. Section 55 provides that the effect of a step-in notice is that the Authority:

(a) is the decision-maker under the relevant law for the prescribed decision or prescribed process from the time the step-in notice is given until the Authority makes a decision under section 56 about the prescribed decision or prescribed process, and

(b) has, for making the decision, all the powers of the decision-maker under the relevant law for the prescribed decision or prescribed process, and

(c) must, in making the decision, consider the following—

(i) the criteria, if any, for making the prescribed decision or undertaking the prescribed process under the relevant law,

(ii) the primary object of this Act.

8.17 The Authority is also authorised under section 56(1) to make the decision or undertake the process, or decides aspects of the decision. In accordance with section 57, any decision made by the Authority is:

(a) taken to be and takes effect as a decision of the original decision-maker 'under the relevant law',

(b) cannot be appealed against by a person under relevant,

(c) limiting on another 'prescribed decision' made by the original decision-maker in relation to the declared project, reconstruction are or disaster prevention area, by requiring that decision not be inconsistent with the Authority's earlier decision.

8.18 Section 54(1) also requires the decision-maker for the prescribed decision or process must give the Authority 'all reasonable assistance or materials' which the Authority requires in order to act.

8.19 In approving the giving of a step-in notice, subsection 52(2) requires the Minister to be satisfied that the notice is necessary either for the protection, rebuilding or recovery of a community, mitigate against potential disasters or improve community resilience for potential disasters.

8.20 Speaking broadly to these provisions, the Minister stated in his second reading speech that:

> The Minister's declaration of areas and projects will enable the authority to exercise functions to expedite decision-making processes and to step in to manage projects and development where necessary to avoid delays in delivering critical development or to pause development that is inappropriate in the face of a disaster. … The power to acquire land will allow the authority to ensure that the development needed to mitigate against the risk of future disasters is delivered when required.

8.21 He also noted that the powers of the Authority are 'subject to strict constraints and are intended to only be used when absolutely necessary', stating that:

> The authority will only resort to using such powers when lives are at stake and when immediate action is required to combat an impending or unfolding disaster, and only to the extent necessary to alleviate the threat. It is likely that the authority will rarely need to rely on those powers. However, they are an essential element in the ability of the authority to respond to a disaster or an impending disaster quickly and efficiently, which was an important point out of the inquiry report.

Part 5 of the Bill sets out the legislative framework for the making of Ministerial declarations of 'declared projects', 'reconstruction areas' and 'disaster prevention areas'. It also provides a number of powers to the Minister and the NSW Reconstruction Authority in respect to a declared project, reconstruction area and disaster prevention area. This includes the power to compulsorily acquire land, demolish buildings adjoining or in the vicinity of relevant land, construct or close roads on relevant lands, and have the Authority 'step in' for

another decision-maker to determine and assess a prescribed decision or process.

In respect to the power to step-in, the Authority may make a decision which takes effect under relevant law as if the Authority was the relevant decision-maker. However, the decision of the Authority cannot be appealed by a person and a subsequent decision by the decision-maker cannot be inconsistent with the Authority's earlier decision.

The Bill may thereby grant the Authority wide administrative powers in respect to certain matters declared by the Minister. The exercise of certain powers may impact individual rights, such as their real property rights in respect to the power to compulsory acquire land, demolish nearby buildings or close roads. Excluding the ability to appeal decisions made by the Authority under its 'step in' powers may also impact the ability of persons to seek administrative review of decisions which adversely impact them.

However, the Committee notes that the declarations can only be made by the Minister where they are satisfied it is necessary to facilitate the protection, rebuilding and recovery of an affected community, mitigate against potential disasters or improve the resilience of an affected community for potential disasters. It also acknowledges that the powers are intended to only be exercised in emergency circumstances which require immediate action, in order to protect public safety and lives. In these circumstances, the Committee makes no further comment.

Wide powers of enforcement – real property, privacy rights

8.22 Part 8 of the Bill provides for inspection and related powers of authorised officers. In accordance with section 73, an authorised officer may exercise functions under Part 8 for any of the following purposes:

(a) enabling the Minister, Authority or chief executive officer to exercise functions under this Act,

(b) determining whether there has been compliance with or a contravention of this Act, including an instrument, consent, approval or other document or requirement issued, given or made under this Act,

(c) obtaining information or records for purposes connected with the administration of this Act,

(d) generally for administering this Act.

8.23 These powers under Part 8 include, among other things:

(a) Entering land, other than a building or structure on the land (section 74), and

(b) Requiring by written notice that a relevant entity or person give information to the Authority that it reasonably requires for the 'effective and efficient exercise of the Authority's functions' (section 76).

8.24 Under section 76(3), failure to comply with a notice to give information without reasonable excuse is an offence carrying a maximum penalty of 200 penalty units ($22 000).

8.25 Section 72 allows the CEO of the Authority to appoint persons, including a class of persons, as authorised officers for the purposes of Part 8 of the Bill. Subsection (3) requires this be made by 'written instrument' for an individual appointment or 'Gazette notice' for an appointment of a class of persons.

Part 8 of the Bill provides enforcement powers to authorised officers for the purpose of enabling the exercise of the Minister and NSW Reconstruction Authority's functions under, determining compliance or contravention with, obtaining information connected to and general administration of the Bill. The CEO of the Authority is empowered under section 72 to appoint persons, including a class of persons, as 'authorised officers'.

These include powers to enter land other than a building or structure and require a relevant entity or person give information to the Authority it reasonably requires for the 'effective and efficient exercise' of its functions. In respect to the power to request information, non-compliance without reasonable excuse is an offence carrying a maximum penalty of 200 penalty units ($22 000).

Therefore, the Bill may grant authorised officers, including police officers, wide powers of enforcement. The exercise of these enforcement powers may impact an individual's rights including, for example, their real property rights in respect to the power to enter land and their privacy rights in respect to the power to request information at the pain of penalty.

The Committee recognises that these provisions are intended to strengthen the enforcement and compliance of the legislative framework regulating the State's emergency disaster preparedness, prevention, response and recovery system.

However, the Committee notes that the individuals authorised to exercise these enforcement powers are those persons or class of persons appointed by the CEO. These appointments are made by 'written instrument' or 'Gazette notice' which, unlike regulations, are not required to be tabled in Parliament and thus not subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee generally prefers that the prescription of significant matters, like the people or class of persons able to exercise enforcement powers which may impact individual rights, be included in the regulations to ensure an appropriate level of parliamentary oversight. For these reasons, the Committee refers this matter to Parliament for consideration.

Wide regulation-making power – matters 'convenient to' administration

8.26 Section 93(1) of the Bill provides for the power to make regulations about the following matters that:

(a) under this Act is required or permitted to be prescribed, or

(b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The Bill provides a general regulation-making power under section 149. Specifically, it allows regulations to prescribe a matter that is 'necessary or convenient' for carrying out or effecting the Bill.

There appears to be no provisions which define or narrow the scope of the ordinary meaning of 'convenient'. The Bill may therefore include a wide regulation-making power. Unlike primary legislation, regulations are subordinate legislation which are not required to be passed by Parliament and the Parliament does not control when it commences.

The Committee recognises that the provisions allow for more flexible regulatory responses in respect to the supply, manufacturing or prescription of scheduled substances and other therapeutic goods. However, it notes that the provisions may effectively allow regulations to prescribe matters with little limit. For these reasons, the Committee refers this matter to Parliament for its consideration.

Makes rights, liberties or obligations unduly dependent upon non-reviewable decisions: s 8A(1)(b)(iii) of the LRA

Removal from office by Governor

8.27 Part 3 of the Bill establishes the NSW Reconstruction Authority Advisory Board (the **Board**) and sets out its functions and membership.

8.28 Section 25 provides that the Board's functions are as follows:

> (a) to provide advice to the chief executive officer about the Authority's strategic priorities,
>
> (b) to make recommendations to the chief executive officer about—
>
> (i) priorities for community infrastructure, other property and community services needed for the protection, rebuilding and recovery of affected communities, and
>
> (ii) the need for the declaration of declared projects, reconstruction areas and disaster prevention areas,
>
> (c) to provide advice to the Minister and chief executive officer in relation to the Authority's functions, including—
>
> (i) whether the Authority is exercising the Authority's functions in an appropriate, effective and efficient way, and
>
> (ii) any other matter requested by the Minister or chief executive officer.

8.29 Under Division 2 of Part 2, the Board is to consist of seven members with the relevant skills, knowledge and experience, being a Chairperson and four members nominated by the Minister and two other members nominated by the Commonwealth. The remuneration, allowances, terms and conditions of each Board member is to be decided by the Governor in accordance with section 27.

8.30 Schedule 1 to the Bill provides for the constitution and procedure of the Board. Relevantly, clause 5 sets out the circumstances in which the office of an appointed

Board member becomes vacant. Relevantly, subclause 5(2) provides that the Governor may remove an appointed member from office 'at any time for any reason or none'.

Part 3 of the Bill establishes the NSW Reconstruction Authority Advisory Board and provides for its functions in advising the NSW Reconstruction Authority and the Minister. Under section 27, the remuneration, allowances, terms and conditions of each appointed Board member is to be decided by the Governor.

Schedule 1 also provides for the constitution and procedure of the Board. Relevantly, clause 5(2) enables the Governor to remove an appointed Board member from office 'at any time for any reason or none'. This may subject an appointed Board member's employment rights to a non-reviewable decision by the Executive. By enabling removal from office without the need for reasons, it may also limit a person's ability to challenge the decision to remove them from office.

The Committee notes that the Board is intended to give advice and recommendations about the operation and functions of the Authority, and to prepare quarterly reports to the Minister about the exercise of the Authority's functions. The provisions may therefore also interfere with the independent advisory role of the Board. For these reasons, the Committee refers this matter to Parliament.

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

Ministerial declarations and authorisations

8.31 As noted earlier, the Minister is enabled under Part 5 of the Bill to declare by order published in the Gazette a 'declared project', 'reconstruction area' and 'disaster prevention area'.

8.32 Subsections 39(4), 40(3) and 41(3) provide that such an order may specify that an Act of Parliament or a statutory instrument does not apply in relation to the declared project/reconstruction area/prevention area, 'including the circumstances in which the Act or statutory instrument does not apply'.

8.33 Part 6 of the Bill provides for the functions and powers of the Authority in respect to a declared project, reconstruction area or disaster prevention area. Relevantly, section 44 provides that Part 6 'applies despite another Act or law', including a provision which provides for a period during which a thing or matter must be done.

8.34 In his second reading speech, the Minister noted that these powers are intended to ensure that 'development for the purposes of reconstruction and mitigation happen faster'. He further stated that:

> Importantly, they are not powers that will be brandished haphazardly or without proper consideration. The powers are tempered by both the oversight of the Minister, and in some circumstances by the Premier. To assist the authority to achieve those outcomes, the CEO will enter into agreements with other New South Wales agencies to establish the circumstances and protocols in which the powers may be used.

8.35 Part 6, Division 2 of the Bill also provides for the making of Ministerial authorisations and sets out the development approval powers under that authorisation.

8.36 Section 68 provides that the Minister may, by order, authorise the undertaking of development without the need for either:

(a) An approval or assessment (e.g. an environmental assessment or approval) under the *Environmental Planning and Assessment Act 1979*,

(b) Consent from any person.

8.37 In accordance with section 69, a Ministerial authorisation has effect, despite an environmental planning instrument, development consent or another Act or statutory instrument specified in the Ministerial authorisation. Subsections 69(2) to (4) provides that the authorisation effectively takes effect as if it was a relevant development consent required under the *Environmental Planning and Assessment Act 1979*, another relevant law or regulation.

8.38 Under subsection 68(3), this authorisation may only be made if all of the following are met:

(a) It is given during a declared state of emergency or in relation to a declared project, reconstruction area or disaster prevention area.

(b) The Authority's CEO has asked that the authorisation be made given those circumstances or on those grounds.

(c) The Authority's CEO has advised the Minister and the Minister is satisfied that the authorisation is necessary to protect public safety and welfare following a disaster declared a state of emergency, or because of the disaster (or likely disaster) which resulted in a declared project, reconstruction area or disaster prevention area.

(d) The development is in an area that has been or is likely to be directly or indirectly affected by the disaster.

8.39 However, a Ministerial authorisation may otherwise be given in exceptional circumstances where immediate action is required to protect public safety and welfare and no other mechanism available would be appropriate in the circumstance (subsection 68(4)).

8.40 Subsections 68(5) and (6), the authorisation must be published in the Gazette within 14 days after it is given but failure to do so does not affect the authorisation.

The Bill provides for the Minister to declare by order published in the Gazette, that a project is a 'declared project' or an area is a 'reconstruction area' or 'disaster prevention area'. This order may specify that an Act of Parliament or a statutory instrument does not apply in relation to that declaration, including the circumstances where the relevant laws do not apply. It also empowers the Authority to exercise certain functions despite any other applicable laws.

It also provides that the Minister can make by order published in the Gazette an authorisation for the undertaking of a development. These orders authorise development without the need for the approvals and assessments required under the *Environmental Planning and Assessment Act 1979*, or the consent of any person.

Therefore, the Bill may enable the Minister to effectively exempt functions exercised by the Authority and certain development activities from the application of any other laws, including Acts of Parliament. This may include excluding duties to and protections for individuals provided under law, including for example property rights in respect to development activities.

The Committee further notes that, unlike regulations, it is unclear if these orders are required to be tabled in the Parliament and thus subject to disallowance under section 41 of the *Interpretation Act 1987*. The Committee generally prefers that exemptions from the operation of specified laws be included in the subordinate legislation, in order to facilitate an appropriate level of parliamentary oversight.

However, the Committee notes that the orders may only be made by the Minister if they are satisfied it is in connection with a disaster which is likely to or has affected communities in NSW, and that it is necessary to protect public safety and welfare. In the circumstances, the Committee makes no further comment.

Wide Executive power – payments for exigencies

8.41 Section 45 of the *Constitution Act 1902* and section 4.6 of the *Government Sector Finance Act 2018* provide that money from the State's Consolidated Fund must only be paid out under the authority of an Act. This is through the annual Appropriation Act which is enacted for an annual reporting period for the NSW Government.

8.42 Section 23 of the Bill makes provisions for the payments out of the Consolidated Fund when the annual Appropriation Act for the relevant reporting period has already been enacted. Relevantly, subsection (2) provides that:

> The Treasurer may, with the concurrence of the Minister, determine that additional money is to be paid out of the Consolidated Fund during the annual reporting period for the NSW Government, in anticipation of appropriation by Parliament, if the money is required to meet exigencies of the Authority during the annual reporting period.

8.43 Subsection 23(3) requires the Treasurer to ensure the details of any such payments are included in the Budget Papers for the next annual reporting period for the Authority.

The Bill provides that the Treasurer, with concurrence of the Minister, to determine that additional money be paid out of the Consolidated Fund to meet exigencies, during the annual reporting period for the NSW Government for which an annual Appropriation Act has already been enacted. This would allow the Treasurer to administratively authorise appropriations from the Consolidated Funds without authorisation under an Act of Parliament, which is required under the *Constitution Act 1902* and the *Government Sector Finance Act 2018*.

The Bill therefore enables the Executive to appropriate public funds collected by the Government for exigency payments, outside of the usual Budget process. The Committee notes that this may allow appropriations of public moneys without the necessary authorisation required under the Constitution, and outside of the usual process which is subject to parliamentary scrutiny.

However, the Committee notes that these provisions are intended to enable the NSW Reconstruction Authority to make emergency payments which have not been accounted for in the earlier Budget process. This may facilitate the State's ability to respond to unprecedented natural disasters and declared state emergencies. It also notes that the details of any exigency payments are required to be included in the Budget Papers for the Authority, for the next reporting period. In these circumstances, the Committee makes no further comment.

Matters deferred to the regulations – delegation of function

8.44 Section 15 permits the Authority to delegate the exercise of any of its functions to an authorised person. Section 89 also enables the Minister to delegate the exercise of one of their functions under the Act to an authorised person. Under both sections 15 and 89, the authorised person who has been delegated the function may also subdelegate to another authorised person if the Authority authorises them to do so.

8.45 Section 19 also enables the CEO to delegate the exercise of a function of their role, other than the power to give direct a relevant entity to take a specified action, to an authorised person.

8.46 Subsections 15(3), 19(2) and 89(3) defines an authorised person to include a person, or a class of persons, prescribed or authorised for this section by the regulations.

The Bill provides that the NSW Reconstruction Authority, the Minister and the Authority's CEO may delegate the exercise of their functions under the Act to an 'authorised person', who may subdelegate where relevantly authorised by the Authority to do so. An 'authorised person' is defined to include a person or class of persons prescribed or authorised by the regulations.

The Bill may thereby provide a wide power of delegation, by deferring the persons authorised to be delegated functions to the regulations. The Committee notes that the Authority, its CEO and the Minister can exercise potentially wide-ranging powers under the Bill. For these reasons, the Committee refers this matter to Parliament for its consideration.

Matters deferred to the regulations – creation of offences

8.47 Subsection 93(2) of the Bill provides that the regulations may create offences. However, the maximum penalty punishable by those regulations cannot exceed 200 penalty units ($22 000).

The Bill provides a general regulation-making power to create offences that carry a maximum penalty not exceeding 200 penalty units ($22 000). The Committee generally prefers that offences be established in primary legislation, in order to facilitate an appropriate level of parliamentary scrutiny.

However, the Committee notes that the maximum penalty punishable by offences created by regulations is only monetary and not custodial. It also acknowledges that regulations are still required to be tabled in both Houses of Parliament and subject to disallowance under section 41 of the *Interpretation Act 1987*. In the circumstances, the Committee makes no further comment.

Commencement by proclamation

8.48 Section 2(b) of the Bill provides that certain provisions commence on a day or days to be appointed by proclamation. These include the development planning functions of the Authority, the power of the Minister to make declarations and authorisations and the development and step-in powers triggered by those declarations, enforcement powers of authorised officers and the offences established under the Bill.

Parts of the Bill commence by proclamation. The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly where the legislation in question affects individual rights or obligations.

However, the Committee notes that a flexible start date may assist with the implementation of administrative arrangements necessary for the effective operation of the newly established NSW Reconstruction Authority. In the circumstances, the Committee makes no further comment.

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

Significant matters deferred to the regulations

8.49 In providing the legislative framework for establishing the Authority and its functions, the Bill prescribes a significant number of matters by regulations. It includes, among other provisions:

- Events, incidents, 'matters', or class thereof are a 'disaster' under the Bill (section 6(e)).
- Actions a relevant entity may be required to take by written notice from the Authority (sections 13(1)(c) and (d)).
- Actions an authorised officer may take when entering land under Part 8 of the Bill (section 74(1)(g)).
- Who is a 'relevant entity' under the Bill (Schedule 4).

The Bill defers a significant number of matters to the regulations, including what events, incidents or matters are a 'disaster', what actions a relevant entity may be required by the Authority to take, what actions an authorised officer may take when entering land and who is a 'relevant entity' that can be subject to the functions under the Bill. The Committee generally prefers substantive matters to be dealt with in the principal legislation, rather than the regulations, to facilitate an appropriate level of parliamentary oversight.

However, the Committee acknowledges that these provisions are intended to build more flexibility into the regulatory framework and allow regulators to better respond to changing circumstances, particularly in connection to natural disasters and declared state emergencies. It also notes that any regulations are required to be tabled in Parliament and are subject to disallowance under section 41 of the Interpretation Act 1987. In the circumstances, the Committee makes no further comment.

9. Point to Point Transport (Taxis and Hire Vehicles) Amendment Bill 2022

Date introduced	9 November 2022
House introduced	Legislative Assembly
Minister responsible	The Hon. David Elliot MP
Portfolio	Transport

Purpose and description

9.1 The object of this Bill is to amend the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (the **Act**) in response to the Point to Point Transport Independent Review 2020. In particular, the Bill—

(a) further deregulates the taxi industry, and

(b) provides for consequential transitional arrangements and adjustment assistance, and

(c) makes other miscellaneous amendments.

Background

9.2 The Act regulates taxi and passenger hire vehicle services and booking services.

9.3 The Bill amends the Act to deregulate the taxi industry and provides transitional arrangements to a new scheme, under which taxi licences will be available on application to the Point to Point Commissioner (**Commissioner**) and renewable every 12 months. There will be no limit on the number of taxi licences which can be issued, there will be no determinations, public auctions or buying, selling and leasing of licences, and licences can be used anywhere across the State. The Bill makes amendments to the Act for to achieve this.

9.4 The Bill amends Schedule 2 of the Act to include transitional arrangements to the new scheme. In his second reading speech, the Minister explained:

> Item [23] provides for current taxi service providers—known as "licence holders"—to be able to obtain the new licence ahead of the commencement of the new system. The commissioner's decision to issue a licence to a person will be final and not subject to review.
>
> When a new licence is issued, the old licence will be cancelled and the current licence owner will be notified. However, any restrictions on the operating area of the old licence will continue to apply to the new licence until the day on which the new system commences, providing some continuity and breathing space to current service providers before the system is opened up to new entrants. Importantly, I note the cancellation of the licence during the transitional period will not affect the current

> licence owner's eligibility for payment under the financial assistance scheme. Item [24] provides that on commencement of the new system, all existing taxi licences—both ordinary licences that are able to be bought and sold, and all licences issued by the Government—are cancelled. Most will have been cancelled during the process of issuing new licences to current service providers, but this ensures that any licences not dealt with during the transition are also cancelled. On the same day, all operating area restrictions will come to an end.

9.5 At this time, new entrants can apply for a licence.

9.6 The Bill also establishes a financial assistance scheme. The criteria for eligibility and other features to support the administration of this scheme are to be prescribed by regulation. Funds appropriated in 2016 for previous rounds of assistance and not spent because of a shortfall in eligible applications will be available as part of the new scheme.

Issues considered by the Committee

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

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

Referral to the regulations – shell legislation

9.7 The Bill replaces Schedule 3 of the Act. Clause 2(1) of this new Schedule provides that the regulations may make provision about further transitional assistance funds, including the following:

(a) the persons who are eligible to receive further transitional assistance funds

(b) the amount payable, or the method for determining the amount payable, to eligible applicants

(c) proof of eligibility

(d) applications for further transitional assistance funds

(e) the period within which applications may be made

(f) the determination of applications for further transitional assistance funds

(g) conditions on payment of further transitional assistance funds

(h) the provision of additional information or records by applicants

(i) reviews of decisions about applications

(j) the determination or approval of a matter referred to in paragraphs (a)–(i) by Transport for NSW.

9.8 Clause 2(2) states that, to avoid doubt, the regulations may make provision about further transitional assistance funds before the commencement of Schedule 2, clauses 21(2)(a) and 26.

9.9 The Explanatory Note to the Bill provides that this regulation-making power may be considered shell legislation.

9.10 The Bill also amends section 157 of the Act to provides that compensation (being damages or any other form of momentary compensation) is not payable by or on behalf of the State because of amendments to the Act. The Explanatory Note states that this includes amendments in the Bill that further deregulate the taxi industry, and cancel all remaining existing taxi licences.

The Bill provides that the regulations may make provision about further transitional assistance funds, including who is eligible to receive these funds, the amount payable, the period in which applications must be made and reviews of decisions about applications.

The Committee notes the breadth of matters delegated to the regulations and that the Explanatory Note to the Bill specifies that this regulation-making power may be considered shell legislation. That is, it provides only the skeleton of the legislative scheme and delegates its details to the regulations. It also notes that these matters impact a person's ability to access further transitional assistance funds and other important related matters, including the amount payable and reviews of decisions about applications. It appears that if a person is ineligible to access these funds, their ability to obtain compensation from the State as a result of the Bill is limited by the Bill's amendments to section 157 of the Act.

The Committee generally prefers such substantive matters to be set out in the Act where they can be subject to a greater level of public scrutiny. However, the Committee notes that regulations remain subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987*. It also notes that delegation to the regulations allows for flexibility and the opportunity to determine the details of the regulatory regime. However, taking into account the breadth and importance of matters delegated to the regulations, the Committee refers this matter to the Parliament for its consideration.

Commencement and repeal by proclamation

9.11 Section 2 of the Bill provides that the Bill commences (as an Act) as follows:

(a) for Schedule 1[26] and [27], on the date of assent

(b) otherwise:

(i) 1 year after the date of assent to this Act, or

(ii) on an earlier day, or days, to be appointed by proclamation.

9.12 It is noted that the transitional period under the new Part 3 of Schedule 2 in the Act, inserted into the Act by this Bill, ends on the commencement of clause 26. Clause 26 states that, on the commencement of the clause, each existing licence that is in force is cancelled.

9.13 Additionally, new Schedule 3, which sets out financial assistance scheme, is repealed on a day appointed by proclamation under clause 5 of that Schedule.

9.14 In his second reading speech, the Minister said:

> The bill provides for a staged commencement process so that we can prioritise getting financial assistance payments to current owners of ordinary taxi licences. Transport for NSW and the Point to Point Transport Commissioner will put in place the administrative arrangements to support the payments scheme and also the new licence application process. Once those preparations are complete, a proclamation will be made to commence the substantive provisions of the bill.

9.15 The Minister also said:

> In the new system, taxi licences will be able to operate anywhere across the State. On that day, the new licence application process will also open to new entrants. That will occur on a day to be proclaimed or, in any case, no later than 12 months after the bill receives assent. This provides sufficient flexibility and opportunity for payments to be made under the financial assistance scheme and for holders of existing licences to transition to the new scheme, while also providing certainty that the new system will commence in full no later than 12 months after assent.

Certain provisions of the Bill may commence by proclamation, on a day or days not more than 1 year after the date of assent. The Bill also provides that Schedule 3, which includes transitional provisions, will be repealed on a day appointed by proclamation.

The Committee generally prefers legislation to commence on a fixed date, or on assent, to provide certainty for affected persons, particularly where the legislation in question affects individual rights or obligations. It also notes that provisions in Acts of Parliament are generally repealed by another Act or expiry, and that this process facilitates an appropriate level of parliamentary scrutiny and transparency.

However, the Committee acknowledges that commencement of certain provisions, and repeal of the provisions relating to the payment of financial assistance, by proclamation accommodates the payment of this assistance in the transition to the new regulatory scheme. In the circumstances, the Committee makes no further comment.

10. Prevention of Cruelty to Animals Amendment (Independent Office of Animal Welfare) Bill*

Date introduced	9 November 2022
House introduced	Legislative Council
Member responsible	Ms Abigail Boyd MLC
	*Private Members Bill

Purpose and description

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

(a) provide that the Royal Society for the Prevention of Cruelty to Animals, New South Wales and the Animal Welfare League NSW are approved charitable organisations for the purposes of the principal Act, and

(b) establish and confer functions on the Independent Office of Animal Welfare, the office of Chief Animal Welfare Officer and the Independent Office of Animal Welfare Advisory Committee (the Committee), and

(c) enable the regulations to prescribe or adopt guidelines relating to the welfare of an animal or class of animals if certain review and reporting requirements are satisfied, and

(d) make it an offence for a person to contravene a provision of the guidelines that is prescribed as a mandatory provision.

Background

10.2 The Bill amends the *Prevention of Cruelty to Animals Act 1979,* which sets out the legislative framework for the prevention of cruelty to animals and for the promotion of their welfare.

10.3 Specifically, the bill amends the Act to establish an independent statutory body responsible for ensuring the welfare of animals in the State.

10.4 In her second reading speech to the Bill, Ms Abigail Boyd MLC, elaborated on the purpose and functions of the statutory body:

> The bill establishes an independent statutory body to undertake key regulatory and administrative responsibilities relating to animal welfare and protection, constituted to ensure independent oversight and review of animal welfare in New South Wales in line with scientific knowledge, technological advances and community expectations,

> and subsequently removes responsibility for animal welfare from the Department of Primary Industries.

10.5 Primarily, the Bill aims to remove the responsibility of animal welfare from the Department of Industries and remove any potential conflict with the Department's concurrent role in promoting and growing agricultural industries.

10.6 The Bill inserts Part 2C, which establishes the Independent Office of Animal Welfare (**IOAW**) and appoints a Chief Animal Welfare Officer and Chief Executive Officer. The objects of the IOAW include the promotion of animal welfare issues, improving animal welfare outcomes, and ensuring the State's animal welfare policies and guidelines are independently reviewed and developed having regard to contemporary scientific knowledge about animal welfare, advances in technology, and community expectations and values. The IOAW is also to ensure the independent review of the administration and enforcement of the State's animal welfare laws.

10.7 Part 2C also establishes an IOAW Advisory Committee to be appointed by the Attorney General. Regarding the Advisory Committee, Mr Boyd stated:

> The Advisory Committee is made up of three representatives of non-government animal welfare organisations, two representatives of the RSPCA NSW and the Animal Welfare League NSW, two animal welfare scientists, one animal welfare ethicist, one representative of consumer rights organisations, one representative of commercial animal industry, one government representative and one local council representative.
>
> … the Advisory Committee must be given an opportunity to review and comment on animal welfare codes of practice, guidelines and standards, and must publicly report its comments and suggested amendments before the document can be adopted. This replaces the current process, which provides representatives of relevant livestock industries and the non-statutory Animal Welfare Advisory Council the opportunity to review and comment on codes of practice, guidelines and standards relating to farm and companion animal welfare before the regulation is made.

10.8 Finally, the Bill amends the definition of 'approved charitable organisations' to recognise the RSPCA NSW and the Animal Welfare League NSW under the Act, rather than by appointment by the Minister.

Issues considered by the Committee

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

Regulations may incorporate extrinsic material and strict liability offences

10.9 Section 34A provides that the regulations may prescribe or adopt guidelines relating to the welfare of an animal or class of animals.

10.10 A document may be adopted in whole or in part, and with or without modification. It may also be in force at a particular time or from time to time.

10.11 A regulation under this section must not be made under this section unless the Committee is first given an opportunity to review and comment on the proposed regulation, and a report outlining the Committee's comments has been published

on the Department's website, including suggested amendments to the proposed regulation that have not been made.

10.12 Compliance, or a failure to comply, with guidelines prescribed or adopted is admissible in evidence in proceedings under this Act as evidence of compliance, or a failure to comply with the Act or regulations.

10.13 Under subsection 34A(5), the regulations made under this section may provide that a provision of guidelines prescribed or adopted is a mandatory provision.

10.14 Subsection 34A(6) provides that a person must not contravene a mandatory provision. Contravention of a mandatory provision may incur a maximum penalty of 50 penalty units ($5 500).

The Bill provides that regulations may prescribe or adopt guidelines relating to the welfare of an animal or class of animals. A document may be adopted in whole or in part, and with or without modification. It may also be in force at a particular time or from time to time. The regulations made under this section may provide that a provision of guidelines prescribed or adopted is a mandatory provision. The Committee generally comments on the incorporation of extrinsic material that may not be subject to disallowance by the Parliament.

The Bill also provides that contravention of a mandatory provision (as prescribed by the regulation) may incur a maximum penalty of 50 penalty units ($5 500). This may amount to a strict liability offence. The Committee generally comments when regulations can prescribe 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 accompanied by monetary penalties are not uncommon in regulatory settings to encourage compliance, and in the current case, the requirement is intended to provide an incentive to comply with provisions regarding animal welfare.

The Committee also acknowledges that before a regulation is made, it must first be reviewed by the Advisory Committee for comment and a report must be published on the Department's website outlining the Advisory Committee's comments and any suggested amendments. This provides a certain level of scrutiny that must be undertaken before a regulation is created prescribing either the incorporation of guidelines or mandatory provisions attaching penalties. Further, any regulation made is still required to be tabled in Parliament and subject disallowance under section 41 of the *Interpretation Act 1987*. As such the Committee makes no further comment.

11. Privacy and Personal Information Protection Amendment Bill 2022

Date introduced	9 November 2022
House introduced	Legislative Assembly
Minister responsible	The Hon. Mark Speakman SC MP
Portfolio	Attorney General

Purpose and description

11.1 The object of this Bill is to amend the *Privacy and Personal Information Protection Act 1998* (the **Act**) to—

(a) extend the Act to State owned corporations that are not subject to the *Privacy Act 1988* of the Commonwealth, and

(b) introduce a scheme for the assessment of data breaches and the mandatory notification of certain data breaches that occur in relation to the access, disclosure or loss of personal information held by public sector agencies, and

(c) provide for exemptions from mandatory notification in particular circumstances, and

(d) give the Privacy Commissioner the power to investigate, monitor, audit and report on public sector agencies in relation to the scheme for the mandatory notification of data breaches, including the power to observe the systems, policies and procedures of a public sector agency, and

(e) give the Privacy Commissioner the power to give directions to, and make guidelines, recommendations and reports about, public sector agencies in relation to data breaches, and

(f) require public sector agencies to publish a data breach policy and keep a data breach register.

Background

11.2 The Act provides for the protection of personal information and the privacy of individuals generally.

11.3 The Bill inserts a new Part 6A into the Act for the mandatory notification of data breaches. In his second reading speech, the Minister explained:

> The bill establishes a scheme that will require New South Wales public sector agencies… in the event of a suspected data breach to do the following: first, to contain the breach and assess the likely severity of harm to impacted individuals; second, if the agency assesses that the breach is likely to result in serious harm to an individual,

> to notify the Privacy Commissioner as well as impacted individuals; and third, where impacted individuals cannot be identified or where it is not reasonably practical to notify them, to issue a public notification. The bill will also require agencies to satisfy additional requirements relating to responsible handling of personal and health information, including a requirement to have a publicly available data breach management policy.

11.4 The Bill also gives the Privacy Commissioner certain powers in relation to this scheme, including to investigate, monitor, audit and report on public sector agencies. The Minister noted that the powers are 'necessary to ensure that the Commissioner can work with agencies to facilitate agency compliance, investigate possible noncompliance and enforce the… scheme'.

11.5 The Minister further stated:

> Agencies hold sensitive information about citizens, including personal, health and financial information. High profile data breaches in recent times in the private sector have demonstrated the potential harm to individuals that can result from unauthorised access to or unauthorised disclosure of personal information. Currently, the… Act does not require agencies or New South Wales State-owned corporations, which are not regulated by the Commonwealth Privacy Act 1988, to notify the Privacy Commissioner or impacted individuals of a data breach that is likely to result in serious harm. However, the Privacy Commissioner currently overseas a voluntary reporting scheme…

11.6 The Bill expands the definition of a 'public sector agency' in the Act to include NSW state-owned corporations that are not already captured by the Commonwealth *Privacy Act 1998*. The Minister said that extending the Act, including the mandatory data breach notification scheme, to these entities 'will resolve a significant gap in privacy regulation'.

Issues considered by the Committee

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

Privacy of personal information

11.7 Provisions proposed in new Part 6A concern the collection, disclosure and use of an individual's personal and/or sensitive health information. For example, sections 59R, 59ZF and 59ZG.

11.8 Section 59R sets out provisions for the collection, use and disclosure of information for the purposes of notifying individuals of an eligible data breach.

11.9 An 'eligible data breach' means unauthorised access, unauthorised disclosure or loss of personal information held by a public sector agency that a reasonable person would conclude is likely to result in serious harm to an individual to whom the information relates (an **affected individual**) (section 59D(1)).

11.10 Subsection 59R(1) provides that a public sector agency that is the subject of an eligible data breach may use relevant personal information, collect relevant personal information from another public sector agency, or disclose relevant personal information to another public sector agency. A public sector agency may

also disclose relevant personal information to a public sector agency the subject of an eligible data breach under subsection 59R(2).

11.11 'Relevant personal information' means an individual's name, contact details, date of birth, identifier and the date of death (if relevant) (section 59R(7)).

11.12 However, under subsection 59R(3), information may only be collected, used or disclosed if it is reasonably necessary for the purpose of confirming the name and contact details of a notifiable individual, or whether a notifiable individual is deceased. A 'notifiable individual' means the individual to whom the personal information subject of the breach relates, or each affected individual (section 59N(1)).

11.13 Subsection 59R(4) provides that a public sector agency is not required to comply with an information protection principle, a Health Privacy Principle, a privacy code of practice or a health privacy code of practice in relation to the use, collection or disclosure of relevant personal information under subsections (1) or (2).

11.14 In his second reading speech, the Minister said that this new legal requirement for agencies to notify individuals when their personal information has been impacted by an eligible data breach:

> … will empower individuals who are likely to experience serious harm because of a data breach involving their personal or health information. Once notified, individuals will be able to take their own steps to mitigate the risk of harm that may arise from the breach.

11.15 Additionally, sections 59ZF and 59ZG in the new Part 6A provide that the Information and Privacy Commission and Cyber Security NSW are not required to comply with certain information protection principles set out in the Act or Health Privacy Principles in relation to information disclosed by, or to, the other agency for the purposes of Part 6A or to enable the performance of their functions, as relevant.

The Bill allows a public sector agency that is the subject of an eligible data breach to use, collect and disclose an individual's personal information, or disclose such information to another public sector agency subject of an eligible data breach, if it is reasonable or necessary to confirm the name and contact details of a notifiable individual. A public sector agency is not required to comply with an information privacy principle, a Health Privacy Principle, a privacy code of practice or a health privacy code of practice in relation to this use, collection or disclosure.

This may interfere with an individual's right to privacy. Although, the Committee notes that 'relevant personal information' is limited in scope, and that it can only be used, collected or disclosed in limited circumstances and for a limited purpose. Specifically, where there is an eligible data breach and for the purpose of notifying an individual to whom the information relates or an affected individual of the breach.

The Committee notes that interferences with the right to privacy must be lawful and not arbitrary. It also acknowledges that the Bill intends to introduce a scheme for mandatory notification of certain data breaches, and that this

provision requires the notification of affected individuals. In the circumstances, the Committee makes no further comment on this issue.

The Bill also allows provides that the Information and Privacy Commissioner and Cyber Security NSW do not have to comply with certain information protection principles or Health Privacy Principles in relation to information disclosed by or to the other agency. This may also impact on an individual's right to privacy. However, the Committee notes the Bill's intent to regulate eligible data breaches and the role of the Privacy Commissioner under the scheme to investigate, monitor, audit and report on agencies in relation to mandatory notification. Similarly, it notes the role of Cyber Security NSW in preventing and responding to cyber security threats. In the circumstances, the Committee makes no further comment.

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

Referral of delegation power to regulations

11.16 Section 59ZJ in new Part 6A provides that the head of a public sector agency may delegate the exercise of a function of the head of the agency, other than this power of delegation, to a person employed in or by the public sector agency, or a person of a class prescribed by the regulations.

The Bill allows the regulations to prescribe a class of persons to whom the public sector agency may delegate the exercise of a function of the head of the agency.

The Committee generally prefers substantive matters, such as which persons may have delegated authority to exercise the function of a public sector agency head, to be set out in the Act where they can be subject to a greater level of parliamentary scrutiny. However, the Committee notes that regulations remain subject to parliamentary scrutiny and can be disallowed under section 41 of the *Interpretation Act 1987*. It also notes that delegation to the regulations allows for flexibility in the regulatory framework. In the circumstances, the Committee makes no further comment.

Delegation to guidelines

11.17 Under section 59ZI(1), the Privacy Commissioner may make guidelines for the purpose of exercising their functions under the new Part 6A.

11.18 Section 59Z(2) provides that the Privacy Commissioner may make guidelines about whether access, disclosure or loss that occurs as a result of a data breach would be likely, or would not be likely, to result in serious harm to an individual.

11.19 If a reasonable person would conclude that the access, disclosure or loss would be likely to result in serious harm to the individual, the data breach is an eligible data breach under section 59D(1).

11.20 In his second reading speech, the Minister provided that the Bill does not legislate a definition of what is 'likely to result in serious harm', stating doing so 'may unintentionally limit the types of serious harm that could be considered when assessing a data breach'. It would also likely be inconsistent with Commonwealth scheme and increase the regulatory burden for agencies.

11.21 Under section 59H, assessors carrying out assessments may consider (among other things) other matters specified in the Privacy Commissioner's guidelines about whether the disclosure is likely to result in serious harm to an individual to whom the personal information relates.

11.22 Under section 59I in new Part 6A, assessors must have regard to guidelines, prepared by the Privacy Commissioner, about the process for carrying out an assessment.

11.23 Section 59ZI(2) also provides that the Privacy Commissioner may also make guidelines about deciding whether to exempt a public sector agency from requirements relating to notification of an eligible data breach for reasons relating to serious risk of harm to health or safety, and cyber security reasons.

11.24 The Privacy Commissioner must consult with the Minister responsible for this Act before publishing guidelines under section 59ZI(3). Section 59ZI(4) states that such guidelines must be published on the Information and Privacy Commission's website.

The Bill allows the Privacy Commissioner to make guidelines about whether access, disclosure or loss that occurs as a result of a data breach would or would not be likely to result in serious harm to an individual. They may also make guidelines about deciding whether to exempt a public sector agency for reasons relating to serious risk of harm to health or safety, and cyber security reasons.

The Committee notes that, unlike Acts and regulations, these guidelines are not subject to parliamentary scrutiny. Although, it acknowledges that including certain matters in the guidelines allows for flexibility in the regulatory framework.

Whether or not a data breach would be likely to result in serious harm determines whether the breach is an eligible data breach, to which the mandatory disclosure scheme set out in the Bill applies. The Committee generally prefers substantive matters, including matters which can impact the application of the regulation, to be set out in legislation and subject to parliamentary scrutiny. Although, it notes that not including a legislated definition of this threshold (in the Act or regulations) intends to ensure that the types of serious harm considered when assessing a data breach are not limited. In the circumstances, the Committee makes no further comment.

Part Two – Regulations

1. Crimes (Administration of Sentences) Amendment (Miscellaneous) Regulation 2022

Date tabled	LA: 20 November 2022 LC: 20 November 2022
Disallowance date	LA: TBC[9] LC: TBC
Minister responsible	The Hon. Dr Geoff Lee MP
Portfolio	Corrections

Purpose and description

1.1 The objects of this Regulation are to—

(a) provide for approval processes to allow the use of devices by inmates for particular purposes, and requirements for using the devices, and

(b) allow the monitoring and recording of telephone calls involving inmates, and

(c) enable the sharing of information to assist with applications for Commonwealth post-sentence supervision or detention orders, and

(d) authorise the use of biometric identification systems for persons under 18 years.

Issues considered by the Committee

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

Privacy rights – powers of Commissioner

1.2 The Regulation make a number of amendments to the *Crimes (Administration of Sentences) Regulation 2014* (the **CASR**), to regulate correspondence, use of certain electronic devices and the conduct of audiovisual (**AVL**) visits with correctional centre inmates.

[9] A disallowance date of 'TBC' indicates that the disallowance date falls outside the current 2022 sitting calendar, i.e. after 17 November 2022.

1.3 Specifically, clause 116 of the CASR provides for additional requirements for correspondence from inmates who have been designated 'extreme high risk restricted inmates' or 'national security interest inmates'. The Regulations inserts subclause 116(3) to require such a designated inmate to have the written approval of the Correctional Services Commissioner to send a letter or parcel to a person or body that is not exempt under the CASR.

1.4 The Regulation also prescribes the sending of a letter or parcel by an extreme high risk restricted or national security interest inmate without approval under subclause 116(3), as a correctional centre offence under Schedule 2 of the CASR. Correctional centre offences declared by the CASR are dealt with under Part 2, Division 6 of the *Crimes (Administration of Sentences) Act 1999*, including section 53 which sets out penalties for offences where the governor of the centre or a visiting magistrate finds guilt beyond reasonable doubt.

1.5 The Regulation also inserts clause 119B, which permits that a telephone call made or received by an inmate may be monitored or recorded, where no party is an exempt body or person. The parties to a call made or received must be informed, if practicable, that it may be monitored or recorded. Subclause (3) permits a monitored or recorded telephone call to be 'transcribed, downloaded, listened to or copied'.

1.6 The Regulation inserts Division 7A into Part 5 of the CASR, which provides for the use of devices by inmates. Under clause 122B, the Commissioner may give an approval for an inmate or class of inmates to be provided an electronic device or devices (a '**provided device**'), including for a specified regulated activity. Subdivision 3 makes provisions for the following regulated activities using provided devices:

(a) Sending and receiving messages, but not for the purposes of transacting legal business or in relation to the inmate's legal matters,

(b) Storing, accessing or reading a document or other recorded materials for the purpose of discussing or transacting legal business.

1.7 Clause 122I provides that the Commissioner may approve a person to send and receive messages to and from an inmate, and that the inmate may use a provided device for that purpose. Subclause (5) permits an 'authorised officer' to read any message sent to or by an inmate using an approved device.

1.8 Clause 122K also empowers a correctional or departmental officer to search a provided device for compliance purposes. Subclause (2) provides that the officer may inspect, examine or read a document or file stored on or accessible through the provided device, and otherwise request the assistance of a law enforcement agency to forensically examine the device. However, in accordance with subclauses 122K(4) and 122J(2), the officer may 'inspect or examine, but not read' a legal document stored on a provided device.

1.9 Clause 3 of the CASR defines:

(a) An 'authorised officer' means the governor or a correctional officer authorised by the governor to exercise the function,

(b) An 'exempt body' to mean a number of independent oversight bodies of NSW and the Commonwealth,

(c) An 'exempt person' to mean a Member of NSW Parliament, a legal practitioner or a police officer.

The Regulation inserts provisions into the *Crimes (Administration of Sentences) Regulation 2014* to regulate correspondence with, and use of, certain electronic devices by inmates. This includes permitting the monitoring or recording of a telephone call with an inmate which does not involve an exempt body or person. It also permits authorised, correctional or departmental officers to read any messages sent or received by an electronic device provided to an inmate or inspect and examine (and read, if not a legal document) anything on or accessible through such a device.

It also introduces a restriction on the sending of letters or parcels to a non-exempt body or person a designated an 'extreme high risk restricted' or 'national security interest' inmate, without the approval of the Commissioner. It prescribes the sending of a letter or parcel in contravention of this restriction as a correctional centre offence, which may be dealt with under Part 2, Division 6 of the *Crimes (Administration of Sentences) Act 1999*.

By restricting correspondence and empowering officers to monitor, record, read and examine electronic and telephone correspondence, the Regulation may therefore impact the privacy rights of inmates and individuals who correspond with them.

The Committee acknowledges that the provisions are intended to protect public safety by regulating correspondence from inmates who have been designated to be a particular safety risk. However, the Committee notes that there are no avenues to challenge the decisions of the Commissioner to refuse approvals, or of officers to exercise these compliance powers. It also notes that, in respect to the restrictions on extreme high risk restricted or national security interest inmates, the refusal of an approval to send a letter or parcel opens the inmate to liability for a correctional centre offence. For these reasons, the Committee refers this matter to Parliament for its consideration.

Freedom of association/access to legal representation – approval by Commissioner for AVL visits

1.10 As noted, the Regulation inserts Division 7A into Part 5 of the CASR, which includes provisions for the conduct of AVL visits with inmates under subdivision 2. Under subdivision 2, clause 122C provides that the Commissioner may permit a person to undertake an AVL visit with an inmate. Clause 122D applies where a person wishes to have an AVL visit with an inmate who has been designated 'extreme high risk restricted' or 'national security interest'. Specifically, a person may only conduct such an AVL visit if they have been approved by the Commissioner to do so.

1.11 Subclause 122D(2) and (3) provides that the Commissioner may require the person, including a legal practitioner, to undergo a criminal record check before they are permitted to undertake the AVL visit and, on the basis of that check, may refuse approval of the person.

1.12 Subclause 122D(4) provides that the Commissioner 'may revoke the approval of a person' for an AVL visit with an extreme high risk restricted or national security interest inmate.

The Regulation inserts Division 7A into Part 5 of the *Crimes (Administration of Sentences) Regulation 2014*, which provides for the conduct of audiovisual link (AVL) visits with inmates under subdivision 2. These provisions enable the Commissioner to permit a person to have an AVL visit with an inmate. For inmates who are designated 'extreme high risk restricted' or 'national security interest', clause 122D requires approval from the Commissioner to permit an AVL visit with that inmate. It also provides that the Commissioner may require any person, including a legal practitioner, seeking to undertake such an approval to undergo a criminal record check. The Commissioner may refuse the approval on the basis of that criminal record check, and can otherwise revoke the approval of a person.

The Regulation may thereby impact on an inmate's freedom of association and, in respect to legal practitioners, refused approvals for AVL visits impacts their access to legal representation. The Committee acknowledges that limits on the freedom of association may be justified for the protection of public safety. However, it notes that the Commissioner has a broad discretion to refuse an approval 'on the basis of a criminal record check' and to revoke an approval, and there appears no provisions which set out or limit the grounds for such a refusal or revocation. For these reasons, the Committee refers this matter to Parliament for its consideration.

Biometric identification of persons aged under 18 years

1.13 Clause 320 of the CASR allows the Commissioner to authorise the operation of a biometric identification system in correctional centres, for the purposes of controlling access to the centre or articles in it and/or the movement of persons within, to and from the centre. Specifically, subclause (2) provides that a person may be required to comply with biometric identification system requirements and may be denied access to the centre if they refuse to comply.

1.14 The Regulation repeals subclause 320(5), which previously excluded the operation of clause 320 for any person under the age of 18 years, unless either:

(a) They have previously been the subject of a direction form the Commissioner barring them from visiting the centre.

(b) They have been convicted of an offence relating to a past visit to a correctional centre.

(c) The correctional officer in charge of the relevant visiting area believes their physical appearance is similar to that of an inmate.

The Regulation amends clause 320 of the *Crimes (Administration of Sentences) Regulation 2014*, to broadly enable a person aged under 18 years to be required to comply with a biometric identification system. Failure to comply may mean the person is denied access to the correctional centre.

By requiring persons aged under 18 years to comply with biometric identification systems, the Regulation may thereby require the collection of personal information, in this case biometric data, of minors. The Committee notes that there does not appear to be any safeguard provisions for the collection of that personal information from minors, and that young people under the age of 18 years may lack the capacity to understand the consequences of the collection of that information or refusing to comply with requirements. For these reasons, the Committee refers this matter to Parliament for its consideration.

2. Major Events Amendment Regulation 2022

Date tabled	LA: 20 September 2022 LC: 20 September 2022
Disallowance date	LA: TBC[10] LC: TBC
Minister responsible	The Hon. Alister Henskens SC MP
Portfolio	Sport

Purpose and description

2.1 The object of this Regulation is to amend the *Major Events Regulation 2017* (the **MER**) in relation to the 2022 UCI Road World Championships—

(a) to prescribe additional major event venues and facilities and major event periods, and

(b) to prescribe Wollongong 2022 Limited (ACN 629 044 677) as the promoter for the 2022 UCI Road World Championships, and

(c) to prescribe additional provisions of the *Major Events Act 2009* (**the Act**), Part 4 that apply in relation to the 2022 UCI Road World Championships, and

(d) to prescribe certain persons as authorised officers for the major event.

2.2 The object of this Regulation is to also declare the International Cricket Council Men's T20 World Cup (the **ICC Men's T20 World Cup**) to be held in Sydney in 2022 as a major event for the purposes of the Act.

2.3 The Regulation provides for the following in relation to the ICC Men's T20 World Cup—

(a) the major event periods,

(b) the provisions of the Act, Part 4 that apply in relation to the major event,

(c) the promoter and responsible authority for the major event,

(d) the sales control area and period for the major event during which the sale or distribution of articles is restricted,

[10] A disallowance date of 'TBC' indicates that the disallowance date falls outside the current 2022 sitting calendar, i.e. after 17 November 2022.

(e) the advertising controlled site for the major event,

(f) the advertising controlled airspace for the major event,

(g) the process of applying to the responsible authority for authorisations to sell or distribute articles in areas where restrictions are in place,

(h) the persons prescribed as authorised officers for the major event.

Issues considered by the Committee

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

Wide enforcement powers – authorised officers for major events

2.4 Under sections 5 and 6 of the Act, regulations which declare an event a 'major event' under the Act must also designate a responsibility authority for that major event. For example, the Regulation inserts Part 3 into the MER to declare the ICC Men's T20 World Cup as a major event and the Office of Sport as the responsible authority for that event.

2.5 The Regulation also inserts clause 20 into the MER, to prescribe the following classes of persons as 'authorised officers' under the Act:

(a) persons engaged by the responsible authority to provide security services,

(b) persons engaged by the responsible authority to provide traffic or pedestrian control services.

2.6 This would thereby authorise anyone engaged by a responsible authority to provide security services or traffic/pedestrian control services in a major event to exercise the powers granted to authorised officers under the Act. These powers include:

(a) Giving a reasonable request or direction for the purpose of securing good order and management and enjoyment of the major event area; failure to comply with which is a strict liability offence (section 44 of the Act)

(b) Requesting a person undergo a search using electronic means, of the articles in their possession, to remove their clothing, or open a vehicle or vessel they are in (section 45 of the Act)

(c) Directing a person to leave or remove a person from a part of a major event area for certain grounds, or request they allow a bag, container or other thing be inspected (section 46 of the Act)

(d) Issuing a penalty notice if it appears to the officer that a person has committed a penalty notice offence (section 73 of the Act

The Regulation prescribes persons engaged to provide security or traffic/pedestrian control services by the responsible authority for a declared major event, as authorised officers under the *Major Events Act 2009*. This would authorise a person privately engaged to provide these services for a major event to exercise enforcement powers granted to authorised officers under the Act. The exercise of these enforcement powers may impact an individual's rights

including, for example, their real property rights in respect to the powers to search and inspect vehicles and articles, and their right to freedom of movement in respect to the power to be directed to leave or be removed from an area.

In respect to the power of authorised officers to issue penalty notices, the Committee notes that penalty notices allow a person to pay the amount specified for an offence within a certain time should he or she not wish to have the matter determined by a court. This may impact on a person's right to a fair trial, specifically, to have a matter heard by an impartial decision maker.

The Committee notes that the provisions are intended to facilitate the smooth and orderly management and enjoyment of major events, by ensuring attendees comply with security, traffic and pedestrian control personnel. However, the provisions would allow private sector employees to exercise wide enforcement powers, including the power to search or remove persons. The Committee notes that, unlike police officers, individuals who have bene privately engaged to provide services are not subject to the same obligations, duties and safeguards provided in NSW law. For these reasons, the Committee refers this matter to Parliament for its consideration.

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. Conveyancing (Sale of Land) Regulation 2022

The object of this Regulation is to remake, with amendments, the *Conveyancing (Sale of Land) Regulation 2017*.

This Regulation provides for the following—

(a) the documents that must be attached to a contract for the sale of land,

(b) the terms and warranties that are deemed to be implied in a contract for the sale of land,

(c) the information that must be included in a draft plan, and the documents that must be included in a disclosure statement, for an off the plan contract for the sale of land,

(d) the persons and bodies prescribed for the *Conveyancing Act 1919* (***the Act***), section 52A(3), which provides that a purchaser has and may exercise rights, powers and immunities in relation to documents issued by the person or body and attached to a contract for the sale of land,

(e) the warranties that are deemed to be implied in an option to purchase residential property,

(f) the form of the statement relating to a cooling off period that must be included in—

(i) a contract for the sale of residential property, or

(ii) an option to purchase residential property,

(g) the circumstances and way in which a purchaser may rescind a contract for the sale of land or an option to purchase residential property,

(h) the matters that constitute a material particular in a disclosure statement for an off the plan contract,

(i) exemptions from—

(i) the Act, section 52A(2), which requires vendors to attach prescribed documents to a contract for the sale of land and deems prescribed terms, conditions and warranties to be included in the contract, and

(ii) the Act, Part 4, Divisions 8 and 9, which deal with certain aspects of the sale of residential property and options to purchase residential property, including by imposing cooling off periods,

(j) savings and transitional matters.

Proposed sections 15, 17 and 19 of this Regulation are arguably made under Henry VIII provisions because the proposed sections amend the Act by affecting the application of the Act.

The Regulation substantially remakes and repeals the previous iteration, with some amendments to include new provisions. While this includes a provision which amends the application of the *Conveyancing Act 1919*, the new provision exempts certain sophisticated exercise of real property options from cooling off periods.

2. Electricity Infrastructure Investment Amendment (Governance and Fees) Regulation 2022

The object of this Regulation is to make provision about the following—

(a) the information required for calculating firm capacity,

(b) the recovery of amounts payable under contribution orders,

(c) the functions of the consumer trustee, the financial trustee and the infrastructure planner,

(d) access schemes and fees for access schemes.

This Regulation also moves an existing provision dealing with the authorised officers who are able to issue penalty notices.

The Regulation prescribes the Australian Energy Regulator (AER) as an authorised officer for the issue of penalty notices under section 76 of the *Electricity Infrastructure Investment Act 2020*. However, this prescription only applies if the AER is appointed as the regulator under the Act. While the Regulation contingently authorises the AER to issue penalty notices under the Act, section 64 of the Act explicitly includes the AER as a body which may be appointed the regulator. People also retain the ability to challenge the penalty notice in court.

3. Game and Feral Animal Control Regulation 2022

The object of this Regulation is to repeal and remake, with amendments, the *Game and Feral Animal Control Regulation 2012*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following matters—

(a) the types of game hunting licence (standard hunting licence, visitor's hunting licence, hunting guide licence, commercial hunter's licence and professional hunter's licence),

(b) the approval of training for eligibility for a game hunting licence and the accreditation of persons, clubs and associations to conduct training,

(c) restrictions on the granting of game hunting licences,

(d) machinery matters for licences, including applications, duration of licences and grounds for refusal of a licence,

(e) the giving of notice of the proposed declaration of public hunting land,

(f) the conditions of game hunting licences, including conditions relating to native game birds,

(g) the prescription of fees for licences,

(h) penalty notice offences and their penalties.

4. Health Records and Information Privacy Regulation 2022

The object of this Regulation is to repeal and remake, with minor amendments, the provisions of the Health Records and Information Privacy Regulation 2017, which would otherwise be repealed on 1 September 2022 by the Subordinate Legislation Act 1989, section 10(2). This Regulation—

(a) prescribes certain services as health services, and

(b) makes provision for the use and disclosure of health information for a secondary purpose in certain circumstances, and

(c) provides for the Ministry of Health, the Health Administration Corporation, local health districts, statutory health corporations and the Cancer Institute (NSW) to be treated as a single agency for the purposes of the Health Privacy Principles and health privacy codes of practice, and

(d) prescribes certain health records linkage systems administered by the Health Administration Corporation as not being health records linkage systems for the purposes of the Health Privacy Principles.

This Regulation comprises or relates to matters set out in the Subordinate Legislation Act 1989, Schedule 3, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

5. National Electricity (New South Wales) Regulation 2022

The object of this Regulation is to repeal and remake, with minor amendments, the *National Electricity (New South Wales) Regulation 2015*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2). This Regulation modifies the operation of the National Electricity Rules, to the extent that the Rules apply as a law of New South Wales, by—

(a) exempting the lessor of a transacted distribution system or transacted transmission system under the *Electricity Network Assets (Authorised Transactions) Act 2015* from the requirement, as an owner, to register as a Network Service Provider, and

(b) replacing a reference to TransGrid as a result of an authorised transaction under the Act.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature, and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

6. NSW Self Insurance Corporation Regulation 2022

The object of this Regulation is to repeal and remake, without significant amendments, the provisions of the *NSW Self Insurance Corporation Regulation 2015*, which would otherwise be repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation authorises the appointed directors of the board of Insurance and Care NSW as a class of persons to whom the NSW Self Insurance Corporation may delegate its functions.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

7. Public Health Regulation 2022

The object of this Regulation is to remake, with amendments, the Public Health Regulation 2012, which is repealed on 1 September 2022 by the Subordinate Legislation Act 1989, section 10(2). This Regulation makes provision for the following—

(a) installation, operating and maintenance requirements for air-conditioning systems and other regulated systems,

(b) operating requirements for public swimming pools and spa pools,

(c) requirements for the carrying out of skin penetration procedures and for the premises where the procedures are carried out,

(d) quality assurance programs, known as QAPs, for suppliers of drinking water,

(e) disease control measures,

(f) the facilities and procedures for handling of bodies of deceased persons, exhumations, cremations and other matters relating to the disposal of bodies,

(g) the codes of conduct for non-registered health practitioners and certain health organisations,

(h) the offences under the Public Health Act 2010 and this Regulation for which penalty notices may be issued and the amount of the penalties payable,

(i) other minor matters.

8. Rail Safety (Adoption of National Law) Amendment Regulation 2022

The object of this Regulation is to update references to certain standards following the publication of revised editions by Standards Australia and Standards New Zealand.

This Regulation is made under the *Rail Safety (Adoption of National Law) Act 2012*, sections 8(1)(d), (e) and (g) and 10(4) and the Rail Safety National Law (NSW), sections 126(4) and 127(4).

9. Referable Debt Order (2022-504)

Pursuant to section 7(2) of the *State Debt Recovery Act 2018*, act of grace payments made by the Government which are recoverable under section 5.7(3) of the *Government Sector Finance Act 2018* for the purpose of the Kangaroo Valley Road Closure Small Business Grant and the Alfresco Restart Rebate Program, in each case payable to the Service NSW, are declared to be referable debts.

10. Work Health and Safety (Mines and Petroleum Sites) Regulation 2022

The object of this Regulation is to remake, with changes, the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation makes provision about the health and safety of workers at mines and petroleum sites. In particular, this Regulation makes provision about the following matters—

(a) the role of mine and petroleum site operators,

(b) managing risks to health and safety, including the preparation of safety management systems, principal mining hazard management plans and principal control plans,

(c) the health monitoring of workers,

(d) consultation with workers at a mine or petroleum site and the safety role of workers at the mine or petroleum site,

(e) the preparation of survey plans and mine plans,

(f) requiring mine and petroleum site operators to provide certain information to the regulator,

(g) requiring mine and petroleum site operators to keep records,

(h) the exercise of statutory functions at mines and petroleum sites by suitably qualified individuals,

(i) the licensing of certain activities at certain mines,

(j) the membership and functions of the Mine Safety Advisory Council and the Mining and Petroleum Competence Board,

(k) safety and health representatives at coal mines,

(l) exemptions from certain requirements of the Work Health and Safety (Mines and Petroleum Sites) Act 2013 and this Regulation,

(m) other miscellaneous matters.

The Regulation substantially remakes and repeals its previous iterations, save for some substantive amendments. While these amendments include the creation of new strict liability offences and prescribed exemptions from the operation of the parent Act, these amendments are intended to ensure compliance with the regulatory framework for ensuring the work health and safety of workers at mine and petroleum sites.

Appendix Three – Letters received from Ministers and Members responding to the Committee's Comments (15 June 2022 – 11 November 2022)

No.	Digest No.	Minister/Member Responsible and Date of Letter	Bills/Regulations Covered by Letter
1.	40/57	The Hon. Matt Kean MP – 10 August 2022	*Electricity Supply Amendment (Renewable Fuel Scheme) Regulation 2021*
2.	40/57	The Hon. Victor Dominello MP – 1 September 2022	*Retail and Other Commercial Leases (COVID-19) Regulation 2022*
3.	41/57	The Hon. Paul Toole MP – 28 June 2022	*Mining and Petroleum Legislation Amendment Bill 2022*
4.	41/57	The Hon. Victor Dominello MP on behalf of former Minister the Hon. Eleni Petinos MP – 1 September 2022	*Retail and Other Commercial Leases (COVID-19) Regulation 2022*
5.	42/57	The Hon. Victor Dominello MP – 15 June 2022	*State Insurance and Care Legislation Amendment Bill 2022*
6.	42/57	The Hon. Paul Toole MP – 27 June 2022	*Work Health and Safety (Mines and Petroleum Sites) Amendment Bill 2022*
7.	43/57	The Hon. Victor Dominello MP – 10 June 2022	*Government Telecommunications Amendment Bill 2022*
8.	44/57	The Hon. Dominic Perrottet MP – 24 June 2022	*Statute Law (Miscellaneous Provisions) Bill 2022*
9.	45/57	The Hon. Victor Dominello MP – 18 July 2022	*Motor Accident Guideline Version 8.2*
10.	45/57	The Hon. Eleni Petinos MP – 9 August 2022	*Work Health and Safety Amendment (Food Delivery Riders) Regulation 2022*

11.	45/57	The Hon Anthony Roberts MP on behalf of the Hon. Wendy Tuckerman MP – 24 August 2022	*Local Government (General) Amendment (Temporary Emergency) Accommodation) Regulation 2022*
12.	45/57	The Hon. Matt Kean MP – 6 September 2022	*Treasury Legislation Amendment (Miscellaneous) Bill 2022*
13.	46/57	The Hon. Natalie Ward MLC – 6 October 2022	*Road Transport (Driver Licensing) Amendment Regulation 2022*
14.	46/57	The Hon. Victor Dominello MP – 10 October 2022	*Motor Accident Injuries Amendment Regulation 2022* *Notification of SA Bar Association Professional Standards Scheme* *Residential Apartment Buildings (Compliance and Enforcement Powers) Amendment (Building Work Levy) Regulation 2022*
15.	46/57	The Hon. Kevin Anderson MP – 19 October 2022	*Liquor Amendment (Online Age Verification Requirements) Regulation 2022*
16.	47/57	The Hon. Damien Tudehope MLC – 27 September 2022	*Industrial Relations Amendment (Dispute Orders) Bill 2022*
17.	48/57	The Hon Paul Toole MP – 11 November 2022	*Crimes Amendment (Money Laundering) Bill 2022* *Dedicated Encrypted Criminal Communication Device Prohibition Orders Bill 2022* *Law Enforcement (Powers and Responsibilities) Amendment (Digital Evidence Access Orders) Bill 2022* *Security Industry Amendment Bill 2022*
18.	49/57	The Hon. Mark Speakman SC MP – 11 November 2022	*Crimes Legislation Amendment (Coercive Control) Bill 2022*